

Public Prosecutor v Wilkinson a/l Primus
[2009] SGHC 289

Case Number : CC 42/2009
Decision Date : 29 December 2009
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Gillian Koh and John Lu ZhuoRen, DPPs for the prosecution; Shashi Nathan and Tania Chin (Harry Elias Partnership) and Jeeva Joethy (Joethy & Co) for the accused
Parties : Public Prosecutor — Wilkinson a/l Primus
Criminal Law – Statutory offences – Misuse of Drugs Act

29 December 2009

Tay Yong Kwang J:

Introduction

1 The accused, born on 27 March 1985, was tried and convicted on the following capital charge:

That you, Wilkinson A/L Primus, on the 3rd day of November 2008, at about 8.40pm, at the Motorcycle Arrival Lane, Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Cap 185, to wit, one packet of granular substance containing not less than 35.66 grams (nett) of diamorphine, without any authorization under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the Misuse of Drugs Act.

The prosecution's case

2 The prosecution's evidence relating to the arrest of the accused and the recovery of the drug in question was not materially disputed. The accused arrived at the Woodlands Checkpoint from Johor Baru at about 8.40pm on 3 November 2008. He was riding a motorcycle bearing Malaysian registration number JGS 5476. As his name was on the Central Narcotics Bureau ("CNB")'s list of persons under suspicion, his motorcycle's ignition key was seized by the immigration officer on duty. An officer from the Auxiliary Police Force then arrived to meet the accused. The officer took the accused's travel documents and the ignition key and escorted him to the office of the Immigration and Checkpoints Authority ("ICA") a short distance away, with the accused pushing his motorcycle along the way.

3 When they arrived at the office, the accused parked his motorcycle in one of the motorcycle lots outside and went into the office with the officer. The accused, his travel documents and the ignition key were handed over to the duty officer there. The duty officer then alerted the CNB office.

4 At about 8.55pm, SSG Syed Anis and CPL Muhamad Azmi of the CNB arrived at the ICA office. They went out to the motorcycle lots with the accused and conducted a search of the accused's motorcycle. A big red plastic bag, which was tied up, was found in the basket of the motorcycle located on the inside of the front panel, just in front of the rider's seat. The contents inside the big

red plastic bag were taken out and laid out on the ground. They included three packets of different types of bread and a plastic bottle of water. A smaller red plastic bag was also found inside the big red plastic bag. It was also tied up and contained some newspapers, inside which was a transparent plastic bag containing white granular substance ("the bundle").

5 When the CNB officers asked the accused in Malay what the bundle was, he replied in Malay that he did not know and that the bundle did not belong to him. Throughout this time, the accused behaved normally although he looked sad.

6 The accused was placed under arrest and escorted to the CNB office in Woodlands Checkpoint. The big red plastic bag and its contents ("the exhibits") were brought along while his motorcycle was left where it was parked. At the CNB office, the accused revealed that he had intended to deliver the bundle to a carpark near the McDonald's restaurant at Woodlands Centre Point shopping centre. As a result of this, a team of CNB officers was activated to go to the vicinity of the said restaurant to conduct observations. In the meantime, the accused's urine sample was taken (it was found to be negative for controlled drugs) and a statement was recorded from him between 11.15pm and 11.35pm. The admissibility of this statement was not challenged by the defence.

7 After the exhibits were securely locked up in a metal cabinet, the accused was brought by CNB officers to the vicinity of Woodlands Centre Point to try to arrest the intended recipient of the bundle. SGT Kannan was with the accused in a van. He spoke to the accused in Malay. The accused's mobile phone was placed on speakerphone mode to allow SGT Kannan to hear what was being said over the phone. The accused was told to make a call to the intended recipient of the bundle. The accused called and told the person at the other end that he had arrived in Singapore and was waiting for instructions. The other person told the accused that he would call him later. When the call came, the accused was asked about his exact location. The accused replied that he was near Woodlands Centre Road.

8 After waiting for some time, SGT Kannan told the accused to call and tell the other person that it was getting late and that he could not wait any longer. When the accused did that, the other person told the accused to go back to Malaysia with the "barang" (Malay for "thing"). The accused was then instructed by the CNB officer to call the other person again and say that he would just place the "barang" somewhere in the vicinity and then return to Malaysia without it. When the accused did so, the other person replied that he would call him back. Another call came telling the accused to place the "barang" at the big tree near McDonald's carpark. SGT Kannan then went to place a mock bundle at the said location. He was holding the accused's mobile phone while doing this. As he was returning to the CNB van, the accused's mobile phone rang and the caller asked him whether he had delivered the item. The CNB officer replied "Yes, yes" and terminated the call.

9 At about 2.05am on 4 November 2008, the follow-up operation at the shopping centre was called off and the CNB team returned with the accused to the office at the Check Point. There, the bundle was weighed in the accused's presence. The accused was subsequently escorted to the CNB Headquarters ("CNB HQ") in town. His motorcycle was also brought there.

10 At the basement car park of the CNB HQ, the accused's motorcycle was searched in his presence. Nothing further was found thereon. The accused was then brought up to the office where the bundle was weighed in his presence. The exhibits were then kept in a safe. After his medical examination, a statement pursuant to s 122(6) of the Criminal Procedure Code ("CPC") (Cap 68) was recorded from him. This statement was also admitted into evidence without any dispute.

11 The white granular substance was subsequently sent to the Health Sciences Authority for

analysis. It was certified to contain not less than 35.66 of diamorphine.

12 In the course of investigations, seven other statements were recorded from the accused, making nine statements in all. All were admitted as evidence without contention. In the first of his statements, the accused said that he did not know what was in the bundle. He claimed that a male Chinese named Alan passed him the bundle in Johor Baru and asked him to deliver it to someone at Woodlands McDonald's restaurant in Singapore. Alan was someone he had met at a discotheque in Johor Baru. Alan told him that the bundle was not contraband or drugs. Once delivery was made, he was to call Alan for payment for his delivery service. As he trusted Alan and also needed money, he "did not think twice". In the second statement (made pursuant to s 122(6) CPC), the accused stated that he was not in a position to say anything. He had been working very hard for his mother's sake and did not know that he would be cheated in this way.

13 In his third statement, the accused was recorded as saying that he had been working as a lorry cleaner earning some RM1,100 to 1,200 each month. After taking care of all his expenses, he remitted some RM300 to his family in Penang. In his fourth statement, he confirmed that he was asked by the CNB officers repeatedly about the contents of the bundle and that he told them that he did not know.

14 In his fifth statement, the accused stated that his mother was ill and he had to borrow RM2,000 from a male Chinese. When he met the said male in Johor Baru, he was given a package that was wrapped up. He asked the man what it was and why it was packed in that way. The man told him it was medicine. The accused then asked the man whether the package contained cigarettes or drugs as he was aware of the laws of Singapore on such items. He was assured that it was medicine and not to worry about it. He trusted the man because the man trusted him and wanted to give him the money that he required.

15 In his sixth statement, the accused elaborated on his relationship with Alan. He was introduced to Alan or "boss" by a friend at the discotheque in March 2008. He met Alan again in May that year and obtained his mobile phone number. In end October 2008, he visited his mother in Penang and noticed that she had a leg infection. He wanted to send her for specialist treatment, estimating that he would probably require RM2,000 to pay for the treatment. He approached many people for a loan without any success. He then remembered Alan and called him but was not able to get through. On 2 November 2008, Alan called the accused and said that he had an important job for him. The accused informed Alan that he needed RM2,000 for his mother's treatment. Alan said that he trusted the accused and needed him to perform the job urgently, after which he would give the accused RM2,000. The accused informed his mother that he had arranged for the money needed for her treatment and that he would be returning to Penang to give it to her personally once he had the money.

16 The next statement concerned the events just before the accused entered Singapore in the evening of 3 November 2008. He had met Alan only twice before. He met Alan near a bank in Johor Baru this time. Alan asked him whether he had time to go to Singapore. He told Alan he could go but wanted to know the reason for doing so. Alan told him that he (Alan) had been sentenced to undergo imprisonment in Singapore before and was barred from re-entering the island. Alan took out the package in question. The package contained the bundle wrapped in newspapers but the accused could not see what was inside the newspapers. The accused took the package from Alan and asked him what he would do should he (the accused) decide to abscond with the money or whatever valuable items that were inside the package. He was trying to find out why Alan had passed him the package. Alan replied that he had made inquiries about the accused from the accused's friend and was told that the accused was a trustworthy person.

17 The accused went on to state that he asked his friend whether Alan was involved in any illegal activities as he was suspicious of Alan since Alan could not tell him outright about the further instructions that the accused would be receiving. He also asked Alan what was in the package and was told that it was nothing to worry about. They did not discuss the RM2,000 that the accused wanted to borrow from Alan.

18 After the accused parted with Alan that evening, he rode his motorcycle to a provision shop nearby and bought a loaf of bread, two kaya loaves, a plastic bottle of mineral water, a packet of cigarettes and a box of matches.

19 In the eighth statement, the accused explained that although he was suspicious of Alan, he was willing to trust him as Alan was willing to provide him the money for his mother's medical treatment. He thought of nothing else besides the money. Even though Alan refused to tell him what the contents of the package were and was unclear with the instructions on what to do with the package, he did not become suspicious of his motives. He "carried the package into Singapore without giving due regard to the consequences, because I just wanted to get the job done and collect the RM2,000 from Alan". Later, the accused corrected his earlier statement and stated that Alan did tell him that it was medicine that he was to bring into Singapore.

20 In the final statement, the accused explained his constant movements in and out of Singapore between June and October 2008. He said that he had a Malaysian girlfriend who was working in a 7-Eleven store in Tanjong Pagar in Singapore. He would meet her frequently in Woodlands. However, she passed away in September 2008 and he would only return to Singapore to spend a few hours in solitude at the places they used to visit together.

The case for the accused

21 The accused testified in his own defence. He elaborated on his relationship with Alan. His friend had told him that Alan was an illegal moneylender. He met Alan briefly only a few times and was proud to have a well-dressed friend like him. He would also call Alan "boss" as he had the habit of calling Chinese friends such. He intended to take the money as a loan from Alan and would repay him with interest as he was expecting some insurance payout.

22 On the evening of 3 November 2008, when Alan handed him the package, he asked Alan what it was and was told, "Ini ubat Cina" (Malay for "This is Chinese medicine"). Alan claimed that he had passport problems and therefore could not go to Singapore himself to deliver the package. Although there were various opportunities to do so, the accused did not check the package at anytime as he trusted Alan. Alan was willing to give him the money and not merely lend it to him for delivering the package.

23 The accused admitted that he had lied about having a girlfriend working in Singapore although he truly did have a girlfriend in Malaysia. He lied about her being the reason for his many visits to Singapore as he had been working illegally here since October 2008 and did not want to compound his existing problems (being investigated for importation of drugs) by disclosing his illegal work as well. He also did not wish to implicate his friend who had helped him to get the work.

24 Although he knew that the package contained Chinese medicine, he did not say so to the CNB officers because he was then hungry, confused and not in a proper state of mind at the time of his arrest. He added that he had eaten a bun with ikan bilis filling before crossing over from Johor Baru to Singapore.

The decision of the court

25 Section 7 of the Misuse of Drugs Act (“MDA”) states:

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

Section 2 of the Interpretation Act (Cap 1), which defines “import” as “to bring or cause to be brought into Singapore by land, sea or air”, applies to the MDA (*Tse Po Chung Nathan & Anor v PP* [1993] 1 SLR 961). Under s 18(2) of the MDA, the accused is presumed, until the contrary is proved, to know that the bundle in question contained diamorphine as he was in possession of the same at the material time.

26 The element of importing the drug in question is not disputed by the accused. What is in contention is his knowledge that he was importing a controlled drug.

27 Alan was not a long-time friend of the accused. His willingness to part with RM2,000 (whether by gift or loan) to a mere acquaintance for the simple act of bringing a small and light package of “medicine” across the Causeway would have caused any rational and law-abiding person to be highly suspicious about the contents of the package. The packaging was crude, consisting only of a plastic bag and newspapers. What was so special about the Chinese medicine that it had to be brought to Singapore instead of the recipient going over to Johor Baru to collect it? There were ample opportunities for the accused to take a peek into the red plastic bag which he could then easily re-tie without affecting the contents whatsoever. There was no instruction against unwrapping the package to take a look at its contents. There was no particular hurry in delivering the package to Singapore as shown by the accused’s stopping over at a provision shop to buy mundane items (see [\[18\]](#) above).

28 The fact that the accused chose to accept the package from Alan without once looking into the contents of the plastic bag is clear evidence that he either knew what was inside or that he chose not to know at all (see the exposition on wilful blindness by the Court of Appeal in *Tan Kiam Peng v PP* [2008] 1 SLR 1). After all, he was suspicious of Alan and was told about his imprisonment. There was absolutely no reason for the accused to believe Alan’s words without verification. The accused was neither naïve nor stupid. He had secondary school education and had worked in both Malaysia and Singapore. He was aware of the laws of Singapore regarding contraband goods and drugs.

29 Further, as acknowledged by the accused, the instructions regarding the recipient of the package were far from clear. The accused had to bring the bundle to Woodlands and then telephone Alan for further instructions. The fact that Alan could not inform the accused there and then the name and contact details of the intended recipient would most certainly put any person on alert that something was amiss about the package to be delivered and that the whole transaction was highly suspicious.

30 If the accused truly believed that the package contained nothing more than Chinese medicine, why did he not say so when he was asked repeatedly about it by the CNB officers? Instead, he consistently denied any knowledge about the contents. He could not have been so hungry that his mind was a complete blank throughout the questioning. After all, he did consume a bun (see [\[24\]](#) above) and had bread with him (see [\[18\]](#) above) which he could easily have taken a bite of along the way to the Causeway. If he was thirsty, he had a plastic bottle of mineral water with him. He also appeared calm and normal to the CNB officers. His deliberate lies about not knowing the contents of the package must have been uttered in the hope of dissociating himself from the bundle of drugs.

31 It is also noteworthy that the accused did not call the friend who was with him and Alan to testify about his lack of knowledge of the contents of the bundle or his belief in Alan's assurances relating thereto.

32 Clearly, the accused has not adduced any evidence capable of even remotely rebutting the presumption of knowledge (in s 18(2) MDA) against him.

33 I therefore found that the prosecution had proved the charge beyond reasonable doubt and I convicted the accused. The mandatory death sentence provided in the MDA was pronounced accordingly.

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