IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 19

Criminal Case No 9 of 2017

Between

Public Prosecutor

And

Mohd Aziz bin Hussain

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
Mohd Aziz bin Hussain

[2018] SGHC 19

High Court — Criminal Case No 9 of 2017
See Kee Oon J
18 April, 10, 11, 15 – 17 August,
12 – 14 September, 23, 24 October,
20 November, 8, 14 December 2017

29 January 2018

See Kee Oon J:

Introduction

1 The accused was charged under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for having in his possession a controlled drug for the purpose of trafficking. The controlled drug in question was not less than 49.98 grams of diamorphine ("the drugs"), which is a Class A controlled drug listed under the First Schedule to the MDA.

2 At the conclusion of trial, in which the accused challenged the admissibility of various inculpatory investigation (long) statements recorded from him, I was satisfied that the Prosecution had proved the charge beyond a reasonable doubt. Upon delivering brief grounds for my decision to find him

guilty, the accused was convicted and sentenced on 14 December 2017. I now set out the grounds of my decision in full.

The Prosecution's case

3 The trial was originally to have involved three accused persons who were to be jointly tried with each other, albeit on different charges involving differing quantities of drugs. The other two co-accused, Rashid bin Zali ("Rashid") and Nordiana binte Mohd Yusof ("Nordiana") initially faced related charges involving possession of 33.46 grams of diamorphine for the purpose of trafficking. They eventually elected to accept the Prosecution's respective offers of reduced (non-capital) charges and plead guilty. By 11 August 2017, when the trial proper involving the charge against the accused commenced, Rashid and Nordiana had already been convicted and sentenced. Both of them were called to testify as prosecution witnesses in the present trial.

4 The Prosecution led evidence from 54 witnesses, mostly by way of their conditioned statements pursuant to s 264 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). Eight prosecution witnesses testified only for the ancillary hearing to determine the voluntariness of the statements recorded from the accused.

Background: Arrest, seizure of exhibits and analyses

5 The accused is a male Singaporean who was 48 years old at the time of the offence on 18 March 2015. He was a landscape subcontractor. In outline, the Prosecution's case was that a day before the accused was arrested, he had received three bundles of diamorphine from one "Datuk". He was to repack them into smaller packets and deliver them to buyers on "Datuk's" instructions. On the morning of 18 March 2015, he brought these three bundles into his rented

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minivan bearing licence plate number GW2420D ("the van") and started repacking them into smaller sachets. He fully repacked only one of the three bundles and partially repacked the second bundle. He left a third bundle (C1A1) ("the third bundle") intact. The third bundle was later found to contain not less than 16.52 grams of diamorphine.

6 At about 9.00 am, the accused drove the van to Block 471, Tampines Street 44. He parked the van and proceeded to unit #03-216 ("the flat") where Rashid and Nordiana resided, bringing with him the repacked bundle and the partially repacked bundle, and leaving the third bundle in the van. He also brought along cash in varying denominations of $5, $10, $50 or $100 to be sorted into bundles. When he arrived at the flat, Rashid opened the door and let him in. Nordiana was still asleep. Rashid then went to the toilet and the accused laid out newspaper on the floor of the living room and started to repack the drugs into smaller sachets. He later persuaded Rashid and Nordiana to assist him in repacking the drugs and in counting and sorting the cash.

7 Officers from the Central Narcotics Bureau ("CNB") had begun surveillance near the flat after 9.00 am, as they had targeted Rashid as a suspect involved in drug activities. The accused left the flat at around 10.00 am with the repacked drugs. After placing the drugs in the van, he drove off. When the accused realised that he was being followed by CNB officers, he abandoned the van and started running. With the CNB officers in pursuit, the accused tripped and fell and was consequently restrained and arrested. As the accused had hurt his right arm upon falling down, he was sent to Changi General Hospital ("CGH") for medical attention. He was later found to have a fractured right humerus.

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8 After the accused was sent to CGH, a contemporaneous statement[1] was taken from him. He confirmed that he was able to give a statement after he had been given medication. He admitted that the items in his van were drugs (specifically, heroin) but he claimed that he was only helping to deliver the drugs to a "budak motor" for "Acit" (*ie*, Rashid) as a favour, for which he would not be paid. He claimed that all the drugs belonged to Rashid. A total of 49.98 grams of diamorphine, with a gross weight of 1399.7 grams, was recovered from the van. He admitted that the contemporaneous statement was given voluntarily.

9 The recovered drugs were contained in two bags. First, there was a pink paper bag (B1 – P28) which was found between the driver's seat and the front passenger's seat. P28 contained a black bag (B1A – P29) which in turn contained a black drawstring bag (B1A1 – P30) in which nine packets of drugs were found. These nine packets, within eight of which were various smaller sachets containing drugs, had a gross weight of 940.9 grams. There was also a digital weighing scale (B1A1K – P40) stained with diamorphine and an empty pouch.

10 Next, another red plastic bag (C1 – P42) was found underneath the driver's seat. Within it, there was a torn orange plastic bag (C1A – P42), which in turn contained a plastic bag (C1A1A – P43) bound by a layer of black tape (C1A1 – P43), and within C1A1A was one packet of drugs (C1A1A1 – P43) which had a gross weight of 458.8 grams.

11 Apart from the drugs mentioned above, various other items were recovered from the van. A red sling bag (D1 – P44) was found between the driver's seat and the front passenger's seat. P44 contained numerous miscellaneous letters (D1B – P49) and one yellow "Ferrero" paper bag (D1A –

[1] Marked as P122 (English translation in P125).

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P45) which in turn contained one red plastic bag (D1A1 – P46). P46 was found to contain the following items:

(a) one digital weighing scale with a black pouch (D1A1A);

(b) two packets each containing numerous empty packets (D1A1B); and

(c) one box containing one charger, one pair of scissors, one receipt for the purchase of plastic packets (D1A1C).

12 The "Ferrero" paper bag (P45) also contained numerous other empty packets (D1A2 – P48) as well as one "Samsung" box containing one manual, one travel charger and one receipt from Sim Guan Electrical Shop (D1A3 – P48). Finally, in a black sling bag (E1 – P50) behind the driver's seat, there was cash amounting to S$24,145 (E1A – P51; P52) and three mobile phones (E1B-MABH-HP1; E1B-MABH-HP2; E1B-MABH-HP3 – P53).

13 The analysis of all the relevant drug exhibits with the total gross weight of 1399.7 grams by the Health Sciences Authority ("HSA") and the chain of custody of all the exhibits were not disputed. It was common ground that the analysis of the relevant drug exhibits revealed that they contained not less than 49.98 grams of diamorphine. In addition, the Prosecution adduced records of phone calls and text messages from the accused's mobile phones.

14 In summary, the evidence pertaining to the accused's arrest, the seizure of the exhibits, the HSA analyses and the analyses of the accused's mobile phone records was generally not disputed. The accused sought to show through his cross-examination of the CNB officers that he had been tripped by a CNB officer and had been manhandled and assaulted on his arrest, which resulted in his fractured humerus. However, the arresting officers confirmed that he

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stumbled and fell and this was what enabled them to catch up with him and arrest him. Necessary force had to be used to subdue and handcuff him.

The ancillary hearing – admissibility of the seven statements

15 The accused's various statements comprised a contemporaneous statement, a cautioned statement recorded under s 23 of the CPC, as well as six "long" investigative statements recorded under s 22 of the CPC. In his statements, the accused essentially admitted to being in possession of all the drug exhibits which were found in his van. The contemporaneous statement (P122 – English translation in P125) was admitted in evidence as the accused accepted that it was given voluntarily.

16 The accused challenged the admissibility of the remaining seven of his investigation statements ("the seven statements"). The first indication from the accused that he was disputing the admissibility of the seven statements emerged only after Rashid and Nordiana had both pleaded guilty to reduced charges and the trial proper was to commence. Objections were then raised as to their proposed inclusion in the Agreed Bundle of documents.

17 As a consequence, an ancillary hearing was convened to determine the admissibility of the seven statements. In the course of the ancillary hearing, the Investigating Officer, Station Inspector Ranjeet Ram Behari ("the IO"), stated that at no point did he offer any threat, inducement or promise to the accused prior to or during the recording of the statements. He had always confirmed when the statements were being recorded that the accused was well and fine and able to give his statements. The accused had also not mentioned that he was in pain or asked for any breaks or medication. Contrary to the accused's claims, the IO maintained that he had not induced the accused to confess by promising

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him a reduced (non-capital) charge involving 14.99 grams of diamorphine. He did not threaten the accused by banging the table, telling him "not to be funny", and saying that his co-accused had implicated him.

18 The accused raised a variety of matters, none of which had apparently surfaced prior to the commencement of the trial. Other than his claims of feeling afraid of the IO and allegations about the manner in which the IO had allegedly threatened or induced him, these revolved essentially around the following aspects. First, the accused claimed that he was tripped by a CNB officer during his arrest and the fracture to his right arm was caused by the CNB officers assaulting him when he was pinned to the ground. He claimed that he was in such excruciating pain that he lost consciousness. Second, while in the CNB operational vehicle, CNB officers swore at him and punched him in the face. Third, he insisted that he was never seen by a doctor in the lock-up but was only given Panadol by the lock-up officers when he complained of pain and had run out of medication and the cast for his fractured arm had come loose.

19 I need only deal briefly with the accused's claims in the ancillary hearing. The Prosecution's evidence resoundingly showed that none of his claims could be believed. First, the CNB officers were in pursuit of the accused and were running behind him and would not have been able to trip him. In any case, the officers testified that they did not trip him but that he had stumbled and fallen. None of the officers recalled that he had lost consciousness. As for his claims of being punched and sworn at in the CNB operational vehicle, none of this was put to any of the arresting officers when they testified. Taking his case at its highest, any injury he might have sustained during his arrest would not be relevant to the subsequent points in time when the seven statements were recorded by the IO. There was a significant time lag since he was in CGH for a

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week before his first disputed investigation statement (*ie*, the s 23 CPC cautioned statement) was recorded on 25 March 2015.

20 Next, his claims of being in unbearable pain and being denied medical attention or replenishment of painkillers were patently unbelievable, as there was clear objective evidence showing the contrary. It was manifestly clear that the accused had liberally exaggerated the pain he allegedly sustained from his fractured humerus. He was seen by Dr Raymond Lim on 1 April 2015. His medications, which included painkillers, were topped up and the station diary (P237) showed that he had not made any complaints during the period when he was in the lock-up, nor raised any complaint about his cast having come loose. There was also uncontroverted evidence from a lock-up officer, Staff Sergeant Hidayatollah Khomeini bin Salleh, who stated that the station lock-up did not stock any medication, not even Panadol, and the lock-up officers would certainly not simply dispense medication on request to an accused person. If any medication was required, they would call for a medical officer.

21 Finally, the accused had initially said that he did not know what "14.99" was at the time he gave his cautioned statement. If this had indeed been the case, any such inducement or promise (*ie*, pertaining to giving him "14.99") could not possibly have operated on his mind. He subsequently changed his evidence to align with his claim that Rashid had told him he would only be implicated as a "courier" or "transporter" and be charged with "14.99", and that he knew this before he gave his cautioned statement.

22 The accused claimed that half of the statements he gave on 27 and 28 March 2015 were the IO's words and the other half were Rashid's. He further claimed that Rashid had taught him what to say in his statements and the contents were untrue. Even if the allegations as to Rashid's conduct were true,

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it would not affect the admissibility of the statements in terms of whether they were given voluntarily by the accused and without any inducement, threat or promise stemming from the IO or any other person in authority. I shall examine this point further at [40]–[41] below.

23 After the ancillary hearing, the seven statements were admitted in evidence as P240 to P246. I was satisfied that they were given voluntarily. In particular, I did not accept that the accused had received any inducement, threat or promise from the IO. If he was truly fearful of the IO as he claimed, his fear appeared to have been wholly self-induced. I saw no basis for his fanciful assertions about the IO putting words into his mouth and being responsible for portions of his statements. I also did not accept his claims that he had been denied medical attention or access to medication despite his complaints of pain as a result of his fractured humerus.

Possession and knowledge of the nature of the drugs

24 The Prosecution submitted that the drugs were all in the possession of the accused, who knew that they were diamorphine. He had conceded as such in all his statements, beginning with the contemporaneous statement (P122) he gave on the day of arrest. Moreover, at the Committal Hearing on 18 May 2016 ("the Committal Hearing"), the accused stated that the drugs were brought to the flat by him, and Rashid and Nordiana had nothing to do with them. It was only during the trial that the accused sought to disavow the seven investigation statements (though not his contemporaneous statement) and claim that he did not know that he had drugs in his possession.

25 The Prosecution thus sought to show that there was proof to the requisite standard of the accused's possession of the drugs, knowledge of the nature of

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the drugs as well as his intention of being in possession of the drugs for the purpose of trafficking.

Alternative – presumptions of possession and knowledge

26 In the alternative, the Prosecution submitted that it could rely on the presumptions of possession (s 21) and knowledge (s 18(2)) in the MDA, and show proof of trafficking with regard to what the accused had admitted to in his statements.

Possession for the purpose of trafficking

27 Finally, the Prosecution relied in the alternative on the presumption of trafficking in s 17 of the MDA and submitted that the accused had not proved on a balance of probabilities that he did not possess the drugs for the purpose of trafficking.

28 At the close of the Prosecution's case, the Defence made no submission. I was satisfied that a *prima facie* case had been established to warrant calling for the Defence. After I administered the standard allocution, the accused elected to give evidence in the Malay language. He was one of three Defence witnesses, the other two being his mother, Mdm Ramja binte Omaya ("Mdm Ramja"), and his wife, Mdm Salinah binte Hashim ("Mdm Salinah").

The Defence's case

29 In putting forward his defence, the accused provided an account of his activities on 17 March 2015, the day before his arrest. He said that he had taken his wife and seven-year-old son to Adventure Cove at Sentosa for a day out. After sending his wife to work at 8.30 pm that night, he spent the night with his son in a rented room in Geylang Lorong 27A. He proceeded to meet Rashid the

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next morning after he received an SMS from Rashid requesting him to meet for a discussion at the flat. He denied bringing any drugs up to the flat. He maintained that the drugs were laid out on the floor and were being repacked by Rashid and Nordiana in the flat when he arrived there on the morning of 18 March 2015. He also denied bringing the drugs into the van.

30 To support his defence, the accused called his mother and wife to testify. Their evidence was focused mainly on how the amount of $24,145 came to be found in the black sling bag (E1 – P50) belonging to the accused. The accused claimed that $20,000 was a loan given to him from Mdm Ramja for toilet renovation work at his flat, while the remaining $4,145 was from his landscaping work. Mdm Ramja and Mdm Salinah both claimed to be able to confirm that the $20,000 was a loan for the accused. The accused said that $10,000 was meant as a deposit for the (unnamed) renovation contractor and the remaining $10,000 was meant for his wife.

31 The Defence was premised largely on the accused's denials of his statements. He contended that the Prosecution had failed to prove the allegations which constitute the material elements of the charge, in particular, that he did traffic in the drugs by having them in his possession for the purpose of trafficking.

32 It was submitted, first, that there was no evidence that he had engaged in any of the acts of trafficking as defined within s 2 of the MDA, and next, that there was "not a shred of evidence that proves that the accused was in possession of the drugs"[2]. It was further submitted that the Prosecution had failed to adduce evidence showing that he had the requisite control over the drugs and knowledge as to the nature of the drugs.

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2 Accused's Written Submissions ("AWS") at [22].

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33 The key contentions raised by the accused centred on discrediting the evidence of Rashid and Nordiana. First, it was submitted that their evidence was inconsistent and unreliable as they had self-interested reasons to pin the blame on the accused. It was suggested that Rashid and Nordiana were in fact the drug traffickers. Correspondingly, Rashid must have placed items in the accused's van on 14 March 2015 when they met for a karaoke session at Ming Arcade, when Rashid had asked him for the keys to the van, and also on the morning of 18 March just prior to the arrest, when Rashid must have gained access to the van to leave drugs there since the accused would habitually have left the rear sliding doors of the van unlocked.

34 On a related point, the exercise of prosecutorial discretion to amend the charges against Rashid and Nordiana to reduced non-capital charges was said to be "wrong and unfair to the accused"[3]. In particular, the Defence highlighted that the CNB operation had targeted Rashid who was the known drug offender, while the accused, who was not on the CNB's "radar", was a victim of circumstances[4]. The accused was "just an unfortunate scapegoat who was at the wrong place at the wrong time"[5].

35 The Defence further submitted that the Prosecution had not proved beyond reasonable doubt that the accused was in possession of the drugs or that he knew of the nature of the drugs that he was allegedly in possession of. It was submitted that the Prosecution would need to rely on "presumption upon presumption upon presumption" in order to establish his guilt, pointing to the presumptions in s 21 MDA (relating to the drugs found in the van), s 18(2) MDA (knowledge) and finally s 17 (possession for the purpose of trafficking)[6].

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3 AWS at [12].

4 AWS at [32]–[35].

5 AWS at [102].

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36 In putting forth these submissions, the Defence contended that even though the accused's seven statements were found to have been given voluntarily and admitted in evidence after the ancillary hearing, a perusal of the statements would suggest that there were serious doubts about their voluntariness. This was principally based on the argument that his self-incrimination was "illogical and irrational"[7] in that he had completely changed his evidence from what he had stated in his contemporaneous statement, namely that the drugs did not belong to him but to Rashid. It was submitted that "no rational person would be willing to accept such a position of changing his statements completely and accepting the blame for a capital amount of drugs", unless he had been subjected to external pressure of some sort[8].

My Decision

37 The accused was charged with having the drugs in his possession for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the MDA. The two sub-sections provide as follows:

> **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 purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

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6 AWS at [39] and [46].

7 AWS at [73].

8 AWS at [77].

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38 As provided in s 2 of the MDA, the term "traffic" means "to sell, give, administer, transport, send, deliver or distribute", or to offer to do any of these acts. Having examined the totality of the evidence, and having reviewed the contents of the statements which were admitted after the ancillary hearing, I was satisfied that the Prosecution had proved the charge against the accused beyond a reasonable doubt. My reasons for concluding thus are set out below.

Revisiting the accused's statements

39 To recapitulate, after conducting the ancillary hearing, I found that the seven statements were given voluntarily by the accused. The evidence before me clearly refuted the accused's spurious claims.

40 The accused further maintained that he was taught and forced by Rashid to tell the IO what came to be recorded in the seven statements. I did not accept that the accused had been coached or coerced by Rashid before giving his detailed statements to the IO, or that he was in fear of Rashid who was allegedly his "Omega" secret society "headman" who had pestered him to say what he said at the Committal Hearing. None of these matters was suggested or put to Rashid at any point during the trial. All this was in any event irrelevant in determining the voluntariness of the seven statements where the focus was on the conduct of the recorder of the statements, being the relevant "person in authority" contemplated in s 258(3) of the CPC. Whatever Rashid may have taught the accused in the lockup, and irrespective of whether Rashid had coached him, these did not render the seven statements any less voluntary – if at all, these issues might be relevant only in evaluating the weight of the statements.

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41 In addition, I was not convinced that Rashid was in such a domineering position of influence over the accused that he was able to coach the accused to regurgitate a slew of details for the IO to record in his statements. On a related note, it was highly unlikely that all the information the accused had given in the seven statements pertaining to the drug activities had been pure fiction crafted by Rashid (and the IO), since he was able to relate a coherent, lucid and comprehensive account of his involvement. It would be all the more unlikely that he could do in such detail so if he had meekly followed Rashid's instructions out of fear as he claimed.

42 Having reviewed the contents of the seven statements and having regard to the totality of the evidence adduced at the conclusion of the hearing, I saw no reason why the statements should be impugned. As the Prosecution had rightly pointed out in the course of the closing oral submissions, this was unlike the rather unusual situation in *Neo Ah Soi v Public Prosecutor* [1996] 1 SLR(R) 199, where there was palpable doubt as to the manner in which the statements in question were recorded and the statements were therefore ultimately found to be unreliable. In the present case, there was inherently nothing discernible in the form or substance of the seven statements at hand to cast doubt as to their accuracy or reliability. I saw no logical difficulty in accepting that an accused person who has initially denied committing any offence can subsequently come clean in respect of his involvement. In any event, the accused's contemporaneous statement (P122) which he gave voluntarily was not a complete denial of his involvement.

43 I was satisfied after the ancillary hearing that the seven statements were accurately recorded and properly admitted. I therefore accorded due weight to these statements. Indeed, even if the evidence of Rashid and Nordiana which

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incriminated the accused should be rejected, the accused's own statements contained a host of material admissions which he was unable to explain away.

Rashid and Nordiana's evidence

44 Rashid testified that the accused had contacted him on the morning of 18 March 2015 saying that he wanted to talk to him about his (*ie*, the accused's) "wife and his female friend problem"[9]. After the accused entered the flat and sat down in the living room, Rashid went to use the toilet. On returning to the living room, Rashid was shocked to find that the accused had laid out the drugs on newspaper on the floor. The accused asked him to help pack the drugs which the accused had to deliver. Although initially reluctant to do so, Rashid helped the accused.

45 Nordiana was asleep when the accused arrived at the flat. She was also shocked and displeased to see the drugs but she helped him seal a few packets of the drugs. They cleared up the remnants of the packing materials and helped the accused count the money he had brought up to the flat. Rashid and Nordiana then went downstairs to buy food and also bought the accused some "roti prata". The accused declined their offer of food and left the flat with all the items he had brought there.

46 Rashid and Nordiana admitted to having drug-related antecedents. They might not have been perfectly consistent or truthful in their testimonies as to whether they themselves had engaged in drug trafficking activities prior to 18 March 2015, but their evidence on the material aspects insofar as the accused was concerned was largely consistent and convincing. I found no reason for

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9 Notes of Evidence ("NE") Day 7, at p 61, line 19.

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them to falsely implicate him even if they did attempt to further downplay their involvement. They had already pleaded guilty and had been sentenced.

47 I also saw no merit in the accused's attempts to capitalise on the inconsistencies in their evidence. Much was made of the evidence relating to the various bags, in whatever size, shape, colour or material, in which the quantities of drugs were found. As can be seen from the photographs, a number of bags in a variety of shapes and sizes were seized from the van. While there were certain discrepancies in the evidence relating to the bags, these were minor. They did not detract from the overall tenor and consistency of the evidence which pointed to the accused as the one who had been in possession of the bags (and the drugs found within) at all material times.

48 In particular, I found no merit in the accused's attempt to suggest that he had not been observed carrying a pink paper bag (P28) out of the flat. This was readily explained by the fact that from where the CNB officers were observing the flat, they could only see the upper body of the accused when he left the flat, as their view of his lower body was blocked by the parapet. Rashid had also stated that the accused took everything with him when he left the flat, including a pink or red-coloured paper bag.

49 As for the Defence's contention relating to the purported wrongful exercise of prosecutorial discretion to amend the charges against Rashid and Nordiana, leaving the accused solely to face a capital charge, this was, with respect, a speculative and vague submission which lacked foundation. The evidence before me revealed that the nature of each of the trio's respective involvements pertaining to the drugs was different. As such, there was no basis to suggest that there was any *mala fides* in how prosecutorial discretion was exercised to amend their charges. The CNB operation might have originally

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targeted Rashid but the accused ended up being caught in the dragnet. I did not see why this should necessarily suggest that the accused was wholly innocent and had been wrongly implicated.

Possession and knowledge of the nature of the drugs

Proof of actual possession and knowledge

50 The evidence implicating the accused was fairly straightforward. The evidence stemmed from two main sources – first, his own inculpatory statements, and second, the accounts of Rashid and Nordiana.

51 In his investigative statements, the accused admitted that he knew that the items were heroin and he had them in his possession as he was acting under the instructions of "Datuk" to repack and deliver the drugs to specified buyers and collect payments on behalf of "Datuk". He admitted that the sum of money which he had with him amounting to over $20,000 "was meant for 'Datuk' from the sale of the drugs"[10]. He understood one "batu" to be one "big packet" or "bundle" of heroin[11]. He had repacked six "batus" of heroin thus far into small packets and delivered them. He was supposed to earn about $400 for repacking and delivering one "batu" of heroin[12].

52 I shall set out a few crucial aspects that I had carefully considered in evaluating the evidence. First, the accused accepted at the outset that his contemporaneous statement in P122 was accurate and "all true"[13] but chose to resile from this position within a matter of moments of attesting to the truth and

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10 Accused's statement recorded on 30 March 2015 (P244) at [24].

11 Accused's statement recorded on 27 March 2015 (P241) at [2] and [3].

12 Accused's statement recorded on 29 March 2015 (P243) at [17].

13 NE Day 9, at p 24, lines 1 and 2.

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accuracy of the contents of the statement. It must have dawned on him that he had to quickly backtrack upon realising that the remainder of his answers in P122 (from Question 5 onwards) were still potentially incriminating. Hence, he claimed to have been unaware or unsure of the answers he had given as he was "mumbling" and feeling "drowsy", and by the time he responded to Question 14, he claimed that he was "not conscious --- not aware"[14]. These claims were quite absurd and incredible. The recorder of the contemporaneous statement, Staff Sergeant Muhammad Helmi bin Abdul Jalal, underwent an almost perfunctory cross-examination[15]. It was telling that none of these claims were raised to him. In my assessment, the irresistible inference was that the allegations were pure afterthoughts.

53 Despite reversing his position with respect to the remainder of his answers in P122, the accused did not deny that in response to the recorder's very first question, "What thing was in your van just now?", his spontaneous response was "heroin". Without reference to his other seven disputed statements, this cogently demonstrated, by his own undisputed admission, both his possession and knowledge of the nature of the drugs found in the van.

54 The accused came up with an explanation for this, which I rejected. He claimed that he knew that there were drugs in the pink paper bag as it actually belonged to Rashid and had been placed in the van by Rashid. After leaving the flat, he had driven off despite his surprise at seeing the pink paper bag containing drugs in the van, and his fear upon seeing a female CNB officer observing him. The accused responded under cross-examination that he drove off as he "tried to get rid of the CNB officer". He was "in fear" and "scared" that the CNB had seen him and he did not know what to do[16]. Yet when asked

14 NE Day 9, at p 25, lines 24–28; at p 26, lines 1–27; at p 27, line 3.

15 NE Day 4, at pp 102–104.

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directly whether he had driven off because he knew the drugs belonged to him and he was trying to get away, he disagreed. Conveniently, he made no mention of the third bundle of drugs (C1A1) which had been left in the van.

55 Another material aspect was the fact that the accused was clearly unable to explain why, if he purportedly did not know that he was either in possession of or transporting the drugs, he would have abandoned the van and tried to escape on foot. This was evidently the consequence of the accused panicking and taking flight on seeing the CNB officers closing in on him. He knew that the game was up. His state of reflexive panic was entirely consistent with guilty knowledge and could only have arisen from his abject desperation and fear of being apprehended with the drugs which he had repacked and was transporting. Simply put, if he was genuinely innocent and wholly uninvolved with the large quantity of drugs in his van, there was logically no reason for him to run, let alone to have driven off "in fear" in the first place in an effort to "get rid of the CNB officer".

56 Further, I saw no basis whatsoever to accept the accused's suggestion that Rashid could have had access to his van through the rear sliding doors which he claimed to have habitually left unlocked, and that Rashid had purportedly asked to borrow the keys to the van during their karaoke session at Ming Arcade. I was also not persuaded by the submission that the accused had somehow "lost control" over the van for about two hours prior to his arrest. At no point were any of these matters ever mentioned in any of his statements.

57 Critically, what was raised in this connection during Rashid's cross-examination was haphazard and piecemeal. It was put to Rashid that he had borrowed the keys to the van on 14 March 2015 and that he had put the red sling

[16] NE Day 9, at p 55, lines 25–31.

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bag (P44) in which the Ferrero paper bag (P45) was found inside the van. Rashid denied these allegations. In any event, no drugs were found within the red sling bag (P44) or within any of the items contained inside it. Next, it was put to Rashid that he had brought the pink paper bag (P28) down from the flat on the morning of 18 March 2015 and as P28 was later found in the van, he must have been the one who put it there, along with the red plastic bag (C1 – P42) which contained the third bundle of drugs (C1A1). Rashid again denied these allegations. The accused's allegation that the rear sliding doors of the van were left unlocked only emerged at the trial. It was also not specifically put to Rashid how he managed to gain access to the van that morning other than being told that the accused had allegedly informed him that the rear sliding doors were not locked. Once again, Rashid disagreed.

58 These bare allegations about Rashid entering the van and nonchalantly leaving the drugs in the pink paper bag (P28) and the third bundle (C1A1) inside the van, together with the accused's own purported loss of control over the van, were all raised only at the eleventh hour. They clearly revealed the accused's propensity to embellish his evidence. I found that the accused's contentions were afterthoughts which lacked credibility and defied logic. It was highly implausible that Rashid would have wanted to leave such a substantial quantity of drugs in an unlocked van without even informing the accused that he had done so, and without specifying what he was planning to do with them.

59 I saw nothing illogical or unbelievable in the idea that the accused would have brought drugs up to the flat in order to repack them. As the accused explained in his statement recorded on 28 March 2015 (P242) at [10]–[12], he was getting tired of repacking the drugs in the van after doing so for over an hour that morning, and thus he decided to go to Rashid's flat to continue repacking them. He had previously brought money there to count (at [13]). He

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had called Rashid on 18 March 2015 in the morning to ask if he could go to the flat, ostensibly to talk about his "girlfriend problem" (at [14]) but blithely made no mention of the drugs.

60 In short, the accused was undoubtedly in physical possession and custody of the drugs at all material times until his arrest. The fact of his possession was corroborated by the evidence of Rashid and Nordiana, and consistent with the observations of the CNB officers who saw him leaving the flat and driving off in the van.

Presumed possession: s 21 of the MDA

61 Alternatively, the Prosecution submitted that the presumption in s 21 of the MDA was operative and the accused was deemed to be in possession of the drugs. This provision states as follows:

> **Presumption relating to vehicle**
>
> **21.** If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

62 I should state that in view of my findings as outlined above, I did not see the need for s 21 of the MDA to be invoked to presume that the accused was in possession of the drugs which were all found in the van. That said, from the evidence adduced, it was clear that the accused was in no position to rebut the s 21 presumption as he was plainly the "person in charge" of the van at all material times and had not ceded control over it. Pertinently, he had never disputed what he had said upon being questioned immediately after his arrest. He admitted that he had heroin in his possession in the van (see P122). His only claim then in P122 was that the drugs actually belonged to Rashid but this would not amount to a rebuttal of the presumption in s 21 of the MDA, which relates

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to the attribution of possession to the person who is the owner or the person in charge of the vehicle for the time being.

Presumed knowledge of the nature of the drugs: s 18(2) of the MDA

63 Further and in the alternative, the Prosecution sought to rely on the presumption in s 18(2) of the MDA to establish that the accused knew the nature of the drugs contained in the van (*ie*, diamorphine). The relevant portions of s 18 of the MDA state as follows:

> **Presumption of possession and 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.

64 Section 18(2) of the MDA shifts the burden onto the accused to prove on a balance of probabilities that he did not know or could not reasonably be expected to have known the nature of the drugs in his possession.

65 The drugs were all found packed in various forms in the van, and it was incontrovertible that in his contemporaneous statement the accused had admitted to knowing that he had heroin in his possession. Once again, I saw no necessity for the Prosecution to invoke s 18(2) of the MDA to presume that he knew the nature of the drugs in his possession. There was absolutely no basis to find that the accused was able to rebut the presumption of knowledge and show that he did not know the nature of the drugs in his possession.

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66 For completeness, I should address the Defence's submission that the Prosecution needed to rely on "presumption upon presumption upon presumption" in order to establish the guilt of the accused, specifically the presumptions in s 21 (relating to the drugs found in the van), s 18(2) (possession and knowledge) and finally s 17 of the MDA (possession for the purpose of trafficking). As the Prosecution had pointed out, there was no attempt to rely on triple-layered presumptions but rather on two presumptions at most. The Prosecution could rely on ss 21 and 18(2) of the MDA to presume possession and knowledge, and then prove that the possession was for the purpose of trafficking. Alternatively, the Prosecution could seek to prove possession and knowledge and then trigger the presumption in s 17 that he had the relevant quantity of drugs, which had to be proved to have been in his possession, for the purpose of trafficking.

67 The Prosecution's approach was consistent with the settled position in law having regard to the decision of the Court of Appeal in *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 ("*Mohd Halmi*"), which was adopted in *Tang Hai Liang v Public Prosecutor* [2011] SGCA 38, and more recently also in *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 and *Hishamrudin bin Mohd v Public Prosecutor* [2017] SGCA 41. I was mindful in any event that the Prosecution did not attempt to apply the presumptions in s 17 and s 18(2) conjunctively.

Additional observations on the accused's credibility

68 The accused had furnished a total of eight statements (one contemporaneous statement, one cautioned statement, and six "long" investigative statements) in relation to the present offence. As I had noted

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earlier, the voluntariness of the contemporaneous statement in P122 was not disputed.

69 I found that the accused's attempts to exculpate himself were wholly incapable of belief, primarily because of the evasive and shifting nature of his evidence. He had initially acknowledged in P122 that he knew of the drugs in his possession and that they were heroin, but claimed that they belonged to Rashid. In his subsequent statements given to the IO, he confessed to his role in assisting "Datuk" to collect payments, repack the drugs and deliver them. At the commencement of the trial, he intimated for the first time that he was disputing the voluntariness of all his statements, with the exception of P122. He then sought to put forward a defence which was internally inconsistent and plainly contrary to P122 as well. By the time he testified, even parts of P122 were alleged to be inaccurate and unreliable.

70 Adopting the observations of Yong Pung How CJ in *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592 (at [9]), the evidence of the accused revealed several material inconsistencies, both internally and externally, which amply supported the finding that he was not a credible witness. It will suffice for me to highlight a few key aspects where such inconsistencies emerged.

71 First, I noted the prevarications in the accused's evidence regarding how he came to be in possession of the drugs, what he was to do with them and his knowledge of the nature of the drugs that he had in his possession. The explanations proffered by the accused at trial were bare denials representing a complete retraction of what he had set out in considerable detail in his statements. They were strained and ultimately unconvincing explanations, strongly suggesting that they were devised as convenient afterthoughts.

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72 I agreed with the Prosecution's submissions and found that the accused had given inconsistent accounts and concocted shifting explanations to suit his purposes. New assertions and embellishments emerged only after his statements had been recorded or only in the course of the trial. Among them, just to name a few, were his claims that: (a) he was punched and sworn at in the CNB vehicle after his arrest; (b) the cast on his fractured arm had come loose, he was in pain and had not been seen by a doctor or given medication prior to being charged in court; (c) he was fearful of Rashid who was his secret society "headman" and thus had agreed to be taught by Rashid about what to say in his statements; (d) in the "Omega" secret society, Rashid was in charge of drugs while he was in charge of a prostitution ring; (e) he would habitually leave the rear sliding doors of his van unlocked, thus allowing Rashid to access the van and leave the pink paper bag containing drugs and the third bundle inside; and (f) the $24,145 seized from him was not related to drug activities.

73 I have alluded to many of these inconsistencies and embellishments earlier. On the last point, the accused had decided to call his mother and wife to testify on his behalf as to how the amount of $24,145 came to be found on him. I found it highly implausible that there was any such $20,000 loan then from Mdm Ramja. At any rate, the existence of such a loan from Mdm Ramja was never once mentioned in any of his statements, let alone its intended use for payment for toilet renovation work. There was also no logical explanation why he would have needed to risk carrying around $20,000 in cash with him on 17 March 2015 when he was purportedly spending the day out at Adventure Cove in Sentosa before sojourning to Geylang with his son to spend the night, given his claim that he would habitually leave the rear sliding doors of his van unlocked. He could easily have left all or part of the money at home, having supposedly obtained it at least two or three days before 18 March 2015, which

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was when he needed to pay the contractor's deposit of $10,000 as he had claimed. No details were furnished as to the alleged toilet renovation contract or the identity of the contractor in any case.

74 I treated the evidence of Mdm Ramja and Mdm Salinah with caution as they were interested witnesses. Rather than supporting the accused's contentions, the vague and highly dubious evidence given by Mdm Ramja about the purported $20,000 loan lent credence to my view that the accused had prevailed upon her (and Mdm Salinah) to agree to testify about a fabrication. Regrettably, the accused had capitalised on Mdm Ramja's poor memory, and in all likelihood confused her with a previous loan she might have given him – he himself claimed that there was one such loan in 2009 although no mention of this was made by Mdm Ramja, who candidly conceded that her memory was not good and that "most of the time" she could not recall a lot of things[17]. Evidently she could not remember her age correctly as well, claiming to be over a 100 years old despite previous indications from the Defence (corroborated by her birth date in her identity card) that she was in her 80's.

75 In Mdm Ramja's statement to the CNB (P248), she had stated that the accused did not inform her why he needed a $20,000 loan. Mdm Ramja claimed that the $20,000, being her life savings, was comprised entirely of $50 notes[18]. This flatly contradicted the accused's version. He claimed that the two bundles of cash amounting to $20,000 that he brought up to the flat were only the "two bundles on the left side of the photograph" (E1A – P51)[19] which clearly included $100 notes and possibly other notes in $5 or $10 denominations as well (P52).

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17 NE Day 10, at p 8 line 12.

18 NE Day 10, at p 6 lines 24–32.

19 NE Day 9, at p 51 line 9.

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As for Mdm Salinah, she had no personal knowledge as to whether there was indeed such a loan.

76 In *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302, the Court of Appeal accepted (at [33]–[34]) that an accused person's lies can in certain circumstances amount to corroboration because they indicate a consciousness of guilt. In that case, the Court of Appeal held that the lies of the respondent were a deliberate attempt on his part to dissociate himself from his conspirators as well as to maintain ignorance of the drugs in his car.

77 In the present case, the accused's vacillations and convolutions underscored his guilty knowledge from the outset and reflected his strenuous attempts to distance himself from the drugs. I found that the accused was clearly shifting his evidence and tailoring it as he went along.

Summary of findings

78 It could not be gainsaid that the accused was reasonably well-acquainted with drugs and drug-related activities. He had engaged in two previous collection and delivery arrangements for "Datuk" since 10 March 2015. On his own admission, he had repacked and delivered six "batus" prior to 18 March 2015.

79 Inasmuch as there was potentially prejudicial evidence of past activities of a similar nature, *Poon Soh Har and another v Public Prosecutor* [1977-1978] SLR(R) 97 could be distinguished on its facts. Unlike the situation in that case, the Prosecution's case against the accused did not depend solely on similar fact evidence to establish guilt. Indeed, in the Prosecution's closing submissions, no reliance was actually placed on his past activities. Nevertheless, the evidence of

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such activities was relevant to his credibility as well as his state of mind, and its considerable probative value outweighed any prejudicial effect.

80 I noted that the accused chose to disavow certain portions of his contemporaneous statement, contrary to his initial indication that he would not dispute the statement and his unqualified acceptance that its contents were "all true". It bears repeating that in his contemporaneous statement, he had readily admitted to having had heroin in his possession, notwithstanding that he had attempted to deflect or diminish his culpability by claiming that the drugs all belonged to Rashid and his role was merely to help Rashid deliver the drugs to a "budak motor" and he would not be paid for it. This admission remained intact despite the various other shifts in his position where P122 was concerned. Notably, there was no challenge made to the truth of this statement or the accuracy of the translation.

81 As I had observed earlier, there was no reason to doubt the voluntariness of the accused's seven statements. Given the totality of the evidence adduced, which encompassed the accused's own admissions in his statements, I found that the accused was in possession of the drugs and knew the nature of the drugs. The Prosecution proposed in the alternative to rely on s 21 of the MDA to presume that he had the drugs in his possession, and on s 18(2) of the MDA to presume that he knew the nature of the drugs. I found that this was not necessary in the circumstances. In my assessment, the evidence adduced more than adequately proved the ingredients of possession and knowledge beyond reasonable doubt.

82 The primary issue for consideration was whether the Prosecution had proved beyond reasonable doubt that the accused had the drugs in his possession for the purpose of trafficking. His own statements were clear and unequivocal

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about the nature of his drug activities. They showed that he was no stranger to drugs and had full knowledge of what he was involved in. He was tasked to repack and deliver the drugs and collect payments for "Datuk". There was a substantial quantity of drugs, with 49.98 grams being nearly 25 times the threshold for triggering the presumption in s 17 of the MDA. Two of the three bundles he received the day before his arrest had been repacked by the time of his arrest. The drugs and relevant repacking paraphernalia, including weighing scales, scissors and plastic sachets, were all found in his van, which he abandoned and fled from on seeing the CNB officers closing in on him. Finally, he was in possession of a large amount of cash totalling $24,145 for which he could not offer any plausible innocent explanation of their provenance or intended use.

83 In the premises, the evidence adduced proved beyond reasonable doubt that he had the drugs in his possession for the purpose of trafficking.

Presumption in s 17 of the MDA not rebutted

84 Section 17(*c*) of the MDA provides that a person who is proved to have been in possession of more than 2 grams of diamorphine was "presumed to have had that drug in possession for the purpose of trafficking". Section 17(*c*) states:

> **Presumption concerning trafficking**
>
> 17. Any person who is proved to have had in his possession more than —
>
> …
>
> (*c*) 2 grammes of diamorphine;
>
> whether or not contained in any substance, extract, preparation or mixture shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

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85 Having regard to the observations of the Court of Appeal in *Mohd Halmi* (at [6]), the instant case did not present a scenario where there was any necessity to apply the presumption in s 17. As I have explained, the evidence showed that the accused had the drugs in his possession for the purpose of trafficking. Where s 17 is relied upon, the burden falls on the accused to prove that his possession of the drugs was not for that purpose.

86 Given my findings, for the avoidance of any doubt, the only logical conclusion was that the accused had failed to rebut the presumption in s 17 of the MDA on a balance of probabilities.

Conviction

87 For the above reasons, I found that the defence was wholly unworthy of credit and unconvincing in the face of the overwhelming evidence against the accused. I was satisfied that the evidence established beyond reasonable doubt that he had the drugs in his possession for the purpose of trafficking. I therefore found the accused guilty as charged and convicted him.

Sentencing

88 The net weight of the diamorphine in question was 49.98 grams. By virtue of s 33(1) of the MDA read with its Second Schedule, the punishment prescribed for trafficking more than 15 grams of diamorphine under s 5(1) of the MDA is death. However, pursuant to s 33B of the MDA, the court has the discretion not to impose the death penalty in certain circumstances. Under s 33B(1)(*a*) of the MDA, the court may order life imprisonment and caning of *at least* 15 strokes if the two requirements within s 33B(2) of the MDA are satisfied. First, the person convicted must prove, on a balance of probabilities, that his involvement in the offence under s 5(1) of the MDA is restricted to that

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of a mere courier, as set out in s 33B(2)(*a*)(i)–(iv) of the MDA. Second, the Public Prosecutor must certify that the person convicted has given substantive assistance to the CNB in disrupting drug trafficking activities within or outside Singapore.

89 In respect of the first requirement, I was bound by the decision of the Court of Appeal in *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 ("*Chum Tat Suan*") at [63]. There, the Court of Appeal had endorsed the views expressed by the High Court in *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 ("*Abdul Haleem*") on the narrow meaning to be accorded to the definition of a "courier" in s 33B(2)(*a*) of the MDA. In *Abdul Haleem*, the High Court concluded (at [51]) that a courier's involvement is limited to delivering or conveying drugs from point A to point B. In *Chum Tat Suan*, it was also clarified (at [68]) that packing is *not* an act that is contemplated within the meaning of "transporting, sending or delivering", as set out in s 33B(2)(*a*) of the MDA.

90 After conviction, the Prosecution declined to issue a certificate of substantive assistance under s 33B(2)(*b*) of the MDA. Counsel for the accused submitted that the accused should be treated as a courier since he had maintained in his statements that he was merely a "transporter". The Prosecution disputed this and submitted that his acts of repacking the drugs would bring him outside the meaning of a "courier". It stated that it had considered whether the accused had provided substantive assistance to the CNB in disrupting drug trafficking activities and ultimately determined that he had not.

91 The accused further sought to be permitted to speak to the IO before sentencing, offering to cooperate by providing more information pertaining to Rashid. This was done in the hope that he might persuade the Prosecution to

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issue the certificate of substantive assistance. I regarded his last-minute offer to cooperate further with scepticism. If indeed he had more useful information to offer, I saw no reason why he did not do so at any point earlier in the investigations, or even after trial had commenced up until the date of his conviction. He claimed that this was because he was fearful for his family's safety. This was hardly a persuasive argument since he had gamely put his aged mother and wife forward as defence witnesses, mentioned his various activities with his wife and son at Adventure Cove in Sentosa and thereafter at Geylang with his son prior to 18 March 2015, while seeking all along to pin the blame on Rashid during the trial.

92 In addition, counsel indicated that he intended, subject to approval from the LASCO Committee, to mount a challenge to the Public Prosecutor's determination in its sole discretion that no substantive assistance had been provided by the accused, relying ostensibly on s 33B(4) of the MDA. He suggested that the Public Prosecutor's determination was made in bad faith or with malice. No particulars or other justifications were provided. I did not agree that this would effectively afford him a stay of proceedings. No such formal application was specifically placed before me and none was pending before any other court in any case.

93 I found that the accused was not a courier as his conduct did not fall within the meaning of s 33B(2)(*a*) of the MDA which narrowly defines what a courier does. His acts of repacking the drugs were not contemplated within the meaning of "transporting, sending or delivering", as set out in s 33B(2)(*a*) of the MDA. As he did not satisfy both requirements set out in s 33B(2)(*a*) and (*b*) of the MDA, the accused was sentenced to the mandatory death penalty.

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94 As for the disposal of the exhibits, the accused raised no objections to the Prosecution's application and I ordered that the exhibits be disposed accordingly.

See Kee Oon
Judge

Terence Chua and Kenny Yang (Attorney-General's Chambers) for the Public Prosecutor;
Hassan Esa Almenoar (R Ramason & Almenoar) and Diana Foo (Tan See Swan & Co) for the accused.

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