

Public Prosecutor v Pausi bin Jefridin and another
[2010] SGHC 121

Case Number : Criminal Case No 35 of 2009
Decision Date : 22 April 2010
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Christina Koh, Crystal Ong and Sabrina Choo (Deputy Public Prosecutors) for the prosecution; Johan Ismail (Johan Ismail & Co) and Chung Ting Fai (Chung Ting Fai & Co) for the first accused; Ram Goswami (K Ravi Law Corporation) and Balvir Singh Gill (B S Gill & Co) for the second accused.
Parties : Public Prosecutor — Pausi bin Jefridin and another

Criminal Law

22 April 2010

Judgment reserved.

Choo Han Teck J:

1 The first and second accused, Pausi Bin Jefridin ("Pausi") and Roslan Bin Bakar ("Roslan") respectively, were tried before me on two charges. The first was a charge of trafficking in not less than 96.07g of diamorphine and a second charge for trafficking in not less than 76.37g of methamphetamine (under s 5(1)(a) read with s 33 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed)) at a public car park at Blk 513A Choa Chu Kang Street 51 ("Choa Chu Kang car park") on 14 June 2008 at 2.55pm. A third charge against the second accused was stood down. There were five persons involved including the two accused. The others were Nuradaha Putra Bin Nordin ("Nuradaha"), Mohamed Zamri Bin Mohamed Sopri ("Zamri"), and Norzainy Bin Zainal ("Norzainy"). The latter three were not charged with Pausi and Roslan for their respective roles but were called as witnesses for the prosecution in the case against the two accused. Pausi did not challenge the crucial evidence against him and his defence was that he did not know that there was a drug transaction going on at the material time and he was there only to collect money as Roslan instructed. Roslan's defence was a denial of any involvement at all, including a denial that he was even in the car park because he was elsewhere at that time.

2 The prosecution's evidence so far as it was undisputed except for Roslan's denial and some minor discrepancies was as follows. Roslan, Nuradaha, Zamri, and Norzainy met at a coffee shop at Lengkok Bahru. Nuradaha's evidence was the clearest and most detailed. He said that they met at about 2pm. They then proceeded to the nearby car park (at Lengkok Bahru, not Choa Chu Kang). There, on Roslan's instructions, Nuradaha got into a gold coloured Chevrolet car with the registered number SDM 7577Z driven by Zamri. Norzainy drove a blue coloured Nissan, bearing registration number SCW 6566M, and Roslan got into that car. On Roslan's instructions, Zamri followed Norzainy's blue Nissan as they drove to the Marsiling MRT Station where they saw a green coloured Perdana car registered number WGF 5610 driven by Pausi. Norzainy followed Pausi's Perdana, and in turn, his Nissan was followed by Zamri's car. They then drove along a convoluted route to the Choa Chu Kang car park. At the trial, Roslan denied his involvement stating that he was neither at Lengkok Bahru nor Choa Chu Kang, and that he did not see Pausi, Norzainy, Zamri, and Nuradaha that day. While Zamri corroborated the meeting at Lengkok Bahru, he said that he was there because Roslan wanted him to collect "something" for him. Norzainy, on the other hand, admitted that there was a meeting with

Nuradaha and Zamri at Lengkok Bahru and Choa Chu Kang car park. However, he said that the fourth person was a friend he knew as "Boy Gemok" and not Roslan.

3 The prosecution evidence through the surveillance officers as well as Nuradaha, Zamri, and Norzainy, established that the three cars went into the Choa Chu Kang car park about 2.55pm. The Perdana was parked alongside the Chevrolet with an empty lot between them. There was some dispute as to whether the cars were parked nearer one end or the other and whether there was just one empty lot or more between the two cars. Apart from that, the prosecution evidence was not challenged except by Roslan. The Nissan stopped in front of the two cars and Roslan alighted. Norzainy then drove off. Nuradaha and Zamri got out of the Chevrolet. Zamri testified that he went to inspect the Chevrolet's engine because Roslan told him that the car was overheating. Meanwhile, Nuradaha walked to the Perdana where he took a red and white coloured "Levi's" bag from the rear passenger seat and returned to the Chevrolet where he then placed the bag on the front passenger seat. He then went to the stairwell briefly to urinate and smoke. When he returned to the Chevrolet, Norzainy had also returned to the car park and picked up Roslan. Zamri and Nuradaha then drove to Block 811 at French Road to deliver the bag to an "Arab" whose name was recorded in Nuradaha's cellphone as "Arab Dogol". Pausi was arrested along Bukit Timah Expressway at 3.50pm. The officers from the Central Narcotics Bureau ("CNB") lost sight of the blue Nissan at New Bridge Road. Consequently, Norzainy was arrested only later that evening at his home where the blue Nissan was also found. Roslan eluded arrest because he went into hiding and was arrested only on 18 July 2008 in his step-brother's flat at Teban Gardens.

4 The prosecution evidence established that the Levi's bag carried by Nuradaha contained the 96.07g of diamorphine. The drugs were not concealed and I am of the view that Nuradaha could and did see what were in the bag. Nuradaha testified that when he was in Zamri's car (the Chevrolet) on the way from Lengkok Bahru to Choa Chu Kang he spoke to Roslan about four times. Three of those times were on calls made by Roslan on Norzainy's cellphone. The fourth was made using Roslan's own cellphone. Nuradaha also testified that he also spoke to Roslan when he and Zamri were on the way to French Road. He testified that the instructions to go to French Road to deliver the bag to "Arab" were given by Roslan. Roslan denied speaking to Nuradaha at all that day. Nuradaha testified that he was asked to carry the "things" for Roslan for a payment of \$500. Pausi testified that he was asked to collect a debt from Roslan at the Choa Chu Kang car park for which he was paid \$3,000. Roslan denied that he had asked Nuradaha and Pausi to do anything for him. On the evidence, I called upon the defence of both accused. They elected to testify.

5 Pausi was a 25-year old Malaysian. He testified that he was asked by one "Bobby" to collect money from Roslan. He met Roslan on the day and in the manner described in the evidence, but he said that all he did was to collect the money from Roslan and he did not know that a drug transaction had taken place. I found his narrative too vague and brief to evince a convincing account of his involvement on the afternoon of 14 June 2008. The presence of Zamri, Norzainy, and Nuradaha could not be explained if all Pausi was asked to do was collect money from Roslan. Only three cars were involved that afternoon. Nuradaha testified that he took the Levi's bag from Pausi's car (the Perdana) on Roslan's instructions. Although Mr Johan, counsel for Pausi, managed to get Nuradaha to say under cross-examination that he (Nuradaha) was "not sure", but it was "probably" from Pausi's car, I am of the view that the evidence as a whole indicated that it was from Pausi's car. If it was from Norzainy's Nissan, then there was no explanation for Pausi having to collect money from Roslan under such elaborate circumstances if his collection was unconnected with Nuradaha's taking delivery of the diamorphine. I am of the view that his testimony created no reasonable doubt in my mind that he delivered the diamorphine to Nuradaha knowing or having reason to know that the Levi's bag contained diamorphine.

6 Roslan's defence was that of alibi. He testified that he was neither at the Lengkok Bahru car park nor the Choa Chu Kang car park. He was at home with his mother Medah Bte Dollah ("Medah") in the morning of 14 June 2008. He ate the lunch she prepared for him and then left the flat for the Turf Club at Pasir Panjang. There, he met his step-brother Shamsubari Bin Jaafar ("Shamsubari") and they chatted and exchanged tips on the horses to bet. He left the premises when the races ended, which was about 7pm. He met his nephew Muhammad Bin Abu Hassan at the MacDonald's restaurant at West Coast for an hour at 9pm. He arrived home at about 10pm and found his mother fast asleep. Medah testified that she usually cooked lunch for Roslan on Saturdays, and that she did so on 14 June 2008. Apart from this, she had very little recollection of anything else. Shamsubari appeared a little too anxious to provide an alibi. Contrasting their evidence with that of Nuradaha, Zamri, Norzainy, and Pausi, I am satisfied that the alibi was not true. I am mindful that Norzainy was trying his best not to identify Roslan, but his denial, inserted in the rest of his evidence and that of the others, strengthened the prosecution's case against Roslan. It became apparent to me that Norzainy wanted to give an accurate account of the events on 14 June 2008 without naming Roslan. Hence, he denied Roslan's participation and cited instead, a mysterious person he called "Boy Gemok" where it would have been Roslan in the version of the others (Nuradaha, Zamri, and Pausi). Roslan further explained that he was named only because the others wanted to frame him. I found no credible evidence of any motive for the others to conspire so. Roslan maintained that he only saw Pausi for the first time after his arrest, but this was contradicted by Pausi who said that he met Roslan and collected money from him. I believed Pausi in this regard. This was a version that was more consistent with the case presented by the prosecution. It would otherwise have been wildly imaginative and self-defeating for Pausi to say that he was at the scene of the crime with someone who was not there. Pausi's defence was that he was not there to deal in morphine but to collect money. There was no need to lie about the identity of the person who instructed him if the instructions were as innocuous as collecting money.

7 Roslan was arrested on 18 July 2008, weeks after the arrests of the others because he left his mother's flat to stay at his step-brother Shamsubari's flat. The arrest was made after hours of stand-off when Roslan who locked himself in one of the bedrooms refused to open the door. He testified that he did not hear the CNB officers because he was asleep. Comparing the evidence I am unable to find Roslan's version credible. He also said that he was roughly treated when the CNB officers entered the bedroom to arrest him. Some physical force might have been necessary given the circumstances and I accept that the arrest was made with reasonable but not excessive force. Roslan also denied that his cellphone number was in Nuradaha and Norzainy's cellphones under the nickname "Celak" and its variant "Lan Celak". The evidence of the former two accomplices in court satisfied me that Roslan was known as Celak and Lan Celak (and sometimes as "Celako").

8 For the reasons above, I am satisfied that the prosecution had proved its case beyond reasonable doubt against the first and second accused, Pausi and Roslan, and I therefore find them guilty as charged and convict them accordingly and sentence them to suffer death on the first charge. The sentences on the non-capital charges are stood down with liberty to apply.

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