IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 177

Criminal Case No 4 of 2018

Between

Public Prosecutor

And

Fauzi Bin Sanusi

GROUNDS OF DECISION

[Criminal Law] — [Statutory Offences] — [Misuse of Drugs Act]

TABLE OF CONTENTS

Public Prosecutor
v
Fauzi Bin Sanusi

[2018] SGHC 177

High Court — Criminal Case No 4 of 2018
Aedit Abdullah J
6–9 February, 30 April, 27 June 2018

6 August 2018

Aedit Abdullah J:

Introduction

1 The Accused, Fauzi Bin Sanusi, was charged with, and convicted of, the offence of importation of diamorphine into Singapore. As a certificate of substantive assistance was granted, and his role was limited to the transportation of the drugs, the court exercised its discretion under s 33B of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), and imposed life imprisonment and 15 strokes of the cane. The Accused has now appealed against his sentence only, but for the sake of completeness these Grounds of Decision deal with both his conviction and sentence.

Background

2 The Accused is a 35-year-old Indonesian national, who has lived and worked in Malaysia. On 18 February 2016, the Accused was arrested on suspicion of trafficking of drugs.

3 The Prosecution and the Defence agreed to a statement of agreed facts pursuant to s 267 Criminal Procedure Code (Cap 68, 2012 Rev Ed). In the statement, it was disclosed that on 18 February 2016, the Accused entered Singapore via the Woodlands Checkpoint driving a trailer bearing Malaysian licence plate PDJ 2564. Immigration and Checkpoints Authority ("ICA") officers stopped the vehicle at about 4.30 pm for a routine check. At a cargo inspection bay, one Corporal Muhammad Syahid bin Mohamed Rashid (PW1) ("Cpl Syahid") searched the vehicle and found a red plastic bag. The Accused was thereafter arrested on suspicion of drug trafficking.

4 After his arrest, the Accused was questioned and the contents of the interview were recorded in the form of a contemporaneous interview note, P38, which was signed by the Accused. The contents of the bag were analysed and were found to contain drugs, namely, not less than 43.28 grams of diamorphine. It was accepted that the Accused was not authorised under the Act or the regulations made thereunder to import diamorphine into Singapore.

The Accused's version of events

5 The Accused claimed that he was asked by one Muruga to help bring "barang" (meaning "thing" in Malay) into Singapore. They both met at Skudai, Johor on the day of the delivery. Muruga was said to have placed a red plastic bag on the passenger seat of the Accused's vehicle. He was also said to not have

informed the Accused of what the "barang" was or where to bring it to. The Accused then drove to Singapore where he was arrested.

6 The Accused explained that he was not present during the search and seizure of the drugs from his vehicle. He could not therefore say if the plastic bag in question was indeed the one that Muruga had put into his trailer.

7 The Accused further claimed that P38 is not an accurate record of what he said. First, he had not used the Malay word for drugs, "dadah". Second, the statement was not read back to him; he was only told to sign on it. Third, the Accused claimed that before P38 was recorded, PW6 SSSgt Samir said to him "You give me one name and I will give you 5 years".

8 The Accused, however, accepted that the other statements given by him were given voluntarily and that they were accurately recorded.

The Prosecution's reliance on previous deliveries made by the Accused

9 The Prosecution referred to previous deliveries made by the Accused on Muruga's behalf, as recorded in statements given by him. By way of background, the Accused first met Muruga when he joined a certain company as a driver. He did not, however, know much about Muruga.

10 For the first delivery, which took place about one month before the Accused's arrest for the present offence, Muruga met the Accused at their workplace, where he placed a plastic bag on the cabin bed of the vehicle the Accused was driving. Muruga did not inform the Accused what was in the bag, and told the Accused that he would only be informed later about the identities of the intended recipients. On the journey to Singapore, Muruga kept calling the Accused to check on the traffic conditions. Eventually, Muruga told the

Accused that he would be met by someone at a delivery point in Senoko, where the Accused was to deliver the cargo he was carrying. Upon completing the delivery of his cargo, the Accused parked the trailer by the roadside and noticed a silver Mitsubishi car driving past a few times. Thereafter, a blue Toyota car parked ahead of the Accused's trailer. An old Indian man alighted and approached the Accused's trailer and asked where the "thing" was. In response, the Accused pointed to the bag. The old Indian man then handed the Accused a phone; the voice at the other end told the Accused to give one block to the old Indian man. The Indian man then removed a white block from the bag, and gave S$1,000 to the Accused. After this transaction, another car (a silver Mitsubishi) parked in front of the Accused's trailer. The Accused approached this other car, and said to the driver, "Muruga?" The driver of the vehicle replied positively, and the Accused then retrieved the bag from his trailer and handed it to the second recipient. He was told by the second recipient that payment had already been settled.

11 Thereafter, following Muruga's instructions, the Accused exchanged the S$1,000 to RM2,900. He then met Muruga at a factory in Johor, where Muruga paid the Accused RM2,100.

Summary of the Prosecution's submissions

12 The Prosecution argued that the charge was made out against the Accused. The Accused brought the drugs into Singapore. He was in actual possession as he had physical control over the red plastic bag, having moved the bag himself. He was also the only one present in the vehicle. Further, the Accused not only knew of the existence of the red plastic bag but knew that the bag contained drugs. While the Accused tried to cast doubt on his possession by claiming that he was not present during the search of the trailer, this should be

rejected for several reasons. First, the Accused's contention is contradicted by the evidence of the ICA officers. Second, the Accused would have protested had he not been present during the search. Third, there was no evidence that the drug exhibits were planted, and the bag recovered matched the Accused's description of what was left in the cabin by Muruga. No other bag was in fact recovered.

13 Alternatively, the presumption of possession under s 21 of the Act applied. The Accused did not show on the balance of probabilities that he did not have the drugs in his possession. As the Accused was in control of the vehicle from which the drugs were seized, and he had not adduced any evidence to rebut the presumption, the presumption continued in effect.

14 Finally, the presumption of knowledge under s 18(2) of the Act applied: the Accused was presumed to have had knowledge of the nature of the drugs. Applying *Obeng Comfort v PP* [2017] 1 SLR 633, the Accused would have to adduce evidence that he did not have such knowledge or did not take steps to establish the nature of the drug. The circumstances surrounding the delivery were suspect, namely: (a) the Accused was not given much detail about the deliveries; (b) the high value of the items brought in; (c) and the high amount paid to him. The Accused failed to determine what the contents were. The Accused had also given statements corroborating his guilt.

Summary of the Defence submissions

15 The Defence accepted that the Accused was in actual possession of the drugs. The focus of the Defence submissions was on rebutting the presumption of knowledge under s 18(2) of the Act. The Accused consistently maintained the position that he only knew the contents of the red plastic bag as "barang", or things. He carried out the delivery only because he trusted Muruga. While he

did not know of Muruga's personal details such as his address, there was no occasion for him to learn of this. Out of that trust, the Accused did not inspect the contents of the bag, as there was no reason for him to do so. He did not suspect that there was anything illegal.

16 Although the Accused is not challenging the voluntariness of P38, the Defence submitted that P38 is an inaccurate record and a mere summary of what the Accused said. In particular, the Accused claimed not to have used the word "drugs" in P38. The Accused only knew of the nature of the contents of the red plastic bag when he was informed at the start of the interview that he would face the death penalty for trafficking drugs. Further, the Accused had denied putting the plastic bag on the cabin bed – he had only shifted the bag to the side of the passenger seat when he realised that the plastic was about to fall. Additionally, the fact that the Accused did not feel that he had to hide the red bag demonstrates his lack of knowledge. Finally, P38 was not read back to the Accused in the proper manner.

17 As for the Accused's cautioned statement, the Defence submitted that this similarly did not indicate his guilt. As the Accused had already known of the contents of the plastic bag from the CNB officers, it follows that the Accused would have pleaded for a lighter sentence in his cautioned statement. However, his plea is not indicative of his knowledge at the material point in time.

The Decision on the charge

18 I was satisfied that the charge has been made out against the Accused beyond a reasonable doubt. On the issue of possession, it was clear on the evidence that the Accused had physical control over the drugs. I also accepted, alternatively, that the presumption under s 21 of the Act applied as the drugs

were found in his vehicle, and this presumption was unrebutted. As to knowledge that the bag contained drugs, I was satisfied that the presumption under s 18(2) applied, and that it was not rebutted. The circumstances of the delivery would have raised some suspicion at least. The failure of the Accused to examine matters further, particularly to look at the contents and to inquire more, undermined his version of the events.

19 I did not base my finding of knowledge, or the finding that the presumption of knowledge remained unrebutted, on the Accused's use of the word "drugs" in his statements. I did not find that such use indicated his knowledge of the nature of the items he was delivering. There was sufficient evidence to suggest that the use of the word "drugs" might not have originated from the Accused, given the circumstances of the discovery and the fact that he was told he would be facing the death penalty.

Analysis

20 The Accused was charged with importing into Singapore a Class A controlled drug, by driving into Singapore in a lorry with 2 packets containing not less than 915.30 grams of substance analysed to contain not less than 43.28 grams of diamorphine, an offence under s 7, and punishable under s 33(1) of the Act.

21 Section 7 of the Act reads:

> Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

22 For a charge to be made out under s 7, it has to be shown that (*Ng Kwok Chun and anor v PP* [1992] 3 SLR(R) 256 at [15], [39]):

(a) the drugs were brought voluntarily into Singapore; and

(b) the Accused had the knowledge or intention to bring the drugs into Singapore.

These were both made out against the Accused.

Bringing of drugs into Singapore

23 It was undisputed that the drugs were brought into Singapore by the Accused, aboard his vehicle. They were found there by the customs officers while they were inspecting his vehicle. However, as the issue of whether the drugs were indeed recovered from the vehicle was raised in evidence, I shall examine this issue for completeness.

Recovery from the vehicle

24 I note at the outset that while the Accused made attempts to throw doubt on whether the item seized was the actual item recovered from his vehicle, this was not pursued in submissions.

25 At trial, the Accused raised the allegation that he was not present when the vehicle was searched. This could be taken as an assertion that he was not shown the bag that was recovered from his vehicle. According to the Accused, he left the vehicle after parking it. Thereafter, an ICA officer, Cpl Syahid, started to inspect the vehicle. At that point, the Accused was told by another officer to wait in the ICA office. He was thus not at the vehicle when the red plastic bag was found.[1] Against this assertion, the Prosecution adduced evidence

[1] 8 February 2018 Transcript, page 8, lines 30–31

through the ICA officers to show that the bag was indeed recovered from the vehicle. Several officers testified to this effect.

26 Having considered the evidence, I was satisfied that the plastic bag was indeed recovered from the vehicle in the presence of the Accused. The Accused's assertion that he was not present during the search was contradicted by the ICA officers, all of whom testified that the Accused was present. Their testimony was not shaken, and there was no reason to doubt their version of events. Furthermore, as recounted by the Accused himself, he had on previous occasions been present during searches; he would have noticed something was amiss if he had not been asked to be present during the search, and would have protested. There was also no one else who could have had access to the vehicle.

27 The Accused made a further attempt to distance himself from the bag that was found in claiming that he had put the bag elsewhere than where it was found by the ICA officer. The Accused testified that while Muruga put the bag on the passenger seat, he later moved it to the gap at the side of the passenger seat as the plastic bag was about to fall off. The Accused identified the location on exhibits tendered in Court.[2] This location appeared to be more exposed than the location where the ICA officer found the plastic bag, behind the passenger seat, under the cabin bed.[3]

28 There was, however, no evidence of any sort that there was any other similar bag in the vehicle. Nor, as submitted by the Prosecution, was it the Accused's case that there was any substitution or planting of evidence. It would seem the Accused was merely raising a whiff of a suspicion without

2 P15D and P19D

3 See P16, location A.

substantiating it further. This was not enough. Given that the evidence of the customs officers on where the bag was recovered from was unshaken and cogent, and there was nothing to show any other bag was present in the vehicle, the only reasonable conclusion that could be drawn is that the bag recovered was the same bag that Muruga had passed to the Accused.

29 In the light of the evidence above, I was satisfied that the physical possession of the drugs by the Accused has been established. The bag containing the drugs was in the Accused's vehicle. That same bag was recovered by ICA, and that bag was the very bag that was passed to the Accused by Muruga.

Presumption of possession

30 In addition, the presumption of possession under s 21 of the Act was triggered by the evidence considered above.

31 Section 21 of the Act reads:

> 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.

As the provision stipulates that the presumption operates until the contrary is proved, the Accused had to show on the balance of probabilities that he was not in actual possession of the drugs: *PP v Yuvaraj* [1969] 2 MLJ 89. This he could not do in the face of the evidence of the customs officers and in the absence of any other evidence to at least point away from the recovery of the drugs from his vehicle.

Knowledge of the drugs

32 The next question is then the Accused's knowledge of the nature of the drugs. The presumption of knowledge under s 18(2) of the Act was invoked and I found that the Accused has not rebutted this presumption. I pause here to note that whilst the Prosecution relied on the contents of the statements made by the Accused to show actual knowledge because of the Accused's use of the word "drugs", I was of the view that knowledge could not be inferred from this fact alone.

Presumption of knowledge

33 The Prosecution invoked s 18(2) of the Act, which provides for a presumption of knowledge as to the nature of the drugs:

> 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 the drug.

It is clear from the words of s 18(2) that the presumption of knowledge can operate alongside a presumption of possession under s 21.

34 In order to rebut the presumption, the Accused must prove on the balance of probabilities that he did not know the nature of the drug: *Obeng Comfort* at [36]. This requires that the Accused gives some explanation for his actions. The explanation has to be credible, cogent, coherent and reasonable enough in the circumstances so as to warrant the court's conclusion that the presumption of knowledge has been rebutted. The Accused would also have to show that there was nothing that would have attracted his investigation or further scrutiny.

35 The Accused claimed that there was nothing suspicious about Muruga's request as he had previously delivered items for Muruga, and did so because he regarded Muruga a friend. Further, it was argued that the Accused trusted Muruga to the extent that he would carry out the delivery despite having limited information. The Accused did not inspect the contents because of that trust.

36 I, however, accepted the arguments of the Prosecution that the circumstances of the previous and present deliveries were suspicious and should have given the Accused cause for pause. It was evident that very little information was given to the Accused. One would have expected that in any delivery carried out as a personal favour, some indication of the recipient (*eg,* that it was a friend or relation of Muruga) and some information or description of the items to be delivered (*eg*, that it was medicine or food) would have been given. There was also clearly little personal connection between the recipients from the previous deliveries and Muruga: there were no queries by the recipients about Muruga's status or well-being, for instance. The Accused's subsequent conversation with Muruga about the second recipient's non-payment, in which Muruga disclosed that "the bosses" had settled the question of payment, would also have made it clear that there was something much more to the transaction. Indeed, the very fact that others aside from Muruga were involved in sending the items would have raised strong suspicion that the transaction was at least not above board.

37 Furthermore, the items were not handed over openly. There was clearly some caution exercised by the recipient in the first delivery in parking his vehicle some distance away from the Accused's trailer. There was a high degree of surreptitiousness that would have been unexpected if the items were anodyne and innocent. The first recipient also handed over a substantial amount of money, SG$1,000, for one block of the items in the bag. Back in Malaysia, out

of the RM2,900 received, the Accused was given RM2,100, a very substantial proportion of the sum collected.

38 On top of all of this, the Accused's relationship with Muruga was clearly not a deep one. The Accused had only known Muruga about two months before the arrest, and did not know much about Muruga as a person. It may be true, as submitted by the Defence, that not all details would be known between friends, but the level of ignorance shown by the Accused about Muruga, and the brevity of their relationship, put into significant doubt whether it could have been true that the Accused trusted or had reasons to trust Muruga. The relationship here was a far cry from the one in the case of *Khor Soon Lee v PP* [2011] 3 SLR 201 for example, where the accused had a close personal relationship with the person who passed him the drugs and had trusted that person, whom he had known for about a year.

39 Given all of these red flags, it would have been reasonable and expected that the Accused probe into what he was asked to do – yet, the Accused did not even check the contents of the bag. His failure to do so could only reasonably have been because he did in fact know or was wilfully blind to what was in the bag. Against these factors, the fact that the Accused was not expressly given any promise or indication of the amount he would be paid for the delivery on 18 February 2016, could not assist him. The evidence showed that the Accused's explanation for his actions could not be accepted, and the presumption of knowledge was unrebutted.

Actual knowledge of the nature of the drugs

40 The reasons above for rejecting any rebuttal of the s 18(2) presumption would be sufficient, to my mind, to also establish either actual knowledge or

wilful blindness. The Prosecution, however, also relied on the use of the word "drugs" in the statements of the Accused as evidence that he knew he was indeed carrying drugs. I was of the view that the statements could not be used to show such knowledge through the use of that word alone.

The statements of the Accused

41 While P38 recorded that the Accused used the word "drugs", I did not find that this indicated his knowledge of the nature of the contents in the bag. There was sufficient evidence to show that the use of the word did not originally come from the Accused given the circumstances of the discovery and the fact that he was told he would be facing the death penalty. Be that as it may, this conclusion did not assist the Accused ultimately.

42 The fact of the matter is that by the time P38 was recorded, it would have been possible that the Accused knew the contents in the bag were drugs not because of his prior knowledge and dealings, but what he picked up from the enforcement officers before P38 was recorded, when he was told that drugs were found in his vehicle. PW6, the narcotics officer interviewing the Accused testified:[4]

> I started by informing the accused person and explaining to him about the mandatory death penalty which was, I believe, already … read out to him earlier. So, what I did was to say – explain to him in the warning again – but in layman terms – and asked him if he wish to co-operate by giving any information related to the drugs found.

This possibility that the Accused was only using the word "drugs" because of what he was told by the enforcement officers should have been excluded by a direct question to the same effect. Given the possibility of the Accused simply

[4] 6 February 2018 Transcript, page 56, lines 7–12,

adopting the word "drugs", his use of the word could not be proof of prior knowledge. If reliance is to be placed on the Accused's use of the word, the proper context should be given and other possibilities should have been excluded. Thus for instance, the statement should have recorded how he came to know these were drugs. In addition, where much turns on the use of particular word or term, the original language should be used.

43 There were a number of assertions made by the Accused in his testimony which touched on the statements given. There was one assertion that PW6, SSSgt Samir, had told the Accused that if he assisted by giving a name of a person involved, he would be given only 5 years of imprisonment. This allegation by the Accused was not, apparently, an allegation of involuntariness. The Accused himself said that this did not cause him to give any untruth or exaggeration.[5] Counsel for the Accused also reiterated that there was no challenge to voluntariness. Any assertion of involuntariness would also go up against the statement of agreed facts, which recorded that the Accused had given his statements voluntarily. Having considered the evidence of the Accused and the position of the Defence, I did not understand the Accused to be making any allegation about the lack of voluntariness, as it did not appear to have operated on his mind, and thus I did not proceed to an ancillary hearing. For completeness, the Accused further reiterated in submissions that voluntariness was not challenged.

44 The primary complaints about P38 were really about the accuracy of its content, insofar as it showed that the Accused knew that the plastic bag contained drugs. There were some questions about whether the correct protocol in the recording of a statement was followed, but given my finding on the use

---

[5] - 8 Feb 2018 Transcript, page 21, line 30 to page 22 line 5.

of the word "drugs", there was no need to determine the issue of the accuracy of P38. There were also some questions that arose regarding whether the Accused used the word "dadah", for drugs, or "dada" (chest), which could be pronounced the same way as "dadah". But again, this was not, to my mind, relevant in the end given my findings on utility of the statement.

45 The Prosecution also sought to rely on the Accused's cautioned statement P41, as showing prior knowledge of the nature of the drugs, on the basis that the Accused had in P41 asked for a lighter sentence and stated that he had done what he did because he needed the money. P41 states as follows:

> I would like to ask for lighter sentence [*sic*]. I did this thing because I needed money. I would also like to ask for a lighter charge because I had fully cooperated with the authorities.

Again, the contents of the statement did not sufficiently indicate prior knowledge. Asking for a light sentence in a cautioned statement may give rise to an inference of guilt, but another inference would be resignation and the hope of avoiding a heavy sentence. Which inference is to be preferred would depend on consideration of other evidence. Here, I was of the view that the strength of the inference was not so great as to warrant weight to be placed on P41 to conclude that the Accused knew of the nature of the drugs.

46 Given this conclusion, whether or not the Accused was indeed told that it was customary for a person to ask, in a cautioned statement, for leniency, was not in the end something that should affect the outcome. Even if he were so told, that would just be a further reason to not give weight to P41 in determining his knowledge. On the other side of the coin, the Accused maintained that this did not affect the voluntariness of the statement, and I did consider that in any event any evidential difficulties only went to the weight to be accorded to the statement.

Conclusion on guilt

47 Given the above, I found that the Prosecution has made out its case that the Accused was guilty of an offence under s 7 of the Act. It was shown beyond a reasonable doubt, and the Accused did not rebut the relevant presumptions, that the drugs were brought into Singapore voluntarily and that he knew the nature of the drugs.

48 The evidence did not show however that the Accused was involved in anything more than the transportation of the drugs.

Sentence

49 The Accused was granted a certificate of substantive assistance by the Public Prosecutor under s 33B(2)(*b*) of the Act. This, together with my finding above – that he was merely involved in the transportation of drugs – meant that the Accused was eligible for the alternative sentencing regime under s 33B(1)(*a*), to imprisonment for life and not less than 15 strokes, instead of facing the death penalty.

50 The Prosecution did not submit on sentence. In mitigation, the Accused noted that this was his first offence. He has two children in the care of his wife, who works in a factory. It was said that full cooperation was given to the enforcement officers.

51 In the circumstances, given the absence of any factor that called for the imposition of a sentence of death, I imposed a sentence of life imprisonment. No lower sentence of imprisonment may be imposed under the statute. There was nothing either that called for the imposition of any caning greater than the prescribed minimum of 15 strokes, and this was accordingly imposed.

52 The sentence of imprisonment was ordered to start from the date of arrest. Orders for the disposal of items seized were also made.

Aedit Abdullah
Judge

John Lu Zhuoren, Rajiv Rai and Deborah Tang Pei Le for the Prosecution;
Chung Ting Fai (Chung Ting Fai & Co.), Zaminder Singh Gill (Hillborne Law LLC) and Ravleen Kaur Khaira (Francis Khoo & Lim) for the defendant.