IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 232

Criminal Case No 44 of 2019

Between

Public Prosecutor

… *Plaintiff*

And

Roshdi bin Abdullah Altway

… *Defendant*

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing]— [Statements] — [Voluntariness]

Version No 1: 03 Nov 2020 (06:30 hrs)

TABLE OF CONTENTS

INTRODUCTION **1**

AGREED FACTS **1**

CHARGE AND CONTEXT **3**

ELEMENTS NOT DISPUTED **5**

POSSESSION FOR THE PURPOSES OF TRAFFICKING **6**

PROSECUTION'S CASE AND ROSHDI'S DEFENCE 6

ADMISSIBILITY OF THE STATEMENTS 7

The eight statements in dispute *8*

The Fardlie Statements *9*

The Ibrahim Statements *11*

EVIDENCE CONTAINED IN THE STATEMENTS 13

ROSHDI'S OPPOSING VERSION AT TRIAL 15

ANALYSIS 17

CONVICTION **23**

SENTENCE **24**

Version No 1: 03 Nov 2020 (06:30 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Roshdi bin Abdullah Altway

[2020] SGHC 232

High Court — Criminal Case No 44 of 2019
Valerie Thean J
17, 24 September 2019, 23–25, 30 June, 1–2 July, 17 August 2020

30 October 2020

Valerie Thean J:

Introduction

1 Roshdi bin Abdullah Altway ("Roshdi") claimed trial to a single charge of possession of 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"). I found Roshdi guilty and convicted him as charged. The death penalty was mandatory in his circumstances and I sentenced him accordingly. These are my grounds of decision.

Agreed facts

2 Roshdi is 61 years of age. On 14 September 2016, at about 6.15am, officers from the Central Narcotics Bureau ("CNB") arrested Roshdi at the void

deck of Block 209B Compassvale Lane.[1] He was carrying a Nokia phone, a set of keys to unit #04-106 of Block 209B Compassvale Lane ("the Compassvale Unit"), a stack of S$50 notes (later ascertained to be a sum of S$4,000), and a blue plastic bag containing a stack of money wrapped with paper (later ascertained to be a sum of S$14,000).[2]

3 At the time of his arrest, he complained of shortness of breath. An ambulance was called and he was attended to by a paramedic.[3] He was subsequently brought to the Compassvale Unit where he identified the room he stayed in ("the Compassvale Room").[4]

4 Various exhibits were recovered from the Compassvale Room. The subject matter of Roshdi's charge (collectively, "the Drugs") were found under the bed and inside a cupboard in the bedroom, as follows:[5]

(a) 128 packets of granular/powdery substance marked H1A;

(b) 13 straws of granular/powdery substance marked H2A;

(c) 2 packets of granular/powdery substance marked H5A;

(d) 84 straws of granular/powdery substance marked H5C;

(e) 137 packets of granular/powdery substance marked J1A; and

---

1 Statement of Agreed Facts at paras 2 – 3 ("SOAF").

2 SOAF at para 5.

3 SOAF at para 4.

4 SOAF at para 9.

5 SOAF at paras 9 and 31.

Version No 1: 03 Nov 2020 (06:30 hrs)

(f) 153 straws of granular/powdery substance marked J2A.

5 In addition, drug paraphernalia such as spoons,[6] papers,[7] empty packets,[8] empty straws[9] and digital weighing scales were also seized.[10] The search ended at around 8.28am.[11]

6 Subsequently, the Drugs were analysed. The 2,201.22g of granular powdery substance was found to contain not less than 78.77g of diamorphine.[12] Spoons, various pieces of paper and three digital weighing scales were found stained with diamorphine.[13] The drug analysis and chain of custody of the diamorphine were not disputed in this case.[14]

Charge and context

7 Roshdi was charged with possession of not less than 78.77g of diamorphine for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA:

That you, **ROSHDI BIN ABDULLAH ALTWAY,**

---

6 SOAF at paras 9(*a*)(v)(5) and 9(*a*)(iii)(2).

7 SOAF at para 9(*a*)(v)(6).

8 SOAF at para 9(*a*)(vii)(1).

9 SOAF at para 9(*a*)(ii)(2).

10 SOAF at paras 9(*a*)(viii) and 9(*c*)(i)(2)

11 SOAF at para 11.

12 SOAF at para 32.

13 Agreed Bundle ("AB") 113, 115, 117, 118 – HSA Lab Certificates for Exhibit H5E, H8, K3, K4

14 SOAF at para 20.

Version No 1: 03 Nov 2020 (06:30 hrs)

> on 14 September 2016, at or about 6.40 a.m., at the bedroom beside the living room of Blk 209B, Compassvale Lane, #04-106, Singapore, did traffic in a Class 'A' Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), *to wit*, by having in your possession for the purpose of trafficking 267 packets and 250 straws containing 2201.22 grammes of granular/powdery substance, which was analysed and found to contain not less than 78.77 grammes of diamorphine, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under Section 5(1)(*a*) read with Section 5(2) of the MDA and punishable under Section 33(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under Section 33B of the MDA.

8 Sections 5(1)(*a*) and 5(2) of the MDA read as follows:

> 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.

9 The term "traffic" is defined under s 2 of the MDA as follows:

> "traffic" means —
>
> (a) to sell, give, administer, transport, send, deliver or distribute; or
>
> (b) to offer to do anything mentioned in paragraph (a),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning

10 The elements of a charge under s 5(1)(*a*) read with s 5(2) of the MDA are as follows (per *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

(a) possession of the controlled drug;

Version No 1: 03 Nov 2020 (06:30 hrs)

(b) knowledge of the nature of the controlled drug; and

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

Elements not disputed

11 The first two elements were admitted by Roshdi at trial. Roshdi consistently acknowledged that he had possession of the Drugs.[15] Roshdi admitted to having rented the Compassvale Room[16] and storing the Drugs there.[17] He also stated that the owner of the Compassvale Unit who rented the Compassvale Room to him did not know of the existence of the Drugs in the room[18] and would not have accessed the room without his permission.[19] In respect of knowledge, Roshdi admitted to knowing the nature of the Drugs that he had in his possession at trial as well.[20]

12 The only issue in dispute at trial was the third element, that of possession for the purposes of trafficking.

---

15 NE 2 July 2020, p 35 lines 12 – 20; 2 July 2020, p 47 lines 20 – 23; 2 July 2020, p 72 line 30 – p 73 line 1.

16 NE 2 July 2020, p 30 lines 12 – 13.

17 NE 2 July 2020, p 31 lines 7 – 18.

18 NE 2 July 2020, p 32 lines 2 – 3.

19 NE 2 July 2020, p 32 lines 6 – 7.

20 NE 2 July 2020, p 73 lines 2 – 7; 2 July 2020, p 46 line 25 – p 47 line 6.

Version No 1: 03 Nov 2020 (06:30 hrs)

Possession for the purposes of trafficking

Prosecution's case and Roshdi's defence

13 The Prosecution relied primarily on Roshdi's statements. Their case was that there was sufficient evidence to prove beyond a reasonable doubt that Roshdi was in possession of the Drugs for the purposes of trafficking. In the alternative, Roshdi's possession of at least 78.77g of diamorphine brought him within the statutory presumption stated in s 17(*c*) of the MDA that his possession of the Drugs were for the purposes of trafficking, and the onus was on him to rebut this presumption on a balance of probabilities.

14 Roshdi's defence was that he was in possession of the Drugs not for the purposes of trafficking, but as a bailee for one 'Aru', intending to return them all along. He relied principally on *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*"), in particular, that 'a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking"': *Ramesh* at [110]. In that regard, Roshdi's evidence was that he was only given the Drugs for safekeeping.[21] He invited the court to amend the charge to one of simple possession under s 8(*a*) of the MDA.[22]

15 The main plank of the Prosecution's case was Roshdi's statements. I therefore deal with their admissibility first.

---

21 NE 2 July 2020, p 19 lines 31 – 32.

22 Defendant's Written Submissions dated 6 August 2020 ("DWS") at para 45.

Version No 1: 03 Nov 2020 (06:30 hrs)

Admissibility of the statements

16 In the course of investigations, nine statements were recorded:[23]

(a) on 14 September 2016, by Staff Sergeant Muhammad Fardlie Bin Ramlie ("SSgt Fardlie") at about 9.00am, pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC");

(b) on 14 September 2016, by SSgt Fardlie at about 9.55am, pursuant to s 22 of the CPC;

(c) on 14 September 2016, by SSgt Fardlie at about 12.55pm, pursuant to s 22 of the CPC;

(d) on 15 September 2016 by Assistant Superintendent Prashant Sukumaran ("ASP Sukumaran") at about 3.26am, pursuant to s 23 of the CPC;

(e) on 21 September 2016 by Staff Sergeant Ibrahim bin Juasa ("SSgt Ibrahim") at about 2.14pm, pursuant to s 22 of the CPC;

(f) on 23 September 2016 by SSgt Ibrahim at about 3.11pm, pursuant to s 22 of the CPC;

(g) on 25 September 2016 by SSgt Ibrahim at about 9.30pm, pursuant to s 22 of the CPC;

(h) on 26 September 2016, by SSgt Ibrahim at about 2.07pm, pursuant to s 22 of the CPC; and

---

23 SOAF at para 40.

Version No 1: 03 Nov 2020 (06:30 hrs)

(i) on 27 September 2016, by SSgt Ibrahim at about 3.08pm, pursuant to s 22 of the CPC.

17 The admissibility of these statements, save for the cautioned statement recorded on 15 September 2016 by ASP Sukumaran, were challenged by the defence. After an ancillary hearing, I held that the statements were admissible.[24]

The eight statements in dispute

18 Roshdi contended that the statements were inadmissible under s 258(3) of the CPC:

> **Admissibility of accused's statements**
>
> **258.**—(3) The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

19 The test of voluntariness has an objective limb and a subjective limb, which were stated in *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 as follows (at [53]):

> The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge: *Dato Mokhtar bin*

---

[24] NE 30 June 2020, p 61 lines 3 – 11.

Version No 1: 03 Nov 2020 (06:30 hrs)

> *Hashim v PP* [1983] 2 MLJ 232 and *Md Desa bin Hashim v PP* [1995] 3 MLJ 350.

20 Roshdi contended that he made the first three statements arising from inducement from SSgt Fardlie, and made the last five statements owing to inducement from SSgt Ibrahim. I take each category in turn.

The Fardlie Statements

21 The first three statements were contemporaneous statements recorded on the day of the arrest by SSgt Fardlie at 9.00am, 9.55am and 12.55am (collectively, "the Fardlie Statements"). Roshdi contended that he had been induced to make these statements when, prior to recording the first contemporaneous statement, SSgt Fardlie had told Roshdi in Malay, "Sekarang Singapore ada undang undang baru. Itu barang bukan kamu punya, kamu tidak akan de gantung, kamu jangan takut."[25] Translated into English, this phrase means "Now Singapore has a new law. If this thing is not yours, you will not be hanged. You don't be afraid."[26] Roshdi claimed that the impact of the inducement had been so great that he was induced to make all three statements to SSgt Fardlie believing that "because Singapore now has a new law, and as the drugs did not belong to him, he will not hang and he need not worry."[27] Accordingly, Roshdi claimed that the contemporaneous statements had been made involuntarily and that they were inadmissible in law.

---

25 NE 30 June 2020, p 50 lines 7 – 12.

26 NE 25 June 2020, p 36 lines 30 – 31.

27 NE 30 June 2020, p 50 lines 25 – 29.

Version No 1: 03 Nov 2020 (06:30 hrs)

22 SSgt Fardlie and Roshdi were alone at the time of these three contemporaneous statements. The door was slightly ajar and no one else heard the two men.[28] SSgt Fardlie denied saying those words.[29]

23 Even assuming the words were said, I doubt whether the objective limb of the test would be satisfied. The words themselves did not make it reasonable for supposing an advantage could be gained or an evil of a temporal nature could be escaped: *Ismail bin Abdul Rahman v Public Prosecutor* [2004] 2 SLR(R) 74 at [37]. The statement did not suggest any particular preference or promise upon any particular course of action, whether explicitly or implicitly.

24 More fundamentally, in my view, the subjective limb of the test was not satisfied. First, there was no reason for Roshdi to have trusted SSgt Fardlie or what he purportedly said. At the time of those alleged utterances, Roshdi had known SSgt Fardlie for all of thirty minutes.[30] The statement was extremely vague. Yet Roshdi did not question or clarify about this supposed "new law" or how the law could have been changed in this way. Instead, Roshdi's evidence was that he accepted all that was conveyed to him at face value. He had three opportunities at separate points of the morning to clarify with Ssgt Fardlie, and did not.

25 Secondly, the evidence of the psychiatrist who examined him, Dr Jaydip Sarkar, was that Roshdi had a suspicion of CNB officers, stemming from a 10 year imprisonment sentence involving the manslaughter of a CNB officer

---

28 NE 24 June 2020, p 44 lines 9 – 16.

29 NE 24 June 2020, p 50 lines 1 – 7.

30 NE 25 June 2020, p 72 line 29 – p 73 line 1.

Version No 1: 03 Nov 2020 (06:30 hrs)

involving self-defence, and a 12-year sentence for drug trafficking.[31] In light of Roshdi's history and personal circumstances, the expectation was that Roshdi would be sceptical and wary, not trusting and unquestioning.

26 Thirdly, Roshdi gave a cautioned statement to ASP Sukumaran on 15 September 2016.[32] On that occasion, Roshdi was presented with a clearly framed charge stating that Roshdi was liable to face the death sentence.[33] He would be aware of the gravity of the charge he was facing, and that charge was a clear contradiction to what he had apparently been told earlier by SSgt Fardlie. No protests were made and no clarifications were sought from ASP Sukumaran. Instead, he gave a statement to ASP Sukumaran (to which I will return) which was not disputed.

The Ibrahim Statements

27 The second category of objections pertained to the five statements recorded by SSgt Ibrahim on 21, 23, 25, 26 and 27 September 2016 at 2.14pm, 3.11pm, 9.30pm, 2.07pm and 3.08pm respectively (collectively, the "Ibrahim Statements"). A crucial difference between the Ibrahim Statements and the Fardlie Statements (besides the specific statement/representation made) was that the Ibrahim Statements were recorded after Roshdi had been formally presented with a charge and had his cautioned statement recorded. In my view, this interview with ASP Sukumaran would have fully informed Roshdi of the seriousness of whatever statement he would later furnish.

---

31 AB 244 – 245, paras 10 and 20.

32 NE 25 June 2020, p 76 at line 24 – p 77 at line 3.

33 AB 324 – 1st Charge.

Version No 1: 03 Nov 2020 (06:30 hrs)

28 For the Ibrahim Statements, Roshdi alleged that, before the first of the statements was recorded, SSgt Ibrahim had told Roshdi in Malay, "Itu barang bukan kamu punya, kamu jangan takut."[34] Translated into English, this means "[t]hose things are not yours, so you don't have to be afraid".[35] Roshdi claimed that SSgt Ibrahim's words had "made [him] calm, so [he could] say whatever he [wanted]".[36]

29 Much like SSgt Fardlie, SSgt Ibrahim categorically denied having made any statement of the sort attributed to him by Roshdi.[37] Mohammad Farhan Bin Sani, the translator who had been present at the scene at the material time, did not recall SSgt Ibrahim saying those words either, although he conceded it was four years ago and it could be possible that he had forgotten.[38]

30 Here too, Roshdi's evidence suggested that he had been inexplicably content to rely on vague statements made by a person that he had no reason to trust. SSgt Ibrahim, like SSgt Fardlie, was a CNB officer. SSgt Ibrahim, too, was barely acquainted with Roshdi at the time that the inducement was allegedly given.[39] Notwithstanding this, Roshdi did not raise any inquiries about what SSgt Ibrahim had told him. His evidence was that, despite being explicitly informed by SSgt Ibrahim about the possibility of a death sentence,[40] he did not

---

34 NE 24 June 2020, p 84 lines 24 – 25.

35 NE 25 June 2020, p 42 line 27 – p 43 at line 3.

36 NE 25 June 2020, p 43 line 31.

37 NE 24 June 2020, p 84 line 22 – p 85 line 7.

38 NE 25 June 2020, p 25 lines 1 – 5.

39 NE 24 June 2020, p 63 lines 25 – 27.

40 NE 25 June 2020, p 80 lines 17 – 30; p 81 lines 1 – 29; p 82 lines 20 – 31.

Version No 1: 03 Nov 2020 (06:30 hrs)

see any necessity to clarify about the status of his charge. Moreover, Roshdi by this juncture would have had sight of the charges and been aware of the possibility of a death sentence as well. This much was made clear when he recorded his cautioned statement. Inexplicably, no clarification was sought. In this case, the assertion, "[t]hose things are not yours, so you don't have to be afraid", was even less of an inducement than that which was allegedly made by SSgt Fardlie.

31 For these reasons, I held that the Prosecution had proven beyond a reasonable doubt that no threat, inducement or promise had been relied upon by Roshdi in giving both the Fardlie and the Ibrahim Statements.

Evidence contained in the statements

32 In his first contemporaneous statement, Roshdi identified the heroin exhibits as such, and admitted that the drug exhibits in his possession in the Room were for sale. At Answer 6 he provided the recorder with detailed prices and weights of the drugs he sold:[41]

> Q6: How did you sell?
>
> A6: One packet of heroin is $70/-. If one set it is $700/-. Ice look at how much they ask for. If 25g it is about $800/-. If 12.5g it is about $400/-. Ganja also the same, depends at how much they want. $800/- for half a block.

33 He explained at Answer 10 that he worked for a person named Aru: "I only pack and keep the thing. If someone wants I will send."

---

41 P299, 14 September 2016 at Answer 3, 5 and 6; P308 (Translations of P299, P300 & P301).

Version No 1: 03 Nov 2020 (06:30 hrs)

34 Roshdi's uncontested cautioned statement, recorded on 15 September 2016, was not inconsistent with the contemporaneous statements, although it excluded detail of any packing or delivering. He stated that the Drugs were owned by "another person". As admitted in cross-examination, he did not explain he was only safekeeping the drugs, without more.[42] Instead, his statement sought only to excuse and reduce his role in the trafficking operations:[43]

> I am just a worker. I am not the boss. The one who owns the things is another person. I am just a worker. I do this because I am not able to work outside…

35 Following this, in his long statements, Roshdi admitted that he had received, repacked and delivered drugs on multiple occasions. In his second long statement on 23 September 2016, he stated that he agreed to help Aru in a job which involved receiving and storing drug consignments, repacking them and distributing to customers, receiving $100 for every "head" of heroin.[44]

36 Roshdi's third long statement on 25 September 2016 was similar, with details regarding past transactions and deliveries of drugs from Aru's workers.[45] He also described the collection of money from customers:

> I would also sometimes receive cash from Aru's customers. The amount varies depending on the amount of drugs they ordered. If I receive instruction from Aru to collect money from his customers, he will inform me the price per packets [*sic*]. For example Aru will ask me to collect $70 to $80 per packet for heroin, $300 to $800 per packet for ice depending on its weight

---

42 NE 2 July 2020, p 60 lines 8 – 12

43 AB 327.

44 P303, 23 September 2016 at para 21

45 P304, 25 September 2016 at paras 26-28 and 30.

Version No 1: 03 Nov 2020 (06:30 hrs)

> and $50 to $100 per packet for ganja also depending on its weight.[46]

37 In his fifth long statement recorded on 27 September 2016, Roshdi identified the Drugs as 'heroin' and stated that various heroin exhibits were for sale at $70-80 a packet and identified the three digital weighing scales as intended for use in weighing and packing products.[47] He described the process of packing heroin into straws in great detail and explained that he had intended to use the empty straws[48] found in his room to pack more straws of heroin.[49]

38 In respect of the drugs that formed the subject matter of his charge, Roshdi identified the specific exhibits, H1A, H2A, H5A, H5C, J1A and J2A in his fifth long statement as intended for sale. In addition, he explained the price of the packets marked H1A and J1A, his method of packing the straws marked H2A and, in relation to J2A, how he would put 36 straws of heroin inside an empty cigarette box to ready them for sale.[50]

Roshdi's opposing version at trial

39 Roshdi's version at trial that he was merely safekeeping the Drugs was therefore diametrically opposed to what he described in his statements. According to him, he agreed to safe-keep the Drugs because Aru had offered him money and persuaded him to do so.[51] Roshdi claimed that Aru would deliver

---

46 P304, 25 September 2016 at para 29.

47 P306, 27 September 2016, at paras 45 and 54.

48 SOAF at para 9(*a*)(ii)(2) – Exhibit "H2B"

49 P306, 27 September 2016, at para 45

50 P306, 27 September 2016, at paras 45, 48 and 52.

51 NE 2 July 2020, p 20 lines 3 – 5.

Version No 1: 03 Nov 2020 (06:30 hrs)

the Drugs to him for safekeeping,[52] and that they came pre-packed.[53] If Aru's customers wanted drugs, he would call Roshdi and either Aru or his men would come to collect the Drugs.[54] Roshdi stressed that he neither packed[55] nor sold any of the Drugs himself.[56] As such, it was submitted that, similar to *Ramesh* ([14] *supra*), Roshdi had not been in possession of the Drugs for the purpose of trafficking.[57]

40 Roshdi explained that the $18,000 he had on his person at the time of arrest was for a delivery of anchovies that he was expecting from one 'Ah Tong'.[58] He had a business trading in anchovies and cuttlefish. His business also involved selling cigarettes for which customs duty was not paid (which Roshdi referred to as "contraband cigarettes").[59] Five to six months prior to his arrest, he had rented the Compassvale Room and used it to run his business. He rented the room because his wife disapproved of his trading in contraband cigarettes.[60] He and his wife lived elsewhere, in a one-room flat they jointly owned.[61]

---

52 NE 2 July 2020, p 20 lines 18 – 20.

53 NE 2 July 2020, p 21 lines 8 – 11; NEs 2 July 2020, p 23 lines 16 – 20.

54 NE 2 July 2020, p 21 lines 14 – 25; NEs 2 July 2020, p 28 lines 12 – 15.

55 NE 2 July 2020, p 23 lines 16 – 18; NEs 2 July 2020, p 28 line 31 – p 29 line 2.

56 NE 2 July 2020, p 28 lines 16 – 19; NEs 2 July 2020, p 28 line 31 – p 29 line 2.

57 DWS at paras 41 – 44.

58 NE 2 July 2020, p 66 line 29 – p 67 line 3.

59 NE 2 July 2020, p 14 lines 24 and 32.

60 NE 2 July 2020, p 31 lines 26 – 31.

61 NE 2 July 2020, p 30 lines 23 – 32.

Version No 1: 03 Nov 2020 (06:30 hrs)

Analysis

41 The explanations provided in Roshdi's statements, which I have elaborated upon at [32]-[38], were detailed, coherent, and consistent. From the first statement that Roshdi gave to CNB, at the earliest opportunity to explain why he had the Drugs in his possession, Roshdi provided a detailed breakdown of the selling prices and weights of the drugs. There was simply no reason for Roshdi to have had such knowledge of these prices, if his role was merely to store the drugs. His long statements, taken after his cautioned statement, were similarly clear. Pressed in cross-examination, Roshdi acknowledged that the recorded statements were all "accurately recorded" and "the truth".[62] In my view, the statements were an accurate reflection of Roshdi's role and participation in heroin trafficking.

42 The extrinsic evidence supported the narrative of the statements rather than that advanced by Roshdi at trial. Evidence recovered in the Compassvale Room on the day of the arrest suggested that Roshdi had been packing drugs in the room. The seized spoons, various pieces of paper and three digital weighing scales were stained with diamorphine.[63] These were explained by Roshdi's admissions in his fifth long statement that the spoons had been used "as scoop [*sic*] to pack the heroin", various pieces of paper which Roshdi explained were

---

62 NE 25 June 2020, p 62 lines 12 – 27 (for the Fardlie Statements); p 62 line 28 – p 63 line 3 and p 63 lines 23 – 29 (for the Ibrahim Statements); NEs 2 July 2020, p 45 lines 11 – 14.

63 AB113 for H5E; AB 114 – HSA Lab Certificate for Exhibit H5F; AB 115 – HSA Lab Certificate for Exhibit H8; AB 117 – HSA Lab Certificate for Exhibit K3, p 117; AB 118 – HSA Lab Certificate for Exhibit K4, p 118.

Version No 1: 03 Nov 2020 (06:30 hrs)

"used as a mat to do my packing [of the drugs]" and the weighing scales were "used for weighing drugs" and "packing drugs."[64]

43 In contrast, Roshdi's trial narrative of how he came to be persuaded by Aru to safekeep the drugs did not withstand scrutiny. On his narrative, Aru was returning to India and Roshdi was to safe-keep the Drugs for him while Aru was in India, promising to return in two to three weeks.[65] But Roshdi shared few mutual acquaintances with Aru ("very little links")[66] and had only known Aru for about one to two weeks[67] before agreeing to help him. It was difficult to believe that Roshdi would have accepted such a large quantity of drugs and agreed to safekeep it for someone who had, until recently, been a total stranger. On Aru's part, it was impossible to believe that Aru would entrust the Drugs to a relative stranger like Roshdi for an extended period of time, when they had allegedly only met on an "on-and-off basis".[68] This Drugs were a large quantity and would be worth a fair amount of money.

44 When asked to explain the discrepancies between the statements recorded and his testimony on the stand, Roshdi's explanation was incoherent:

(a) When asked why he had said that the Drugs were his in his recorded statement, he answered that he did not want to implicate the

---

64 P306, 27 September 2016, at paras 49-50.

65 NE 2 July 2020 p 29, lines 4-8, 11-13, 15.

66 NE 2 July 2020, p 52 at lines 28 – 29.

67 NE 2 July 2020, p 52 at lines 7 – 14.

68 NE 2 July 2020, p 51 at lines 2 – 7.

Version No 1: 03 Nov 2020 (06:30 hrs)

other residents of the Compassvale Unit.[69] This did not answer the question, because he could just as easily have adopted the version he used at trial without implicating the other residents.[70]

(b) When referred to his statement which specified that he packed the drugs and asked why he had not mentioned prior to trial that he merely safe-kept the Drugs for Aru, he said:[71]

> Arul [*sic*] did ask me to pack those things but I refused. So when they arrested me, the things are already packed. That is --- that was why I say I only pack. What I meant was I only safekeep the [Drugs].

This answer was internally inconsistent. If the drugs had come pre-packed as he claimed, he would not have needed to pack the drugs; however his statement said "I only pack". Asked for an explanation, he only reiterated the inconsistency.

(c) Roshdi was also asked to explain his inconsistent accounts regarding the drug paraphernalia.[72] In his statements, he had consistently confirmed that he had not only used the weighing scales, spoons and empty sachets to pack the drugs, but had *asked for them* from Aru.[73] In trial however, he took the position that Aru had simply passed these instruments (presumably pre-stained with diamorphine) to Roshdi on the

---

69 NE 2 July 2020, p 27 at lines 9 – 13.

70 NE 2 July 2020, p 49 at lines 14 – 32.

71 NE 2 July 2020, p 28 at lines 6 – 11.

72 NE 2 July 2020, p 61 at lines 29 – 30.

73 P304, 25 September 2016, at paras 26 – 27; P306, 27 September 2016, at paras 50 and 54.

Version No 1: 03 Nov 2020 (06:30 hrs)

day he was returning to India.[74] Roshdi explained the discrepancy saying:

> [what] I meant [by my earlier testimony in court] is this is the earlier occasion he asked me to weigh them. I --- and I told him that I do not have any weighing machine and I do not have plastic. Subsequently, then he would --- he brought those things. Upon seeing there are too many, I decided --- I told him that I do not wish to help him [pack].

This answer suggested that Roshdi had in fact agreed to help pack the drugs but had backed out at the last minute upon seeing the quantity of drugs to be packed. Not only was this explanation yet *another* version of events, it contradicted *both* his statements to the police and his earlier testimony in court. In other words, his answers compounded, rather than explained away the inconsistencies which damaged his credibility as a witness.

45 Lastly, I considered two positions he took at trial which deviated from his statements:

(a) He failed to give a lucid reason for the cash he had in hand. At his professed price of $6 per kg, $18,000 would have yielded 3,000 kg of anchovies. This explanation was also inconsistent with his first and fifth long statements, where he stated that he had been expecting a contraband cigarette delivery on that morning and the money was for that purpose.[75]

---

74 NE 2 July 2020, p 61 lines 18 – 20.

75 P302, 21 September 2016, at para 8; P306, 27 September 2016, para 56(r).

Version No 1: 03 Nov 2020 (06:30 hrs)

In respect of the $18,000 in cash, I pause to clarify that the Prosecution appeared to accept that it could have been for the purpose of cigarettes as set out by Roshdi in his statements and I approached the evidence on the same basis. 202 cartons and 13 packets of contraband cigarettes were recovered from the Compassvale Room at the time of Roshdi's arrest.[76] It was clear, in any event, as suggested by the Prosecution, that Roshdi's evidence at trial regarding the delivery of anchovies was a lie.

(b) While on the stand, Roshdi contended that he had not witnessed the search in the Compassvale Room. Roshdi's first long statement admitted that the search was conducted in his presence.[77] This contention was made for the first time at the trial. No attempt had been made to cross-examine witnesses whose evidence was to the contrary. For example, SSgt Mohammad Nasran bin Mohd Janburi testified that Roshdi had been seated looking into the room while the search was being conducted and witnessed the search.[78]

These inconsistencies were part of a general pattern of evasiveness, with Roshdi's testimony adopting the narrative that best distanced him from his statements at any given point on the stand. Added to this was Roshdi's admission that about "30%" of his statements to Dr Jaydip had been lies[79] and

---

76 AB 267 para 10.

77 P302, 21 September, p 339 para 11.

78 NE for 23 June 2020, p 16 at lines 9 to 13.

79 NE 25 June 2020, p 86 at lines 1 – 17.

Version No 1: 03 Nov 2020 (06:30 hrs)

that he would have lied in his recorded statements if he had not been "induced" to make involuntary statements:[80]

> Q So are you saying that if Mr Fardlie did not say those words, you will lie to the CNB and you will not speak the truth?
>
> A Of course, I would lie. If I said the truth, then I would die.
>
> Q So you would lie to Mr Fardlie?
>
> A If he doesn't uttered [*sic*] those words, I will lie.[81]

Roshdi's professed willingness to lie, coupled with his illogical responses on the stand, went to issues of general credibility and were consistent with my finding that the statements, rather than his version on the stand, were reliable.

46 I held, therefore, that the Prosecution had proven the element of possession for the purposes of trafficking beyond reasonable doubt. In the present case, although s 17(*c*) of the MDA was applicable, I considered that there was sufficient evidence to prove the charge beyond a reasonable doubt. In the alternative, if there was not, Roshdi had not rebutted the presumption on the balance of probabilities.

47 *Ramesh* ([14] *supra*) did not assist Roshdi. Its premise is that a mere bailee does not assist in the onward distribution of drugs for sale. The Court of Appeal noted at [110] that the evil addressed by s 5 of the MDA was the "supplying or distributing [of] addictive drugs to others". The issue to be determined was whether Roshdi had been in possession of the drugs with a view

---

80 NE 25 June 2020, p 62 at lines 20 – 24 (for the Fardlie Statements); p 63 at lines 23 – 29 (for the Ibrahim Statements);

81 NE 25 June 2020, p 62 at lines 20 – 24.

Version No 1: 03 Nov 2020 (06:30 hrs)

to onward distribution to third party consumers. The case is inapplicable to the case at hand. In the present case, Roshdi took delivery from Aru's workers, repacked heroin for onward sale, and also met customers to collect money. His possession of the Drugs was with a view to furthering their passage along the supply chain. In my judgment, he had been in possession of the Drugs for the purpose of trafficking.

48 I would also add, for purposes of clarity, that, in the present case, Roshdi's version was that he stored the Drugs for Aru, for which Aru paid him \$200–\$300.[82] By his narrative, he was aware of the nature of what he stored, Aru's business of trafficking in heroin, and that he would be thereby aiding Aru by giving temporary storage services at a fee. In *Ramesh*, at [115], the Court of Appeal commented that, where a bailee assisted a primary drug trafficking offender to safekeep drugs while knowing the latter's intent to traffic in the drugs, the offence of abetment by aiding under s 12 of the MDA would be relevant. Therefore, even if I accepted Roshdi's version of events, it would not have been an appropriate case to amend the charge to one under s 8(*a*) of the MDA as he suggested; rather, s 5(1)(*a*) read with s 12 of the MDA would have been the appropriate amended charge. I rejected Roshdi's version of events, however, and therefore no necessity for amendment of the charge arose.

Conviction

49 I held that the Prosecution had proved the charge against Roshdi beyond reasonable doubt and I convicted him accordingly.

---

82 DWS at para 22.

Version No 1: 03 Nov 2020 (06:30 hrs)

Sentence

50 The alternative sentencing regime in s 33B of the MDA was only available, where no question of unsoundness of mind was applicable, if I found that Roshdi was a courier and a Certificate of Substantive Assistance was issued under s 33B(2)(*b*) of the MDA. In line with *Zamri bin Mohd Tahir v Public Prosecutor* [2019] 1 SLR 724 at [15], I considered the accused's acts in relation to the particular consignment of drugs which formed the subject matter of the charge against him. As explained at [37] – [38] above, Roshdi had packed the Drugs and was not a courier. The Prosecution also informed that no certificate had been issued for Roshdi.

51 Accordingly, the prescribed punishment under s 33(1) read with the Second Schedule to the MDA applied. I pronounced the mandatory sentence of death on Roshdi.

Valerie Thean
Judge

Mark Tay, Chan Yi Cheng and Shana Poon (Attorney General's Chambers) for the Prosecution;
Peter Keith Fernando (Leo Fernando LLC), Rajan Sanjiv Kumar and Lee May Ling (Allen & Gledhill LLP) for the accused.

Version No 1: 03 Nov 2020 (06:30 hrs)