

Public Prosecutor v Gunasilan Nadarajah
[2018] SGHC 170

Case Number : Criminal Case No 54 of 2017
Decision Date : 01 August 2018
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lau Wing Yum, Ong Luan Tze and Tan Wee Hao (Attorney-General's Chambers) for the Public Prosecutor; Ram Goswami (M/s Ram Goswami) and Cheng Kim Kuan (K K Cheng & Co) for the accused; Luo Ling Ling (RHTLaw Taylor Wessing LLP) and Dhanaraj James Selvaraj (James Selvaraj LLC) as amicus curiae (10 - 11 August 2017).
Parties : Public Prosecutor — Gunasilan Nadarajah

Criminal Law – Statutory offences – Misuse of Drugs Act

Evidence – Proof of evidence – Onus of proof

[LawNet Editorial Note: The accused's appeal from this decision in Criminal Appeal No 34 of 2018 was dismissed by the Court of Appeal on 19 February 2019 with no written grounds of decision rendered. The Court of Appeal agreed with the reasoning and findings of the Judge below and, in particular, with his conclusion that the Prosecution had proved beyond a reasonable doubt that the Appellant had passed the haversack containing the drugs to Hossain.]

1 August 2018

Judgment reserved.

Choo Han Teck J:

1 This is not a usual case in which an accused had been arrested with narcotic drugs in his possession. Consequently, the presumptions of knowledge and trafficking do not arise and the Prosecution has to prove its case beyond a reasonable doubt against the accused, Gunasilan.

2 Gunasilan is a 34 year-old Malaysian whose vocation was running a brothel at 35A Geylang Lor 22. He had a Bangladeshi named Hossain Mahabub working for him, mainly as a look-out in case of raids by the vice squad.

3 On the evening of 13 April 2016 a raid took place but Gunasilan was not at the premises so he was not detained. The vice squad detained several women and two Bangladeshi men, but Hossain was not one of them.

4 Hossain turned out to be a crucial Prosecution witness. He was 22 years old at the material time in 2016. He testified that after the police had left the premises, Gunasilan called him and when told that the police had left, Gunasilan returned to 35A Geylang. He went to his room after asking Hossain for his (Hossain's) haversack. Gunasilan packed some things into the haversack. The main one being a paper bag with the "Duty Free" logo. Inside this bag were two plastic bags. In the larger pink plastic bag were the subject matter of this trial – 15 packets of methamphetamine weighing 419.72g net. There were some cannabis and a packet of heroin but these are not the subject of this trial.

5 The drugs were separately wrapped. There were two bundles each containing six packets of methamphetamine and one bundle containing three packets. These form the 15 packets for which Gunasilan was charged for trafficking, and the charge carries the death penalty.

6 The methamphetamine were all packed in the 15 individual plastic packages. The three lots comprising six, six and three, were then wrapped in what is known as "cling wrap" plastic, and then wrapped over with black tapes. The three separate bundles were then wrapped with newspaper held together with rubber-bands and the rubber bands were held in place with scotch-tapes.

7 Another important item recovered from the haversack was a small striped towel. This towel was to become significant when the defence presented its case. He had very few things in the haversack, mostly small personal items. It was not clear whether he included the towel. The material point was that Gunasilan's DNA was found on that towel. He testified that he telephoned his friend Pobitro who told him (Hossain) that he (Pobitro) was busy at work but will meet him that evening after work.

8 My impression of Hossain as a witness is that he appears truthful, and his story is plausible in spite of the strange bit that he had given some of the cannabis in his haversack to Pobitro just because Pobitro wanted them. Some may argue that unusual behaviour such as this enhances rather than diminishes the quality of a witness' testimony, but I would prefer to leave it to the end as a corroborative piece rather than as a major reason for accepting or rejecting Hossain's evidence. This is a classic instance in which fact-finders may justify opposing views, all with equally cogent reasons, when the truth is, in reality, beyond their reach.

9 What I do find as the strongest and most crucial aspect of Hossain's testimony is that he brought the haversack voluntarily to a police station to surrender the drugs. There was no compulsion by anyone. Why would anyone do that? That is a question which a rational person may answer by saying that that is the right thing to do, and thus, the only option for Hossain.

10 There is no evidence of any motive other than fright. Hossain himself was hesitant as to what he should do and so he rang his friend Pobitro for advice. He also rang his family and was advised by them to surrender the haversack to the police. Pobitro subsequently gave him the same advice although before taking some of the cannabis for himself. On these evidence, I was satisfied that there was sufficient evidence to call on the defence. Gunasilan elected to testify on his own behalf.

11 Gunasilan was not found with any drugs in his possession and, therefore, none of the presumptions of trafficking apply to him. The Prosecution's case is a straightforward charge of trafficking by giving the 419.72g of methamphetamine to Hossain. "Giving" is defined as an act of trafficking under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). Without the presumptions, the Prosecution is bound to prove its case against Gunasilan beyond a reasonable doubt.

12 Having dealt with the Prosecution's evidence, I will now set out the defence. Gunasilan denies the entire case against him save that there was a raid by the vice squad late in the evening of 13 April 2016. He said that he was in Malaysia at the time when Hossain telephoned him and told him about the raid.

13 Gunasilan then left Malaysia on 14 April 2016 and entered Singapore at 1am, that is, about two to three hours after the raid. He then saw two men in a car, and when they spotted him, they gave chase. He hid himself in a drain from 2.11am to 3.19am of 14 April 2016. While hiding in the drain Gunasilan had several telephone conversations with Hossain. When told that the vice squad had left, Gunasilan got on his motorcycle at 3.24am and returned to Malaysia.

14 Gunasilan testified that he came to Singapore on 14 April to check on the prostitutes and the brothel, and also to see if his clothes, handphone, earpiece, watch, jacket and shoes were intact where he left them, but he returned to Malaysia without entering the premises because he had been chased by the vice squad. He was arrested when he came back to Singapore on 18 April 2016. He explained that he came back on 18 April because he wanted to see a person called "Abang".

15 Gunasilan testified that there were two "Abangs". He had been receiving drugs from a Malaysian Abang and passing them to the Singaporean Abang. He said that when he was not around, Hossain would be the one doing this job of collecting drugs from the Malaysian Abang and handing them to the Singaporean Abang. I should point out that the two Abangs emerged only in the later rendition of Gunasilan's story. When he was delivering the drugs, he (Gunasilan) was paid \$150 to \$200 per delivery.

16 Gunasilan's statements to the Central Narcotics Bureau, in particular, the contemporaneous statement recorded by SSgt Mohd Jashim at 5pm on 18 April 2016, and his cautioned statement recorded on 19 April 2016 do not support any suggestion that he did not know that Hossain's haversack contained drugs. His cautioned statement is clear that his defence was that he had nothing to do with the drugs in Hossain's haversack. In the contemporaneous statement, Gunasilan admitted to drug trafficking activities although he denied any involvement with the drugs in question under the charge.

17 When two principal protagonists – Hossain and Gunasilan – give conflicting versions of an event, their evidence must be contrasted against each other's, and they are also compared to each other as witnesses. The incontrovertible fact here is that the drugs were real and were surrendered to the police by Hossain. If the drugs were Hossain's, why would he surrender them to the police? It is possible that he might wilfully have wished to frame Gunasilan. But other than this speculative possibility, no motive was established as to why Hossain wanted to frame Gunasilan.

18 It seems to me much more likely that Hossain was telling the truth. Gunasilan was his superior. Hossain might or might not have known that Gunasilan had been dealing in drugs, but he knew, when he opened the haversack, that some of the bundles contained drugs. He was advised by his friend Pobitro as well as his (Hossain's) family to surrender the drugs to the police.

19 The evidence from the forensic experts from the Health Sciences Authority ("HSA") favoured Hossain's account as well. They found Gunasilan's DNA on the inside of the cling wrap as well as on the rubber bands used to fasten the bundles of drugs. It was submitted by counsel on behalf of Gunasilan that the DNA evidence is unreliable, not because there is no evidence of DNA. There was DNA as the officers testified, but that the DNA might have been transferred by accident. It is possible that Gunasilan's DNA could have been transferred from the towel, which was inside the haversack, onto the drug exhibits. The evidence from the HSA expert was that it would be unlikely if the exhibits were tightly wrapped, leaving little room for an accidental transfer of DNA. The exhibits seemed to me sufficiently well wrapped that an accidental transfer seems highly unlikely. Furthermore, there is no evidence of Hossain's DNA on the drug exhibits. Finally, there was no credible explanation or evidence as to how Gunasilan's DNA was found on the towel in the first place.

20 Testing Gunasilan's evidence against Hossain's and the documentary and forensic evidence, I am left in no doubt that Hossain told the truth, namely that Gunasilan passed the haversack to Hossain and instructed him to keep it in safe custody; and when Hossain found that there were drugs in the haversack, he decided, after advice, to surrender them to the police. This leads me to accept the Prosecution's case that the drugs stated in the charge were handed by Gunasilan to Hossain.

21 That being the case, the question arises, was there evidence that Gunasilan knew that the parcels inside Hossain's haversack contained drugs? Gunasilan gave no plausible answer to this question other than flatly denying that he had any knowledge of those drugs. By his own admission, he was not an entirely innocent person with nothing to do with drugs. He admitted that he had been collecting and passing drugs from one "Abang" to another "Abang". Even his earlier version which did not involve the second "Abang" showed that he had passed drugs from one person to another. He named Hossain as one who had helped him do this whenever he (Gunasilan) was not able to do it himself. It is implied in Gunasilan's evidence that the drugs were not his, that he did not know that they were drugs. The burden of evidence that an accused knew that he was trafficking is always a high order. It is never easy to know what one thinks.

22 The big question in this case concerning the guilt or innocence of Gunasilan will largely be determined by whether Hossain's testimony prevails over Gunasilan's. There is no rule that one witness is not sufficient to condemn an accused, but, especially in a capital case, the court has to be left with no reasonable doubt that the charge has been proved. It is, of course, possible that Gunasilan had nothing to do with the methamphetamine in the charge against him, but to acquit him, I must be satisfied that it is not just a possibility but a reasonable one based on the evidence before me.

23 No matter how I strain to see if Gunasilan's version of that facts might reasonably be true, or that Hossain's story might possibly be false, I can find nothing that might permit me to doubt that the charge against Gunasilan has been made out.

24 However, I am of the view that Gunasilan qualifies as a "courier". That would make him eligible for the alternative sentence of life imprisonment under s 33B(2) of the MDA if he is certified to have rendered substantive assistance. In passing drugs from one "Abang" to another, Gunasilan merely followed the instructions given to him. Gunasilan's act of passing the haversack to Hossain was facilitative of his delivery of those drugs, in the same way that concealing or storing for safe-keeping drugs meant for delivery would be. He was, presumably because of the raid, concerned that the drugs would be found by the vice squad, and asked that Hossain hold on to it for safe-keeping.

25 A certificate of substantive assistance was granted by the Public Prosecutor to the accused and accordingly, I sentence the accused to the mandatory life imprisonment with effect from 14 April 2016 and 15 strokes of the cane under s 33B(1)(a) of the MDA.