

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 67

Criminal Case No 20 of 2017

Between

Public Prosecutor

And

- (1) Alagesan Nathan
- (2) Chidananda Vijakumaran

FOUNDATIONS OF DECISION

[Criminal procedure and sentencing] — [Sentencing] — [Drug trafficking]

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Public Prosecutor
v
Alagesan Nathan and another

[2017] SGHC 67

High Court — Criminal Case No 20 of 2017
Audrey Lim JC
20 March 2017

3 April 2017

Audrey Lim JC:

Introduction

1 The two accused persons pleaded guilty to the offence of importing a controlled drug under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). I imposed the mandatory minimum sentence of 20 years’ imprisonment and 15 strokes of the cane on both accused persons. They have appealed against their sentences for being unreasonable and excessive, and I now set out my grounds of decision.

2 The first accused (“Alagesan”) and the second accused (“Chidananda”) are 21-year-old male Malaysians. Alagesan faced two charges under the MDA, of which the Prosecution proceeded on one charge. He pleaded guilty to that charge, the particulars of which were as follows:

That you, ALAGESAN NATHAN,

(1st Charge)

on the 23rd day of June 2015, at or about 6.45 p.m., at Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug listed in Class ‘A’ of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, two (02) blocks containing **not less than 362.2 grams of vegetable matter which was analysed and found to be cannabis**, without any 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 (Cap 185, 2008 Rev Ed).

3 Chidananda also faced two charges under the MDA, of which the Prosecution also proceeded on one charge. He pleaded guilty to that charge, the particulars of which were as follows:

That you, CHIDANANDA VIJAKUMARAN,

(1st Charge)

on the 23rd day of June 2015, at or about 6.45 p.m., at Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug listed in Class ‘A’ of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, two (02) blocks containing **not less than 344.1 grams of vegetable matter which was analysed and found to be cannabis**, without any 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 (Cap 185, 2008 Rev Ed).

The facts

4 The facts, as set out by the Prosecution in the Statement of Facts, to which both accused persons admitted without qualification, were as follows:

...

3 On 23 June 2015, at about 6.45 p.m., both the 1st and 2nd accused entered Singapore from Malaysia via the Woodlands Checkpoint on a motorcycle bearing Malaysian registration no. JPB 9273 (“the motorcycle”). The 1st accused was riding the motorcycle whilst the 2nd accused rode pillion. Both of them were stopped for a routine check. During the check, an Immigration and Checkpoints Authority (“ICA”)

officer observed that there was an unusual bulge around the 1st accused's groin area, and that he appeared to be hunching his back and avoiding eye contact. The officer asked the 1st accused whether he was hiding anything at his groin area. The 1st accused admitted that he was and showed the officer a block wrapped in aluminium foil which was inside his pants at his groin area. Both accused persons were then escorted to the body search room in the Green Channel Secondary Team office.

4 A search of the 1st accused revealed that he had a second block wrapped in aluminium foil strapped to his back under his shirt. A search of the 2nd accused revealed that he similarly had a block wrapped in aluminium foil hidden at his groin area and a block wrapped in aluminium foil strapped to his back under his shirt. The ICA officers immediately activated officers of the Central Narcotics Bureau ("CNB") for assistance.

...

5 The Statement of Facts went on to explain that two blocks of vegetable matter were recovered from each accused person and seized by the CNB officers. The accused persons were thereafter placed under arrest. The blocks of vegetable matter were sent to the Health Sciences Authority for analysis. The two blocks recovered from Alagesan were found to contain not less than 362.2g of vegetable matter which was analysed and found to be cannabis, and the two blocks recovered from Chidananda were found to contain not less than 344.1g of vegetable matter which was analysed and found to be cannabis.

6 The Statement of Facts continued as follows:

...

10 Investigations revealed that the accused persons were bringing cannabis into Singapore on behalf of an individual known as "Sega" (whose identity has yet to be ascertained).

11 The 1st accused first met Sega about two months prior to his arrest at a coffeeshop at Larkin, Malaysia. At that time, Sega had offered the 1st accused a job of bringing drugs into

Singapore in exchange for payment of RM\$100 per trip. The 1st accused did not take up Sega's offer then.

12 On 22 June 2015, the 2nd accused approached the 1st accused and asked to borrow money from him. The 1st accused informed the 2nd accused that he was also in need of money and that he intended to seek help from his acquaintance, Sega. The 1st accused invited the 2nd accused to follow him to meet Sega. Later that day, both accused persons proceeded to Sega's residence at Larkin, Malaysia. The 1st accused introduced the 2nd accused to Sega, and told Sega that they both needed money. Sega then offered to pay both accused persons RM\$100 each if they helped him to bring cannabis into Singapore. Both accused persons agreed to this.

13 On 23 June 2015, at about 4.30 p.m., both accused persons returned to Sega's residence. Sega handed each of them two blocks of cannabis wrapped in aluminium foil. Sega instructed them to hide the blocks to avoid detection by the police. Sega then helped to tape one block onto the back of the 1st accused and instructed the 1st accused to hide his remaining block at the groin area in his pants. Sega similarly helped to tape one block onto the back of the 2nd accused and instructed him to hide his remaining block at the groin area in his pants.

14 Thereafter, Sega gave the 1st accused directions, in the presence of the 2nd accused, to deliver all four blocks of cannabis to a recipient at Kranji MRT Station after they had successfully entered Singapore. Both accused persons then left for Woodlands Checkpoint, Singapore, on the motorcycle, and entered Woodlands Checkpoint on 23 June 2015 at about 6.45 p.m., but failed to get past Singapore immigration (see paragraph 3 above).

15 It was under such circumstances that on 23 June 2015, at about 6.45 p.m.:

- (a) the 1st accused entered Singapore via Woodlands Checkpoint, in the manner described in paragraph 3, knowing that two blocks of vegetable matter containing not less than 362.2 grams of cannabis were hidden on his person; and
- (b) the 2nd accused entered Singapore via Woodlands Checkpoint, in the manner described in paragraph 3, knowing that two blocks of vegetable matter containing not less

than 344.1 grams of cannabis were hidden on his person.

...

7 After ensuring that both Alagesan and Chidananda understood the nature and consequences of their plea of guilt and the punishment prescribed for the offences above, I found them guilty as charged and convicted them accordingly. One further charge for each accused person was taken into consideration for the purposes of sentencing. Both of them had no known antecedents. The Prosecution submitted that the mandatory minimum sentence of 20 years' imprisonment and 15 strokes of the cane would be adequate for each accused person.

Mitigation

8 Defence counsel for both Alagesan and Chidananda urged the court to impose the minimum sentence as submitted by the Prosecution. In brief, defence counsel for Alagesan stated that Alagesan had cooperated fully with the authorities after his arrest and had indicated his desire to plead guilty from the very beginning. Also, Alagesan was only 19 years old at the time of the offence and he had committed the offence as he needed the money. In addition, this was not a case where the actual amount of the analysed drugs was above the amount that attracted capital punishment. Defence counsel for Chidananda stated that Chidananda had committed the offence as he was financially in dire straits and was merely 20 years old at the material time. Further, Chidananda, a first-time offender, had admitted to the Statement of Facts without qualification and had cooperated with the authorities.

Sentence

9 As each of the accused persons had been found to traffic in cannabis where the quantity was not less than 330g and not more than 500g, the mandatory minimum sentence under the MDA is 20 years' imprisonment and 15 strokes of the cane: see the Second Schedule to the MDA. I sentenced Alagesan and Chidananda each to the mandatory minimum sentence, namely, 20 years' imprisonment and 15 strokes of the cane. I also backdated their sentences to 25 June 2015, the date which, according to the Prosecution, the accused persons were first charged in court and remanded.

10 I saw no reason to depart from the mandatory minimum sentence. Apart from the fact that the Prosecution had not asked for more than the mandatory minimum sentence, I also found no aggravating factors to warrant a higher sentence. Although both Alagesan and Chidananda each had one additional charge (of importation of cannabis mixture of not less than 549.1g and 549.9g, respectively) taken into consideration for the purposes of sentencing, I took into account the mitigating factors raised by defence counsel. Hence, even though both accused persons have appealed on the basis that their sentences were unreasonable and excessive, the sentence imposed on each of them was essentially the prescribed mandatory minimum sentence.

11 Finally, the Prosecution applied to forfeit the motorcycle (and the keys to the motorcycle) under s 28(2) of the MDA, as it was used in connection with the offences. Defence counsel for both accused persons did not object, and I granted the forfeiture. I was satisfied that the motorcycle was used in connection with the offence because that was the vehicle which both accused persons had travelled on and had used to smuggle the drugs into Singapore. As for the other exhibits, they were disposed of in accordance with the

Prosecution's application. I ordered all exhibits to be forfeited or returned to the accused persons (as the case may be) only after the period for appeal had lapsed or after any final disposal of the appeal.

Audrey Lim

Judicial Commissioner

Wong Woon Kwong and Star Chen (Attorney-General's Chambers)
for the Prosecution;
Ramesh Tiwary (Ramesh Tiwary) for the first accused;
Gill Amarick Singh (Amarick Gill LLC) for the second accused.
