

Public Prosecutor v V Shanmugam a/l Veloo and another
[2015] SGHC 33

Case Number : Criminal Case No 6 of 2014
Decision Date : 03 February 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Terence Chua, Jasmine Chin-Sabado and Tan Yanying (Attorney-General's Chambers) for prosecution.; Singa Retnam (Aziz, Tayabali & Associates) and M Nedumaran (M Nedumaran & Co) for the first accused.; Johan bin Ismail (Johan Ismail & Company) and Zaminder Singh Gill (Hilborne Law LLC) for the second accused.
Parties : Public Prosecutor — V Shanmugam A/L Veloo — Mohd Suief bin Ismail

Criminal Law – Statutory Offences – Misuse of Drugs Act

Criminal Procedure and Sentencing – Sentencing – Principles

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 2 of 2015 was dismissed by the Court of Appeal on 26 January 2016. See [\[2016\] SGCA 6.](#)]

3 February 2015

Choo Han Teck J:

1 The two accused persons were separately charged for trafficking in diamorphine on 28 October 2011 but with committing their respective offences in furtherance of the common intention of both. The first accused is a 30-year old Malaysian. The second accused is a 46-year old Singaporean. The drugs were packed in ten packets and the total weight was 4497.7g and the contents were analysed and found to be diamorphine weighing not less than 28.5g.

2 The two accused were charged under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the Act”), read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), and punishable under s 33 and s 33B of the Act. Section 5(1)(a) provides as follows –

Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore – (a) to traffic in a controlled drug...

Section 33 provides that any person convicted of an offence of trafficking in a controlled drug shall be punished according to the relevant provision in the Second Schedule. Diamorphine is a Class “A” controlled drug as defined in s 2 of the Act, (under “Specified Drug”). The Second Schedule provides that for offences involving more than 15g of diamorphine, the punishment is death – unless s 33B applies. Section 33B provides that the court may impose a sentence other than death in certain circumstances. On conviction, both accused persons would thus face the death penalty unless s 33B applies to them.

3 On 28 October 2011, officers from the Central Narcotics Bureau (“CNB”) saw the second

accused carrying a haversack to a bus stop outside the Haw Par Villa at about 11.25am. About five minutes later, the first accused drove a car (a Perodua "Kenari") with the number plate JLT 8467, to the bus stop and the second accused got into the car.

4 The first accused then drove along Pasir Panjang Road, making several turns on the way before arriving at a hilltop car park at the National University of Singapore. The car stopped there for about five minutes before going back onto Pasir Panjang Road from South Buona Vista Road. The Kenari was then seen going into an Esso petrol station along Pasir Panjang Road.

5 The car was parked near the air pumps in the petrol station. CNB officers observing the car reported that a man came out of the car and walked into the convenience store. Inspector Sea Hoon Cheng testified that it was the second accused who went into the convenience store. The car left the petrol station about 12.12pm and drove along Pasir Panjang Road and the West Coast Highway. It stopped finally at a car park at Block 405, Pandan Gardens.

6 The second accused was seen leaving the car and walking to Block 405. He was carrying a black plastic bag with a golden logo. CNB officers moved in and arrested both accused persons. The first accused was arrested in the car. The haversack carried by the second accused when he first entered the Kenari along Pasir Panjang Road was found on the floor mat of the front passenger seat. Three black plastic bundles were found in the haversack. Two black plastic bags were also found in it as well as one newspaper wrapped bundle. The black plastic bundles and the newspaper wrapped bundles were found to contain granular substances analysed to be diamorphine.

7 The second accused was arrested outside his mother's flat, unit #13-34 of Block 405 Pandan Gardens. The officers searched the Block for the black plastic bag that the second accused was carrying when he went to Block 405, and eventually found it among some flower pots on the staircase landing between the seventh and eighth floors. It was searched and found to contain three newspaper wrapped bundles containing granular substances. In total, the ten drug exhibits were analysed and found to contain not less than 28.5g of diamorphine.

8 The forensic evidence from Dr Alaric Koh of the Health Sciences Authority showed that the newspaper wrapping found in the haversack could have been from the same set of newspapers as those used to wrap the diamorphine found in the black plastic bag on the staircase landing. The observations and conclusion are found in paragraph 6 of the report marked as P83. The observations of Dr Alaric Koh were based on a "comparison of characteristics, manufacturing cut edges and possible ink transfers". Forensic evidence also showed that the clear plastic bags containing the ten packets of diamorphine were manufactured by the same machine. The heat seals on the clear plastic bags were also from the same sealing machine.

9 The DNA of the first accused was found on both sides of the tapes used to bundle one of the black plastic bundles in the haversack. His DNA was also found on the interior surface of the black plastic bag of one of the three black plastic bundles in the haversack. In his statements to the police, he admitted helping to put the black plastic bundles into the haversack. However, he denied that he knew what were in those bundles. He also referred to the person with the haversack who got into his car, and whom he helped, as "Ah Boy". The second accused testified that he got into the car driven by an Indian man at the date and time stipulated in the charge. He admitted that he was given a black plastic bag by that Indian man and told to put it along the staircase of the 6th or 7th storey of Block 405. He opened the black plastic bag and saw three bundles wrapped in newspapers. He denied knowing what were in the three bundles and stated that he did not ask the Indian man what they contained.

10 On the evidence adduced above, I was satisfied that the prosecution had proved its case against both accused as charged. The identity of the two persons in the Kenari car were not disputed and I thus find that the prosecution had proven the fact that the diamorphine were in the possession of both accused when they were in the car and that they transported the diamorphine from the Esso Station to Pandan Gardens with the common intention of trafficking in the drugs. I thus called upon both accused to enter upon their defence. They elected to testify.

11 The first accused raised the defence of ignorance. He claimed that he did not know that the plastic bags contained drugs and that he had no common intention of trafficking drugs with the second accused. His case was that the drug trafficking transaction that day was carried out by the second accused and coordinated by one Puni. The first accused admitted in his statements to the CNB that he knew Puni but asserted his association with Puni as innocuous. He accepted Puni's offer to deliver the car to his (Puni's) friend, "relax for about an hour and I could drive the car back to Malaysia after his friend returned it". He claimed that Puni told him that his friend needed the car to deliver some personal documents. The first accused was suspicious and asked Puni what sort of documents they were. According to the first accused, Puni pulled out a bunch of documents which seemed like documents relating to property transactions and showed them to him.

12 The first accused stated that on the material day, 28 October 2011, Puni showed him the documents and said that they were illegal and that was why the transaction had to be hidden behind the speakers in the car. He told the first accused that his job was to drive the car from Malaysia to Singapore and pass the car to "Ah Boy" and wait for "Ah Boy" to return the car to him, after which, he was to drive it back to Malaysia. At trial, the first accused identified the second accused as "Ah Boy". He picked up the second accused at Pasir Panjang Road and drove him around until they arrived at the Esso Station where he got out. He went into the convenience store to buy drinks. He testified that when he returned to the car, he saw that the boot was open and he asked the second accused what he was doing. The second accused told him that he was pumping air into the tyres. The first accused then got back into the car where he saw "some black coloured bundles on the front passenger seat". He testified that he put the black bundles into the haversack for the second accused because he was asked to help. The second accused then asked him to drive to Block 405 which he did. There, the second accused took some bundles from the haversack and left but told the first accused to wait for him.

13 The second accused similarly raised the defence of ignorance. He had taken a ride from the Indian man driving the Kenari and when he arrived at Block 405, the Indian man took out a black plastic bag from the rear passenger seat and gave it to him. He was instructed to leave it at the staircase of the 6th or 7th floor of Block 405. He testified that he met the Indian man, who he now identified as the first accused, on 28 October 2011 with the view of having lunch with him. He then testified that after getting into the Kenari, the first accused drove him along various roads, finally ending at the Esso Station where he got out and went into the convenience store to buy a drink. When he returned to the car he saw that the boot was open but there was nothing suspicious about it. There was no cogent reason why he agreed to meet the first accused that day. He had only met the first accused once before and had no business with him. The only connection was the vague, almost implied, belief that the first accused was going to help him find work.

14 For the accused persons to rebut the presumption of trafficking in the drugs found in their possession their explanations must be cogent and consistent. I am not satisfied that they were. By the second accused's account, the first accused agreed to meet the second accused on that day for the purpose of lunching with him. Their conduct – driving around and making stops in a car park and a petrol station – was not convincing. They spent all the time driving aimlessly and making the two stops and then decided that that they no longer had time for lunch.

15 The second accused testified that when he returned from the convenience store to the Kenari car and saw the black bundles in the passenger seat he "was shocked". Even without any explanation acceptable to him, he helped put those bundles into his haversack. Then he said, astonishingly, that he was late for his Friday prayers near his mother's home. The first accused took him there and asked that he drop a few bundles off at the 6th floor staircase. There is no doubt in my mind that the second accused person's story that he was meeting the first accused for lunch, and the first accused person's story that he met the second accused on 28 October 2011 only because their common friend Puni told him that the second accused wanted to meet him, are inherently contradictory.

16 Evidence that is required to corroborate testimony will sometimes contain conflicting aspects, but they may not be rejected as untruthful if there are reasons for the discrepancies that the finder of fact accepts. Some of the strangest stories ever told have turned out to be true; and some of the vilest lies have been sold through the mouths of straight faces. Fact-finding is a practised art, and it is probably impossible to discuss that subject comprehensively in this judgment. It is also not necessary to do so here because there is a crucial lie that further unravelled the defences of both the accused persons. Inspector Sea of the CNB testified that he saw the second accused walk into the Cheers convenience store after the Kenari stopped at the Esso Station. Neither accused denied that they went to the Esso Station, but both claimed to be the one who went into the convenience store. The reason for that claim was evident as they both knew that the black plastic bundles appeared on the passenger seat while the person in the driver's seat was alone in the car. Both accused tried to disassociate themselves from the appearance of the drugs.

17 Taking into account the evidence of Inspector Sea, I am inclined to believe that it was the second accused who went into the convenience store. So it was likely that the second accused was telling the truth on this point and the first accused had told the lie. Further, the second accused testified that he saw the first accused closing the boot of the car. This was, in an unintended way, corroboration of the first accused's evidence that Puni had previously hidden documents in the speakers in the boot. On this occasion, the first accused denied checking the boot because that would directly implicate him.

18 Although the second accused was likely to be telling the truth in saying that he and not the first accused went into the convenience store, his evidence thereafter raised questions that were not answered. He said that he returned to the car and saw black bundles that shocked him, but he did not protest when the first accused told him that he needed to put some of the bundles inside his (the second accused) haversack. He said that he merely unzipped the haversack and the first accused put some of the black bundles into it. This part of his evidence was to explain the bundles found in his haversack. Instead of protesting, the second accused said that he was already late and needed to go for his Friday prayers. When they arrived at Pandan Gardens the first accused reached over the passenger seat and took a black plastic bundle which he handed to the second accused and told him to place on the flower pots between the 6th and 7th floor staircase landing. The second accused did just that and then went up to his mother's flat where he was arrested.

19 I do not believe that the first accused would have so readily dropped off the black plastic bag (with the drugs) at the staircase landing in Pandan Gardens, a place that, from the evidence, was determined by chance for that was where the second accused told him he was headed. The second accused repeated that he was late for his prayers at least twice but his general evidence suggested otherwise, not least because he did not say what exactly at what time he needed to be at the mosque and why that time could not be changed or his prayers delayed, but also because he went for what appeared to be a pointless car ride and stopover. He hardly knew the first accused; he had no

specific reason to meet the first accused on that day other than for a lunch date which he did not seem to care much about and which was cancelled because he was late for his prayers.

20 The absence of a common purpose of the meeting between the two accused persons is a strong indictment in itself in the circumstances, but their respective versions, already weakened by their mutual contradictions, do not make sense even on their own. I am thus satisfied beyond reasonable doubt that both accused knew that the black plastic bags contained diamorphine and they acted with the common intention of trafficking in them in the manner of the second accused dropping part of them off at Block 405 Pandan Gardens. I do not think that their testimonies raised any reasonable doubt as to whether they had the diamorphine for the purposes of trafficking. I thus found them guilty and convicted them as charged.

21 The facts as I have found also suggest that the involvement of the two accused were probably restricted to the acts described in s 33B(2)(a)(i) of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed), namely, the mere transporting and delivering of the drugs. By virtue of s 33B(1) the mandatory death penalty will not apply if the accused satisfies the condition in s 33B(2)(a)(i) - as the two accused before me have - and the Public Prosecutor certifies that he has also substantively assisted the CNB in disrupting drug trafficking activities (s 33B(2)(b)). In this case, the Public Prosecutor did not object to the submissions of the accused that they had satisfied s 33B(2)(a), but he will not grant the certificate to the second accused under s 33B(2)(b). That being the case, my finding under s 33B(2)(a)(i) will not save the second accused from the death penalty.

22 However, by the statutory amendments that brought in ss 33B(1) and (2), there is one further chance for an accused person to escape the death penalty. Under s 33B(1)(b) and s 33B(3), the accused person who has satisfied s 33B(2) but fails to obtain the PP's certificate of substantial assistance may be spared the death penalty if he proves that "he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in relation to the offence". The two accused applied for psychiatric assessment at the adjourned hearing in which the parties made their submissions on sentence.

23 Deputy Public Prosecutor, Mr Terence Chua, did not object to the application of the first accused because he accepted that a year ago his counsel had asked for a copy of the prosecution's psychiatric report although the Public Prosecutor ("PP") has no record of receiving the request. However, Mr Chua objected to the application by the second accused on the ground that it was only made after conviction. The last avenue of hope rests on the fact of a mental condition which has to be supported by medical evidence. The court cannot determine that state without medical evidence and it is not right that on a matter of life and death, the issue is determined on the basis of an untested procedure. I therefore granted leave to both accused to obtain psychiatric evidence.

24 The accused persons were brought before me again on 29 January 2015. Mr Nedumaran, counsel for the first accused, submitted that his client was only a courier and Mr Chua stated that he will not challenge that submission and that the prosecutor has granted the first accused a certificate of substantive assistance. I find no reason from the evidence to find otherwise. I therefore sentenced the first accused to the mandatory life imprisonment with effect from 12 December 2011 and to 15 strokes of the cane under s 33B of the Act.

25 Mr Johan submitted that the second accused was also a courier. Mr Chua does not dispute this but says that the PP will not be issuing a certificate of substantive assistance to the second accused. The second accused also did not produce psychiatric evidence to establish that he was suffering from an abnormality of mind at the time of the offence. In the circumstances, I have no

discretion but to sentence the second accused to suffer death.

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