IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 23

Criminal Case No 24 of 2017

Between

Public Prosecutor

And

Fazali Bin Mohamed

GROUNDS OF DECISION

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

TABLE OF CONTENTS

Public Prosecutor
v
Fazali bin Mohamed

[2018] SGHC 23

High Court — Criminal Case No 24 of 2017
Pang Khang Chau JC
14, 15, 16, 17 March 2017; 24 March 2017; 30 August 2017

30 January 2018

Pang Khang Chau JC

1 I convicted the accused, Fazali Bin Mohamed, a 45-year-old Singaporean male ("the Accused") on two charges of trafficking in cannabis and cannabis mixture contrary to s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") and passed the mandatory death sentence on him in relation to each charge. The Accused has appealed against both conviction and sentence.

The charges

2 The Accused was committed to stand trial for seven drug-related charges, of which the 1st and the 6th charges were punishable by death ("the two capital charges"). The 1st amended charge reads:

> ... on the 16th day of March 2015, at about 5.10 p.m., at Block 55 Sims Drive #07-1067, 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.), *to wit*, by having in your possession for the purpose of trafficking, seven (7) blocks and one (1) packet containing not less than 1838.8 grams of vegetable matter, which was analysed and found to be cannabis, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) and punishable under section 33(1) of the said Act, and further, upon your conviction under section 5(1)(a) read with section 5(2) of the said Act, you may alternatively be liable to be punished under section 33B of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.).

while the 6th charge reads:

> ... on the 16th day of March 2015, at about 5.10p.m., at Block 55 Sims Drive #07-1067, 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.), *to wit*, by having in your possession for the purpose of trafficking, seven (7) blocks and one (1) packet containing not less than 2775.34 grams of fragmented vegetable matter, which was analysed and found to contain cannabinol and tetrahydrocannabinol, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) and punishable under section 33(1) of the said Act, and further, upon your conviction under section 5(1)(a) read with section 5(2) of the said Act, you may alternatively be liable to be punished under section 33B of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.).

3 Each of the two capital charges attracted the mandatory death penalty as, under the Second Schedule of the MDA, the thresholds for mandatory death penalty are more than 500 grams for the offence of trafficking in cannabis, and more than 1,000 grams for the offence of trafficking in cannabis mixture.

4 At the commencement of trial, the Prosecution proceeded only with the two capital charges, to which the Accused claimed trial, and stood down the remaining five charges.

Undisputed facts

5 The Accused was arrested on 16 March 2015 at about 4.45pm at the sheltered walkway along Block 55 Sims Drive. He was escorted to his residential unit ("the Unit") where searches conducted by officers of the Central Narcotics Bureau ("CNB") resulted in the recovery of the following items:

(a) from the right drawer under the television console (which location was marked "A"):

(i) one red 'Dermacel' bag (marked "A1") containing one newspaper wrapped bundle (marked "A1A"), which in turn contained:

(A) one plastic packet (marked "A1A1") which contained one plastic-wrapped bundle containing vegetable matter (marked "A1A1A");

(B) one clear plastic packet containing vegetable matter (marked "A1A2"); and

(C) one bundle wrapped in black tape (marked "A2") which contained one plastic-wrapped block containing vegetable matter (marked "A2A");

(b) from the left drawer under the television console (which location was marked "B"):

(i) two bundles wrapped in black tape (marked "B1" and "B2" respectively) which contained two blocks wrapped in brown tape each containing vegetable matter (marked "B1A" and "B2A" respectively); and

(ii) one bundle wrapped in clear plastic (marked "B3") which contained one paper-wrapped block (marked "B3A") containing vegetable matter (marked "B3A1");

(c) from under the kitchen stove (which location was marked "D"):

(i) one paper bag (marked "Dl") containing one plastic bag (marked "D1A") which in turn contained two newspaper-wrapped blocks (marked "D1A1" and "D1A2") each containing one plastic-wrapped block of vegetable matter (marked "D1A1A" and "D1A2A" respectively).

6 The eight exhibits containing vegetable matters ("A1A1A", "A1A2", "A2A", "B1A", "B2A", "B3A1", "D1A1A" and "D1A2A") were found collectively to contain:

(a) not less than 1,838.8 grams of vegetable matter which was analysed and found to be cannabis as defined in s 2 of the MDA; and

(b) not less than 2,775.34 grams of fragmented vegetable matter which was analysed and found to contain cannabinol and tetrahydrocannabinol, and was therefore cannabis mixture as defined in s 2 of the MDA.

The foregoing will hereinafter be referred to collectively as "the Drugs".

7 These eight exhibits were received by the Accused about a week before his arrest from persons known to him as "Boy Jack" and "Boy Siva". *The eight exhibits were all contained in the plastic bag "D1A" when they were given by Boy Jack and Boy Siva to the Accused.* The Accused then asked Boy Jack and Boy Siva for a bag to put "D1A" in, and Boy Jack and Boy Siva gave the

Accused the empty paper bag "D1". The Accused then placed "D1A" into "D1" and brought the exhibits up to the Unit, where *he opened "D1A" and took some of the exhibits out of "D1A" to keep at the locations marked "A" and "B"*. The exhibits not taken out were then kept by the Accused within "D1A" at the location marked "D".

8 The Accused's DNA was found on the exterior surface, interior surface and handles of bag "A1", and the interior surface and string handles of the bag "D1".

9 Besides the foregoing, CNB officers also found, on a shelf in the Unit's kitchen (which location was marked "C"), a red basket (marked "C1") containing controlled drugs and drug paraphernalia. Further, when arrested, the Accused was carrying a blue drawstring bag (marked "E") which was found to contain controlled drugs. (The Prosecution's Closing Submission erroneously referred to the blue drawstring bag as exhibit "F" instead of "E". There is no exhibit marked "F" in this case.) These controlled drugs and drug paraphernalia were not the subject of the two capital charges.

10 Prior to his arrest, the Accused had been a consumer of the drugs methamphetamine (also known as "Ice") and Erimin-5, but not cannabis.

Prosecution's case

11 It was the Prosecution's case that:

(a) the Accused had purchased the Drugs from Boy Jack and Boy Siva on credit;

(b) when the Accused received the plastic bag "D1A" from Boy Jack and Boy Siva, the Accused had known that it contained controlled drugs, in particular, cannabis and cannabis mixture; and

(c) the Accused had intended to sell the Drugs for money.

12 To prove its case, the Prosecution relied on the statements of the Accused recorded by the CNB officers, the Accused's testimony in court, the conditioned statements and oral testimonies of CNB officers, as well as the presumption of knowledge as to the nature of the Drugs under s 18(2) of the MDA ("the s 18(2) presumption").

13 The Prosecution did *not* rely on the presumption concerning trafficking under s 17 of the MDA. This was consistent with the position laid down in *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 at [8] and [10] that the presumptions in ss 17 and 18 of the MDA cannot be applied conjunctively.

Defence's Case

14 The Accused chose to give evidence at trial in his defence. He did not call any other witnesses. The Accused's position was that:

(a) about one week before his arrest, he was given the plastic bag "D1A" and its contents by Boy Jack and Boy Siva for him to deliver to Boy Jack's and Boy Siva's friend on their instructions;

(b) he did not know that "D1A" and its contents contained cannabis and cannabis mixture; and

(c) he did not pay Boy Jack and Boy Siva for the contents of "D1A" and he was not planning to sell them.

15 While the Accused did not challenge the voluntariness of the statements taken from him by the CNB officers, he claimed that:

(a) the statements were never read back to him nor was he invited to read them; and

(b) the statements contained inaccuracies and fabrications in that the incriminating parts of the statements were never said by him.

The Accused therefore asked the court to give no weight to the statements.

The law

16 As laid down by the Court of Appeal in *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR(R) 550, the conditions necessary for a conviction for an offence under s 5(1)(*a*) read with s 5(2) of the MDA are (at [35]):

(a) possession of a controlled drug;

(b) knowledge of the nature of the drug;

(c) possession for the purpose of trafficking; and

(d) absence of authorisation under the MDA.

Whether the Accused was in possession of the Drugs

17 The element of possession was not disputed in the present case. The Drugs were found in the Unit, which was the Accused's residence. The Accused

did not deny knowledge of the bundles and packages containing the Drugs, nor did he claim that the Drugs had been placed in the Unit by anyone else. In fact, the Accused's testimony at trial was that he had been given the bundles and packages containing the Drugs by Boy Jack and Boy Siva, and that he was the one who had placed those bundles and packages at the locations where the CNB officers later found them.

Whether the Accused knew the nature of the Drugs

18 In the light of the foregoing, the s 18(2) presumption was triggered. Section 18(2) of the MDA provides that:

> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

To rebut the s 18(2) presumption, the Accused needed to prove on the balance of probability that he did not know or could not reasonably be expected to have known the nature of the Drugs: see *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [18].

Evidence presented by the Prosecution

19 The Accused gave a contemporaneous statement in Malay at the Unit at 6.40pm on the day of the arrest. This statement was recorded by Sergeant Muhammad Zulyadi bin Zulkeplie ("PW 19") in English. The relevant portions read:

> Q1 What is this? (B1 were shown to 07 bundle of vegetable matters which was found on him during arrest)
>
> A1 This is 'Barang'
>
> Q2 What is 'Barang'?
>
> A2 Ganja

> Q3 What is this? (B1 were shown 02 big packet, 05 small packet containing crystalline substance which was found in a red basket placed on top of the kitchen shelf)
>
> A3 Ice.
>
> [signatures]
>
> Q4 What is this? (B1 were shown 02 blocks ~~of veget~~ and 01 packet of vegetable substance which was found from the right drawer of the TV console)
>
> A4 'Barang'.
>
> Q5 What is this? (B1 were shown 03 blocks wrapped with tapes found from left drawer of the TV console)
>
> A5 'Barang'
>
> [*Note:* Q1 referred to the contents of the blue drawstring bag marked "E", Q3 referred to the contents of the red basket marked "C1", Q4 referred to the items recovered from the location marked "A", while Q5 referred to the items recovered from the location marked "B".]

20 Subsequently, after CNB officers found the items recovered from the location marked "D" during a final search of the Unit, PW 19 took another contemporaneous statement from the Accused at 9.35pm, in which the Accused was recorded as having given the following answer to the following question:

> Q 15 What is this? (B1 was shown 02 blocks wrapped with newspaper which was found below stove.)
>
> A 15 'Barang'

21 In his cautioned statement taken one day after his arrest, the Accused said:

> Hisham don't know anything about the drugs. I only asked him to help me send my parents and myself from Sims Drive to Bedok. I regret of my actions. I asked for forgiveness and I hope for another chance. I admit that what I did was wrong. If I am given another chance, I would not repeat my mistakes because I am the sole bread winner to support my wife and my 3 children. I really regret my actions. I hope my repentants [sic] will be accepted.

The name "Hisham" in this passage referred to a friend of the Accused who was in the Accused's company at the time of the arrest and who was consequently arrested together with the Accused. The cautioned statement was taken from the Accused by Inspector Teh Chee Sim Karlson ("PW 34") in the presence of a Malay language interpreter, Norashikin binte Bunyamin ("PW 1").

22 The Accused was also recorded in his long statements as admitting that he knew he was receiving cannabis from Boy Jack and Boy Siva when they gave him the plastic bag "D1A".

The Accused's explanations

23 When cross-examining the prosecution witnesses during the Prosecution's case, Defence Counsel put to them that, when the Accused was brought up to the Unit, Staff Sergeant Mohammad Ridzuan Shah bin Osman ("PW 9") asked the Accused whether he had anything to surrender and the Accused responded "surrender what?". According to the Accused's evidence in court, after he was brought back to the Unit, a CNB officer asked him "Are there any more of this?" while pointing to the blue drawstring bag marked "E", and the Accused answered "I do not know". Despite the minor discrepancy between the version put forth by Defence Counsel during the Prosecution's case and the version given in the Accused's oral evidence, the purport of this part of the Accused's case is clear – when asked by CNB officers about the presence of controlled drugs in the Unit, the Accused had denied any knowledge, and this denial corroborated the Accused's position that he had no knowledge as to the nature of the Drugs.

24 Although PW 9 indicated during cross-examination that he could not remember if the Accused had said "surrender what?", PW 9 also said in

cross-examination that the Accused had responded to PW 9's question by confirming that the Accused had something to surrender. Three other CNB officers who were present at the Unit with PW 9 and the Accused (*ie,* Staff Sergeant Mohamed Faizil bin Mohamed Farook ("PW 18"), Inspector Tjoa Nazri Adam ("PW 12") and Staff Sergeant Mohamad Khairul bin Mohamad ("PW 15")) were also asked during cross-examination whether they heard the Accused responding to PW 9 with the question "surrender what?". They all denied having heard this from the Accused.

25 The Accused did not dispute that the contemporaneous statements accurately recorded him as having identified the nature of the Drugs, but he gave the following explanations for his answers:

(a) the Accused said "this is *barang*" because PW 19 had said "this is *barang*" first so the Accused just followed by repeating the word "*barang*";

(b) "*barang*" merely meant "items" or "objects"; and

(c) he used the word "ganja" because the packages had already been opened and shown to him, thus allowing him to see their contents. PW 19 then prompted the Accused by asking the Accused "ganja, right?".

The Accused also proffered a similar explanation in respect of those parts of his long statements which recorded him as having identified the Drugs as cannabis.

26 At trial, the Accused explained that:

(a) he had received the bundles and packages containing the Drugs inside the plastic bag "D1A" from Boy Jack and Boy Siva;

(b) he did not know what was inside the plastic bag "D1A"; and

(c) he had been told by Boy Jack and Boy Siva that, later in the same day, a friend of theirs would call the Accused and the Accused was to give the entire plastic bag "D1A" to the friend.

27 Neither the Defence Counsel nor the Prosecution asked the Accused at trial what the Accused had thought the plastic bag "D1A" contained, and the Accused did not offer any account of what he had thought or believed "D1A" contained. Nor did the Defence Counsel or the Prosecution ask the Accused at trial whether he had checked the contents of the plastic bag "D1A", and the Accused did not assert that he had done so.

Assessment

28 As noted at [26]-[27] above, the Accused's claim was simply that he did not know what he had received from Boy Jack and Boy Siva. The Accused did not explain what he had thought or believed that he received from Boy Jack and Boy Siva. This is fatal to any attempt to rebut the s 18(2) presumption. As explained by the Court of Appeal in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [39]:

> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. …

29 Furthermore, the lack of any attempt by the Accused to deny knowledge of the nature of the Drugs in his cautioned statement was particularly telling given that he had specifically addressed his mind to the question of knowledge when making his cautioned statement. As mentioned, the Accused stated in his cautioned statement that "Hisham don't know anything about the drugs". If the Accused also did not know anything about the drugs, he would have said so, rather than caveat only Hisham's knowledge. But he did not. I therefore drew an adverse inference against the Accused on this issue pursuant to s 261(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

30 I also found the Accused's explanations concerning his contemporaneous statements (as outlined at [25] above) difficult to accept.

31 With regard to the Accused's explanation that he had identified the contents of the bundles and packages as "ganja" when giving his contemporaneous statements *only because* their contents had been made visible to him by then, a close reading of the Accused's evidence-in-chief will reveal that this explanation applied only to Q1 of the contemporaneous statement, which related to the contents of the blue drawstring bag "E". The contents of "E" were not the subject of the two capital charges. The Accused did not use this explanation when it came to Q4, Q5 and Q15, which were the questions concerning the Drugs. Instead, the Accused's explanation was that "*barang*" in his answers to Q4, Q5 and Q15 meant merely "items" or "objects". I found this explanation difficult to believe given that the Accused's use of the word "*barang*" in answer to Q4, Q5 and Q15 came after his answer to Q2 that by "*barang*" he had meant "ganja". I therefore did not accept this explanation.

32 I also gave little weight to the Accused's claim, as outlined at [23] above, that he had denied knowledge of the presence of the Drugs in the Unit when

asked by the CNB officers if he had anything to surrender. First, the Accused's claim was denied by the CNB officers during trial. Secondly, even assuming that such a denial had been made, the denial could not be viewed in isolation but must be assessed in the light of all the other evidence bearing on the issue. While such a denial could be regarded as evidence of the Accused's lack of knowledge, it was also consistent with the instinctive reaction of a guilty person seeking to deny a crime and distance himself from it. When all the evidence was viewed in the round, I was of the view that such a denial, even assuming it had occurred, would not have been sufficient to outweigh the difficulties identified at [28]-[31] above.

33 I therefore found that the Accused had failed to rebut the presumption under s 18(2) of the MDA that he knew the nature of the Drugs.

Whether the Accused was in possession of the Drugs for the purpose of trafficking

34 Section 5(2) of the MDA provided that:

> (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.

35 According to s 2 of the MDA:

> "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

Evidence presented by the Prosecution

36 In the contemporaneous statements given by the Accused to PW 19 on 16 March 2015, the Accused was recorded as saying that he had intended to let one "Ocheng" sell the Drugs as well as the controlled drugs found in the blue drawstring bag marked "E", and "Ocheng" would later return the sale proceeds to the Accused. In a subsequent statement taken on 17 March 2015 by Station Inspector Hisham bin Sulaiman ("PW 20"), the Accused was recorded as wanting to amend his earlier contemporaneous statement to the extent that:

(a) only the controlled drugs found in the blue drawstring bag marked "E" were meant for "Ocheng"; and

(b) the Drugs were meant to be sold to other clients.

37 In the long statement given to PW 34 on 21 March 2015, the Accused was recorded as saying that he began buying cannabis on credit from Boy Jack and Boy Siva from July 2014 to sell to various customers. In the long statement given to PW 34 on 23 March 2015, the Accused was recorded as saying:

> 15 One week before I was arrested, I cannot remember the exact date, both Boy Siva, Boy Jack called and asked to me meet at the car park of Blk 54 Sims Drive. We later met and had an argument at the carpark over money matters. I then agreed to pay them about S$2000/- plus to S$3000/-. Both Boy Jack and Boy Siva accepted the money. Before they go, they pleaded me to take some more drugs from them, there were two and a half kilograms of cannabis and one packet about 50 grams of Ice. Initially I refused to take as I still have quite a lot of balance at home. They said this order also had been cancelled and they did not want to bring it back to Malaysia. I then decided to just take first as I need money to pay for my house expenses. They said they will call me back about the payment later and they left. I then took all the drugs back home.

38 The Accused was also recorded in the long statement given to PW 34 on 24 March 2015 as saying:

> 35 Another 2½ kilogram of cannabis and 50 grams of Ice were handed over to me one week before I was arrested in March 2015. At that time I pay them another $2000 to $3000 and that was the last payment I pay Boy Siva and Boy Jack.
>
> 36 That was the reason why I was arrested with the balance of about 5 kilograms cannabis and 100 over grams of Ice in my house.

39 The Accused was also recorded in the long statements of 23 March 2015 and 24 March 2015 as saying that the prices he charged for selling cannabis ranged from $200 for 25 grams, to $350 for 50 grams, to $1,100 for 200 grams.

40 The long statement of 21 March 2015 recorded the Accused reiterating that the controlled drugs found in the blue drawstring bag marked "E" were meant to be sold to "Ocheng". As for the Drugs, none of the long statements explained who the intended recipients or buyers of the Drugs were.

41 On 7 April 2015, the Accused was assessed by Dr Subhash Gupta ("Dr Gupta"), Consultant of the Department of General and Forensic Psychiatry at the Institute of Mental Health ("IMH"), for soundness of mind and fitness to plead in a court of law. In his report dated 13 April 2015, Dr Gupta recorded that he had been informed by the Accused that:

(a) the Accused had built up a stockpile of cannabis as his supplier kept on giving cannabis to him on credit despite the Accused telling the supplier that he was not able to sell that much cannabis; and

(b) on the day of the "alleged offence", the Accused had received a call from a client and was out with a friend to deliver cannabis when both he and his friend were arrested.

The Accused's explanations

42 At trial, the Accused explained that:

(a) about a week before his arrest, Boy Jack and Boy Siva had given him the plastic bag "D1A";

(b) he did not know what was inside the plastic bag "D1A";

(c) Boy Jack and Boy Siva told the Accused that a friend of theirs would call him later that day, and the Accused was to hand the plastic bag "D1A" and its contents to the said friend; and

(d) while he owed money to Boy Jack and Boy Siva, these were gambling debts and not debts arising from the sale and purchase of controlled drugs.

43 The Accused denied having admitted to the CNB officers who recorded his statements that he had been selling cannabis or that he had bought cannabis from Boy Jack and Boy Siva. The Accused did not challenge the voluntariness of those statements. Instead, the Accused's position was that those parts of the statements relating to the buying and selling of controlled drugs, including information about the prices of controlled drugs, were fabricated by the CNB officers without the Accused's knowledge. The Accused's evidence was that none of those statements had been read back to him, nor had he been invited to read the statements himself before signing them. In particular, Defence Counsel pointed to one uncorrected typographical error in the long statements (*ie*, an erroneous reference to "your customer" instead of "my customer" in paragraph 4 of the long statement of 21 March 2015) as evidence that the long statements had never been read back to the Accused by either PW 1 or PW 34. According to Defence Counsel, if the long statement had been read back to the

Accused, this typographical error would definitely have been spotted and corrected in the process.

44 As for Dr Gupta's report, the Accused denied telling Dr Gupta that he had been buying and selling cannabis. In particular, the Accused denied telling Dr Gupta that he had built up a stockpile of cannabis.

45 The Accused confirmed at trial that his cautioned statement was accurately recorded.

Assessment

46 I will begin by examining the Accused's allegations concerning Dr Gupta's report followed by his allegations concerning the contemporaneous and long statements.

Dr Gupta's report

47 When asked during cross-examination whether he could have misunderstood the Accused, Dr Gupta sought and obtained the court's permission to refer to his handwritten notes of his interview with the Accused. He then read out the following passage from his handwritten notes:

> "He started selling cannabis in July 2014 as he needed money and had some debts. Used to make"---two hun---"S$2,000 by selling 500grams of cannabis. Did like this two to three times in October and pay these loans. From then, till 1 week before the arrest, the supplier kept on giving him cannabis on credit in spite of him saying that he cannot pay/sell so much. On the day of alleged offence, he was at his parent's house (Sims's Drive) where his stock was and he had called a friend – co-accused who is a taxi-driver to drop his parents to Bedok at his sister's place. (He lives at times with sister, at times with parents.) Got the customer's call to deliver. Was caught with his friend and cannabis."

Thereafter, Defence Counsel ceased his cross-examination and did not challenge any part of Dr Gupta's report or put any other allegations from the Accused to Dr Gupta.

48 Dr Gupta was a consultant psychiatrist at the IMH when he interviewed the Accused. At the time of the trial, Dr Gupta had left the IMH and moved to the UK. Since Dr Gupta was not associated with the CNB either in his former or current capacity, I considered Dr Gupta to be an independent and disinterested witness.

49 In the light of the foregoing, I saw no reason to doubt that the statements in Dr Gupta's report, concerning the Accused's buying and selling of cannabis, accurately recorded what the Accused had told Dr Gupta.

The statements recorded by the CNB officers

(1) Whether the statements were read back to the accused

50 In respect of the contemporaneous statements, PW 19 testified that:

(a) both he and the Accused had spoken to each other in Malay during the taking of the contemporaneous statements;

(b) he had recorded the statements in English in handwriting;

(c) he then read the statements back to the Accused;

(d) as the Accused was seated beside PW 19 when PW 19 was reading the statements back to the Accused, PW 19 had shown the statement to the Accused and the Accused was also following and reading the statement as PW 19 read it back to the Accused.

51 The contemporaneous statements were signed on every page by the Accused. In particular, the Accused signed his name against a declaration written by PW 19 in English at the end of each contemporaneous statement to the effect that the relevant statement had been read back to the Accused in Malay.

52 With regard to the long statements, these were taken by PW 34 in the presence of PW 1. PW 34 spoke in English to the Accused but the Accused did not require PW 34's questions to be translated into Malay by PW 1. Instead, PW 1 would provide assistance to the Accused only in relation to those parts of PW 34's utterance which the Accused had difficulty understanding. The Accused would respond to PW 34's questions in a mixture of English and Malay, and PW 34 would seek PW 1's assistance for those parts of the Accused's answers given in Malay.

53 Both PW 1 and PW 34 gave evidence that, after PW 34 typed out the long statements in English and checked them, they were read back to the Accused by PW 1 in Malay.

54 Similarly, like the contemporaneous statements, the long statements were signed on every page by the Accused. In particular, the Accused signed his name against a declaration written by PW 1 at the end of each long statement confirming that the relevant statement had been interpreted and read back to him in Malay.

55 During the cross-examination of PW 1, Defence Counsel did not put to PW 1 that she had omitted to read the long statements back to the Accused. During the cross-examination of PW 34, although Defence Counsel alluded obliquely to the possibility that PW 1 may not have read the long statements

back to the Accused, Defence Counsel fell short of putting the point directly to PW 34.

56 I found that PW 1, PW 19 and PW 34 all fared well under cross-examination. They did not waver on the issue of whether the statements had been read to the Accused. Their testimonies were consistent and believable. None of them betrayed any sign of falsehood or deception in their demeanour during cross-examination.

57 I did not place much weight on the one uncorrected typographical error highlighted by Defence Counsel. It would require a huge logical leap to conclude, from the existence of this one error, that none of the statements had been read back to the Accused, especially when numerous other errors had been picked up and corrected by hand throughout these statements, and the Accused had signed against each of these other corrections.

58 Having observed the Accused on the witness stand, I found the Accused to be a reasonably sharp and intelligent person. I therefore found it difficult to believe that, in the absence of any circumstance affecting voluntariness (which the Defence did not raise), the Accused would have signed the statements even though he was not aware of the contents of these statements (either by having them read back to him or otherwise).

59 For the foregoing reasons, I rejected the Accused's contention that the statements had not been read back to him.

60 There is one other point I should highlight. The Prosecution relied on the following exchange during cross-examination as an admission by the Accused that the statements had been read back to him:

> Q And after the statements were read to you, you signed the statements to affirm the contents of those statements. Agree or disagree?
>
> A Yes, agree.

I did not place weight on this as I appreciated that there could be some ambiguity as to whether the Accused was merely confirming that he had signed the statements, or that he was confirming (in addition) that the statements had been read to him.

(2) Whether the Accused should have been invited to read the statements for himself before signing them

61 Defence Counsel argued in closing submission that:

> 28 The crux of this case is that since DW1 understands English why was he not given a chance to read the statement or at least invited to read the statements. If he understands English there is no need to read over to him. Section 22 (3) (b) and (c) of the CPC must be read together and likewise for Section 23 (3) (b) and (c). The reading back will only come into play only if he does not understand English.

62 This was a novel argument. Defence Counsel was essentially saying that:

(a) the obligation to read an accused's statement back to the accused only applied to an accused who did not understand English;

(b) consequently, if an accused understood English there was no requirement for his statements to be read back to him;

(c) where the requirement to read back the statements did not apply, there would be a requirement that the accused be invited to read the statements himself.

63 The flimsiness of this argument was apparent from a mere perusal of statutory provision. Section 22(3) of the CPC read:

> (3) A statement made by any person examined under this section must –
>
> (*a*) be in writing;
>
> (*b*) be read over to him;
>
> (*c*) if he does not understand English, be interpreted for him in a language that he understands; and
>
> (*d*) be signed by him.

A comparison of s 22(3)(*b*) with s 22(3)(*c*) revealed that the latter was qualified by the phrase "if he does not understand English" while the former was not. As a matter of statutory interpretation, there was simply no basis for reading s 22(3)(*b*) as applying only to persons who did not understand English. No authority was cited to the court to support the Defence Counsel's submission. I therefore rejected the submission that there was a legal requirement that the Accused be invited to read the statement for himself, merely because he understood English.

64 Having said that, I would add that in a case where the accused made a specific request to be allowed to read his statement and this request was denied, the court may rightfully view that denial with suspicion and consequently doubt the reliability of the statement. But that was not the case here. The Accused's claim was that the CNB officers were statutorily obligated to "invite" him to read his own statement. The Accused did not allege that he had requested to read his own statements and had been denied the opportunity to do so. I specifically asked the Accused whether the statements were presented to him for signing in such a manner that, had he wanted to read the statements for himself, he could have done so, or were the statements taken hurriedly away from him. His answer was that he could not remember. In any event, the

Accused admitted during the trial that his understanding of English was limited and that, even if he had been given the opportunity to read the statements himself, there would have been parts of the statements which he could not understand. In fact, PW 19 confirmed during cross-examination that he had invited the Accused to read the contemporaneous statements. In the circumstances, I saw no reason to place less weight on the statements merely because the Accused had not read the statements himself.

(3) Whether incriminating portions of the long statements were fabricated by PW 34

65 Given my finding that the statements had been read back to the Accused and that the Accused was not denied the opportunity to read his own statements, I could not accept the Accused's allegation that the incriminating portions of his long statements were all fabricated by PW 34. Significantly, this allegation of fabrication was not put to PW 1 during cross-examination. Given that PW 1 had been present during the recording of the long statement and was responsible for interpreting and reading to the Accused what PW 34 had recorded, she would have been a critical witness to any alleged fabrication. The failure to cross-examine PW 1 on this issue further undermined the credibility of the Accused's allegation.

Conclusion

66 In the light of the foregoing, I gave full weight to the contemporaneous statements and long statements of the Accused. Consequently, I found that it had been proven beyond a reasonable doubt that the Accused was in possession of the Drugs for the purpose of trafficking.

67 For completeness, I add that, even if I had acceded to the Defence Counsel's submission for me to place no weight on the Accused's statements, I would have still found it proven beyond a reasonable doubt that the Accused was in possession of the Drugs for the purpose of trafficking.

68 First, the Accused admitted at trial that he had received the contents of plastic bag "D1A" from Boy Jack and Boy Siva for the purpose of delivering the said contents to one of their friends. The act of delivering constituted trafficking as defined in s 2 of the MDA. This would have been sufficient to sustain a finding that the Accused had been in possession of the Drugs for the purpose of trafficking.

69 Secondly, even without relying on the Accused's statements and the Accused's admission discussed at [68] above, there remained sufficient objective evidence to sustain a finding that the Accused had been in possession of the Drugs for the purpose of trafficking. This was because:

(a) the quantity of the Drugs was huge – roughly three times the amount needed to trigger the mandatory death penalty;

(b) the Accused did not consume cannabis and therefore would not have required the cannabis for his personal consumption; and

(c) there was a complete lack of explanation from the Accused as to what other purposes he could have been in possession of the Drugs for if not for the purpose of trafficking.

Whether the trafficking was unauthorised

70 It was undisputed that the Accused was not authorised under the MDA or the regulations made thereunder to possess and traffic in the Drugs.

Other matters arising in the course of these proceedings

The Accused's admission of mistake, expression of regret and plea for forgiveness in his cautioned statement

71 The Accused ended his cautioned statement with the following passage:

> I regret of my actions. I asked for forgiveness and I hope for another chance. I admit that what I did was wrong. If I am given another chance, I would not repeat my mistake because I am the sole bread winner to support my wife and my 3 children. I really regret my actions. I hope my repentants [sic] will be accepted.

72 The Prosecution submitted that this passage reflected the Accused's guilt in respect of the two capital charges. Defence Counsel submitted that this passage should not be interpreted as an admission of guilt. The Accused's explanation at trial for this passage in his cautioned statement was as follows:

> Q Okay. When you made this statement, in short, you would---in your statement, you s---you said you regret what you have done, what you did was wrong, "regret my actions", "hope for repentants will be accepted", all these, does it show or does it mean that you had knowledge that you were in possession was drugs?
>
> A Your Honour, at the point of my arrest, I don't know about the drugs becau---at that point in time, the items were not open. So when this statement---cautioned statement was recorded, by that time, all---all the items were opened. And it was also after the weighing process, the officer came to me and wrote all these in the cautioned statement. And having said to me what were in the notice of warning, he then asked me if I had anything to say. So it was at that point of time when everything was already open and every---at that time---in point of time it was---after the weighing process has---was already over.

73 Even though I found the Accused's explanation difficult to follow, I decided to give the Accused the benefit of the doubt on this issue and therefore

did not give any weight to the passage quoted at [71] above in coming to my decision.

The controlled drugs found in the blue drawstring bag and the drug paraphernalia found in the red basket

74 Defence Counsel made the following points in his closing submissions:

> 22 The contents in the blue drawstring bag was later discovered to contain vegetable matter as listed out in paragraph 5.1 of PW9 conditioned statement shown at page 262. The defence would like to highlight that the prosecution is not charging the accused on having in possession of what was in the drawstring bag.
>
> 23 The other item which the PW9 claimed that that the accused did surrender was the red basket which was on top of the kitchen shelf as listed in the whole of paragraph 5.2 of PW 9 conditioned statement. Again if indeed these were surrendered by the accused, these items that were surrender are not part of the prosecution case.

75 This submission was grounded on erroneous factual assumptions. The controlled drugs in the blue drawstring bag were the subject of the 2nd and 7th charges on which the Accused was committed to trial, while the drug paraphernalia in the red basket were the subject of the 5th charge on which the Accused was committed to trial. These charges had been stood down at the commencement of the trial when the Prosecution decided to proceed only with the two capital charges.

76 In this regard, I would observe that the Prosecution had rightly refrained from presenting any evidence which was relevant only to the stood down charges but not the two capital charges. Such evidence would have been prejudicial to the Accused while being devoid of probative value in relation to the two capital charges.

The role of "Ocheng"

77 Even though the character "Ocheng" was mentioned several times in the Accused's statements, he was not called as a witness at trial. I therefore asked for further written submissions on whether I should draw any inference or conclusion from the absence of "Ocheng" as a witness in the light of the Court of Appeal's remark in *Harven a/l Segar v Public Prosecutor* [2017] SGCA 16 ("*Harven Segar*") that:

> 68 Finally, we note that there was no evidence either in the court below or before us from Sulaimi and Mogan. It is clear to us that both of them are material and critical witnesses who would have been able to either corroborate or rebut the Appellant's defence. At the trial, Investigating Officer Yeo Wee Beng informed the court that both Sulaimi and Mogan had already been arrested by the CNB, convicted and sentenced … Given that both Sulaimi and Mogan were held in custody at the time of the trial, it is curious that neither the Prosecution nor the Defence called them to testify. The court was thus deprived of the assistance which they could have given. We would only observe that the Prosecution would have known, from the statements which both Mogan and Sulaimi had given to the CNB, what they were likely to say if they were called as witnesses at the trial, while the same could not be said of the Appellant.

78 Having read the further written submissions, I found that "Ocheng" was not a material witness. In *Harven Segar*, Mogan and Sulaimi were material witnesses. Mogan was the person from whom the accused received the controlled drugs with which he was caught, and Sulaimi was the intended recipient of the said controlled drugs. In the present case, the Accused was recorded in his contemporaneous statements and long statements as saying that "Ocheng" was *not* the intended recipient of the Drugs. According to these statements, the role of "Ocheng" was only in relation to the controlled drugs in the blue drawstring bag "E". As noted at [75] above, those drugs were the subject of the 2nd and 7th charges and not the two capital charges that were proceeded with. At trial, the Accused said that the Drugs were meant to be

delivered to an unidentified friend of Boy Jack's and Boy Siva's. Since "Ocheng" had no role in relation to the Drugs, there was no reason to think that he would have any relevant evidence to give in relation to the two capital charges. There was also no indication that "Ocheng" would have any insight into the Accused's state of knowledge *vis-à-vis* the Drugs. On the contrary, if "Ocheng" had appeared as a witness, his evidence would fall squarely within the category of prejudicial evidence devoid of probative value described in [76].

79 Further, in *Harven Segar*, the evidence of Mogan and Sulaimi was critical because the accused had provided a consistent and believable explanation to rebut the s 18(2) presumption. In the present case, the Accused's defence was a bare denial and it was a defence which the Accused failed to raise when first given the opportunity to do so. Consequently, the Accused came nowhere close to rebutting the s 18(2) presumption. As such, the need for the Prosecution to call further witnesses to rebut the Accused's evidence did not arise.

80 In the circumstances, "Ocheng" was not a material or critical witness in relation to the two capital charges before this court, and I did not consider it justified to draw an adverse inference, whether against the Prosecution or the Accused, for their omission to call "Ocheng" as witness during the trial.

Decision

81 For the reasons above, in respect of both of the charges to which the Accused had claimed trial (*ie*, the 1st amended charge and the 6th charge), I concluded that:

(a) the Accused had been in possession of the Drugs;

(b) pursuant to the presumption under s 18(2) of the MDA which was not rebutted, the Accused had known the nature of the Drugs;

(c) the Accused had had the Drugs in his possession for the purpose of trafficking; and

(d) the trafficking was not authorised by the MDA or the regulations made thereunder.

I therefore convicted the Accused on both charges.

82 As both charges carried the mandatory death penalty and neither the Prosecution nor the Defence contended that the discretion not to impose the death penalty under s 33B of the MDA applied, I passed the sentence of death on the Accused.

Pang Khang Chau
Judicial Commissioner

Eugene Lee and Shen Wanqin (Attorney-General's Chambers) for the prosecution;
Johan Bin Ismail (Johan Ismail & Co) and Lam Wai Seng (Lam W.S. & Co) for the accused.