

Public Prosecutor v Prabakaran a/l Srivijayan
[2014] SGHC 222

Case Number : Criminal Case No 20 of 2014
Decision Date : 03 November 2014
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Lim How Khang and Sanjna Rai (Attorney-General's Chambers) for prosecution. Kanagavijayan Nadarajan (Kana & Co) and Ravi s/o Madasamy (L F Violet Netto) for the accused.
Parties : **Public Prosecutor — Prabakaran A/L Srivijayan**

Criminal law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 12 of 2014 was dismissed by the Court of Appeal on 2 October 2015. See [\[2015\] SGCA 64.](#)]

3 November 2014

Choo Han Teck J:

1 The accused is a 26-years old Malaysian who was arrested and charged for importing 22.24g of diamorphine when he drove into Singapore on 12 April 2012 at 5.15am. He was charged under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The offence is punishable under s 33 of the MDA.

2 The prosecution adduced evidence, unchallenged by the accused, that at the material time the accused drove a Hyundai Sonata bearing a Malaysian licence number JHY 93 from Malaysia. The car passed through the immigration booths at the Woodlands Checkpoint. SSgt Chan Tim Fatt, an officer from the Immigration and Checkpoints Authority ("ICA") noticed the black-tinted windows of the car and stopped the vehicle. He then told the accused to go to an inspection pit for a thorough check by other ICA officers.

3 ICA Sergeant Chen Zhongfu Roger searched the accused and his belongings but nothing incriminating was found. He and ICA Sergeant Aidil Rafael then searched the car. Sgt Aidil Rafael lifted the tray inside the centre arm-rest console next to the driver's seat. He saw a black bundle in the console under the tray. Officers from the Central Narcotics Bureau ("CNB") were alerted and Sgt Goh Yang Lun went to the inspection pit and took custody of the two black bundles. W/SSSgt Kengadhelagam and SSgt Chew Tai Waif of the CNB went with Sgt Goh.

4 W/SSSgt Kengadhelagam recorded a statement from the accused at the inspection pit at 5.43am. She asked the accused about the black bundles. The accused stated that he did not know anything about them because the car belonged to his friend 'Nathan'. The two black bundles were opened and the contents sent to the Health Sciences Authority of Singapore ("HSA"). The contents were examined and analysed by an analyst of the HSA, Miss Lim Jong Lee and she certified that the contents were diamorphine weighing 22.24g.

5 The accused gave a number of statements to the CNB in the Tamil language through the Tamil

interpreter Mr Manickam. None of his statements were directly incriminatory. His cautioned statement was recorded on 12 April 2012 between 3.35pm and 4.46pm. He stated that he had done nothing wrong and that he only came to Singapore to work. He stated that the car belonged to his friend.

6 The prosecution also adduced the record of the calls made to and from the cell phone used by the accused. The record shows that one 'Balu' called at 12.20pm on 11 April 2012. He called again on 12 April 2012 at 1.22am and the accused subsequently called him at 4.15am on the same day. About 40 minutes later at 4.47am the accused received a call from one 'Nathan'. The accused then called one 'Batte' at 5.06am and at the same time also called 'Nathan'. At 5.12am 'Batte' returned call. The accused was arrested about 5.15am. Thereafter, 'Balu' called at 5.20am, 'Batte' called at 5.38am, 'Nathan' called at 6.03am and 'Balu' called again at 6.34am. All these calls went unanswered because the accused was in the custody of the ICA officers.

7 On the evidence adduced by the prosecution, I was satisfied that a case against the accused was sufficiently made out for him to enter upon his defence. The accused elected to testify. His defence was that he had no knowledge that there were two black bundles in the console box, and therefore, there was no knowledge that he was driving a car with the 22.24g of diamorphine into Singapore.

8 Under ss 18(2) and 21 of the MDA, the law presumes the accused in the circumstances (as here proved by the prosecution) to be in possession of the drugs knowing them to be so. These are rebuttable presumptions and the accused must persuade the court that he did not know that he was in possession of the drugs in question. I now set out these provisions below for ease of reference.

Presumption of possession and knowledge of controlled drugs

18. – ...

(2) 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.

...

Presumption relating to vehicle

21. If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

9 The accused testified that he was born in Penang, Malaysia on 16 November 1987 and obtained an equivalent of the Secondary Four level education. His father died about five years ago. His mother works as a security officer. He told the court his employment history. The accused says that he worked as a petrol pump attendant in Pasir Panjang, Singapore. He first worked there in 2006 but subsequently worked in the Port of Singapore Authority as well as the Jurong Port. He then worked as an 'operator' in a company in Kaki Bukit but stopped working there about February or March 2012 when he was dismissed for not reporting for work regularly. He then went back to work at a Caltex station in Bukit Batok and was still employed there when he was arrested for the present offence.

10 He has been riding motorcycles and driving cars without licence from Malaysia to Singapore. He bought a motorcycle in Malaysia for RM6,000 and was making instalment payments of RM250 a month but had not kept up payment from January to April 2012. He rode his motorcycle to two places in

Singapore on 9 April 2012 looking for a job as a security guard. He testified that he worked in Caltex in 2006 and 'did not like the job and didn't want to return to the same job'. However, he returned to Caltex to work as a pump attendant. His first day back at work was 10 April 2012. He went to work on his motorcycle.

11 On 11 April 2012, the younger brother of the accused told him that the motorcycle shop called asking for payment of arrears of the instalments. The accused then spoke to a person at the motorcycle shop and asked for an extension of time till he has been paid by Caltex. He then left for work. He went home after work that evening about 11.30pm. He was afraid that the motorcycle will be repossessed by the shop, so he called his friend 'Balu' (whom he had known for four years) and asked to borrow his motorcycle. 'Balu' told him that the road tax had expired for his motorcycle, and offered to get a car from a common friend, 'Nathan', for the accused.

12 On the morning of 12 April 2012, the accused called 'Balu' at 4am and told him to tell 'Nathan' that he (the accused) would be going to 'Nathan's' house to collect the car. The accused arrived at 'Nathan's' house thirty minutes later, left his motorcycle there and took the car from 'Nathan'. He drove it straight to McDonald's and left the car unlocked in the carpark while he went to buy his breakfast. At that point, one 'Batte', a close friend of 'Balu' telephoned the accused and asked him where he was. Nothing transpired when the accused told 'Batte' that he was at McDonald's. Thereafter, he returned to the car and drove to Singapore where he was arrested.

13 That was the summary of the accused person's effort to rebut the presumption of knowledge of the contents in the black bundles found in the console box of the car.

14 I find the story of the accused implausible to have even created any doubt in my mind as to his knowledge of the drugs in his possession. The reason for borrowing 'Nathan's' car (through 'Balu') was strange and illogical. The fear that his motorcycle would be repossessed does not justify leaving it in 'Nathan's' house and taking 'Nathan's' car to work instead. No explanation was given as to how that helps against the repossession of the motorcycle by the shop. There was no elaboration as to how long he intended to keep 'Nathan's' car or how long he intended to leave his motorcycle at 'Nathan's' house.

15 The accused did not explain why he needed to contact 'Balu' and trouble 'Nathan' at 4am in the morning. There was no evidence that 'Balu' and 'Nathan' also believed that the motorcycle would be repossessed should the accused ride it into Singapore, and thus, it was a situation that required the three of them to be involved in passing 'Nathan's' car to the accused. Nothing that the accused did or said when he was arrested and his car searched exculpated him in anyway. They were mere denials and attempts at passing off ignorance of the illicit contents in the car. Although the accused testified that he had left the car unlocked and unattended when he went into McDonalds to get his breakfast, I find no evidence to suggest that someone else planted the drugs in the car during that time. If there were such a person, it would have been utterly senseless for him to plant the drugs inside the car and hope that the accused would again leave it unlocked and unattended in Singapore for that person to retrieve the drugs. By this evidence the accused appears to show that if he had known that there were drugs in the car he would not have left the car unlocked. If that were the only reason for this evidence, I am of the view that it was self-serving and I do not believe it. There was no other evidence that persuaded me that this evidence could be accepted.

16 I am of the view that the accused have little room and imagination to present a more credible account of why he was driving a car with drugs to Singapore at 5am – when he was only required to start his shift as a petrol pump attendant at 3pm. The story as he presented was probably the best he could adduce in the circumstances. I therefore find that the evidence of the accused to be untrue

and that the presumptions against him under ss 18(2) and 21 of the MDA have not been rebutted. Accordingly, I found him guilty as charged. The Deputy Public Prosecutor Mr Lim informed the court that the Public Prosecutor was not issuing a certificate of substantive cooperation under s 33B(2)(b) of the MDA to the accused. Thereafter, the accused's lawyer Mr Kanagavijayan informed the court that he has no further submissions to make on behalf of the accused. I therefore sentenced the accused to suffer the mandatory punishment of death.

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