

Veeramani Manikam v Public Prosecutor
[2015] SGHC 201

Case Number : Magistrate's Appeal No 133 of 2013
Decision Date : 03 August 2015
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Jason Chan, Kelvin Kek, Kok Li-en and Joshua Raj Thomas (Allen & Gledhill LLP) for the appellant; Mark Jayaratnam and Delicia Tan (Attorney-General's Chambers) for the respondent.
Parties : Veeramani Manikam — Public Prosecutor

Criminal Law – Statutory Offences – Misuse of Drugs Act

3 August 2015

Judgment reserved.

Chan Seng Onn J:

1 This is an appeal brought by the appellant against his conviction and sentence. On 19 June 2013, the appellant was convicted by a District Court Judge ("the DJ") on two charges for importation of 474.4 grams of cannabis and 246.52 grams of cannabis mixture under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") punishable under s 33(1) of the MDA and one charge of possession of Nimetazepam, a "Class C" controlled drug, under s 8(a) of the MDA. The appellant was sentenced to a total of 20 years' and 6 months' imprisonment with 20 strokes of the cane. The DJ's grounds of decision can be found at *PP v Veeramani Manikam* [2013] SGDC 206 ("the DJ's GD").

2 The appellant is a Malaysian Citizen who, prior to his arrest on 30 December 2011, was working as a daily-rated bus driver, ferrying Malaysian workers into and out of Singapore, and as a "bouncer" in a pub in Johor Bahru ("JB"), Malaysia. On 30 December 2011 at or about 6.50am, the appellant drove a Malaysian registered motor vehicle viz, a Proton Wira car with registration number JKJ1408 ("the Car"), into the Woodlands Checkpoint, Singapore from JB. Acting on intelligence, two officers from the Immigration & Checkpoints Authority ("ICA") proceeded to check the Car. At about 6.59am when the appellant opened the bonnet of the Car, a black bag ("the Black Bag") was found to be concealed under two car mats between the air filter compartment and the battery of the Car. The Black Bag contained two bundles of plastic-wrapped vegetable matter and a tablet. The vegetable matter was later confirmed to be cannabis mixture and the tablet was confirmed to be Nimetazepam.

3 Before the DJ and this Court, the prosecution relied on the presumptions in ss 18(2) and 21 of the MDA. By way of overview, s 18(2) of the MDA states that a person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of the drugs and s 21 of the MDA states that if a controlled drug is found in any vehicle, the owner or the person who is in charge of the vehicle for the time being is presumed to be in possession of the controlled drug.

4 In both the proceedings here and below, the appellant sought to rebut these presumptions. The appellant was unrepresented in the proceedings below. On appeal, he remained unrepresented for two days of hearing until Mr Jason Chan ("Mr Chan") was appointed on 28 January 2014 to represent the appellant on a *pro-bono* basis. To date, the appellant has been remanded in prison for approximately 3 years and 7 months.

5 I now turn to the appellant's defence. According to the appellant, he was working as a bouncer in a pub named "Peace and Bistro" located in Taman Perling, JB ("the Pub"). On 29 December 2011, while the appellant was working at the Pub, a customer who frequently sang at the Pub (who was known to the appellant only as and shall be referred to in my judgment as "the Singer") arrived at 11.00pm. Both the appellant and the Singer drank for some part of the night and the Singer requested the appellant to arrange for transport to Singapore, as the Singer had to return for his work. After failed attempts at contacting a taxi driver, the appellant approached his co-worker, Ravi, for help. Ravi agreed to allow the appellant to use the Car, which belonged to him, on condition that the Singer drove to Singapore, as the appellant had consumed alcohol throughout the night. The appellant was supposed to drive the Car back after he dropped the Singer off. Ravi also informed the appellant that the amount of petrol in the Car might be running low. The Singer told the appellant that he would pay him an amount between RM20-30 for his assistance.

6 As the amount of petrol in the Car was low, the Singer first drove to a petrol station with the appellant in the passenger seat next to him. The appellant said he noticed the Black Bag in the Car. He opened the bag to ascertain if there was anything valuable in the bag, only to be told by the Singer that it contained food. The appellant then went to the restroom at the petrol station. When he returned, he noticed that the bonnet of the Car was open. The Singer then continued driving the Car, and the appellant fell asleep whilst seated on the front passenger seat. According to the appellant, the Singer was not present in the Car when he was awoken by a Malaysian Traffic Police officer who threatened to issue a summons if the appellant did not move his car.

7 At that point, the Car was parked somewhere along the road before the Malaysian Customs. As the Singer was no longer in the Car, the appellant moved to the driver's seat, drove the Car, crossed the Malaysian Customs and proceeded towards the Woodlands Checkpoint because he was unable to make a U-turn. He intended to make a U-turn after the Woodlands Checkpoint. The appellant had also noticed that the Black Bag was not in the Car and assumed that the Singer had taken it with him.

8 At the hearing below, the DJ rejected the appellant's defence. I reproduce the relevant portion of the DJ's GD:

44 On the facts, I found his explanation puzzling and incredible. According to the Accused, he had borrowed the car from 'Ravi' ostensibly in order for the singer to go to Singapore. After he was awoken by [t]he Malaysian Traffic Police officer and he found the singer missing from his seat, there was no longer any reason for him to make the trip into Singapore. ***I found it inexplicable that he had driven into Singapore instead of turning back and returning to the pub as the officer was chasing him from where the car was parked and that it was a straight road. On the facts, as there were many internal inconsistencies in the Accused's evidence and his explanation as to why he had no choice but to drive into Singapore to be incredible***, I rejected his evidence and instead found that he had clearly intended to import the drugs into Singapore as he had driven from Johor Bahru into Singapore with the drugs. ***Further, by his own admission as the drugs were not meant for his personal consumption, it could be inferred that the drugs were brought into Singapore for the purpose of trafficking.*** Consequently, I was satisfied that the prosecution had established that [*sic*] the element of importation as he had brought the drugs from Johor Bahru, Malaysia into Singapore.

45 In the present case, I also found that the Accused was aware with [*sic*] the contents of the black bag and he had driven into Woodlands Checkpoint from Johor Bahru for the purpose of importing the drugs into Singapore. During his examination-in-chief, he testified that he had opened the black bag (*Exhibit P35*) when he saw it in the car. According to him as he wanted to see if it belonged to Ravi and if there was anything valuable inside, ***he opened it and saw***

"something inside". During his cross-examination, he gave evidence that when he opened it and [sic] there was another bag inside. Nevertheless, during his cross-examination, when the prosecution highlighted that from the photograph, *Exhibit P23* it could be seen that the wrapper for exhibit marked **B1A** was transparent, he agreed. I also noted that the other bundle of cannabis and cannabis mixture exhibit marked **B1B1A1** was wrapped with transparent plastic wrappers. ***To my mind, by his own evidence, the Appellant was clearly aware that the black bag contained drugs when he drove the car JKJ1408 alone from Johor Bahru into Singapore.***

[emphasis added in bold italics]

9 The appellant appealed against both his conviction and sentence. When I first heard the appeal on 27 September 2013, the appellant was unrepresented. I noted that the existence of a U-turn before the Malaysian Customs had not been ascertained and no attempt was made to verify the existence of the Pub, his co-worker Ravi, the Singer and the incident of the Malaysian Traffic Police officer waking him up and ordering him to drive the Car away. I questioned the appellant. I also asked the prosecution to address me on, *inter alia*, these points. The matter was adjourned as further facts had to be verified and if necessary, for fresh evidence to be taken before me. Mr Chan had, since taking on the appellant's case, proceeded to obtain a private investigation report from, Mr Neo Keng Hoe William ("Mr Neo"), a private investigator, on some of the aforementioned issues.

10 Mr Neo gave evidence before me on 11 November 2014. His evidence was that there was no available U-turn located at the Johor Sultan Iskandar Complex Customs. He stated that the only way to make a U-turn would be to "go back" to Singapore and proceed to come back to JB. [\[note: 1\]](#) On 25 March 2015, SSGT Lim Cheng Hwee ("SSGT Lim") gave evidence for the prosecution and confirmed that he had been informed that (i) "[the Malaysian Customs] will not allow anyone to just make a U-turn so easily" [\[note: 2\]](#) and (ii) an individual who informed an officer at the Malaysian Customs that he wished to make a U-turn might be allowed to do so. Notwithstanding the differences between the evidence of Mr Neo and SSGT Lim, it is clear that "negotiating" a U-turn (if one is at all possible) near the Malaysian Customs is not a straightforward matter, and it would have made sense for the appellant, even in the absence of the Singer, to proceed to drive into Singapore instead of having to go through the cumbersome process of approaching an officer at the Malaysian Customs and explaining his situation.

11 Given this, the factual premises relied on by the DJ *viz*, it was *"inexplicable that [the appellant] had driven into Singapore instead of turning back and returning to the [Pub]"* (see [44] of the DJ's GD), is inherently flawed as there seems to be a highly plausible explanation for the appellant driving into Singapore even though the Singer was no longer in the Car. This finding of the DJ also appears to be made against the weight of the evidence before her as the appellant's evidence that he could not perform a U-turn was not challenged by the prosecution in the hearing below.

12 I also find that it cannot be concluded that the appellant was "clearly aware" that the Black Bag contained drugs just because he had opened the said bag and seen "something inside", and had further stated during his cross-examination "that when he opened [the Black Bag], and [sic] there was another bag inside" (see the DJ's finding of fact noted at [45] of the DJ's GD). Based on the photographs of the Black Bag and its contents exhibited as P22 to P27, I accept that some of the wrappings used to wrap each of the two bundles of drugs separately were transparent and some were translucent. However, after examining photograph P24 which shows Exhibit B1B before it was unwrapped, I accept the submission by Mr Chan and find on the objective evidence that Exhibit B1B is actually opaque when viewed in its original wrapped form because multiple layers of wrapping were used. The bundle of drugs B1B1A1 was first taped up in translucent brown sticky tape and thereafter

wrapped in a translucent blue plastic bag, followed by a transparent plastic wrapper that had an opaque pictorial advertisement of the brand "Roti Kaya" on it. The said bundle was finally wrapped in a translucent pink plastic bag. From my observation, the multiple layers of wrapping have in fact rendered the whole bundle of drugs in Exhibit BIB opaque as can be seen in photograph P24. Apart from the fact that the appellant might have seen the opaque Exhibit B1B instead of Exhibit B1A when he opened the Black Bag without taking out any of the bundles, I also observe that *even if* the appellant might have seen Exhibit B1A instead of the opaque Exhibit BIB, it would not have been readily apparent that Exhibit B1A contained drugs if it was placed sideways in the Black Bag and viewed edgewise through several layers of transparent wrapping. Therefore, it remains highly probable that the appellant would not have known merely by opening the Black Bag that the bundles inside the Black Bag contained drugs, especially when viewed in the light of the assurance from the Singer, a pub customer known to the appellant, that the bag contained food.

13 Additionally, the DJ manifestly erred by finding that the appellant admitted that the drugs were not for his personal consumption; such a finding also implied an admission by the appellant that he knew that the Black Bag contained drugs (see [44] of the DJ's GD). This purported admission is completely unsupported by the evidence before the DJ. The appellant merely stated that he did not consume drugs; [\[note: 3\]](#) such an innocuous statement does not at all support the implied admission inferred by the DJ.

14 In the present case, I am satisfied that the appellant has rebutted the presumptions in ss 18(2) and 21 of the MDA on a balance of probabilities. First, I note that the appellant's testimony and version of events have been largely consistent since he was arrested and he was able to provide a detailed account of the events leading up to his arrest. I find his candid testimony to be credible. Indeed, the appellant was, *inter alia*, able to provide directions of where the Pub was located and draw the internal layout of the Pub during the hearing before me on 24 October 2013. As an aside, I note that the prosecution had submitted at the trial below that the accused had "fabricated his entire defence" and that he "could not even provide the address of his place of residence, his workplace which is the pub, the alleged pub and the petrol kiosk." At the appeal, the prosecution similarly maintained its position that "[the] entire story [of the appellant] is highly improbable" and reiterated that the appellant "[was not] even [able] to state the proper name of the pub or where it was located other than giving just a general reference to its location in JB." [\[note: 4\]](#) However, I note that at the trial below, the appellant had in fact accurately provided the name of the Pub as "Peace and Bistro" and stated that it was located "on the way to Iskandar Road" at Taman Perling. [\[note: 5\]](#) The existence of the Pub at the location mentioned by the appellant could have been ascertained by a simple search on the Internet (which was probably not done by the investigating officers in charge of the appellant's case ("the IOs") and the prosecution). I performed a "Google" search based on the name of the Pub provided by the appellant and found the address and location of the "Peace Bistro Pub and Café" in Taman Perling in JB which broadly tallies with what the appellant had said. I note that Mr Neo was also subsequently able to verify the physical existence of the Pub.

15 Second, as noted at [10] and [11] above, the appellant's explanation for driving into Singapore when he had no intention to go to Singapore after the Singer abandoned him in the Car near the Malaysian Customs is plausible given the difficulties he had in making a U-turn at that location. Third, on the evidence, the appellant would not likely have suspected that there were controlled drugs in the Black Bag after he was assured by the Singer that it contained food when he opened the bag, especially since he was tired after a session of alcohol consumption. I also note that one of the IOs who gave evidence in the court below said that the appellant was "slurring" when he was arrested and that he fell asleep while he was being investigated a few hours after his arrest. [\[note: 6\]](#) This subsequent conduct of the appellant is entirely consistent with the appellant's factual account of him

having drunk heavily the night before and fallen asleep in the Car while the Singer smoothly departed. If the appellant wanted to perform a drug run to bring the controlled drugs into Singapore in the early hours of that morning of 30 December 2011, I find it odd that he would not want to be in an alert state of mind whilst making the drug run. Instead he took so much alcohol the night before that it appears to me that a drug run immediately following all that heavy drinking would not on a balance be something on his mind.

16 Additionally, the appellant was candid in providing Ravi's phone number and mentioning that a Malaysian "officer" told him that he was not allowed to park on the side of the road in his statement given on 2 January 2012 ("the 2 January 2012 Statement") soon after his arrest. It is unfortunate that the IOs chose not to check the truth or falsity of the appellant's story at that time and follow up by tracing the location of the Pub, the existence and whereabouts of Ravi, the Singer and the Malaysian Traffic Police officer who had woken the appellant up while the Car was stationary near the Malaysian Customs.

17 On the whole, the appellant has rebutted the presumptions in ss 18(2) and 21 of the MDA and satisfied me on a balance of probabilities that he is not guilty of importing or possessing the controlled drugs.

18 As a final point, I note that the appellant highlighted an incident that occurred sometime in November 2011 (about a month before his arrest) where he declined a request to illegally transport cigarettes into Singapore and had reported such activity to the ICA ("the ICA Report") at the Woodlands Checkpoint. The appellant believed that he might have been framed up because of this. The appellant's account in relation to the ICA Report was not a mere afterthought that was proffered in the present appeal. The appellant raised the ICA Report soon after his arrest in the 2 January 2012 Statement and attempted to raise it at the court below. The DJ, for reasons not known, did not allow the appellant to fully ventilate this point in the hearing below. [\[note: 7\]](#) However, the appellant and prosecution made full submissions on this point in the present appeal. The prosecution called officers of the ICA to give evidence on the ICA Report. The following points may be gleaned from the evidence of these witnesses: (i) both the ICA and Singapore Customs do not have records of any complaint made by the appellant; (ii) there are about six steps in the workflow relating to reports made on such illegal cigarette smuggling; [\[note: 8\]](#) and (iii) there will be no record with ICA of any such complaint if it was not properly recorded at the Woodlands Checkpoint. [\[note: 9\]](#) I do not find the appellant's evidence on the ICA Report to be wholly unbelievable or inherently incredible. I am of the view that it is unlikely that the appellant would fabricate this entire episode. He readily offered his passport for verification of the date in November 2011 when he would have made the ICA Report (and he was also subsequently able to provide satisfactory explanations for the additional trips made to Singapore during that period). I am of the view that there is a possibility that the ICA Report was not recorded. I must also add that the very conspicuous arrangement of the large car mats covering the Black Bag placed just next to the battery of the Car beneath the bonnet (see photographs P17 to P22) is inconsistent with a design to conceal the Black Bag so as to import the drugs. To the contrary, when viewed in the light of the fact that the ICA officers had stopped the Car acting on intelligence, the aforesaid arrangement seems to have been executed so as to ensure that the Black Bag is readily discoverable merely by opening the bonnet of the Car. Therefore, this evidence – even in the absence of the ICA Report in the ICA records – appears to lend some support to the appellant's argument that he might have been framed up because he had refused a request to illegally transport cigarettes into Singapore and had reported it to the ICA.

19 Nevertheless, I state, for completeness, that the appellant has rebutted the presumptions in ss 18(2) and 21 of the MDA even without having to rely on the ICA Report, and, viewed in the light of all

the circumstances, the discrepancies in the appellant's evidence that may be attributed to his ICA Report have not undermined the credibility of his other evidence as a whole, which I have found to be consistent and predominantly unrebutted.

20 In the light of the above, I allow the present appeal and set aside the appellant's conviction and acquit him of all the charges. In closing, I would like to express my gratitude to Mr Chan for his detailed and well-researched submissions.

[\[note: 1\]](#) Transcripts dated 11 November 2014, pp 103-104.

[\[note: 2\]](#) Transcripts dated 25 March 2015, p 32:4-12.

[\[note: 3\]](#) Notes of Evidence dated 19 June 2013, p 38.

[\[note: 4\]](#) Transcript dated 27 September 2013, p 12.

[\[note: 5\]](#) Notes of Evidence dated 19 June 2013, pp 4-5.

[\[note: 6\]](#) Notes of Evidence dated 18 June 2013, p 40, 48-49.

[\[note: 7\]](#) Notes of Evidence dated 19 June 2013, p 11.

[\[note: 8\]](#) Transcript dated 11 November 2014, p 24.

[\[note: 9\]](#) Transcript dated 11 November 2014, p 51.

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