

Public Prosecutor v Vanmaichelvan s/o Barsathi and Another
[2005] SGHC 78

Case Number : CC 41/2004

Decision Date : 22 April 2005

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : James Lee, Adam Nakhoda and Daphne Chang (Deputy Public Prosecutors) for the prosecution; Subhas Anandan and Anand Nalachandran (Harry Elias Partnership) for the first accused; John Abraham (John Abraham) and K Jayakumar Naidu (Segeram and Co) for the second accused

Parties : Public Prosecutor — Vanmaichelvan s/o Barsathi; S Manogaran

Criminal Procedure and Sentencing – Sentencing – Accused convicted of trafficking 499.99g of cannabis – One other trafficking charge taken into consideration – Accused had previous drug antecedents – Whether sentence imposed on accused was crushing

22 April 2005

Kan Ting Chiu J:

1 The accused, Vanmaichelvan s/o Barsathi is appealing against the sentence I imposed on him for trafficking 499.99g of cannabis.

2 The accused, who is 35 years old and was a supervisor in a cleaning company, appeared before me with another person, S Manogaran ("Manogaran").

3 At the outset, each of them faced two charges. The accused faced a capital charge of trafficking 749.17g of cannabis and a non-capital charge of trafficking 458.91g of cannabis mixture. Both offences were alleged to have been committed on 2 April 2004 at the cleaner's store in the National Dental Centre ("NDC") to which the accused had access in the course of his work. Manogaran was charged with abetting the accused in the commission of the two offences.

4 The accused and Manogaran claimed trial to the charges they faced and were tried together.

5 However, on the fourth day of the joint trial, the Prosecutor amended the charge of trafficking cannabis against the accused. The amendment was to reduce the quantity of cannabis stated in the charge from the original 749.17g to 499.99g. The effect of the amendment was that the accused would not face the mandatory death sentence if he was convicted, but was liable to a maximum sentence of 30 years' imprisonment or imprisonment for life and 15 strokes of the cane and a minimum sentence of 20 years' imprisonment and 15 strokes.

6 The accused pleaded guilty to the amended charge and admitted the Statement of Facts^[1] prepared by the Prosecution, the relevant portions of which are:

6 Whilst at the vicinity of the rubbish collection centre, the accused admitted to ASP Krishnan [the investigation officer of the case] that he had hidden the drugs belonging to *the accomplice*. The accused then led the party of CNB officers to the cleaner's store 8-1 on the 8th floor of the NDC. In the cleaner's store, the accused indicated to ASP Krishnan, by pointing with his hand, that the drugs were kept above the false ceiling at the right-hand corner of the cleaner's store. ASP Krishnan then recovered from above the false ceiling the following:-

- a) a paper bag (Kolber-Geneve) containing 1 plastic bag with 1 block and loose vegetable matter and 3 blocks of vegetable matter wrapped with aluminium and adhesive tapes
- b) 1 block of vegetable matter wrapped with aluminium foil and adhesive tapes

7 The accused subsequently gave an oral statement to SI Ang in Tamil that the drugs that had been recovered belonged to the accomplice and that the accomplice had given him the drugs four to five days ago. The accused also admitted that he was keeping the drugs for *the accomplice* until the accomplice found a customer for the drugs.

[emphasis added]

The accused was then convicted on the amended charge.

7 The Prosecutor applied for the charge for trafficking in the cannabis mixture to be taken into consideration for the purpose of sentencing. The accused consented to the application and admitted to that charge.

8 The Prosecutor then produced a record of the accused's antecedents^[2] which he admitted to. The record revealed a history of drug offences. He had been convicted on one charge of drug trafficking, two charges of possession of drugs and one charge of consumption of a drug on 19 October 1990 and had been sentenced to a total of 62 months' imprisonment and five strokes of the cane. On 29 November 1995, he had been placed under drug supervision for 24 months for consuming a controlled drug. The accused informed me that the drug involved in those cases was heroin.^[3]

9 Then his counsel, Mr Subhas Anandan, made the plea in mitigation on his behalf. Mr Anandan told me:

... I'm instructed to inform your Honour that the accomplice, Manogaran, is a childhood friend who approached the Accused for help in storing the drugs. The Accused found it difficult to say "no" and agreed to hold it, but told him to take it off as soon as he can. The Accused was not paid anything for this, your Honour. There was no arrangement for him to get any profit out of this.^[4] ...

and

... he has already told the DPP that he will be a prosecution witness and do what he can in resolving this matter.^[5] ... I hope your Honour will not give him a crushing sentence, your Honour, in that it will not be too heavy, your Honour. ... Crushing sentence would be somewhere to the maximum, your Honour. I hope that will not happen because he has pleaded guilty after all, and he's going to be a prosecution witness.^[6]

[emphasis added]

10 After hearing Mr Anandan, the Prosecutor did not address me on sentence. I reviewed the facts of the case, the accused's antecedents and the plea in mitigation. When I passed sentence, I told the accused:

I'm sure you are acutely aware of what has happened. You were facing the death penalty, you

are no longer facing that now. You have pleaded guilty to a charge for trafficking in 499.99 grams of cannabis; agreed to have taken into account for purpose of sentencing another charge for trafficking in cannabis mixture. But on the facts, you admit that actually the cannabis involved exceed 500.

Now, on your antecedents it is clear that this is not just a "one off" incident where you obliged a friend. You have a history of criminality with regard to the same drug – cannabis [this was incorrect, as his previous offences involved heroin] – and, really, I cannot see how we can just regard this as an incident of somebody helping a childhood friend because he found it difficult to say "no". All right, I mean you must be very naïve you behaved that way, and I must be very naïve if I accept it that you behaved that way.

I give due recognition to those parts of the mitigation that has been brought up to me, the fact that you will evidence in this case and the fact that you have pleaded guilty.[\[7\]](#)

I sentenced him to 26 years' imprisonment with 15 strokes of the cane.

11 I do not regard this to be a crushing sentence, as the maximum term is life imprisonment or 30 years and the minimum sentence is 20 years, *and* taking into account his drug antecedents *and* the second trafficking charge that was taken into account for the purpose of sentencing. To me, it was a fair and appropriate sentence on the facts then before me.

12 I would, in a normal case, have ended here and would not have gone further, but this turned out to be a most unusual case where the accused went on to say on oath that some of the facts he had admitted to in court and significant parts of the mitigation plea made on his behalf were untrue.

13 What happened was that after the charges against the accused were disposed of, the case against Manogaran went on. In accordance with the understanding that was alluded to, the accused was called to give evidence as a witness for the Prosecution.

14 The prosecutor asked him questions on Manogaran's involvement with the drugs, and received surprising replies. I set out some of the questions and answers:

Q: Now, with respect to the 749.17 grams of cannabis and 458.91 grams of cannabis mixture, did the Accused Manogaran have anything to do with them?

A: No.[\[8\]](#)

...

Q: Now, witness, do you recall that on the 13th of January when you pleaded guilty to the charge, you agreed to the Statement of Facts at the same time?

A: I agreed to take the offer and, as such, I agreed to whatever Statement of Facts.[\[9\]](#)

...

Q: Now, can you look at paragraph 7 [of the Statement of Facts], in fact, look at paragraph 6 as well, Mr Vanmaichelvan. Right, in paragraph 6, you have admitted to the part that says, that you admitted to ASP Krishnan that you had hidden the drugs belonging to the accomplice, the accomplice being the Accused in the dock. Do you see that?

A: Sir, at that point of time, I was told by my counsel that since an offer was made to me, I should accept whatever that was stated. As such, it did not matter to me what was stated in the Statement of Facts, I took the offer.

Q: Now, look at paragraph 7, again, you agree that you gave a statement to SI Ang that the drugs that they recovered belonged to the Accused and that the Accused had given you the drugs 4 to 5 days ago.

A: Sir, the fact is, it's not true, Sir, paragraph 7 is not true. ... I admitted it, but paragraph 7 is not true.

Q: Now, in fact, besides the Statement of Facts, during your plea in mitigation, the counsel has said that he was instructed by you that the Accused [Manogaran] is a childhood friend who approached you for help in storing the drugs, and that you had found it difficult to say "no". And you agreed to store it and you asked him to take it away as soon as possible. ... [Y]our counsel also told the Court that you were not paid for helping the Accused to keep the drugs. Do you remember that, your counsel saying those during your case?

A: Sir, I did not listen to what counsel was saying on my behalf in mitigation, the fact is it's not true. I admitted the wrong that I did and I've been punished.[\[10\]](#)

...

Q: Now, in that case, witness, would you be able to tell us why did your counsel say those things during your plea in mitigation?

A: Sir, I was given this offer and I was considering the welfare of my family and child. I wanted to live, Sir, as such I took the offer, and whatever the counsel said on my behalf, he did it so that I could get this offer.[\[11\]](#)

...

Q: Now, witness, I'm putting it to you that in paragraph 6 [of the Statement of Facts], you had admitted to ASP Krishnan tht the drugs belonged to the Accused Manogaran.

A: I disagree.

Q: And that is the reason why you agreed to that paragraph of the Statement of Facts on the 13th of January.

A: I was given an offer. I did not want to waste that offer and that is why I agreed to the Statements of Facts on that day.

Q: Now I'm referring to paragraph 7 now. I'm putting it to you that you did give a statement to SI Ang which was interpreted by ASP Krishnan, saying that the drugs belonged to the Accused Manogaran.

A: I disagree.[\[12\]](#)

...

Q: Now, witness, I'm putting it to you that you had agreed to the Statement of Facts, namely, paragraph 7, the first sentence, second portion which states that the Accused Manogaran had given you the drugs four to five days ago. You agreed to that because that was the truth. I'm putting it to you.

A: I disagree.

Q: And I'm putting it to you that you agreed to the next sentence as well in paragraph 7: "The Accused also admitted that he was keeping the drugs for Manogaran, the accomplice ...". You agreed to that part of the Statement of Facts as well on the 13th of January because that was the truth.

A: I disagree. I had been advised by my counsel. Since I was taking up the offer, I was to agree and admit to whatever that was put to me.[\[13\]](#)

...

Q: Now, witness, did you say that to ASP Krishnan as stated in the paragraph [para 7].

A: I did not tell him that.

Q: Now, I put it to you, witness, that you did say to ASP Krishnan what was stated in that sentence of paragraph 7, namely that you had nothing to do with the drugs and that it belonged to the Accused Manogaran, and that you were only doing Manogaran a favour by storing the drugs for him.

A: I disagree. I did not tell.

Q: Now, look at the last sentence of paragraph 7, (reads) "Vanmaichelvam again mentioned that the drugs belonged to the accused Manogaran and I told him that he should reveal this fact to the court". Do you agree that you said that to ASP Krishnan?

A: No, I did not.

Q: Now, I put it to you that you have in fact said that to ASP Krishnan.

A: I disagree. I did not tell this.[\[14\]](#)

15 I have set out the questions and answers at length to show the extent of and reasons for the accused's change of position.

16 He disavowed without apology significant parts of the mitigation plea that his counsel had made *on his instructions*.

17 When Manogaran's connection with the drugs was brought up by Mr Anandan in the mitigation plea, I took it into account in deciding on the sentence I imposed.

18 If that had not been brought up, there was little that mitigated the offence and sentence except that the accused had pleaded guilty. Even as regards that, however, there was already a trade-off. In exchange for admitting his guilt, the weight of the cannabis stated in the charge was reduced to 499.99g from the true weight of 749.17g to enable him to avoid the death sentence.

When he pleaded guilty to the amended charge in such circumstances, he had already obtained the benefit of his plea from the reduction of the charge. His plea would not have had the same impact on sentence as a plea of guilt made without a trade-off.

19 If he had instructed Mr Anandan honestly, Mr Anandan would not have said most of what was said in mitigation on his behalf, including the assertion that he was only storing the drugs for Manogaran at the latter's request, and I would probably have imposed a heavier sentence.

20 Nevertheless, the accused still feels that the sentence imposed is too harsh on him, and that he deserves a lower sentence.

[\[1\]](#)Exhibit G.

[\[2\]](#)Exhibit H.

[\[3\]](#)Notes of Evidence, pp 338–339.

[\[4\]](#)Notes of Evidence, pp 341–342.

[\[5\]](#)Notes of Evidence, p 342.

[\[6\]](#)Notes of Evidence, p 343.

[\[7\]](#)Notes of Evidence, p 344.

[\[8\]](#)Notes of Evidence, p 510.

[\[9\]](#)Notes of Evidence, p 511.

[\[10\]](#)Notes of Evidence, pp 512–513.

[\[11\]](#)Notes of Evidence, p 513.

[\[12\]](#)Notes of Evidence, p 518.

[\[13\]](#)Notes of Evidence, p 522.

[\[14\]](#)Notes of Evidence, pp 531–532.

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