

Public Prosecutor v Phua Han Chuan Jeffery
[2011] SGHC 209

Case Number : Criminal Case No 22 of 2011
Decision Date : 21 September 2011
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Amarjit Singh, Sharmila Sripathy-Shanaz and Eunice Ng (Attorney-General's Chambers) for the prosecution; Ong Cheong Wei (Ong Cheong Wei & Co) and Chia Soo Michael (Sankar Ow & Partners LLP) for the accused.
Parties : Public Prosecutor — Phua Han Chuan Jeffery

Criminal Law – Statutory offences – Misuse of Drugs Act

21 September 2011

Judgment reserved.

Choo Han Teck J:

1 The accused is 26 years old. He was arrested at the Woodlands Immigration Checkpoint on 20 January 2010 at 11.11pm when he attempted to drive into Singapore in a car with the licence plate number SFY 2926M. His vehicle was searched by Station Inspector Ashari Bin Hassan ("SI Ashari") and Staff Sergeant Chew Tai Wai ("SSG Chew"). Four bundles of diamorphine were found in his car. Two of them were hidden behind the glove compartment, and two behind the radio compartment. All four bundles were wrapped in black tape as shown in the photographs adduced at trial and marked as A1, A2, B1 and B2 respectively. Diamorphine was found in A1, B1, and C1. They were analysed and established to amount to 104.21g and thus formed the subject matter of the charge upon which the accused was tried before me. A2 was found to contain Zalepelon, a non-controlled drug. A black bag described as a laptop case was seized from the car. It was not disputed that it belonged to the accused. The contents in the bag were also not disputed. They included a roll of black tape ("D1B"), which was sent for forensic analysis together with the black tapes that were used to bind the four bundles A1, A2, B1, and C1. The tapes used to bind the bundles were found to have come from the roll (D1B) taken from the bag.

2 SI Ashari testified that when he and SSG Chew found the four bundles the accused looked nervous. He asked the accused what was A1 and the accused said that he did not know. He also asked the accused what were B1 and C1, and again the accused said that he did not know. Mr Amarjit Singh, the Deputy Public Prosecutor submitted that the three bundles of diamorphine felt lumpy and irregularly shaped and thus felt differently from the rectangular shaped bundle A2. He also submitted that A2 was lighter in weight than the other three bundles. The accused denied that the bundles could be distinguished in that way. The bundles were no longer available to be examined in the original state at trial. It cannot sure just by looking at the photographs because the wrapping had made the four bundles indistinguishable from each other in the photographs. Forensic evidence was also adduced to show that the DNA of the accused matched that found on the black tape used to wrap B1 and C1 as well as on the unfinished roll of tape marked D1A. The forensic expert found the DNA of various other people including two females on the black tapes. She testified that the evidence indicated that there were at least seven people and up to 23 people involved in handing the four bundles.

3 The evidence was sufficient for the defence to be called. The accused elected to testify. The law imposed a presumption against him which he had to rebut. The presumption was that he knew that A1, B1, and C1 contained diamorphine. The accused denied that he looked nervous. He also denied that SI Ashari had asked him what were in A1, B1, and C1. His defence was that he had rented the car and driven into Malaysia at about 9pm on 20 January 2011 as instructed by one "Ah Da". He knew that Ah Da wanted him to deliver things to Singapore. When he arrived at Taman Sentosa in Johor, he told Ah Da that he wanted to buy some sundries and asked Ah Da to look after the car for him. When he returned, he saw Ah Da in the front passenger seat and three bundles wrapped in masking tape on the floorboard. He also saw some "Gorkia" which he understood to be Erimin-5 near the handbrake of the car. He testified that he asked Ah Da how much "Gorkia" were in the bundles on the floorboard, and Ah Da told him there were five boxes. He asked Ah Da if he could open them but Ah Da said no because they were all the same. Ah Da then told him to wrap the three bundles in black tapes. Ah Da then wrapped the Erimin-5 in newspapers and handed them to the accused who wrapped them with black tape.

4 The defence version at trial was largely in consonance with the statements given by the accused to the Central Narcotics Bureau ("CNB") officers. However, he qualified the discrepancies by saying that the interpreter Mr Wong did not interpret his evidence clearly or completely. For example, the accused testified that he thought all the bundles contained "Gorkia" and that he had told the interviewing officer that but it was not reflected in his statement P62 at paragraph 31 where he mentioned this incident. The cautioned statement of the accused merely read: "I went to Malaysia for shopping. I did not know that there is "bai fen" in the vehicle". Mr Ong, counsel for the accused, submitted that the accused was tricked into carrying diamorphine for Ah Da. I am not persuaded by this submission because the accused who was a drug abuser himself did not strike me as a gullible person when it comes to dealing with drugs and drug peddlers. I do not believe that he did not know or even suspect that the bundles might carry diamorphine. It is dangerous to apply the legal presumption of knowledge liberally, and the defences of the accused persons against whom this presumption applies must be considered without cynicism. However, legal presumptions such as that under s 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) were legislated because of the difficulty in which the prosecution (and everyone else) has in showing what was in the mind of a person whose thoughts cannot be found in any document or had not been expressed to a witness. Whether a drug courier knew what it was that he was carrying when the parcel was all wrapped up is a question only the courier can answer. Faced with a capital charge, few would admit that they knew the contents of those parcels. On the other hand, if the prosecution had clear evidence that the denial was false, it would not have to rely on the presumption. Thus, it is the trial judge who has to decide whether the accused had shown that on the balance, he had proved that he did not know what the contents were.

5 Examining the events leading the accused to Johor where he left his car with Ah Da and the delivery of the four parcels seized from his car, I am not persuaded that the accused had discharged the burden of rebutting the presumption against him. I am not persuaded that the accused was so gullible that he could be led to believe that he was only carrying "Gorkia". Ah Da, on his own evidence was not a person he had known well enough to trust so implicitly, and the circumstances of the way the bundles were wrapped, assuming for the moment that the accused's version was to be accepted, were such that no reasonable person in the accused's position would have agreed to transport them into Singapore without satisfying himself that he was carrying only "Gorkia". Nothing in the manner the accused testified, nor the embellishment he made to his defence story, was convincing enough to raise any doubt in my mind that he transported the diamorphine in the three bundles knowing that they were diamorphine. Thus his denial of knowledge was weak and unconvincing.

6 Mr Ong also submitted that the prosecution had the duty of producing Ah Da as a witness and

that the failure to do so amounted to a lapse in evidence so severe that the benefit of the doubt ought to be given to the accused. It was not the case that Ah Da was in the custody of the CNB and they had withheld him from the court. This was apart from the fact that if he were, the defence was always at liberty to call him as a defence witness. In this case, Ah Da was an important witness to the defence case. He was not crucial to the prosecution case although the CNB would undoubtedly want to prosecute him if it could. I do not think that the failure to call Ah Da was detrimental to the prosecution case.

7 For the reasons above, I am satisfied that the prosecution has proved its case against the accused beyond reasonable doubt and I thus find the accused guilty as charged. I therefore convicted him and sentenced him to suffer death.

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