

Public Prosecutor v Lisa Ismaniar
[2015] SGHC 177

Case Number : Criminal Case No 21 of 2015
Decision Date : 13 July 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ma Hanfeng and Nicholas Lai Yi Shin (Attorney-General's Chambers) for the prosecution; Ahmad Nizam Bin Abbas (Straits Law Practice LLC) and Ranadhir Gupta (A Zamzam & Co) for the accused.
Parties : Public Prosecutor — Lisa Ismaniar

Criminal Law – Statutory offences – Misuse of Drugs Act

13 July 2015

Judgment reserved.

Choo Han Teck J:

1 The accused was aged 27 when she was charged for trafficking in 2294.8g of methamphetamine under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), an offence punishable under s 33(1) of the Act. The offence was committed on 13 February 2013 at 5.50pm at the arrival hall of the Changi Airport Terminal 3.

2 The accused, who is an Indonesian from Bogor, Indonesia, met a Nigerian man named Ken through an online website sometime in 2011. Ken told the accused that he was a businessman dealing in gold. The accused testified that she became Ken's girlfriend sometime in 2012, which was also about the same time that she became the girlfriend of one "George" who lived in Sydney, Australia.

3 The accused flew to Kuala Lumpur, Malaysia on 2 December 2012 to meet Ken. Ken, who bought the air ticket for her, met her at the airport with another Nigerian named Vincent and Vincent's girlfriend, "Am", who is a Thai national. The accused stayed in Ken's house from 2 to 5 December 2012. Various people visited them at Ken's house. One of these was a man named Kaiceiy.

4 The accused claimed that the three men – Ken, Vincent and Kaiceiy persuaded her to smuggle gold from New Delhi, India to Kuala Lumpur. She was told that gold was cheaper in New Delhi, and that the gold would be hidden in a suitcase and smuggled into Kuala Lumpur. The gold will then be sold in Kaiceiy's shop in Kuala Lumpur. She believed that there would be no trouble and that even if caught, she needed only to pay tax on the gold.

5 The accused claimed that she reluctantly agreed to bring the gold from New Delhi for Ken because she believed that she was only carrying gold and she needed money for her father's medical expenses.

6 On 5 December 2012, the accused made her first trip to New Delhi and back to Kuala Lumpur via Singapore with a suitcase containing what she believed to be gold. She did not see any gold but believed, as she was told, that the gold was hidden at the bottom of the suitcase. The accused was paid US\$800 by Ken for the trip even though he had promised her US\$2,000. He told her that he would pay her the remainder later. The accused returned to Bogor on 15 December 2012.

7 While in Indonesia, the accused continued to be in contact with Jo, the Nigerian man who handed her the suitcase in New Delhi, as well as with Ken. They persuaded her to help recruit friends to join them in the business of transporting gold. The two friends that the accused recruited, namely, Jayanti and Moralina, eventually did not travel to Kuala Lumpur with the accused. In the meantime, the accused was pressing for payment of the US\$1,200 balance owing to her by Ken. In spite of this, the accused agreed to make another trip to New Delhi for Ken.

8 The accused flew to New Delhi on 10 February 2013 and there she contacted Kaiceiy who told her to meet a Nigerian man named Kelvin at a building called Hotel Shiv. She met Kelvin on the next day and spent the day sight-seeing with Kelvin. Kelvin then had the accused transferred to Hotel Krishnan. On 12 February 2013, Kelvin met her in her room at the hotel and then brought her to his house where he showed her a suitcase. The accused looked at the empty suitcase and asked where the gold was. Kelvin told her that it was hidden in the suitcase. He then packed the suitcase with clothing, and gave her an air ticket from Singapore to Kuala Lumpur, and from Kuala Lumpur to Medan. The accused was already in possession of an air ticket from New Delhi to Singapore. He also gave her US\$300 for expenses. When she returned to her own room in Hotel Krishnan, the accused checked the suitcase out of curiosity but could not find any gold.

9 The accused checked in the suitcase at the New Delhi airport on 13 February 2013 and left on a Jet Airways flight. She arrived in Singapore at 6pm that day at Terminal 3. She testified that she went in search of a toilet and after that she approached Mahendran (PW17) who was an airport security officer on duty, and asked him for assistance in finding her connecting flight to Kuala Lumpur. Mahendran's evidence was that he noticed the accused behaving suspiciously and when the accused had come out of the toilet, he questioned her and her response deepened his suspicions. He therefore asked to have her suitcase screened by the x-ray machine. Suspicious images appeared in the x-ray and the accused was taken to the immigration office where the suitcase was searched.

10 The immigration officers notified the Central Narcotics Bureau ("CNB"). In the meantime, an immigration officer, Pantithai (PW19) searched the accused and the accused said that there was nothing on her but there was something in the bag. When asked what it was, the accused said that it was gold.

11 The CNB officers searched the suitcase in the presence of the accused and found a hidden layer in the suitcase. Using a penknife, the CNB officers found two wooden panels secured by steel frames. Two packages wrapped in aluminium foil were recovered from the wooden panels. One of the packages was cut open and was found to contain a crystalline substance. The officers told the accused that that was drugs and the accused started crying.

12 The prosecution and the defence disputed the demeanour of the accused at the airport and particularly, in the immigration office when the drugs were found. The accused claimed that she was initially lost and needed directions from Mahendran, and later, when the drugs were found she was shocked because she believed that she had been carrying gold.

13 There was no dispute that the substances recovered from the suitcase carried by the accused were the drugs described in the charge. The accused was thus presumed by law to be in possession of the drugs and also that she knew the nature of the drugs in her possession under ss 18(1) and (2) of the Act. She was thus obliged to rebut those presumptions by showing on a balance of probabilities that she either did not know that there were drugs in her suitcase or that she did not know that the substances were methamphetamine.

14 Mr Ahmad Nizam, counsel for the accused, submitted that the court ought to accept the claim

by the accused that she believed that she was carrying gold and had no knowledge that she was carrying methamphetamine. He submitted that Mahendran and the officers in the immigration office did not testify accurately as to the demeanour of the accused during the time she was first observed by Mahendran to the time the packages were cut open, revealing the crystalline substances.

15 It is not possible for the court to make a finding as to the demeanour of a person other than what the court is able to observe; that is, the demeanour of the person in court. In this case, the court can accept or reject the evidence of Mahendran and the other witnesses if there are grounds to do so. I am unable to say that Mahendran's evidence that he saw the accused "behaving suspiciously" ought to be rejected. His evidence is only an oblique reflection of the demeanour of the accused. It is, however, direct evidence to explain why he stopped her. I see no reason to find Mahendran's evidence unreliable.

16 From the evidence, I am unable to agree with Mr Nizam's submission that "[the accused's] responses and demeanour prior and upon arrest show that she did not know there were drugs in the suitcase". The incontrovertible evidence was that the accused was stopped, whether she was behaving suspiciously or not, and her suitcase was searched. There was only one piece of relevant evidence at the material time when the drugs were revealed and that was her answer to the question of what was in the suitcase. Her answer was "gold".

17 But no gold was found. Her own evidence showed that she did not see any gold being put into the suitcase. She knew that something was hidden in the suitcase. She was told that it was gold but she did not know for sure. The evidence she led was so paltry and is not sufficient for me to find that there was any reason for her to believe she was carrying gold. The men she met were recent acquaintances. Notwithstanding that she claimed one of them to be her boyfriend, the evidence showed that she responded to internet invitations from people she had not known previously. One ought to be on guard meeting such strangers, and more so to run international errands for them. Much more so, running errands without reasonably satisfying oneself that the errands were lawful.

18 The accused was told that she was carrying gold but she did not see the gold. She was told it was hidden in the bag, but she did not verify it herself. She cannot then say that the presumptions of knowledge have been rebutted. She did nothing sufficient to rebut it. In response to the submission by Deputy Public Prosecutor Ma Hanfeng that the accused had been wilfully blind, Mr Ahmad Nizam submitted that "wilful blindness" is "merely 'lawyer-speak' for actual knowledge that is inferred from the circumstances of the case. It is an indirect way to prove actual knowledge; ie, actual knowledge is proved because the inference of knowledge is irresistible and is the only rational inference available on the facts ..." Counsel then argued that "where the prosecution seeks to rely on actual knowledge in the form of wilful blindness, the alleged wilful blindness must be proved beyond reasonable doubt".

19 That submission by defence counsel exemplifies the confusion that can arise when we treat a figure of speech as if it were a principle of law. "Wilful blindness" and its more showy form, "Nelsonian blindness", merely mean deliberately refusing to find out what one ought to in the circumstances. If it is shown that a person could and ought to have checked but intentionally did not, the inference must be that she either knew what it was or feared what she might find should she check. In either case, she cannot then argue that the legal presumptions have been rebutted. The presumptions can only be rebutted by reasonable evidence that the accused did not know that she was carrying methamphetamine. On the evidence of this case, a reasonable person in her circumstances ought to have checked to see if she was indeed carrying gold. Her failure to do so leads me to find that the legal presumptions have not been rebutted.

20 For the reasons above, I find the accused guilty as charged and convict her accordingly.

