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PP v. SANTREN RAJOO
MAGISTRATE COURT, SUNGAI SIPUT
AHMAD SHAMIL AZAD ABDUL HAMID Mg
[NO KES 83-103-06-2013]
9 SEPTEMBER 2014

Counsel:

For the prosecution - Hafizah Zahidah Abdullah

For the accused - Ashween Kumar

MAHKAMAH MAJISTRET SUNGAI SIPUT (U)
DALAM NEGERI PERAK DARUL RIDZUAN, MALAYSIA
[NO KES 83-103-06-2013]
PUBLIC PROSECUTOR v. SANTREN RAJOO

PARTIES

PROSECUTION: PUAN HAFIZAH ZAHIDAH BT ABDULLAH

ACCUSED: EN ASHWEEN KUMAR

DECISION DATE: 16 JUNE 2014

GROUNDINGS OF JUDGMENT

This is the grounds of judgment for a sentence made by this court against, one Santren a/l Rajoo (hereby referred as 'the OKT'). The accused was charged under [section 6 of the Dangerous Drugs Act 1952](#), an offence punishable under [section 39A\(1\) of the same Act](#). The offence was for the possession of 29.37 grams of the substance known as cannabis.

After a lengthy trial, the OKT was convicted and was thus sentenced to 3 years imprisonment (commencing from the date of sentencing) and was also sentenced to 3 strokes of the whip. This is an appeal against the conviction and sentence provided by the court against the OKT for the said charge.

1. The Prosecution's Case

The learned DPP had called 7 witnesses to the stand in order to prove its case. For ease of reference, I shall list them in accordance to their roles.

- SP 1- Lance Corporal Mhd Shazni Bin Shamsuahir
- SP 2- Detective Sergeant Husainudin Bin Husain
- SP 3- Corporal Shafiza Binti Gulam Haidar
- SP 4- Corporal Musthapa Bin Sayed Ali
- SP 5- Detective Corporal Mohd Azmi Bin Amir Nordin
- SP 6- Sergeant Zainal Abidin Bin Jais
- SP 7- Pn Nurul Fadlina Binti Harun

The gist of the Prosecution's case is as follows.

On the 4th of June 2013 at about 7.30pm, **SP2** was carrying out a police operation called OPS Tapis. He was in charge of a team of police officers (which includes **SP 5**) and was patrolling an area known as Taman Jalong Bharu in Sungai Siput Utara. At that point in time, SP 2 had spotted a man riding a red EX-5 motorcycle with the plate number AEG2685 (**P7**). He found the rider to be suspicious and had observed the motorcycle for about 10 minutes.

He then ordered the rider to stop in front of a coffee shop called Weng Kee, introduced himself as a police officer and proceeded to perform a search on the rider. The rider of the motorcycle, **the OKT**, did not have any illicit substance on his body, and thus a search was performed on the motorcycle itself. SP 2 noted



to be Cannabis (P9A(s)) was found.

SP 2 had then seized the items, arrested the OKT, and brought the OKT with the seized items back to the Narcotics department office at IPD Sungai Siput. He also prepared a **search list (P4)** and a police report (**SSU Report 1669/13 - P5**). After the police report was made, SP 2 had handed over the seized items and the OKT to **SP 6**, the Investigating Officer. SP 6 had classified the investigation to be under [section 39A\(1\) of the Dangerous Drugs Act 1952](#).

On the 5th of June 2013, SP 6 had ordered **SP 1** (a police photographer) to take **photographs of the seized items (P2A-P2E)**. On the same day, at about 4.19 pm, SP6 had sent the seized P9A(1) and its contents, P9A(s) to the Ipoh's branch of Jabatan Kimia Malaysia and handed over the said items to **SP 7**, a **Chemist** who works at the said Department. SP7 had handed over a receipt (**P14**) to signify the acceptance of the items.

The next day, on the 6th of June 2013, SP 1 and SP 6 had gone to the crime scene and took 2 pictures of the said area (**P3G & P2H**). While at the crime scene, SP 6 also prepared the sketch plan (**P16**).

After receiving the P9A(1) and P9A(s) from SP 6, SP 7 had began performing the analysis of the substance on the **2nd of July 2014**. The first test performed by the Chemist was to obtain the net weight of the substance, minus the plastic packet. The next test was a physical examination in which SP7 found that the substance contained only 1 type of organic plant material and no other foreign material. SP 7 then ran the next test by putting the substance under a microscope, which resulted in her finding that the substance was of the cannabis genus with resin present. The final test performed on the substance was the Thin Layer Chromatography test which confirmed that the resin found inside the substance contained cannabinoids which are found in cannabis resins. This finding was all the proof SP 7 needed to confirm that the substance **contained cannabis weighing 29.37 grams**, as per her **Chemist Report (P15)**.

2. The Defense's Case

The OKT called upon 2 witnesses to state his case. The first being the OKT himself and the second is a person by the name of Janaraj a/l Loganathan.

The OKT's defendant had been been concentrated on two points. The OKT's first argument was that the **items seized from the bucket of his motorcycle were not properly documented** and that **some items were missing from the list of seized items**. Secondly, it is the OKT's version that he was actually sitting inside the coffee shop prior to his arrest and that he was only arrested as he was walking towards his motorcycle after he left the shop. The second point presumably was raised in an effort to **state that the illicit substance was placed inside his motorcycle by someone else**, as it was left unattended by the road side. Let us discuss the defendant sworn testimonies for further analysis.

The OKT stated during his testimony that he had gone to work that day and had left his motorcycle unattended multiple times during the day. At 6.40 pm, the OKT had completed his work and had gone to the coffee shop and parked his motorcycle in front of the said shop. He then proceeded to enter the shop and as he was entering the shop, he saw an acquaintance named Janagaraj (SD2) who was riding his motorcycle past the shop. He waved at SD 2 and proceeded to enter the shop. He sat down inside the shop, ordered a drink and spent about 10 minutes there. During that time, he could not see his motorcycle as his view was blocked.

As per the OKT's evidence, the police only approached him as he ventured close to his motorcycle and it was then that the police inspected his vehicle and found the drugs. The OKT stated that he was surprised to discover that there had been drugs in the bucket of his motorcycle, inferring that he did not have any knowledge of its existence. Also, the OKT noted that he had only frequented the coffee shop 3-4 times.

The second witness called by the defendant to the stand was on Mr Janagaraj a/l Loganathan (**SD2**). He is an acquaintance of the OKT and had known him for 3 to 4 years. On the date of the offence, at about 6.30 pm, as he was travelling home from work, he saw the OKT in front of the crime scene (coffee shop). Upon spotting the OKT, SD2 honked at him and waved. This happened at around 6.45 pm.

3. The Court's Finding - At The End Of The Prosecution's Case

After going through all the evidence brought forth before this court, I find that the witnesses brought by the prosecution were clear and concise in their evidence, and were credible witnesses. There was very little that was brought up to challenge the credibility of their evidence. SP 2 and SP 5 had clearly accounted the observation and arrest of the OKT. They have also established that the drugs were found inside the motorcycle belonging to the OKT (which is undenied by the OKT at any point).

Learned defense counsel tried to establish that the OKT had left his vehicle unattended in front of the coffee shop which allowed for a 'window of opportunity' for the drugs to be planted there, but such a notion was flat out denied by SP 2. Another notion that the police was actually chasing another man who dumped the said items inside the motorcycle while trying to escape from the police was also firmly rejected by SP



proximity to the OKT himself, it is my finding that the element of **possession under section 12(2) of the Dangerous Drugs Act 1952**, is hereby successfully proven at *prima facie* level by the prosecution. The presumption, under [section 37 of the same Act](#) states:

Section 37. Presumptions

In all proceedings under this Act or any regulation made thereunder-(d) any person who is found to have had in his custody or under his control anything whatsoever containing any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall, until the contrary is proved, be deemed to have known the nature of such drug;

Following the abovementioned legal provision, it can be safely presumed that the OKT had knowledge of the drugs. Also, the fact that the drugs were found in a plastic bag which was in close proximity to the OKT's personal effects, namely the rain coat, it can be safely interred that the OKT had the said drugs in his custody and under his control.

Finally, the drugs were brought before SP 7, who, with her expertise as a Chemist, had performed the analysis and found the drugs to indeed be cannabis, a drug that is listed in the [First Schedule of the Dangerous Drugs Act](#) and is thus deemed to be a dangerous drug. In conjunction with all the above findings, and since there had been no rebuttal evidence brought forth to prove that the OKT is a person that is authorized to handle the Dangerous Drug Cannabis, I had found that the prosecution had proven all the elements under [section 12\(2\) of the Dangerous Drugs Act](#) and thus had proven their case at a *prima facie* level.

I had thus called the OKT to enter his defence.

4. The Court's Finding - At The End Of The Defense's Case

At the end of the defense's case, it is my duty to consider the overall case and decide whether or not the Prosecution had proven its case beyond a reasonable doubt.

Looking at the evidence that the OKT had provided in his defense, I find that the integrity of the prosecutions case was not shaken. The doubts that the OKT had attempted to raise were insufficient for it to be called reasonable doubts.

During the prosecution's case, learned defense counsel had brought forth an argument that the items that were seized from the OKT's motorcycle was not properly documented and did not account for a few items. Some items were flat out denied to have existed by SP2. Other, he explained, was omitted from the search list as they were of no import to the case. Though I find this to be undesirable, I do not believe that the failure to include the rain coat, helmet and chain to be damning enough so as to cause the prosecution's case to fall altogether. It must also be noted that the OKT had never denied the existence of the drugs and the fact that it was found inside his motorcycle.

The defense's main argument was that the OKT was not stopped while he was riding the motorcycle, but instead was arrested as he was returning to the said vehicle, after leaving the coffee shop. This version was placed in order to support the idea that the items *could* have been placed in his motorcycle by some unknown person. It is to describe a window of opportunity for this to act to happen. The question that was not answered is why would such a thing happen. The OKT did not provide any testimony as to whether any party wanted to do him harm by executing such a risky manoeuvre. The assertion that the police was actually chasing somebody else who dumped the drugs inside the OKT's motorcycle is also unsupported and I find to be highly unbelievable. This is due to the simple fact that should the police be in hot pursuit, why would this 'culprit' not throw the drugs away but instead choose to take his time and carefully place it in a plastic bag inside the OKT's motorcycle along with his other personal effects? I do not deny that this still constitutes a doubt, but without any proof backing up the allegation, it remains as such, a mere doubt and not a reasonable doubt.

Also, when the time frame of both versions are compared, it can be clearly seen that both versions are speaking of two separate time frames. SP 2 and SP 5 states that the OKT was stopped, searched and arrested at 7.30 pm (7.40 pm, if one would consider the 10 minute observation period taken). The OKT's statement was that he was at the coffee shop at about 6.40 pm, stayed there for 10 minutes before he allegedly left and was arrested. This puts the time of arrest, based on the OKT's version, at 6.50 pm, a full 40 minutes difference from the police's version. It must be noted that the prosecution's version of events is backed by the existence of documentary evidence, such as the search list **P4** (which was signed by the OKT himself), and the police report **P5**.

It is as such that I find there to be no reasonable doubt created against the Prosecution's case, and that the Prosecution had successfully proven its case beyond reasonable doubt. It follows that I found the OKT



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During mitigation, learned Defense Counsel who had mitigated on behalf of the OKT had stated that OKT was a gardener by trade and is the sole-breadwinner for his family. He has 2 teenage daughters and a wife who is unemployed. Also, he is caring for his mother-in-law and a sister who is afflicted by diabetes. Learned counsel pleaded for a short imprisonment term as a lengthy one would cause great distress to the OKT's family.

The learned Deputy Public Prosecutor, in providing aggravating factors, informed the court that the OKT had a clean record. Despite that fact, the learned Deputy pushed for a heavy sentence as the offence committed by the OKT is a grave one, and one that provides for a mandatory imprisonment term, should the OKT be convicted. The learned Deputy also argued that the OKT had not shown any remorse as he had not pleaded guilty. With that, the learned deputy requested for a deterrent sentence to be meted out.

Sentencing

In considering the proper sentence to be handed by the court, I must take into mind the sentencing principles. The three foremost considerations are the OKT's **private interest**, the **public interest** and the **circumstances of the case**. Only upon balancing these three considerations can the court decide as to the right and fitting punishment to be levied on the OKT.

First, I shall consider the personal interest of the OKT. The OKT is a 49 year old male who is currently married and has children. He is gainfully employed and has multiple dependents whom he provides for with his income. Should a lengthy custodial sentence be passed by this court, those that depend on the OKT for a living would be bereft of a source of income and would have to fend for themselves during such a period.

The OKT is also a first offender as he has no recorded criminal convictions. The courts are usually much more lenient towards first time offenders and it has been deemed undesirable put such offenders behind bars. The courts would usually opt for a non-custodial sentence with a view to rehabilitate the said offender.

Another matter to be considered is that at a first glance, this offence is not a violent one and does not directly do anyone any harm. The lack of violence would usually account for a degree of leniency from the courts. As to whether any other person is harmed, it is an arguable point at best. Though no specific person is harmed by the deeds of the OKT, the offence has far reaching consequences, which I shall elaborate in greater detail when I consider the public interest.

In looking into the public interest, it would be ignorant for the court not to consider the fact that the existence of dangerous drugs as defined under the [Dangerous Drugs Act](#), is a bane to any society. It is a substance that rots at the very root of a community and is akin to a slow acting poison. Undeterred, it could paralyze society by slowly breaking down at the basic values held by individuals who are addicted, leaving them a husk of their former selves. The addiction itself also drives drug users to commit unspeakable crimes in order to escape the harsh withdrawal symptoms. Such corruption slowly creeps and weakens any familial structure and as members of the society becomes increasingly dysfunctional due to the after effects of the drugs and due to the fear of crimes committed in relation to drugs, civilization slowly crumbles. It is not a hyperbole to liken the abuse of dangerous drugs to cancer, as like cancer, it slowly chokes the life out of a community and there is seldom any cure for such an ailment.

Being illegal in nature, the drug trade thrives where there is a demand for the illicit substance. The drug trade are more often than not, international in nature and the crimes committed in the furtherance of such a business has been numerous and notorious. By having in his possession such a copious amount of cannabis, the OKT is indirectly supporting the drug trade. One would not go so far as to accuse the OKT of trafficking in drugs (that would take another whole offence, prescribed by a different provision of the law to prosecute), but the act of having in your possession a supply of drugs is in line with keeping the drug trade alive. Only by dwindling the supply of dangerous drugs could we stop feeding the demand.

The circumstances of the case weighs heavily on the OKT. The OKT was caught with a large cache of the drug cannabis. The amount he had in his possession was large enough for him to be legible for a sentence under [section 39A\(1\) of the Dangerous Drugs Act](#), instead of the usual provision under [section 6](#) which provides for a much lesser sentence. [Section 39A\(1\) of the Act](#) provides for a mandatory imprisonment term of 2 years, and this shows that Parliament intended to set aside those who have such large quantities of drugs, and treat them as serious offenders.

Taking an overall look at all the considerations I have laid out, I a light sentence is in order. The offence committed by the OKT is indeed grave, and to provide a minimal sentence would make a mockery of the law, the justice system and the international effort to combat the abuse of drugs. I had thus sentenced the OKT to **3 years imprisonment and also ordered him to suffer 3 strokes of the whip**. The imprisonment was ordered commence from the date of sentencing.

(AHMAD SHAMIL AZAD ABDUL HAMID)



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