IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 62

Criminal Case No 49 of 2017

Between

Public Prosecutor

And

Mangalagiri Dhruva Kumar

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Drug Trafficking] — [Guilty Plea]

[Criminal Procedure and Sentencing] — [Retraction of Plea of Guilt]

[Criminal Procedure and Sentencing] — [Sentencing] — [Benchmark Sentences]

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

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Public Prosecutor
v
Mangalagiri Dhruva Kumar

[2018] SGHC 62

High Court — Criminal Case No 49 of 2017
Foo Chee Hock JC
25–28 July 2017; 11 September 2017; 12 February 2018; 2 March 2018

21 March 2018

Foo Chee Hock JC:

Retraction of the plea of guilt

1 The accused had on 25 July 2017 claimed trial to a capital charge (marked "A") of trafficking in not less than 22.73 grams ("g") of diamorphine pursuant to s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The first witness, Mr Khu Nguan Hin (PW1) from the Immigration & Checkpoints Authority, had finished his testimony and the Prosecution had concluded the examination-in-chief of a material witness, Shanti Krishnan (PW2)

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("Shanti"), when the Defence applied for a brief adjournment of the proceedings. This was on 26 July 2017. When the court resumed in the afternoon of 27 July 2017, I understood that the Defence had just made representations to the Attorney-General's Chambers.[1] The matter was adjourned to 28 July 2017 and only after 4.00pm did the accused officially confirm in open court that he would plead guilty to the reduced charge (marked "D")[2] of trafficking in "not less than 14.99 grams of diamorphine", which did not attract the mandatory death penalty. The plea of guilt was taken, the Statement of Facts (marked "E") ("SOF") admitted to by the accused without qualification and the court found the accused guilty of and recorded a conviction on the reduced charge.[3] The proceedings were then adjourned to a date to be fixed for submissions on sentence.[4]

2 The proceedings resumed on 11 September 2017 and submissions on sentence by both parties were filed earlier on 6 September 2017. Parties had a preliminary discussion in chambers and were about to proceed for oral submissions in open court when Defence Counsel, Mr Edmond Pereira, indicated that there might be another development. The matter was stood down to the afternoon.

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1 Transcript, Day 3 (27 July 2017), p 1.

2 Transcript, Day 4 (28 July 2017), p 1.

3 Transcript, Day 4 (28 July 2017), pp 2, 8 and 9.

4 Transcript, Day 4 (28 July 2017), p 9.

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Then in open court, the accused applied for the plea of guilt recorded on 28 July 2017 (about 6½ weeks earlier) to be retracted.

3 Mr Pereira applied to be and was discharged from further acting for the accused. The intervening time was taken up for the accused to obtain new counsel. Mr Ramesh Tiwary now appeared for the accused and maintained the application for the retraction of the plea. On the court's direction, the accused had put forward his grounds for doing so in an affidavit ("accused's first affidavit") filed on the 12 February 2018. I quote from paras 3, 4 and 9:

> 3. On the day that [Shanti] concluded her evidence in chief my lawyer at that time Mr. Edmond Pereira spoke to me in the court. He advised me that the evidence against me was strong in view of Shanti's evidence. If I lost the case I could be sentenced to death. He asked me if he could make representations to the DPP to reduce the capital charge to one that did not attract the death sentence. I would have to plead guilty to this amended charge. I think we spoke for about 45 minutes. At the conclusion of that meeting I said I would not plead guilty. He told me to think again and to inform him the next day. He gave me a piece of paper to write what I intended to do.
>
> 4. The next morning he met me again. He asked for my decision. At first I said that I would not plead guilty. He advised me again that the evidence against me was strong. He advised me to think of my family, my son and wife. That day was my son's birthday. I was very emotional. I felt no one believed me. Everyone believed Shanti. I felt alone as if no one was helping me. I was feeling very depressed. I

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> was also missing my son more than ever because it was his birthday. So I agreed to plead guilt.
>
> 9. The next time my lawyer saw me at Changi prison I told him I did not want to plead guilty. He said he would then have withdraw from the case. I said okay.

4 The accused added, "I was very emotional and I had been crying. I was thinking about my son more than ever. In those circumstances I broke down. I agreed to plead guilty. I simply gave up. I am not guilty of the offence or the reduced charge to which I pleaded guilty. I did not give Shanti anything. Therefore I cannot plead guilty."[5]

5 The affidavit was served on Mr Pereira who made the following comments in his affidavit ("Mr Pereira's affidavit"):

> 8. Save for the fact that I advised the Accused that the evidence against him was strong in view of Shanti's evidence, paragraphs 3 and 4 of the Accused's affidavit is untrue.
>
> 9. I spoke with the Accused at length after the adjourned hearing. I advised the Accused that the evidence against him was strong. There were circumstances in which if he were questioned following Shanti's evidence, he would not be able to answer as he had difficulty explaining when I questioned him. I informed him that he was dealing with his life. I told him that I had spoken with the Prosecution earlier that day and the Prosecution had indicated that in the event he elects to plead guilty, the Prosecution will consider proceeding on a non-

[5] The accused's first affidavit at paras 10 and 11.

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> capital charge and offer him a sentence between 26-30 years' imprisonment. However, that determination will have to be considered by the Prosecution after they have considered our Representations. Without a moment of hesitation, the Accused immediately agreed to plead guilty to the charge. I told the Accused not to make a rash decision. I provided the Accused with a piece of paper to confirm his instructions to me that he wish to plead guilty to the charge. The Accused asked me what he should write. I told him that if he wishes to plead guilty, he can write to me his instructions. He then wrote on the piece of paper I provided. After he finished writing, I told him to keep the paper with him and to take some time to think about his decision and to inform me on the following day what he intends to do and if he still wishes to plead guilty to the charge, he can than hand his written instructions to me. …

6 Mr Pereira further added that he received the signed note from the accused on the morning of 27 July 2017. Thereafter, representations were made to the Prosecution. On 28 July 2017, Mr Pereira went through the SOF with the accused. Mr Pereira informed the accused that pleading guilty was "a choice that he has to make freely to which he responded that he understood".[6] Throughout the discussion, the accused maintained his decision to plead guilty.

7 When Mr Pereira visited the accused on 19 August 2017 in Changi Prison, the accused was told that the Prosecution would be seeking a sentence of at least 28 years' imprisonment. The accused

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6 Mr Pereira's affidavit at para 12.

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asked if Mr Pereira could request the court to impose a sentence of 20 years' imprisonment. Mr Pereira said he would try for 24 years' to 26 years' imprisonment. Instructions were taken to prepare for a written mitigation on his behalf. The accused did not ask to retract his plea on 19 August 2017. The first time Mr Pereira was told that the accused wanted to retract his plea was on 11 September 2017.[7]

8 In his affidavit of 26 February 2018 ("accused's second affidavit"), the accused responded to Mr Pereira's affidavit. The accused conceded that he had agreed to plead guilty on 26 July 2017 and not on 27 July 2017.

9 The accused also claimed that he had no difficulty explaining to Mr Pereira the facts of his case. He maintained that during Mr Pereira's visit to Changi Prison on 19 August 2017, he had told Mr Pereira he wished to retract his plea.

10 On analysis, it should be plain what the accused was *not* saying. He was not challenging the procedure for or that he had entered the plea of guilt. He had sufficient time for consideration and was granted such time as was requested to reach his decision. The accused was not alleging that he had misunderstood the

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7 Mr Pereira's affidavit at paras 14 and 15.

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situation. Further, the accused was not criticizing Mr Pereira's advice and conduct as counsel.

11 I found that in the circumstances, the accused's plea of guilt was voluntarily made, with full presence of mind as to the nature of the plea, the offence and the facts he was admitting to. His present allegations were a belated afterthought, and in any event, they were insufficient in law to enable him to retract his plea.

12 To begin, I noted that the accused's initial account was that after 45 minutes of discussion on 26 July 2017, he refused to plead guilty. Conversely, Mr Pereira claimed the accused wished to plead guilty after the discussion "[w]ithout a moment of hesitation".[8] The accused was asked to, and did, write out his instructions on 26 July 2017. He was asked to think through his plea until the next day.

13 When faced with Mr Pereira's affidavit, the accused eventually conceded he had agreed to plead guilty by 26 July 2017 after all. Objectively, it was hard for the accused to deny this as his note containing his instructions was signed twice and dated twice on 26 July 2017, with a correction that indicated the accused's mind was directed to the date. It was fairly obvious that the accused indicated he wanted to plead guilty by 26 July 2017.

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8 Mr Pereira's affidavit at para 9.

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14 What also could not be controverted was that the sentencing consequences of pleading guilty were explained to him. The accused's vacillating accounts aside, it was clear that Mr Pereira was aware that the situation was delicate and gave him time to ponder over the plea before it was formally entered in court.

15 Next, as to the accused's claim that he had told Mr Pereira he wished to retract his plea on 19 August 2017, I found this most unlikely. In representing the accused, having had 14 interviews with him,[9] Mr Pereira had shown himself to be careful and conscientious. On 6 September 2017, Mr Pereira had filed a detailed mitigation and submissions on sentence. If Mr Pereira had been informed of the accused's wish to retract his plea by 19 August 2017, he would have immediately informed the Prosecution and the court. There would be no reason to do all that work and to persist in filing the papers.

16 I also noted that the mitigation plea and submissions could only have been prepared under the accused's instructions.[10] It was apparent that Mr Pereira attended the chambers discussion on 11 September 2017 on sentence with no inkling that the accused had changed his mind, until parties were about to submit in open court (see [2] above).[11] All that Mr Pereira could tell the court on 11

9 Mr Pereira's affidavit, para 4.

10 Mr Pereira's affidavit at para 14; Prosecution's Submissions (Retraction of Plea) at para 53.

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September 2017 was that "I spoke to the accused person in regard to the sentence that the prosecution has proposed as part of the sentence they are asking the Court to impose on him in light of his plea of guilt."[12] The accused told the court that he did not admit to the reduced charge ("D") and the SOF.[13] The accused's inconsistent stance was juxtaposed against Mr Pereira's consistent account. In my judgment, the accused's claim that he had tried to retract his plea as early as 19 August 2017 was untrue.

17 The foregoing findings raised the scenario that between 28 July 2017 and 11 September 2017, the accused had not notified his counsel or anyone else about the involuntariness of his plea, or his emotional state. I had serious doubts about the accused's *bona fides* in this application and the truthfulness of the reasons stated for the change of plea.

18 In any event, the accused had not provided the court with "valid and sufficient grounds which satisfy the [trial judge] that it is proper and in the interests of justice that he should be allowed to" retract his plea, or that indicated a qualification of his plea (*Ganesun*

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11 Transcript, Day 5 (11 September 2017), p 1.

12 Transcript, Day 5 (11 September 2017), p 1.

13 Transcript, Day 5 (11 September 2017), p 2.

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s/o Kannan v Public Prosecutor [1996] 3 SLR(R) 125 ("*Ganesun*") at [12], citing *Public Prosecutor v Sam Kim Kai* [1960] MLJ 265).

19 The above was reflected in s 228(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), which states:

> **228.**-(4) Where the court is satisfied that any matter raised in the plea in mitigation materially affects any legal condition required by law to constitute the offence charged, the court must reject the plea of guilty.

20 After an accused had admitted to the Statement of Facts and prior to sentence being passed, the issue here commonly arose in two main scenarios. The first was where the plea of guilt was qualified, whether by matters raised in mitigation (as contemplated in s 228(4) of the CPC), or by any matter that may come to the notice of the court.[14]

21 In the ordinary course, the circumstances of the qualification would have made it obvious, or upon closer elucidation the court would have discerned, that an accused was manifestly labouring under a mistake or misunderstanding (see *Ganesun* at [13], *Md Rafiqul Islam Abdul Aziz v Public Prosecutor* [2017] 3 SLR 619 at [32], [33]). Indeed, s 228(4) of the CPC was generally invoked in situations where despite an accused's insistence on pleading guilty,

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14 Transcript, Day 6 (2 March 2018), p 18.

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the court could not accept the plea, as it was not a *knowing* plea of guilt at first instance.[15] This was similar to where the situation revealed some undue pressure, alerting the court that the initial plea was not *voluntarily* entered into (*Chng Leng Khim v Public Prosecutor and another matter* [2016] 5 SLR 1219 at [18]). These situations showed that despite adherence to the procedural safeguards of s 227(2) of the CPC and the admission to the Statement of Facts, an accused had manifestly not understood his plea or did not genuinely have the freedom to choose how to plead and the court must reject the plea (*Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 at [23]).

22 In the other scenario, there would be situations where an accused applied to retract his plea after what appeared to be a considered and voluntary plea. The court was duty bound to enquire into the reasons for the change in mind because an "accused person cannot be permitted merely at whim to change his plea" (*Ganesun* at [12], citing *Public Prosecutor v Sam Kim Kai* [1960] MLJ 265). More seriously, a purely tactical decision by an accused to resile from a valid plea might represent an attempt to "game the criminal process".[16] Moreover, an accused may not disclose the real reason for his change of position.[17]

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15 Transcript, Day 6 (2 March 2018), pp 14 and 15.

16 Prosecution's Submissions (Retraction of Plea) at para 70.

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23 If there were indeed no *valid or sufficient* reasons for retraction, then the legal conditions to constitute the offence were unaffected, let alone "materially affect[ed]" under s 228(4) of the CPC. This would be the case despite the accused's *ex post facto* assertions that he did not admit to the reduced charge and the SOF.[18]

24 As Justice White stated in *Brady v. United States* 397 U.S. 742, 749 (1970) ("*Brady*"):

> That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. *He thus stands as a witness against himself* and he is shielded by the Fifth Amendment from being compelled to do so – hence the minimum requirement that his plea be the voluntary expression of his own choice**.** *But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial – a waiver of his right to trial before a jury or a judge.* Waivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences. …
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> [Emphases added]

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17 Defence's Submissions on Retraction of Plea at para 21.

18 Transcript, Day 5 (11 September 2017), p 2.

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25 Notwithstanding the constitutional context in *Brady*, I found these observations apposite. In our system, an accused's plea of guilt similarly formed the legal basis for the accused's conviction without a full trial and the attendant consequences (see *Koh Bak Kiang v Public Prosecutor* [2016] 2 SLR 574 at [43]). As such, if the accused were able to show valid and sufficient grounds for the retraction of his plea, then like the qualification of plea situations mentioned, the court was duty bound to allow the application for retraction.

26 Because of the grave consequences of a guilty plea, it had to be taken with care and due attention to the substantive nature of the plea. In this case, Mr Pereira and I had repeatedly clarified with the accused that he understood the nature and consequences of his plea and that he wanted to plead guilty.[19]

27 In terms of substance, the accused understood and *admitted* fully to the offence and the SOF, which stated he had delivered the drugs to Shanti and moreover that he knew the plastic bag he was delivering contained two packets of heroin.[20] It must be appreciated that the accused was someone with the actual knowledge of the facts underlying the offence he was charged with. With that knowledge, the accused "agreed to plead guilty".[21] Borrowing from the language

19 Transcript, Day 4 (28 July 2017), pp 1-3, 8; Prosecution's Submissions (Retraction of Plea) at paras 21 and 26.

20 SOF at para 9.

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of *Brady* (at p 749), the accused's plea was in essence an unequivocal admission to the offence; he stood "as witness against himself".

28 I was mindful of the danger of accused persons pleading guilty despite their innocence (see comments in *Public Prosecutor v Liew Kim Choo* [1997] 2 SLR(R) 716 at [89(a)]). I was also sympathetic that accused persons faced powerful pressures to plead guilty in the case of capital charges that were reduced. However, even if I accepted Mr Tiwary's submission that the accused was affected by emotional pressure, "albeit one that was not caused by anyone else",[22] that was a far cry from a situation of an involuntary plea. Even if his allegations were true, that would only amount to self-induced pressure, which was not a valid ground for retraction under the law (*Lee Eng Hock v Public Prosecutor* [2002] 1 SLR(R) 204 at [9]).[23]

29 As was the case, I had serious doubts about the accused's alleged "depressed"[24] and "very emotional"[25] state. I detected no

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21 The accused's first affidavit at paras 4 and 5.

22 Defence's Submissions on Retraction of Plea at para 18.

23 Prosecution's Submissions (Retraction of Plea) at para 59.

24 Defence's Submissions on Retraction of Plea at para 16.

25 The accused's first affidavit at paras 4 and 10.

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hint of emotional distress when he pleaded guilty. The accused's claim was a convenient excuse. Significantly, I was certain that his emotional state did not affect his capacity to appreciate and consider his decision to plead guilty and admit to the SOF.

30 All that the accused's affidavits could establish was that he pleaded guilty after he had duly considered Mr Pereira's advice.[26] Having heard the evidence-in-chief of the Prosecution's main witness, Shanti, he assessed his chances at trial. At the very highest, this was a reluctant decision. It was nevertheless a *calculated* and considered decision to plead guilty to the reduced charge, made with full awareness of the trade-offs and consequences. In the event, I dismissed the accused's application to resile from his voluntary and knowing (*Brady* at p 749) plea of guilt and his admission to the SOF.

Sentence

31 I turn now to consider the sentence to be imposed. I set out the reduced charge ("D") that the accused had pleaded guilty to on 28 July 2017:

> That you, **MANGALAGIRI DHRUVA KUMAR**,
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> on 16 May 2014, sometime between 5.02pm and 5.36pm, at the vicinity of the carpark located outside Sheng Siong Supermarket at Woodlands Centre

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[26] The accused's first affidavit at paras 3 and 4.

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> Road, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"), *to wit*, by delivering two packets of brown granular/powdery substance which was analysed and found to contain **not less than 14.99 grams of diamorphine**, to one Shanti Krishnan (NRIC No S1722033J) without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) of the MDA and punishable under section 33(1) read with the Second Schedule of the MDA.

32 I sentenced the accused to 26 years' imprisonment with 15 strokes of the cane. The reasons for my decision follow.

33 The accused is a 46-year-old Malaysian male (43-years-old at the material time of the offence). The accused was a first leg courier who would bring drugs into Singapore and then transfer the drugs to a second leg courier.[27]

34 On 16 May 2014, at about 5.02pm, the accused drove a bus bearing the Malaysian vehicle registration number JJA 5556 ("the Bus") from Malaysia to Singapore via the Woodlands Checkpoint.[28] He was at that point in time working as a bus driver for Presto Jaya Travel & Tours Sdn Bhd, a company registered in Malaysia.[29]

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27 SOF at para 7.

28 SOF at para 8.

29 SOF at para 3.

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35 The accused then proceeded to meet Shanti in the vicinity of the carpark located outside the Sheng Siong Supermarket located at Woodlands Centre Road.[30] Shanti was a second leg drug courier who was instructed by one unidentified "Boy" to meet the accused at the aforementioned carpark.[31]

36 At the meeting, which took place sometime between 5.02pm and 5.36pm, the accused alighted from the Bus, approached Shanti and handed her a plastic bag with two packets wrapped with newspaper and bound with green masking tape ("Bundle"). He knew that the Bundle contained heroin (*ie*, the street name for diamorphine).[32]

37 Thereafter, Shanti called "Boy", who instructed her to call one unidentified "Abang". "Abang" instructed Shanti to proceed to Block 631 Ang Mo Kio Street 61 ("Block 631") to hand over the Bundle to one Zainudin bin Mohamed ("Zainudin") in exchange for cash.[33]

38 At about 6.00pm, Shanti met Zainudin at Lift Lobby "A" on the second floor of Block 631. Shanti passed Zainudin the Bundle.

30 SOF at para 9.

31 SOF at paras 7 and 9.

32 SOF at paras 9 and 10.

33 SOF at para 12.

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Zainudin gave Shanti a bundle of cash amounting to $8,200. Zainudin knew he was collecting heroin from Shanti. They then parted ways.[34]

39 At about 6.08pm, officers from the Central Narcotics Bureau ("CNB") forcefully entered Block 631, #03-294, which was Zainudin's flat. Zainudin was in the midst of repacking the heroin in the Bundle in accordance with the instructions of one unidentified "D De".[35] Upon hearing the CNB officers' attempts to enter his flat, Zainudin picked up the two transparent packets of heroin and zip-lock bags that he intended to repack the heroin into and threw them into the rubbish chute in the kitchen. In his haste, he left a trail of heroin cubes on the kitchen floor leading up to the rubbish chute.[36]

40 After the CNB officers entered the flat, Zainudin was placed under arrest. The heroin cubes on the kitchen floor were seized by CNB officers. The other CNB officers then led Zainudin down to the rubbish collection point which served Zainudin's flat. Amongst the items retrieved were two clear plastic bags containing a brown granular substance, brown cubes and loose granular substance of heroin in the rubbish bin, and around the floor of the rubbish chute

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34 SOF at paras 16, 17 and 27.

35 SOF at paras 16, 18 and 19.

36 SOF at para 19.

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at the said rubbish collection point.[37]

41 Collectively, all the seized heroin (including those found in Zainudin's flat) were analysed and found to contain not less than 14.99g of diamorphine.[38] There was no dispute that all of the seized heroin came from the Bundle that the accused delivered to Shanti on 16 May 2014, and which Shanti delivered to Zainudin on the same day.[39]

42 At all material times, the accused was not authorised under the MDA or the regulations made thereunder to traffic in diamorphine, a Class A controlled drug listed in the First Schedule to the MDA.[40]

43 Contemporaneously, at about 6.10pm on 16 May 2014, Shanti was arrested, and a bundle of cash amounting to $8,200 was seized from her. The accused was arrested more than a year later, on 23 September 2015.[41]

44 Investigations revealed that there were three prior occasions

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37 SOF at paras 20–24.

38 SOF at paras 31 and 34.

39 SOF at para 26.

40 SOF at paras 32 and 33.

41 SOF at paras 27 and 28.

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on which the accused had handed bundles of drugs to Shanti in Singapore: 30 April 2014, 13 May 2014, and 14 May 2014.[42]

45 Zainudin and Shanti were subsequently charged for trafficking in not less than 22.73g of diamorphine under the MDA. They claimed trial, and their matters were heard before See Kee Oon JC (as he then was) from August to September 2016. On 30 September 2016, both were convicted of their respective charges. Shanti, who satisfied the conditions of s 33B(2) of the MDA, was sentenced to life imprisonment. Zainudin, who failed to satisfy either of the two conditions under s 33B(2), was sentenced to suffer death: *Public Prosecutor v Zainudin bin Mohamed and another* [2017] 3 SLR 317.[43] Shanti's appeal against conviction and sentence was dismissed (CCA 30/2016).[44] Zainudin's appeal against sentence was dismissed (*Zainudin bin Mohamed v Public Prosecutor* [2018] SGCA 8).

46 For the purposes of sentence, I found that the recent Court of Appeal decision of *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 ("*Suventher*") and the High Court's decision in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122

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42 SOF at para 6.

43 SOF at para 2.

44 SOF at para 2(b).

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("*Vasentha*") were most relevant. I had recently discussed and applied *Suventher* (which adopted *Vasentha*) in *Public Prosecutor v Hari Krishnan Selvan* [2017] SGHC 168 ("*Hari Krishnan*") (at [14]–[16]). In *Hari Krishnan* at [17] and [20], I further considered the unreported cases of *Public Prosecutor v Tamil Alagan a/l Gunasekaran* (CC 38/2017) ("*Tamil Alagan*")[45] and *Public Prosecutor v Jothiswaran a/l Arumugam* (CC 34/2017) ("*Jothiswaran*").

47 In essence, the quantity of drugs that an accused was charged with would provide an indicative starting point; thereafter, upward or downward adjustments should be made to take into account the offender's culpability as well as the presence of aggravating or mitigating factors: see *Suventher* at [30]; *Hari Krishnan* at [15]. Given that the accused was charged with trafficking in not less than 14.99g of diamorphine, which was a sliver away from the weight that would attract the mandatory death sentence, the indicative starting range ought to be 26 to 29 years' imprisonment. This starting point had as its primary consideration the degree of harm to society, which was in turn based on the quantity of drugs trafficked (*Suventher* at [21]).

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45 *Tamil Alagan a/l Gunasekaran v Public Prosecutor* (CCA 22/2017) (accused's appeal against sentence was dismissed).

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48 The Prosecution's position was that the appropriate sentence to impose was at least 28 years' imprisonment together with the mandatory 15 strokes of the cane.[46] On the other hand, the accused did not maintain Mr Pereira's mitigation and submissions on sentence filed on 6 September 2017. Mr Tiwary stated that on sentence the accused wished the court to consider only that the accused had a clean record and that he had been gainfully supporting his family.[47]

49 The Prosecution submitted that there were three applicable sentencing considerations:

> (a) First, the accused had been engaged in drug operations of sizeable scale and significant complexity. The Prosecution claimed that the accused had assisted a cross-border drug trafficking syndicate by bringing in large quantities of drugs on the Bus on four occasions. It was also claimed that the accused had been part of an elaborate drug trafficking scheme that involved communicating "using both Malaysian and Singapore-registered phone numbers", and involved at least five persons – namely, "Boy", "Abang", Shanti, Zainudin and the accused.[48]

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46 Prosecution's Skeletal Sentencing Submissions ("PSSS") at para 2.

47 Transcript, Day 6 (2 March 2018), p 12.

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(b) Second, the accused had managed to avoid detection on numerous occasions because of the way he had concealed the drugs – *ie*, by wrapping them in newspapers and placing them in an "innocuous, commonly found plastic bag". The fact that the accused had managed to traffic drugs on four occasions was testament to the accused's success in concealing the drugs.[49] It was also submitted that the accused's culpability was higher than in *Hari Krishnan* given that a tourist bus provided more hiding places and an opportunity to disclaim the knowledge of the drugs if discovered.[50]

(c) Third, the Prosecution also argued that the accused's late plea of guilt (after hearing the overwhelming evidence and effectively on the "last day of trial") and his subsequent application for retraction meant that his plea of guilt was not indicative of his remorse.[51] They further argued this should be an "additional aggravating factor".[52] In their view, he had only pleaded guilty when he knew that the game was up.[53] The

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48 PSSS at para 7(a).

49 PSSS at para 7(b).

50 PSSS at paras 7(b) and 10.

51 PSSS at para 8(a).

52 Transcript, Day 6 (2 March 2018), p 13.

53 Transcript, Day 6 (2 March 2018), p 13.

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accused had also been uncooperative during investigations. He had consistently denied that he had committed the said offence, and had thereby wasted the court's and the Prosecution's resources.[54]

50 I had the following reservations over the Prosecution's submissions. I address each in turn:

(a) As to the size and complexity of the drug operations, two points were in order. First, it was incumbent upon the Prosecution to include evidence of aggravating factors they intended to rely on within the SOF. In terms of the accused's involvement, the SOF stated he had only interacted with Shanti.[55] There was no evidence the accused was involved in anything other than delivering the drugs (*eg,* recruitment of others). Second, and to the point, I noted that *Vasentha* (at [39], [40], [67]) linked an accused's culpability to the size and complexity of the drug operations. In the present case, there was no evidence that the accused's involvement went towards the *degree of syndication* required for an uplift in sentence. His specific role as a courier must therefore be considered a limited one.

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54 PSSS at para 8.

55 SOF at paras 6, 7, 9 and 11.

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(b) I was similarly unpersuaded by the Prosecution's claim that the accused's culpability was increased because the mode of concealment was "evident" in his previous offending and the current offence.[56] None of the additional features, as suggested by the Prosecution, as to how the drugs were concealed and delivered on prior occasions, and on this occasion, were disclosed in the SOF. There was simply no factual basis to find such an aggravating factor existed. Nevertheless, I took the view that the accused's admission in the SOF to the uncharged offences negated the mitigating weight to the Defence's claim that the accused was a first-time offender (*Vasentha* at [81]).

(c) I disagreed with the Prosecution's submissions that the accused's lack of remorse was an additional *aggravating* factor, as that was confined to his attempt to retract his plea of guilt. I also noted that the accused's late plea of guilt did save some, albeit limited, resources for the system. However, in the main, I was in agreement with the Prosecution that the mitigating weight given to the accused's plea of guilt had to be attenuated. Here, the accused pleaded guilty only after the Prosecution's material witness had given evidence and he had assessed his chances of succeeding at trial. Thereafter, he

56 PSSS at para 7(b).

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effected a *volte-face*, and sought to retract his plea. His plea was tactical, rather than remorseful.[57]

51 To round off, this accused presented no factors warranting a departure downward of the sentencing range of 26 – 29 years' imprisonment (*Suventher* at [30], *Vasentha* at [48], [80]). By the same token, there was also no gainsaying the fact that as a courier, his specific role for the offence was a limited one. A term of imprisonment at the lower end of the range (*ie*, 26 years' imprisonment) was therefore appropriate.

52 As a check for consistency, I compared the accused against the sentencing precedents.

53 The accused in *Tamil Alagan* faced one additional charge of trafficking with common intention in 182.92 g of methamphetamine, which was taken into consideration for the purposes of sentencing. The accused there had recruited one other person into his criminal enterprise for reward and also made arrangements with the drug recipients for the collection of drugs. It appeared to me that *Tamil Alagan* was a case involving a recruiter and coordinator (see *Hari Krishnan* at [20]), and despite his cooperation with the authorities, the overall higher culpability there warranted a harsher term of 27

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57 PSSS at para 8(a).

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years' imprisonment.

54 The case of *Hari Krishnan* similarly involved a recruiter who had promised financial reward to obtain the assistance of two others in his drug trafficking (*Hari Krishnan* at [11]). The accused in *Hari Krishnan* was sentenced to an imprisonment term of 26 years. I should also point out that the accused there took very careful steps to hide the heroin under baskets of vegetables, which evinced a degree of premeditation (*Hari Krishnan* at [19]). In the present case, I was unpersuaded that the accused's concealment of the drugs was more culpable than the steps taken by the accused in *Hari Krishnan*. For one, we had no facts that the accused had hidden the Bundle amongst the passengers in the tourist bus or in some other way (see [50(b)] above).

55 Despite the aggravating circumstances of *Hari Krishnan*, the accused's plea of guilt in that case demonstrated some remorse. The accused's cooperation with the authorities was also another mitigating factor not present in this case (*Hari Krishnan* at [19]). The balance of aggravating and mitigating factors in *Hari Krishnan* suggested to me that 26 years' imprisonment was appropriate for this accused who presented the court with neither particularly aggravating, nor mitigating, factors.

56 As for the case of *Jothiswaran*, this involved a courier

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recruited by the accused in *Tamil Alagan*. It appeared to me that the lower term of 25 years' imprisonment in *Jothiswaran* was calibrated against the imprisonment term received by the more culpable accused in *Tamil Alagan* (see *Hari Krishnan* at [20]).

57 Having considered the circumstances of the present case, I decided a sentence of 26 years' imprisonment and 15 strokes of the cane was appropriate.

58 In exercise of my discretion under s 318 of the CPC, I ordered that the imprisonment term shall take effect from the date of remand on 25 September 2015.

Foo Chee Hock
Judicial Commissioner

April Phang, Carene Poh, Rajiv Rai and Desmond Chong (Attorney-General's Chambers) for the Public Prosecutor;
Edmond Pereira (Edmond Pereira Law Corporation) and Prasad s/o Karunakarn (Prasad & Co) for the accused.
[Prasad s/o Karunakarn was discharged on 31 July 2017.
Edmond Pereira was discharged on 11 September 2017;
Ramesh Tiwary (M/s Ramesh Tiwary) was appointed in his place.]

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