

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 55

Criminal Case No 21 of 2017

Between

Public Prosecutor

And

Pandian A/L Subramaniam

GROUND OF DECISION

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

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Public Prosecutor
v
Pandian a/l Subramaniam

[2017] SGHC 55

High Court — Criminal Case No 21 of 2017
Pang Khang Chau JC
1 March 2017

14 March 2017

Pang Khang Chau JC

1 The accused, Pandian A/L Subramaniam, a 38-year-old Malaysian male, was convicted on 1 March 2017 of unauthorised importation of not less than 40.53 grams of diamorphine (“the drug”), contrary s 7 of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) (“MDA”). As the accused satisfied the requirements of s 33B(2) of the MDA, I sentenced the accused, pursuant to s 33B(1)(a) of the MDA, to the mandatory minimum sentence of life imprisonment and 15 strokes of the cane instead of imposing the death penalty. On 9 March 2017, the accused filed an appeal against the sentence.

The Charge

2 The charge against the accused read (“the Charge”):

That you, **PANDIAN A/L SUBRAMANIAM**, on 23 January 2015, at or about 7.05 p.m., at Woodlands Checkpoint,

Singapore, did import into Singapore a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.), *to wit*, by bringing into Singapore a total of three bundles, namely one bundle concealed in the left fender, one bundle concealed in the right fender and one bundle concealed in the air filter compartment of the motorcycle JQH5021 which you were riding at the material time, and which bundles were found to be three packets containing not less than 1,152.10 grams of granular/powdery substance which were analysed and found to contain not less than 40.53 grams of diamorphine, without authorisation under the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) or the regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) and punishable under Section 33(1) of the said Act, and alternatively, upon conviction, you may be liable to be punished under Section 33B(1) of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.).

The Proceedings

3 After the Charge was read and explained to the accused, he pleaded guilty. As s 227(3) of the Criminal Procedure Code (Cap. 68, 2012 Rev. Ed.) (“CPC”) prohibits the High Court from recording a plea of guilty to an offence punishable with death unless evidence is led by the prosecution to prove its case at the trial, I rejected the guilty plea. The prosecution then proceeded to prove its case by:

- (a) reading out an agreed statement of facts filed pursuant to s 267 of the CPC on behalf of both the prosecution and the defence;
- (b) admitting conditioned statements from 25 witnesses pursuant to s 264 of the CPC; and
- (c) tendering a total of 136 documentary and physical exhibits.

None of the evidence was challenged by the defence.

4 Having found that there was some evidence, not inherently incredible, which satisfied each and every element of the Charge, I called on the accused to give his defence. The accused chose to remain silent while the defence counsel indicated that no other witnesses would be called. In light of the foregoing, I found that the prosecution had proven its case beyond a reasonable doubt and convicted the accused of the Charge.

Consideration of Section 33B of the Misuse of Drugs Act

5 The relevant portions of s 33B of the MDA provide:

Discretion of court not to impose sentence of death in certain circumstances

33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court —

(a) may, if the person satisfies the requirements of subsection (2), *instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes; or*

(b) ...

(2) The requirements referred to in subsection (1)(a) are as follows:

(a) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted —

(i) to transporting, sending or delivering a controlled drug;

... ; and

(b) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

...

[emphasis added]

6 According to paragraph 17 of the agreed statement of facts, the drug was handed over to the accused already packed and bundled, and his involvement was limited to placing the bundles into different parts of the motorcycle which he rode into Singapore on. I therefore found it proven, on the balance of probabilities, that the accused's involvement was restricted to transporting, sending or delivering the drug. The prosecution then tendered a certificate of substantial assistance pursuant to s 33(B)(2)(b) of the MDA. In light of the foregoing, I found that the requirements of s 33B(2) of the MDA have been satisfied. This triggered the discretion under s 33B(1) of the MDA not to impose the death penalty. Pursuant to s 33B(1)(a) of the MDA, the court may, instead of imposing the death penalty, sentence the accused to imprisonment for life and to caning of not less than 15 strokes.

Submissions on sentence

7 The prosecution indicated that it would leave the sentence to the court. In mitigation, the defence counsel urged the court to be as lenient as possible, having regard to the following factors:

- (a) the accused had been forthright and cooperative with the authorities from the very beginning;
- (b) his cooperation led to the apprehension of 4 others during the follow-up operation;
- (c) when he realised through a telephone conversation during the follow-up operation that there might be another bundle of the drug in the motorcycle which was not accounted for, he informed the Central Narcotics Bureau officers who then conducted a further search and

recovered another bundle from the air filter compartment of the motorcycle; and

(d) the accused is very contrite, as demonstrated by the following remarks he made during the committal hearing:

Your honour, I committed this offence under the situation I was in. I have two young children. I should not have committed this offence. Your Honour, I have to work to educate my children; my wife and I are not educated. My parents are old. Therefore, they are unable to work. I plead with you to give me the minimum sentence. I will work to educate my children upon release.

Decision on sentence

8 I accepted the defence counsel's submission on sentence and, in exercise of the discretion conferred by s 33B(1) of the MDA, sentenced the accused to imprisonment for life, backdated to 23 January 2015 (the date of his arrest), and also to 15 strokes of the cane. In the circumstances, this was the lowest sentence I could legally impose.

Pang Khang Chau
Judicial Commissioner

Lu Zhuoren John and Chan Yi Cheng (Attorney-General's
Chambers) for the prosecution;
Rengarajoo s/o R Rengasamy Balasamy (B Rengarajoo &
Associates) for the accused.