IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 82

Criminal Case No 64 of 2017

Between

Public Prosecutor

And

(1) Ong Seow Ping
(2) Abdul Rahim Bin Shapiee

GROUNDS OF DECISION

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

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Public Prosecutor
v
Ong Seow Ping and another

[2018] SGHC 82

High Court — Criminal Case No 64 of 2017
Valerie Thean J
26–28 September, 3–5 October 2017, 17–19 January 2018, 5 February, 15 March 2018

6 April 2018

Valerie Thean J:

Introduction

1 Following a joint trial, I convicted the first accused, Ong Seow Ping ("Ong") and the second accused, Abdul Rahim Bin Shapiee ("Abdul") on separate charges of possessing a Class A controlled drug for the purpose of trafficking under s 5(1)(*a*), read with s 5(2), of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). As s 33B of the MDA was not applicable, I imposed the mandatory sentence of death on both accused persons. These are my reasons.

Charges

2 Ong is a 45-year-old male Singaporean who was initially charged with possessing, for the purpose of trafficking, 41 packets containing not less than

1,285.3g of granular/powdery substance which was found to contain not less than 51.73g of diamorphine (referred to by witnesses at the trial by its street name, heroin).[1] At the conclusion of the trial, the Prosecution accepted that Ong had intended to consume one of the packets which was found to contain 0.04g of diamorphine and applied for the charge to be amended accordingly pursuant to s 128(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC").[2] The Defence had no objection and the application was granted. I thereafter convicted Ong on the following charge:[3]

> … on 3 August 2015, at about 10.20 p.m., inside unit #05-196 of Block 728 Jurong West Avenue 5, Singapore, did traffic in a Class 'A' controlled drug listed in the First Schedule to [the MDA], to wit, by having in your possession for the purpose of trafficking, forty (40) packets containing not less than 1284.05 grams of granular/powdery substance which was analysed and found to contain not less than 51.69 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) punishable under section 33(1) of the MDA, and further upon your conviction under section 5(1)(a) read with section 5(2) of the MDA, you may alternatively be liable to be punished under section 33B of the MDA.

3 Abdul is a 41-year-old male Singaporean, who was initially charged with possessing, for the purpose of trafficking, 14 packets and three straws containing not less than 965.6g of granular/powdery substance which was found to contain not less than 41.24g of diamorphine.[4] The Prosecution accepted, after trial, that Abdul had intended to consume the eight packets and three straws found in two exhibits containing 1.37g of diamorphine. The Defence had no

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1 Arraignment Notice, p 1.

2 Prosecution's written submissions at paras 78–79.

3 Amended Arraignment Notice, p 1 (C1A).

4 Arraignment Notice, p 5.

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objection to the amendment of the charge to exclude these exhibits.[5] I allowed the amendment and convicted Abdul on the following amended charge:[6]

> … on 3 August 2015, at about 10.00am, inside unit #06-45 of Block 175C, Yung Kuang Road, Singapore, did traffic in a Class 'A' controlled drug listed in the First Schedule to [the MDA], to wit, by having in your possession for the purpose of trafficking, six (6) packets containing not less than 928.1 grams of granular/powdery substance which was analysed and found to contain not less than 39.87 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) punishable under section 33(1) of the MDA, and further upon your conviction under section 5(1)(a) read with section 5(2) of the MDA, you may alternatively be liable to be punished under section 33B of the MDA.

4 At the request of the Prosecution at the commencement of trial, the two accused, whose offences arose from the "same series of acts" (see s 144 of the CPC), were jointly tried. No objection was taken by defence counsel.[7]

Agreed Facts

5 An agreed statement of facts ("ASOF") was tendered under s 267(1) of the CPC. The agreed facts are as follows.

6 At about 10.00am on 3 August 2015, officers with the Central Narcotics Bureau ("CNB") raided unit #06-45 of Block 175C, Yung Kuang Road, Singapore ("the Yung Kuang Unit"), where Abdul was residing at the time. Abdul and one Nuraiin Binte Rosman ("Nuraiin") were arrested in one of the

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5 Prosecution's written submissions at paras 80–82.

6 Amended Arraignment Notice, p 6 (C2A).

7 NE 26/09/17, Day 1, p 3.

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bedrooms of the said unit. Abdul was packing granular powdery substances while Nuraiin was packing white crystalline substances.[8]

7 Seized exhibits included 14 packets and three straws of granular/powdery substance[9]. These exhibits, were marked A1A1 (two packets), A1B1 (three packets), B1A (three packets), B2A1 (one packet) and B4 (five packets and three straws). Abdul admitted to ownership and possession of the various exhibits seized. He knew that the various packets contained heroin.[10] The six packets in A1A1, B1A and B2A1, which formed the subject matter of the amended charge which Abdul was convicted of, were found to contain a total of not less than 39.87g of diamorphine.[11] Several weighing scales, empty cut straws, glass tubes, empty plastic packets and other paraphernalia were also seized.[12] In Abdul's presence, the seized exhibits were put into polymer bags and sealed.[13]

8 On the same day, at about 7.42pm, Ong called Abdul. Several calls later, Abdul informed the CNB officers that Ong would like to collect one pound of heroin at Block 728 Jurong West Ave 5, Singapore. Under the supervision of ASP Chor Guo Hui Desmond ("ASP Chor"), who was the officer in charge of the operation,[14] Abdul called Ong at about 10.06pm, informing Ong that he had arrived at the carpark of Block 725 Jurong West Ave 5.[15]

8 ASOF at paras 2 and 5.

9 ASOF at para 6.

10 ASOF at para 27.

11 ASOF at para 25.

12 ASOF at para 6.

13 ASOF at para 7.

14 NE 26/09/2017, Day 1, pp 94–95.

15 ASOF at para 8.

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9 At the same time, a second team of CNB officers was despatched to observe unit #05-196 of Block 728 Jurong West Ave 5, Singapore ("Jurong West Unit").[16] Ong was seen leaving the said unit at about 10.15pm, and he was arrested shortly thereafter at about 10.20pm, after a struggle, at the ground floor of Block 728 Jurong West Ave 5.[17]

10 Subsequently, Ong was brought to the Jurong West Unit, where he was residing at the time.[18] Seized exhibits included the following: E1A (21 packets), E2A1A (one packet), F1A1 (one packet), G1A1A (one packet), H2 (one packet), J1A1 (five packets), J1B1 (five packets) and K1A1A (six packets).[19] Ong admitted to ownership and possession, and knew that they contained heroin.[20] The seized exhibits were placed into polymer bags that were sealed in Ong's presence.[21] The Prosecution subsequently accepted that H2 (containing not less than 0.04g of diamorphine) was meant for Ong's personal consumption. The remaining exhibits, 40 packets found to contain a total of not less than 51.69g of diamorphine,[22] formed the subject matter of the charge which Ong was convicted of.

The applicable law and the key issue

11 Ong and Abdul were charged under ss 5(1) and (2) of the MDA which read as follows:

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16 ASOF at para 12.

17 ASOF at para 13.

18 ASOF at para 1.

19 ASOF at para 15.

20 ASOF at para 28.

21 ASOF at para 16.

22 ASOF at para 25.

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> **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.

12 "Traffic" (with "trafficking" given a corresponding meaning) is defined in s 2 of the MDA as (a) to sell, give, administer, transport, send, deliver or distribute; or (b) to offer to do the same, in the absence of authority given under the Act.

13 The Prosecution's case was that Ong and Abdul possessed the various exhibits for the purpose of trafficking. The elements of a charge for possessing a controlled drug for the purpose of trafficking under s 5(1) read with s 5(2) of the MDA were set out by the Court of Appeal in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]:

(a) possession of a controlled drug;

(b) knowledge of the nature of the drug;

(c) proof that possession of the drug was for the purpose of trafficking which was not authorised.

14 Because it was clear from the agreed facts that both Ong and Abdul admitted that they had possessed the quantities of drugs stated in the proceeded charges and had known the nature of the drugs to be heroin,[23] only element (c)

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was in dispute in this case. The presumption of trafficking in s 17 of the MDA was applicable. Both Ong and Abdul were arrested with more than 2g of diamorphine in their possession, and the onus was accordingly on them to rebut the presumption on the balance of probabilities. The presumption provides:

> **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.

15 Ong and Abdul's defences, which I will turn to, rested upon consumption. In *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 ("*Muhammad bin Abdullah*") at [31], the Court of Appeal highlighted the following factors which are relevant when examining the defence of consumption:

(a) rate of drug consumption;

(b) frequency of supply;

(c) whether the accused had the financial means to purchase the drugs for himself; and

(d) whether the accused had made a contrary admission in any of his statements that the whole quantity of drugs was for sale.

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[23] ASOF at paras 27–28.

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16 These four factors formed the framework for considering the Prosecution's case, the defences raised and my decision for each accused person, which I detail below.

Ong

The Prosecution's case

17 The Prosecution submitted that Ong's defence of consumption was not plausible. They pointed out that the quantity of heroin found in the Jurong West Unit could sustain his addiction for 7 years and 31 days.[24] The Prosecution submitted that it was illogical for Ong to stockpile such a large quantity of heroin if he had genuinely intended to consume all of it, because he had ready access to the drug.[25] Furthermore, Ong had been unemployed for four years at the time of his arrest, and did not have a stable income. Accordingly, he could hardly have afforded such a large quantity of heroin for himself.[26] In any event, Ong had provided complete and detailed admissions regarding his intention to sell the heroin that were seized from him.[27]

Ong's case

18 Ong's case was that all the drugs found in the Jurong West Unit were for his own consumption. He explained that it was "safer" to buy more drugs, because doing so would allow him to avoid interacting with suppliers frequently, as he had been "played out" by suppliers on multiple occasions, meaning that the suppliers either did not turn up or made off with his money

24 Prosecution's written submissions at paras 36–39.

25 Prosecution's written submissions at paras 40–42.

26 Prosecution's written submissions at para 43.

27 Prosecution's written submissions at paras 44–54.

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without providing him with the goods in exchange.[28] Thus, it was logical for him to keep a large quantity of heroin for himself. Furthermore, he had recounted the same to Dr Jerome Goh ("Dr Goh"), a senior consultant psychiatrist from the Institute of Mental Health ("IMH") who interviewed him after his arrest.[29]

19 Ong did not challenge the admissibility of his statements. He contended, nevertheless, that he lied in his statements. His evidence was that Senior Staff Sergeant Quek Wee Liang ("SSSGT Quek"), an enforcement officer attached to CNB, had told him when he was arrested that the large quantity of drugs found at the Jurong West Unit could not have been meant for his personal consumption. Because of this, he lied in order to cooperate with the CNB, by saying that he intended to sell some of the seized heroin, even though he had intended to consume all of it.[30]

Decision on the charge against Ong

20 The first of the four factors set out by the Court of Appeal in *Muhammad bin Abdullah* is the rate of consumption. Ong conceded during trial under cross-examination that he consumed one straw of heroin per day.[31] He also accepted that the average amount of pure heroin in each straw was around 0.02g.[32] The quantity of diamorphine seized from the Jurong West Unit, excluding the quantity which the Prosecution accepted was meant for Ong's consumption, was not less than 51.69g. This was enough diamorphine to fill approximately 2,584

28 Ong's written submissions at paras 4–5.

29 Ong's written submissions at paras 13–19.

30 Ong's written submissions at paras 7 and 9.

31 NE Day 7, 17/1/2018, p 60.

32 NE Day 7, 17/1/2018, p 60.

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straws, which, given his rate of consumption of one straw a day, would last him more than seven years, a calculation which did not take into account the additional pound that he planned to purchase from Abdul on the day of his arrest.

21 Consideration of his frequency of supply did not assist his defence. While Ong's explanation for building up a stockpile of heroin was that he had been cheated by suppliers in the past, his evidence in this respect was vague. While, as the Prosecution pointed out, this stockpile would have lasted him seven years, up to the point of arrest, he had only consumed heroin for about three or four years.[33] Ong accepted that he had purchased heroin from one Ah Chun on at least 20 occasions, and Ah Chun had called him approximately once a week to offer him heroin.[34] He also confirmed that Ah Chun could provide him with even more heroin if he had so wished.[35] Given that Ah Chun had provided Ong with heroin on numerous occasions, there was little reason for Ong to fear that Ah Chun would "play him out". In addition, aside from Ah Chun, Ong could also obtain heroin from Abdul.[36] A parallel may be drawn with *Muhammad bin Abdullah*, where the first appellant submitted that he had stocked up a large quantity of heroin because the arrest of a Malaysian syndicate member threatened to interrupt his supply of heroin. This explanation was rejected by the Court of Appeal at [39] as a "bare allegation unsupported by any evidence" which "was contrary to evidence of a regular and uninterrupted supply of drugs (of large quantities) for three weeks prior to the arrest." Further, although Ong asserted that he informed Dr Goh that he was "stocking up" heroin

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33 NE Day 7, 17/1/2018, pp 61–62.

34 NE Day 7, 17/1/2018, p 58.

35 NE Day 7, 17/1/2018, p 59.

36 NE Day 7, 17/1/2018, pp 59–60.

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for himself because "he was worried he could not find the source(s) if he need[ed] the drug", the next line of the same report contained his information to Dr Goh that he had been selling heroin to a few of his friends.[37]

22 Ong's poor financial state at the time of his arrest was not disputed. He had $5,180.75 in savings, consisting of $5,081.50 in cash found in his wallet ($4,300.00 of which was meant for payment to Abdul for the heroin) and $99.25 in his bank account.[38] He had no other savings at the material time,[39] and had to borrow money from his wife.[40] In my judgment, he could not have been prepared to pay Abdul $4,300.00 for the heroin (and leave himself with $880.75 in savings) unless he was reasonably certain that he would be able to profit from selling the heroin which he bought.

23 Finally, Ong also provided complete and detailed admissions regarding his intention to sell heroin in the seven statements relating to the capital charge. Ong did not dispute the voluntariness of his statements, in which he admitted the following:

(a) In his contemporaneous statement recorded on 4 August 2015, Ong confirmed that he had intended to sell at least 30 packets of heroin for $100 per eight-gram packet;[41]

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37 Agreed Bundle at p 198.

38 NE Day 7, 17/1/2018, p 62.

39 NE Day 7, 17/1/2018, p 62.

40 NE Day 7, 17/1/2018, p 63.

41 Ong's Statements, pp 257–261.

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(b) In his cautioned statement recorded on 4 August 2015, Ong stated that the exhibits found at the Jurong West Unit were "not solely for trafficking purpose";[42]

(c) In his first investigation statement recorded on 9 August 2015 at about 2.58pm, Ong stated that he started selling drugs to fund his own drug addiction[43] and his "expenditures".[44] He also confirmed that he sold heroin at a profit of $20 per eight-gram packet.[45] He further detailed how he would receive and fulfil orders for heroin from his clients. In particular, his clients would call him at a particular number to confirm their orders of heroin, and would meet him at the vicinity of his block to receive the packets of heroin;[46]

(d) In his second investigation statement recorded on 9 August 2015 at about 8.49pm, Ong stated that he would receive a profit of about $700 to $900 from selling 55 packets of heroin.[47] He also provided details regarding his sales of heroin to two drug consumers, "Ah Seng" and "Ah Heng".[48] He further stated that he started purchasing heroin from Abdul sometime around June 2015;[49] and

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42 Ong's Statements, p 312.

43 Ong's Statements, p 401.

44 Ong's Statements, p 404.

45 Ong's Statements, p 405.

46 Ong's Statements, pp 405–406.

47 Ong's Statements, p 408.

48 Ong's Statements, pp 411–412.

49 Ong's Statements, p 409.

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(e) In his fifth investigation statement recorded on 15 August 2015 at about 7.28pm, Ong made the following admissions:

(i) E1A1A was for sale at $100 per packet.[50]

(ii) E2A1A would be repacked into 55 smaller packets containing eight grams of heroin each, and thereafter sold for $100 per packet.[51]

(iii) F1A1 would be repacked into approximately 20 smaller packets containing eight grams of heroin each, and thereafter sold for $100 per packet.[52]

(iv) G1A1A would be repacked into smaller packets containing eight grams of heroin each, and thereafter sold for $100 per packet.[53]

(v) J1A1 and J1B1 were for sale at $100 per packet.[54]

(vi) K1A1 was for sale at $70 per packet.[55]

(vii) H2 was intended for his personal consumption.[56]

24 Although Ong accepted that these statements were provided without threat, inducement or promise, he alleged that SSSGT Quek informed him that the exhibits seized at the Jurong West Unit could not be for his own

50 Ong's Statements, p 457.

51 Ong's Statements, p 458.

52 Ong's Statements, p 459.

53 Ong's Statements, p 460.

54 Ong's Statements, p 462.

55 Ong's Statements, pp 464–465.

56 Ong's Statements, p 463.

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consumption as it was a "very substantial amount" of drugs. Thus, he decided to lie in all his statements and falsely claim that he intended to sell heroin.[57] He thought that by rendering "cooperation", it would help him receive a lighter sentence,[58] although he accepted that this belief was self-induced.[59]

25 SSSGT Quek unequivocally denied that he had made such a statement to Ong,[60] who accepted that SSSGT Quek had no reason to lie.[61] The logic of Ong's argument was also difficult to follow. Ong was a drug addict who knew that the penalties for drug trafficking were much heavier than those for consumption or possession.[62] It was rather illogical for Ong, as he claimed, to lie that he had trafficked heroin in order to receive a lighter sentence. Finally, Ong's admissions were very detailed and included specifics as to how customers would order heroin and meet him.[63]

26 Ong also told Dr Goh that he sold heroin to his friends in order to make ends meet.[64] When cross-examined on this, Ong's contention was that he had lied to Dr Goh so as to be consistent with his lies to CNB,[65] and because Dr Goh was using the same model of mobile phone as the investigation officer, Investigation Officer Shafiq Basheer ("IO Basheer").[66] The latter contention was patently unsustainable, and the former, not persuasive.

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57 NE Day 7, 17/1/2018, p 32.

58 NE Day 7, 17/1/2018, p 66.

59 NE Day 7, 17/1/2018, pp 33–34.

60 NE Day 7, 17/1/2018, p 12.

61 NE Day 7, 17/1/2018, p 64.

62 NE Day 7, 17/1/2018, p 64.

63 Ong's Statements, pp 405–406.

64 Ong's Statements, p 198.

65 NE Day 7, 17/1/2018, p 68.

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27 In all the circumstances, I was satisfied that the Prosecution had proven its case beyond reasonable doubt against Ong on the amended charge. I convicted him accordingly.

Abdul

The prosecution's case

28 The Prosecution relied on Abdul's concession that he had, on average, consumed one straw of heroin every two days since October 2014. Since Abdul's position at trial was that four drug exhibits, namely A1A1, A1B1, B2A1 and B4, containing a total of not less than 11.71g of diamorphine, were for his own consumption, this meant that he had an approximately three-year supply of diamorphine for his own use.[67] This, the Prosecution submitted, was inexplicable. Abdul also had a ready supply of heroin.[68] Furthermore, the four exhibits referred to above would cost at least $11,121, a sum which Abdul could not have easily afforded considering his poor financial circumstances.[69] In any event, Abdul admitted in his statements that the exhibits were for sale.[70]

Abdul's case

29 Abdul contended that four of the seized exhibits (namely A1A1, A1B1, B2A1 and B4) were meant for his consumption. Regarding these exhibits, it was submitted on behalf of Abdul that he was unable to accurately ascertain his own rate of consumption of heroin because of the erratic urges which he

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66 NE Day 7, 17/1/2018, pp 69–70.

67 Prosecution's written submissions at paras 57–58.

68 Prosecution's written submissions at para 59.

69 Prosecution's written submissions at paras 68–69.

70 Prosecution's written submissions at paras 70–71.

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experienced.[71] Therefore, Abdul's self-proclaimed rate of consuming one straw of heroin every two days was inaccurate and not ought to be relied upon.[72] As for the remaining exhibit, B1A (which contained not less than 29.53g of diamorphine), Abdul claimed that he had meant to deliver it to Ong and one other recipient, Husaini Bin Hussin, an inmate currently serving his sentence in Changi Prison for drug offences. Abdul referred to this inmate as "Jebek" and the same name is adopted in these grounds of decision. In relation to this part of the claim, Abdul's suggestion was that his involvement was limited to that of a courier.[73]

30 Furthermore, Abdul contended that he did not have a ready supply of heroin. His first supplier, one "Black", had stopped selling heroin, and he was unfamiliar with his new supplier, one "Kumar".[74] Further, he submitted that he could very well afford the quantity of heroin found in his possession, especially since his family was willing to provide him with financial assistance.[75] Therefore, it was not unreasonable for Abdul to have acquired the quantity of heroin that he did. Finally, he challenged the voluntariness of the statements in which he had admitted to selling heroin.

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71 Abdul's written submissions at paras 39–46.

72 Abdul's written submissions at para 49.

73 Abdul's written submissions at para 69–123.

74 Abdul's written submissions at paras 54–57.

75 Abdul's written submissions at paras 58–62.

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Decision on the charge against Abdul

Consumption

31 In considering the first factor set out in *Muhammad bin Abdullah*, I took into account that Abdul's defence, as mentioned above, drew a distinction between B1A and the rest of the seized exhibits (A1A1, A1B1, B2A1 and B4). Two of the three packets within B1A were intended for Ong, and the last was intended for Jebek. The other four exhibits were meant for his consumption. The Prosecution accepted at the end of trial that A1B1 and part of B4 were intended for Abdul's own consumption and reduced the charge to exclude A1B1 and B4. Therefore, these grounds deal only with the remainder: A1A1, B2A1 and B1A.

32 I deal first with B1A, the three packets intended for Ong and Jebek. Abdul accepted that he had intended to deliver or "give" two packets of heroin to Ong,[76] and that the remaining packet was "to be given to Jebek because he ordered" half a pound of heroin.[77] These acts fall within the definition of trafficking under s 2 of the MDA, which is to "give, … send, deliver or distribute", and Abdul's intention to deliver to Ong and Jebek at a future time was sufficient for the purposes of s 5(2) (see *Lee Yuan Kwang & anor v Public Prosecutor* [1995] 1 SLR(R) 778 at [57]). Therefore, by Abdul's own account, he had possessed B1A for the purpose of trafficking. It was also undisputed that B1A was found to contain not less than 29.53g of diamorphine.[78] Accordingly, Abdul's admission in relation to B1A alone was sufficient to sustain a capital charge under s 5(1) read with s 5(2) of the MDA.

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76 NE Day 8, 18/1/2018, p 16; Abdul's written submissions at para 79.

77 NE Day 8, 18/1/2018, p 29; Abdul's written submissions at para 123.

78 ASOF at para 25.

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33 In addition, I examined Abdul's defence that he had intended to consume A1A1 and B2A1, which formed the remainder of the diamorphine specified in the amended charge.

34 These two exhibits contained a total of not less than 10.34g of diamorphine.[79] Abdul admitted in his first long statement that he used to smoke half a packet of heroin every two days after being arrested by the police in July 2014, but reduced his rate of consumption to one straw of heroin every two days when he was arrested again in October 2014. He stated that he maintained this consumption rate until his arrest in relation to this case on 3 August 2015.[80] Although Abdul stated at trial that his rate of consumption would vary, he conceded, during cross-examination, that the general average rate was one straw every two days.[81] Assuming that each straw contained 0.02g of diamorphine, the two exhibits contained enough diamorphine for 517 straws, which would last about two years and ten months.

35 As stated above, it was argued on behalf of Abdul that the rate of consumption which he provided at trial was unreliable and ought not to be relied on, given that it varied from time to time. In particular, it was submitted "[t]hat one arrest [in July 2014] would cause an increase in heroin usage and another [in October 2014] would result in a decrease in heroin usage reflects a contradiction in [Abdul's] physical disposition in relation to his rate of consumption, therefore making any absolute declarations as to his rate of consumption unreliable".[82] There was no such inconsistency, however. Abdul

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79 ASOF at para 25.

80 Abdul's Statements, pp 428–429.

81 NE Day 8, 18/1/2018, p 49.

82 Abdul's written submissions at para 42.

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had satisfactorily accounted for the difference in rate of consumption in July 2014 and October 2014. He informed Dr Kenneth Koh ("Dr Koh"), an IMH psychiatrist whose duty was to assess his mental state, that his use of heroin decreased in 2015 because he had started smoking methamphetamine, which helped curb his cravings for heroin.[83] He also told Dr Koh that his withdrawal symptoms had reduced because of the lower intake.[84]

36 Secondly, while defence counsel asserted that Abdul could smoke up to half a packet a day, he did not follow on, despite an invitation from the Court, with any assertion as to how long the amount of diamorphine found in his possession would have lasted him at that rate.[85] Of relevance is the guidance in *Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 2 SLR(R) 706 at [49] that an accused person seeking to establish a defence of consumption must "at the very least be able to give a coherent account of his rate of consumption" to discharge his legal burden of rebutting the presumption of trafficking. In any event, Abdul stated that half a packet would contain about five or six straws.[86] Even if he smoked this amount every two days, he would have had enough diamorphine to last him more than 170 days. This was still a very substantial quantity of diamorphine.

37 Abdul further highlighted that the exhibits for his consumption were packed differently from those which he had meant to traffic.[87] For instance, A1A1,[88] A1B1,[89] and B4[90] were small packets, which allowed Abdul to consume

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83 Abdul's Statements, p 193.

84 Abdul's Statements, p 194.

85 NE Day 10, 15/3/2018, pp 5–7.

86 NE Day 8, 18/1/2018, p 23.

87 Abdul's written submissions at para 34.

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the heroin contained therein more conveniently. In contrast, B1A comprised three larger packets wrapped with black tape.[91] This, according to Abdul, showed that he had intended to consume some of the exhibits found in his possession. I found no merit in this submission. Abdul could, for example, have intended to sell different quantities of drugs to different buyers. He had also collected a portion of the drugs that morning from Kumar, and would not have had the time to repack everything. Such differences in packaging could not be determinative of his intent.

Supply

38 Regarding Abdul's frequency of supply, his evidence was that he had two suppliers, Black and Kumar.[92] Although Black had at one point stopped supplying him with heroin, Black provided him with the contact details of another supplier, Kumar. Abdul agreed in cross-examination that both Black and Kumar would supply the same to him "on demand".[93]

Financial means

39 In respect of his financial means, Abdul testified that he earned less than $2,000 a month as a part-time Uber driver,[94] and roughly $800 a week helping his father with his airfreight business.[95] This would translate to around $5,200 a

88 P 68.

89 P 68.

90 P 75.

91 P 70.

92 NE Day 8, 18/1/2018, p 50.

93 NE Day 8, 18/1/2018, p 50.

94 NE Day 8, 18/1/2018, p 52.

95 NE Day 8, 18/1/2018, p 53.

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month. However, Abdul had also accepted that he stayed at home to play with his children at times,[96] and paid Nuraiin $300 to $500 per week for helping him to repack drugs.[97] He further informed Dr Koh that he had not been working since his arrest in July 2014.[98] Thus, his monthly income in 2015 was most likely much lower than $5,200. This was further exacerbated by an unfortunate choice of renovation contractor which gave rise to a loss of $7,000 in late 2014, and the need to fork out yet another sum to renovate his flat.[99] Although he claimed at trial that his family had helped him to pay the said sum,[100] this assertion was not corroborated by any witness or any document. Considering Abdul's financial means, he could ill afford spending (as he accepted during cross-examination) at least $8,400 on purchasing both heroin and ice (*ie*, methamphetamine) from February 2015 to June 2015.[101] In my judgment, it is unlikely that he would have done so without the prospect of earning a profit from the onward sale of the drugs.

Admissions in statements

40 The final factor required me to examine the admissions made in his statements, which included the following:

(a) In his first contemporaneous statement recorded on 3 August 2015 at 1.10pm, Abdul alleged that the drug exhibits seized at the Yung

96 NE Day 8, 18/1/2018, p 53.

97 NE Day 8, 18/1/2018, pp 55–56.

98 NE Day 8, 18/1/2018, p 53; CH Bundle at p 193.

99 NE Day 8, 18/1/2018, p 54.

100 NE Day 8, 18/1/2018, p 54.

101 NE Day 8, 18/1/2018, pp 51–52.

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Kuang Unit belonged to Ong, and that he had packed them at Ong's behest.[102]

(b) In his third contemporaneous statement recorded on 3 August 2015 at 9.20pm, Abdul changed his tune and confirmed that the said exhibits belonged to him, and that he had intended to sell them to various customers, including Ong.[103]

(c) In his first investigation statement recorded on 11 August 2015, Abdul admitted that he sold heroin for $20 per straw.[104]

(d) In his second investigation statement recorded on 13 August 2015, Abdul admitted that his friends would introduce customers who wanted to buy heroin to him.[105]

(e) In his third investigation statement recorded on 14 August 2015, Abdul detailed how he would receive and fulfil orders for heroin and ice from his clients.[106] Abdul also admitted that he intended to sell one pound of heroin to Ong for $4,300.[107]

(f) In his fourth investigation statement recorded on 15 August 2015, Abdul admitted that he intended to repack and sell heroin for $140 per eight-gram packet.[108]

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102 Abdul's Statements, p 290.

103 Abdul's Statements, p 293.

104 Abdul's Statements, p 431.

105 Abdul's Statements, p 436.

106 Abdul's Statements, p 441.

107 Abdul's Statements, p 442.

108 Abdul's Statements, pp 451–452.

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(g) In his sixth investigation statement recorded on 17 August 2015 at about 8.32pm, Abdul provided extensive information on the contact numbers of his drug customers.[109]

41 Abdul's first statement contradicted various of his other statements. As I explain below, after considering the evidence given during his ancillary hearing and in the course of the trial, I was of the view that only the admissions made in the third contemporaneous statement and the statements made thereafter were reliable.

(1) Abdul's ancillary hearing on his statements

42 The Prosecution sought to adduce three contemporaneous statements, a cautioned statement and six long statements. Abdul challenged the voluntariness of seven of the ten statements he gave, admitting to the voluntariness of the first and second contemporaneous statements and the cautioned statement. Abdul's challenge of the third contemporary statement rested on a threat made by ASP Chor on 3 August prior to the third contemporaneous statement. Out of frustration that the telephone number of Ong provided by Abdul was incorrect, ASP Chor said: "If that's the case, I'll bring your wife and … your family to the station."[110]

43 Taking Abdul's case at its highest, ASP Chor had threatened to bring Abdul's family to the police station if he was not helpful with Ong's arrest. In other words, this alleged threat was made to enlist Abdul's assistance in a drug operation, and not for the purpose of obtaining a confession from him. The alleged threat did not have reference to the charge, which is a requirement under

109 Abdul's Statements, pp 509–511.

110 NE 27/09/2017, Day 2, p 45

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s 258(3) of the CPC (see *Poh Kay Keong v Public Prosecutor* [1995] 3 SLR(R) 887 at [44]). Further, the words uttered by ASP Chor were not, objectively determined, a threat. Abdul's allegation was that ASP Chor had threatened to bring his family to the police station. There was no suggestion that ASP Chor had threatened to prosecute his family or to harm them in any way. Accordingly, in my view, Abdul's fears were self-induced and did not emanate from a threat, inducement or promise. Indeed, Abdul conceded in cross-examination that his worries about his wife were "self-perceived".[111] Such self-perceived threats are insufficient to render a statement involuntary – the existence of a threat, inducement or promise from a person in authority must be established (*Lu Lai Heng v Public Prosecutor* [1994] 1 SLR(R) 1037 at [19]). Abdul moreover conceded that he had known, even before his first contemporaneous statement (which he admitted to be voluntary) was recorded, that his wife would be brought to the police station.[112]

44 The second contention, relating to his six investigation statements, was IO Basheer's refusal to allow Abdul to call his wife until all the statements were completed, resulting in Abdul fearing for his wife.[113] He alleged that this fear operated on his mind and continued throughout the recording of the long statements.

45 This challenge had no merit. Even if the Court were to accept Abdul's contentions, the words allegedly uttered by IO Basheer did not, objectively determined, amount to a threat, inducement or promise. There was no suggestion that IO Basheer had demanded that Abdul confess or admit to

111 NE 28/09/2017, Day 3, p 10.

112 NE 28/09/2017, Day 3, pp 8–9.

113 NE 27/09/2017, Day 2, p 47.

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trafficking heroin before he would let him speak to his wife. Rather, the allegation was that IO Basheer did not allow Abdul to speak to his wife until he had finished giving his statements. It is difficult to accept how this subjectively caused Abdul to provide the six long statements over the course of seven days, from 11 August 2015 to 17 August 2015. These statements were recorded after the cautioned statement, where it was explained to Abdul that he would be sentenced to death if he was convicted of trafficking heroin. In my view, it is difficult to believe that Abdul would have willingly admitted to a capital charge in exchange for an opportunity to speak with his wife. Of relevance also was *Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541 ("*Sharom*"), where the accused, who faced a capital charge, challenged the admissibility of a long statement in a similar vein. The Court of Appeal found that it "made no sense" that the accused's free will "would be so easily weakened by his desire to see his wife that he would rather give a statement that would eventually bring him more harm than any advantage" (*Sharom* at [47]).

(2) Abdul's assertions during his trial regarding his statements

46 Abdul's statements were therefore admitted after the ancillary hearing. When the trial resumed, Abdul disputed their accuracy during the main trial by raising new allegations that IO Basheer had forced him to cooperate.[114] I found this hard to believe. If he had really wanted to cooperate, it would have been much simpler for him to state that all of the drugs seized from him were for sale. Instead, it was recorded that exhibits A1B1 and part of B4 were for his own consumption.[115] When this point was put to Abdul, he then raised a new

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114 NE Day 8, 18/1/2018, p 21.

115 Abdul's Statements, pp 450 and 452.

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allegation that was not put to IO Basheer: that IO Basheer suggested to him that B4 was most likely for sale because the packets weighed around 8g each.[116]

47 Further, Abdul admitted during cross-examination in the main trial that the majority of his first contemporaneous statement, which he had sought to rely on as the truth while disavowing his third contemporaneous statement and six investigation statements, consisted of lies.[117] These lies were as follows:

(a) the heroin belonged to Ong (when it was actually meant for Ong);[118]

(b) Ong had asked him to pack the heroin (he did not);[119]

(c) Ong had given him instructions on how the heroin was to be collected (he did not);[120]

(d) Ong paid him about $500 to $600 each time for packing drugs for him;[121] and

(e) Ong told him that he would collect the drugs from him at around 4pm at a nearby park.[122]

48 Abdul did not proffer any explanation as to why he had lied, apart from saying that "it didn't occur to [him] to give the full details of what was

116 NE Day 8, 18/1/2018, p 63.

117 NE Day 8, 18/1/2018, pp 43–46.

118 NE Day 8, 18/1/2018, p 44.

119 NE Day 8, 18/1/2018, p 44.

120 NE Day 8, 18/1/2018, p 45.

121 NE Day 8, 18/1/2018, p 46.

122 NE Day 8, 18/1/2018, p 46.

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happening".[123] It was clear, nonetheless, from the admissions made during his testimony, that the first contemporaneous statement was not reliable.

49 I should mention that Abdul was inconsistent with respect to the voluntariness of his various statements. He began by accepting that he had given the third contemporaneous statement (save for the answers to questions 22 and 24)[124] and the first three investigation statements (recorded on 11, 13 and 14 August 2015) voluntarily.[125] After conferring with his counsel for about 15 minutes on the second day of the ancillary hearing,[126] however, he changed his evidence, and challenged the admissibility of the third contemporaneous statement and all the investigation statements.[127]

50 After considering the evidence, I regarded as reliable the admissions made in his third contemporaneous statement and those made after (*ie*, his cautioned statement, which was not disputed, and six investigation statements). These included the admissions highlighted at [40(b)]–[40(g)] above.

Conclusion on Abdul

51 Applying the *Muhammad bin Abdullah* framework, I was of the view that Abdul had not rebutted the presumption of trafficking in relation to the four drug exhibits. In my judgment, the Prosecution had proved the amended charge beyond a reasonable doubt, and I accordingly convicted Abdul on the amended charge.

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123 NE Day 8, 18/1/2018, p 44.

124 NE 27/09/2017, Day 2, p 53.

125 NE 27/09/2017, Day 2, pp 56–57; NE 28/09/2017, Day 3, p 3.

126 NE 28/09/2017, Day 3, pp 4–5.

127 NE 28/09/2017, Day 3, pp 5–6; NE 05/10/2017, Day 6, p 16.

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Sentence

Ong

52 Ong did not adduce any evidence that he was merely a courier within the meaning of s 33B of the MDA. Neither did the Prosecution tender a certificate of substantial assistance.[128] By virtue of s 33(1) of the MDA read with the Second Schedule to the MDA, the punishment prescribed for possessing more than 15g of diamorphine for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA is death. Accordingly, I imposed the mandatory death penalty on Ong.

Abdul

Abdul's contentions in relation to s 33B of the MDA

53 Abdul submitted that s 33B was applicable to him, because, in relation to the three packets of diamorphine in B1A, he was a mere "courier", fulfilling the criteria under s 33B(2)(*a*) or s 33B(3)(*a*) of the MDA, effecting a delivery from Kumar to Ong for two packets and Jebek for the last packet.[129] Jebek was to give him $1,900 in exchange for half a pound of heroin,[130] while Ong was to pass him $4,300.[131]

The law on s 33B

54 Section 33B of the MDA provides:

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128 NE Day 10, 15/3/2018, p 22.

129 NE Day 8, 18/1/2018, p 19.

130 NE Day 8, 18/1/2018, p 64.

131 NE Day 8, 18/1/2018, p 20.

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Discretion of court not to impose sentence of death in certain circumstances

33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court —

(*a*) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes; or

(*b*) shall, if the person satisfies the requirements of subsection (3), instead of imposing the death penalty, sentence the person to imprisonment for life.

(2) The requirements referred to in subsection (1)(*a*) are as follows:

(*a*) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted —

(i) to transporting, sending or delivering a controlled drug;

(ii) to offering to transport, send or deliver a controlled drug;

(iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

(iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and

(*b*) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

…

(4) The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to any such

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> determination unless it is proved to the court that the determination was done in bad faith or with malice.

55 The Court of Appeal recently provided guidance in *Zainudin bin Mohamed v Public Prosecutor* [2018] SGCA 8 ("*Zainudin*") on the scope of this provision. Although this decision was delivered after written submissions were exchanged on 5 February 2018, parties asked to submit on it at the last hearing on 15 March 2018 and were of the view that their closing submissions were consistent with the views of the Court of Appeal.[132]

56 Steven Chong JA, delivering the judgment of the court, held that having regard to the relevant legislative debates, Parliament intended s 33B to contain "*limited*" and "*'tightly-defined' exceptions*" to the general rule that the death penalty is the appropriate punishment for those who traffic or import drugs in a quantity exceeding the prescribed threshold, because general deterrence still remains the predominant objective in relation to drug offences (at [49]) (emphases in original). The common thread (at [81]) in the types of conduct within the scope of s 33B(2)(a) were acts that were facilitative or incidental to the transporting, sending or delivering of the controlled drugs. Examples of such acts included (*Zainudin* at [57]–[64]):

> (a) storing or safe-keeping drugs in the course of transporting, sending or delivering those drugs;
>
> (b) collection of drugs for the purpose of subsequent transporting, sending or delivering those drugs;
>
> (c) collection of money upon sending, transporting or delivering of drugs; and

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132 NE Day 10, 15/3/2018, pp 13–14; 16–17.

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(d) relaying of information regarding subsequent deliveries in the course of transporting, sending or delivering drugs.

57 Conversely, acts falling outside the scope of s 33B(2)(*a*) included (at [65]–[68] and [104]):

(a) recruitment of drug couriers and administration of remuneration;

(b) efforts to expand the drug consumer base;

(c) sourcing for drug supply and acting as a go-between in negotiations for drug transactions; and

(d) division and packing of drugs for the purpose of giving the drugs the capacity for wider transmission.

Decision

58 Particular reliance was placed by defence counsel on *Public Prosecutor v Christeen d/o Jayamany and another* [2015] SGHC 126 ("*Christeen*"),[133] where Tay Yong Kwang J (as Tay JA then was) distilled the following factors which inform the analysis of whether an accused was a mere "courier" (at [68]):

(a) whether the role is a common and ordinary incident of transporting, sending or delivering a drug;

(b) whether such involvement is necessary to deliver the drugs, including:

(i) the degree of alteration to the drugs; and

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133 Abdul's written submissions at para 82.

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(ii) the extent to which such involvement looks beyond his immediate recipient of the drugs;

(c) the extent in scope and time of the functions which the offender performs;

(d) the degree of executive decision-making powers which the accused has; and

(e) whether the offender receives a distinct form of benefit for performing his extra functions.

59 It was submitted on behalf of Abdul that applying the above guidance, Abdul was merely a "courier" for the following reasons:

(a) Abdul had repacked the diamorphine in order to differentiate what belonged to him and the other persons, and because there was a hole in the packaging of the original wrapping which could have opened him to allegations that the diamorphine had "leaked".[134] Furthermore, as stated by Choo Han Teck J in *Public Prosecutor v Tan Kah Ho and another* [2017] SGHC 61, an accused who "separated the bundles for delivery" could nevertheless be considered a courier.[135]

(b) Abdul's delivery was a "one-off *ad hoc* duty", given that the evidence did not show any lengthy exchanges between Kumar and him.[136]

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134 Abdul's written submissions at paras 86 and 95.

135 Abdul's written submissions at para 93.

136 Abdul's written submissions at para 99.

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(c) Abdul had no executive decision-making powers, which was clear from the fact that he had no power to set the price of the heroin.[137]

(d) Abdul did not profit from the transaction.[138]

60 Primarily, Abdul sought to say that he was purely a deliveryman for the parcels for Ong and Jebek. In assessing the defence contentions, three points are pertinent. First, the burden of proof lies on the person convicted to prove, on a balance of probabilities, that his involvement in the offence was restricted to one of the permitted types of activities set out in s 33B(2)(*a*)(i)–(iv): *Zainudin,* at [109]. Secondly, this inquiry is a fact-sensitive one in each case: *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 ("*Rosman bin Abdullah*") at [30]–[31]. Thirdly, even an offender who is asked to deliver a quantity of drugs may nevertheless found not to be delivering but in substance to be distributing: *Zainudin* at [105]. As I explain below, the evidence did not support Abdul's contentions that he was only facilitating delivery as a courier.

61 First, Abdul's submissions on the delivery of the parcel intended for Jebek was contradicted by Jebek, who had been called by Abdul as a defence witness. Jebek denied that he had asked Abdul to purchase half a pound of heroin for him, or that he had given Abdul $1,900 to complete the purchase.[139] He said that he had "never gotten any drugs" from Abdul, and that as friends, they had only consumed drugs together.[140] During cross-examination by the Prosecution, he specifically stated that he had not asked Abdul to transport or

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137 Abdul's written submissions at para 104.

138 Abdul's written submissions at para 107.

139 NE Day 9, 19/1/2018, pp 14–15.

140 NE Day 9, 19/1/2018, p 7.

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order drugs on his behalf.[141] He also confirmed that coming from a poor family, he could not have afforded to purchase $1,900 worth of heroin.[142] In his submissions, Abdul did not seek to discredit Jebek. Rather, it was said that Jebek's testimony "should be granted additional weight given the spontaneous nature by which it was made".[143] More importantly, Abdul's fourth investigation statement explained that this last packet was intended to be stored in the room to be repacked into smaller packets of 8g when customers placed orders. He expected to make 30 packets of heroin from this parcel, at $140 a packet.[144]

62 Ong's evidence, moreover, indicated that Abdul played a middleman function, contrary to Abdul's position that he was to deliver the "batu" at no profit. While under cross-examination by Abdul's counsel, he denied that the pound of heroin was meant to be passed to him through Abdul from a third-party supplier (presumably Kumar).[145] He also did not give Abdul any instructions as to how the heroin was supposed to be packed.[146] Most tellingly, he stated that he would "place the *order* to [Abdul, who was] supposed to send it to [him]" [emphasis added].[147]Abdul's own evidence reinforced this point. He stated in his evidence-in-chief that he had helped Ong (upon Ong's request) to source for heroin, which he did by approaching his supplier, Kumar.[148] In his third contemporaneous statement, he stated he intended to "sell" the pound of

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141 NE Day 9, 19/1/2018, p 16.

142 NE Day 9, 19/1/2018, p 15.

143 Abdul's written submissions at para 110.

144 Abdul's Statements, p 451.

145 NE Day 7, 17/1/2018, p 53.

146 NE Day 7, 17/1/2018, p 53.

147 NE Day 7, 17/1/2018, p 53.

148 NE Day 8, 18/1/2018, p 19.

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heroin to Ong for $4,800.[149] Later in the same statement, he disclosed purchases of heroin from "Umar" for $3,800 a pound.[150] In his third investigation statement, he followed on to describe how he had obtained Ong's number, sought Ong's custom for a "batu" of heroin, intending to sell it to Ong for $4,300, after which he contacted Kumar to arrange a supply of two "batu". After receipt of the heroin from Kumar, he weighed the drugs and prepared the package for Ong, planning to contact him in the afternoon.[151] The reference in the third contemporaneous statement to $4,800 instead of $4,300 and to Umar instead of Kumar were likely errors because the statement was taken by hand at the time of the arrest. Abdul's intended delivery to Ong, in this context, was in the nature of distribution, as envisaged by *Zainudin* at [105], rather than delivery.

63 Of relevance is *Rosman bin Abdullah*, cited by Chong JA with approval in *Zainudin* at [67]. There, Rosman actively sourced for the diamorphine in question and acted as a middleman in negotiations between the supplier and a third party for the sale and purchase of diamorphine, by conveying the third party's offer to the supplier to enable the two of them to reach an agreement over the terms of payment. The Court of Appeal held in *Rosman bin Abdullah* that these acts were not merely incidental in the course of transporting, sending or delivery of drugs (at [36]), and affirmed the finding of Tay J that he was not a "courier". Similarly, in the present case, Abdul had sourced diamorphine for Ong, and was a middleman between Ong and Kumar.

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149 Abdul's Statements, p 293.

150 Abdul's Statements, p 294.

151 Abdu's Statements, pp 442–444.

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64 The *Christeen* guidelines, relied upon by defence counsel, did not assist Abdul. His acts were not a "common and ordinary incident of transporting, sending or delivering a drug", nor was his involvement "necessary to deliver the drugs". It should be noted that while the accused Christeen collected money and relayed messages, these actions were incidental to her transporting and delivering the drugs: see *Zainudin*, at [61]–[64]. Indeed, in *Public Prosecutor v Rosman bin Abdullah* [2015] SGHC 287, at [18], Tay J referred to his earlier *Christeen* guidelines and distinguished Rosman's role on the footing that he helped to source for heroin and to broker the deal.

65 In addition, aside from Ong, Abdul admitted to some 55 customers in his sixth investigation statement.[152] In the light of this customer base, and his admission in his investigation statement mentioned at [61] in relation to the third parcel in B1A, it was clear that his collection from Kumar was not one-off as he contended. Rather, he had sourced for and intended to facilitate the sale and distribution of the heroin found in his possession. It was clear from the Court of Appeal's decision in *Public Prosecutor v Chum Tat Suan* [2015] 1 SLR 834 that persons intending to sell controlled drugs would not be characterised as couriers: see *Zainudin* at [70].

66 For these reasons, I found that Abdul's role exceeded that of a "courier" and that he was unable to satisfy the requirements of s 33B(2)(*a*) of the MDA.

67 After I made my finding, the Prosecution informed me that a certificate of substantive assistance under s 33B(2)(*b*) of the MDA had been issued in Abdul's favour.[153] Nevertheless, the alternative sentencing regime under s

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152 Abdul's Statements, pp 509–511.

153 NE Day 10, 15/3/2018, at p 22.

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33B(1)(*a*) was not available to Abdul because both requirements in s 33B(2)(*a*) and s 33B(2)(*b*) must be satisfied before an accused person may qualify. I therefore sentenced Abdul, who had possessed more than 15g of diamorphine for the purpose of trafficking, to death.

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Final comments on Abdul's courier contention

68 I close by dealing with an argument made by the Prosecution in the event that it becomes relevant on appeal. Relevant to Abdul's submissions on s 33B of the MDA in relation to the parcels for Ong and Jebek, the Prosecution submitted that Abdul could not be allowed to argue that he was only a courier in relation to some, and not all, of the diamorphine found his possession. Either he was a courier for all of the diamorphine found in his possession, or none at all.[154] The words of s 33B allow for this reading, as subsection (2) applies to the accused's "involvement in the offence", which is the offence coming within subsection (1). Nevertheless, I note that in this case, if I had taken the view that Abdul was a "courier" in relation to the parcels he said were intended for Ong and Jebek, this would concern 29.53g of diamorphine, forming the bulk of the diamorphine involved in the charge, with the remainder 10.34g under the capital punishment threshold. I was not required to deal with the Prosecution's argument as, on the facts, I was of the view that Abdul's actions were not sufficiently limited. If a different view of the facts is taken on appeal, it would be relevant to consider an amendment to Abdul's charge pursuant to s 390(4) of the CPC, such that two charges could be preferred instead: one for trafficking 29.53g of diamorphine, to which s 33B would be applicable, and another for trafficking 10.34g, for which a different (and not capital) punishment would be applicable.

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154 NE Day 10, 15/3/2018, at pp 17–18.

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Valerie Thean
Judge

John Lu Zhuoren, Chin Jincheng and Shenna Tjoa Kai-en for the Prosecution;
Chung Ting Fai (Chung Ting Fai & Co) and Prasad s/o Karunakarn (K Prasad & Co) for the first defendant;
Nadwani Manoj Prakash (Gabriel Law Corporation), Jeeva Arul Joethy (Regent Law LLC) and Luo Ling Ling (Aequitas Law LLP) for the second defendant.

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