IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 142

Criminal Case No. 30 of 2017

Public Prosecutor

v

1. Suthakar J Raman
2. Prabu N Pathmanathan

JUDGMENT

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

Version No 1: 29 Oct 2020 (20:25 hrs)

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Public Prosecutor
v
Suthakar J Raman and another

[2017] SGHC 142

High Court — Criminal Case No 30 of 2017
Choo Han Teck J
4-7, 11-13, 18 April 2017

28 June 2017 Judgment reserved.

Choo Han Teck J:

1 The first accused, Suthakar J Raman, is a 31 year-old Malaysian. The second accused, Prabu N Pathmanathan, is a 30 year-old Malaysian. Both were residing in Malaysia at the material time.

2 On 31 December 2014, around 7.30am, Suthakar drove a Malaysian registered Toyota Hilux, with licence plate WWU 6501, to the Woodlands Checkpoint. Two officers from the Immigrations and Checkpoints Authority ("ICA") conducted a random search of the Toyota Hilux. One of them noticed that four screws on the rear seat had scratches on them. He removed the screws and found several packets of brownish granular substances under two metal lids. The ICA officers then notified officers from the Central Narcotics Bureau ("CNB"), who seized ten packets of brownish substances from a compartment under the passenger seat behind the driver's seat and ten packets of brownish

substances from a compartment under the passenger seat behind the front passenger's seat.

3 Suthakar informed the officers that the Toyota Hilux belonged to one "Prabu", who had driven a silver-coloured Proton Kancil car into Singapore around the same time as him that morning. Suthakar described Prabu to be about 27 years old, bald and short, wearing a white t-shirt with a red coat and a pair of blue jeans. Around 12.45pm, as part of CNB's follow-up operation, Suthakar called Prabu and informed the CNB officers that Prabu had instructed him to park the Toyota Hilux outside the Woodlands Checkpoint at the Sheng Siong car park, and that Prabu would meet him there. CNB officers arrested Prabu at the car park of Woodlands Town Garden around 1.13pm. No controlled drugs were found in the Proton Kancil, but two screwdrivers were retrieved from the dashboard drawer facing the front passenger seat on 5 January 2015.

4 The twenty packets of brownish granular substance seized from the Toyota Hilux were found to contain not less than 227.82g of diamorphine. Suthakar and Prabu were accordingly tried on one charge each of having the common intention to traffic in 227.82g of diamorphine, and, pursuant to that common intention, doing several acts preparatory to and for the purposes of trafficking in 227.82g of diamorphine, thereby committing an offence under s 5(1)(*c*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act") read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), punishable under s 33(1) and s 33B of the Act. The Prosecution's case is that Prabu provided the Toyota Hilux car, with the concealed diamorphine, and instructed Suthakar to drive the car into Singapore, where Prabu would meet him at the Kranji station in Singapore to receive the twenty packets of diamorphine and then distribute them together with Prabu. In furtherance of this common intention, Suthakar drove

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the Toyota Hilux into Singapore on 31 December 2014 and Prabu travelled into Singapore on the same day to meet with Suthakar.

5 As part of the investigation, two contemporaneous statements, a cautioned statement, and five investigation statements were recorded from Suthakar. A contemporaneous statement, a cautioned statement, and five investigation statements were recorded from Prabu. All the statements except the contemporaneous statements were recorded by Investigation Officer Ranjeet Singh ("IO Ranjeet") with one Mdm Malliga present as the Tamil interpreter.

6 Both accused persons challenged the admissibility of the investigation statements recorded by IO Ranjeet. After a *voir dire*, I found that the statements were given voluntarily and admitted them into evidence. Counsel for Suthakar, Mr Johan bin Ismail ("Mr Johan"), submitted that Suthakar's statements were not interpreted to him (Suthakar) in Tamil as claimed by IO Ranjeet and Mdm Malliga. He pointed to IO Ranjeet's conditioned statement in relation to three investigation statements recorded from Suthakar, which did not state that the statements had been interpreted back to Suthakar in Tamil before they were signed. I found no merit in this allegation. First, this is a challenge to the accuracy of the statements rather than its voluntariness. Only the latter is relevant to the admissibility of (as opposed to the weight given to) the statements. Second, it is unclear why this allegation was never put to Mdm Malliga during cross-examination, given that she was the person who had allegedly failed to interpret the statements to Suthakar. Third, both Mdm Malliga and IO Ranjeet had orally testified that Mdm Malliga had interpreted the statements back to Suthakar in Tamil before signing. The same is stated in Mdm Malliga's conditioned statement. Fourth, Suthakar himself had admitted in cross-examination that his statements, other than some

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incriminating lines, had been read to him in Tamil by Mdm Malliga. This contradicts Mr Johan's argument that three whole statements had not been interpreted back to Suthakar. There is also no reason for Mdm Malliga to have selectively interpreted parts of Suthakar's statement to him.

7 Mr Johan also submitted that IO Ranjeet had induced Suthakar to confess in his statements by telling him that IO Ranjeet would get him a reduced charge if he admitted to the crime. This was denied by both IO Ranjeet and Mdm Malliga. Mr Johan pointed to Mdm Malliga's purported admission that IO Ranjeet had said "if you cooperate, it is good for you". It is clear from Mdm Malliga's oral evidence that this was not something specifically said by IO Ranjeet before or during the recording of Suthakar's statements, but something that she had heard Investigation Officers sometimes say to accused persons. Even if it had been said by IO Ranjeet to Suthakar, it was a general statement that cannot reasonably be inferred as an inducement affecting the voluntariness of the statement without more.

8 Similar allegations were made by Mr Jeeva Arul Joethy ("Mr Joethy") on behalf of Prabu. Prabu testified that IO Ranjeet had banged the table, called Prabu a liar, and told Prabu that if Prabu told the truth, he (IO Ranjeet) would be able to save him "from being hung" and would get him a jail term of 20 to 22 years. Prabu testified that the corrections in his 5 January 2015 statement were made because IO Ranjeet had told him that his (IO Ranjeet's) boss was "not happy" and Prabu had to "change [his] statement" to ensure that Suthakar and Prabu had similar statements, such that IO Ranjeet could save them. Mr Joethy also submitted that it was "fantastically coincidental" that both accused persons had voluntarily changed their statements such that their accounts became consistent with one another. The only inference was that

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IO Ranjeet had provided some form of inducement or promise to both accused persons. I found this insufficient to establish a reasonable doubt that IO Ranjeet had indeed provided such an inducement or threat to Prabu. Both IO Ranjeet and Mdm Malliga testified that the accused persons had given their answers voluntarily. I see no reason for them to lie. I do not believe that Prabu would have given such a detailed account of his offence on a bare promise made by IO Ranjeet, whom he had no reason to trust.

9 I move on to the weight to be placed on Suthakar and Prabu's statements. Mr Retnam, on behalf of Prabu, submits that the statements of both accused persons, even if admitted, should not be given any weight because they were not accurately recorded. In particular, the statements taken from both accused persons on 5 January 2015, where they wanted to make corrections to their statements, both contained the phrase "I wish to help Singapore". Suthakar's statement, consisting of six paragraphs, was also somehow recorded in a short span of five minutes. Mr Retnam contends that the exact same phrase in the two statements, the short time taken to record Suthakar's statements, and the fact that the corrections made the two accused persons' accounts far more similar, is evidence that IO Ranjeet had "tailored" the statements instead of accurately recording what the accused persons had said.

10 I find IO Ranjeet's explanation to be reasonable. He testified that there was a typographical error in the end time of the recordings. The accurate end time should have been two hours later. Both statements were also interpreted from Tamil into English. The original Tamil words used by both accused persons may hence have differed slightly. I also note that Prabu's account in his 5 January 2015 statement was corroborated by his statement taken a day later, where he provided more details consistent with his 5 January 2015 statement,

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as well as by Dr Richard Cuthbert Mellor's ("Dr Mellor") psychiatric report based on interviews with Prabu. IO Ranjeet had no involvement in the preparation of Dr Mellor's psychiatric report. Thus, I find that Prabu's 5 January 2015 statement was accurately recorded.

11 Regardless, I did not need to, and hence did not, rely on this particular statement in coming to my eventual decision. Prior to their 5 January 2015 statements, both Suthakar and Prabu's accounts were already consistent in material respects. I find that the other statements from the accused persons were all taken soon after their arrest, internally and externally consistent and, based on the testimonies of IO Ranjeet and Mdm Malliga, accurately interpreted and recorded. Although Mdm Malliga did not keep contemporaneous notes of the recordings, she testified that she had interpreted the questions from IO Ranjeet and answers from the accused persons accurately, and had also interpreted all the statements back to the accused persons before they were signed.

12 I move on to the case against the accused persons. Suthakar and Prabu are charged under s 5(1)(*c*) of the Act, which makes it an offence for a person to do any act preparatory to or for the purpose of trafficking in a controlled drug. The elements required in an offence under s 5(1)(*c*) of the Act are knowledge of the nature of the drug, which may be proved or presumed pursuant to s 18(2) of the Act, and act(s) done or offered to be done preparatory to or for the purpose of trafficking in a controlled drug.

13 I find that the two accused persons had knowledge of the specific nature of the drugs, *ie*, that it was diamorphine. Although possession of the drugs is not a requirement for an offence to be made out under s 5(1)(*c*) of the Act, the Prosecution relies on Suthakar's possession to invoke the presumption of

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knowledge under s 18(2) of the Act. Suthakar was in actual possession of the diamorphine when he drove the Toyota Hilux containing the diamorphine into Singapore. He is thus presumed to know the specific nature of the drugs under s 18(2) of the Act. I find that he has not rebutted the presumption. To do so, he needs to give a credible account of what he thought was inside the car and his account should be consistent with the circumstances. He had admitted to knowing that the car contained "jaman", that "jaman" was drugs (although he did not know what type of drugs they were) and that he was to be paid between 1,000 to 1,500 Malaysian Ringgit for each trip into Singapore, compared to his monthly income of around 2,300 Malaysian Ringgit. He knew that if he were arrested for smuggling "jaman" into Singapore, he would face the death penalty. He was told that "jaman" was also known as "kalu" and where it was hidden in the car, but made no effort to ascertain what he was carrying. Although Mr Johan points out that Suthakar's psychiatric report, prepared by Dr Derrick Yeo, stated that Suthakar was informed by Prabu that there would be multiple packets of "ganja" (street name for cannabis) hidden in the car, this is not corroborated by Suthakar's own statements to the CNB. As Suthakar chose not to give evidence in his defence during trial, he was unable to explain his actions. I thus find that he has not rebutted the presumption against him.

14 I find that Prabu had actual knowledge that the drugs were heroin. In his first investigation statement to the CNB, he admitted that he knew that he had arranged for Suthakar to bring in "kalu". Although "kalu" meant "stone" in Tamil, it was his term for "one pound of heroin". He further distinguished it from "ganja", which were sold in "buku" (books), and stated that he knew that the drug syndicate he worked for brought both heroin and "ganja" into Singapore.

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15 During trial, Prabu sought to retract this admission, but his oral account was full of contradictions and this obviously affected his credibility as a witness. He claimed that he had only arranged for Suthakar to bring "jaman" into Singapore, and he had only mentioned "jaman" in his recorded statements, not "kalu". First, he could not even give a consistent account of what "jaman" was. Although he testified multiple times to knowing that "jaman" referred to "ganja" (street name for cannabis), he later testified during cross-examination to not even knowing if "jaman" meant drugs. Second, his testimony that he had never said the word "kalu" in his statements is inconsistent with IO Ranjeet and Mdm Malliga's evidence that they had recorded only the answers that Prabu had given, and the presence of both the words "kalu" and "jaman" throughout his statements. His statements also repeatedly referred to his specific belief that there were at least ten "kalu" in the Toyota Hilux. Fourth, at one point, Prabu claimed that "kalu" only meant "ice" (street name for methamphetamine) to him, but as pointed out by the Prosecution during cross-examination, this would mean that he believed that the Toyota Hilux contained cannabis, but somehow intended to retrieve a completely different drug, methamphetamine, from the same car to deliver them to buyers in Singapore. I find that his oral evidence evinced a propensity to change his testimony to distance himself from the offence and also his previous statements, and was unworthy of belief.

16 In any event, I find that Prabu has not rebutted the presumption under s 18(2) of the Act that he knew the nature of the drugs. The presumption of knowledge operates here as Prabu is deemed to be in joint possession of the drugs with Suthakar under s 18(4) of the Act. Prabu knew and consented to Suthakar's possession of the drugs in the Toyota Hilux as he was instrumental in arranging for Suthakar to drive the Toyota Hilux containing the drugs into Singapore to meet up with Prabu.

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17 The second element refers to acts done or offered to be done for the purpose of or preparatory to trafficking in drugs. It is not disputed that Suthakar had driven in the Toyota Hilux containing the diamorphine into Singapore, and that Prabu had separately entered Singapore around the same time in the Proton Kancil. The question is whether these acts can be said to be preparatory to or for the purpose of trafficking, done pursuant to a common intention to traffic in the diamorphine. I find that the Prosecution has proved its case against both accused persons. By driving such a large quantity of diamorphine into Singapore and admitting to intending to deliver the drugs to persons in Singapore in his statements, Suthakar had himself already committed acts preparatory to or for the purpose of trafficking under s 5(1)(*c*) of the Act. His acts and statements demanded explanation, which he chose not to give by electing to remain silent.

18 The evidence also points to a plan by Suthakar and Prabu jointly, where Suthakar would drive the drugs into Singapore, for both of them to distribute to buyers in Singapore. In Prabu's investigation statements, Prabu had given a detailed explanation of his plan together with one "Aiya" (known as "sir" in English), in which Prabu would arrange for Suthakar to drive the Toyota Hilux with the "kalu" (his term for one pound of heroin) into Singapore before delivering it to buyers in Singapore. This would enable Prabu to avoid the risk of being caught with drugs at Customs. Prabu stated that he had estimated there to be at least ten "kalu" in the car (given the size of the car) and expected to be paid at least 5,000 Malaysian Ringgit for the trip. Prabu thus offered Suthakar around 1,000 to 1,500 Malaysian Ringgit for Suthakar's trip.

19 Prabu subsequently claimed at trial that he only came into Singapore to introduce a job at a hospital to Suthakar. They planned to go to Khoo Teck Puat

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Hospital after Suthakar had driven the Toyota Hilux into Singapore and he (Prabu) had left the screwdrivers in the car on Aiya's instructions.

20 I do not accept Prabu's account. First, although this explanation was mentioned in Suthakar's statements, it was not present in Prabu's own statements. Even in his contemporaneous statement, which was not recorded by IO Ranjeet, Prabu only mentioned that he was waiting for his "brother to find work", while lying about his relationship with Suthakar. If it had been the truth, Prabu would have taken the first opportunity to mention it upon being arrested. Second, this is inconsistent with Prabu's own account as recorded in Dr Mellor's psychiatric report. In the report, Prabu was recorded as having suggested to one "Ayya" that "Boy" (*ie*, Suthakar) could drive the vehicle into Singapore so that Prabu would not have to face the legal consequences. Prabu was to use the screwdrivers to open the compartments under the back seats of the car for their first delivery, and orientate Suthakar to the roads in Singapore. Prabu did not challenge the accuracy of this report during trial, which entirely corroborates Prabu's statements, as opposed to his oral testimony. Third, as pointed out by the Prosecution, Prabu's account is illogical. He admitted that he was unsure if there was a job vacancy at the hospital, and yet was entirely willing to bear all of Suthakar's expenses in Johor Bahru indefinitely without assurance that Suthakar would be able to pay him back. This included paying for Suthakar and his girlfriend's accommodation and food expenses for around ten days, up to the point Prabu and Suthakar entered Singapore and were arrested.

21 Suthakar's statements to the CNB were also materially consistent with Prabu's. As Suthakar and Prabu were jointly tried for the same offence, I can consider Suthakar's confession, affecting himself and Prabu, as evidence

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against Prabu. Mr Retnam submits that as Suthakar had elected not to give evidence during trial and thus could not be cross-examined on them, Suthakar's statements should be discredited. Mr Retnam did not indicate during trial that he wished to call Suthakar as a witness for Prabu or that both accused persons should be tried separately. I find that Suthakar's statements were consistent with the Prosecution's case and he made no attempt to diminish his own responsibility in the matter. In any event, I am not relying solely on Suthakar's statements to determine Prabu's guilt, but only as additional corroborative evidence of Prabu's own statements. It is clear from the statements of both accused persons that Prabu had asked Suthakar to take up the delivery job since 17 December 2014. Suthakar was to drive the Toyota Hilux into Singapore and meet Prabu at Kranji station and Prabu would then deliver the drugs together with Suthakar. This reinforces the inference that Prabu's statements were an accurate reflection of his plan with Aiya and Suthakar to bring the drugs into Singapore for trafficking.

22 I should add that although the forensic evidence in this case is not entirely conclusive, it is consistent with Suthakar and Prabu's statements. First, laboratory testing revealed that one of the screwdrivers retrieved from Prabu's car "could have originated" from six screws from the Toyota Hilux. Given the small samples involved, Ms Grace Wong from the Health Sciences Authority testified that this was the highest conclusion level that she could have reached. Second, the forensic evidence from Prabu's mobile phones corroborates the details of his and Suthakar's plan in his statements. It showed that Prabu was in contact with Aiya (whom he had saved in his phone as "Sayang") on 30 December 2014 and the morning of 31 December 2014 on his two Nokia mobile phones, that he had called Suthakar during the morning and afternoon of 31 December 2014, and that he had sent a text message to Suthakar at

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12.01pm on 31 December 2014 asking Suthakar where he was. Third, Suthakar had also given evidence that he had entered Singapore prior to 31 December 2014 to obtain a stamp on his passport to avoid suspicion later on. ICA's records show that Suthakar did enter Singapore on 29 December 2014.

23 Finally, in his closing submissions Mr Retnam hopes to adduce evidence of Aiya's *modus operandi* by attaching the notes of evidence of the oral testimony of one Saravanan Chandaram in a separate trial (Criminal Case No 36 of 2017). Mr Retnam's point seems to be that "Aiya" usually provides a car, with drugs concealed inside, to a courier. The courier drives the car into Singapore and leaves it locked in a Woodlands car park without more. Thus, his argument is that Prabu's involvement was not more than just leaving the screwdrivers and car keys in the back of the car. Apart from the fact that Mr Retnam has no basis to refer to such evidence in his closing submissions, this evidence has no probative value whatsoever. It is not proved that "Saranavan" and "Aiya" in Saravanan Chandaran's testimony are the same persons as those mentioned by Prabu, especially given that "Aiya" is a generic form of address meaning "sir". It is also unreasonable to conclude that both deliveries would have been carried out in the same way without any further context.

24 In the light of all the evidence, I find that Prabu and Suthakar had the common intention of bringing not less than 227.82g of diamorphine into Singapore to be delivered to buyers in Singapore, and in furtherance of that common intention, Suthakar drove the diamorphine into Singapore in a Toyota Hilux and Prabu drove separately into Singapore in a Proton Kancil to meet with Suthakar for the subsequent deliveries. By doing so, they committed an offence

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under s 5(1)(*c*) of the Act, *ie*, doing acts preparatory to or for the purposes of trafficking in drugs, read with s 34 of the Penal Code.

25 I find that Suthakar's involvement was limited to doing such acts preparatory to or for the purpose of transporting, sending or delivering the diamorphine under s 33B(2)(*a*)(iii) of the Act, as his role was to transport the drugs into Singapore and subsequently deliver them together with Prabu. I find that Prabu had not proved on a balance of probabilities that his involvement was limited as such. Both Prabu and Suthakar's statements showed that Prabu was involved in recruiting and arranging for Suthakar to transport the drugs into Singapore. This function goes beyond merely delivering the drugs.

26 For all the reasons given above, I find both accused persons guilty as charged and convict them accordingly.

- Sgd -
Choo Han Teck
Judge

Jasmine Chin-Sabado, Chin Jincheng and Lu Yiwei (Attorney-General's Chambers) for prosecution;
Johan Bin Ismail (Johan Ismail & Co) and Mahadevan Lukshumayeh (S.T. Chelvan & Company) for first accused;
Singa Retnam (Aziz Tayabali & Associates) and Jeeva Arul Joethy (Hilborne Law LLC) for second accused.

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