

Shanmugam s/o Murugesu v Public Prosecutor
[2005] SGCA 1

Case Number : Cr App 10/2004
Decision Date : 14 January 2005
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Kan Ting Chiu J; Yong Pung How CJ
Counsel Name(s) : Peter Fernando (Leo Fernando) and Amarick Gill (Amarick Gill and Co) for appellant; Seah Kim Ming Glenn (Deputy Public Prosecutor) for respondent
Parties : Shanmugam s/o Murugesu — Public Prosecutor

Criminal Law – Statutory offences – Importing of controlled drug – Six packets of cannabis found in appellant's motorcycle – Whether appellant knew of only one or all six packets of cannabis – Section 7 Misuse of Drugs Act (Cap 185, 2001 Rev Ed)

14 January 2005

Kan Ting Chiu J (delivering the judgment of the court):

1 This appeal came before us after the appellant, Shanmugam s/o Murugesu, was convicted and sentenced to death by Tay Yong Kwang J for importing 1029.8g of cannabis into Singapore on 29 August 2003 at the Tuas Checkpoint.

2 The appellant was arrested while entering Singapore from Johor on his motorcycle. It was a big motorcycle with two carrier boxes, one on each side of the rear wheel. When the motorcycle was checked by officers of the Immigration and Checkpoints Authority ("ICA"), a packet of greenish vegetable matter was recovered from under a raincoat in the right carrier box. When he was asked what it was, he said, "Give me a chance, sir." He said that he might have taken it by mistake when he purchased prawn crackers at a shop, and he did not know what its contents were.

3 Officers of the Central Narcotics Bureau ("CNB") were alerted. They took over custody of the appellant and the packet and commenced investigations. The appellant was again asked if he knew of the contents of the packet, and again he pleaded ignorance. A search was undertaken of the appellant's motorcycle, which yielded four similar packets from the compartment in the motorcycle's seat and another packet in a haversack inside the left carrier box.

4 He was questioned about the packets by Sergeant Ravichandran Ramu ("Sgt Ravichandran") in Tamil and he replied in Tamil. The questions and answers were recorded in English:

- Q1: What is inside the six bundles?
A1: Ganja. [Malay for cannabis]
Q2: Who does this bundles belong to?
A2: Don't know.
Q3: Where did you get the 6 bundles from?
A3: From a toilet in JB Esso station.
Q4: Who do you supposed to deliver to?

A4: To nobody.

Q5: What are you going to do with the 6 bundles?

A5: I has to deliver it to Fort Road and place it at one of the pillars under Sheares Bridge.

Q6: Who will collect the 6 bundles?

A6: I need to call Mok, a Chinese in his thirties to confirm that I had placed the 6 bundles at the pillar. I then supposed to go away from the place. I do not know who collect.

Q7: How much do you get for doing this?

A7: \$2,000.

Q8: How the money will be given to you?

A8: Mok will call me within an hour, to collect my money from the same pillar where I place the 6 bundles. That is all.

5 This statement was admitted at the trial without objection.

6 The appellant was subsequently taken from the Tuas Checkpoint to the CNB Headquarters at Police Cantonment Complex. In the early hours of the following day, a charge of importing six packets of cannabis was read to him, and his cautioned statement was recorded by the investigation officer, Assistant Superintendent Ong Pang Thong ("ASP Ong"), with the assistance of a Tamil interpreter. It read:

I admit to the charge. This is the first time I have committed an offence. I do not have any criminal records. Due to family circumstances and my love for my twin sons, which the court had granted custody to me after my divorce proceeding. In Malaysia, I met a Chinese man by the name of "Mok" at a Go-kart track, when I used to go there to do mechanical repairs for their vehicles. I became Mok's friend. Mok asked me to do a "lobang" and asked me whether am I willing to do it. He asked me to carry some "ganja" into Singapore, and placed it under Sheares Bridge at Fort Road. I agreed to his request. Mok also told me that on completing the job, I would be paid S\$2,000. My mother is divorced, my sister is divorced with 2 children and I am also divorced with 2 children. I have been working in many places, in several occupations and my income was insufficient to support my family. My father had been away for 6 years and he never come home. I look after the family. I used to sit down and think, and sometimes I cried thinking that why my family should suffer. I had money problem.

7 This statement was also admitted in evidence at the appellant's trial without objection. The six packets of vegetable matter formed the subject matter of the charge on which he was prosecuted and convicted. There was no dispute over the nature or weight of the contents of the packets.

8 Further statements were taken by the investigation officer from the appellant. Of particular interest was one recorded on 1 September 2003. In the statement, the appellant alleged that on the day of his arrest while he was still at Tuas Checkpoint, before his motorcycle was searched and the five further packets were recovered, an Indian officer abused and threatened him, a Chinese officer

made him kneel and a Malay officer hit his head. It was only after receiving this treatment that he made the statement set out at [4] above. He added that:

17 I would like to say that I did lie when I was giving the statement to the Indian CNB officer on the day of my arrest. I lied when I said that I took the 6 bundles from the JB "Esso" station. The truth was that I took only one packet from the Esso Station. I lied because I do not want anyone to know about the transaction I had with 'Mok' at the 'Go-Kart' track. *I lied because I would need to go there to work on a frequent basis. I also know that the people working in the 'Go-Kart' track consumed 'Ganja'. As such, I do not want to get them into trouble by mentioning the name.* I am now mentioning the 'Go-Kart' track now because I have been thinking about my children when I was in the cell for the past 2 days. I thought that why should I bear the consequences of the 6 bundles of 'Ganja' and who would look after my twin boys. I know that if I were convicted of carrying more than 500 grammes of 'Ganja', upon conviction, I would be sentenced to death. I would like to say that I only carried the smaller block of 'Ganja' found in my haversack because while we were having lunch, 'Mok' did tell me that I would be carrying 200 to 300 grams of 'Ganja'. I do not know how the other 5 blocks of 'Ganja' came into my motorcycle. [emphasis added]

9 The appellant's defence at the trial was that he had been going to Johor to repair boats at a shed in a go-kart track at Taman Petaling, Johor Baru ("the track"). A person known to him as Ah Seng would inform him when there were repair jobs to be done.

10 About three months before his arrest, Ah Seng introduced him to his friend, Mok, who wanted a boat repaired. The appellant asked for the boat to be brought to the track so that he could have a look at it. The appellant, Ah Seng and Mok then smoked cannabis obtained by Mok.

11 A month later, Mok informed the appellant that he had brought his boat to the track. The appellant went to the track and examined it and told Mok the parts he needed for the repairs. Mok agreed to get them, and they smoked cannabis together again.

12 On 29 August 2003, they met again as Mok had obtained the parts. They had lunch together. During the lunch, Mok asked him if he was prepared to bring cannabis into Singapore for which he would be paid \$2,000 for bringing a quantity of 200g to 300g. He agreed to do it, knowing that the death penalty applies where more than 500g of cannabis is imported.

13 After lunch, he returned to the track and started work on the boat. While he was working, Mok came and asked him for a knife. He went to his motorcycle which was parked nearby, unlocked one of the carrier boxes with the motorcycle keys which had been left on the motorcycle, and took out a knife from his haversack.

14 He brought the knife to a container at the track in compliance with Mok's request. Mok joined him there later. Mok had with him a plastic bag from which he took out two bundles wrapped in newspaper. Using the appellant's knife, Mok cut the two bundles into six portions. The appellant recognised the bundles to be cannabis, asked Mok how much each bundle weighed, and Mok said the weight was 1kg. Mok also said he was going to make some deliveries.

15 After the blocks were cut, he put the knife back into the motorcycle carrier box and resumed work on the boat. He met Mok again while he was working on the boat. He told Mok that he would finish the job by 4.30pm. Mok paid him the agreed repair costs and instructed him to go to an Esso

petrol station at 5.00pm to collect the packet of cannabis he was to bring to Singapore.

16 He kept the appointment and met Mok at the petrol station. They went into the toilet of the petrol station where Mok retrieved a packet in a plastic bag from the cistern and handed it to him. Mok instructed the appellant to call him when he had cleared the Singapore checkpoint, and then to take the packet to Benjamin Sheares Bridge and call him (Mok) again.

17 He removed the wet outer plastic bag and placed the packet in his haversack, and bought some prawn crackers from the petrol station. He then placed the haversack back in the left carrier box, from where it was recovered by the ICA officer at the Tuas Checkpoint.

18 He claimed ignorance of the other five packets recovered. He suspected that Mok had framed him or cheated him and placed them in his motorcycle, although he could not think of any reason for Mok to do that.

19 The appellant claimed that even while he was at the Tuas Checkpoint he had told Sgt Ravichandran and other officers, whom he did not identify, that he was bringing in only one packet. They shouted at him and hit his head, and Sgt Ravichandran slapped him. When he was questioned, he was questioned loudly.

20 He also gave an explanation for his cautioned statement. He claimed that when it was recorded, he had told the Tamil interpreter that he had knowingly brought in only one packet. The interpreter had asked him if he admitted that six packets were recovered from his motorcycle, and he had agreed and made the cautioned statement, which should be read and understood against that background. He also added that he had told other CNB officers that he had only knowingly brought in one packet, but they did not believe him.

21 Tay J rejected his defence. He found that the statement recorded at the checkpoint set out in [4] above was recorded without shouting, intimidation or assault by anyone, and that the cautioned statement set out in [6] above was a full record of all that the appellant had said.

22 The judge also pointed out that, based on the evidence before him, the street price of cannabis in August/September 2003 was \$10 per gram and as the undisputed packet from the left carrier box weighed 218.1g, the value of that packet would be \$2,181. After deducting the \$2,000 payment to the appellant, Mok would only make \$181 out of the transaction. (The judge was being generous in not taking into account the cost of the packet to Mok.) He considered that the \$2,000 payment was more likely to be for carrying six packets than one.

23 The judge also referred to the appellant's explanation in para 17 of his investigation statement set out in [8] above, and observed that when the statement was made on the day of his arrest, the appellant already knew that there were six packets recovered. If Mok had told him the weight of the cannabis in the one packet he agreed to carry was 200g to 300g, then he must have realised that by admitting that he was knowingly in possession of the six packets, he would face the death penalty, and would not be going back to the track to work.

24 On appeal before us, the appellant's counsel, Mr Fernando, argued that Tay J was wrong to reject the appellant's defence that he only knew about the one packet of cannabis he agreed to carry, and was ignorant of the other five packets.

25 We reject the argument. All six packets were recovered from his motorcycle. When the first statement was recorded from him, he admitted knowledge of the six packets to Sgt Ravichandran. At the Police Cantonment Complex, after he was informed that he was being charged with respect to the six packets, he admitted the charge in his cautioned statement without qualification.

26 It bears repeating that both statements were admitted in evidence with no question raised over their voluntariness. Although the appellant alleged that he was shouted at, hit on the head, slapped and made to kneel (all of which were denied), he did not say that the alleged misdeeds had caused him to make the statements. His explanation was that he lied because he wanted to protect his friends at the track as he needed to continue to work there.

27 As Tay J pointed out, this was unbelievable because he knew that with his admission he could face the death penalty, and would not be returning to the track to work.

28 A serious flaw in the appellant's defence was that he could not give a credible reason for the presence of the other five packets. He thought that Mok might have placed the packets there to frame or cheat him but admitted that he could not say why Mok would do that. It makes no sense for Mok to frame him when he had agreed to transport the drugs for him, or to cheat him by putting five undisclosed packets on his motorcycle which would be discovered if he opened the carrier boxes or the seat compartment to store or retrieve anything such as his haversack, his knife or the prawn crackers he had bought. If it was not Mok or the appellant himself, who would have placed the packets there? There was simply no plausible basis for the six packets to be in the carrier boxes and the seat compartment without the appellant's knowledge and consent.

29 The undisputed fact that the six packets were found in the motorcycle in the possession of the appellant raised rebuttable presumptions under s 18(1)(a) and s 21 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) that these packets were in his possession, and under s 18(2) that he knew the nature of their contents.

30 Tay J had examined the appellant's defence that he actually only knew of the presence of one packet and was ignorant of the other five packets, and had rejected the defence. We found that he was well justified to come to that finding. He convicted him on the strength of the admissions, but even without the admissions, the appellant could have been convicted on the rebuttable presumptions that he knew about the packets and their contents, which he failed to rebut.

31 In the circumstances, we saw no basis for disturbing the judge's finding on the facts or the conviction of the appellant.

Appeal dismissed.

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