

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 39

Court of Appeal / Civil Appeal No 4 of 2026

Between

- (1) Howe Wen Khong Rocky
- (2) Annamalai Kokila Parvathi
- (3) Han Li Ying, Kirsten
- (4) Leelavathy d/o Suppiah
- (5) Wham Kok Han Jolovan
- (6) Rockey Sharmila
- (7) Nazira Lajim Hertslet

... Appellants

And

Attorney-General

... Respondent

In the matter of Originating Application No 1213 of 2025

Between

- (1) Howe Wen Khong Rocky
- (2) Annamalai Kokila Parvathi
- (3) Han Li Ying, Kirsten
- (4) Leelavathy d/o Suppiah
- (5) Wham Kok Han Jolovan
- (6) Rockey Sharmila
- (7) Nazira Lajim Hertslet

... Applicants

And

Attorney-General

... Respondent

GROUNDS OF DECISION

[Courts and Jurisdiction — Court judgments — Declaratory — Standing to seek declaratory relief]

[Constitutional Law — Fundamental Liberties — Right to life and personal liberty]

[Constitutional Law — Equality before the law]

[Constitutional Law — Judicial power]

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Howe Wen Khong Rocky and others

v

Attorney-General

[2026] SGCA 39

Court of Appeal — Civil Appeal No 4 of 2026

Ang Cheng Hock JCA, Hri Kumar Nair JCA and Debbie Ong Siew Ling JAD

10 July 2026

3 September 2026

Ang Cheng Hock JCA (delivering the grounds of decision of the court):

1 In the General Division of the High Court, the appellants applied for a declaration that the mandatory death penalty (“MDP”) in the Misuse of Drugs Act 1973 (2020 Rev Ed) (“MDA”) was unconstitutional. The application was dismissed, and the appellants appealed against that decision. We heard and dismissed the appeal on 10 July 2026. We now set out the grounds of our decision.

Facts

The parties

2 The appellants were members of the Transformative Justice Collective (“TJC”), which was an unincorporated association whose “express purpose [wa]s to seek the abolition of the death penalty and reform of the criminal justice system”.

(a) The 1st, 2nd, 3rd and 5th appellants – Mr Howe Wen Khong Rocky, Ms Annamalai Kokila Parvathi, Ms Han Li Ying Kirsten and Mr Wham Kok Han Jolovan – were part of the founding executive committee of the TJC. Among other things, they had organised campaigns against the death penalty and/or supported the families of prisoners awaiting capital punishment.

(b) The 4th, 6th and 7th appellants – Ms Leelavathy d/o Suppiah (“Ms Leelavathy”), Ms Rockey Sharmila (“Ms Sharmila”) and Ms Nazira Lajim Hertslet (“Ms Nazira”) – were members of the TJC. Ms Sharmila was also part of the founding executive committee of the TJC. The 4th, 6th and 7th appellants each had a brother who had been convicted and sentenced to the MDP under the MDA, and who had since been executed. Ms Leelavathy was the sister of Mr Tangaraju s/o Suppiah (executed on 26 April 2023). Ms Sharmila was the sister of Mr Syed Suhail bin Syed Zin (executed on 23 January 2025). Ms Nazira was the sister of Mr Nazeri bin Lajim (executed on 22 July 2022).

3 The respondent was the Attorney-General.

Background to the dispute

4 The appellants sought a declaration that the MDP contained within s 33(1) of the MDA, read with its Second Schedule, was unconstitutional for violating Arts 9(1), 12(1) and 93 of the Constitution of the Republic of Singapore (2020 Rev Ed) (“Constitution”).

Decision below

The appellants’ standing to bring the application

5 The judge below (“Judge”) held that the appellants did not have standing to bring the application based on a violation of their private rights. They did not have a real interest in bringing the application because their rights were not violated. The Judge acknowledged that a person’s rights may, in a rare case, be violated by the very existence of an unconstitutional statutory enactment that is penal in nature. But the existence of that statute must personally affect the appellants in a manner that the law recognises would give them standing to seek redress by way of judicial review. The appellants had not suggested that the MDP may be invoked against them, and so were not personally affected by it.

6 The Judge also held that the appellants had no standing based on a violation of their public rights. The appellants had not shown any “special damage” or “special interest” because they failed to show any advantage they would experience if the application was allowed, other than the satisfaction of righting a purported wrong.

7 Finally, the appellants had failed to establish standing based on the exceptional ground of there being an egregious breach of a public duty which did not generate correlative rights. They had not explained how the existence of the MDP or its operation represented a breach of public duties on the part of the state.

8 Even though the Judge found that the appellants lacked standing, she went on nonetheless to consider whether the appellants had established their case that the MDP violated the Constitution.

Whether the MDP violated Art 9(1) of the Constitution

9 The Judge held that the MDP did not violate Art 9(1) of the Constitution. The appellants had argued that the MDP contravened the right to a fair trial and to be heard because persons subject to the MDP could not make submissions on sentence. The Judge rejected this argument, finding that persons convicted of capital offences under the MDA could make submissions on sentence, *eg*, by submitting that their role was limited to that of a “courier” of the drugs under s 33B(2) of the MDA. Even if the MDP did not afford an accused person of the right to be heard on sentence, it would not fall foul of Art 9(1) of the Constitution. The right to be heard was essentially a procedural right aimed at determining the guilt of an accused person. The MDP, being a sentencing outcome after guilt was determined, did not violate the accused’s right to a fair trial and to be heard.

10 The Judge also rejected the appellants’ argument that the principle of proportionality was part of the term “law” in Art 9(1) of the Constitution. She pointed out that the Singapore courts had categorically rejected importing the principle of proportionality into Singapore.

Whether the MDP violated Art 12(1) of the Constitution

11 The Judge rejected the appellants’ argument that the MDP failed the reasonable classification test under Art 12(1) of the Constitution. She held that the first limb of the reasonable classification test was satisfied because the MDP was dependent on the amount and weight of drugs trafficked, and this was an intelligible criterion. The second limb of the reasonable classification test was also satisfied. The drug quantity thresholds that triggered the MDP bore a rational relation to the MDA’s object of drug control.

12 The Judge rejected the appellants’ argument that a principle of proportionality was contained in Art 12(1) of the Constitution, relying on the same reasons stated in [10] above.

Article 93 – Judicial power

13 The Judge held that the MDP did not violate Art 93 of the Constitution. The appellants had argued that the MDP violated Art 93 of the Constitution because, if the MDP was unconstitutional under Arts 9(1) or 12(1) of the Constitution, the courts would have been compelled to impose an unconstitutional punishment. However, since the Judge had held that the MDP did not violate Arts 9(1) and 12(1) of the Constitution, the appellants’ argument had no leg to stand on.

Issues to be determined

14 The parties’ arguments on appeal were substantially similar to their case in the court below. Based on the parties’ cases, the following issues arose for the court’s consideration:

- (a) Did the appellants, or any of them, have standing?
- (b) Did the MDP violate Art 9(1) of the Constitution?
- (c) Did the MDP violate Art 12(1) of the Constitution?
- (d) Did the MDP violate Art 93 of the Constitution?

Did the appellants have standing?

Parties’ arguments

15 The parties’ arguments on their standing to bring the application are summarised below.

Appellants' arguments

16 The appellants argued that they had standing based on a violation of their private rights. They had a real interest in the dispute because they were anti-death penalty activists and had worked closely with persons sentenced to the MDP. Moreover, the 4th, 6th and 7th appellants had a real interest because they had suffered psychological, reputational and financial damage from the execution of their loved ones, and faced difficulties in visiting or communicating with their loved ones when they were on death row. Alternatively, the appellants argued that their private rights were violated because the MDP was an unconstitutional law on the statute books and they faced a real and credible threat of prosecution that could lead to the MDP.

17 The appellants also argued that they had standing based on a breach of public duty because, if the MDP was unconstitutional, the Legislature would have failed in its duty to pass laws within the bounds of the Constitution.

18 Finally, the appellants submitted that, should the court find that the appellants did not satisfy any legal test of standing, the court should introduce a new rule of standing, *ie*, a litigant should have the right to have a public authority uphold the rule of law if the litigant could show that he had a close and intimate connection with the issue brought before the court (“Close Connection Rule”). Hence, they argued that they should be accorded standing since they had a close and intimate connection to the question of whether the MDP was unconstitutional.

Respondent's arguments

19 The respondent argued that the appellants had no standing to bring the application. They could not rely on their private rights to establish standing

because they had not shown how their own constitutional rights had been violated. The appellants also could not rely on the mere existence of an allegedly unconstitutional law to claim that their rights had been violated because the MDP did not “cast a shadow” that affected the appellants’ conduct.

20 The appellants could not rely on any alleged public rights to establish standing because they had not identified the public right that they said was infringed. They also could not show how any alleged infringement had caused them “special damage”, which is a requirement for standing to vindicate a public right.

21 As regards the argument that standing may be founded on a breach of public duty, the respondent noted that standing could not be based on the assertion that Parliament had breached its duty to legislate constitutionally. The respondent argued that, if such an allegation could establish standing, then any litigant who alleges that legislation is unconstitutional will have standing.

22 Finally, the respondent argued that the court should not adopt the Close Connection Rule because it was incompatible with Singapore’s rights-based approach towards standing.

Our decision

23 We held that the appellants did not have standing to seek the declarations relating to the unconstitutionality of the MDP. They failed to establish standing based on a violation of a private or public right. They could not establish standing under the exceptional ground that there had been a grave breach of public duty which did not generate correlative rights. We also did not accept the novel ground relied on by the appellants that they could establish standing by having a close and intimate connection to the issue before the court.

Standing based on violation of a private right

24 To establish standing based on a violation of private rights, an applicant must show: (a) a real interest in bringing the action; (b) a real controversy between the parties concerned; and (c) a violation of a private right (*Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 (“*Tan Eng Hong*”) at [115]). These are conjunctive requirements. As was explained by this court in *Tan Eng Hong*, a “real interest” would *prima facie* be shown if the appellants could show that there is a violation of their constitutional rights (at [83]). As for the requirement that there is a violation of a “private right”, this refers to rights that are personal to the applicant. This requirement would be fulfilled if the appellants could show their constitutional rights were violated since every constitutional right is a personal right (*Tan Eng Hong* at [80]).

25 In this case, the appellants had failed to establish standing because they have no real interest in bringing these proceedings and their private rights had not been breached. The appellants have not shown how they themselves have suffered an alleged infringement of their constitutional rights under Arts 9(1) or 12(1) of the Constitution. They had not been prosecuted under the MDA. They thus could not assert that their right to a fair hearing under Art 9(1) of the Constitution had been violated. Neither could they claim that they have a right to be treated equally under Art 12(1) of the Constitution which had been violated. Given this, there was also no real controversy between the appellants and the State since there were no ongoing legal proceedings where the appellants were facing the threat of any imposition of the MDP on them.

26 To overcome this, the appellants argued that the MDP infringed their private rights because (a) they faced a real and credible threat of prosecution that could lead to the MDP, and (b) the MDP was an unconstitutional law on

the statute books. We did not accept these arguments.

27 An applicant who faced “a real and credible threat of prosecution under an allegedly unconstitutional law” could succeed in showing that his constitutional rights had been violated (*Tan Eng Hong* at [114]). But this avenue of standing applied only to “[p]ersons who act in ways that may cause them to be liable under an allegedly unconstitutional law” and who would be “in the unenviable position of waiting to see whether a prosecution will be brought against them despite the alleged unconstitutionality of the law” (*Tan Eng Hong* at [113]). For instance, in *Tan Eng Hong*, the appellant faced a real and credible threat of prosecution under s 377A of the Penal Code (Cap 224, 2008 Rev Ed) because he regularly participated in acts prohibited under that section (*Tan Eng Hong* at [183]). Here, the appellants did not claim that they acted or were acting in any manner that attracted, or could potentially attract, a real and credible threat of prosecution under the MDA provisions which carried the MDP. The appellants also did not claim to belong to any group that the allegedly unconstitutional law targets, such as drug traffickers.

28 Beyond a real and credible threat of prosecution, this court has observed that it is conceivable that an applicant’s constitutional rights could potentially be violated simply by the very existence of an unconstitutional law in the statute books, though this would be an extraordinary case (*Tan Eng Hong* at [94] and [110]). However, the mere existence of an unconstitutional law did not, without more, mean that a private right was violated. The allegedly unconstitutional law must target a group of persons that the applicant belonged to. For instance, we noted that, in a hypothetical scenario where persons of a certain race were banned from taking the bus, only citizens of that race would have standing to contest the ban (*Tan Eng Hong* at [93]). Likewise, the appellant in *Tan Eng Hong* had standing to challenge s 377A not simply because it was a potentially

unconstitutional law on the statute books. Rather, s 377A targeted sexually active male homosexuals, and the appellant was part of this targeted group (*Tan Eng Hong* at [126]). In the present case, the appellants made no claims that they were part of any group that the MDA and MDP targeted. As such, they could not establish standing based on the mere existence of an allegedly unconstitutional law.

29 The 4th, 6th and 7th appellants claimed that their private rights had been violated because they had suffered psychological, financial and reputational damage, and faced other difficulties like being unable to communicate with their brothers who had been sentenced to the MDP. But these claims could not establish standing because these private rights which were allegedly infringed were not the same as the constitutional rights under Arts 9(1) and 12(1) of the Constitution which the appellants sought to vindicate through these proceedings. The private rights that the appellants sought to vindicate were rights personally held by individuals potentially facing the MDP (eg, a right to be heard on sentence). These were not the rights that had been allegedly infringed in the case of the 4th, 6th and 7th appellants, or, for that matter, any of the appellants as we have already explained. Thus, the 4th, 6th and 7th appellants could not establish standing to bring the present application by relying on the purported infringements of their private rights.

30 Before leaving this issue, we make a comment about [29] of the judgment below, which was about the appellants' standing based on an alleged violation of private rights. There, the Judge appeared to suggest that, because the MDP was not offence-creating in nature, the existence of the MDP would not "cast a shadow" on those persons whose conduct was affected by the MDP, such as to give them standing even if they were not prosecuted. If that was what the Judge intended to say, we do not agree. If a person acts in such a way that

his conduct attracts possible criminal prosecution and the imposition of a certain punishment, his conduct would be affected by the prescribed punishment in the written law, and not just the offence-creating part of that written law. After all, one of the key policy objectives behind the MDP is to deter would-be drug traffickers. So, by that logic, the existence of the MDP in the statute books would have been intended to affect the conduct of present or would-be drug traffickers. The Judge's comments appear to be based on her reading of our remarks in *Masoud Rahimi bin Mehrzad v Attorney-General* [2024] 1 SLR 414 (“*Masoud*”) at [4]–[5], which are set out below:

4 ... The appellants rely on *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 (“*Tan Eng Hong*”), where this court stated (at [94]) that the existence of an allegedly unconstitutional law on the statute books could suffice to show a violation of a constitutional right (and thus to found standing) in an extraordinary case. They say that the present case is such a case, particularly because [prisoners awaiting capital punishment] have been specifically targeted by the [Post-appeal Applications in Capital Cases Act 2022 (Act 41 of 2022)]. In our judgment, the appellants have taken *Tan Eng Hong* out of context.

5 **It is important to note that the statements in *Tan Eng Hong* were made in the context of offence-creating provisions.** In that context, the point being made was that the effect of such a provision could be felt even if the applicant was not yet being prosecuted (*Tan Eng Hong* at [110]). To put it another way, the very existence of such a law may cast a shadow that affects the conduct of those affected by it, such that they may be found in such circumstances to have standing to bring a challenge against the law, even if it has not been invoked against them. While this may be true in principle, it is a fact sensitive inquiry. The true nature of that inquiry is whether and how the law being challenged *has actually affected the applicant*. In that light, the statements in *Tan Eng Hong* are irrelevant to the present case, which does not concern offences. ... As noted above, the inquiry in this context is whether the appellants *have actually been affected by the provisions*.

[emphasis in original in italics; emphasis added in bold]

31 Our remarks in *Masoud* at [5] should not be understood as a statement

of principle that standing based on the existence of an unconstitutional law on the statute books applies only if the challenged law is an offence-creating provision. That paragraph of *Masoud* only explains that what has been said in *Tan Eng Hong* about this avenue of standing was said in the context of offence-creating provisions. It cannot be read to suggest that offence-creating provisions are the only type of law that could possibly “cast a shadow” on the conduct of those affected by it.

Standing based on violation of a public right

32 We then considered the appellants’ arguments on standing based on an alleged violation of a public right. To establish standing on this ground, an applicant must show that (a) a public right was violated; and (b) the applicant suffered “special damage” because of the violation of that right (*Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 (“*Vellama*”) at [33]).

33 We first explain the important distinction between private rights and public rights. A public right is one which is held and vindicated by public authorities, whereas a private right is one which is held and vindicated by a private individual (*Tan Eng Hong* at [69]).

34 In our judgment, the appellants failed to establish standing based on the violation of a public right. The appellants had not explained what public right they were seeking to vindicate, how such a right arose, and what special damage they have suffered arising from a breach of such a public right. Instead, their arguments on the merits were focused on violations of Arts 9(1) and 12(1) of the Constitution. These articles in the Constitution reflected fundamental liberties enjoyed by individuals, which were private or personal in nature (see *Tan Eng Hong* at [80]–[81]). These do not give rise to public rights. The

appellants thus failed to show the violation of any public right and could not establish standing on that basis.

Standing based on a grave breach of public duty that did not generate correlative rights

35 We then turned to the appellants' argument on standing based on a grave breach of public duty. In *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 ("*Jeyaretnam*"), we observed that, in the rare case where a public body or institution has breached its public duty in an egregious manner, a claimant may have standing to seek redress in respect of such a breach of public duty if the court is of the view that it would be in the public interest to hear the case (at [64]). Such standing might be established even if the claimant cannot show that the public duty has given rise to any correlative public rights and the claimant cannot show that he has suffered any special damage arising from that breach of public duty (*Jeyaretnam* at [64]). However, we emphasised that such cases would be extremely exceptional and must involve very grave and serious breaches of the law (*Jeyaretnam* at [62]). The appellants argued that this was one such case where there has been such a grave and serious breach of a public duty.

36 We did not accept the appellants' argument for similar reasons to those set out at [34] above. The appellants' application essentially sought to vindicate rights that were private in nature. Their complaints about the MDP's constitutionality do not involve any breach of public duty by an authority, or in fact, any breach of any public rights, as we have already explained. In seeking to frame their case as involving a breach of public duty, the appellants attempted to argue that, if the MDP was unconstitutional, Parliament would have breached its duty to ensure that the legislation it passed was constitutional. This was a

specious argument. At its core, the substance of their claim was that the MDP violated the fundamental liberties in Arts 9(1) and 12(1) of the Constitution. In fact, their entire argument hinged on this premise. This meant that the application was still ultimately concerned with private rights and not a breach of public duty. Having failed to establish standing based on an alleged violation of private rights, the appellants could not bypass the applicable rules of standing by dressing up the claim as one concerning public duties.

Standing based on the Close Connection Rule

37 Finally, we considered the appellants' submissions on their proposed novel ground of standing, *ie*, the Close Connection Rule. They argued that this court should extend the limits of standing to embrace the Close Connection Rule which, as already explained (at [18] above), would allow persons to bring a claim if they had a close and intimate connection with the issue brought before the court. In their case, the appellants claimed to have a close and intimate connection to the issue of whether the MDP is constitutional because they had advocated against the MDP and had worked with persons sentenced to the MDP and their families.

38 We rejected this argument. The rules on standing are not just an inconvenient hindrance to claimants who seek to challenge the constitutionality of laws, or seek judicial review of the acts of the executive. They serve a vital gatekeeping function to "prevent the wastage of the court's time and public money by the multiplicity of litigation" which may be brought by persons who do not have a sufficient interest or basis to bring such a challenge (*Jeyaretnam* at [34]). The Close Connection Rule proposed by the appellants would substantially weaken this gatekeeping function of our standing rules. As a preliminary point, we found it inherently ambiguous in its scope. It is unclear

who would fall within the class of persons who would have a “close and intimate connection” with the issue that has been raised for judicial consideration. For example, in the context of this case, what type of conduct would qualify as advocating for or against the MDP? Would it only include those who have organised themselves as the appellants have, but not those who may feel as strongly that the MDP should be abolished but have not organised themselves in the same way? Leaving aside the difficulty in ascertaining the precise breadth of its application, the Close Connection Rule would grant standing to far too many persons who are not personally affected by a law, other than having advocated for or against the law or worked with persons who had been affected by the law, which was how the appellants described their connection with the MDP. There is no doubt in our mind that this would dramatically increase the number of persons who have standing to bring a myriad of claims against the government or other public authorities on all manner of complaints, grievances and differences in opinion. This would undermine the purpose of the rules of standing which is to ensure that litigation is not brought by persons with only a remote connection to the dispute or issue before the court, but by persons with a sufficient interest in the matter.

39 The Close Connection Rule would also be inconsistent with present standing rules, which “espouse an ethos of judicial review focused on vindicating personal rights and interests through adjudication”, instead of allowing in litigants whose rights are not violated but are interested in the policy or political aspects of the issue (see *Vellama* at [34]–[35]). The Close Connection Rule would “decoupl[e] judicial review from the fundamental precepts of adversarial litigation” and “leave the courts vulnerable to being misused as a platform for political point-scoring” (*Vellama* at [34]). This is not a desirable development for the law to take. We therefore declined to adopt the

Close Connection Rule.

40 Having considered the parties’ arguments on standing, we held that the appellants had failed to establish their standing to bring the application before the court. We therefore dismissed the appeal on this basis.

41 Given that the appellants had not established their standing to bring the application, we did not need to make any determination as to whether their claims that the MDP violated the Constitution had been established. However, since both the appellants and the respondent were permitted to make submissions, both before the Judge below and on appeal, on the merits of the appellants’ claim that there had been a breach of the Constitution, we will provide some brief observations on these arguments.

Did the MDP violate Art 9(1) of the Constitution?

42 We begin by addressing the parties’ arguments on Art 9(1) of the Constitution. Their arguments are summarised below.

Parties’ arguments

Appellants’ arguments

43 The appellants argued that the word “law” in Art 9(1) of the Constitution included the right to a fair trial. This, in turn, included a right for accused persons to make representations in sentencing. The MDP breached this right – it restricted an accused person from being heard on sentence because it provided for a mandatory sentence of death.

44 The appellants also argued that the word “law” in Art 9(1) of the Constitution incorporated a common law principle that punishment must be

proportionate, which they said was traced back to Magna Carta. The MDP contravened this principle because the sentence could not be adjusted according to the circumstances of offending.

Respondent's arguments

45 The respondent submitted that the MDP did not violate the right to a fair trial because there was no constitutional right to be heard on sentence where Parliament had prescribed a mandatory sentence. In any event, the right to be heard depended on the subject matter and context of the decision to be made, and it did not extend to allowing an accused person to submit on matters which were irrelevant under the concerned penal legislation (*eg*, a sentencing option that was unavailable under the statute).

46 As for the principle of proportionate punishment, the respondent argued that no such principle was contained in Art 9(1) of the Constitution.

Our observations

47 In our view, there did not appear to be any sound legal basis for the appellants' arguments that the MDP violated Art 9(1) of the Constitution.

Did the MDP violate the right to a fair trial?

48 The right to a fair trial, as guaranteed under Art 9(1) of the Constitution, was not impacted by the MDP. The word "law" in Art 9(1) of the Constitution incorporates the fundamental rules of natural justice, which are procedural rights aimed at securing a fair trial (*Ong Ah Chuan v Public Prosecutor* [1980] AC 648 ("*Ong Ah Chuan*") at 670; *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 ("*Yong Vui Kong (Caning)*") at [64]). On several occasions, the courts have already rejected challenges to the MDP on the basis that it violates

the fundamental rules of natural justice incorporated in Art 9(1) of the Constitution (see, eg, *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 (“*Yong Vui Kong (MDP)*”) at [85] and [99]).

49 In this appeal, the appellants essentially argued that the MDP was unconstitutional because it violated the right to a fair trial by denying accused persons the right to make submissions on their sentence. This argument did not appear tenable. While the right to be heard forms part of the fundamental rules of natural justice under Art 9(1) of the Constitution (*Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [88] and [105]–[107]), this right did not require that the accused’s submissions must be capable of affecting the sentence imposed on him. The scope of the right to be heard depends on the “subject matter and the context” to which it applies, including “the kind of decision [the decision-making body] has to make and the statutory or other framework in which it operates” (*Manjit Singh s/o Kirpal Singh v Attorney-General* [2013] 2 SLR 844 at [88], citing *Lloyd v McMahon* [1987] AC 625 at 702). The right to be heard is a procedural, and not a substantive right (*Yong Vui Kong (Caning)* at [64]). It is concerned with whether an accused person had the opportunity to address a case made against him at trial. It does not change the substantive content of the offence the accused is charged with, or the punishment it carries (see *Yong Vui Kong (Caning)* at [64]). Parliament has the sole power to decide the types of sentences that should be imposed for various types of offences, and it is the duty of the courts to carry out their judicial function of meting out the legislatively-prescribed punishments on offenders, exercising only such discretion as may have been given to them by Parliament to determine the punishments which they think are appropriate given the circumstances of the case (*Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 (“*Mohammad Faizal*”) at [43]–[45]). The court cannot arrogate to itself a

sentencing discretion which Parliament did not grant.

50 The appellants' arguments, taken to their logical conclusion, would lead to the absurd result that all mandatory sentences imposed by statute would be unconstitutional under Art 9(1) of the Constitution. That cannot be right. Mandatory sentences are found throughout our criminal law, which is essentially statute-based, and it would be an "extreme position" to say that all mandatory sentences are unconstitutional (*Ong Ah Chuan* at 673). In fact, in the course of their oral arguments, the appellants made it clear that they were not taking the position that the MDP that would be imposed under s 302(1) of the Penal Code 1871 (2020 Rev Ed) ("Penal Code") (when an accused is convicted of murder by intentionally causing the death of another person under s 300(a) of the Penal Code) is also unconstitutional under Art 9(1) of the Constitution. They provided no explanation for this different stance for the MDP in relation to murder by intentionally causing death, even though they accepted that their arguments on Art 9(1) of the Constitution, if accepted, would apply equally to impugn the MDP under s 302(1) of the Penal Code. In our view, this unexplained inconsistency in the appellants' position that the MDP may be unconstitutional in some circumstances but not others seriously undermined their argument that there is a violation of Art 9(1) of the Constitution because the convicted offender cannot be heard on his sentence due to the mandatory nature of the punishment imposed by law.

51 Before leaving this issue, we briefly address a point made by the Judge. At [53] of her decision, the Judge made the point that the MDP did not violate Art 9(1) of the Constitution because the offender convicted of a capital offence under the MDA could still make submissions on sentence. We point out only that the sentencing submissions in this regard would be severely constrained compared to sentencing submissions for an offence where the statute does not

prescribe a mandatory punishment. This is because s 33B of the MDA provides only a restricted list of factors that could be relevant to whether the MDP is imposed. And the presence or absence of some of these factors lie outside the accused's control, such that no submissions which the accused may make in respect of them could affect his sentence. For instance, if the Public Prosecutor refuses to issue a certificate of substantive assistance, an accused person cannot make any arguments at his trial that would avail him of the discretionary sentence of life imprisonment under s 33B(2) of the MDA. His recourse is to commence separate judicial review proceedings against the Public Prosecutor to allege that he had exercised his power to grant or refuse a certificate unconstitutionally or in bad faith or with malice (*Public Prosecutor v Ranjit Singh Gill Menjeet Singh* [2017] 3 SLR 66 at [62]; *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 at [34]–[35]).

52 In summary, we are of the view that Art 9(1) of the Constitution guarantees the accused the right to a fair trial, but that does not mean that the submissions by the accused must always be capable of affecting the sentence because Parliament is empowered to enact mandatory sentences to punish those who are convicted of criminal conduct.

Did the MDP violate a purported principle of proportionate punishment?

53 The appellants argued that Art 9(1) of the Constitution included a common law principle of proportionate punishment, which would effectively allow the courts to review punishments in the statutes on the ground that they are excessive or disproportionate. In this regard, the appellants argued that the MDP can never be found to be a proportionate punishment in law regardless of how heinous the crime or culpable the offender. We found this argument to be quite untenable.

54 As alluded to above at [49], it is the sole remit of Parliament to determine the range and type of punishment in penal legislation. The appellants’ argument that Art 9(1) of the Constitution contains a principle of proportionate punishment, which constrains Parliament’s ability to enact penal legislation, had essentially been considered and rejected by Chan Sek Keong CJ in *Mohammad Faizal* at [60]:

As far as the position in Singapore is concerned, the prescription of punishments for offences falls under the legislative power and not the judicial power ... The principle of proportionality, as a principle of law (as opposed to a principle of good government), has no application to the legislative power to prescribe punishments. If it were applicable, then all mandatory fixed, maximum or minimum punishments would be unconstitutional as they can never be proportionate to the culpability of the offender in each and every case. ... Whether ‘the legislature ought not to oblige the judiciary to impose a punishment which is wholly lacking in proportionality to the crime’ (see [*S v Dodo* 2001 (5) BCLR 423 (CC)] at [26]) is a matter of legislative policy and not of judicial power. The courts must impose the legislatively-prescribed sentence on an offender even if it offends the principle of proportionality. ...

55 We agree with Chan CJ’s reasoning in the extract above. The courts have consistently stated that Art 9(1) of the Constitution does not permit them to review the substantive reasonableness of penal legislation enacted by Parliament (see *Yong Vui Kong (MDP)* at [80]; *Tan Seng Kee v Attorney-General* [2022] 1 SLR 1347 at [264]). Allowing the courts to review whether punishments provided for in legislation are proportionate to the gravity of the offence would contradict the well-established constitutional principle that the courts cannot act as “mini-legislatures”, since an examination of whether punishment is proportionate would require the courts to consider extra-legal policy factors and considerations (see *Lim Meng Suang v Attorney-General* [2015] 1 SLR 26 (“*Lim Meng Suang*”) at [77]). Adopting a principle of proportionality in the manner argued by the appellants would require the courts

to assess the constitutionality of a whole range of offences and punishments prescribed by law, and not just the question of whether the MDP is proportionate. To illustrate, the court may be faced with arguments that certain types of conduct, *eg*, traffic offences involving negligence, do not warrant custodial sentences based on the principle of proportionality. However, these are questions of policy for Parliament to decide. Simply put, the courts are plainly not equipped to carry out such assessments.

56 Accordingly, we did not think that the appellants' arguments on the unconstitutionality of the MDP under Art 9(1) of the Constitution could pass muster.

Did the MDP violate Art 12(1) of the Constitution?

57 We now turn to state our observations on the parties' arguments on Art 12(1) of the Constitution. These arguments are summarised below.

Parties' arguments

Appellants' arguments

58 The appellants contended that the MDP failed the reasonable classification test because different kinds of offenders (*eg*, drug kingpins and low-level drug mules) were punished the same way, so there was no intelligible differentia classifying offenders who were unlike each other.

59 Moreover, the right to equality included the principle of proportionality, which was breached by the MDP.

Respondent's arguments

60 The respondent argued that the MDP fulfilled the reasonable

classification test because the quantity of drugs trafficked was an intelligible differentia which bore a rational relation to the legislative object of stamping out the drug trade.

61 As for the principle of proportionality, the respondent noted that proportionality review had never been part of Singapore law and should not be adopted as such.

Our observations

62 In our view, the appellants' arguments about the unconstitutionality of the MDP under Art 12(1) of the Constitution were untenable.

Did the MDP pass the reasonable classification test?

63 The appellants' key argument was that the MDP failed the reasonable classification test because it targeted a wide range of offenders with varying levels of culpability. We need only point out that the courts have already considered and rejected the argument that the MDP violates Art 12(1) of the Constitution because it does not discriminate finely enough between different drug offenders (see *Ong Ah Chuan* at 673–674; *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 at [87]; *Yong Vui Kong (MDP)* at [115]).

64 The courts have also held that the MDP under the MDA passes the reasonable classification test. This court has held that the key differentia which attracts the MDP – that is, the amount of drugs trafficked – is intelligible and bears a rational relation to the MDA's object of preventing the growth of drug addiction in Singapore by stamping out the illicit drug trade (*Yong Vui Kong (MDP)* at [112] and [119]; *Ong Ah Chuan* at 674).

65 This court has also held that the other differentiae which affect whether the MDP is imposed pass the reasonable classification test. These other differentiae are the factors relevant to the alternative sentencing regime in s 33B of the MDA, namely, (a) whether the offender was a courier (ss 33B(2)(a) and 33B(3)(a) of the MDA); (b) whether the offender had substantively assisted the Central Narcotics Bureau (“CNB”) in disrupting drug trafficking activities (s 33B(2)(b) of the MDA); and (c) whether the offender was suffering from an abnormality of mind (s 33B(3)(b) of the MDA). This court has held that these differentiae are intelligible and bear a rational relation to the social object of the MDA (*Quek Hock Lye v Public Prosecutor* [2015] 2 SLR 563 (“*Quek Hock Lye*”) at [30]–[36]). There is nothing unreasonable in Parliament’s decision not to impose the MDP on an offender who has played a relatively restricted role in the offence or who suffered from such abnormality of mind such that it substantially impaired his mental responsibility, given the diminished culpability of these offenders (*Quek Hock Lye* at [36]). And the differentiation between offenders who have substantively assisted the CNB and those who have not bears an obvious relation to the MDA’s object. The substantive assistance regime enables the CNB to “reach further into drug networks by obtaining assistance in disrupting drug trafficking activities” from couriers “who could furnish a lead to the CNB to identify the ‘suppliers and kingpins outside Singapore’” (*Quek Hock Lye* at [36]).

66 We note that the decisions of this court which we have canvassed above applied the reasonable classification test as set out in *Lim Meng Suang*, as opposed to the version of the test set out in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 (which was decided later). There is no need for us to decide which version of the test is the correct one, or whether they are to be

applied in different contexts. That can be reserved for a more appropriate occasion.

Did Art 12(1) of the Constitution contain a principle of proportionality?

67 As for the appellants' argument on proportionality, we do not accept that judicial review under Art 12(1) of the Constitution includes a proportionality review in the sense that the court may review legislation to ensure that Parliament has used the least restrictive means to achieve its legislative objectives. This argument has been rejected by our courts in previous cases as being inapplicable under Singapore constitutional law (*Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [87]; *Xu Yuanchen v Public Prosecutor* [2023] 5 SLR 1210 at [83]–[88]). We see no basis to take a different view.

68 Accordingly, we did not think that the appellants' arguments on the unconstitutionality of the MDP under Art 12(1) of the Constitution had any realistic chance of succeeding.

Did the MDP violate Art 93 of the Constitution?

69 The final argument raised by the appellants was that the MDP violated Art 93 of the Constitution because it compelled the courts to impose an unconstitutional punishment. This argument is premised on the assumption that the MDP is found to be unconstitutional under Arts 9(1) and 12(1) of the Constitution. That being the case, we do not see how this argument concerning Art 93 of the Constitution advances the appellants' case about the unconstitutionality of the MDP any further. Not only that, if there is no violation of these articles, the appellants' argument on Art 93 of the Constitution would fail *in limine*. Given our observations on the merits of the appellants' arguments

about the breach of Arts 9(1) and 12(1) of the Constitution, we need say no more about this argument about the breach of Art 93 of the Constitution.

Conclusion

70 To recapitulate, we dismissed the appeal on the basis that the appellants did not have standing to bring the application. We also awarded the respondent the costs of the appeal, which we fixed in the amount of \$25,000 (all-in).

Ang Cheng Hock
Justice of the Court of Appeal

Hri Kumar Nair
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

The appellants in person;
Vincent Leow, Hay Hung Chun, Chng Luey Chi and Tan Ye Jia
Hannah (Attorney-General's Chambers) for the respondent.
