

Public Prosecutor v Masoud Rahimi bin Mehrzad and another
[2015] SGHC 288

Case Number : Criminal Case No 14 of 2013
Decision Date : 04 November 2015
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Andre Darius Jumabhoy, Qiu Huixiang, and Kevin Tan Eu Shan (Attorney-General's Chambers) for the prosecution; Peter Keith Fernando (Leo Fernando) and Prasad s/o Karunakarn (K Prasad & Co) for the first accused; Ram Goswami (Ram Goswami) for the second accused.
Parties : Public Prosecutor — Masoud Rahimi bin Mehrzad — Mogan Raj Terapadisamy

Criminal Law – Statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeals to this decision in Criminal Appeal Nos 35 and 36 of 2015 were dismissed by the Court of Appeal on 10 October 2016. See [\[2016\] SGCA 69.](#)]

4 November 2015

Choo Han Teck J:

1 The first accused (“Masoud”) is a 25 year-old Singaporean and was serving as a national serviceman when the offences were committed on 20 May 2010. The second accused (“Mogan”) is a 27 year-old Malaysian who was working as a forwarding agent in a company in Johor, Malaysia at that time. They were jointly tried on two charges each for offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”).

2 In respect of Masoud, the first charge against him was for possession of not less than 31.14g of diamorphine for the purposes of trafficking. The second charge was for possession of 77g of methamphetamine for the purposes of trafficking. Mogan’s first charge was for trafficking in not less than 14.99g of diamorphine in handing the said drugs to Masoud on 20 May 2010 between 8.30pm and 9pm. The second charge against him was for trafficking in 77g of methamphetamine by handing the said drugs to Masoud at the same time that he handed the diamorphine to Masoud.

3 The undisputed evidence was that on 20 May 2010 between 8.30pm and 9pm, Masoud drove a Mazda RX8 car with the licence plate number SGR 2475Y to the pick-up point at the Bishan Mass Rapid Transit station. He parked his car alongside the Malaysia-registered Proton Wira, bearing the licence plate number JGV 8436, driven by Mogan. Mogan got out of his car and boarded the Mazda RX8 car that Masoud was in. Mogan then handed over black bundle, with the marking “BISH” as well as some Chinese characters, to Masoud, who handed some money to Mogan in return. Shortly after, Mogan got back into his Proton Wira and drove off. Mogan and Masoud were subsequently intercepted by officers from the Central Narcotics Bureau (“CNB”) at different locations and were arrested.

4 The packet that Mogan passed to Masoud was marked at trial as “A1”. It contained a packet of diamorphine weighing not less than 15.5g (later marked at trial as “A1A1A”) as well as two packets of methamphetamine which weighed a total of weighing 77g (later respectively marked at trial as “A1A1B1A” and “A1A1C1A”). In addition to “A1”, two bundles of diamorphine were found in a Mickey

Mouse bag (marked at trial as "B1A") in the locked backseat compartment of Masoud's car, which was unlocked with a key that was in Masoud's possession. Masoud initially denied that there was anything in the backseat of the vehicle. The two bundles found in the Mickey Mouse bag were haphazardly wrapped in paper and masking tape, with the contents of the bundles – granular or rocky substances – visible from the outside. The bundles were marked "B1A1A" and "B1A2A" and were found to contain diamorphine weighing 7.83g and 7.81g respectively. Masoud's deoxyribonucleic acid was found on both sides of the tapes used to wrap B1A1. The total weight of diamorphine in A1, B1A1A and B1A2A in Masoud's possession was 31.14g.

5 The CNB also recovered a notebook (marked at trial as "C1A"), three forged National Registration Identity Cards and two forged drivers' licences from Masoud's car. Following the recovery of the drugs, CNB officers conducted a search at his place of residence and found two stun guns in his master bedroom.

6 Masoud made two outright denials in his contemporaneous statements to the CNB. He claimed that in respect of A1, Mogan left it in his car without his knowledge and he realised the bundle was left in his car only after he had driven a distance. He further asserted that he did not know what the bundle contained. As for the Mickey Mouse bag (B1A) and the two bundles in it, Masoud's initial defence was that he did not know who they belonged to or how they got into his car.

7 At trial, Masoud had a more elaborate defence. He testified that he worked as a driver for a person known only as "Arab", who was the boyfriend of his step-sister. He thought that Arab might be an illegal moneylender because Arab had shown him a name card reflecting so. He stated that Arab inexplicably vanished in February 2010. Shortly after, Arab's boss, named "Ah Kiat", contacted him and asked him to work for an unlicensed moneylending syndicate which operated in Malaysia and Singapore. Masoud's job was to collect money from debtors and hand them to a person called "Alf". The money would be wrapped in bundles and delivered by persons who would identify themselves using code names such as "Jay" or "Joke". Masoud testified that he was paid \$150 a day for this job. He made the trips in a car that he had rented with a forged driving licence (which was the Mazda RX8 that he was arrested in). He said that after delivering the money to Alf, Alf would open the bundles before him and count the money before instructing Masoud on where the bundles should be sent to.

8 According to Masoud, Alf instructed him on 20 May 2010 to collect money from "Joke", who, as it turned out, was Mogan. He testified that he had collected bundles containing money from Mogan on previous occasions and that he expected the bundle (A1) to contain money and not drugs. He explained that he gave Mogan \$40 because he did not purchase the mobile phone top-up card that he was instructed to get for Mogan.

9 As for the bundles in the Mickey Mouse bag (B1A), Masoud claimed that they were placed in the car by Alf. He claimed that he met Alf a few days before the arrest, either on 17 or 18 May 2010, and Alf instructed him to open the boot of the car. Alf proceeded to put the Mickey Mouse bag into the backseat compartment, which was accessible from the boot of the car. Masoud said he was suspicious and put his hand into the bag to feel the contents. He felt "newspapers and plastic". Alf noticed this and told him to get out of the vehicle. Masoud did so and nothing more was said or done about the Mickey Mouse bag and its contents. Masoud claimed that he neither opened the backseat compartment nor touched the bag until the arrest on 20 May 2010.

10 Masoud's defence was that he must have been set up by the moneylending syndicate. He testified that the syndicate must have decided to do so because they found out he intended to stop working for them and were concerned that he would divulge information to the police. Another reason he gave was that the syndicate had found out that he tried to steal from them on a previous

occasion. According to him, he cut open a bundle sometime in the first week of May 2010 intending to steal the money but changed his mind. He then wrapped up the bundle with tape before handing it to Alf. Alf later confronted him in his car with stun guns after finding out that the bundle had been cut open. Masoud claimed that a week later that, Alf forgot to take the two stun guns that he had with him when he left the car, and he (Masoud) decided to keep them for fear that Alf would threaten him again. These were the two stun guns that were later retrieved in Masoud's unit by the CNB officers. Masoud testified that he was worried that the syndicate would take "serious action" against him, as evidenced from a message he sent to his girlfriend on 4 May 2010 where he told her that he was in danger. Perhaps as an alternative to his account that he was set up by the syndicate, Masoud also suggested that he might have been set up by another member of the syndicate, "Cina", who discovered that Masoud had complained to Alf about his poor performance.

11 To make out the two charges of possession for the purpose of trafficking against Masoud, the prosecution had to prove that Masoud was in possession of the drugs in the bundles (A1A1A, A1A1B1A, A1A1C1A, B1A1A, B1A2A), knew the nature of the drugs, and was holding on to the drugs for the purpose of trafficking. There was no dispute over the fact that Masoud had possession of the bundles of drugs, but he claimed that he did not know that the bundles contained drugs. He said that he thought A1 contained money and had no idea what was in the Mickey Mouse bag. As clarified by the Court of Appeal in *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548, the presumptions in s 17 and s 18 of the MDA cannot be applied together. Thus, to make out the charges, the prosecution must (a) prove that Masoud knew the nature of the drugs and prove that he possessed the drugs for the purpose of trafficking, or (b) prove that he knew the nature of the drugs and invoke the presumption under s 17 of the MDA that Masoud had the drugs in his possession for the purpose of trafficking, or (c) invoke the presumption under s 18(2) of the MDA that Masoud was presumed to know the nature of the drugs and, in that case prove that he was in possession of the drugs for the purpose of trafficking.

12 I am not persuaded by Masoud's account that he was part of a moneylending syndicate and was framed by members of the syndicate. I accepted the prosecution's submission that Masoud's defence appeared to have developed over time to the eventual version that was before the court. In his first contemporaneous statement recorded on the day of the arrest (P128), Masoud made no mention of any moneylending syndicate and plainly denied having knowledge of what the bundles contained. Even if one were to attribute this lack of disclosure to the fear that he was experiencing after the arrest, the same reason does not help explain why Masoud continued to insist that he did not know the contents of the bundles in the next two statements recorded on 21 and 22 May 2010. In the statement recorded on 22 May 2010, Masoud went as far as to provide details on Ah Kiat, Alf and the job he was paid \$150 to do, but maintained that he did not know what the bundle contained. Masoud's denial of knowledge in the statements was plainly at odds with his testimony at trial. As the prosecution submitted, if Masoud had indeed always been delivering bundles of money for the syndicate and the incident on 20 May 2010 was merely another such delivery, Masoud would have stated this from the outset. Given the inconsistencies in his evidence at trial and his statements, it is clear to me that his account about the moneylending syndicate was a defence that he developed late.

13 Further, Masoud's explanation that he was framed by the syndicate is illogical. It is highly unlikely, and in fact baffling, that a syndicate would frame its member by placing so many bundles of drugs worth such a large amount of money in his car. Not only does this not make any financial sense, it would be the last thing that such an "illegal moneylending syndicate", if it existed, would have needed or wanted.

14 Contrary to the weak and inconsistent defence that was put up by Masoud, strong evidence

was adduced by the prosecution to show that Masoud knew that he was dealing with drugs. The entries in his notebook (C1A) and the text messages that were retrieved from Masoud's mobile phones and SIM cards contained multiple references to drugs. The prosecution led evidence from Senior Staff Sergeant Muhammad Faizal bin Baharin ("Sssgt Faizal") (PW53), whom they submitted was well-acquainted with drug expressions from his dealings with drug informers and accused persons over 13 years, to show that the entries and text messages contained references to drugs. Sssgt Faizal testified that "chocolate" is commonly used to refer to heroin (street name for diamorphine) due to its colour, "air con" is used to refer to "ice" which is the street name for methamphetamine, "fish" is a reference to methamphetamine when sold "by set", and "Kit" is used to refer to Ketamine. The prosecution submitted, with the aid of Sssgt Faizal's evidence, that several of Masoud's text messages (eg, "100g rm 23600, chocolate - rm 10300", "aircon 2 set" and "Tis my last price...25g-2500 sing dollar") could only be interpreted as orders for heroin and methamphetamine. The same could be said for some of the entries in his notebook, like "Kit 20 x 50g", "Fish = 3½ set" and "P = (68 x 7.5) + ½ ball". Sssgt Faizal also testified that the prices stated in the messages corresponded with his intelligence on what drug prices were in 2010 (produced in P269). The prosecution further submitted that it could not have been a mere coincidence that there were numerous references to "chocolate" (diamorphine) and "ice" (methamphetamine) in the entries and messages, which were the two drugs that Masoud was found in possession of.

15 Masoud attempted to explain the terms used in the messages and entries as being references to standard amounts of money to fit his story about his being part of a moneylending syndicate. I am not convinced by this explanation. Firstly, this explanation is inconsistent with the position he took in a statement that was recorded very soon after his arrest (P134), where he stated that "[he] was just instructed by Alf to copy and write down these things" and that he had "no idea on [sic] what the writings in the note book means". Further, Masoud was not consistent with his interpretation of the words. For example, though he initially testified that "chocolate" meant 16 bags of money, he later changed his position and said that it was a reference to the interest. Having examined the string of text messages and entries in the note book, I accepted the prosecution's submission that Masoud's explanation of the terminology and what the various messages and entries meant was contrived and did not make sense. Instead, it is clear from the messages and entries that Masoud was a person familiar with prohibited drugs and had been dealing with them.

16 The drugs found in the Mickey Mouse plastic bag (in B1A1A and B1A2A) were hidden in the locked backseat compartment of Masoud's car, which could only be unlocked with a key that was in his possession. They were clearly visible due to the haphazard manner in which they were wrapped. In these circumstances, it was difficult for Masoud to argue that he had no knowledge of the contents of the bundles (B1A1A and B1A2A), especially when he knew of their presence and had touched them.

17 After considering the above, I agreed with the prosecution that the evidence adduced had proved beyond reasonable doubt that Masoud knew that the bundles in his possession contained drugs. In any event, he would also have failed to rebut the presumption under s 18(2) of the MDA.

18 The last element that had to be proven for Masoud's charges was that he possessed the drugs for the purpose of trafficking. The prosecution submitted that Masoud admitted that he intended to deliver the bundles to Alf and thus this element was made out. Given that I found that Masoud's account of the moneylending syndicate to be fabricated, I did not think that it was appropriate to selectively rely on a portion of that account to make such a finding. It was unclear if Alf existed. Even if Alf existed, he may not have been the person that Masoud intended to deliver the drugs to.

19 Notwithstanding this, I am satisfied on the evidence before me that Masoud was in possession

of the drugs for the purpose of trafficking. He had in his possession four bundles that contained a large quantity of drugs — 31.14g of diamorphine and 77g of methamphetamine. To put it in context, the amounts for the respective drugs far exceeded that needed to invoke the presumption of trafficking under s 17 of the MDA (*ie*, 2g for diamorphine and 25g for methamphetamine). To be clear, I am not relying on the presumption in s 17 of the MDA. I am merely using the statutorily provided threshold levels in s 17 as a basis of comparison to demonstrate that Masoud had with a very large quantity of drugs with him. It is inconceivable that Masoud intended the drugs for his own consumption, especially since there was no evidence that he was a drug-taker. He had no drug-related antecedents and his urine samples were tested negative for drugs. The entries in Masoud's notebook and his text messages contained multiple references to drugs, quantity of drugs as well as their prices. Several of the messages and entries in the notebook resemble drug orders. The prosecution also adduced circumstantial evidence such as Masoud's use of a rental car, the stun guns and the forged identification documents that were found in his possession. Although these items would not by themselves support an inference that Masoud was involved in the drug trade, they fall into place with the other evidence in forming a picture that Masoud was someone who was involved in the trafficking of drugs. I therefore convicted Masoud on the two charges.

20 I move on to the case against Mogan. The prosecution's case was a straightforward one based on Morgan's act of passing the bundle A1 to Masoud. Mogan's statements to the CNB contained elaboration of how he came to be in possession of the various bundles of drugs. He stated that he had entered Singapore from Malaysia on 20 May 2010 with the intention to see his ex-girlfriend. He was instructed by an Indian called "Bro" to retrieve some bundles and deliver them. Mogan testified that he does not know who Bro was and that Bro was introduced to him by a Chinese male known to him as "Mr Tan". Mogan met Mr Tan at a wedding function and gave him his mobile number. Mr Tan met up with him a week later and asked if he wanted to bring shipments into Singapore. Mogan stated that he finally agreed after a few occasions but maintained that he did not know the bundles contained drugs although he had guessed that the contents were illegal.

21 On 20 May 2010, Mogan followed Bro's instructions and went into a toilet of a coffee shop in Woodlands to retrieve four bundles hidden in the false ceiling. Bro instructed him to pass one bundle to a man referred to as "Boss" and the three remaining bundles to someone in Kallang. Boss turned out to be Masoud, and Mogan was arrested before he could deliver the three bundles to his contact in Kallang. He identified Masoud as the person he handed A1 to. According to his own evidence, he was promised \$1,500 to carry out the job. Mogan said that he took up the job as he needed money to repay the debt that he owed a person known to him as "Ah Neh".

22 Mogan's defence was that he agreed to deliver four bundles in exchange for \$1,500 but did not know that they contained drugs. He claimed at trial that he thought that like before, the bundle contained a baton and a stun gun, which he thought was illegal due to tax evasion. He explained that he had delivered a similar black bundle to Masoud on 15 May 2010 and was told by the person who wrapped it, "Shan", that it contained a stun gun and a baton. He further claimed that he had no reason to think that the bundle contained drugs because Bro merely told him that the bundles contained "barang". His counsel submitted that he came from a "background where he had no exposure to the drug subculture" and therefore thought that the word "barang" meant things and not drugs. He also tried to explain away the usage of the word "drugs" in his statements by blaming it on the inaccurate translation of the interpreter, Mr Manickam.

23 I did not accept Mogan's evidence that when he used the word "barang" he had no idea the word was slang for drugs because in Malay it simply meant "things". Mr Manickam gave evidence that he was certain that Mogan had used the word "drugs". I found it unlikely that a senior and experienced interpreter like Mr Manickam would have made such a serious mistake in translation. The

following was recorded in Mogan's statement of 22 May 2010 (P141):

... When we met up, I then asked him what was the shipment and where was it coming from. ... He then told me that he wanted me to send the drugs into Singapore straight in my face. He did not say the exact words "drug" but said "barang". I then asked whether "barang" is illegal and he said yes. I also guessed that it was drugs but I do not know what drugs exactly.

A quick read of this passage shows that replacing the words "drug" with "barang" will make no sense at all.

24 I am satisfied that Mogan had referred to the bundles as containing "drugs" from the time he was arrested and was attempting to argue otherwise at trial. I am also unpersuaded by Mogan's account that he thought that the bundle contained stun guns and baton due to what Shan had told him. He had made no mention of Shan or of this prior delivery involving stun guns and batons during investigations. When asked to point out who Shan was in his phone records, Mogan identified a person named "Sanjay", whom the records showed he had no contact with since 9 April 2010.

25 In all, I am not persuaded by Mogan's evidence that he did not know that he was delivering drugs. The presumption under s 18(2) of the MDA that operated against him required a more cogent and plausible explanation than that he had given. Given that he was suspicious of the contents of the four bundles which he had received from a person he did not know (and who promised him a sum of \$1,500 to deliver them) from a highly suspicious location, and thought that they were illegal, a coherent explanation as to why he did not check to find out in what way the contents were illegal is required. Mogan's omission to provide such an explanation destroyed his defence. Mogan has thus failed to rebut the presumption under s 18(2) of the MDA. There is no doubt that Mogan delivered A1, which contained not less than 14.99g of diamorphine and 77g of methamphetamine to Masoud. I thus found him guilty as charged.

26 In respect of Masoud whose first charge was a capital charge, I had to further determine if he trafficked merely as a courier in which case, he may be spared the mandatory death penalty if the Public Prosecutor issues a certificate to certify that he has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore. For my part, I disbelieved Masoud's evidence and, consequently, the only inference that I can draw is that Masoud was collecting and distributing drugs as a trafficker and not just as a mere courier. The evidence of the notebook and stun guns, and more importantly, the other drugs in his possession at the time are not evidence consistent with someone who is merely a courier. In any event, even if Masoud was a mere courier, it would not spare him the death penalty if the Public Prosecutor does not issue a certificate of substantive cooperation. In this case, the Public Prosecutor declined to issue the certificate. I thus sentenced Masoud to death on the capital charge.

27 As for Mogan who did not face a capital charge, the evidence showed that he acted merely as a courier. In the light of Mogan's young age (22 years old when he committed the offence) and his minimal involvement in the offences, I sentenced him to the minimum mandatory sentence of 20 years' imprisonment and 15 strokes of the cane on the first charge.

28 The prosecution informed me that the Public Prosecutor has decided to not further prosecute both Masoud and Mogan on their respective second charges involving methamphetamine. I therefore ordered a discharge not amounting to an acquittal of the two respective charges pursuant to s 232(1)(b) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).