

Public Prosecutor v Dinesh Pillai a/l Raja Retnam
[2011] SGHC 95

Case Number : Criminal Case No 1 of 2011
Decision Date : 14 April 2010
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Isaac Tan and Geraldine Kang (Deputy Public Prosecutors) for the Prosecution; Amolat Singh (Amolat & Partners) and Lam Wai Seng (Lam W S & Co) for the accused.
Parties : Public Prosecutor — Dinesh Pillai a/l Raja Retnam

Criminal Law

14 April 2010

Judgment reserved.

Chan Seng Onn J:

Introduction

1 The accused, Dinesh Pillai A/L Raja Retnam ("the accused"), is a 27-year old Indian Malaysian who lived in Skudai, a town close to Johor Bahru in Malaysia. The eldest child of a family of five, he was penniless and unemployed in December 2009. He had a girlfriend whom he was planning to marry. He was going to start work in January 2010 at Universal Studios Singapore with a salary of \$1,100. Life was about to improve for the accused. But on 19 December 2009, while travelling from Johor Bahru, he was arrested at the Singapore Woodlands Immigration Checkpoint ("Woodlands Checkpoint"). A brown paper wrapped packet found under his motorcycle seat was subsequently analysed and found to contain diamorphine – commonly known as heroin. He is charged with an offence under section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") of importing, without lawful authority, not less than 19.35 grams of diamorphine into Singapore, a capital offence under section 33 of the MDA.

Background

2 About one month before the accused was arrested, his friend Ravi (whom he had known for about one year) introduced him to someone called Raja. On 19 December 2009, at about 1.00pm, Raja came to his house with a proposal. According to the accused, Raja said that he had some food for the accused to deliver to a person called "Ah Boy" in Singapore for a payment of RM200. The accused was at that time financially strapped. He expressed his interest and asked Raja what the food was. Raja replied that it was a secret, something expensive and that the accused was never to open the packet as Ah Boy would know and refuse delivery. The accused agreed to deliver the "food". At about 7.00pm Raja passed the accused a red plastic bag, which contained one brown paper wrapped packet secured with two rubber bands (the contents of which could not be seen without opening it), a packet of curry and a packet of cut fresh chilli (the contents of which could be clearly seen as they were both in clear, transparent plastic bags). The accused was told to call Raja before and after passing through the Woodlands Checkpoint, whereupon Raja would give the accused Ah Boy's contact information and further instructions. The accused took the red plastic bag containing the three items and rode his motorcycle directly to the Woodlands Checkpoint without checking the contents of the

brown paper wrapped packet.

3 At about 8.19pm, the accused arrived at Counter 45 of the Woodlands Checkpoint. A notification alert sounded when the accused's particulars were scanned by the immigration officer. The immigration officer alerted the Quick Response Team at the Woodlands Checkpoint, who dispatched an officer to Counter 45. This officer escorted the accused and his motorcycle to the motorcycle parking lot beside the Immigration and Checkpoints Authority Car Arrival Secondary Team Office ("ST Office") located within the Woodlands Checkpoint. The accused parked his motorcycle and waited inside the ST Office until a team of Central Narcotics Bureau ("CNB") officers arrived at about 8.55pm. The accused was then escorted by the CNB officers to his motorcycle. While walking to the motorcycle, the accused revealed to one of the CNB officers, Sergeant Vasanthakumar Pillai ("Sergeant Kumar"), that he had been paid to deliver some "items" to Ah Boy, and that the items were placed under his motorcycle seat. The motorcycle was then searched in the accused's presence.

4 The red plastic bag and its contents were found under the accused's motorcycle seat and seized. The CNB officer conducting the search, Staff Sergeant Chew Tai Wai, pulled open a corner of the brown paper wrapped packet and peeked inside. He noticed that it contained a brown granular substance. At about 9.05pm, the accused was arrested on suspicion of importation of a controlled drug.

5 The brown granular substance was subsequently analysed by the Health Sciences Authority of Singapore and found to contain not less than 19.35 grams of diamorphine.

Admissibility of similar fact evidence

6 At the commencement of the trial, the prosecution applied to admit evidence of two previous deliveries by the accused made also on behalf of Raja of similarly wrapped items to the same person, Ah Boy, in Singapore on the basis that they were similar fact evidence. This evidence was not to be used to show the accused's propensity to import drugs into Singapore or his past behaviour but to show the state of knowledge of the accused in relation to the contents of the brown paper wrapped packet which he was delivering on this occasion. I allowed the admission of the evidence of the previous deliveries for the purpose stated by the prosecution against the objection of the defence. I now set out my reasons.

7 The accused had voluntarily admitted in the various statements to the CNB officers that he had, on two previous occasions, successfully brought into Singapore items which had been packed identically to those found on his motorcycle on 19 December 2009. Paragraph 10 of Sergeant Kumar's conditioned statement stated that:

... I spoke to the subject in Tamil and he informed me orally that he had previously assisted a friend from Johor Bahru to smuggle *drugs* into Singapore on two different occasions. ...

[emphasis added]

8 In a contemporaneous statement made by the accused to Sergeant Kumar at about 11.05pm on 19 December 2009, the following was recorded:

...

Q4) How many times have you delivered to Boy?

A4) I have delivered to boy twice and this will be thirdtime I'll be delivering to him and I will be paid by him in Singapore dollars.

Q5) How much were you paid in your previous deliveries to Boy?

A5) The first time when I delivered to Boy, I was not paid anything by him but è secon time when I delivered to him, I was paid \$9,600/- in Singapore dollars which I passed back to Rajah in Malaysia. I in turn will be paid RM 200/- for every delivery.

A6) Where were all these deliveries made?

Q6) The first delivery was made in Pasir Ris MRT Station where I was picked up at è Taxi-stand by boy in his Car and the second delivery, I was picked up by boy in his Car outside UOB Bank near Bedok Bus Interchange. All transaction of *drug* & money took place in Boy's Car.

[emphasis added]

9 On 22 December 2009, the accused said in a further statement recorded at about 2.25pm that:

...

23 The first delivery was made to Ah Boy was about 1 week before I was arrested. The second delivery was made to Ah Boy was about a few days before I was arrested. For all three occasions, Raja will give me the same exact package that includes a red plastic bag containing a brown paper bag, a packet of curry and a packet of chilli. Like the third occasion, I didn't look at the content of the brown package and didn't check.

24 For the first time, I passed to Ah Boy at Pasir Ris MRT. I parked my bike at Harbour Front and took a MRT there. I took a Taxi from Harbour Front to Bedok Interchange for the second occasion. It was done during daytime for the first two occasions. I don't remember the timing but I know the Sun is still out. Both times, I boarded Ah Boy's car and passed him the package. He didn't check the contents and I left shortly. I didn't collect anything from Ah Boy during the first trip and collected \$9,600 during the second trip. I returned to Malaysia and passed the money to Raja. I asked a bit more for the second occasion as I saw that there were \$9,600 and he gave me RM 300 for the second trip as compared to RM 200 for the first trip. I asked me [*sic*] what is the \$9,600 for and he told me that it was owed by Ah Boy but he did not explained more. For the third trip where I was arrested, he promised to pay me RM 200 but might pay me more.

...

10 On 24 December 2009, the accused said at paragraph 28 of a further statement recorded at about 10.22am that:

... I met Raja a total of four times. First time when I was introduced to him, second time before the first trip when I delivered the food items and third and fourth time on the same day before I was arrested. ...

11 The defence did not challenge the voluntariness of these statements. The prosecution sought to admit these statements under sections 14 and 15 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") on the ground that the previous deliveries "shed light" on the accused's state of mind, and more particularly on the extent of his knowledge of the actual nature of the contents in the brown

paper wrapped packet. In other words, the statements were being adduced as evidence of the truth of the matters stated – ie (a) that the accused had *in fact* made two previous deliveries of identically packaged items which he knew did not contain food or anything else but contained drugs instead (as was clearly admitted by him in his statements), and therefore (b) that the striking similarity of the facts and circumstances of the previous two deliveries with those of the third delivery supported an inference that the accused was not ignorant of what he was delivering but that he knew, as he did on the previous occasions, that the third identically wrapped brown paper packet accompanied by a packet of curry and chilli for delivery to Ah Boy (the subject of the present charge) contained illicit drugs and not something else. The evidence sought to be admitted was to show that the accused knew exactly what he was delivering not only in the two similar previous deliveries but in the present (third) delivery as well. Thus, this evidence was to be used to rebut the accused's claim that he was an innocent courier who simply did not know what he was asked to deliver because he had not opened the brown paper wrapped packet to check its contents. Section 15 of the EA states:

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional *or done with a particular knowledge or intention*, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

[emphasis added]

12 Since the similar fact evidence is relevant to the issue of the mental state, or more specifically the particular knowledge, of the accused in the present case when he was on his way to deliver the item to Ah Boy on this third delivery, it is relevant under section 15. But there is a further hurdle: similar fact evidence adduced under section 15 will be admitted only if the court is satisfied that its probative value outweighs its prejudicial effect: *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 ("*Tan Meng Jee*").

13 The Court of Appeal in *Tan Meng Jee* approved three non-exhaustive factors to be taken into account when balancing the probative value of the evidence against its prejudicial effect. The first factor is the cogency of the similar fact evidence. If the evidence to prove the facts and circumstances of the previous similar occurrences is not disputed, then the cogency of such similar fact evidence tends to be higher and conversely, the cogency is correspondingly less if the similar fact evidence to prove the existence or details of the previous occurrences is disputed with credible evidence. The cogency of the similar fact evidence in this case is not in doubt since it originates from the accused's own statements which were not challenged. The second factor is the relevance of the evidence. As explained above at [11]–[12], the similar fact evidence is relevant to the state of knowledge of the accused of the contents of the brown paper wrapped packet that he was going to deliver to Ah Boy on the day of his arrest. The third factor is the strength of the inference that can be drawn. The classic test in this regard is that of striking similarity laid down in the House of Lords decision of *Director of Public Prosecutions v Boardman* [1975] AC 421, per Lord Wilberforce and Lord Cross. The more unique the features that give rise to the similarity of the previous occurrences with the present occurrence and the more strikingly similar they are, the higher will be their probative value and the stronger will be the inference that can be drawn in showing that the acts in question were similarly accidental or intentional or done with a particular knowledge or intention as with the previous occurrences.

14 The prosecution submitted that the evidence of the two previous deliveries bore a striking similarity to the facts of the present case. In particular, the prosecution emphasised (a) the circumstances surrounding the delivery and (b) the identical packaging of the items. On (a), the

circumstances of the delivery were that in all three instances the accused received the items from Raja and was to be paid RM200-300 to deliver the items, and all the deliveries were to be made to Ah Boy. On (b), the drugs found in this case were, like the previous two occasions, wrapped in brown paper and disguised to look like innocuous food packets, with accompanying curry and chilli packets. I agreed with the prosecution that there were many unique features in the present occurrence which were strikingly similar, if not identical, with the previous two occurrences.

15 Having regard to the cogency of the evidence of the two previous drug deliveries, the relevance of the evidence and the strikingly similar, unique nature and circumstances of the previous two deliveries with the present one, and also the proximity in time between the three events (all taking place in quick succession within a week), I found that the evidence relating to the previous two deliveries was highly probative to show by way of inference that the accused in fact knew, and if not, then he must have at least believed or strongly suspected that the brown paper wrapped packet he was carrying on behalf of Raja for delivery to Ah Boy on this third occasion (disguised and made to resemble a packet of food) contained drugs. This inference was based on the fact admitted by the accused that in the two previous similar deliveries, he knew that the similarly wrapped brown paper packets contained drugs which he had smuggled into Singapore and therefore he was not likely to be ignorant or to have harboured a mistaken belief about the true nature of the contents of the packet on this strikingly similar third occurrence. In other words, the similar fact evidence allowed an inference to be made that the accused must have similarly known and if not, then at least believed or strongly suspected that he was carrying drugs which had to be smuggled into Singapore (and not something else as he now claims) in the disguised food package on behalf of Raja to be delivered to Ah Boy on this third occasion. Without cogent evidence by way of his admission of his knowledge that he was in fact carrying illicit drugs in the earlier two deliveries, I would not have admitted the similar fact evidence. But since there was such evidence, the similar fact evidence of the two previous deliveries was in my view highly probative for the purpose of establishing the accused's true state of mind or knowledge in the present case.

16 For these reasons, I found that the probative value of the similar fact evidence outweighed its potential prejudicial effect. I accordingly admitted the evidence under section 15 of the EA.

The section 7 offence

17 The accused is charged under section 7 of the MDA. Section 7 states:

Import and export of controlled drugs

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

18 To secure a conviction, the prosecution must show that the accused imported the diamorphine into Singapore without prior authorisation. "Import" is defined in accordance with section 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) as "to bring or cause to be brought into Singapore by land, sea or air": *Ng Kwok Chun and another v Public Prosecutor* [1992] 3 SLR(R) 256 ("*Ng Kwok Chun*"). The importation of drugs is not an offence of strict liability, so the prosecution must also show that the accused knew, or is taken to have known, that he was bringing the controlled drug into Singapore: *Abdul Ra'uf bin Abdul Rahman v Public Prosecutor* [1999] 3 SLR(R) 533 and *Ng Kwok Chun*. The prosecution has to prove not just knowledge of a controlled drug, but knowledge of the *specific drug* – diamorphine.

19 The standard of proof that the prosecution has to satisfy is that of beyond reasonable doubt. V

K Rajah JA in the Magistrate's Appeal of *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR 983 took this standard to mean that all doubt, for which there is a reason related to and supported by the evidence presented, must be excluded. As reasonable doubt may also arise from a lack of evidence, the trial judge must be able to say precisely why and how the evidence supports the prosecution's theory of the accused's guilt. This approach effectively inhibits and constrains the subjectivity of the trial judge's fact-finding mission.

20 With these principles in mind, the next question is whether the evidence supports a conviction under section 7 of the MDA. It is not disputed that the accused physically brought the diamorphine into Singapore and that he was not authorised to do so. The only issue is whether the *mens rea* of the offence is made out: whether the accused knew, or is taken to have known, that he was carrying *diamorphine*. The accused's knowledge for the purposes of section 7 may be proved:

- (a) by establishing that the accused had actual knowledge that he was carrying diamorphine;
- (b) by showing that the accused was wilfully blind to the fact that he was carrying diamorphine; and
- (c) by relying on the presumption in section 18(2) of the MDA whereby the accused is presumed by law to have known the nature of the drug he was carrying (in this case, diamorphine).

The defence submissions

21 The accused's defence was that he honestly and reasonably believed that he was not carrying any form of controlled drugs.

22 In support of this claim, the defence first relied upon evidence which (as contended by defence counsel) positively established the accused's belief that the item in the brown paper wrapped packet was not controlled drugs. It was the accused's testimony that he had known Ravi for five years, and trusted him. When Raja was introduced to the accused, he naturally (if foolishly) extended to Raja the trust that he had in Ravi. In his mind, the friend of his friend was his friend too. Because of his trust, he did not expect them to involve him in delivering drugs. Although the accused trusted Raja to a certain extent, he never actually believed that he was being asked to deliver food. He suspected that the delivery was of contraband items: possibly money, electronic parts or gold. The accused also testified that he had asked Raja about the contents he was asked to deliver, and believed Raja's assurance that there would be "no problems" in taking the items to Singapore. He explained the contradiction between his belief that the items were contraband and his belief in Raja's assurance that there would be "no problems" on the basis of a distinction between "big" and "small" problems. A "big" problem was one that could, for example, involve drugs. A "small" problem related to more minor import offences. The accused explained that he understood Raja's assurance to mean that there would be no "big" problems in taking the items to Singapore.

23 His belief that the items were not drugs was reinforced by three more facts. First, he had been told by Raja to place the items in the open basket of his motorcycle. It would be most unusual to display controlled drugs in plain sight, and Raja's instructions reassured him that the items were minor contraband. Second, RM200 to RM300 was too little payment for the delivery of controlled drugs. Third, the accused had not been aware that Raja was a drug dealer, and neither did Ah Boy look like a drug addict.

24 The defence further pointed to his testimony relating to the mode of delivery on the first

delivery where he had parked his motorcycle at Harbour Front MRT station and taken the MRT to Pasir Ris MRT station. The defence submitted that, based on common sense, it was highly unusual for a person who knowingly carried controlled drugs to embark on a long and public ride with the controlled drugs in a red plastic bag swinging from his hand.

25 The accused also testified that when he had been stopped at Counter 45 of the Woodlands Checkpoint on 19 December 2009, his demeanour was calm and he did not avoid eye contact with the immigration officer. He honestly thought that he was stopped to pay a traffic fine. It was alleged that this was not the manner typical of a person who was knowingly carrying drugs. The accused also testified that there had been a gray dustbin near the ST Office where he was asked to park his motorcycle. The escorting officer was waiting for him about 30 metres away. It was his testimony that he had the time to transfer the items from the basket to under his motorcycle seat. This being the case, he would also have had the time and opportunity to dispose of the items in the dustbin. That would have been the likely course of action had he known that they were drugs. Since he had not disposed of the items, it should be inferred that he did not have such knowledge. Similarly, he was waiting alone inside the ST Office for approximately 30 minutes. During this time, he had the time and opportunity to delete any potentially incriminating evidence in his mobile phone, but he had not done so.

26 The defence also sought to negate the evidence which showed that the accused knew he was transporting drugs. In relation to the contemporaneous statements made by the accused to Sergeant Kumar on 19 December 2009 at about 11.05pm (reproduced above at [8]) where references to "controlled drug" and "drug" were made, the accused explained that these statements had been recorded *after* Sergeant Kumar had informed him that the packet was found to contain drugs (in Tamil: "*pothaiporul*"). Hence he had not made the references to drugs from his personal knowledge. The explanation for the references in the SMSes to drugs was that his friends borrowed his mobile phone occasionally and that the messages had been meant for, or sent by, them. Any inconsistency in his explanations was explained by the length of time since he had last seen these messages – more than one year since the mobile phone had been taken away from him on 19 December 2009.

27 The defence submitted that for these reasons, the accused neither had actual knowledge nor a suspicion that the items were drugs. Even if the accused did suspect that the items were drugs, he had asked questions about their contents and had been reassured that they were not drugs. Further, he had not personally inspected the contents because he had been warned not to do so, and pulling apart one corner of the packet to inspect the contents had simply not occurred to him. Therefore, since he had taken reasonable steps to ascertain the contents, the accused had not been wilfully blind. Accordingly, the defence submitted that the presumption of knowledge in section 18(2) of the MDA was rebutted.

The submissions of the prosecution

28 The prosecution submitted that the accused either had actual knowledge or was wilfully blind to the fact that he was carrying diamorphine. It sought to portray the accused as an intelligent and educated person who, because of his desperate financial position, willingly assumed the risk of importing diamorphine into Singapore on promise of payment of money.

29 Reliance was placed in particular on the two previous deliveries – allegedly on 10 December 2009 and 14 December 2009 (the accused did not confirm the dates). Both times, the accused had been delivering drugs to Ah Boy for Raja which were disguised as a packet of food item wrapped in brown paper accompanied by a packet of curry and a packet of chilli, similar to the present facts. The items had been passed to the accused by Raja and Ravi respectively on the first and second

deliveries. The accused had recently come to know Raja through his friend, Ravi. Raja offered the accused money for delivering "food" into Singapore. According to the accused, Raja had told him on this occasion that the item was "secret" and "expensive", and that the accused was not to look inside. The accused, however, knew that it was not food items he was being asked to deliver. He consistently maintained during his cross-examination that he did not believe he was asked to deliver food in the brown paper wrapped packet. He reached this conclusion for two reasons: (a) on the very first occasion he met Raja, he overheard Raja telling Ravi that the "food" cost \$3,000; and (b) he did not believe he would be paid RM200 merely to deliver food. As he suspected the item in the brown paper wrapped packet to be contraband, he said that he had repeatedly sought assurances from Raja. Raja allegedly assured him that he would not encounter any problems at immigration. The accused explained that he understood Raja's assurance to mean that he would not experience any "big problems" – ie problems relating to drugs. The prosecution submitted that the repeated assurances sought by the accused showed that he was, at the very least, alive to the possibility that he was asked to deliver controlled drugs. If that was not on his mind, then why did he have to seek such repeated assurances from Raja? According to the accused, Raja had told him that the "food" he was to deliver to Ah Boy was something expensive. The accused was warned that he was not to open the packet because Ah Boy would know and reject the delivery. On each of the deliveries, the accused was instructed to telephone Raja twice – once before he reached the Woodlands Checkpoint, and a second time after he had entered Singapore. It was only then that Raja would give the accused Ah Boy's contact number. The accused would contact Ah Boy and arrangements would be made for the handover of the food items. Both deliveries to Ah Boy took place in the confines and privacy of Ah Boy's car. Upon returning to Johor Bahru, Raja would take the accused's phone and delete all records of communication that the accused had with Ah Boy. The accused conceded on cross-examination that these circumstances were suspicious and had reinforced his belief that he was involved in an illegal activity.

30 After handing the items to Ah Boy during the second delivery, the accused was given two or three packets or envelopes by Ah Boy to take to Raja. When he returned to Johor Bahru, the accused learnt that the packets contained \$9,600 and proceeded, on this basis, to ask Raja for more money. The prosecution submitted that this was a significant fact and invited the court to infer from it that the accused was not a simpleton who was unwittingly ensnared in Raja's scheme.

31 Turning to the attempted delivery on 19 December 2009 that is the basis of the present charge, the prosecution showed that the circumstances were materially identical to the two previous deliveries. The accused was given "food" by Raja to deliver to Ah Boy, promised RM200 for a successful delivery, warned not to inspect the items and told to contact Raja after entering Singapore for Ah Boy's number. The prosecution submitted that given the previous two deliveries, the accused must have been at least alive to the possibility that he was delivering drugs *this* time. The prosecution also relied on the contemporaneous statement of the accused made in Tamil to Sergeant Kumar at the CNB office, recorded on 19 December 2009 at about 11.05pm. The relevant parts are:

Q1) What is this? (Pointing to a Zip-lock bag consisting of 1 parcel wrapped in brown paper & 1 small plastic bag containing curry in a red plastic bag)

A1) The parcel wrapped in brown paper contains *Controlled Drug* but I do not know what type of drug.

...

Q6) Where were all these deliveries made?

A6) The first delivery was made in Pasir Ris MRT station...and the second delivery ... outside UOB Bank near Bedok Bus Interchange. *All transaction of drug and money* took place in Boy's car.

[emphasis added]

32 The prosecution submitted that these statements showed that the accused had actual knowledge that the brown paper wrapped packet contained drugs.

33 The prosecution also submitted that, in any event, the presumption of knowledge in section 18(2) of the MDA applied, and had not been rebutted by the accused.

Analysis

Actual knowledge

34 The first question is whether the totality of the evidence supports a finding that the accused actually knew that he was carrying controlled drugs or in other words, that the accused was *aware or almost certain* that the brown paper wrapped packet contained controlled drugs: see *Public Prosecutor v Koo Pui Fong* [1996] 1 SLR(R) 734 at [\[14\]](#).

35 Actual knowledge can be found from either a direct admission of the accused or an inference from the facts. The prosecution submitted that the statement of the accused contained in the contemporaneous statement recorded on 19 December 2009 by Sergeant Kumar represented a direct admission of the accused showing his actual knowledge of the *nature* of the "controlled drug". I reproduce the relevant extract:

Q1) What is this? (Pointing to a zip-lock bag consisting of 1 parcel wrapped in brown paper & 1 small plastic bag containing curry in a red plastic bag)

A1) The parcel wrapped in brown paper contains *Controlled Drug* but I do not know what type of drug.

36 I am not satisfied beyond reasonable doubt that this represents a direct admission of actual knowledge that the drug inside the brown paper wrapped packet was in fact specifically *heroin* particularly when the accused had qualified his admission by stating that he did not know what type of drug it was. However I am satisfied that the admission clearly shows that he had actual knowledge that the brown paper wrapped packet contained some form of controlled drug, but he did not know its exact nature *ie* the drug could well be heroin or other types of controlled drugs. Although the statement was made at about 11.05pm on 19 December 2009, *after* the accused had been told by Sergeant Kumar at his arrest at 9.05pm that the brown paper packet contained "drugs", the manner in which the accused answered the above direct question posed by Sergeant Kumar to him indicates to me that he had *personal* knowledge that the brown paper wrapped packet contained controlled drugs even before Sergeant Kumar had told him so. If indeed, he did not know at all what was inside the packet prior to being informed by Sergeant Kumar, his obvious answer would have been to the effect that "I do not know what is inside but you told me it is drugs." Had he really suspected that the packet contained money, electronic parts or gold as he now claimed, then I would have expected the substance of his answer to be as follows: "I suspect the packet contains money, electronic parts or gold but you told me that it is drugs." In my opinion, the accused's answer itself suggested that he was answering Sergeant Kumar's simple and direct question "What is this?" from his personal knowledge when he said basically that he did not know what type of controlled drug the brown paper wrapped parcel contained, giving rise to the inference that he actually knew it contained some form

of controlled drug, the actual nature of which was not known to him. In any event, I believe that the accused had understood Sergeant Kumar to be asking him about his *personal* knowledge of what was inside the brown paper wrapped packet. It would have been a complete waste of time for Sergeant Kumar to ask the accused effectively the question "What is this based on what I have told you before?" I also do not believe that the accused understood the question in this way and I thus disagree with the defence's contention that the accused's answer to that question from Sergeant Kumar was based not on the accused's personal knowledge but merely from what Sergeant Kumar had told him earlier.

37 The accused admitted that he knew the item he was asked to deliver was contraband, but maintained however that he did not believe it was drugs. He said he believed or suspected the contraband either to be money, electronic parts or gold. It is not clear to me how bringing money, electronic parts or gold into Singapore from Malaysia would be against the law, especially if the quantity in any case is likely to be limited given the small size of the brown paper wrapped packet. I note that the accused had acknowledged under cross-examination that he had no basis for his belief that the items were money, electronic parts or gold. Given that crucial admission by the accused, it seems that his belief or suspicion that the contraband in the packet could be money, electronic parts or gold, was nothing more than evidence fabricated by him to aid his defence that he did not know or believe that he was carrying controlled drugs. I reject his evidence that he had harboured any belief or suspicion that money, electronic parts or gold was in the brown paper wrapped packet.

38 I accepted the evidence of the immigration officer manning Counter 45 at the Woodlands Checkpoint that the accused avoided eye contact with him when the accused was asked to hand over the keys to his motorcycle. This shows nervousness on the part of the accused when he was stopped at the Woodlands Checkpoint.

39 The accused insisted in his testimony that there was a dustbin near the motorcycle bay next to the ST Office at the Woodlands Checkpoint. It was his allegation that he had the time and opportunity to throw the item into the dustbin. That he had not disposed of the item was indicative of his belief that he did not think the item contained controlled drugs. The existence of this dustbin became the subject of much dispute at trial, with the accused steadfastly insisting on the existence of the dustbin despite the repeated avowals to the contrary by the immigration and CNB officers. I find that, even on the *assumption* that the accused's version of facts is correct, it does not take him very far. The reason is that on his own account, the dustbin was at least 10 metres away from where he parked his motorcycle. Even if the escorting officer had been waiting 30 metres away, it is inconceivable that one could walk 10 metres towards the dustbin with the red plastic bag and then dispose of it without being noticed by the escorting officer who had already taken custody of him. This may arouse the suspicion of the escorting officer. Hence, the fact that he did not attempt to throw away the items is inconclusive in my view. In any event, the photograph of the scene taken late at night some six hours after his arrest showed that no such dustbin was present at the location indicated. I reject the accused's evidence that there was in fact a dustbin at the location stated by the accused. It was again clear to me that his explanation on why he did nothing to dispose of the brown paper wrapped packet into the readily available dustbin was cleverly weaved in by the accused after contriving evidence of the existence of a dustbin at the location near where his motorcycle was parked. No factual basis exists in support of this part of the accused's contentions.

40 I now consider the similar fact evidence that was admitted. Having regard to the cogency of the evidence of the two previous drug deliveries, the strikingly similar, unique nature and circumstances of the previous two deliveries with the present, and also the proximity in time between the three events (all taking place in quick succession within a week), I find that the evidence relating to the previous two deliveries is highly probative to show that the accused in fact knew, and if not,

then he must have at least believed or strongly suspected that the brown paper wrapped packet he was carrying on behalf of Raja again for delivery to Ah Boy on this third occasion (disguised and made to resemble a packet of food) contained drugs. This inference is based on the fact admitted by the accused that in the two previous similar deliveries, he knew that the similarly wrapped brown paper packets contained drugs and therefore, he is not likely in my judgment to be ignorant or to have harboured a mistaken belief of the true nature of the contents in the packet on this strikingly similar third occurrence. In other words, the accused must have similarly known and if not, then at least believed or strongly suspected that he was carrying drugs (and not something else as he now claims) in the disguised food packet on behalf of Raja to be smuggled into Singapore and delivered to Ah Boy on this third occasion. The accused's knowledge that he was carrying some form of controlled drugs on the previous two occasions under almost identical circumstances has reinforced my belief that the accused was fully aware that the brown paper wrapped packet he was carrying on this occasion also contained controlled drugs.

41 Given his testimony in court that he did not believe that he was delivering food items in the brown paper wrapped packet on this third occasion, and his suspicion that it was contraband, and coupled with his knowledge that his two previous similar deliveries to Ah Boy packaged in the same way were drug deliveries, it is highly likely in my view that the accused would have known (and if I am wrong on this, then it is highly likely that he would have believed or strongly suspected) that this third delivery for which he was to be paid RM200 by Raja was similarly another drug delivery disguised as a food item. The assurances from Raja, even if given, that the accused would not encounter problems at the immigration, were meant to comfort the accused that he would escape detection at immigration and not so much as to indicate to the accused that the item in the brown paper wrapped packet was not drugs.

42 I find that the accused had taken the risk of delivering the items to Ah Boy in Singapore principally because he needed the money, believing that he could once again escape detection using the same *modus operandi*, with the packet of drugs again disguised innocuously as a food item in a brown paper wrapped packet as with the previous two successful deliveries. It should be noted that the curry and chilli packed in clear, transparent plastic packets were there to help throw off suspicion that the brown paper wrapped packet might not contain food but drugs instead. The accused admitted that he had the time and opportunity, while travelling to the Woodlands Checkpoint, to inspect the item and check whether it was similarly an illicit drug that he was asked to bring to Singapore. The accused could offer neither a credible nor cogent explanation for failing to do so despite his belief that the item in the brown paper wrapped packet was not food but some form of contraband. With such belief and with the knowledge that drug offences in Singapore carry a severe penalty, all the more so I would have expected the accused to inspect the brown paper wrapped packet if he had really no wish to take the risk of carrying drugs for Raja and had wanted to ascertain for himself that he was not in fact carrying drugs this time, unless of course he already knew or suspected the item to be drugs as with the previous deliveries, and hence there was no longer any need to inspect or check the brown paper wrapped packet at all.

43 The explanation tendered by the accused for not checking the item was two-fold: (a) that Raja had assured him he would not encounter "problems" at the immigration; and (b) he had been warned not to open the packet or Ah Boy would reject the delivery. Explanation (a) was odd since, as the accused admitted, he did not believe Raja's assertion that it was food. Why would he then choose to believe Raja's assurance that he would not encounter "problems" (which he said he understood to mean "big problems" *ie* problems relating to illicit drugs), bearing in mind that if it were actually to be drugs, the consequences of being caught as admitted by the accused would be serious? If the accused had indeed relied on his understanding of Raja's assurance, then I find that his reliance was one more of hope than a firm belief that he would not encounter "big problems" at the immigration.

Explanation (b) was also untenable since the brown paper wrapped packet was secured by only two rubber bands and could have been easily opened and re-secured with the same rubber bands without Ah Boy knowing about it. I am of the view that these explanations were contrived by the accused to explain why given the circumstances, he simply turned a blind eye and did not bother to check what was in the brown paper wrapped packet.

44 For the reasons articulated above, and looking at the evidence as a whole, I am driven to conclude that the accused did have actual knowledge that he was carrying a controlled drug.

The section 18(2) presumption

45 The prosecution is further relying on the presumption in section 18 of the MDA. It reads (relevant parts extracted):

Presumption of possession and knowledge of controlled drugs

18. – (1) Any person who is proved to have had in his possession or custody or under his control –

(a) anything containing a controlled drug;

...

shall, until the contrary be proved, be presumed to have had that drug in his possession.

(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.

46 It is apparent from section 18 that the presumption of knowledge of the actual nature of the drug in section 18(2) applies only if that drug is proved, or presumed under section 18(1), to have been in the accused's possession. It is undisputed that the red plastic bag was in the accused's physical possession, and that it was subsequently found to contain a controlled drug, diamorphine. Accordingly, the section 18(2) presumption is triggered and until the contrary is proved by the accused on a balance of probability, the accused is presumed to have known the actual nature of the drug found in his possession, which was diamorphine or heroin.

47 Given the totality of the evidence before me, I find that the accused failed to rebut the presumption that he had knowledge of the actual nature of the drug found in his possession. He is therefore presumed under s 18(2) of the MDA to know that the controlled drug found in the brown paper wrapped packet was diamorphine or heroin.

Conclusion

48 The accused is accordingly found guilty as charged. I convict him and sentence him to death as mandated by section 33 of the MDA.

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