

Public Prosecutor v Vikneswaren Ramu and another
[2018] SGHC 138

Case Number : Criminal Case No 38 of 2018
Decision Date : 08 June 2018
Tribunal/Court : High Court
Coram : Aedit Abdullah J
Counsel Name(s) : April Phang and Zulhafni Zulkeflee (Attorney-General's Chambers) for the Prosecution; Selva Kumara Naidu (Liberty Law Practice LLP) for both accused.
Parties : Public Prosecutor — Vikneswaren Ramu — Parthiban Rajagopal

Criminal procedure and sentencing – sentencing – importation of diamorphine without authorisation

[LawNet Editorial Note: The appeal from this decision in Criminal Case Appeal No 27 of 2018 was withdrawn.]

8 June 2018

Aedit Abdullah J:

Introduction

1 The Accused, Vikneswaren Ramu, pleaded guilty to a single charge, as follows:

You are charged ... that you, Vikneswaren Ramu, on 7 May 2016, at or about 11.40 am at Woodlands Checkpoint, Singapore, together with on Mohd Shahrman Bin Mohamed Sababri ... (“Shahrman”) and Parthiban Rajagopal ... (“Parthiban”), in further of the common intention of you all, did import a “Class A” controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the Act”), *to wit*, Shahrman drove into Singapore a yellow Perodua Myvi car bearing Malaysian licence plate W2507F (“the Vehicle”), within which was concealed two (2) bundles containing 904.8 g of granular/powdery substances which [were] analysed and found to be not less than 10 g of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 of the Act, read with section 34 of the Penal Code (Cap 224, 2008 Rev Ed) and punishable under s 33(1) of the said Act.

The charge carried a minimum sentence of 20 years’ imprisonment and 15 strokes, and a maximum sentence of 30 years’ imprisonment or life imprisonment, with 15 strokes.

2 Parthiban was similarly charged, and pleaded guilty. He was sentenced to imprisonment of 22 years and 15 strokes. Shahrman was convicted separately on his plea of guilt to a similar charge, but with a higher amount of drugs, *ie*, not less than 14.99 grams, and was sentenced to 25 years’ imprisonment and 15 strokes of the cane.

Facts

3 The statement of facts reads in material parts:

4. On 7 May 2016, at about 11.40 am, officers from the Immigration & Checkpoints Authority, Singapore ("ICA") directed one yellow Perodua Myvi car bearing Malaysian registration number W2507f ("the Car") from Woodlands Checkpoint Arrival Counter 22 to the Woodlands Checkpoint Arrival Car Inspection Pit ("Inspection Pit") for thorough checks. The said Car was driven by Shahrman.

5. Thereafter, at about 11.45 am, ICA officers conducted a search of the Car, in the presence of Shahrman. Two (2) bundles wrapped with black tape were found from underneath the dashboard behind the glove compartment of the Car. The said bundles were retrieved and placed on the front passenger seat of the Car. Shahrman was then placed under arrest by the ICA officers, before officers from the Central Narcotics Bureau, Singapore ("CNB") were notified. The CNB officers subsequently arrived at the Inspection Pit. The two bundles were then inspected by CNB officers and found to contain granular substances which were revealed by the field test kit to be heroin. On the same day, at about 11.48 am, CNB officers took over custody of Shahrman, the two bundles and the Car.

...

6. After investigations were conducted, [the Accused] and Parthiban were arrested by CNB officers later on the same day at about 4.45 pm at Woodlands Checkpoint Departure Bike Counter 65, on suspicion of having committed drug importation offences. They were escorted to the Woodlands Checkpoint Detention Yard. Both [the Accused] and Parthiban were on a Yamaha LC 135 motorcycle bearing Malaysian registered licence plate JNM 6874 ("the motorcycle"), with [the Accused] the driver [sic] of the said Motorcycle and Parthiban as the pillion rider.

...

4 The SOF recounted the examination of drugs that were found; it suffices to note that the two packets were found to contain not less than 904.8 grams of a granular or powdery substance in total, which on analysis was found to contain not less than 15.02 grams of diamorphine, a Class 'A' controlled drug listed in the First Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The SOF then continued:

13. Investigations revealed that Shahrman was instructed by [the Accused] and Parthiban to transport the two drug bundles ... into Singapore. Shahrman was required to transport the drug bundles using the Car and drive to Blk 2021 Bukit Batok Industrial Park, Singapore. Upon arrival, Shahrman would call either [the Accused] or Parthiban, who would then arrange for someone to collect the said drug bundles. Shahrman was accordingly arrested with the two drug bundles upon entering Singapore in the Car.

...

14. Shahrman first knew Parthiban sometime in April 2016 in Malaysia. He was introduced to the latter while looking for a moneylender. After [borrowing] a sum of Malaysian Ringgit \$2,500.00 from Parthiban, Shahrman told the latter that he was unable to keep up with the repayment of the loan on the terms agreed. Parthiban then proposed that Shahrman assist in performing some deliveries for him. Shahrman agreed.

15. About one week after agreeing to perform the deliveries, Shahrman drove to one "Sutera mall" in Malaysia on Parthiban's instructions. There, he met with [the Accused] and Parthiban. [The Accused] briefed him on the job to be done and provided him with specific instructions while

Parthiban emphasised the significance of the job and informed Shahrman to contact him or [the Accused] if he had any issues.

16. The next day, [the Accused] contacted Shahrman to arrange for the first job. He instructed Shahrman to proceed to "Kip Mart" at Tampoi, Malaysia and wait. When Shahrman drove his Car there, he was asked to follow one silver Proton Waja car, driven by an unidentified male Indian, to an open carpark in the vicinity. At the open carpark, the said male Indian placed a black plastic bag, containing the items to be delivered, in the Car. After this Shahrman contacted [the Accused] who instructed him to drive into Singapore.

17. Shahrman proceeded to enter Singapore on the same day. After passing the immigration checks, Shahrman contacted [the Accused] who instructed Shahrman to drive to Blk 2021, Bukit Batok Industrial Park, Singapore to deliver the black plastic bag to an unknown person. Thereafter, Shahrman drove back to his house in Malaysia.

18. Following this first delivery, Shahrman went on to make 3 further deliveries, with the fourth delivery on the date of his arrest on 7 May 2016. The second and third deliveries also involved the same process. Shahrman received a total sum of at least Malaysian Ringgit \$500.00 for all the deliveries he made thus far.

...

19. On 6 May 2016, sometime in the evening, Shahrman received a call from Vikneswaren, requesting a meeting with him and Parthiban at "Kip Mart" at Tampoi, Malaysia. At the meeting, Shahrman was instructed to make the delivery of drugs on 7 May 2016. Thereafter, on 7 May 2016, sometime in the morning, Shahrman drove his car to the same "Kip Mart" whereupon an unidentified male Indian arrived in a silver Proton Waja car and placed the two bundles of drugs in the Car. Shahrman then drove the Car into Singapore through Woodlands Checkpoint. He was arrested when the drug exhibits were found in the car.

21. Post-arrest [sic], at about 1.25 pm, Shahrman agreed to cooperate by making calls to the Malaysia-based supplier of the drugs. Initially Shahrman's repeated calls to the handphones of both accused persons were unsuccessful. At 2.05 pm, he received a call from the number ... in the presence of CNB officers. This number belonged to [the Accused], but was saved as "Sami 2" in the contacts list of Shahrman's handphone. As such, CNB officers referred to this caller as "Sami" in document the conversation between "Sami" and Shahrman.

22. CNB officers heard "Sami" instruct Shahrman to call "Sami" again to inform the latter once Shahrman reached Blk 2021 Bukit Batok Industrial Park, Singapore. As such, CNB officers initiated a follow-up operation and subsequently, at 2.56 pm, Shahrman was instructed by CNB officers to give "Sami" another call to inform "Sami" that he had reached Blk 2021 Bukit Batok Industrial Park, Singapore, already parked the car and that everything went well. However, no one was apprehended by the CNB officers who were conducting this operation at Blk 2021 Bukit Batok Industrial Park.

23. In light of the suspicious circumstances, suggesting their involvement in the importation of the drug bundles, [the Accused] and Parthiban were placed on the immigration watch-list, and arrested when they attempted to leave Singapore on 7 May 2016...

24. [The Accused], Parthiban and Shahrman had shared in the common intention to deliver the said drugs into Singapore. In furtherance of this common intention, Shahrman drove the Car,

carrying the said drug bundles, into Singapore on the instructions of [the Accused] and Parthiban.

...

25. Both [the Accused] and Parthiban were not authorised to import diamorphine, a controlled drug, under the MDA or the Regulations made thereunder.

26. By importing not less than 10 grams of diamorphine, together with Shahrman, in furtherance of the common intention of them all, both [the Accused] and Parthiban have thereby committed one count of an offence under section 7 of the MDA read with section 34 of the Penal Code (Cap 224, 2008 Rev Ed) and punishable under section 33(1) of the MDA.

5 Having found that both Accused understood the charge, and the consequences of pleading guilty to the charge, and on his admission to the statement of facts, I convicted both of them.

Mitigation

6 In joint mitigation with Parthiban, counsel for both Accused argued for the minimum sentence of 20 years and 15 strokes of the cane to be imposed on the Accused, as he was not the one who had lent money to Shahrman in the first place, and neither was he the one who had proposed that Shahrman deliver drugs.

7 Counsel also sought to distinguish Shahrman's sentence of 25 years' imprisonment as Shahrman pleaded guilty to a charge of importation of not less than 14.99 grams of diamorphine.

8 As to the mitigating factors, it was noted that the Accused had no prior convictions. He had been working as a lorry driver since 2011, before he was arrested. The Accused was about to go through customary rites of marriage when he was arrested; he had married his wife in a civil ceremony. They had adopted a child who was 3 years old at the time of the hearing. He had lost his father when he was just 15 years old, and has an aged mother, who the Accused hoped to spend time with after serving his sentence.

9 Counsel relied on the decision in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher Shanmugam*"). He also sought a backdating of the start of imprisonment to 7 May 2016, the date of his first remand.

Prosecution Submissions

10 The Prosecution sought a sentence of between 20 to 22 years' imprisonment for the Accused and Parthiban. Applying the sentencing benchmark, in respect of offences of importing not less than 10 grams of diamorphine, the appropriate sentencing range was between 20 to 22 years' imprisonment, with a minimum of 15 strokes of the cane.

11 The Prosecution referred to the Court of Appeal's guidance in *Suventher Shanmugam*, which laid down guidelines for the offence of importing cannabis, and indicated that the sentencing ranges could be adapted for use for other types of drugs, with the same sentencing ranges. As the importation of 10 to 14.99 grams of diamorphine attracts a similar sentencing range as the importation of between 330 to 499.99 grams of cannabis, a similar range can be derived for diamorphine. Thus the Court of Appeal held, in *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 ("*Amin bin Abdullah*") at [100] that the sentencing range for importing between 10 to 11.5 grams of diamorphine was

between 20 to 22 years' imprisonment.

12 The Prosecution submitted, applying *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122, that the indicative starting sentence within the range was to be adjusted in line with the culpability of the accused persons, taking into account various factors such as involving others, being motivated by financial advantages, or directing or organising the drug trade on a commercial scale. Thereafter, the sentence would be adjusted to take into account aggravating and mitigating factors. On the facts here, the drug operations were submitted to be wide, involving at least two other persons beyond Shahrman, the Accused and Parthiban. Shahrman was also brought into the net because of his inability to pay money back to Parthiban, which meant that the accused had abused his position of influence over him.

13 Shahrman, the Prosecution noted, who was the actual courier bringing in the bundles, was sentenced to 25 years' imprisonment. The Prosecution submitted that the culpability of Parthiban and the Accused was at least equal, if it did not exceed that of Shahrman. The two of them had played indispensable roles in the coordination of the delivery. Shahrman was also said to be dependent on the Accused and Parthiban as Shahrman updated them at each stage of the delivery.

The court's decision

14 Taking into account the facts of the charge against each accused person, particularly the quantity of drugs specified in the charge, I imposed a sentence of 20 years and 6 months' imprisonment, and 15 strokes of the cane on the Accused. Parthiban was sentenced to 22 years' imprisonment and 15 strokes of the cane.

15 The Accused has filed an appeal against my decision on sentence. As Parthiban has not filed any appeal against my decision in respect of his case, I shall only deal with the analysis pertaining to the Accused's sentence below.

Analysis

16 I accepted that the applicable sentencing approach for diamorphine was the guidance laid down by the Court of Appeal in *Suventher Shanmugam* and adapted in *Amin bin Abdullah*. The first step is to determine the indicative range based on the quantity of the drug as contained in the charge, and then to consider adjustments to take into account culpability, and the presence of aggravating or mitigating factors: *Suventher Shanmugam* at [28]. I noted further the guidance of the Court of Appeal in *Suventher Shanmugam* at [36]-[37] that the fact that the actual quantity seized was higher than the quantity stated in the charge would not, in itself, justify the imposition of a higher than minimum sentence.

Sentencing range

17 Both the Prosecution and the Defence were of the same mind as to the relevant range applicable to the Accused, as well as to Parthiban. The starting range was constrained by the amount of drugs specified to be involved, *ie*, not less than 10 grams, which put the Accused and Parthiban at the lower end of the spectrum. This meant that the Accused was placed at a lower starting point as compared to Shahrman, who pleaded guilty to a charge involving not less than 14.99 grams of diamorphine.

Starting point

18 The starting point of the sentencing range is determined by the quantity of drugs as specified in the charge, *ie*, not less than 10 grams. While it was apparent that larger quantities were involved, and that the charge against Shahrman involved a larger amount, it is largely the Prosecution's prerogative to prefer the charge that it considers appropriate in the circumstances, and the court would not impose a higher sentence simply for this, as has been noted above. As submitted by the parties, this case thus fell within the lower band laid down by the Court of Appeal in *Amin bin Abdullah* at [100].

19 As the quantity involved was at the floor of the range, the starting point would be 20 years' imprisonment and 15 strokes of the cane

Culpability, aggravating and mitigating factors

20 While Counsel for the Accused argued that his role was minimal and less than that of Parthiban, it was apparent from the statement of facts that the Accused played a critical role in the commission of the offence as he was clearly the primary communications conduit with Shahrman. It may be that Parthiban has greater culpability ultimately as he was the one who drew in Shahrman into trafficking in the first place, the Accused's role was not negligible and could not be ignored.

21 As against that, there were minimal mitigating factors present in respect of the Accused. His family situation, whether the old age of his mother, or the fact that he had a young child, could not assist him. These were matters irrelevant to the question of culpability, or harm caused by the offence. Neither were they so out of the ordinary that judicial mercy was to be extended.

22 In light of his role, and in the absence of any substantive mitigating favour, I was of the view that a sentence of imprisonment above the minimum of 20 years was justified. Nonetheless, the Accused' role was ultimately less than that of Parthiban who drew Shahrman in. Weighing all of these factors, a sentence of 20 years and 6 months' imprisonment, and 15 strokes of the cane was commensurate with his culpability and the relevant factors present in this case.

Sentence imposed

23 A sentence of 20 years and 6 months' imprisonment, and 15 strokes of the cane was thus imposed on the Accused. It is to run from the date of his first remand, that is 7 May 2016.