IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 166

Magistrate's Appeal No 9048 of 2016/01

Between

K SARAVANAN KUPPUSAMY

… Appellant

And

PUBLIC PROSECUTOR

… Respondent

GROUNDS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing] — [Appeals]

K Saravanan Kuppusamy
v
Public Prosecutor

[2016] SGHC 166

High Court — Magistrate's Appeal No 9048 of 2016/01
Sundaresh Menon CJ
4 August 2016

19 August 2016

Sundaresh Menon CJ:

Introduction

1 This appeal was the first that touched on the issue of sentencing for offences under s 13(*aa*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), a provision that was introduced in 2013 to make it an offence for a person to aid, abet, counsel or procure the commission of any offence under the Act within Singapore, notwithstanding that all or any of the acts constituting the aiding, abetment, counselling or procurement were done outside Singapore. For convenience only, I refer to the acts of aiding, abetment, counselling and procurement collectively as "abet" or any of the derivatives of that word. Similarly, I refer to the offence that is being abetted in this way as "the primary offence" or "the underlying offence".

2 Where an offender is charged under s 13(*aa*) of the Act, the punishment prescribed by s 33(1) read with the Second Schedule of the Act, ranges from a *minimum* of two years' imprisonment or $4,000 fine or both to a *maximum* of ten years' imprisonment or $40,000 fine or both. The prescribed range of punishments covers the abetment of any of a broad range of offences under the Act which in turn attract an extremely broad range of punishments. At one end of the spectrum, the Act prescribes the imposition of the death penalty for the underlying offence and in certain limited circumstances, life imprisonment as an alternative to the death penalty. Further down that end of the spectrum are those offences that are punishable with a term of imprisonment of between 20 and 30 years and accompanied by a minimum of 15 strokes of the cane. At the other end of the spectrum, there are offences that carry a maximum punishment of one month's imprisonment and/or $1,000 fine (see for example, an offence under s 40B(4)(*a*) of the Act for failing to submit to the taking of photographs, finger impressions, particulars and body samples). It is thus evident that the range of punishments prescribed for the offence under s 13(*aa*) is lower at the top end than the maximum punishment that may, and in many cases, *must* be imposed for certain primary offences; and is higher at the bottom end than the maximum sentence that may be imposed for other primary offences. In my judgment, this militates against the possibility of finding a direct co-relation between the punishments prescribed for the abetment offence under s 13(*aa*) with those prescribed for the corresponding primary offence.

3 In the present case, the Appellant was charged with abetting one Kannan Reti Nadaraja ("Kannan") to import into Singapore 10.38g of diamorphine. The underlying offence (namely, the importation of 10.38g of diamorphine) would have attracted a punishment falling between 20 and 30 years' imprisonment with 15 strokes of the cane. It would therefore have

fallen at the high end of the range in terms of the seriousness of the underlying offences prescribed in the Act. The Prosecution, in the exercise of its discretion, charged Kannan with importing a *reduced* quantity (9.99g) of diamorphine, resulting in a corresponding *reduction* in the severity of punishment that could be imposed on Kannan. For this offence, the prescribed punishment is a term of imprisonment of between 5 and 30 years' imprisonment with a minimum of 5 strokes of the cane.

4 I pause to observe that there is a slight difference in the structure of the punishments for the offence of importation of diamorphine under s 7 and of trafficking the same under s 5 of the Act. The punishment prescribed for importation offences ranges from 5 to 30 years' imprisonment with a minimum of 5 strokes of cane save for (i) cases where the quantity of diamorphine involved exceeds 10g in which case the prescribed punishment range is between 20 and 30 years' imprisonment and 15 strokes of the cane, and (ii) cases where the quantity of diamorphine involved exceeds 15g in which case the death sentence is mandatory. The punishment range prescribed for trafficking offences is 5 to 20 years' imprisonment with a minimum of 5 strokes of the cane save for (i) cases where the quantity of diamorphine involved exceeds 10g in which case the prescribed punishment range is between 20 to 30 years' imprisonment and 15 strokes of the cane, and (ii) cases where the quantity of diamorphine involved exceeds 15g in which case the death sentence is mandatory. Notwithstanding this difference, I do not think that in practice the precedents have drawn any distinction between the sentences imposed for importation and trafficking: see for example *Public Prosecutor v Kovalan A/L Mogan* [2013] SGDC 395 at [24]. Furthermore, it is clear that the overall tenor of the punishment provisions for ss 5 and 7 of the Act is similar in that (i) a minimum of 20 years' imprisonment and 15 strokes is imposed in cases where the quantity of diamorphine involved exceeds 10g

and (ii) the death penalty is prescribed where the quantity of diamorphine involved exceeds 15g. It stands to reason, given the generally linear relationship between sentence and the quantity of diarmorphine imported or trafficked, that sentences below 20 years' imprisonment would be appropriate in cases where the quantity of diamorphine involved falls below 10g even where importation offences are concerned. I therefore approach the remaining discussion on this basis.

5 On the basis of the indicative sentencing guidelines I set out in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [47] for cases involving trafficking in a quantity of diamorphine of up to 9.99g, the reduced charge against Kannan would have attracted a punishment of around 15 years' imprisonment as well as 10 to 11 strokes of cane in the absence of any compelling mitigating circumstances. Notwithstanding the guidelines set out in *Vasentha*, the Prosecution prevailed upon the sentencing court to impose a much lower sentence on Kannan. Kannan was eventually sentenced to 6 years' imprisonment and 5 strokes of the cane, a marked and *very* substantial departure from the indicative guidelines set out in *Vasentha*. No cogent explanation for the Prosecution's sentencing position was put forward. The sentencing judge in Kannan's case did not write a judgment explaining his reasons. Nor was any appeal filed by any party, which is unsurprising since Kannan was the beneficiary of a remarkably lenient sentence and this had been sought by the Prosecution. I concluded in the circumstances that the sentence imposed on Kannan was wrong in principle.

6 I take this opportunity to remind sentencing courts that sentencing is a matter that lies exclusively within their prerogative. While the Prosecution is expected to assist the court in this task, it is for the sentencing court to determine what sentence would be just in all the circumstances. And while

sentencing courts should not slavishly apply sentencing benchmarks and tariffs, the judicial prerogative to depart from such guidelines must be exercised in a *reasoned* and *measured* manner and only in *appropriate* cases: *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24].

7 I also take this opportunity to remind the Prosecution of what I said in the Opening Address that I delivered at the Sentencing Conference held in 2014 (*Singapore Law Gazette* (February 2012)) on the duty of the Prosecution in relation to sentencing. On that occasion, I said at paras 34 to 39:

> 34 … **The Prosecution owes a duty to the Court and to the wider public to ensure that the factually guilty and only the factually guilty are convicted, and that all relevant material is placed before the Court to assist it in its determination of the truth. This duty extends to the stage of sentencing where the Prosecution should place all the relevant facts of the offence and the offender before the Court. Furthermore, the Prosecution should always be prepared to assist the Court on any issues of sentencing. But what does this mean in practical terms?**
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> 35 It is perhaps possible to extrapolate from those principles that are widely accepted and to arrive at some thoughts about the prosecutorial role in sentencing. First, the Prosecution acts only in the public interest. That immediately distinguishes it from those who appear in a private law suit to pursue the interest of a private client. On this basis, there would generally be no need for the Prosecution to adopt a strictly adversarial position. Second, that public interest extends not only to securing the conviction in a lawful and ethical manner of those who are factually guilty, but also to securing the appropriate sentence.
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> 36 The latter point is a critical one. Private victories tend to be measured by the size of the damages awarded or the pain inflicted on the opposing side. But the prosecutorial function is not calibrated by that scale. The appropriate sentence will often not bear a linear relationship to the circumstances. … Hence, this calls for the Prosecution to reflect on why it takes a particular view of what sentence is called for in a given case and to articulate those

> considerations so that the sentencing Judge can assess these and assign them the appropriate weight.
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> 37 I suggest that the Prosecution can play a vital role by identifying to the Court:
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> a. The relevant sentencing precedents, benchmarks and guidelines;
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> b. The relevant facts and circumstances of the offence and of the offender that inform where in the range of sentences the case at hand may be situated;
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> c. The offender's suitability and other relevant considerations that may bear upon whether particular sentencing options that might be available should be invoked;
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> d. The relevant aggravating and mitigating considerations;
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> e. The relevant considerations that pertain to aggregating sentences[;]
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> f. Any particular interest or consideration that is relevant and that pertains to the victim; and
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> g. Where it may be appropriate to order compensation to be paid to the victim, the relevant considerations (including the appropriate quantum).
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> 38 While the Prosecution may take the position that a certain sentencing range is appropriate in the circumstances, *it must present all the relevant materials to enable the Court to come to its own conclusion as to what the just sentence should be*.
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> 39 These broad guidelines can be supplemented with another very practical point. *All the relevant facts must be proven beyond a reasonable doubt; and in guilty pleas, the accused must know all the facts on the basis of which he pleaded guilty. For the Prosecution to raise a fact undisclosed in the statement of facts or ask the Court to draw an inference from the facts at the stage of sentencing may be unfairly prejudicial to the offender, who cannot be punished for something that is not proven. Hence, the statement of facts must be prepared with this in mind.*
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> [emphasis in bold in original; emphasis in italics added]

8 In my judgment, this guidance would serve the Prosecution well in framing its sentencing submissions in future cases. Sentencing courts are

greatly assisted by submissions from the Prosecution because these are taken to be made in the public interest. But it is nevertheless incumbent on the sentencing court to evaluate the cogency of the position that is taken by the Prosecution, which for its part, is obliged to place the relevant materials before the court to enable it "to come to its own conclusion as to what the just sentence should be".

The proceedings in the court below

9 Before the District Judge, the Prosecution sought a sentence of between 7 and 8 years' imprisonment. The Prosecution submitted that there were signs of syndication since the "number of persons involved [was] more than [the Appellant] & Kannan" notwithstanding that the element of syndication was not specifically mentioned in the Statement of Facts ("SOF").[1] I pause here to note that save for the mention of three persons who participated in the drug run (namely, Kannan, the appellant and one Krishnamurthi Pradheeb Eluthachan ("Krishnamurthi") who ferried Kannan to Singapore on a motorcycle), the SOF did not even hint of any other features of syndication. The Prosecution also argued that the Appellant was more culpable than Kannan on the basis that Kannan's standing in the syndicate must have been lower than the Appellant's, and urged the District Judge to impose a more severe sentence on the Appellant as compared to the sentence of 6 years' and 5 strokes of the cane that had been imposed on Kannan.

10 The District Judge was persuaded by the Prosecution's submission that the offence was a syndicated one. In her view, there was a hierarchy of command because the Appellant "received instructions from his superior

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[1] Notes of Evidence, Record of Proceedings at p 25.

which he then passed to Kannan to perform", and "within this hierarchy, other person or persons recruited Kannan and promised him payment".[2]

11 The District Judge also agreed that the Appellant was more culpable than Kannan because he had an "active and important role"[3] in the drug run whereas "Kannan was a mere tool".[4] She took the view that the appellant "with his knowledge, experience and position in the hierarchy, had instructed and taught Kannan what to do" and had "sent the young Kannan to commit the act while he … remained safely in Malaysia".[5] Therefore, the District Judge held that the Appellant's custodial sentence could not be less severe than Kannan's sentence since he was more culpable than Kannan, and sentenced the Appellant to 7 years' imprisonment.

My decision

12 There were two main planks to the Appellant's contentions in this appeal. First, the Appellant submitted that the District Judge had misapplied the principle of parity and had failed to consider the range of punishment prescribed for offences under s 13(*aa*). Secondly, the Appellant contended that the District Judge had erred in finding that the transaction was part of a syndicated enterprise.

13 Before me, the Prosecution submitted that a term of between 7 and 8 years' imprisonment was appropriate and justified because it reflected the relative culpability of the Appellant and Kannan. The gist of this submission is

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2 Grounds of Decision at [19].

3 Grounds of Decision at [20].

4 Grounds of Decision at [21].

5 Grounds of Decision at [23].

neatly encapsulated in the following paragraph from the Prosecution's written submissions:

> 44 We acknowledge that the sentence sought in respect of Kannan was not in accordance with the sentencing framework laid down in *Vasentha* – this was necessary, however, to ensure parity in sentencing between an offender of greater culpability (*ie*, the appellant) versus an offender of lower culpability (*ie*, Kannan) in the same criminal enterprise and was achieved through the eventual imposition of a higher sentence for the appellant. In this regard, we note the caution sounded by the High Court against excessive obeisance to sentencing precedents … and therefore calibrated our sentencing approach towards Kannan to avoid any such injustice in punishment. The desirability of consistency cannot, after all detract from the need for individualised justice.

14 With great respect to the Prosecution, and also to the District Judge who seemed to accept it, this submission is wrong in principle for a number of reasons. *First*, the primary offender (namely, Kannan) should have been sentenced to a term that was well outside the sentencing range for the s 13(*aa*) offence. It would be wrong in principle to think that the sentence to be imposed on the primary offender should be manipulated in some way to serve the ends of relative culpability as the Prosecution sees it. As I have noted at the outset of my judgment (see at [2] above), it is simply impossible to directly correlate the range of sentences under s 13(*aa*) with that applicable to the range of primary offences in that manner because the former encompasses a range that is both higher (at the low end) and lower (at the high end) than the latter.

15 Aside from this, the approach taken by the Prosecution in relation to Kannan also threatens to throw into disarray the applicable sentencing guidelines for all the other cases involving drug traffickers whether they are couriers or not, a point which the Prosecution candidly accepted. There is

often little to distinguish the culpability of couriers who transport quantities of such drugs. How is "individualised justice" served when another courier carrying a similar quantity as Kannan is to be sentenced? I therefore said in no uncertain terms in my brief oral grounds when I disposed of the appeal that the sentence imposed in Kannan's case should not be regarded as having any precedential value and I reiterate that given the absence of any cogent explanation, it should be regarded as wrong in principle.

16 *Secondly*, because the punishment provision for s 13(*aa*) offences covers a wide range of underlying offending behaviour, in order to arrive at an appropriate sentence, in my judgment, the sentencing court should have regard to two primary considerations in determining what the appropriate sentence should be within the range prescribed for the offence at hand. These are:

(a) The gravity of the underlying offence; and

(b) The actual culpability of the offender who is before the court facing a charge for an offence under s 13(*aa*).

17 I elaborate briefly on each of these points.

The gravity of the underlying offence

18 The language of s 13(*aa*) makes it clear that the offence under that section is for abetting another "*offence under* [*the*] *Act*". In my judgment, this would, at least as a starting point, require the sentencing court to have regard to the underlying offending behaviour that the primary offender has been charged with. The point has particular significance here because there was a substantial difference between Kannan's underlying offending behaviour, which was importing 10.38g of diamorphine on the one hand, and that with

which he was charged, which was importing not less than 9.99g of diamorphine. As noted above at [3], this has a material impact on the applicable range of punishments. In this respect, the learned Deputy Public Prosecutor, Mr Wong, submitted that it was within the discretion of the Prosecution to reduce the charge against Kannan; and he submitted that the fact it has chosen to do so should not affect the sentence imposed on the Appellant.

19 The issue before me was this: whether the court is entitled to have regard to the actual offence with which the primary offender was charged in assessing the gravity of the underlying offence. While I rejected the Prosecution's submission that the parity principle mandated the imposition of a harsher sentence on the Appellant, I accepted that parity could apply in a broader sense when assessing the gravity of the offence that the Appellant had been charged with abetting. I am aware that there are authorities dating back to the 1990s that suggest that the issue of parity becomes irrelevant once co-offenders have been charged with different offences as there would no longer be any basis for comparison: see for example *Tay Huay Hong v Public Prosecutor* [1998] 3 SLR(R) 290 at [39]–[40] and *Phua Song Hua v Public Prosecutor* [2004] SGHC 33 at [38]. However, I do not think that those cases support the proposition that the court should be blind to the actual offence with which the primary offender was charged. Indeed, I note that Chao Hick Tin JA, in *Lim Bee Ngan Karen v Public Prosecutor* [2015] 4 SLR 1120, having examined the authorities, including some from other jurisdictions, left the door open to the application of the principle of parity where participants in a common criminal enterprise are charged with different offences. Chao JA took the view that the principle of parity could, with appropriate limitations, be applied in such cases and much will depend on why different charging decisions were made in respect of the co-offenders ([38] and [41]).

20 While the present appeal concerned the correlation between the sentence of an abettor and the offence for which the primary offender was charged rather than parity in their sentences, I agreed with the general approach taken by Chao JA and prefer the view that the court should consider the matter in the round. On this basis, I considered that the sentencing court when dealing with an offence under s 13(*aa*) of the Act would be entitled to have regard to the offence that the underlying offender was actually charged with as a relevant factor in the overall analysis, if it is looking to achieve a measure of appropriate relativity between the offenders involved in a common criminal enterprise, at least to the extent this is possible within the context of the sentencing range applicable to each of them. Mr Wong was undoubtedly correct that it was within the discretion of the Prosecution to charge Kannan on the basis of the lower quantity. But if they chose to do that, I do not think, in the absence of some explanation, the Prosecution can then urge the court to shut its eyes to the fact that they have exercised their discretion in a particular way in relation to the primary offence, when it comes to sentencing the offender for the secondary offence under s 13(*aa*).

21 Of course it may be the case that the Prosecution has exercised its discretion in favour of the primary offender on account of personal mitigating factors, such as his vulnerability owing to his youth or immaturity. In such circumstances, there would seem to be no reason in principle why the benefit of any reduction in the charge against the primary offender should benefit the abettor. Similarly, there might be instances where the Prosecution is not in a position to proceed against the primary offender. Yet if it has the evidence, there would seem to be no reason in principle why it ought not to be able to proceed against the secondary offender under s 13(*aa*) without regard to the fact that it has not done so against the primary offender. In such cases, the court might (and likely would) proceed to sentence the offender under s 13(*aa*)

on the basis of the offending conduct with which he has been charged, without regard to the offence with which the primary offender has been charged (if at all).

22 Mr Wong submitted that the reason the Prosecution reduced the charge against Kannan is to be found in the Prosecution's view and submission that the Appellant is more culpable than Kannan. With respect, this misses the point and as noted at [2] and [14] above, this rests on a misconception as to how the primary and secondary offenders should be punished in these cases. The Appellant might well be more culpable than Kannan but given that the two offenders have been charged with different offences, the Appellant's sentence must ultimately be calibrated by reference to the range of punishments that is prescribed for *his* offence and any attempt to achieve relativity between the offenders should be undertaken within this context.

The actual culpability of the offender

23 I turn to the next factor which is the actual culpability of the offender who is before the court. Here too I regard the position of the Prosecution as being incorrect in principle. The true inquiry in my judgment is framed by reference to where, in the broad spectrum of conduct that is encompassed by the types of *abetment* referred to in s 13(*aa*), the particular conduct of the particular offender before the court falls. The section covers acts ranging from assisting to instigating, procuring and even coercing the commission of the underlying offence. The real focus of the inquiry should be on where, in that range, the conduct of the abettor falls.

24 That inquiry may well require the court to consider the relative actions of the primary offender and the abettor. But this would be an incidental inquiry directed at determining the culpability of the abettor rather than to

assess the appropriate or comparative penalties to be visited upon each of them. This can be illustrated with a brief example: suppose that the abettor *coerces* a courier to transport 25g of diamorphine by threatening to injure him. The courier will face the death penalty if he is convicted; or if he can bring himself within the relevant provisions of the Act, he may be sentenced to life imprisonment; or if the Prosecution chooses to reduce the quantity of diamorphine in respect of which he is charged to 14.99g he may face a sentence of between 20 and 30 years' imprisonment with a minimum of 15 strokes. But in any of these situations, the primary offender will face a punishment that is substantially higher than that of abettor who, even assuming the most serious type of underlying offence and the most egregious type of abetment, cannot be sentenced to more than 10 years' imprisonment and a $40,000 fine.

25 In the present case, Kannan, the primary offender, was charged with an offence that carried a punishment ranging from 5 to 30 years' imprisonment. As I was not persuaded that there was any reason to ignore the actual charge that was preferred against Kannan, I approached the case on that footing. I ignored the erroneous sentence that was imposed on Kannan (namely 6 years' imprisonment and 15 strokes of the cane) and consider the putative sentence that should, in my judgment, have been imposed (which is a term of imprisonment of around 15 years with around 11 strokes of the cane). On this basis, Kannan's offence, although serious, would attract a punishment that is well below the punishments prescribed for the most serious offences under the Act which, as I have said, include sentences of death, life imprisonment or imprisonment terms of between 20 and 30 years. Since the offence abetted by the Appellant is not close to the most serious of offences under the Act, it stands to reason that he should not be sentenced to suffer a punishment that falls near the highest end of the sentencing range for s 13(*aa*) offences. At the

same time, the primary offence was a serious offence under the Act. I was thus of the view that a starting point of between 5 and 6 years' imprisonment would have been appropriate in the instant case.

26 I then turned to consider the actual culpability of the Appellant. The Prosecution contended that the Appellant was more culpable than Kannan. Although for the reasons I have outlined at [24] above, I did not think this was *directly* relevant, I nevertheless considered the Prosecution's complaint on the footing that what they are contending is that the nature of the abetment in this case is of a more egregious variety *because* the Appellant allegedly prevailed upon Kannan to commit the underlying offence. To make this good, they contended, as they did in the court below, that the present case involves a syndicated offence. I did not accept this contention. The element of syndication would be a seriously aggravating factor (see *Yap Ah Lai v Public Prosecutor* [2014] 3 SLR 180 at [31]) but it is nowhere to be found in the SOF. The SOF mentions three persons involved in the drug run, namely, the Appellant, Kannan and Krishnamurthi. In the Appellant's mitigation submissions before the court below, it was argued that the Appellant was merely passing on instructions to Kannan. In other words that he was nothing more than a messenger. The Prosecution argues however, that there must have been a chain of command and the Appellant, who was in charge of relaying instructions to Kannan, must have been higher up in that hierarchy as compared to Kannan. On this basis, they say an inference should be drawn that this was a syndicated operation.

27 It is true that some flexibility in respect of standard of proof and evidentiary sources is typically accorded to both the Prosecution and the defence in the sentencing process: *Public Prosecutor v Aniza bte Essa* [2009] 3 SLR(R) 327 at [60]–[62]. However, the degree of flexibility that is to be

accorded must ultimately depend on the materiality of the fact in question and the possible prejudice that could be caused to the position either of the Prosecution or the Defence by taking a particular fact into account. It is apposite to refer once again to the extract from my speech which has been referred to above at [7]. I would underscore, in particular, the point made at para 39 of the speech, which is that it may be unfairly prejudicial to the offender if the Prosecution were to raise a fact undisclosed in the SOF or ask the court to draw an inference from the facts at the stage of sentencing, which the accused was not aware of when he entered his plea. Where a material factor that either aggravates or mitigates the offence is to be put forward by either the Prosecution or the Defence, then it is incumbent on them to either have it agreed, or to prove it. Such proof can be by way of evidence adduced at a *Newton* hearing (see *Ng Chun Hian v Public Prosecutor* [2014] 2 SLR 783 at [24]); or on the basis of submissions without adducing further evidence for this purpose (see *R v Robert John Newton* (1982) 4 Cr App R(S) 388 cited in *Public Prosecutor v Soh Song Soon* [2010] 1 SLR 857 at [3]). But where the latter course is taken, the burden will be on the Prosecution to persuade the court that the aggravating facts it wishes to rely on are supported by the SOF. In this regard, the court would have to be satisfied beyond a reasonable doubt that the relevant inferences should be drawn: see for example *Public Prosecutor v Liew Kim Choo* [1997] 2 SLR(R) 716 at [64]. And where the inference sought by the Prosecution is not an irresistible one, the doubt will be resolved in favour of the accused.

28 With this in mind and having perused the SOF in this case, I was satisfied that it could not reasonably be inferred that the Appellant was a member of a syndicate. The SOF did not allege that the Appellant was even acquainted with Krishnamurthi. Further, the mere fact that the Appellant was relaying instructions to Kannan did not, in my judgment, inexorably lead to

the conclusion that the Appellant was part of a syndicate and was higher up in the chain of command. It would not be right to disregard the possibility that the Appellant was a mere messenger as opposed to someone who was remotely directing or controlling the operations of a drug syndicate as suggested by the Prosecution. Therefore, in view of the fact that syndication is a seriously aggravating factor and that there was insufficient basis to support such a finding, I did not think it safe or fair to count it against the Appellant for the purpose of sentencing. This did not mean that the Appellant was not *in fact* part of a syndicate; it only meant that evidence of his participation in a syndicated drug network was absent and therefore, could not be used to aggravate his culpability so as to enhance his sentence. On balance, in my judgment, nothing in the SOF warranted the imposition of a sentence that was higher than the starting point of between 5 and 6 years' imprisonment.

29 Lastly, the Appellant's plea of guilt was a relevant mitigating factor in my judgment. While his plea of guilt came late in the proceedings, it had the benefit of advancing the administration of justice and saved the court, the Prosecution and public the time and costs of a full trial. Counsel for the Appellant, Mr Too, urged upon me that this is a case where the Prosecution did not have the benefit of any presumptions at law that it could rely on to make out their case against the Appellant. Indeed, they were entirely dependent on the evidence of a co-offender, Kannan. Hence, had the matter gone to trial, it could not be said with certainty that the Prosecution would have prevailed and the Appellant's decision to plead guilty should be regarded as evidencing remorse and therefore treated as a significant mitigating factor. In my judgment, Mr Too is correct in these points. I would only add that the Prosecution's principal witness, had the matter gone to trial, would have been a co-offender, Kannan, who had been sentenced to an inexplicably lenient sentence of six years' imprisonment at the urging of the Prosecution when he

should have been sentenced to an imprisonment term that was 2 or 2.5 times as long. This might well have been a relevant factor that could have been taken into account in assessing the weight of his evidence.

Conclusion

30 In the circumstances, I considered that the initial starting position should be reduced on account of this mitigating factor. I therefore allowed the appeal and reduced the term of imprisonment from a term of 7 years to a term of 4.5 years, backdated to 10 September 2014.

Sundaresh Menon
Chief Justice

Too Xing Ji (Bachoo Mohan Singh Law Practice) for the appellant;
Wong Woon Kwong and Chan Yi Cheng (Attorney-General's Chambers) for the respondent.