IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 22

Criminal Case No 11 of 2018

Between

Public Prosecutor

And

Roszaidi bin Osman

JUDGMENT

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

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Public Prosecutor
v
Roszaidi bin Osman

[2021] SGHC 22

General Division of the High Court — Criminal Case No 11 of 2018
Choo Han Teck J
12 October, 7 December 2020

1 February 2021 Judgment reserved

Choo Han Teck J:

1 On 6 October 2015, the accused ("Roszaidi") collected a red plastic bag containing, *inter alia*, a total of not less than 32.54g of diamorphine ("the Drugs"). Roszaidi then handed the Drugs to his Wife, Azidah bte Zainal ("7Azidah"). Subsequently, Roszaidi was charged under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for trafficking in the Drugs. On 21 January 2019, I found Roszaidi guilty of the charge against him. As the issue of whether Roszaidi qualified for the alternative sentencing regime under s 33B of the MDA was not raised before me, I sentenced Roszaidi to the mandatory death penalty pursuant to s 33 of the MDA.

2 Roszaidi appealed against both his conviction and sentence in Criminal Appeal No 2 of 2019 ("CA 2"). Roszaidi also filed Criminal Motion No 17 of 2019 ("CM 17") seeking leave to rely on a further ground in his appeal against sentence, namely, that he was eligible for the alternative sentencing regime

under s 33B(1)(*b*) of the MDA, and should therefore have been sentenced to life imprisonment.

3 The Court of Appeal dismissed Roszaidi's appeal against conviction. As regards Roszaidi's appeal against sentence, the Court of Appeal allowed CM 17 because it found that the evidence (a) established that Roszaidi was a mere courier within the meaning of s 33B(3)(*a*) of the MDA, and (b) provided a sufficient basis to think that Roszaidi could come within the ambit of s 33B(3)(*b*) of the MDA, so as to justify taking additional evidence (see *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 ("CA Judgment") at [26]). Consequently, the Court of Appeal directed the parties to file additional evidence in the form of psychiatric reports prior to the hearing of CA 2. After perusing the additional evidence, the Court of Appeal observed that there were disagreements between the parties' experts and that their reports "raise[d] as many questions as they answered" (CA Judgment at [39]). It therefore remitted the following questions to me for additional evidence to be taken pursuant to s 392(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed):

(a) What precisely were the abnormalities of mind that Roszaidi was suffering from at the material time?

(b) Do the relevant abnormalities arise from a condition of arrested or retarded development of mind, or any inherent causes, and/or are they induced by disease or injury?

(c) Did the relevant abnormalities substantially impair Roszaidi's mental responsibility for his acts and omissions?

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4 These three questions mirror the three requirements that an accused must prove on a balance of probabilities in order to satisfy the exception on diminished responsibility under s 33B(3)(*b*) of the MDA, namely:

(a) first, the accused was suffering from an abnormality of mind;

(b) second, the abnormality of mind

(i) arose from a condition of arrested or retarded development of mind,

(ii) arose from any inherent cause, or

(iii) was induced by disease or injury; and

(c) third, the abnormality of mind substantially impaired the accused's mental responsibility for his acts and omissions in relation to his offence (see *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") at [21]).

5 Incidentally, these are the same requirements that apply to the partial defence of diminished responsibility for the offence of murder under Exception 7 to s 300 of the Penal Code (Cap 224, 2008 Rev Ed).

6 The Prosecution's expert was Dr Bharat Saluja ("Dr Saluja"), a Consultant Psychiatrist who formerly worked for the forensic department at the Institute of Mental Health ("IMH") and is currently the head of the Young Persons Mental Health Services for Monash Health in Melbourne. The Defence's expert was Dr Jacob Rajesh ("Dr Rajesh"), a Senior Consultant Psychiatrist in Promises (Winslow) Clinic and a Senior Consultant Psychiatrist in the Singapore Prison Service since October 2015. Dr Rajesh was also formerly employed by the IMH.

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7 Dr Saluja and Dr Rajesh agree that the accused suffered from two recognised mental disorders, namely (a) major depressive disorder ("MDD") and (b) mental and behavioural disorder due to dependence of multiple substances ("substance use disorder"), at the time of his commission of the offence. It is undisputed that both of these disorders constituted "abnormalities of mind" and thus satisfy the first requirement set out in *Nagaenthran.*

8 The experts are further agreed that the accused's MDD was an abnormality of mind that arose from an inherent cause. As such, the second requirement in *Nagaenthran* is also satisfied insofar as the accused's MDD is concerned. However, the experts differ on their assessment of whether Roszaidi's substance use disorder satisfies the second requirement in *Nagaenthran.* Dr Saluja's assessment was that Roszaidi's substance use disorder did not arise from a condition of arrested development of mind or any inherent cause, and was not induced by disease or injury. In contrast, Dr Rajesh opined that the accused's MDD had formed the "underlying substrate" for his substance use disorder, and that the two conditions had operated "synergistic[ally]" to exacerbate the accused's overall mental state. Thus, Dr Rajesh's view is that the accused's substance use disorder had, like his MDD, arisen from an 'inherent cause'.

9 In my view, Dr Saluja's evidence on this point was to be preferred. There is no evidence that Roszaidi's MDD and substance use disorder had operated in a "synergistic" manner, or that the existence of the latter was contingent on the former. Notably, Roszaidi had a long-standing history of dependence on multiple substances, and had begun consuming drugs from age 10 onwards. However, Dr Saluja observed, and Dr Rajesh did not dispute, that Roszaidi had only started exhibiting symptoms of MDD from about seven months before the time of his arrest. Thus, Dr Saluja reasoned that the accused's MDD was not

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likely to be "an additive factor in the sense [of] add[ing] to his resistance or inability to resist drug-seeking behaviour". I agree with Dr Saluja's analysis. In the premises, there was nothing to show that the accused's substance use disorder had arisen from any 'inherent cause'.

10 The third requirement of *Nagaenthran* caused the strongest disagreement between the experts here. Dr Rajesh thinks that Roszaidi's mental disorders impaired his rational judgment and thereby substantially impaired his mental responsibility. According to Dr Rajesh, Roszaidi's impaired rational judgment was evident from three factors, namely:

(a) his apparent focus on the short-term benefits of trafficking drugs over the long-term consequences of being caught;

(b) his overestimation of the threat posed to his life if he did not traffic the drugs; and

(c) his decision to incriminate his then-pregnant wife by asking her to keep the Drugs on his behalf.

On the other hand, Dr Saluja was of the view that Roszaidi's mental responsibility was not substantially impaired for three primary reasons. First, based on the medical criteria for a diagnosis of MDD, the accused's MDD fell within the category of mild severity. Second, despite his MDD, Roszaidi's conduct at the time of his commission of the offence demonstrated that he had been able to exercise "multiple functions in the brain" such as planning, executing a plan, and understanding instructions from others. Given that Roszaidi's brain had been "functioning in a very organised manner, not just internally but also involving the external agencies", it was unlikely that that Roszaidi's MDD had had a significant impact on his cognitive ability at the

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material time. Third, Dr Saluja observed that Roszaidi had exhibited similar offending behaviour on previous occasions, and that he had already been in and out of prison several times in the past for drug consumption and trafficking. Since there was nothing to show that Roszaidi had been suffering from MDD when he committed those offences, it was more likely than not that Roszaidi's MDD had not contributed to his commission of the offence on 6 October 2015.

11 It is necessary, as a starting point, to identify the facts pertaining to Roszaidi's offence which are relevant to the experts' dispute. Roszaidi's evidence at trial was that he had been trafficking drugs for person known as "Is Cangeh". Roszaidi claimed that he had agreed do so because (a) he wanted to be paid for each job; (b) Is Cangeh was his "friend" and he trusted him; and (c) he would be able to satisfy his drug addiction by "steal[ing] [drugs] from the packet[s]" that he was trafficking. On the day of his arrest, Roszaidi had, as per usual, collected the Drugs on Is Cangeh's instructions. Upon receiving the Drugs, Roszaidi realised that the bundle was very heavy and he became "confused and scared". He then asked his wife, Azidah, who was pregnant at the time, to "take the [Drugs] and keep [them] for [a]while for [him]". Roszaidi, Azidah and several others who had been involved in the transaction were arrested by Central Narcotics Bureau officers shortly afterwards.

12 Dr Rajesh testified that it was evident that Roszaidi suffered from impaired rational judgment because he undertook the dangerous activity of trafficking simply so that he could consume the drugs that he was asked to deliver. With respect, however, I agree with Dr Saluja that this choice was in fact the consequence of an exercise of rational judgment on Roszaidi's part. Roszaidi's evidence — both in his statements as well as in his testimony in court — revealed that he was aware of the legal penalties of trafficking, but had nevertheless made a conscious decision to continue trafficking for Is Cangeh

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because he believed that its risks were outweighed by its rewards. That Roszaidi had made such a reasoned choice was evident from his testimony that he was "willing to take the risk of collecting drugs from strangers because [he]… wanted to be able to consume a portion of the drugs that [he] collected".

13 Dr Rajesh also laid emphasis on Roszaidi's evidence that he had agreed to help Is Cangeh traffic the Drugs because he was "confused and scared that [he] [would] be framed], and that Is Cangeh "would ask his gang to beat [him] up". Dr Rajesh opined that in this "panic[ked] state", Roszaidi may have overestimated the dangers of trafficking and felt "helpless" and overwhelmed by his drug addiction and his fear of retribution. In my view, Roszaidi's fear of the threat that Is Cangeh posed to his safety was again the result of rational thinking on his part. In his long statements, Roszaidi explained that he was aware that Is Cangeh was a member of the '369' gang. Moreover, there had been a previous incident where Roszaidi had angered Is Cangeh by throwing away a heavy drug consignment. This resulted in Is Cangeh deducting S$8,000 from Roszaidi's payment. In these circumstances, it was not illogical for Roszaidi to assume that Is Cangeh would react more strongly — perhaps even with physical violence — if Roszaidi were to throw his consignment away for the second time.

14 In addition, there was nothing to show that Roszaidi's MDD had caused or contributed to Roszaidi's "panic[ked] state". Given that Roszaidi knew of the trafficking penalties, it was only natural that he would have felt immense fear upon realising that the drugs were heavy enough to warrant capital punishment. Indeed, the fact that Roszaidi had experienced such emotions underscored his capacity to comprehend and weigh the risks of his conduct.

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15 Finally, Dr Rajesh also interpreted Roszaidi's decision to give the Drugs to his innocent, heavily-pregnant wife as a sign of his inability to think and act rationally. However, in my view, this fact alone was not so "extraordinarily absurd" as to demonstrate that Roszaidi was suffering from impaired rational judgment. It was equally plausible that Roszaidi passed the Drugs to his wife because (a) he assumed that she would not get caught; or (b) he had mistakenly believed that she would get a lighter sentence because she was pregnant. Indeed, Roszaidi explained in his statements that he had passed the drugs to his wife because "[h]e thought it was safer than [him] carrying the drugs and driving around Singapore".

16 For the above reasons, I do not find Dr Rajesh's evidence, as well as the Defence's submissions, to be persuasive.

17 I turn to consider Dr Saluja's evidence. Counsel for the Defence, Mr Eugene Thuraisingam, asserts that Dr Saluja's evidence "f[ell] short of the rigour required of experts" because of his failure to provide comprehensive reasons for the conclusions drawn in his reports. Mr Thuraisingam also argued that Dr Saluja had taken an excessively narrow approach in assessing Roszaidi's mental state by focusing exclusively on Roszaidi's cognisance of the nature and wrongness of his acts. Finally, Mr Thuraisingam submits that Dr Saluja's reasoning proceeded on the faulty premise that Roszaidi's previous drug offences were completely uninfluenced by any mental disorders.

18 I am unable to agree with Mr Thuraisingam's submissions. First, although Dr Saluja's reports were brief and his medical conclusions lacked explanation at times, Dr Saluja well-able to defend and justify his views during cross-examination. I thus find that the gaps in Dr Saluja's medical reports were not so detrimental to his credibility as to render his evidence unreliable as a

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whole. Second, I disagree that Dr Saluja had failed to undertake a holistic assessment of Roszaidi's conduct. To the contrary, Dr Saluja had looked at matters "longitudinally" and had even considered Roszaidi's psychiatric history and history of substance abuse in arriving at a view on whether Roszaidi's judgment had been impaired at the material time. Dr Saluja also explored the motivations behind Roszaidi's decisions and, in so doing, went beyond merely ascertaining Roszaidi's capacity to understand the nature of his acts and to differentiate right from wrong. Finally, as regards Mr Thuraisingam's third contention, I note that there was no dispute between the experts that Roszaidi had only begun to exhibit symptoms of MDD about seven months prior to his arrest (see [9] above). In fact, it appeared that the source of this information was Roszaidi himself, as Dr Saluja's understanding of Roszaidi's psychiatric history was derived from his interviews with Roszaidi while Roszaidi was in remand.

19 Having considered the evidence before me in its totality, I agree with Dr Saluja that Roszaidi's ability to execute the tasks that Is Cangeh required of him evidenced his ability to think in a logical and organised manner. The fact that Roszaidi may have felt fear and, eventually, remorse as a result of his actions has no bearing on the question of whether his judgment was impaired at the material time.

20 In *Nagaenthran*, the Court of Appeal held that the appellant's rational judgment was not impaired simply because he had simply taken a calculated risk which, contrary to his expectations, had materialised. While "[h]is alleged deficiency in assessing risks might have made him more prone to engag[ing] in risk behaviour… [i]t [did] not in any way diminish his culpability" (at [41]). Likewise, while Roszaidi may have underestimated the risks involved in delivering the Drugs and passing the Drugs to Azidah, this did not nullify the fact that he had wilfully chosen to take those risks in order to reap a reward.

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21 In summary, Roszaidi suffered from two abnormalities of mind at the time of his offence — MDD and substance use disorder. Of these two conditions, only Roszaidi's MDD satisfies the second requirement of *Nagaenthran* as it arose from an 'inherent cause'. However, there is insufficient evidence to show that Roszaidi's MDD substantially impaired his mental responsibility for his acts and omissions in relation to his offence. I thus find that Roszaidi does not satisfy the requirements under s 33B(3)(*b*) of the MDA and, consequently, cannot avail himself of the alternative sentencing regime under s 33B(1)(*b*) of the MDA.

- Sgd -
Choo Han Teck
Judge of the High Court

Hay Hung Chun, Soh Weiqi and Yan Jiakang (Attorney-General's Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam, Suang Wijaya and Johannes Hadi (Eugene Thuraisingam LLP) for the accused

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