IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 161

Criminal Case No 43 of 2016

Between

Public Prosecutor

And

(1) Zulkarnain bin Kemat
(2) Mohammad Rizwan bin Akbar Husain
(3) Saminathan Selvaraju

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Public Prosecutor
v
Zulkarnain bin Kemat and others

[2018] SGHC 161

High Court — Criminal Case No 43 of 2016
Hoo Sheau Peng J
1–2, 6–8, 13–16, 20–21, 23 September, 7 November 2016, 16 January 2017, 5–6 September 2017; 12 March 2018

16 July 2018

Hoo Sheau Peng J:

Introduction

1 In this joint trial, the three accused persons claimed trial to a charge each in relation to 35 bundles of granular/powdery substance containing 301.6 grams of diamorphine (which I shall refer to as "the drugs").

2 The first accused, Zulkarnain bin Kemat ("Zulkarnain"), faced a charge of having the drugs in his possession for the purpose of trafficking. This is an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA").

3 The charge against the second accused, Mohammad Rizwan bin Akbar Husain ("Rizwan"), was that of abetting by instigating Zulkarnain to be in possession of the drugs for the purpose of trafficking. This is an offence under

s 5(1)(*a*) read with s 5(2) and s 12 of the MDA.

4 As for the third accused, Saminathan Selvaraju ("Saminathan"), he was charged with trafficking the drugs by delivering them to Zulkarnain, an offence under s 5(1)(*a*) of the MDA.

5 In brief, the Prosecution's case was that on 20 November 2013, Rizwan instructed Zulkarnain to collect the drugs. At around 10pm, along Quality Road, Singapore, Saminathan passed the drugs to Zulkarnain. After collecting the drugs, Zulkarnain was meant to deliver the drugs to Rizwan, but he was arrested before he could do so. Turning to the defences, Zulkarnain denied any knowledge of the nature of the drugs, while Rizwan and Saminathan denied any involvement at all. At the conclusion of the trial, I found that the elements of the respective charges had been made out against each of the accused persons, and I convicted them accordingly.

6 Under s 33(1) read with the Second Schedule of the MDA, the prescribed punishment for these offences is death. Section 33B(1)(*a*) provides that if the two requirements set out in s 33B(2) are satisfied, the court has a discretion not to impose the death penalty. The first requirement is that the acts of the accused were restricted to those of a "courier". The second requirement is that the Public Prosecutor ("PP") certifies that the accused has substantively assisted the Central Narcotics Bureau ("CNB") in disrupting drug trafficking activities within or outside Singapore.

7 I found that Zulkarnain met both requirements, and exercised my discretion to impose the sentence of life imprisonment. As he was above 50 years old, he was not liable for caning. However, Rizwan met neither of the requirements. As for Saminathan, although he satisfied the first requirement, in that I found his role to be that of a courier, the PP did not issue a certificate of

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substantive assistance. In respect of Rizwan and Saminathan, I imposed the mandatory death sentence.

8 Rizwan and Saminathan have both appealed against their conviction and sentence. I now provide the reasons for my decision, beginning with the evidence for the Prosecution.

The Prosecution's case

Events leading up to the drug transaction

9 On 20 November 2013, at or about 8.15pm, acting on information received, a group of CNB officers began tailing Zulkarnain from his residence at Block 1 Spooner Road to various locations in Singapore before reaching Chin Bee Drive at about 9.13pm. Zulkarnain was driving a black Honda car with registration number SJF2200B.

10 On the same night, as closed circuit television ("CCTV") footages revealed, at about 9.20pm, Rizwan left his residence at Block 136 Petir Road. He was wearing a cap, a black T-shirt and long dark pants. He headed in the direction of a parking area.

11 At about 9.55pm, Zulkarnain was seen positioning his car near the junction of Chin Bee Drive and Quality Road. At about the same time, a black Mitsubishi Lancer bearing registration number SGC4606C ("the black Mitsubishi") was observed to be parked in front of Zulkarnain's car. The black Mitsubishi was registered under Rizwan's name.[1] SSgt Azhari bin Rohman ("SSgt Azhari") observed that the driver was plumb, and wearing a cap.[2]

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1 The Agreed Bundle ("AB"), pp 477-478 *ie,* AB477-478.

2 AB257, para 12.

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12 Then, both cars were seen driving from Chin Bee Drive into Quality Road, which was a two-way road. SSSgt Mak Weng Chuan ("SSSgt Mak") observed that the cars drove past a stationary trailer bearing Malaysian registration number WER2508 ("the Trailer"), which was parked along Quality Road (towards the direction of Chin Bee Drive). The Trailer had its hazard lights on. The black Mitsubishi stopped further down along Quality Road (towards the direction of International Road). Meanwhile, Zulkarnain's car made a U-turn, and parked in front of the Trailer. The driver of the Trailer (observed to be a male Indian) alighted and loaded certain items into Zulkarnain's car through the left rear passenger side, before returning to the Trailer.[3] I shall refer to this as "the drug transaction".

Arrests and seizure of the drugs

13 Following the drug transaction, the three vehicles left Quality Road, and were separately tailed by the CNB officers.

14 At Tagore Industrial Avenue, Zulkarnain's car was stopped, and Zulkarnain was arrested by the CNB officers. From the floor mat of the rear of the car, the CNB officers recovered two red plastic bags: the first contained 15 black-taped bundles, while the second contained 20 black-taped bundles. All 35 bundles contained the drugs. The items were seized.[4]

15 The CNB officers lost sight of the black Mitsubishi when its driver made a sudden U-turn, and sped off along Tampines Avenue. Following investigations, Rizwan was identified as its driver. Rizwan was arrested on 29

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3 AB250, para 13 and AB304.

4 AB273, paras 15 and 16.

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November 2013, after he was brought back to Singapore from Malaysia. He had fled to Malaysia on 25 November 2013 by hiding in the boot of a car.[5]

16 The Trailer was tailed by the CNB officers from Quality Road to Tuas checkpoint. It was observed to have passed through the Immigration and Checkpoints Authority ("ICA") gantry at about 10.15pm, and to have headed towards Malaysia. Following investigations, Saminathan was identified as the Trailer's driver, and the person who carried out the drug transaction. He was arrested on 25 March 2014 at the Woodlands Checkpoint as he was entering Singapore.

Analysis by the Health Sciences Authority

17 The 35 bundles seized from Zulkarnain's car were sent to the Health Sciences Authority ("HSA"). Upon analysis, it was ascertained that the granular/powdery substance within the 35 bundles weighed 11,439 grams in total and was found to contain not less than 301.6 grams of diamorphine.

Statements of Zulkarnain

18 Pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the Prosecution sought to admit 12 statements recorded from Zulkarnain in the course of investigations. Zulkarnain did not object to the admissibility of any of his statements. The 12 statements were:

(a) Two contemporaneous statements recorded under s 22 of the CPC by SSgt Bukhari bin Ahmad on 20 and 21 November 2013;

(b) The cautioned statement recorded under s 23 of the CPC on 21 November 2013 by W/Insp Ng Pei Xin ("W/Insp Ng");

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5 Exh P279, paras 20 and 21.

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(c) Nine long statements recorded by W/Insp Ng Pei Xin under s 22 of the CPC on various dates, from 21 November 2013 to 6 May 2014.

19 At the outset, I should state that the contents of these statements were fairly consistent. I summarise their key aspects. In the various statements, Zulkarnain consistently stated that on the night of 20 November 2013, he had acted on the instructions of a person whom he knew as "Bos" or "Boss" to collect "illegal" items. The plan was for Zulkarnain to meet "Bos" or "Boss" at Tagore Lane after collecting these items, so that he could hand the items over to "Bos" or "Boss". "Bos" or "Boss" was also known to him as "Batman". For convenience, I shall refer to him as "Boss".

20 Specifically, in the first long statement recorded on 21 November 2013, Zulkarnain stated as follows:

(a) Upon being shown nine photographs of different persons, Zulkarnain identified "Boss" as Rizwan.[6]

(b) Zulkarnain stated that on 20 November 2013, "Boss" called him at 5pm on his blue Nokia handphone (marked as "ZK-HP3") and told him that there was a job that night and instructed him to get ready. At about 7pm to 8pm, "Boss" called again and told Zulkarnain to head to Chin Bee Drive. At Chin Bee Drive, when "Boss" was near, he instructed Zulkarnain to switch off all his handphones and to use a walkie-talkie to communicate instead.[7]

(c) Upon arrival, "Boss" instructed Zulkarnain to drive into Quality Road and were he to see a trailer with blinking lights, he was to park in

6 AB417, para 8.

7 AB416, para 4.

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front of that trailer. Then, "Boss" drove on ahead and Zulkarnain followed. Zulkarnain then saw the Trailer with its lights blinking. Zulkarnain did as instructed and parked in front of the Trailer. Then, an Indian man exited the Trailer, walked over, opened the back door of his car, placed some items into his car and walked off. Zulkarnain then communicated with "Boss" over the walkie-talkie to ask where he should go next. He was informed to head to the "usual place" which Zulkarnain assumed would be Tagore Lane.[8]

(d) As for past dealings between the parties, Zulkarnain stated that he got to know "Boss" sometime in August 2013, when he was working as a bouncer in Boat Quay. One day, "Boss" called him, and asked if he wanted to work for "Boss". "Boss" said that someone told him that Zulkarnain "could be trusted", had a driver's licence, and needed money. A week later, Zulkarnain agreed to help "Boss", and did so for about three to five times in total.[9]

21 In the fourth long statement recorded on 25 November 2013 at 7.48pm, Zulkarnain said that:

(a) He had collected items for "Boss" on six other occasions prior to the night of the drug transaction. On these occasions, Zulkarnain would rent a car ahead of time. He had rented about five or six cars in total. "Boss" instructed him on the pick-up location to collect the items. When he arrived, someone would place the items in his car. He would then meet "Boss" at Tagore Lane where "Boss" would collect the items from his car. He had never checked the items put in his car. Zulkarnain would

8 AB417, para 4.

9 AB415-416, paras 2-4.

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be paid $200 to $300 for each job, and a further $500 for the car rental charges.[10]

(b) In terms of communication devices, "Boss" would give handphones to him. Sometime after he began helping "Boss", "Boss" started giving him two handphones, instead of one handphone. One handphone was meant for communications with "Boss", while the other was meant for communications with the other people related to the deals. He had "thrown away handphones about 3 to 4 times". Earlier in November 2013, "Boss" gave him the blue Nokia handphone, along with a black Nokia handphone (marked as "ZK-HP4"), as well as the walkie-talkie.[11]

22 In the eighth long statement recorded on 4 December 2013, the following details were furnished:

(a) When shown a photograph of Rizwan, he confirmed that Rizwan was "Boss". Zulkarnain was also able to recognise "Boss's" voice. On 20 November 2013, Zulkarnain saw "Boss" in his car when it was parked at Chin Bee Drive. He recognised "[Boss's] black and tinted Mitsubishi". He has never seen anyone else drive it other than "Boss". He also recognised "Boss" because of "his big body and short hair". Zulkarnain also knew that "Boss" was at the scene on 20 November 2013 because "Boss" spoke to him using the walkie-talkie, and he could recognise the voice of "Boss".[12]

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10 AB429, paras 29-30.

11 AB429, para 29.

12 AB442, paras 41.

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(b) Saved within the blue Nokia handphone was a contact named "Batman" with the number 9059 6581. This was the number of "Boss", and Zulkarnain called "Boss" using the number. Apart from Batman's number, Zulkarnain also identified the phone numbers 8401 7309 and 9051 9541 as the mobile phone numbers of "Boss", who would use these numbers to call him. "Boss" was the only one who would contact Zulkarnain using the blue Nokia handphone, and he would only contact "Boss" using this handphone.[13]

23 In the second long statement recorded on 24 November 2013, Zulkarnain stated that on previous occasions, "Boss" told him there was "nothing dangerous" about the merchandise. "Boss" knew he would not ask much because he needed the money. Then, he admitted that "[he] guessed that this job [was] illegal, because if not, [he] would not be doing it in the middle of the night and using walkie-talkie like a secret agent." He thought the job might involve "drugs, cigarettes or improvised items" – being Starhub modems. He wanted to stop, but decided to do the job one last time – the drug transaction – because he was "desperate for money".[14]

Communications records

24 Following Zulkarnain's arrest, a black walkie-talkie was found in his possession. A number of handphones were also seized from Zulkarnain, including the blue Nokia handphone (with the number 9083 7584). The blue Nokia handphone was sent to the CNB's Forensic Response Team for forensic examination. From the examination report[15], there were messages and calls

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13 AB442, paras 42.

14 AB421, para 14.

15 AB107-113.

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between Zulkarnain and the number 9059 6581 saved as "Batman", as well as calls between the number used by Zulkarnain and the number 8401 7309 (which Zulkarnain stated was another of "Boss's" numbers).[16] I reproduce the relevant messages and calls extracted on 20 November 2013 below:

SMS Text Message

S/N	From	To	Message	Date/Time
1	Batman	ZK-HP3	Semua hp tutup semua k.. 10 min saya sampai (Translation: All *hp* turn off/close all *k*.. *10min* I reach[17])	20/11/2013 9:24:35 pm
2	ZK-HP3	Batman	K	20/11/2013 21:25:25
3	ZK-HP3	Batman	Bos dah sampai (Translation: Boss has reached)	21/11/2013 00:39:07

Call Records

S/N	From	To	Date/Time	Duration
1	Batman	ZK-HP3	20/11/2013 17:03:37	16 seconds
2	Batman	ZK-HP3	20/11/2013 19:44:34	27 seconds

16 AB442, paras 42.

17 AB115.

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3	ZK-HP3	8401 7309	20/11/2013 20:45:05	-
4	ZK-HP3	8401 7309	20/11/2013 20:45:19	-
5	Batman	ZK-HP3	20/11/2013 20:53:52	27 seconds
6	Batman	ZK-HP3	20/11/2013 21:19:54	50 seconds

25 Call records from Zulkarnain's handphone number, and the two handphone numbers identified as belonging to "Boss", being 8401 7309 and 9059 6581, were also retrieved from Singapore Telecommunications Ltd ("Singtel").[18] These phone records revealed that there were various calls and messages between Zulkarnain and the numbers dating back to 31 October 2013.

Evidence against Saminathan

26 With that, I turn to the evidence adduced by the Prosecution against Saminathan.

Statement of Saminathan

27 One long statement recorded by W/Insp Ng from Saminathan under s 22 of the CPC on 28 March 2014 was admitted into evidence without objections from Saminathan. In it, Saminathan said that he worked as a driver for a company known as MKG Logistics. He would deliver consignments from Malaysia into Singapore. In the course of his work, he has been to Shipyard

[18] AB147-152, Exh P273 and AB135-146 respectively.

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Crescent near Pioneer Road. Save for one occasion, he drove the same lorry and trailer. He said that the lorry (not the trailer) had the registration number WER2508.[19]

Entry and exit records

28 The Prosecution also tendered documentary evidence from the ICA, concerning the entry and exit records of Saminathan, as well as the Trailer, which showed that:

(a) On 20 November 2013, Saminathan entered and left Singapore twice using his passport with the number A28724303. The first entry was at 8.24am, with the exit at 10.32am. More significantly, there was a second entry at 6.40pm, with the exit at 10.18pm from the Tuas Checkpoint. I shall refer to these as "the travel movement records".[20]

(b) The vehicle records showed that for the entry at 6.40pm and the exit at 10.18pm, Saminathan was the Trailer's only occupant, *ie,* the driver.[21]

(c) For the entry at 6.40pm, an image of a duly completed disembarkation card ("the disembarkation card") was produced.[22] This document contained Saminathan's name and signature, vehicle registration number "WER2508", and stated the address in Singapore to be "SHIPYArD Rd".

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19 AB451, para 15.

20 AB474.

21 AB475.

22 Exh P278, p 3.

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(d) For the exit at 10.18pm, an image of Saminathan's passport (duly captured for the exit) was produced.[23]

29 Through the entry and exit records, the Prosecution sought to show that Saminathan was in Singapore from 6.40pm to 10.18pm, and was the driver of the Trailer who had transferred the bundles from the Trailer into Zulkarnain's car on 20 November 2013, and who had then left in the Trailer for Malaysia.

Evidence of ICA officer

30 ICA officer SSgt Goh Cheow Siang ("SSgt Goh") gave evidence that he was the officer on duty at Tuas Checkpoint who processed the exit of the Trailer on the night of 20 November 2013. He explained the verification protocol that he applied, including his observation of distinguishing features that he would have noticed while inspecting Saminathan's passport photo. There was nothing for him to suspect that Saminathan was not the person who presented Saminathan's passport when the Trailer exited Singapore.[24]

Evidence from Saminathan's former employer

31 A statement of Saminathan's former employer, Mr Murugan a/l Silvarajoo ("Murugan") was admitted by consent under s 32(1)(*k*) of the Evidence Act (Cap 97, 1997 Rev Ed).[25] According to Murugan, the Trailer had been assigned to Saminathan since he started working for MKG Logistics. Each driver would be assigned a specific trailer, could park his assigned trailer near his home, and would have to take care of it. Likewise, Saminathan was given exclusive possession of the Trailer. On 20 November 2013, Saminathan was

23 Exh P278, p 4

24 Notes of Evidence ("NEs"), 13 September 2016, p 56 lines 21 to 31 and p 57 lines 4 to 6.

25 Exh P274.

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only instructed to make one delivery of mineral water from Malaysia to Chin Bee Drive in Singapore in the morning. Then, on 21 November 2013, when Murugan contacted Saminathan for a fresh delivery, he found out that Saminathan had gone back to his hometown. Murugan scolded him for taking leave without informing him, and without returning the keys to the Trailer. In fact, Saminathan missed work from then until 27 November 2013. During that period, Saminathan had the keys to the Trailer with him.

DNA analysis

32 Finally, HSA analysis revealed that Saminathan's DNA was found on two of the 35 bundles containing the drugs, namely bundles "A1A9" and "B1A6". The analyst from HSA, Ms Tang Sheau Wei June ("Ms Tang"), gave evidence as follows:

(a) Saminathan's DNA was found on "AREA 1" and "AREA 4" of bundle B1A6. "AREA 1" was the exterior surface area of the taped bundle. "AREA 4" was the total surface area of the non-adhesive side of the black tapes, which were laid out after the taped bundle was dismantled;[26] and

(b) For bundle A1A9, Saminathan's DNA was found on "AREA 4", but not "AREA-1". Again, "AREA-4" was the total surface area of the non-adhesive side of the black tapes, which were laid out after dismantling the tapes of the bundle, while "AREA-1" was the exterior surface area of the taped bundle. Ms Tang testified that "since there were no DNA obtained from AREA 1, [it was] most likely that the DNA [in respect of AREA 4] would have been on the areas that were covered by the tapes".[27]

[26] NEs, 7 September 2016, page 25 lines 1-9.

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Close of the Prosecution's case

33 At the close of the Prosecution's case, I found that there was sufficient evidence against each of the accused persons and called upon them to give evidence in their own defence.

Zulkarnain's defence

34 Zulkarnain's evidence was consistent with the contents of the statements, as summarised at [19]—[23] above. He did not seriously dispute that he was in possession of the 35 bundles containing the drugs. Consistent with his position in the statements, he claimed that he did not know that the drugs were diamorphine, save that they could be illegal items, including drugs.

Rizwan's defence

35 Rizwan denied any involvement in the drug transaction. He claimed that he was not the driver of the black Mitsubishi. According to him, he had loaned his car to one "Uncle", who was a male Malay whom he had known since September 2013, on 20 November 2013, for $300. He had lent "Uncle" his car before, and was told by "Uncle" that he needed it for personal reasons. To hand over the car, Rizwan would leave his car key in a pouch in the car, and leave the car unlocked.

36 That night, Rizwan left his home at about 9pm because "Uncle" told him that something had happened to his car earlier that evening and instructed Rizwan to leave his home. Rizwan took a taxi to Boat Quay, and arrived there at about 10pm where he met some friends, including one Khairul Famy bin Mohd Samsudin ("Khairul").

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[27] NEs, 7 September 2016, page 50 lines 22-23

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37 He stayed at Boat Quay until about 3am to 4am, when he learned from "Uncle" that his car was involved in a drug case. On "Uncle's" further instructions, Rizwan went to stay in a flat in Yishun for two nights. Then, he left Singapore for Malaysia. He did so by hiding in the boot of a car because he did not have his passport with him. In doing all these, he was merely following "Uncle's" instructions. He felt betrayed by "Uncle" as he had trusted him.

38 As for Zulkarnain's evidence against Rizwan, his defence was that Zulkarnain was lying when he implicated Rizwan. Zulkarnain had associated Rizwan with the black Mitsubishi because Zulkarnain had seen Rizwan with that car on previous occasions at Boat Quay. To support his defence that he was not at the scene at the time of the drug transaction, Rizwan called Khairul as a witness.

39 At this juncture, I should add that the Prosecution introduced three long statements recorded by W/Insp Ng under s 22 of the CPC for the purpose of cross-examining Rizwan on inconsistencies between his testimony and those statements. Rizwan did not object to the admissibility of these statements, and these were admitted into evidence accordingly for cross-examination by the Prosecution. I will deal with this in [74] below.

Saminathan's defence

40 Saminathan said that on the morning of 20 November 2013, he drove the Trailer into Singapore to deliver a consignment of mineral water at Chin Bee Drive. After that, he went back to his mother's home in Tampin, Negeri Sembilan. Before doing so, he left the Trailer at the office, and returned the keys to the Trailer.

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41 Usually, after completing his assigned delivery, he would park the Trailer at the office of MKG Logistics, and would return the keys of the Trailer to Murugan, Murugan's wife or to the office. He did not have permission to take the Trailer with him elsewhere. Once or twice, Saminathan might have forgotten to return the keys of the Trailer. However, the boss, Murugan, had a spare key. He had never kept the Trailer with him after a job before.

42 Saminathan claimed that he was not the person who drove the Trailer into Singapore that night, or the person involved in the drug transaction. When he did not have any work to do, he would place his passport in the Trailer.[28] With regards to the disembarkation card, he explained that it was his practice to leave "a few white cards with [his] details", pre-filled and pre-signed, in the Trailer. He would only leave the portion stating "Address in Singapore" blank, and would fill this portion up when he needed to make a delivery based on the delivery address. Therefore, in respect of the disembarkation card, Saminathan disputed that the words "SHIPYArD RD" under the section "Address in Singapore" were written by him. However, he agreed that the rest of the details in the disembarkation card were pre-filled by him, and that he signed it.[29] According to Saminathan, someone else could have used his passport, the disembarkation card and the Trailer to enter Singapore, and to carry out the drug transaction.

43 I should add that the Prosecution introduced a long statement recorded from Saminathan on 31 March 2014 by W/Insp Ng under s 22 of the CPC, so as to cross-examine Saminathan on the inconsistencies between the contents of this statement and his testimony. I will return to this from [102] onwards.

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28 NEs, 21 September 2016, p 38, lines 8-17

29 NEs, 21 September 2016, p 37, lines 11-30, and p 38, lines 1-4.

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Handwriting experts

44 As Saminathan claimed that he did not write the words "SHIPYArD RD" on the disembarkation card, the Prosecution applied to call a handwriting expert, Dr Nellie Cheng ("Dr Cheng") from the HSA, as a rebuttal witness to test Saminathan's claim. I allowed the Prosecution's application. Subsequently, to respond to Dr Cheng's opinion, Saminathan also applied to call a handwriting expert, Mr Pang Chan Kok William ("Mr Pang"), which I also allowed.

45 In Dr Cheng's first report dated 23 September 2016, she concluded that the possibility that Saminathan was the writer of "SHIPYArD RD" in the disembarkation card in question "cannot be ruled out".[30] In response, , Mr Pang, in his first report of 11 January 2017, did not render any conclusion on the writer of the phrase, explaining that there was "insufficient quantity" and that "the questioned and collected handwriting specimen" were of "poor quality".[31] Given Mr Pang's views, further handwriting specimens were collected from Saminathan, and furnished to both experts for consideration. Both experts then furnished a second report each.

46 Thereafter, in her second report dated 28 February 2017, Dr Cheng maintained her view that the possibility that Saminathan was the writer of "SHIPYArD RD" cannot be ruled out.[32] Under rigorous cross-examination by Saminathan's counsel, Dr Cheng explained and defended her position. Meanwhile, in Mr Pang, in his second report dated 25 August 2017, came to the finding that Saminathan was *not* the writer of the words "SHIPYArD RD".[33]

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30 Exh D3-3.

31 Exh D3-1.

32 Exh P289.

33 Exh D3-2.

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However, in court, Mr Pang retracted this position by stating that he wished to expunge the relevant paragraph, being paragraph 6, of the second report.[34]

Decision on conviction

47 With that, I proceed to state the law applicable to the charge against each of the accused persons, to analyse the relevant evidence and to state my findings.

Zulkarnain

Overview

48 Zulkarnain was charged with having the drugs in his possession for the purpose of trafficking, an offence pursuant to s 5(1)(*a*) read with s 5(2) of the MDA. Section 5 of the MDA provides:

> **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;
>
> …
>
> (2) For the purpose of this Act, a person commits an offence for trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

49 The elements for such an offence are (a) possession of a controlled drug, which may be proved or presumed pursuant to s 18(1), or deemed pursuant to s 18(4) of the MDA; (b) knowledge of the nature of the drug, which may be proved or presumed pursuant to s 18(2) of the MDA; and (c) proof that possession of the drug was for the purpose of trafficking which was not

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[34] NEs, 6 September 2017, lines 1-23.

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authorised (*Muhammad Ridzuan bin Md Ali v Public Prosecutor* [2014] 3 SLR 721 ("*Ridzuan*") at [59]). In this connection, s 18 of the MDA provides:

> **Presumption of possession of 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.
>
> …
>
> (4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

50 Turning to the parties' position, Zulkarnain did not dispute that he was in possession of the drugs. In any case, it was clear that he was in possession of the two red plastic bags with the 35 bundles which contained the drugs, and would be presumed by s 18(1) of the MDA to be in possession of the drugs. Further, Zulkarnain did not dispute that he was in possession of the drugs for the purpose of trafficking. By Zulkarnian's account, he was meant to *deliver* the drugs to Rizwan. Under s 2 of the MDA, "traffic" is defined to include "sell", "send", "transport" and "deliver". Thus, the main dispute between the parties was as to the *mens rea* of the charge *ie,* whether Zulkarnain had knowledge of the nature of the drugs, and it is to this question that I turn.

Whether Zulkarnain had knowledge of the nature of the drugs

51 As it was proved or presumed that Zulkarnain had possession of the drugs pursuant to s 18(1), s 18(2) of the MDA was triggered such that

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Zulkarnain was presumed to have knowledge of the nature of the drugs in his possession.

52 In order for an accused person to rebut the presumption of knowledge, he has to prove on a balance of probabilities that he did not know the nature of the drug or could not reasonably be expected to have known of the same (*Ridzuan* at [75]). In assessing whether the presumption is rebutted, in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633, the Court of Appeal stated at [37] that:

> [t]he court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities.

53 Having considered Zulkarnain's evidence, I agreed with the Prosecution that he had failed to rebut the presumption of knowledge. In his statements to the CNB, Zulkarnain admitted that all along, he had suspected that the items he was collecting for Rizwan were illegal items which might be *drugs*. In his second long statement set out above at [23] above, he also admitted that "if not, I would not be doing it in the middle of the night and using walkie-talkie like a secret agent". Under cross-examination by the Prosecution, again, Zulkarnain admitted that the items he was collecting for Rizwan might actually be drugs.[35]

54 The drug transaction was not the first time Zulkarnain had collected and delivered items for Rizwan. He admitted that he had worked for Rizwan on

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35 NEs, 16 September 2016, p 35 lines 7-14.

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previous occasions, although he said it was about three to five times (see [20(d)] above) or six times (see [21(a)] above). Despite his suspicion of the contents of the items, not once did he inspect the them. In the fourth long statement recorded on 25 November 2013 at 7.48pm, Zulkarnain explained that he did not do so because checking would mean that he was betraying Rizwan's trust in him.[36] During cross-examination by the Prosecution, he said that he wanted to inspect the contents, but that every time he collected the items, Rizwan was there, and he could not do so.[37] I found these to be mere excuses. In all these instances, Zulkarnain collected the items at a specified location, and then drove to another location where Rizwan would collect the items. On all those occasions, he had every opportunity to check the contents of the items but he chose not to do so. In fact, further along in the cross-examination by the Prosecution, Zulkarnain conceded he was not keen to inspect the items.[38]

55 When cross-examined by the Prosecution, Zulkarnain denied that he knew that the items would be heroin, the street name for diamorphine, because Rizwan told him the items were not dangerous, and because he trusted Rizwan. He said it did not occur to him what type of drugs were involved, but he did not clarify the issue with Rizwan at all.[39] As set out above at [23], in the second long statement recorded on 24 November 2013, Rizwan knew he would not ask many questions, as he needed the money. In cross-examination, Zulkarnain also conceded that there was no good reason to trust Rizwan when Rizwan said that items were not dangerous.[40] He agreed that he was willing to do the job "because [he] needed the money".[41]

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36 AB429, para 30.

37 NEs, 16 September 2016, p 35 lines 25-28.

38 NEs, 16 September 2016, p 35 lines 29-31.

39 NEs, 16 September 2016, p 35 lines 15-24.

40 NEs, 16 September 2016, p 37 lines 15-26 and p 39 lines 1-8.

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56 Given the suspicious circumstances surrounding the work he was doing for Rizwan, and his suspicion that the items might be drugs, an ordinary reasonable person in Zulkarnain's position would have taken steps to establish the nature of the items he was collecting for Rizwan and the nature of the drug in question. Zulkarnain did nothing of that sort. It was not sufficient for him to merely assert that he did not know that the drugs were diamorphine. I found that Zulkarnain had failed to rebut the presumption under s 18(2) of the MDA that he knew the nature of the drugs *i.e, that the drugs were diamorphine.*

Conclusion

57 By the foregoing, I found that the Prosecution had proved the charge against Zulkarnain beyond a reasonable doubt. I found him guilty and convicted him of the charge.

Rizwan

Overview

58 Rizwan was charged with abetment by instigating Zulkarnain to be in possession of the drugs for the purpose of trafficking, an offence under s 5(1) read with s 5(2), as well as s 12 of the MDA.

59 Section 12 of the MDA provides:

> **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.

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41 NEs, 16 September 2016, p 33 line 22.

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60 In *Chan Heng Kong and another v Public Prosecutor* [2012] SGCA 18, at [33]-[34], the Court of Appeal observed that although the meaning of abetment is not defined in the MDA, the word "abet" in s 12 of the MDA should have the same meaning as that word in s 107 of the Penal Code (Cap 224, 1985 Rev Ed). Therefore, abetment would include "instigation, conspiracy, and aiding". To prove the *actus reus* of abetment by instigation, "there has to be "active suggestion, support, stimulation or encouragement" of the primary offence".

61 Turning to the *mens rea* of the offence, the Court of Appeal held, in *Koh Peng Kiat v Public Prosecutor* [2016] 1 SLR 743, that for an abettor to be guilty of abetment by intentional aiding, the abettor must have had knowledge of "the essential matters constituting the primary offence": see [22]-[23] and [26]-[27]. For the primary offence of the trafficking of drugs, knowledge of the nature of the drugs in question is a critical component. Thus, the *mens rea* would require proof that the abettor had knowledge of the nature of the drugs in question.

62 Further, in *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 at [75]-[78], the Court of Appeal held that where the abettor is alleged to be abetting another to traffic drugs to himself, *ie*, he is the intended recipient, there is an additional *mens rea* element to be proved. The element is that the abettor is required to have himself intended to traffic in the offending drugs. The drugs should not be for his own consumption.

63 I now set out the parties' arguments. The Prosecution contended that it was Rizwan who instigated Zulkarnain to carry out the drug transaction. In this connection, it was submitted that full weight should be given to Zulkarnain's evidence against Rizwan. In contrast, Rizwan's evidence was untruthful, and his actions were indicative of his guilt. Further, the Prosecution submitted that

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Rizwan knew of the circumstances of the crime, including the nature of the drugs. The Prosecution pointed out that Rizwan did not raise the defence of consumption. Given the sheer amount of diamorphine involved, the irresistible inference was that Rizwan intended to traffic in the drugs.

64 Turning to Rizwan's case, he denied that he was "Boss", and that he was involved in the drug transaction. He also alleged that Zulkarnain was not a truthful witness. Specifically, Rizwan argued that Zulkarnain falsely implicated Rizwan, and he had the incentive to do so. According to Rizwan, Zulkarnain might have pointed to Rizwan as "Boss" because he had seen the black Mitsubishi at Boat Quay before, and knew that it belonged to Rizwan. Thus, Zulkarnain's evidence was not reliable. Further, there was no other evidence to corroborate Zulkarnain's account.

Whether Rizwan abetted by instigating Zulkarnain to carry out the drug transaction

65 To prove Rizwan's role in the drug transaction, the Prosecution relied heavily on Zulkarnain's evidence. At the outset, I should state that I was mindful that I did not accept Zulkarnain's bare assertion that he did not know that the drugs were diamorphine, and found that he had failed to rebut the presumption of knowledge of the drugs which operated against him. Despite this, it was clear that I was not precluded from giving weight to any other aspects of his evidence, including his evidence against Rizwan. It remained for me to carefully assess the reliability of such evidence, and what weight, if any, to accord to it. Having evaluated Zulkarnain's evidence, I found that Zulkarnain's evidence on Rizwan's role in the drug transaction was cogent, coherent and consistent, and was supported by the other evidence.

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66 I elaborate. In the first contemporaneous statement recorded on 20 November 2013 at 11.26pm, Zulkarnain stated that "bos" was to meet him at Chin Bee to "pick-up stuffs", being "something illegal", and then to drive off to "Tagore area" to meet up with "bos".[42] When a number of photographs were presented to him in course of the recording the first long statement on 21 November 2013, at 7.08pm, he clearly identified Rizwan as "Boss".[43] Then, Zulkarnain confirmed Rizwan as "Boss" in the eighth long statement recorded on 4 December 2013, when specifically shown a photograph of "Rizwan".[44] At trial, he did not waver from this position. In other words, Zulkarnain identified Rizwan from the outset, and had been consistent on this point.

67 I should add that during cross-examination, Zulkarnain was asked whether he was *mistaken* about the person who gave him his instructions. Zulkarnain refuted this.[45] I noted that this was not raised in the closing submissions. Instead, the argument shifted to the possibility of Zulkarnain falsely implicating Rizwan. In any case, I considered the question whether Zulkarnain was mistaken about the identity of "Boss". As I shall discuss later, I accepted that there were previous dealings between the parties, and Zulkarnain had met Rizwan in person various times before.[46] In any event, even Rizwan did not dispute that Zulkarnain had met him before, and would be able to recognise him. However, Rizwan's contention was that Rizwan frequented Boat Quay, and Zulkarnain, being a bouncer at one of the clubs there, would recognise him.[47] It was far-fetched to suggest that Zulkarnain could have been mistaken about the identity of "Boss".

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42 AB310.

43 AB417, para 8.

44 AB442, para 41.

45 NEs, 16 September 2016, p 12 lines 21-31 and page 21 lines 27 and 22 line 1.

46 NEs, 16 September 2016 p 10 lines 4-10 and p 26 lines 17-30.

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68 Moving away from the identification issue, as described above, in the various long statements, Zulkarnain was forthcoming in providing details of the previous dealings, of between three to six occasions, even though he implicated himself in the process. In particular, Zulkarnain described taking instructions from "Boss", and the *modus operandi* involved in the dealings. He narrated how he would be given instructions to collect the items, and then to deliver them to "Boss" at a separate location. He also gave details on the modes of communications between them, the use of rental cars and the payments involved. Again, his account remained consistent throughout the statements to the trial.

69 On the material aspects of the drug transaction, Zulkarnain's version was supported by the external evidence as follows:

(a) First, Zulkarnain stated that "Boss" gave him two handphones to work with. One of the handphones would be used solely for "Boss" to contact him, and the second handphone was for him to use to convey messages from "Boss" to his contacts in that phone. He provided the contact numbers of "Boss". Zulkarnain also stated that "Boss" gave him a walkie-talkie in early November 2013 for him to communicate with "Boss" when they were near. On the night of 20 November 2013, he used the blue Nokia handphone to communicate with "Boss", as well as the walkie-talkie. Indeed, when Zulkarnain was arrested, a walkie-talkie and two handphones were seized from him. The phone records extracted from the blue Nokia handphone seized from him showed communications with the numbers identified to be those of "Boss" on 20 November 2013: see [21], [22] and [24] above.

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47 NEs, 16 September 2016, p 66 line 30 to p 68 line 26.

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(b) Second, a text message sent at 9.24pm to Zulkarnain which was forensically extracted from the blue Nokia handphone instructed Zulkarnain to switch off all his handphones as "Boss" would be arriving in 10 minutes: see [24] above. Shortly after this message was sent, the black Mitsubishi was observed arriving at the scene, and parking in front of Zulkarnain's car at the scene at about 9.55pm. This was consistent with Zulkarnain's account of the drug transaction.

(c) Third, as mentioned at [11] above, the black Mitsubishi was registered under Rizwan's name at the material time.

(d) Fourth, Zulkarnain then described how he was given instructions to drive ahead of the Trailer with the blinking lights, and to await the delivery. His description of the movements of the two cars were indeed observed by the CNB officers.

70 At this juncture, I should add that I also considered if Zulkarnain could have been mistaken about the person who gave him the instructions on that night itself. From Singtel's records, even prior to 20 November 2013, there were phone calls between Zulkarnain and "Boss": see [25] above. To arrange for the drug transaction, "Boss" and Zulkarnain communicated various times that night. In such circumstances, I accepted the evidence that Zulkarnain was able to identify Rizwan's voice over the phone and over the walkie-talkie. Clearly, Zulkarnain was familiar with Rizwan's voice. Any suggestion that on 20 November 2013, Zulkarnain could have wrongly identified Rizwan as "Boss" was untenable.

71 Having analysed Zulkarnain's evidence, I was of the view that he had provided a reliable account of the dealings with Rizwan, and the instructions given by Rizwan for the drug transaction on 20 November 2013. Such aspects

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of his evidence were not shaken by the cross-examination. With that, I turn to evaluate Rizwan's version. Having considered Rizwan's account, I rejected it for these reasons.

72 First, Rizwan's account itself was unbelievable. Rizwan testified that he only met "Uncle" in September 2013, a mere two months before the drug transaction and he was not close to "Uncle".[48] Indeed, he was unable to provide details of "Uncle". Rizwan also testified that he had done work for "Uncle" whereby he kept a lookout for "Uncle" at Defu Lane. This made him suspect that "Uncle" was involved in illegal activities.[49] As such, there was no reason for Rizwan to trust "Uncle". When he purportedly learned that something had happened to his car and that his car was involved in a drug case, the logical thing to do would be for Rizwan to inform the authorities of this, and to find out more about it. Instead, Rizwan complied with "Uncle's" instructions to the letter, stayed at a flat in Yishun for two nights, then left his family at home so as to leave Singapore. The account simply did not make sense.

73 Second, Rizwan's narrative was contradicted by the other evidence. Rizwan testified that he left his residence on 20 November 2013 following "Uncle's" instructions when he was informed that "something happened" to his car, the black Mitsubishi.[50] The CCTV footage at his residence showed him leaving his residence at 9.20pm: see [10] above. However, the CNB officers only observed the black Mitsubishi at Quality Road at about 9.55pm. Then, the CNB officers observed the drug transaction at about 10pm. In other words, these events occurred only *after* Rizwan had left his residence. I did not see any reason to reject the CNB officers' evidence on such aspects. As such, Rizwan's account

48 NEs, 20 September 2016, p 35 lines 29-31 and p 36 lines 1-14.

49 NEs, 20 September 2016, p 65 line 15 to p 66 line 19.

50 NEs, 20 September 2016, p 10 lines 14-19.

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of "Uncle" informing him prior to 9.20pm to leave his home so as to avoid detection because "something happened" to his car was seriously undermined.

74 Third, I found that Rizwan had been inconsistent in accounting for his movements on 20 November 2013 and the days after that. In the long statement recorded on 30 November 2013 which was used by the Prosecution to cross-examine Rizwan, Rizwan stated that he could not recall what he did on 20 November 2013, or the three days after that. In particular, he stated that he could not recall what he did on 20 November 2013 because he had taken some medication he obtained from the clinic he visited earlier in the day.[51] However, in court, Rizwan was able to give detailed evidence on what he did on the evening of 20 November 2013, namely that he went to Boat Quay till about 4am the following day. Then, he also recalled how he was then instructed by "Uncle" to stay at a person's flat in Yishun for a couple of nights before being instructed to flee the jurisdiction.[52] When asked by the Prosecution to explain such discrepancies, Rizwan merely stated that he was still in shock after his arrest when he voluntarily gave the statements.[53] I did not find this to be a satisfactory explanation.

75 Fourth, Rizwan's conduct of surreptitiously fleeing Singapore also pointed towards his guilt. More shall be said of this from [83] onwards. For now, I wish to deal with his claim that he hid in the boot of a car because he did not have his passport with him. In cross-examination, it was pointed out to Rizwan that when he entered Malaysia on 25 November 2013, there was a stamp in his passport, and that his passport was with him when he was arrested. Confronted with such evidence, Rizwan conceded that his passport was in the

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51 Exh P279 at para 18 and 19.

52 NE, 20 September 2016 pp 2-23.

53 NEs, 20 September 2016, p 61 line 31 to p 62 line 2.

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car which he used to enter into Malaysia. However, he then tried to explain that he was only told of this after the car had crossed over to Malaysia.[54] I agreed with the Prosecution that Rizwan did not use his passport to leave Singapore because he feared detection and arrest, and this pointed towards his guilt.

76 Based on the above, I found that Rizwan was not a truthful witness, and rejected his account of what transpired on 20 November 2013, including his version of lending the black Mitsubishi to "Uncle". Turning specifically to his alibi defence, it was not supported by the evidence. As discussed above, Rizwan did not mention in the long statement recorded on 30 November 2013 that he was at Boat Quay at the material time. Instead, he stated that he "cannot remember" what took place on 20 and 21 November 2013. Further, Rizwan's witness, Khairul, was unable to give evidence on the exact date and time when he met Rizwan at Boat Quay. He said that it could be on 20 November 2013 or before or after that date.[55] As such, Khairul's evidence was not at all helpful, and did not further Rizwan's alibi defence at all.

77 For completeness, I now deal with the argument that Zulkarnain had every motive to implicate someone else regardless of the truth of it just so that he can receive the certificate of substantive assistance from the PP. Zulkarnain pointed to Rizwan because he recognised the black Mitsubishi as Rizwan's car. In this regard, I noted that in cross-examination, Zulkarnain was not confronted with the allegation that he lied to implicate Rizwan. This belated allegation that Zulkarnain lied only arose in the course of Rizwan's evidence in court, which was then pursued in the closing submissions. In any case, there was really no reason why Zulkarnain would frame Rizwan, instead of naming the real "Boss". As I observed, Zulkarnain identified Rizwan from the very next day after the

54 NEs, 20 September 2016, p 49, lines 9-19.

55 NEs, 21 September 2016, p 9 lines 2-7 and p 17 lines 16-30.

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drug transaction when shown a number of photographs. In light of all of the above, I dismissed Rizwan's defence.

78 As detailed by Zulkarnain, Rizwan recruited Zulkarnain for the drug transaction, and gave Zulkarnain specific instructions on where and how to collect the drugs. In my view, such acts sufficed as "active suggestion, support, stimulation or encouragement" of the primary offence – so as to constitute the *actus reus* of abetment by instigation.

Whether Rizwan possessed the requisite mens rea *for abetment*

79 Turning to the *mens rea,* I found that Rizwan had knowledge of the circumstances constituting the crime, particularly knowledge of the nature of the drugs in question. I also found that Rizwan intended to traffic in the drugs, and did not mean to consume them.

80 From the above discussion, it was clear that Rizwan knew that Zulkarnain would be taking possession of the 35 black-taped bundles, and had intended that Zulkarnain would be delivering them to him thereafter at a different location. Therefore, the two ingredients of the crime committed by Zulkarnain – possession of the drugs, and possession for the purpose of trafficking – were known to Rizwan.

81 On the question whether Rizwan knew of the nature of the drugs, the evidence showed that Rizwan had recruited Zulkarnain into the scheme as someone who could be trusted, and had carefully devised an elaborate system for Zulkarnain to carry out the jobs on the previous occasions, and also for the drug transaction in question. This included equipping Zulkarnain with the communication devices, and instructing Zulkarnain how to carry out the jobs. Rizwan's substantial role in the drug deals, which included recruitment, control

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and co-ordination, indicated that he should know precisely what type of drugs he was involved with.

82 For the drug transaction, Rizwan called Zulkarnain numerous times on 20 November 2013 to get him to do the job. Thereafter, Rizwan controlled Zulkarnain's actions and whereabouts. He maintained constant communication with Zulkarnain throughout, and was present so as to oversee the drug transaction. The 35 bundles which Zulkarnain collected on Rizwan's instructions contained not less than 301.6 grams of diamorphine. This was a substantial quantity of drugs, and 20 times of the weight of 15 grams of diamorphine which would attract the death penalty. The drugs were highly valuable. By his careful actions to ensure the successful receipt of the 35 bundles by Zulkarnain, Rizwan revealed that he knew the value of the drugs.

83 Further, Rizwan took numerous steps to evade detection and arrest in relation to the drug transaction. Rizwan acted in a clandestine fashion. He required Zulkarnain to switch off all his handphones and to communicate using a walkie-talkie. Then, he planned for Zulkarnain to separately collect the consignment and then to pass him the items collected subsequently. When Rizwan's car was tailed by the CNB officers, he made a sudden U-turn and sped off. Soon after, he left Singapore illegally by hiding in a car boot. From Rizwan's conduct, it was evident that he knew that the drug transaction was highly illegal, and that he would suffer severe punishment if apprehended.

84 Given the substantial role Rizwan played in the drug deals, his appreciation of the value of the drugs and of the highly illegal nature of the drug transaction, the irresistible inference was that Rizwan knew that the 35 bundles Zulkarnain collected for him contained diamorphine. In any event, as submitted by the Prosecution, I found that s 18(4) of the MDA was applicable, such that

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Rizwan was deemed to be in joint possession of the drugs with Zulkarnain. In turn, the presumption of knowledge within s 18(2) of the MDA was operative, and this had not been successfully rebutted by Rizwan.

85 I have set out s 18(4) of the MDA above at [49]. An accused is deemed to be in possession of a drug with another if the latter was in possession of the said drug with the "knowledge and consent" of the accused. This would be a question of fact. The accused has to exercise some measure of control over the drugs being deemed to be in his or her possession, and "control" here refers to the accused's power or authority over the drugs in question and not physical control: *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [62] to [65] and [68].

86 Based on my findings above, Rizwan was clearly aware that Zulkarnain was in possession of the drugs at the material time, since Zulkarnain had acted on his instructions to collect the drugs (see [80] to [83] above). Rizwan's control over Zulkarnain's conduct before, during and after the drug transaction was clear. As such, Rizwan knew and consented to Zulkarnain being in possession of the drug bundles. It followed that Rizwan should be deemed to be in joint possession of the drugs.

87 Consequently, s 18(2) of the MDA would apply and Rizwan was presumed to know the nature of the drugs which Zulkarnain had collected on his behalf. Given the nature of the defence (which I had rejected in any event), Rizwan had not adduced any evidence to rebut the presumption of knowledge of the nature of the drugs on a balance of probabilities.

88 I turn to the question whether Rizwan himself intended to traffic in the drugs. Where the quantity of drugs is large, a court may draw the inference that

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a recipient intended to traffic in them. In *Ong Ah Chuan and another v Public Prosecutor* [1979-1980] SLR (R) 710, it was observed as follows:

> 14. …Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of any plausible explanation by him, be irresistible…
>
> 15. As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it.

89 As I observed above at [82], the quantity of the drugs was very large. To reiterate, the quantity was not less than 301.6 grams of diamorphine, and was far in excess of the quantity which would trigger the presumption of trafficking in s 17 of the MDA (at 2 grams) and the quantity which would attract the death penalty (15 grams). I therefore agreed with the Prosecution that the irresistible inference to be drawn from the sheer quantity of the drugs was that Rizwan intended to traffic in them. Given the nature of the defence, there was no evidence to rebut this. Specifically, Rizwan did not say that the drugs were for his own consumption.

Conclusion

90 As such, I found that the Prosecution had proved the charge against Rizwan beyond a reasonable doubt. I thus found him guilty and convicted him of the charge.

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Saminathan

Overview

91 Saminathan was charged with trafficking by delivering the drugs to Zulkarnain, being an offence under s 5(1)(*a*) of the MDA. The elements of such an offence are (a) the *actus reus* of trafficking; and (b) the *mens rea* of the knowledge of the nature of the drugs. As stated above at [50], "traffic" is defined to include "deliver" within s 2 of the MDA.

92 The Prosecution's case was that Saminathan delivered the drugs to Zulkarnain. There was no direct identification by any witness that Saminthan was the person who delivered the drugs to Zulkarnain. Also, the Trailer was not stopped in time before it left Singapore. As such, to prove that Saminathan was the person involved, the Prosecution put forth the various strands of objective evidence to place Saminathan at the scene, and to link him to the delivery of the drugs.

93 To reiterate, Saminathan's defence was one of denial. According to him, he was not in Singapore at the material time, and someone had impersonated him and driven the Trailer into Singapore. The impersonator was able to enter Singapore using his identity because he had left his passport, as well as the disembarkation card (which Saminathan had pre-filled and pre-signed) in the Trailer. As for the DNA evidence, his DNA must have found its way to the bundles by a process of transference.

Whether Saminathan had delivered the drugs to Zulkarnain

94 Having assessed the evidence, I agreed with the Prosecution that the evidence pointed incontrovertibly to the conclusion that Saminathan delivered the drugs to Zulkarnain.

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95 First, the travel movement records, read together with the vehicle records, showed that using his passport, Saminathan entered and exited Singapore at 6.40pm and 10.18pm on 20 November 2013 in the Trailer. There was only one person in the Trailer during those times.

96 Second, the disembarkation card also showed that at 6.40pm, Saminathan entered Singapore, as it was completed and signed by Saminathan.

97 Third, during the drug transaction, SSSgt Mak observed the male Indian driver of the Trailer loading items into Zulkarnain's car, before returning to board the Trailer through the driver's door.[56] At that point, W/SI Rahizah Rahim ("W/SI Rahizah") was in an operational vehicle which passed by the Trailer, and she also observed the male Indian in the Trailer "about to close the driver's door".[57] After that, SSSgt Mak, SSgt Azhari, W/SI Rahizah and SSSgt Lee Hiang Hong tailed the Trailer all the way to Tuas Checkpoint, and saw it leave for Malaysia.[58] Therefore, the same person who delivered the drugs to Zulkarnain drove the Trailer and left for Malaysia via Tuas checkpoint.

98 Fourth, the evidence of SSgt Goh strengthened the Prosecution's case that it was Saminathan who exited Singapore in the Trailer at 10.18pm. As the officer on duty at Tuas Checkpoint who processed the exit of the Trailer, he gave clear evidence on the verification protocol that he applied on the date in question. In particular, SSgt Goh said that Saminthan's passport photo showed distinguishing features – such as the ears and the moustache. Upon verification, the driver had passed his visual inspection. Saminathan did not challenge or furnish any evidence to show that SSgt Goh was mistaken in identifying him as

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56 AB250, para 13.

57 AB244, para 13.

58 AB250, para 14; AB258. para 14; AB244, paras 14-15; AB253, paras 12-13.

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the driver of the Trailer. Nor was it suggested by Saminathan that the verification protocol was not complied with. There was really no basis to doubt SSgt Goh's evidence.

99 Fifth, according to Murugan, Saminathan's employer from MKG Logistics, at the material time, Saminathan had exclusive use of the Trailer. After the morning delivery on 20 November 2013 to a customer at Chin Bee Drive, Saminathan had gone missing with the Trailer's keys. I accepted his evidence. Indeed, Saminathan admitted in his statement that he used the Trailer for the deliveries for MKG Logistics. Further, Saminathan did not deny that on the morning of 20 November 2013, he used the Trailer to enter Singapore at 8.24am to make a delivery at Chin Bee Drive, and to exit Singapore at 10.32am. This bolstered the Prosecution's case that the Trailer was available to Saminathan to re-enter Singapore to carry out the drug transaction.

100 Sixth, the presence of Saminathan's DNA on two of the 35 bundles of drugs, specifically bundles A1A9 and B1A6, inexorably pointed to Saminathan having contact with the drugs, and making the delivery to Zulkarnain (see [32] above). As the Prosecution submitted, the presence of the DNA on the interior areas, "AREA-4", raised two possibilities. First, it pointed to Saminathan having direct contact with the exterior areas of the bundles, as well as his involvement in the wrapping of the drug bundles. Second, it was also possible that Saminathan only had direct contact with the exterior of the bundles, but he had also touched an area of tape which had stuck out slightly. In either scenario, Saminathan was inextricably linked to the drugs.

101 In this regard, Saminathan tried to explain away the presence of his DNA by claiming that there has been some form of secondary transfer. As he claimed, he drove the Trailer most of the time. Also, at one point in time, he used a roll

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of black tape (which he left in the Trailer) to fix some wiring in the Trailer. Thus, his DNA must have been transferred to the steering wheel of the Trailer and the black tape. When the impersonator used the Trailer and or the black tape, Saminathan's DNA must have been transferred onto the two bundles. In and of itself, I found this explanation unbelievable. But viewed holistically with all the other evidence, I had no hesitation rejecting this conjecture. I will expand on this later.

102 I now turn to consider the merits of Saminathan's defence, and start by observing that Saminathan has been inconsistent in his position. Prior to the trial, he did not dispute that he was present in Singapore at the material time. His entire defence of *not* being in Singapore, and there being an impersonator was a belated one. In his long statement recorded on 31 March 2014 which the Prosecution used to cross-examine him on, he did not mention any of this. I pause at this juncture to note that the recorder asked Saminathan what he did when he came into Singapore on 20 November 2013 alone in the Trailer and the recorder then informed Saminathan that he "came into Singapore … again at 6.40pm and left at 10.18pm".[59] In response, Saminathan was uncertain about this, but guessed that there were three possible reasons for him to have entered Singapore on the evening of 20 November 2013.[60] What was critical was that at no time did Saminathan dispute that he was in Singapore. Being in Singapore for reasons he could not remember and *not* being in Singapore entirely were entirely different matters.

103 In the course of cross-examination by the Prosecution, Saminathan said that he had already known during the time of investigations that someone could have impersonated him on 20 November 2013.[61] If that were to be his belief,

59 Exh P283.

60 Exh P283.

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there was absolutely no reason for him not to have raised this at the earliest opportunity. Indeed, the situation was aggravated by the fact that even in his Case for the Defence filed on 13 November 2015, Saminathan did not mention that he was not in Singapore at the material time.

104 Next, I found it impossible to accept that Saminathan would leave such an important document as his passport in the Trailer. This was especially since Saminathan claimed that Murugan had a spare key, and that he was not the only person with access to the Trailer. Even if that might have been his usual practice, after the delivery to Singapore on 20 November 2013, Saminathan did not turn up for work for a few days. He said he went to Tampin, Negeri Sembilan, leaving the Trailer parked at the office. If he knew that he was not going to be in control of the Trailer for a few days, I failed to understand why he did not remove his passport from the Trailer that day. Linked to the above, it was hard to imagine in the first place why Saminathan would pre-fill and pre-sign a stack of "white cards", and further, why he would carelessly leave them in the Trailer.

105 On Saminathan's claim that he did not write the words "SHIPYArD RD", I dismissed this. Based on at least six similarities between the words "SHIPYArD RD" and Saminathan's handwriting specimens, Dr Cheng's finding was that the possibility of Saminathan writing the words cannot be ruled out. Meanwhile, Mr Pang was unable to come to a conclusion on the issue. I noted that the drug transaction took place at Quality Road. As such, it was inexplicable why the impersonator would have written "SHIPYArD RD" as the address in Singapore. On the contrary, I noted that Saminathan had stated that he had gone to Shipyard Crescent before (see [27] above). Further, I also noted that Quality Road was adjacent to Chin Bee Drive, the location where

[61] NEs, 21 September 2016, p 47, lines 1-13.

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Saminathan had a delivery earlier that morning. In my view, the claim that he did not write the words "SHIPYArD RD" was a mere attempt to disassociate himself from the disembarkation card, which I found to be filled in by him.

106 Third, by Saminathan's account, the impersonator chose to use his passport to enter Singapore. Given that the impersonator's purpose was to commit a serious crime, it was illogical that one would take on the added risk of being detected by ICA for using a false passport, and in turn, the heightened risk of being caught with the drugs.

107 Fourth, the impersonator must have known Saminathan's movements and plans, so as to be able to take the key from the office of MKG Logistics and to drive the Trailer to Singapore, shortly after the Trailer became available. Also, the impersonator must have known that Saminathan's passport would be in the Trailer, together with a ready stack of pre-filled and pre-signed "white cards". Taken together, this was an impersonator who appeared to know Saminathan well. However, when asked, Saminathan had no idea at all who could have done this to him. He claimed that he did not know who would have framed him for this very serious crime.[62]

108 Fifth, Saminathan's defence depended on a confluence of quite a number of coincidences, which rendered it quite incredible. These included the following:

(a) For the defence to be believed, the impersonator must have had a fair resemblance to Saminathan, so as to be confident to risk the verification check by the ICA;

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62 NEs, 21 September 2013, p 65, lines 13-31 and p 66, lines 1-8.

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(b) Also, the impersonator must have had handwriting similar to Saminathan, or be able to copy his handwriting well, so as to be able to write the words "SHIPYArD RD" such that at least six similarities to Saminathan's handwriting were observed by Dr Cheng. Indeed, the impersonator must have known that Saminathan would write the word "road" as "RD", which also appeared in the disembarkation card he presented for the first entry on 20 November 2013 at 8.24am with the address "SENOKO RD";[63]

(c) Further, the impersonator must have somehow managed to use the black tape left behind by Saminathan in the Trailer to wrap the bundles, or transferred Saminathan's DNA from the Trailer to the bundles; and

(d) Thereafter, the impersonator then drove to Quality Road, adjacent to where Saminathan had driven to earlier that morning for the delivery at Chin Bee Drive.

109 For all of the reasons above, I rejected the defence. At this point, I should highlight that a reasonable doubt must be "real or reasonable", and "not merely fanciful", before the Prosecution can be found not to have discharged its burden: *Jagatheesan s/o Kirshnasamy v Public Prosecutor* [2006] 4 SLR (R) 45 at [51]. By raising the implausible claims in his impersonation defence, Saminathan had not cast any reasonable doubt on the Prosecution's case. I accepted that Saminathan entered Singapore driving the Trailer at 6.40pm, delivered the drugs to Zulkarnain, and then exited Singapore at 10.18pm on 20 November 2013.

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63 Exh P278, p 2.

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Whether Saminathan knew of the nature of the drugs

110 As Saminathan was in possession of the 35 bundles, by s 18(1) of the MDA, he was presumed to be in possession of the drugs, and therefore, presumed to have known of the nature of the drugs by s 18(2) of the MDA. Given the nature of his defence, Saminathan had adduced no evidence to rebut the presumption of knowledge.

Conclusion

111 In light of the foregoing, the Prosecution had proved the charge against Saminathan beyond a reasonable doubt. I found Saminathan guilty and convicted him of the charge.

Decision on Sentence

112 I now turn to my decision on sentence.

113 The prescribed punishment under s 33(1) read with the Second Schedule of the MDA is death. There is an alternative sentencing regime in 33B(1)(*a*) of the MDA allowing the court the discretion to impose a mandatory term of imprisonment for life and 15 strokes of the cane.

114 For a court to have the discretion to impose the alternative sentence, an offender must show that his acts fell within s 33(B)(2)(*a*)(i)–(iv) of the MDA and must also receive a certificate of substantive assistance from the PP. The decision to give or withhold such a certificate is at the sole discretion of the PP: s 33(B)(4) of the MDA.

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Zulkarnain

115 Having heard the parties' submissions, I found on a balance of probabilities that Zulkarnain's role in the drug transaction was to collect the drugs and then to deliver the drugs to Rizwan. His acts fell within the acts of a courier under s 33B(2)(*a*)(i) of the MDA. The PP had also issued Zulkarnain with a certificate of substantive assistance.

116 On the facts of this case, I saw no reason to impose the death penalty, nor did the Prosecution submit that there was any such reason. Accordingly, I imposed the alternative sentence of life imprisonment (backdated to the date of his arrest on 20 November 2013). As Zulkarnain was more than 50 years old, by s 325 of the CPC, he was not liable for caning.

Rizwan

117 The Prosecution submitted that Rizwan was not a courier. I agreed with the Prosecution that Rizwan's role went beyond that of a courier. Apart from getting Zulkarnain to carry out the drug transaction, he had also coordinated the drug transaction. As for the second requirement, the PP did not issue a certificate of substantive assistance. Accordingly, I passed the mandatory death sentence on him.

Saminathan

118 As for Saminathan, it was clear on the evidence that his role was to deliver the drugs to Zulkarnain (which he did). Therefore, based on a balance of probabilities, his role was that of a courier. However, the PP did not issue a certificate of substantive assistance.

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119 As the alternative sentencing regime was not available for consideration, I passed the mandatory death sentence on him.

Hoo Sheau Peng
Judge

Anandan Bala, Marcus Foo and Chan Yi Cheng (Attorney-General's Chambers) for the Public Prosecutor;
Ramesh Chandr Tiwary (Ramesh Tiwary) and Ranadhir Gupta (A Zamzam & Co.) for the first accused;
Gill Amarick Singh (Amarick Gill LLC) and Zaminder Singh Gill (Hilborne Law LLC) for the second accused;
Mahadevan Lukshumayeh (S.T. Chelvan & Company) and Dhanwant Singh (S K Kumar Law Practic LLP) for the third accused.

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