

Public Prosecutor v Mohammed Fauziya and another
[2015] SGHC 118

Case Number : HC/Criminal Case No 1 of 2015
Decision Date : 29 April 2015
Tribunal/Court : High Court
Coram : Hoo Sheau Peng JC
Counsel Name(s) : Eugene Lee Yee Leng and Jane Lim Ern Hui (Attorney-General's Chambers) for the prosecution; Rengarajoo s/o Rengasamy Balasamy (M/s B Rengarajoo & Associates) and Mahadevan Lukshumayeh (S T Chelvan & Company) for the first accused; Lee Yoon Tet Luke (Luke Lee & Co) and Aw Wee Chong Nicholas (Clifford Law LLP) for the second accused.
Parties : Public Prosecutor — Mohammed Fauziya and another

Criminal Law – Statutory offences – Misuse of Drugs Act

29 April 2015

Hoo Sheau Peng JC:

1 The first accused, Fauziya Mohammed (“the first accused”), is a 35-year-old Ghanaian national. She claimed trial to a charge of trafficking in not less than 1,871.6g of methamphetamine (“the methamphetamine”), a controlled drug, without any authorisation, an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). The charge averred that on 21 February 2012, at about 5.47pm, the first accused gave a luggage bag (“the luggage bag”) containing the methamphetamine to the second accused, Komal Rihan Nand Kumar (“the second accused”), in Room 315 of the Golden Royal Hotel, 51 Desker Road, Singapore.

2 The second accused is a 32-year-old Malaysian national. She claimed trial to a charge of attempting to export the methamphetamine from Singapore, without any authorisation, an offence under ss 7 and 12 of the MDA. The charge averred that on 21 February 2012, at about 7.10pm, the second accused attempted to export the luggage bag containing the methamphetamine from Singapore via the Woodlands Checkpoint.

3 At the conclusion of the joint trial, I convicted the first and second accused persons of the respective charge against each of them. Further, I found that each of them had satisfied the requirements under s 33B(2) of the MDA. Instead of the death penalty provided for under s 33(1), pursuant to s 33B(1)(a) of the MDA, I imposed a sentence of life imprisonment on each of them, to commence on 23 February 2012 which is the date they were first charged in court. These are the reasons for my decision.

The prosecution’s case

Trafficking by the first accused

4 I begin with the evidence led by the prosecution, which was largely undisputed. On 20 February 2012, the first accused arrived at Changi Airport, Singapore, with the luggage bag which was an ordinary-looking black trolley suitcase. The first accused brought it to Singapore from the Republic of

Niger ("Niger"), after travelling via Morocco and Doha, Qatar. Upon her arrival in Singapore, she checked into Room 315 of the Golden Royal Hotel.

5 As captured on closed circuit television footages obtained from the Golden Royal Hotel, on 21 February 2012, around 5.40pm, the second accused met the first accused at the lobby area of the hotel. The second accused was carrying her baby daughter ("the baby") in her arms. They proceeded to take the lift to Room 315. At about 5.47pm, the parties left Room 315, with the second accused pulling the luggage bag towards the lift. When they emerged from the lift at the lobby area, the first accused pulled the luggage bag out of the lift, and passed it to the second accused.

Attempt to export by the second accused

6 Thereafter, the second accused left the Golden Royal Hotel with the luggage bag. She proceeded to the taxi stand at Queen Street, so as to queue for a Malaysia-registered taxi to go to Malaysia. At about 6pm, she boarded a taxi driven by Abu Talip bin A Latip ("Mr Abu Talip"), sharing the ride with two other female Chinese passengers who were also waiting in the queue. Before departing, Mr Abu Talip helped her put the luggage bag in the boot of his taxi as she was carrying the baby.

7 From Queen Street, Mr Abu Talip drove the taxi to the Woodlands Checkpoint. At about 7.10pm, the taxi was stopped for checks at the Woodlands Checkpoint. A party of officers from the Central Narcotics Bureau ("CNB") questioned Mr Abu Talip and his passengers. The second accused informed Woman Sergeant Palan Hemmamalani ("W/Sgt Hemma") and Staff Sergeant Abdul Hafiz bin Roslan ("SSgt Hafiz") that she had a luggage bag in the boot of the taxi.

8 The taxi was diverted to a garage for further checks. W/Sgt Hemma instructed the second accused to retrieve the luggage bag from the boot, and she started to search the luggage bag. The second accused became hysterical. She started to cry aloud, saying that the luggage bag did not belong to her. She also protested that whatever was in the luggage bag was not hers.

9 As she was observed to be unsteady on her feet, the second accused was asked to sit on a chair with the baby. Then, she started to have breathing difficulties. W/Sgt Hemma took the baby from the second accused, and handed the baby to another officer. As the second accused attempted to bite her tongue, W/Sgt Hemma and another female officer tried to calm her down.

Arrest of the two accused persons

10 Meanwhile, SSgt Hafiz continued with the search of the luggage bag. At about 7.45pm, SSgt Hafiz slit open one side of the luggage bag, and uncovered some white crystalline substance believed to be a controlled drug. The second accused was placed under arrest.

11 That same night, another party of CNB officers conducted a search in the vicinity of the Golden Royal Hotel for the first accused. At about 10.50pm, the CNB officers spotted the first accused and arrested her.

Recovery and analysis of the methamphetamine

12 In the main compartment of the luggage bag, there were 11 sets of African attire of different colours and styles for women ("the clothes"). On 22 February 2012, at about 2am, under the instructions of the then investigating officer, Assistant Superintendent Nathaniel Sim Junqing ("ASP Sim"), Staff Sergeant Matthew Tan Chun Kiat ("SSgt Tan") cut out the two sides of the luggage bag.

From one side, two hidden pieces of boards labelled "A1A" were uncovered, with white crystalline substance sandwiched in between. From the other side of the luggage bag, another two hidden pieces of boards labelled "A1B", which concealed white crystalline substance in between, were uncovered.

13 SSgt Tan poured out the crystalline substance from the pieces of boards "A1A" and "A1B" into two plastic bags which were then sealed, and marked as "A1A-D" and "A1B-D". He sent them to the Illicit Drugs Laboratory of the Health Sciences Authority ("HSA") for analysis. Meanwhile, ASP Sim sent the pieces of boards "A1A" and "A1B" to the DNA Profiling Laboratory of the HSA for DNA analysis by Christopher Syn Kiu Choong ("Mr Syn"). There was still some crystalline substance adhering to the inner surfaces of "A1A" and "A1B". After Mr Syn completed his examination, he collected the remaining crystalline substance on "A1A" and "A1B", and packed them into two plastic bags which were sealed. He marked the two plastic bags as "A1A-E2" and "A1B-E3" and sent them to the Illicit Drugs Laboratory for analysis. Upon analysis by Yu Lijie of the Illicit Drugs Laboratory, the four bags were found to contain 2,381.29g of crystalline substance with not less than 1,871.6g of methamphetamine.

Statements by the first accused

14 The prosecution relied on five statements made by the first accused including the statement recorded pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") on 22 February 2012 ("the cautioned statement, Exh P47"); a statement recorded pursuant to s 22 of the CPC on 25 February 2012 ("the second long statement, Exh P50"); and another statement recorded pursuant to s 22 of the CPC on 28 February 2012 ("the third long statement, Exh 51").

15 The first accused did not challenge the voluntariness of the statements. However, she disputed the accuracy of a few matters. In due course, I shall deal with the contents of the statements in more detail. For now, it suffices to say that in the statements, the first accused explained how she came to be in possession of the luggage bag, brought it to Singapore, and handed it to the second accused. Crucially, she stated that she thought the luggage bag contained only the clothes.

Statements by the second accused

16 Eight statements of the second accused were adduced by the prosecution including the statement recorded pursuant to s 23 of the CPC on 25 February 2012 ("the cautioned statement, Exh P49"); three statements recorded pursuant to s 22 of the CPC on 28 February 2012 ("the first long statement, Exh P52"), 29 February 2012 ("the second long statement, Exh P53") and 19 December 2012 ("the third long statement, Exh P54"); and her accounts given to the Institute of Mental Health ("IMH"), as contained in the IMH reports dated 29 March 2012 and 26 June 2013 ("the two IMH reports").

17 The second accused did not challenge the voluntariness of the eight statements. In the statements, the second accused sought to deny that the luggage bag was in her possession. She came to Singapore to collect clothes which she had agreed to purchase from the first accused. At the Golden Royal Hotel, she did not take the luggage bag as she was worried about its contents. In the course of the different statements, she gave different accounts of how the first accused put the luggage bag in the boot of the taxi. In any case, the second accused thought the luggage bag contained clothes. I shall return to the contents of the statements shortly.

Close of the prosecution's case

18 At the close of the prosecution's case, there was evidence to show that on 21 February 2012, the first accused gave the luggage bag to the second accused, and the latter took it with her to the Woodlands Checkpoint. As the two accused persons were in actual possession of the luggage bag containing the methamphetamine, under s 18(1) of the MDA, they were presumed to be in possession of the methamphetamine contained in the luggage bag. In turn, under s 18(2) of the MDA, both the accused persons were presumed to have known the nature of the drugs contained in the bag. As such, I was satisfied that the prosecution has made out a *prima facie* case on the respective charge against the first accused and the second accused. I called for the defence.

The first accused's defence

19 The first accused elected to give evidence, and I set out the main aspects of her evidence-in-chief. Married with three children, the first accused used to live in Kumasi, Ghana. She sold clothes for a living, but her business was not doing well. Prior to her arrest, she met a friend named Nana, who offered to introduce her to someone named Young, who could finance her in her business provided that she carried out a trip for Young.

20 On 14 February 2012, the first accused left Kumasi, Ghana for Niger travelling by bus through Burkina Faso. It was a two day journey. When she arrived at the Niger bus terminal on 16 February 2012, she was met by Young and Nana. Young brought her to his house, where she stayed for one night. Young took away her passport.

21 The next day, Young brought the luggage bag to the house, and told her to pack her own clothes in the luggage bag. She did so. After that, Young told the first accused to take a rest as she would be travelling that night. He carried the luggage bag with him, and placed it in the boot of his car.

22 That evening, Young came back to the house to fetch the first accused to the airport. At the airport, Young checked in the luggage bag. He handed her the passport, and also gave her the flight tickets, some receipts and US\$3,000 in cash.

23 When she arrived in Singapore on 20 February 2012, she boarded a taxi, and went to the Golden Royal Hotel. In Room 315, she opened the luggage bag to take her own clothes out. She saw the clothes in the luggage bag. However, she was not sure what else was inside the luggage bag. She informed Young of the hotel that she was staying in. In turn, he informed her that someone would come to collect the luggage bag from her.

24 On 21 February 2012, the first accused called Young again to ask about the arrangements. He told her someone wearing a green T-shirt and carrying a baby would collect the luggage bag from her at the hotel. She informed Young what she was wearing that day. Young instructed her to call him before handing over the luggage bag to the person.

25 Sometime in the evening, as the first accused was waiting in the lobby, the second accused arrived, and called out "Fauziya from Africa". Both of them went into the lift, so as to go up to Room 315. In Room 315, the first accused called Young. At Young's request, the first accused passed the phone to the second accused. After they had spoken, the second accused passed the phone back to the first accused. Young confirmed that the luggage bag was to be given to the second accused. The second accused then took the luggage bag. Both the accused persons took the lift down to the lobby. The second accused left with the luggage bag, and the first accused went back to her room.

26 Later that night, she was arrested. Consistent with the position in her statements, the first

accused's defence was that she thought the luggage bag contained only the clothes.

The second accused's defence

27 Electing to give evidence, the second accused gave this account in her evidence-in-chief. A kindergarten teacher, she is married to one Emman Bishop Engkuww, a Nigerian national. He played football with a Malaysian club. At the time of her arrest, their baby was barely seven months old. After her arrest, her husband could not be located. The baby has been placed in a children's home.

28 The second accused said that her husband asked for her help to go to Singapore with the baby, to collect a luggage bag and to bring it to Malaysia on behalf of one of his male friends. She had to make the trip as she was the only one with a passport. Her husband assured her that there would only be clothes in the luggage bag.

29 On 21 February 2012, the second accused left Kuala Lumpur in the morning, and took a bus to Singapore. When she arrived, her husband told her via text messages that she was to collect the luggage bag from the first accused at the Golden Royal Hotel.

30 When she arrived at the Golden Royal Hotel, the first accused looked at her as if she knew her. Subsequently, they entered the lift, and went into Room 315. Someone called the first accused on the telephone. The first accused passed the telephone to the second accused to speak to Young. Young told the second accused to take the luggage bag and pass it to someone in Malaysia. She asked Young what was inside the luggage bag, and he told her there were clothes.

31 After that, the second accused saw the first accused open the luggage bag, take out all her clothes from the luggage bag and then close it. The first accused told the second accused that there were only clothes in the luggage bag. The second accused did not look into the luggage bag.

32 Subsequently, the second accused left the Golden Royal Hotel, and took a taxi to Queen Street. She boarded the taxi driven by Mr Abu Talip, together with the baby. Mr Abu Talip helped her put the luggage bag into the boot of the taxi.

33 When the taxi was stopped at Woodlands Checkpoint, she saw SSgt Hafiz search the luggage bag, and take out all the clothes. It was the first time she saw the clothes. When SSgt Hafiz cut one side of the luggage bag, she saw some white crystalline substance coming out of the luggage bag. She then realised there was illegal substance in the luggage bag.

34 The second accused admitted that substantial portions of her statements concerning the role of the first accused were not true. She made up the contents to protect her husband. She did not inform anyone of her husband's involvement.

35 The second accused also gave evidence about a trip she made to Cambodia on or around 1 February 2012, she made a trip to Cambodia. She did so as instructed by her husband to collect a sports bag from a Thai lady. From Cambodia, she sent an text message to her husband which stated:

Babe the thing is coming out pls help me im scard here

She was afraid when she noticed a "white powder" coming out of the side of the sports bag. Although she did not know what the "white powder" was, she thought it was harmful and could be heroin. She thought her life and that of the baby had been put at risk. The sports bag was meant to be collected by her husband's "brother", who did not turn up. She returned to Malaysia without the sports bag, as

the sports bag was taken away by the Thai lady.

36 Upon her return to Malaysia, the second accused quarrelled with her husband. She felt that her husband was “play[ing] with [her] life”. She told him about the “white powder” in the sports bag, and asked whether it was illegal. However, he assured her that there were only clothes in the sports bag, and there was nothing to be afraid of.

37 The second accused made a trip to Singapore on 11 February 2012. She said that the purpose was to meet a lady who wanted to stay with her.

38 It was the second accused’s position that notwithstanding her previous experience in Cambodia, she agreed to travel to Singapore on 21 February 2012 to help her husband collect the luggage bag because she thought that the luggage bag contained only clothes. She trusted her husband. They had been married for three years by then and she did not have anyone else she could rely on.

The law

39 The charge against the first accused was under s 5(1)(a) of the MDA which reads:

Trafficking in controlled drugs

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug; ...

By s 2 of the MDA, “traffic” means to “sell, *give*, administer, transport, send, deliver or distribute”, or offer to do any of the above.

40 The charge against the second accused was one under s 7 read with s 12 of the MDA which provide as follows:

Import and export of controlled drugs

7. Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

Abetments and attempts punishable as offences

12. Any person who abets the commission of or who attempts to commit or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

While “export” is not defined in the MDA, it is defined in s 2(1) of the Interpretation Act (Cap 1, 1985 Rev Ed) to mean “to *take* or cause to be taken out of Singapore by land, sea or air”, and I adopted the meaning accordingly.

41 Essentially, the first accused admitted that she *gave* the luggage bag with the methamphetamine to the second accused, constituting the *actus reus* of the charge against her. The second accused conceded that she attempted to *take* the luggage bag with the methamphetamine from Singapore to Malaysia, constituting the *actus reus* of the charge against her. However, they

denied any knowledge of the methamphetamine.

42 In this regard, s 18 of the MDA states:

Presumption of possession and knowledge of controlled drugs

18. —(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

...

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

43 As set out in [18] above, both the accused persons did not dispute physical possession of the luggage bag, triggering the presumption that they were in possession of the methamphetamine contained in the luggage bag under s 18(1) of the MDA. In turn, they were presumed to have knowledge of the nature of the drugs in their possession under s 18(2) of the MDA.

44 In order to rebut the presumption of knowledge, each of the accused persons had to show on a balance of probabilities that she did not know the nature of the controlled drug referred to in the respective charge or could not reasonably be expected to have known the nature of the controlled drug: see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [75], where the Court of Appeal endorsed its earlier decision in *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903. The Court of Appeal continued, at [75], to explain that an accused is not able to rebut the presumption “by a mere assertion of his lack of knowledge had he been wilfully blind as to the nature of the drugs”. In *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156, the Court of Appeal stated at [30]:

Wilful blindness is not negligence or an inadvertent failure to make inquiries. It refers to the blindness of a person to facts, which, in the relevant context, he *deliberately refuses* to inquire into. Such failure to inquire may sustain an inference of knowledge of the actual or likely existence of the relevant drug. [emphasis in original]

Closing submissions

45 The law, as set out above, is well settled. The sole issue before me was whether the presumption of knowledge had been rebutted. According to the prosecution, the first and second accused persons had failed to do so. For the first accused, there were many suspicious circumstances surrounding the delivery of the luggage bag to the second accused, and the first accused deliberately closed her eyes to them. She was evasive in court in key aspects, including the sum of US\$3,000 given to her. As for the second accused, it was submitted that she was not a credible witness. Again, there were many suspicious circumstances surrounding her trip to take the luggage bag back to Malaysia with her, and the second accused deliberately closed her eyes to them. Also, it was telling that she was hysterical even before the methamphetamine was recovered.

46 Defence counsel for the first accused submitted that there was nothing suspicious about the

circumstances surrounding the delivery of the luggage bag. There was no real opportunity for the first accused to search the luggage bag. In any case, the methamphetamine was well hidden, and it was difficult even for the CNB officers to retrieve the drugs. He submitted that therefore, the first accused had rebutted the presumption of knowledge.

47 For the second accused, her defence counsel submitted that her extreme reaction at Woodlands Checkpoint was brought about by the stressful situation she found herself in. Her conduct during the Cambodia trip showed that she refused to have anything to do with anything illicit. The reason why the second accused gave the false statements was to protect her husband. She trusted the husband, as he was the father of the baby. Gullible and naïve, she was obedient to him. She accepted his assurances, and did not check on the luggage bag. It was also submitted that she had rebutted the presumption of knowledge.

Findings in respect of the first accused

Journey from Ghana to Niger

48 With that, I turn to evaluate the evidence, beginning with the first accused's evidence why she made the trip from Kumasi, Ghana to Niger. In her evidence-in-chief, the first accused stated that she was informed by Nana that someone was willing to finance her in her business if she were to carry out a trip for him. Nana did not tell her how much she would be paid, where she would be travelling to, or what kind of business her friend was doing. It was highly unusual that for a mere delivery, a stranger would be prepared to finance the first accused for her business. With the limited information, and without attempting to find out more, the first accused claimed she made the two day journey. Such evidence was troubling.

49 In cross-examination, the first accused continued to deny that Nana told her how much she was going to earn. This directly contradicted paragraph 8 of the second long statement, Exh P50, where the first accused stated:

... About a week before 14th February, Nana told me that there was a man who would give me \$3000 US dollars to travel with a luggage bag. As this is a large amount of money, I decided to take up the offer. ...

To my mind, this was a material inconsistency. As will be discussed at [57] to [62] below, the first accused was very evasive as to whether the sum of US\$3,000 seized from her was meant to be her payment. What was contained in paragraph 8 of the second long statement, Exh P50, appeared to be the real reason why the first accused embarked on the journey.

50 In cross-examination, the first accused then claimed that Nana told her that Young would give her some clothes to travel with, and that the clothes are to be sold at the place where she would deliver them. This was not previously mentioned by the first accused in any of the five statements adduced or in her evidence-in-chief. In my view, this was an afterthought to shore up the defence that she thought she was delivering clothes.

Dealings with Young and others in Niger

51 I move on to her dealings with Young. In her evidence-in-chief, the first accused said that upon meeting Young, the first accused did not ask Young for details of the trip. Again, she did not ask where she was going, how much she would be paid, and what she would be delivering. That night, there were other persons who stayed over at Young's house. Apart from Nana, there were two

women named "Rita" and "Comfort", and Young's brother named "Obina". The first accused took photographs with them, and the photographs showed other luggage bags in the house. However, she did not ask them about Young or the trip. In fact, Young told her she was travelling to Singapore only on the day they went to the airport.

52 Given these unusual circumstances including those set out at [48] above, the first accused's complete lack of curiosity and interest about the trip was surprising, and suggested she knew more about the trip than she claimed. What was contained in paragraph 8 of the second long statement, Exh P50, appeared to be the truth, which is that she was interested in making US\$3,000 from the trip.

Handling of the luggage bag

53 Next, in terms of the handling of the luggage bag, there were various significant inconsistencies. In her evidence-in-chief, the first accused stated that when Young brought the luggage bag into the house, he asked her to pack her clothes on top of what was already in the bag. She did so.

54 In cross-examination, she shifted her position, and stated that Young packed her clothes into the luggage bag. She then said that she did not look at the items in the luggage bag before or after her clothes were put in. She did not ask Young whether she could check the luggage bag herself. She first saw the contents of the luggage bag in Room 315 when she was unpacking her clothes from the luggage bag. However, she did not touch or go through the contents. When she handed over the luggage bag to the second accused, they did not open the luggage bag to verify the clothes in it.

55 In contrast, in the cautioned statement, Exh P47, she mentioned:

... This person in Niger's condition was that I must delive[r] the luggage to Singapore. I inspected the luggage and only found it to contain clothing. ...

Then, in her second long statement, Exh P50, she said at [11]

... I woke up in the morning and found that Nana had left. Young told me she was travelling. Young gave me a luggage bag with clothes inside, and ... I checked through the bag and saw only traditional clothing inside. ...

56 It was clear to me that the first accused vacillated between adopting the position that she had checked the luggage bag and saying that she had not, as she was not certain which would be more advantageous for her defence. Taken together with her strong denial that she knew the true worth of US\$3,000, and that the clothes were worth only about US\$100, discussed below at [60], I was of the view that she was trying to avoid having to explain why upon seeing the clothes, she did not query why she should be paid such a large sum for the delivery of 11 sets of African wear for women. Further, given that this was supposedly a normal delivery of the clothes, it was baffling that parties did not seek to ascertain the goods being handed over.

Money matters

57 The first accused's evidence regarding the US\$3,000 was also inconsistent, unsatisfactory and illogical. First, as stated at [49], her evidence that she did not know how much she was going to be paid directly contradicted paragraph 8 of the second long statement, Exh P50.

58 Secondly, in cross-examination, she said that when she was given the sum of US\$3,000 at the

airport by Young, she did not know what the sum was for, and whether it would be enough for to stay in Singapore for seven to eight days as planned. Young only told her that she could make purchases with the money, and that she could earn profits after reselling the items back home. She did not know if the money was meant to be given to her or for her to buy items to resell. In my view, it did not make any sense for the first accused to commence the trip to deliver the luggage bag without knowing what sum she would be paid and without knowing whether the cash given to her was enough to last the stay in Singapore.

59 Next, in cross-examination, when asked how much she thought the clothes in the luggage bag would be worth, the first accused said she could not tell. She agreed though that she would see such clothes in the market or shopping areas in Ghana. It was pointed out that at paragraph 12 of the second long statement, Exh P50, she said:

The clothes in the bag are worth about 1.5 million cedis, which I think is worth about \$100 US dollars. ...

She explained that she told ASP Sim that she did not know, and could not guess the value of the clothes in the luggage bag. However, the interpreter, one Bill Yeboah Kyeremeh ("Bill") pressured her to give a figure. This was flatly denied by Bill.

60 Further, the first accused stated that she did not know how much US\$3,000 was actually worth. However, when informed that US\$3,000 was the equivalent of "98 million old Cedis", she conceded that it was a large sum of money. Her earnings from selling clothes were approximately 600,000 to 700,000 old Cedis (or approximately US\$18 to US\$20).

61 In this regard, I note that the first accused was not unfamiliar with transactions in US dollars. At paragraphs 41 to 43 of the third long statement, Exh P51, it was recorded that the first accused was shown three Western Union money transfer receipts dated 23 December 2011, the first two for US\$1,000 and the third for US\$3,000. In the first and third receipts, the first accused was listed as the recipient. She claimed that she received the monies on behalf of her mother, who was a businesswoman. As for the second receipt, the first accused was listed as the sender, and she claimed that she was acting on her mother's instructions to send the money to her sister.

62 It appeared obvious to me that the first accused was trying to feign ignorance of the value of the US dollar, the worth of the clothes and the amount she would be paid. She was being evasive so that she would not be asked why she was being paid such a substantial sum for the mere delivery of the clothes. I accepted the evidence of Bill that the words in paragraph 12 of the second long statement, Exh P50, came from the first accused.

Conclusion

63 On key aspects of her defence, the first accused had been inconsistent in her evidence in court. There were also material discrepancies between her evidence in court and the contents of the statements. It was evident that she was not forthright about what she knew of the trip. I found that the first accused knew that she was to be paid US\$3,000 by Young to make the delivery, and knew the value of US\$3,000. It was highly suspicious that she should be asked to deliver merely clothes, particularly the 11 sets of African attire in the luggage bag, for such a large sum of money by a stranger. Despite the suspicious circumstances surrounding the trip, the first accused did not ask Young, Nana or any others in the house for more information. She also did not try to search or inspect the luggage bag. It seemed to me that the first accused deliberately failed to inquire, and shut her eyes to the obvious, which was that she was delivering more than just the clothes. She had

not shown on a balance of probabilities that she did not know, or could not reasonably be expected to have known, the nature of the methamphetamine. She failed to rebut the presumption within s 18(2) of the MDA.

Findings in respect of the second accused

Trip to Singapore

64 Turning to the second accused, in her evidence-in-chief, she claimed that the luggage bag was intended for her husband's friend. In cross-examination, she changed her evidence and stated that it was for her "husband's brother". Upon being pressed further on this issue, she reverted to saying that it was for her husband's friend and explained that he has the same name as her "husband's brother". Significantly, none of the eight statements mentioned that the luggage bag was for her husband, his friend or brother. While she explained that she did not wish to implicate her husband, she could not provide any reason why she did not mention the husband's brother or his friend. She agreed that she had no reason to protect her husband's friend.

65 Secondly, the second accused said that she made the trip to Singapore, instead of her husband or his friend because she was the one with a passport. She then explained at length what happened when the husband misplaced his passport. For a while, the husband only had a "paper" document of some sort. However, she then agreed that by 21 February 2012, her husband had received a new Nigerian passport to replace the one he misplaced, completely undermining the reason she gave for having to travel on behalf of her husband.

66 Both in evidence-in-chief and in cross-examination, the second accused said that on 21 February 2012, before leaving her house, her husband asked her where she was going. She answered that she was going to Singapore. This was somewhat illogical, given that it was also her evidence that her husband was the one who had instructed her to go to Singapore on 21 February 2012. Taken together, the second accused's evidence that she came to Singapore on behalf of the husband was extremely unsatisfactory.

Handling of the luggage bag

67 I move on to the handling of the luggage bag. Initially, in evidence-in-chief, the second accused stated that she saw the first accused open the luggage bag, remove her clothes from the luggage bag before closing it. However, in cross-examination by defence counsel for the first accused, she changed her evidence to say that the first accused had already removed her clothes from the luggage bag. Thereafter, she wavered between saying that the first accused had opened the luggage bag to show her the clothes inside and that the first accused had not opened the luggage bag but told her it was clothes inside. Subsequently, in cross-examination by the prosecution, she stated that the luggage bag was closed at all times in Room 315. The first time she saw the clothes was at Woodlands Checkpoint.

68 These material inconsistencies demonstrated that the second accused was not a candid witness. She shifted her position to disassociate herself with the contents in the luggage bag, but was simply unclear which position would be better for her defence. However, what was telling was that she did not bother to check the contents of the luggage bag herself.

Trust in her husband and assurances by Young and the first accused

69 The second accused explained that she trusted her husband, and believed him when he said

that the luggage bag contained clothes. Young and the first accused also informed her that the luggage bag contained clothes.

70 However, in her evidence-in-chief, the second accused described her harrowing trip to Cambodia on 1 February 2012 to collect a bag for her husband. She admitted that she feared for her life because she thought she was involved with illegal drugs. For the Cambodian trip, the husband also used the excuse that there were only clothes in the sports bag, which was the same reason he gave to ask her to make the trip to Singapore on 21 February 2012.

71 As for the trip to Singapore on 11 February 2012, in her evidence-in-chief, she said it had nothing to do with collecting anything for her husband. However, in cross-examination, she said that on her husband's instructions, she went to Mustafa Centre, Singapore, to meet an unknown person who was supposed to pass a bag to her. She was afraid during this trip. However, no one turned up. Again, she felt her husband had "played with [her] life".

72 Relying on ss 14 and 15 of the Evidence Act (Cap 97, 1997 Rev Ed), the prosecution submitted that the evidence in relation to the previous trips is relevant to show the second accused's state of mind at the material time. There was no objection by defence counsel. In my view, after these experiences, there seemed to be no reasonable basis for her blind trust in her husband. As for the assurances given by Young over the telephone that the luggage bag contained clothes, the second accused admitted that she did not know Young, and had no reason to trust Young. Similarly, given that she did not know the first accused, I did not see why she would rely on any assurances given by the first accused.

Behaviour at the Woodlands Checkpoint

73 Turning to her behaviour at the Woodlands Checkpoint, the second accused explained that she was scared at the time because "[s]he was not ready to face this thing". From the second accused's extreme reaction at the Woodlands Checkpoint, I was persuaded that she was fearful because she knew that she was carrying something other than clothes.

Contents of statements

74 It was also quite evident that the second accused had not been truthful in the statements. The second accused admitted that these portions were false:

(a) Her assertion that prior to 21 February 2012, she had met the first accused in Kuala Lumpur, and that she had come to Singapore to collect the clothes that she had agreed to purchase from the first accused. Such contents were found in paragraphs 4 to 6 of the first long statement, Exh P52, and the two IMH reports. In actual fact, they had never met until 21 February 2012 at the Golden Royal Hotel.

(b) Her assertion that on 21 February 2012, the first accused had opened the luggage bag in the lobby, and touched the sides of the luggage bag. The second accused told her "Don't play with me, I have a daughter with me." The second accused then left the hotel without taking the luggage bag. She did not go to the room (see paragraph 8 of the first long statement, Exh P52). The above was not true.

(c) Her assertion that, continuing from (b) above, the second accused proceeded to Queen Street without the luggage bag. While talking to the two Chinese passengers in the taxi, she saw the first accused appear with the luggage bag. A mentally disabled boy pulled the luggage bag to

the boot of the taxi (paragraph 9 of the second long statement, Exh P53). She did not think too much about it, and boarded the taxi. The first accused was in another taxi which was behind her taxi. The first accused ran out of her taxi just before reaching the Woodlands Checkpoint. The second accused was surprised to see the luggage bag in the taxi (see paragraphs 10 to 12 of the second long statement, Exh P53). All the above was not true.

(d) In another variation, the second accused said that the first accused had boarded the taxi with her, with the luggage bag, and had run away as they were reaching the Woodlands Checkpoint (last paragraph of the cautioned statement, Exh P49). Again, this was contrary to what was established in court.

75 The second accused explained that she made the false statements to protect her husband and because she was afraid. She did not mean to incriminate the first accused. As discussed at [64] above, even if her explanation were to be accepted, there was no reason for her not to mention her husband's friend or his brother.

76 The second accused maintained that what she told ASP Sim in her third long statement, Exh P54, was true. She stated as follows:

... In court, around October, I heard Fauziya say that she knew that there [sic] drugs inside the luggage bag, and that her friend gave her the bag with the drugs inside. Fauziya was talking to the other prisoners in the court at that time and I heard her saying all this. ...

In cross-examination, the second accused then added that she heard only parts of the conversation, but a friend known as "Sayeedah" also told her about this. She did not tell ASP Sim about "Sayeedah". As the statement was recorded on 19 December 2012, she was asked about the two month delay before informing ASP Sim what she knew. She explained that she took some time to find out if what the first accused said was really true. The first accused flatly denied what the second accused said. Given the second accused's attempts to incriminate the first accused in her statements, and her embellishments of what purportedly happened in the lock-up, I rejected her account.

Conclusion

77 On material aspects, the second accused had been inconsistent in her evidence in court. She also blatantly lied in her statements. Her explanation that she did so to protect her husband cannot be believed. When cornered to explain the difficulties with her evidence in court, she was quick to change her stance. She was not a credible witness. The circumstances surrounding the collection of the luggage bag were suspicious. Her husband had a passport, and there was no convincing reason why she had to be the one travelling to Singapore to pick up a bag of clothes for his friend. She did not inquire further from her husband, or check the luggage bag. Given the previous trips, she had no reasonable basis to trust her husband that the luggage bag contained only clothes. She had no reason to rely on assurances by Young or the first accused. By deliberately failing to inquire, she had not shown, on a balance of probabilities, that she did not know, or could not reasonably be expected to have known, the nature of the methamphetamine. She had not rebutted the presumption within s 18(2) of the MDA.

Conviction and sentence

78 I found that the prosecution had proved beyond reasonable doubt the charge against the first accused and that against the second accused, and convicted them accordingly.

79 Pursuant to s 33B(2)(b) of the MDA, the Public Prosecutor certified that the two accused persons have substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore. I also found, on a balance of probabilities, that the two accused persons were mere couriers in that their respective involvement in the offences was restricted to transporting and delivering the drugs within s 33B(2)(a) of the MDA.

80 Having satisfied both limbs of s 33B(2) of the MDA, the two accused persons could be sentenced under s 33B(1)(a) of the MDA which provides that the court may, instead of imposing the death penalty, sentence an accused to imprisonment for life and, if the accused is sentenced to life imprisonment, the court shall also sentence him to caning of not less than 15 strokes.

81 No submissions were made for the imposition of death penalty on the two accused persons. I imposed the sentences of imprisonment for life on the two accused persons, and ordered the sentences to commence on 23 February 2012, that being the date they were first produced in court. By s 325(1)(a) of the CPC, being women, the two accused persons were not liable to be punished with caning. Therefore, I did not impose any caning. By s 325(2) of the CPC, the court may, in lieu of caning, impose an imprisonment term of not more than 12 months. Given the life imprisonment terms, I did not do so.

82 On 30 March 2015, the two accused persons appealed against only the sentences, on the ground that the sentences are excessive. As explained, I have imposed the minimum punishment provided by the law. The life imprisonment terms have also been backdated to the date they were first produced in court.

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