IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 72

Criminal Appeal No 20 of 2017

Between

PUBLIC PROSECUTOR

… Appellant

And

GOBI A/L AVEDIAN

… Respondent

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Illegal importation of controlled drugs]

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Public Prosecutor
v
Gobi a/l Avedian

[2018] SGCA 72

Court of Appeal — Criminal Appeal No 20 of 2017
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
2 May 2018

25 October 2018 Judgment reserved.

Tay Yong Kwang JA (delivering the judgment of the court):

Introduction

1 The respondent was charged with one count of importing not less than 40.22g of diamorphine, an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The charge ("the original charge") reads as follows:

> That you, GOBI A/L AVEDIAN, on 11 December 2014, at about 7.50 pm, at Woodlands Checkpoint, No.: 21 Woodlands Crossing, Singapore, on a motorcycle bearing Malaysian registration number JQL 3650, 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*, by having in your possession for the purpose of trafficking, two packets containing a total of not less than 905.8 [grams] of granular substance which was analysed and found to contain a total of not less than 40.22 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 7 of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed) and

> punishable under s 33(1) of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed).

2 The respondent claimed trial and the sole issue in the trial below was whether the respondent had rebutted the presumption of knowledge of the nature of the drug under s 18(2) of the MDA. The trial judge ("the Judge") found that the presumption was rebutted and exercised his power under s 141(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to convict the respondent on an amended charge of attempting to import into Singapore a Class C controlled drug ("the reduced charge"). The reduced charge reads:

> That you, GOBI A/L AVEDIAN, on 11 December 2014, at about 7.50 pm, at Woodlands Checkpoint, No.: 21 Woodlands Crossing, Singapore, on a motorcycle bearing Malaysian registration number JQL 3650, did attempt to import into Singapore a controlled drug under Class 'C' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), without any authorisation under the said Act or the Regulations made thereunder, *to wit*, by having in your possession for the purpose of importation, two packets containing a total of not less than 40.22 grams of diamorphine, which you believed was a controlled drug under Class 'C' of the First Schedule of the said Act, and you have thereby committed an offence under s 7 read with s 12 of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed) and punishable under s 33(1) of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed).

Based on the reduced charge, the Judge sentenced the respondent to 15 years' imprisonment with effect from the date of arrest on 11 December 2014 and to ten strokes of the cane. The Judge's decision can be found in *Public Prosecutor v Gobi a/l Avedian* [2017] SGHC 145 ("the GD").[1]

3 The Prosecution appealed on the ground that the Judge erred in finding that the presumption under s 18(2) of the MDA was rebutted. The Prosecution contended that the respondent ought to have been convicted on the original charge.

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[1] Record of Proceedings, Vol 3

Facts

Events leading up to the respondent agreeing to transport the drugs

4 The respondent is a Malaysian. He was 26 years old at the time of the incident. In 2011, he came to Singapore to work as a security guard earning between $1,400 and $1,850 each month. The respondent's daughter had a growth in her jaw and needed several operations, with another operation scheduled after January 2015 which was expected to cost about RM50,000.[2] However, the respondent and his wife managed to save only about RM20,000.

5 According to the respondent, he approached his friend, "Guru", for part-time job recommendations as he needed money for his daughter's operation. Guru introduced the respondent to one Vinod. Guru and the respondent met Vinod at a restaurant. There, the respondent was asked to deliver some drugs into Singapore.[3] He would be paid RM500 for each packet delivered. The respondent claimed that when he asked Vinod for more details about this delivery, Vinod assured him that "it is only chocolate drugs" and that "it is an ordinary drug".[4] The respondent also claimed that Vinod told him that if he was caught, he would either be fined or given light punishment. However, the respondent had "no idea about all this" and "thought it will be a problem" and refused to carry out the delivery.[5] He explained in cross-examination that, "At first, I did not want to do because I was scared".[6] He then left the restaurant.

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2 NE (9 February 2017), p 6 line 21

3 ROP Vol 2 p 122 at para 32.

4 NE (9 February 2017), p 7 line 18

5 NE (9 February 2017), p 7 line 19

6 ROP Vol 2 p 122 para 32

6 As the date of his daughter's operation grew closer and the respondent still did not have enough money to pay for it, he "became desperate".[7] He decided to ask a friend, Jega, about the "chocolate drugs". Jega and the respondent had met in Singapore when the respondent was working as a security guard in the casino in Sentosa. The respondent claimed to have grown close to Jega as they were both working in Singapore. The respondent explained that he did not have many friends in Johor Bahru. Among his friends in Johor Bahru, Jega was the only one who went to clubs and discos.[8] The respondent therefore asked Jega about the "chocolate drugs". In particular, the respondent asked Jega "what are chocolate drugs" and mentioned to him that they would be used in discos.[9] According to the respondent, Jega replied that "if it is to be used in discos, it is not a very dangerous drug and that it is not a terrible drug".[10]

7 The respondent claimed that he believed Jega because Jega frequented discos and there was no reason why Jega would lie to him about this since Jega did not know Guru or Vinod. The respondent then thought to himself that since Vinod had told him that the drugs would be mixed with chocolate, "it will not be a problem as it is mixed with food".[11] Moreover, the respondent recalled that Vinod had told him that if he were to be caught at the Singapore checkpoint, he would "either be fined or be given light punishment".[12] Since the punishment would be a fine, the respondent thought it was not a big matter. The respondent also thought that since Guru was present at the meeting with Vinod and Guru was the respondent's friend, Vinod would not lie in front of Guru. This was also

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7 ROP Vol 2 p 122 para 32

8 NE (9 February 2017), p 8 lines 3 – 4

9 NE (9 February 2017), p 8 lines 9 – 10

10 NE (9 February 2017), p 8 lines 10 – 11

11 NE (9 February 2017), p 8 lines 27 – 30

12 NE (9 February 2017), p 9 lines 4 – 5

because they knew that the respondent was asking about the delivery because of his financial problems. The respondent claimed that he agreed to transport the drugs for Vinod for the above reasons.

The first delivery of drugs into Singapore

8 The respondent admitted that he had delivered similar bundles of drugs into Singapore on eight or nine previous occasions on his relative's motorcycle.[13] The first occasion took place a few days after 22 October 2014. On the first occasion, Vinod called the respondent and informed him that Vinod's brother would pass the respondent the "chocolates". The respondent then took the motorcycle and waited at the meeting point near his home. Vinod's younger brother arrived and passed the respondent one packet of drugs on the first occasion.[14] Vinod's younger brother also gave the respondent ideas on how the packet could be smuggled into Singapore and suggested that it be placed at the back of the motorcycle.[15] The respondent brought the packet back, removed the newspaper wrapping and wrapped the bundle in a black rubbish bag.[16] In the process of doing so, the respondent noticed that the drugs looked like chocolate as they were "in the colour of chocolate". The respondent thought that this was consistent with what he was told the drugs were mixed with.[17] He did not know what drug it was and also did not know that the drug carried the death penalty in Singapore.[18]

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13 NE (9 February 2017), p 15, line 24

14 NE (10 February 2017), p 19, lines 8 – 9

15 NE (9 February 2017), p 16, lines 10 – 11

16 NE (9 February 2017), p 14 lines 12 – 14

17 NE (9 February 2017), p 14 lines 17 - 18

18 NE (9 February 2017), p 14 lines 21 - 26

9 The respondent then placed the wrapped packet inside the motorcycle and travelled into Singapore for work. After arriving in Singapore, he was instructed by either Vinod or Guru to go to Admiralty Station.[19] Upon reaching Admiralty Station, the respondent called Vinod and was told to pass the packet to a man with a hunchback.[20] The respondent did as instructed.

The arrest

10 On the day of arrest on 11 December 2014, the respondent received and handled the drugs as described above. Before entering Singapore, the respondent picked up his friend, Chandra, so that they could travel together to Singapore for work. At the Woodlands Checkpoint, the respondent was stopped by Immigration and Checkpoint Authority officers because he had been classified as a person of interest prior to his arrival in Singapore. A team of Central Narcotics Bureau ("CNB") officers were notified and upon their arrival, the respondent and Chandra were escorted into a nearby empty garage for a strip search by the CNB officers. Nothing incriminating was found on the two individuals' bodies.

11 CNB officer W/SSgt Ritar Diayalah ("W/SSgt Ritar") then asked the respondent in Tamil if he had any contraband items in the motorcycle to declare and he answered in the negative.[21] A search was conducted on the motorcycle. Halfway through the search, when a CNB officer was attempting to remove the motorcycle's seat, the respondent admitted suddenly to W/SSgt Ritar in Tamil that there were 'things' hidden in the motorcycle. He claimed that he did not know what those 'things' were but referred to them as 'chocolate' (in English).[22]

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19 NE (9 February 2017), p 11 lines 11 - 12

20 NE (9 February 2017), p 11 lines 16 - 17

21 ROP vol 2 p 188 at para 10.

Upon further questioning, the respondent said he knew 'chocolate' meant drugs and was not a reference to sweets. The respondent then directed the CNB officers' attention to the rear compartment beneath the seat of the motorcycle. The CNB officers found a screwdriver in the motorcycle and used it to unscrew a small flap covering the inner compartment of the motorcycle.[23] In the presence of the respondent and Chandra, the CNB officers found two black bundles inside the motorcycle. The two black bundles were marked 'A1' and 'A2' respectively.

12 The black packaging of the first bundle, A1, was cut open by an officer from the CNB Forensic Response Team ("FORT") and a clear plastic packet containing brown granular substance was revealed. This clear plastic packet was marked as 'A1A'. This process was repeated for the second bundle, A2 and another clear plastic packet containing brown granular substance was revealed.[24] This second clear plastic packet containing brown granular substance was marked 'A2A'. Subsequently, A1A and A2A were analysed by the Illicit Drugs Laboratory of the Health Sciences Authority ("HSA") and were found to contain the following:[25]

(a) A1A contained 453.1g of granular/powdery substance which contained not less than 20.19g of diamorphine; and

(b) A2A contained 452.7g of granular/powdery substance which contained not less than 20.03g of diamorphine.

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22 ROP vol 2 p 189 at para 12.

23 ROP vol 2 p 189 at para 13.

24 ROP vol 2 p 5 at paras 8 and 9.

25 ROP vol 2 p 8 at para 17.

13 The HSA also reported that the respondent's DNA was found on both the sticky side and the non-sticky side of the tapes used to wrap A1. It was also found on the exterior of the bundle consisting of both the tape and the black plastic wrapping of A2.[26]

14 The respondent was asked about the contents inside the packets once they were removed. The respondent referred to them as "chocolate".[27]

Proceedings below

The Prosecution's case

15 The Prosecution's case was essentially that the respondent should have known that the packets contained drugs that would attract the death penalty because (i) he was paid a relatively large sum for the simple job of bringing the drugs through the immigration checkpoint; and (ii) there were signs that Guru was part of a syndicate and the respondent was therefore helping the syndicate and these signs should have aroused his suspicions. In the light of this, the respondent did not take sufficient steps to satisfy himself that the drugs were not those that would attract the death penalty. The Prosecution contended that Vinod's assurances were insufficient since the respondent had no basis to trust someone that he had met only once. The Prosecution also challenged the respondent's evidence as to Jega. The Prosecution alleged that Jega was an afterthought as he was never mentioned by the respondent in his statements. In any event, the Prosecution submitted that consulting Jega about drugs was inadequate as Jega never saw the drugs and the respondent did not ask Jega further as to why the drugs were not dangerous.

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26 ROP vol 2 p 8.

27 ROP vol 2 p 85.

16 The Prosecution submitted that the respondent could have done more, such as probing the opinions given to him by Vinod and Jega, or tasting the contents of the bundles to confirm that they were "chocolate" drugs. The Prosecution also relied on the fact that the respondent cried after the arrest, contending that it was due to the fact that the respondent knew he was in possession of diamorphine.

The respondent's defence

17 The respondent's defence at trial was that he did not know that the two bundles, A1 and A2, contained diamorphine and that the presumption of knowledge of the nature of the drugs in s 18(2) was rebutted. He contended that he believed that the drugs were "chocolate" drugs consisting of drugs normally used in discos but mixed with chocolate. In his statement recorded on 12 December 2014 under s 23 of the CPC , the respondent said, "I know that it is a drug, but the person who ask me to bring in told me that it is not a dangerous type of drug, and it is something like chocolate".

18 Counsel for the respondent, Mr Nathan, submitted that the respondent referred to the drugs as "chocolate" consistently and that this was corroborated by the Prosecution's own witnesses, all of whom agreed that the respondent did not use the words "diamorphine", "heroin" or any other street term for diamorphine to refer to the drugs. Mr Nathan also submitted that the respondent was a credible witness as he had admitted candidly to bringing the drugs into Singapore on previous occasions even though this was an aggravating factor. He also had good reasons as to why he agreed to deliver the "chocolate" drugs but would not have done so if he had thought that the drugs would attract the death penalty. Lastly, Mr Nathan argued that the respondent did take reasonable steps to assure himself that the drugs were not of the kind that would attract the

death penalty. He sought the assurances of Vinod and got the opinion of a trusted third party, Jega, who was not known to Guru or Vinod. Mr Nathan explained that the reason why Jega was not mentioned in the respondent's statements is that the statements were recorded in a question-and-answer fashion and the respondent only answered whatever was asked of him. In addition, Jega did not testify in court because he was afraid of being arrested for tax evasion. Mr Nathan tendered WhatsApp Messages to show that Jega had intended to testify initially. The respondent had also checked the packets and satisfied himself that the colour of the contents, being brown, matched what was told to him about the drugs being "chocolate drugs".

Decision of the High Court

19 The Judge held that the respondent managed to rebut the presumption of knowledge in s 18(2) of the MDA. The Judge relied on (a) the consistency of the respondent's evidence and (b) the respondent's demeanour. The Judge also rejected the Prosecution's contentions that the respondent should not have trusted Vinod's assurances and that the respondent's claim that he sought assurance from Jega was a mere afterthought.

Consistency of the respondent's evidence

20 The Judge found the respondent's evidence to be consistent for the following reasons. First, the respondent's position from the time of his arrest and throughout the trial was that he did not know that the packets contained diamorphine. Although he admitted that he knew the packets contained drugs, he thought that they were "chocolate" drugs or drugs normally used in discos and mixed with chocolate. The Judge noted that this was the position taken in all the recorded statements and that the Prosecution's own witnesses confirmed this.[28]

21 The Judge noted a possible inconsistency as to whether the term "diamorphine", "heroin" or any other slang for diamorphine was used either by the respondent or by those who recorded his statements. The Judge pointed out that most of the witnesses agreed that these terms were not used. The Tamil interpreter who assisted during the recording of the respondent's statements, Ms Malliga Anandha Krishnan ("Mdm Malliga"), agreed in cross-examination that the investigating officer did not pose any questions to the respondent that the drugs could be heroin. She believed that the investigating officer did not use the word "heroin" and hence it did not appear in the respondent's statements. In re-examination, Mdm Malliga added that she interpreted the word "diamorphine" as "heroin" when she was interpreting the charge to the respondent in Tamil. She said that the respondent could understand the meaning of this word as he did not ask her about it. The respondent denied that Mdm Malliga used the word "heroin" when she was reading the charge to him.

22 The Judge found that Mdm Malliga's evidence in cross-examination and in re-examination was "somewhat inconsistent" and therefore this aspect of her evidence was not "a reliable indicator of any lack of veracity on the part of the [respondent]" when considering his evidence in its entirety.[29]

23 The Judge also rejected the Prosecution's submission that the respondent's behaviour (*ie,* crying) after the arrest suggested that he knew that the drugs attracted the death penalty.[30] He believed the respondent's account that he cried because he had been arrested and Guru had essentially abandoned him.

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28 GD at [35].

29 GD at [38].

30 GD at [40] and [41].

Demeanour

24 From the respondent's demeanour in court, the Judge found him to be a truthful witness.[31] The Judge observed that the respondent underwent a full day of cross-examination and remained essentially consistent in his evidence throughout. The Judge found that the respondent was forthright about the fact that he had trafficked other drugs into Singapore previously for Vinod's brother and was quick to admit when he could not recall certain portions of his testimony.[32] He was of the view that the respondent's testimony about his belief that the drugs were a mild form of drugs mixed with chocolate for use in discos had "the ring of truth".

Rejection of Prosecution's contentions

25 The Judge accepted that the respondent had attempted to get Jega to give evidence and that Jega was clearly not a fictitious person.[33] The Judge rejected the Prosecution's submission that the respondent should not have trusted Vinod since he met him once only and got to know him over the course of the transaction. The Judge found that in weighing the totality of the evidence on a balance of probabilities, the respondent's story that he believed the drugs were not diamorphine but a mild form of disco drug that was mixed with chocolate was a credible one.[34]

26 Having found that the presumption of knowledge in s 18(2) was rebutted, the Judge exercised his power under s 141(2) of the CPC and convicted the respondent of the offence of attempting to import a Class C Controlled Drug

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31 GD at [43].

32 GD at [43].

33 GD at [48] and [49]

34 GD at [53].

instead (under s 7 read with s 12 of the MDA).[35] He then considered the submissions on sentence and decided to sentence the respondent to 15 years' imprisonment and ten strokes of the cane.[36]

Arguments on appeal

27 The issue before us is the same as in the trial below, namely, whether the respondent succeeded in rebutting the presumption of knowledge of the nature of the drugs under s 18(2) of the MDA. The Prosecution contends that the Judge erred in finding that the presumption in s 18(2) was rebutted by the respondent. In particular, the Prosecution relies on the highly suspicious circumstances and the weaknesses and inconsistencies in the respondent's evidence. The Prosecution also challenges the Judge's finding in relation to the respondent's demeanour.

Our decision

The applicable legal principles

28 As the only issue in this appeal is whether, in all the circumstances of the case, the Judge was correct in holding that the respondent succeeded in rebutting the presumption of knowledge of the nature of the drug under s 18(2) of the MDA, we begin by discussing the test for rebutting the said presumption.

29 Section 18(2) of the MDA provides that:

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35 GD at [55].

36 GD at [63].

> **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.

To rebut the presumption in s 18(2), the accused person must prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug that he was caught in possession of (see *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*") at [24]).

30 In *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng"*), this Court addressed the issue of how the presumption of knowledge in s 18(2) could be rebutted. We stated the following (at [39]- [40]):

> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. Similarly, he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of, and to rebut this, he must give an account of what he thought it was.
>
> 40 Where the accused has stated what he thought he was carrying ("the purported item"), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item. This assessment will naturally be a highly fact-specific inquiry. For example, the

> court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country of receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. Ultimately, what the court is concerned with is the credibility and veracity of the accused's account (*ie*, whether his assertion that he did not know the nature of the drugs is true). This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.

Obeng concerned an accused person who claimed that she did not know that what she was carrying was illegal. In the present case, however, the respondent admitted not only that he knew what he was carrying was illegal but also that he knew they were drugs. His defence was that he did not know what type of drugs they were, in particular, that they were diamorphine. We therefore have to consider how the presumption of knowledge could be rebutted when an accused person admits that he knew that he was carrying drugs but claims that he did not know that the drugs were the specific kind of drugs that he was caught in possession of.

The respondent knew that he was carrying drugs

31 In the present case, the respondent's evidence is that although he knew that he would be transporting drugs, he believed that they were "chocolate" drugs that consisted of drugs mixed with chocolate and which were typically used in discos. According to the respondent, he believed that the drugs were not serious drugs and they would have occasioned only a fine or a light sentence if he was caught carrying them. In our view, this would not be sufficient to rebut the presumption of knowledge in s 18(2).

32 The starting point is what this Court said in *Obeng* about the effect of s 18(2). The presumption in s 18(2) operates to vest an accused person with knowledge of the nature of the drug which he is in possession of and to rebut this, he must give an account of what he thought it was. Since the respondent was in possession of the drugs found in the motorcycle, the law presumes that he knew the said drugs were diamorphine.

33 Similarly, as this Court said in *Obeng*, an accused person would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. Since he knew that he was carrying illegal drugs and wished to show that he did not know they were diamorphine, then it was incumbent on him to tell the Court what he thought or believed the drugs were.

34 Here, the respondent did not even state what type of illegal drugs he thought he was carrying. Instead of drug names (whether the scientific, the popular or merely the jargon names), he only identified them according to the likely place of use (namely, in discos) and the legal consequences that he believed they would bring if he was arrested with them (namely, a fine or a light sentence). He did not claim to have knowledge about the types of drugs commonly used in discos. He also did not say that his friend, Jega, had knowledge about such things. It will be recalled that the respondent had testified that "I have no friends who use drugs so I do not know much about drugs".[37] The respondent claimed that he did not know what drugs he was transporting save that they were mixed with chocolate and were not dangerous or serious

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37 ROP vol 1 p 184 lines 21 - 22

drugs and that if caught with the drugs in Singapore, he would be fined or be given light punishment. Even if dangerous or serious drugs meant those that would attract the death penalty, imprisonment for life or a long imprisonment term and non-dangerous or non-serious drugs meant those that would result in only a fine or a short imprisonment term, it was obvious that the respondent did not know what type of drugs would fit into each category. Similarly, he would not know the type of punishments for different amounts of any particular drug.

35 In order to rebut the presumption in s 18(2), which vests the respondent with the knowledge that the drugs imported were diamorphine, it is not enough for the respondent, who knew that he was transporting illegal drugs, to state merely that he did not know what sort of drugs they were or that he had never heard of diamorphine or heroin. If he did not know what diamorphine was, he could not possibly claim that the drugs he was carrying were not diamorphine. Similarly, he would not be able to say whether diamorphine was a dangerous drug or not (according to his definition of dangerous drugs). The presumption in s 18(2) is placed in the MDA precisely to address the difficulty of proving an accused person's subjective state of knowledge with regard to any specific type of drug. It also takes care of the case of a trafficker or an importer of drugs who simply does not bother or does not want to know what drugs or even what goods he is going to carry. Allowing the respondent in these circumstances to rebut the presumption of knowledge by merely stating that he did not know what drugs he was carrying save that they were not dangerous drugs and therefore could not be diamorphine would, as we mentioned in *Obeng* (at [39]), make the presumption of knowledge all bark and no bite. This is because in effect he would be merely stating nothing more than, "The law presumes that I know the illegal drug is diamorphine but I do not know what diamorphine is".

36 The penalties that a particular type of drug attracts in law cannot be used as a proxy for identifying the drug itself. In the present case, the respondent said that he made inquiries as to how dangerous or serious the drugs were in relation to the penalties that they would attract should he be caught in possession of them. That would still not inform him as to the nature of the drugs that he was going to carry. Put in another way, knowledge about the possible penalties that the drug would attract would not help the respondent to identify the drug. If his professed intention was to refuse to carry drugs that attracted the death penalty, then it was incumbent on him to find out what sorts of drugs would lead to such a penalty and how he was to identify them. He must then show that he did take adequate steps to ensure that he was not carrying those sorts of drugs. In this case, he simply did not bother to find out more about what exactly he was tasked to carry across state boundaries into Singapore despite knowing that they were illegal drugs and despite being afraid initially of transporting such drugs.

37 It follows that if the respondent did not know the name of the drugs that he was to carry, he could not possibly verify whether those drugs were dangerous in that they could lead to the death penalty or a long term of imprisonment. The respondent's case was that he knew very little about drugs. He had no friends who consumed drugs. He had never heard of diamorphine or heroin. Therefore, he would have no knowledge as to whether diamorphine would attract a fine or a long imprisonment term or the death penalty. He would also not know if the drug that was mixed with chocolate that he was to carry into Singapore was diamorphine or something else based only on the penalties he had thought they would attract.

38 For the reasons above, we are unable to agree with the Judge that the presumption of knowledge in s 18(2) of the MDA was rebutted in this case. In any event, we have grave reservations about the evidence given by the

respondent and we address these below.

The respondent's trust in the supplier, Vinod

39 In determining whether an accused person believed subjectively the information given by the drugs supplier about the drugs, the court will consider the knowledge of and the efforts made by the accused person to find out about the drugs that he was going to traffic in. In our view, unique circumstances justifying a very high level of trust must be shown by the accused person before the Court is persuaded that the accused person is entitled to rely solely or mainly on the information given by the drugs supplier. This is the effect of this Court's decision in *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 and the High Court's decision in *Public Prosecutor v Phuthita Somchit and another* [2011] 3 SLR 719, both of which turned on their respective unique factual situations. This is because the accused person, when told that he would be transporting illegal drugs across state boundaries, will know that (i) the supplier is involved in illegal activities, (ii) the supplier has chosen not to transport these drugs himself and (iii) the supplier is often willing to pay the accused person a disproportionately large amount of money for the simple task of transporting the drugs into Singapore. All these should put the ordinary accused person on notice that the drugs in question must be worth a lot more than the reward for transporting them and that the risks of doing the delivery must be correspondingly high.

40 In the present case, we do not think that Vinod's assurances could do very much to help the respondent to rebut the presumption of knowledge. Vinod did not give the respondent any information that would help the respondent to identify the drugs. According to the respondent, Vinod only informed him that

he would be transporting drugs mixed with chocolate without providing any further details as to what these drugs would be.

41 There was also little reason for the respondent to trust Vinod. When cross-examined by the Prosecution as to why he trusted Vinod despite having just met him, the respondent explained that "… if [Vinod] wanted to cheat [him], [Vinod] would have said that it is some other item. However, [Vinod] told [the respondent] and so [the respondent] thought it must be the truth. And [Vinod] said it is not dangerous".[38] We do not think that this factor alone would prove, on a balance of probabilities, that the respondent truly believed Vinod's representations as to how dangerous the drugs were. In coming to this view, we considered that (i) the respondent had met Vinod only once in person and knew little about Vinod; (ii) no inquiries were made by the respondent about Vinod's background or reputation, although he knew then that Vinodh was involved in illegal activities; and (iii) after the meeting with Vinod, the respondent actually turned down the offer of the job because he thought "it would be a problem".[39] He only agreed to transport the drugs when his daughter's operation drew near and he was still unable to raise the necessary funds. For these reasons, we do not think that the respondent believed what Vinod told him.

42 The respondent also claimed that he believed Vinod because the representations about the drugs were made in the presence of Guru, who was the respondent's friend. We note the Prosecution's challenge that the respondent was not on close terms with Guru and similarly had little reason to trust Guru. Whatever the case may be, the respondent would have realised that he was not speaking to ordinary, honest businessmen who were willing to help him with

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38 ROP Vol 1, p 251 at lines 8 - 13

39 ROP vol 1 p 182 at line 19

his financial problems but to men who were involved in illegal activities and who wanted to draw him into such activities to earn easy money. Moreover, as we stated above, the respondent did not appear to believe Vinod then because he did not take up the offer of delivery work immediately.

43 A further point indicated that the respondent did not trust Vinod or Guru. After speaking with them and thinking that it would be a problem, he went to check with his friend, Jega, regarding what Vinod had told him about the drugs.

The respondent's trust in his friend, Jega

44 We proceed on the basis that Jega was not a fictitious person, as found by the Judge. If the respondent wishes to rely on assurances given by others to him, there must similarly be unique circumstances justifying a very high degree of trust in those person(s). On this score, there are several problems with the respondent's evidence on the assurances given by Jega to him. Firstly, we agree with the Prosecution that it was strange that in the respondent's statements to the police, he did not mention the assurances given by Jega. Even if we accept the respondent's explanation that the statements were recorded in a question-and-answer manner and no question was asked about Jega, it still seems strange that the respondent would explain to the investigation officer that Vinod had told him that these were disco drugs but omit to add that he also verified this important information with Jega. Further, as pointed out by the prosecution at the trial[40], how would the CNB officers know to ask about Jega if he did not tell them about Jega?

45 Secondly, the respondent did not adduce any evidence concerning Jega's knowledge or experience in drugs. Under cross-examination, the respondent

[40] ROP vol 1 p 317

testified that that "[a]mong [his] friends in JB, [Jega] was the only one who goes to club and – clubs and discos."[41] According to the respondent, he thought that because Jega had gone to discos before, he would know about drugs and because Jega was his friend, he would not lie to him. However, Jega's familiarity with discos did not equate to familiarity with drugs. Jega did not see the drugs and did not know what sort of drugs was mixed with chocolate. The respondent also stated under cross-examination that he did not know if Jega had taken drugs before.[42]

46 Thirdly, the respondent did not ask Jega any questions in relation to the nature of the drugs that would help the respondent to identify them. Instead, the questions posed to Jega were in relation to the seriousness of the drugs and the kind of penalties that they were likely to attract. Even if the respondent was made aware of the penalties, that alone would not help him to identify the drugs and certainly would not help him rebut the presumption of knowledge in s 18(2) because, as we have emphasised, that presumption vested him with knowledge that the drugs in question were diamorphine.

The respondent's visual inspection of the drugs

47 Given the respondent's evidence that he knew very little about drugs, any visual inspection of the drugs that he was tasked to deliver would also not help him. At best, he would know that the drugs were brown in colour, corresponding with the description of "chocolate", but he would still not know what sort of drugs they were or what drugs had been mixed with chocolate.

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41 ROP Vol 1 p 183 at lines 1 -4

42 ROP Vol 1 p 249 at lines 1-2.

Comments on the Judge's findings

48 We make a couple of comments on the Judge's findings. As pointed out at [22] above, the Judge found that the evidence of the interpreter, Mdm Malliga, in cross-examination and in re-examination was "somewhat inconsistent" and therefore this aspect of her evidence was not a reliable indicator of any lack of veracity on the part of the respondent when considering his evidence in its entirety.

49 Her evidence was that the investigation officer did not mention the word "heroin" while he was questioning the respondent and hence that word did not appear in the statements. However, she added that she did use the word "heroin" to describe "diamorphine" when reading the charge to the respondent. The fact that the word "diamorphine" appeared in the charge is beyond dispute. Understood in context, her evidence showed that the word "heroin" was used by her to explain diamorphine in the charge (at the start of the recording) and thereafter, that word was not used by the investigating officer during the questioning. We therefore do not think there was any inconsistency in the interpreter's evidence.

50 In respect of the reduced charge, there is a high degree of artificiality in stating that the respondent "believed" he was importing a class C drug under the MDA when he did not mention a single drug name or even drug classes throughout his testimony. Why is it that a drug which is described by the respondent as not dangerous or not serious cannot be one under class A or B and of a quantity which does not attract the death penalty? For instance, why could it not be diamorphine in an amount that was way below the 15g threshold for the death penalty since the respondent had no idea what drug was mixed with chocolate? What is heavy punishment and what is light punishment in the

respondent's mind anyway? For unauthorised importation of class A and B drugs, the general punishment is imprisonment for a minimum of five years and five strokes of the cane and a maximum of 30 years or imprisonment for life and 15 strokes. Even for the importation of class C drugs, the general punishment is imprisonment for a minimum of three years and five strokes of the cane and a maximum of 20 years and 15 strokes of the cane.

51 This highlights the difficulty of permitting punishments under the law to be used as proxies for drug types and is something that is not permitted in the MDA. An accused person certainly cannot rebut the presumption of knowledge in s 18(2) by substituting knowledge of the nature of the drug with knowledge of the punishments provided in law because the presumption in s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of, and to rebut this, he must give an account of what he thought it was (*Obeng* at [39]).

Conclusion

52 For the reasons above, we disagree with the Judge's decision to convict the respondent on the reduced charge. We hold that the presumption of knowledge of the nature of the drug under s 18(2) of the MDA was not rebutted by the respondent. Accordingly, we set aside the respondent's conviction and his sentence on the reduced charge and we find him guilty on the original charge and convict him on that charge.

53 As a result of the Judge's findings, there were no submissions and no finding made on whether the conditions in s 33B of the MDA were satisfied. We will therefore hear the parties on these matters now before deciding on the next course of action.

Sundaresh Menon	Judith Prakash	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

Mohamed Faizal, Tan Zhongshan and Nicholas Wuan (Attorney-General's Chambers) for the appellant;
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