

Public Prosecutor v Chairul
[2015] SGHC 281

Case Number : Criminal Case No 43 of 2014
Decision Date : 27 October 2015
Tribunal/Court : High Court
Coram : Lee Seiu Kin J
Counsel Name(s) : Tai Wei Shyong, Tan Wen Hsien and Tan Si En (Attorney-General's Chambers) for the prosecution; Mohamed Muzammil Bin Mohamed (M/s Muzammil & Co) and Lam Wai Seng (M/s Lam W S & Co) for the accused.
Parties : Public Prosecutor — Chairul

Criminal Law – Statutory offences – Misuse of Drugs Act

27 October 2015

Lee Seiu Kin J:

1 The accused is a 35 year-old Indonesian man. On 20 October 2015, I convicted him under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") for importing 2,781.5g of methamphetamine, a "Class A" controlled drug under the First Schedule of the MDA. While the offence carried the punishment of death, I found that the requirements under s 33B(2) of the MDA were made out. Accordingly, I exercised my discretion under s 33B(1)(a) and sentenced him to life imprisonment and 15 strokes of the cane. These are the grounds of my decision.

The prosecution's case

2 The accused arrived in Singapore on 26 September 2012 on flight SQ 407, which he had boarded at New Delhi, India. He carried with him his personal belongings and a luggage bag. Upon his arrival at Changi Airport Terminal 3, he was directed to have the luggage bag screened by an X-ray machine, and it was through the X-ray screening that the officers of the Immigration & Checkpoints Authority noticed anomalies in the linings of the luggage bag. Upon dismantling the luggage bag, it was found to contain three brown packages containing 5,101g of a crystalline substance. This substance was subsequently analysed by the Health Sciences Authority and found to contain 2,781.5g of methamphetamine.

3 The prosecution also sought to rely on the accused's statements to the investigating authorities, all of which were inculpatory in nature. A total of 11 statements were taken from the accused:

- (a) One contemporaneous statement that was taken from the accused at the scene of the incident.
- (b) One statement that was given in response to the accused's notification of what were then proposed amendments to the MDA.
- (c) One statement recorded pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

(d) Eight statements recorded under s 22 of the CPC.

4 The admissibility and the content of these statements were not challenged by the accused. His account of events, as given in these statements (and indeed, on the stand), did not waver in any material sense. At the time of his arrest, his second wife, Ayu, was carrying their second child. He also has a child from his first wife.

5 The accused had been working in Surabaya as a freelance agent for people who wanted to apply for passports from 2000 to 2011. In February 2011, he met an Indonesian woman whom he knew as "Vivian" and had come to him to have her passport made. They soon became both friends and business partners, and she would regular refer to him customers who needed passports to be made. One of these customers was a woman whom he knew by the name of "Sherly", who told him that she had been recruited by Vivian to transport drugs from Malaysia into Indonesia. In particular, he was told by Sherly that the drug she transported was "shabu", which was the Indonesian term for methamphetamine. He verified this with Vivian, who confirmed Sherly's account. However, he ceased working as a freelance agent soon after as he got into trouble with the immigration authorities and was unable to find employment from around the middle of 2011 to September 2012. This left his family without a regular source of income.

6 Sometime in August 2012, Vivian approached the accused, asking if he were interested in transporting drugs between countries for payment. Despite knowing the risks involved, he agreed and was told by Vivian that he would be travelling to Kuala Lumpur, Malaysia ("KL") to meet with an African man known to him as "Boss". He was also informed that he would be travelling from KL to New Delhi, then to Singapore and finally back to KL. More instructions would be given to him along the journey and Vivian would attend to his flight arrangements. He was given 1.7 million rupiah by an associate of Vivian known to him as "Lyla", and told he would be given between US\$2,000 and US\$3,000 upon successful completion of his delivery.

7 When he arrived at KL, he met with several men, one of whom he believed to be Boss. He was then given US\$600 and a flight ticket, and was instructed by Vivian to travel to Calcutta and from there, to New Delhi. Again, he followed Vivian's instructions dutifully, regularly calling her to ensure that he was adhering to them. Finally, on 25 September 2012, days after he arrived in New Delhi, he was brought to a three-storey house by two men of African descent. He was given a ticket for his flight to Singapore that was scheduled to depart that very night, and was also handed money, the luggage bag that was found to contain the drugs, and the keys to a small green lock with which the luggage bag was secured. The luggage bag was taken by one of the African men from a bedroom of the house. Although he was not told what the bag contained, he understood that there were illegal drugs in it. He knew that he was to bring the luggage bag to Singapore and subsequently, to Malaysia. He was then called a taxi that brought him back to his hotel to fetch his belongings and thereafter, to the airport where he boarded flight SQ407.

8 The accused's statements were corroborated by statements taken from Vivian and Lyla, who were serving their imprisonment term in Indonesia at the time of the hearings. These were admitted without any objections from the accused.

The accused's defence

9 The accused was the sole witness for the defence. He largely rehashed the facts set out above while giving his evidence in court, save for one additional detail. He stated that the man who had handed him the luggage bag had also opened it slightly, and that he could only see that it contained clothing before the bag was locked. This forms the basis of his only defence – that he did

not know the specific nature of the drugs that were in the luggage bag. It was not disputed that the *actus reus* element of the offence set out under s 7 of the MDA was satisfied by his act of bringing the luggage bag containing the drugs onto Singaporean shores.

Whether the accused knew the specific nature of the drugs

10 Given that the drugs were found in the luggage bag that was in the accused's possession, it was not seriously contended that the drugs that were found in it were not legally in his possession. Nor would such an argument have succeeded; there was nothing to rebut the presumption arising under s 18(1) of the MDA in the present case. By operation of s 18(2) of the MDA, the accused was also presumed to know the nature of the drug, *ie*, methamphetamine. The question that fell to be determined was therefore whether that presumption had been rebutted. The principles governing the rebuttal of this presumption were stated concisely by the Court of Appeal in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 ("*Muhammad Ridzuan*") at [75]:

75 In order to rebut the presumption of knowledge under s 18(2) of the MDA, an accused person has to adduce sufficient evidence to demonstrate, on a balance of probabilities, that he or she did not know the nature of the drug, *ie*, the actual controlled drug proven or presumed to be in the accused person's possession: see *Nagaenthiran* (at [31]). In *Dinesh Pillai*, this court further refined the principles applicable to the rebuttal of the presumption of knowledge (at [18]):

... As s 18(2) has been triggered in the present case, the appellant bears the burden of proving on a balance of probabilities that he did not know *or could not reasonably be expected to have known* the nature of the controlled drug that was found inside the Brown Packet. ... [emphasis added]

[emphasis in original]

11 The accused's evidence, consistent with his statements to the investigating authorities, was that he did not actually know the specific nature and quantity of the drugs in the luggage bag. He pointed to the fact that there was nothing to indicate that he had been told that he would be carrying methamphetamine. That, essentially, was the only evidence he gave to rebut the presumption. Weighing the evidence before me, I found on a balance of probability that the accused had not rebutted the presumption. My reasons are as follows.

12 First, the accused highlighted that he had not seen anything in the luggage bag other than the clothing, and that the drugs were well-concealed. Even if I had accepted his evidence in relation to these matters, they were of little assistance to the accused. He had been specifically told by Vivian that he would be transporting drugs between countries and undertook the assignment despite having been warned of the risks. Therefore, whether the drugs were concealed or unseen by him was irrelevant. As set out above at [7], he had known when the luggage bag was passed to him that it contained illegal drugs. He was only not told what drug he was transporting.

13 Second, not only had the accused known that the luggage bag contained illegal drugs, there were ample grounds for him to suspect that it had in fact contained "shabu". In particular, his conversation with Sherly would have alerted him to the fact that Vivian had been recruiting people to transport "shabu" and as the prosecution submitted, there was nothing that would have led him to think he had been recruited to transport a different drug. This was not disputed by the accused during cross-examination:

Q Yes. And if you read on:

[Reads] "Sherly is actually recruited by Vivian to carry 'Shabu' from Malaysia into Indonesia..."

A Yes.

Q Yes. Now, at the time when Sherly mentioned this to you, you knew that Shabu was an illegal drug?

A Yes.

Q And of course, now you know that Shabu is the same thing as Ice which you were arrested in---arrested with, sorry.

A Yes.

Q Right. Did Sherly mention any other illegal drugs which she dealt with on Vivian's behalf?

A I cannot recall.

Q Okay. So as far as you recall, all you know is that Vivian would recruit people to carry Shabu for her, as at that point in time?

A Yes.

14 Third, the accused had displayed no interest in finding out the nature of the drugs he carried. He was interested only in completing the assignment and receiving payment. He was prepared to transport whatever was put in the bag. He conceded that he had plenty of opportunities to do so but had no interest in finding out the nature of the drugs, simply because it made no difference to him – he would have proceeded to complete his assignment in any case:

Q Okay. From the time you collected the bag in Delhi up to the time of your arrest, you had several opportunities to open the bag and check its contents.

A Yes.

Q But you chose not to.

A Yes.

Q Okay. Because you wanted to finish the job---

A Yes.

Q ---bring the drugs to Malaysia---

A Yes.

Q --and collect your money.

A Yes.

Q And it did not matter to you how much drugs the luggage bag contained.

A Yes.

15 Fourth, the facts of the present case were clearly distinguishable from that of *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 and *Public Prosecutor v Mas Swan bin Adnan and another appeal* [2012] 3 SLR 527, in which the accused persons were ultimately convicted on amended charges of attempting to import drugs. This was because they were found to have believed that they were transporting a drug other than what was actually in their possession. The accused here held no such belief or indeed, any reasonable basis for such a belief. At best, he was merely indifferent to what he had been transporting.

16 I therefore found the accused guilty as charged and convicted him of the offence under s 7 of the MDA.

The sentence

17 As set out in s 33 read with the Second Schedule of the MDA, the offence of importing more than 250g of methamphetamine carries with it the ultimate punishment of death. Nevertheless, the prosecution accepted that the conditions in s 33B(2) of the MDA were satisfied. It certified that the accused had substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore, and that his involvement in the offence was restricted to the transportation, sending or delivery of the drugs in question.

18 On my part, I found that the role of the accused in the commission of this offence was restricted to that of a courier (*ie*, his involvement was restricted to the acts set out in s 33B(2)(a) of the MDA). As the facts show, the accused's involvement did not go beyond the collection and transportation of the drugs, merely following instructions as and when they were given to him. It was therefore open to me to sentence the accused to life imprisonment and caning of no less than 15 strokes in lieu of death in the exercise of my discretion, and I saw nothing that warranted the imposition of the death penalty or additional strokes of the cane above the statutory minimum. Accordingly, I sentenced the accused to imprisonment for life, commencing from his date of arrest on 26 September 2012, and to 15 strokes of the cane.

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