Dinesh Pillai a/l K Raja Retnam *v* Public Prosecutor
[2012] SGCA 24

Case Number	: Criminal Appeal No 6 of 2011
Decision Date	: 04 April 2012
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Eugene Thuraisingam, Mervyn Cheong Jun Ming and Kenneth Chua Han Yuan (Stamford Law Corporation) for the appellant; Aedit Abdullah SC, Geraldine Tan and Wong Woon Kwong (Attorney-General's Chambers) for the respondent.
Parties	: Dinesh Pillai a/l K Raja Retnam — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2008 Rev Ed) – Importing controlled drugs without authorisation – Drugs contained in a brown packet – Appellant arguing that he did not know the contents of the packet – Whether appellant had requisite knowledge for finding liability under s 7 of the Misuse of Drugs Act

Evidence – Proof of Evidence – Presumptions – Presumptions under s 18 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) – Whether appellant able to rebut presumption of knowledge in s 18(2) of the Misuse of Drugs Act

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2011] SGHC 95.]

4 April 2012 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an appeal by one Dinesh Pillai a/l K Raja Retnam ("the appellant") against his conviction by the High Court judge ("the Judge") in *Public Prosecutor v Dinesh Pillai a/l K Raja Retnam* [2011] SGHC 95 ("the Judgment") of the following charge under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"): [note: 1]

> **YOU ARE CHARGED** at the instance of the Attorney-General as Public Prosecutor and the charges against you are:
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> That you, **DINESH PILLAI A/L K RAJA RETNAM**,
>
> on 19 December 2009, at about 9.05 p.m., in a Malaysian registered motorcycle bearing registration number JKR 3019, at the Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, one packet of granular/powdery substance, which was analysed and found to contain not less than 19.35 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

[emphasis in bold in original]

The facts

2 The appellant is a 29-year-old Malaysian male who lived in Skudai, Malaysia. According to the appellant, his friend, Ravi, introduced him to a person called "Raja" in November/December 2009. Raja offered to pay the appellant to deliver food to a person called "Ah Boy" in Singapore. The appellant expressed his interest and asked what kind of food he would have to deliver. However, Raja told him that it was a "secret", [note: 2] saying only that it was something expensive. Raja also warned the appellant that he was never to open the package of food to be delivered because Ah Boy would know and would refuse to accept delivery. [note: 3] Unemployed and in financial difficulty, the appellant agreed, despite suspecting that he would be delivering something other than food. [note: 4]

3 On 10 December 2009, the appellant made his first delivery. Raja gave the appellant a red plastic bag which contained a brown paper-wrapped packet secured with two rubber bands, a packet of curry and a packet of freshly cut chilli. The appellant said that he was instructed by Raja to call him before and after passing Woodlands Immigration Checkpoint ("Woodlands Checkpoint"). After clearing immigration, the appellant called Raja, who then gave him Ah Boy's contact information and further instructions. [note: 5] The appellant subsequently contacted Ah Boy, who told him to effectuate delivery at Pasir Ris MRT Station. The appellant successfully delivered the items to Ah Boy, for which he was paid RM200. [note: 6] The appellant then returned to Johor Bahru, where Raja took his mobile phone and deleted all records of communications between the appellant and Ah Boy. [note: 7]

4 A second delivery took place on 14 December 2009. On that occasion, it was Ravi, not Raja, who handed the appellant the items to be delivered to Ah Boy. [note: 8] Those items were similar to the items delivered by the appellant on 10 December 2009, *viz*, they likewise consisted of a brown paper-wrapped packet, a packet of curry and a packet of freshly cut chilli. Still curious about the contents of the brown packet, the appellant queried Ravi about it, but was likewise told by the latter that it was a secret. [note: 9] Despite his concerns not being assuaged, the appellant nonetheless decided to proceed with the second delivery. As before, after the appellant passed Woodlands Checkpoint, he called Raja, who gave him Ah Boy's contact information. The appellant called Ah Boy, who told him to meet at Bedok Bus Interchange. The appellant successfully delivered the items to Ah Boy and received several envelopes from Ah Boy to give to Raja. The appellant testified at the trial that the envelopes contained money which totalled S$9,600. The same routine was followed upon the appellant's return to Johor Bahru, *viz*, Raja took the appellant's mobile phone and deleted the phone records of the appellant's conversations with Ah Boy. [note: 10] The appellant was paid RM300 for the second delivery.

5 The appellant attempted to make a third delivery to Ah Boy on 19 December 2009, but was arrested at Woodlands Checkpoint. This attempted delivery is the subject matter of the present appeal. At about 7.00pm on 19 December 2009, Raja gave the appellant a red plastic bag ("the Red Plastic Bag") to pass to Ah Boy. The appellant did not ask Raja what the Red Plastic Bag contained (it was subsequently found to contain, just as in the case of the first and second deliveries, a brown paper-wrapped packet, a packet of curry and a packet of freshly cut chilli). When the appellant arrived at Woodlands Checkpoint Counter 45 at about 8.19pm, a notification alert sounded as his particulars were being checked. The immigration officer at the counter, Sergeant Chua Guan Bee ("Sgt Chua"), alerted the Immigration and Checkpoints Authority Arrival Car Secondary Team Office

("the ST Office") located within Woodlands Checkpoint. Sgt Chua also asked the appellant to hand over his motorcycle keys and informed the latter that he would have to do a further verification check. [note: 11]

6 In response to the alert triggered by Sgt Chua, an officer from AETOS Auxiliary Police Force, Corporal Mohamed Firoz bin Mohamed Eusoof, was despatched to escort the appellant from the immigration counter to the ST Office. The appellant parked his motorcycle at a parking lot adjacent to the ST Office and waited inside the ST Office for about 30 minutes until officers from the Central Narcotics Bureau ("CNB") arrived at approximately 8.55pm. [note: 12]

7 After they arrived, the CNB officers escorted the appellant to his motorcycle. Sergeant Vasanthakumar Pillai ("Sgt Kumar") was the only CNB officer who understood and spoke Tamil. As the men walked to the motorcycle, Sgt Kumar asked the appellant whether he had anything to declare. The appellant informed Sgt Kumar in Tamil that he had been paid to deliver some items to Ah Boy and that those items were placed under his motorcycle seat. This led to the appellant's motorcycle being searched in his presence. Staff Sergeant Chew Tai Wai ("SSgt Chew"), the CNB officer conducting the search, found the Red Plastic Bag under the motorcycle seat. Noticing that the Red Plastic Bag contained a brown packet which was unusually hard ("the Brown Packet"), SSgt Chew peeped through a small opening of the Brown Packet and saw a brownish granular/powdery substance, which appeared to be packed in a separate plastic bag. [note: 13] Of a gross weight of 451.0g, the brownish granular/powdery substance was later analysed by the Health Sciences Authority of Singapore and was found to contain not less than 19.35g of diamorphine. [note: 14] Subsequently, the appellant was arrested on suspicion of importing a controlled drug into Singapore on 19 December 2009 at about 9.05pm.

8 After his arrest, the appellant gave various statements to the CNB officers. It was in these statements that the appellant revealed that he had previously made two deliveries to Ah Boy. These statements consisted of:

(a) the appellant's conversation with Sgt Kumar after a strip search conducted at about 9.47pm on 19 December 2009; [note: 15]

(b) the appellant's statement to Sgt Kumar recorded at about 11.05pm on 19 December 2009 (the appellant's "Contemporaneous Statement"); [note: 16]

(c) the appellant's cautioned statement under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC") recorded at about 4.40am on 20 December 2009; [note: 17]

(d) the appellant's first statement under s 121 of the CPC (the appellant's first "long statement") recorded at about 10.20am on 22 December 2009; [note: 18]

(e) the appellant's second long statement recorded at about 2.25pm on 22 December 2009; [note: 19]

(f) the appellant's third long statement recorded at about 10.22am on 24 December 2009; [note: 20] and

(g) the appellant's fourth long statement recorded at about 10.25am on 29 July 2010. [note:

21]

The decision of the Judge

9 In the Judgment, the Judge set out the law as follows:

> 18 To secure a conviction [under s 7 of the MDA], the [P]rosecution must show that the [appellant] imported the diamorphine into Singapore without prior authorisation. … The importation of drugs is not an offence of strict liability, so the [P]rosecution must also show that the [appellant] knew, or is taken to have known, that he was bringing the controlled drug into Singapore … The [P]rosecution has to prove not just knowledge of a controlled drug, but knowledge of the *specific drug* – diamorphine.
>
> …
>
> 20 … It is not disputed that the [appellant] physically brought the diamorphine into Singapore and that he was not authorised to do so. The only issue is whether the *mens rea* of the offence is made out: whether the [appellant] knew, or is taken to have known, that he was carrying *diamorphine*. The [appellant]'s knowledge for the purposes of section 7 may be proved:
>
> (a) by establishing that the [appellant] had actual knowledge that he was carrying diamorphine;
>
> (b) by showing that the [appellant] was wilfully blind to the fact that he was carrying diamorphine; and
>
> (c) by relying on the presumption in section 18(2) of the MDA whereby the [appellant] is presumed by law to have known the nature of the drug he was carrying (in this case, diamorphine).
>
> [emphasis in original]

Actual knowledge

10 After examining all the evidence adduced before him, the Judge found at [44] of the Judgment as follows:

> For the reasons articulated above [at [36]–[43] of the Judgment], and looking at the evidence as a whole, I am driven to conclude that the [appellant] did have actual knowledge that he was carrying a controlled drug.

11 Having made this finding, it was unnecessary for the Judge to make a finding on whether there was wilful blindness on the appellant's part to the fact that the Brown Packet contained a controlled drug.

The presumption under s 18(2) of the MDA

12 The Judge next considered the application of the presumption set out in s 18(2) of the MDA ("the s 18(2) MDA presumption") in the light of his finding that the appellant had actual knowledge that he was carrying a controlled drug, and held as follows (at [46]–[47] of the Judgment):

46 It is apparent from section 18 that the presumption of knowledge of the actual nature of the drug in section 18(2) applies only if that drug is proved, or presumed under section 18(1), to have been in the [appellant]'s possession. It is undisputed that the [R]ed [P]lastic [B]ag was in the [appellant]'s physical possession, and that it was subsequently found to contain a controlled drug, diamorphine. Accordingly, the section 18(2) presumption is triggered and until the contrary is proved by the [appellant] on a balance of probability, the [appellant] is presumed to have known the actual nature of the drug found in his possession, which was diamorphine or heroin.

47 Given the totality of the evidence before me, I find that the [appellant] failed to rebut the presumption that he had knowledge of the actual nature of the drug found in his possession. He is therefore presumed under s 18(2) of the MDA to know that the controlled drug found in the brown paper wrapped packet [*ie*, the Brown Packet defined at [7] above] was diamorphine or heroin.

The issues before us

13 The appellant's counsel raised the following arguments in his oral submissions before this court:

(a) the Prosecution had failed to prove beyond reasonable doubt that the appellant had admitted to being in possession of a controlled drug in his Contemporaneous Statement; and

(b) the appellant had proved on a balance of probabilities that he did not know that he was in possession of diamorphine, *ie*, he had rebutted the s 18(2) MDA presumption that he knew the nature of the controlled drug contained in the Brown Packet.

14 The appellant also filed supplementary written submissions contending that s 33 of the MDA was unconstitutional [note: 22] because the MDA allowed the Public Prosecutor to act arbitrarily by selecting the punishment to be inflicted upon an individual member of a class of offenders with the same legal guilt, either by choosing between bringing proceedings in the Subordinate Courts and bringing proceedings in the High Court, or by manipulating the amount of drugs stated in the charge, regardless of the actual amount involved in the offence. Such arbitrary power, it was argued, was a breach of Art 93 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint). However, at the hearing before us, counsel for the appellant withdrew this ground of appeal. If this ground of appeal had not been withdrawn, we would have rejected it as completely without merit.

15 The Prosecution's submissions in reply to the appellant's arguments were that: (a) the appellant had actual knowledge that he was carrying a controlled drug; [note: 23] (b) the appellant was wilfully blind to the fact that he was carrying diamorphine into Singapore; [note: 24] and (c) the appellant had failed to rebut the s 18(2) MDA presumption. [note: 25]

Our decision

The presumption under s 18(1) of the MDA

16 In our view, it is not necessary for us to decide the issue of whether the Prosecution has proved beyond reasonable doubt that the appellant had, in law, possession of the controlled drug (*viz*, diamorphine) found in the Brown Packet. The reason is that because the appellant was in actual physical possession of the Brown Packet containing that controlled drug, the presumption under s 18(1) of the MDA was triggered and he was presumed to have had that drug in his possession in the absence of proof to the contrary. The question therefore is whether, on the evidence, the appellant

has proved the contrary – *viz*, whether he has proved that he did not have the controlled drug in the Brown Packet in his possession because he did not know that the Brown Packet contained a controlled drug.

17 In our view, the appellant has failed to prove the contrary for the following reasons. First, the appellant had made two previous deliveries of similar packets wrapped in brown paper which, he had admitted, contained drugs. For those deliveries, he was paid RM200 on the first occasion and RM300 on the second occasion. Second, the appellant was to be paid RM200 for the third delivery of a similarly wrapped brown packet (*viz*, the Brown Packet). Third, the appellant did not believe Raja when the latter told him that the brown packet to be delivered to Ah Boy on each occasion contained food. Fourth, the appellant suspected that the Brown Packet (just as in the case of the brown packets delivered on the first and second occasions) contained something illegal. Fifth, the appellant admitted that he had the time and opportunity, while travelling to Woodlands Checkpoint on 19 December 2009, to inspect the Brown Packet and check whether it was similarly an illicit drug that he was being asked to bring to Singapore.

The s 18(2) MDA presumption

18 Since the appellant is presumed under s 18(1) of the MDA to have had possession of the controlled drug in the Brown Packet, s 18(2) of the MDA is triggered. This provides that any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug. In *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156, this court held at [24] that the words "the nature of that drug" in s 18(2) of the MDA were simply a reference to the actual controlled drug which was proved or presumed to be in the possession of the accused at the material time. As s 18(2) has been triggered in the present case, the appellant bears the burden of proving on a balance of probabilities that he did not know or could not reasonably be expected to have known the nature of the controlled drug that was found inside the Brown Packet. The issue we now have to examine is whether the appellant has proved the contrary of what s 18(2) presumes, *ie*, whether he has proved that he did not know or could not reasonably be expected to have known that the controlled drug in the Brown Packet was diamorphine.

19 In this regard, the appellant's submission was simply that he did not know that he was being asked to deliver a controlled drug, much less diamorphine, to Ah Boy, and that he had not admitted or confessed to the fact that the Brown Packet contained a controlled drug. His defence was that although he suspected that the Brown Packet contained contraband or something illegal, he never associated it with a controlled drug, much less diamorphine. He said that he was shocked when he was told by the CNB officers on 19 December 2009 that the Brown Packet contained diamorphine. [note: 26]

20 In our view, the crucial question in relation to the s 18(2) MDA presumption in this case is whether it can be rebutted or proved to the contrary by the appellant merely asserting that he did not know what was in the Brown Packet when: (a) he did not believe that the Brown Packet contained what Raja said it contained (*ie*, food); and (b) he had ample time and opportunity to open the Brown Packet to see what was inside it. This is not a case where the appellant reasonably believed that the Brown Packet contained some controlled drug other than diamorphine (*eg*, "ice", ecstasy, *etc*) and had good reason for such belief (compare, *eg*, *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*"), where the Prosecution did not dispute the accused's evidence that he had no suspicion that the bundles found on him at the material time contained diamorphine as, when transporting similar bundles in the past, he had sometimes been told that the bundles contained erimin and ketamine and, at other times, had not been told of the contents of the bundles

at all). In the present case, the appellant did not bother to take the simple step of peeping into the Brown Packet to see what it contained despite suspecting that it contained something illegal (see [17] and [19] above). If, for example, the appellant had testified that he had opened the Brown Packet and had seen some yellow substance which he had genuinely, but mistakenly, believed to be some food item, then that testimony might be evidence which the court could have considered to determine whether he had rebutted or disproved the s 18(2) MDA presumption.

21 In our view, the appellant has failed to rebut the s 18(2) MDA presumption on a balance of probabilities because he turned a blind eye to what the Brown Packet contained despite suspecting that it contained something illegal. The factual distinction between this case and *Khor Soon Lee* is that in the latter case, the accused did not have any suspicion that he was carrying anything other than erimin and ketamine (which the court accepted). In contrast, in the present case, the appellant was aware that he was carrying something illegal, and he could easily have verified what that thing was by simply opening the Brown Packet. It was not enough for the appellant to take the position that he did not open the Brown Packet because he had been told not to do so. In using the expression "turning a blind eye" in this context, we do not mean to say that the appellant had actual knowledge that the Brown Packet contained diamorphine. In the context of s 18(2) of the MDA, it is not necessary for the Prosecution to prove wilful blindness as a means of proving actual knowledge on the appellant's part of the nature of the controlled drug in the Brown Packet as the Prosecution has no such burden. Instead, it is for the appellant to prove on a balance of probabilities that he did not know or could not reasonably be expected to have known that the Brown Packet contained diamorphine. In our view, the appellant has failed to rebut the s 18(2) MDA presumption by his mere general assertions that he did not know what was in the Brown Packet as: (a) the nature of the controlled drug in that packet could easily have been determined by simply opening the packet; and (b) there was no evidence to show that it was not reasonably expected of him, in the circumstances, to open the packet to see what was in it. In short, the appellant has failed to prove the contrary of what s 18(2) of the MDA presumes in the present case as he neglected or refused to take reasonable steps to find out what he was asked to deliver to Ah Boy on 19 December 2009 in circumstances where a reasonable person having the suspicions that he had would have taken steps to find out (*viz*, by simply opening the Brown Packet to see what was in it).

Conclusion

22 For the above reasons, we are of the view that the appellant has failed to rebut the s 18(2) MDA presumption, and we accordingly dismiss his appeal.

[note: 1] See the Record of Proceedings ("RP") vol 4, p 1.

[note: 2] See, *inter alia*, the certified transcript of the notes of evidence ("the NE") for Day 5 of the trial at p 14, line 15 (in RP vol 2).

[note: 3] See the NE for: (a) Day 6 of the trial at p 28, lines 23–30 (in RP vol 3); and (b) Day 5 of the trial at p 14, lines 25–26 (in RP vol 2). See also the Appellant's Written Submissions filed on 6 January 2012 at para 5.

[note: 4] See the NE for Day 6 of the trial at p 27, lines 19–29 (in RP vol 3).

[note: 5] See the NE for Day 6 of the trial at p 29, lines 1–8 (in RP vol 3).

[note: 6] See the NE for Day 6 of the trial at p 53, lines 13–15 (in RP vol 3).

[note: 7] See the NE for Day 6 of the trial at p 49, line 29 to p 50, line 17 (in RP vol 3).

[note: 8] See the NE for Day 5 of the trial at p 8, lines 28–31 (in RP vol 2).

[note: 9] See the NE for Day 6 of the trial at p 57, lines 10–28 (in RP vol 3).

[note: 10] See the NE for Day 7 of the trial at p 1, lines 13–29 and p 2, lines 11–31 (in RP vol 3).

[note: 11] See the NE for Day 1 of the trial at p 45, lines 14–20 (in RP vol 1).

[note: 12] See the Judgment at [3].

[note: 13] See the conditioned statement of SSgt Chew dated 11 November 2010 at para 5 (in RP vol 4, pp 121–122).

[note: 14] See RP vol 4, p 29.

[note: 15] See the conditioned statement of Sgt Kumar dated 10 November 2010 ("Sgt Kumar's conditioned statement") at para 10 (in RP vol 4, pp 125–126).

[note: 16] See Sgt Kumar's conditioned statement at para 12 (in RP vol 4, pp 126–127).

[note: 17] See RP vol 4, pp 171–173.

[note: 18] See RP vol 4, pp 74–77.

[note: 19] See RP vol 4, pp 78–82.

[note: 20] See RP vol 4, pp 83–85.

[note: 21] See RP vol 4, pp 86–89.

[note: 22] See paras 1–3 of the Appellant's Supplemental Written Submissions on Article 93 of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) filed on 6 January 2012.

[note: 23] See the Respondent's Submissions & Bundle of Authorities dated 6 January 2012 ("the Respondent's Submissions") at para 18D.

[note: 24] See the Respondent's Submissions at para 18E.

[note: 25] See the Respondent's Submissions at para 18F.

[note: 26] See the appellant's second long statement recorded on 22 December 2009 at para 16 (in RP vol 4, p 79).