

Public Prosecutor v Muhammad bin Abdullah and another
[2015] SGHC 231

Case Number : Criminal Case No 25 of 2015
Decision Date : 02 September 2015
Tribunal/Court : High Court
Coram : Kan Ting Chiu SJ
Counsel Name(s) : Tan Wen Hsien and Raja Mohan s/o Krishnaraju (Attorney General's Chambers) for the prosecution; James Masih (James Masih & Company) & Supramaniam Rajan (Hilborne Law LLC) for the 1st Accused; Low Cheong Yeow (Tito Isaac & Co LLP) & Daniel Koh (Eldan Law LLP) for the 2nd Accused.
Parties : Public Prosecutor — Muhammad bin Abdullah — Yu Ching Thai

Criminal law – statutory offences – Misuse of Drugs Act

[LawNet Editorial Note: The appeals to this decision in Criminal Appeals Nos 21 and 22 of 2015 were dismissed by the Court of Appeal on 12 January 2017. (The application in Criminal Motion No 53 of 2016 was dismissed by the Court of Appeal on 17 August 2016.) See [\[2017\] SGCA 4.](#)]

2 September 2015

Kan Ting Chiu SJ:

Introduction

1 This is a joint trial of two accused persons ("the Accused Persons"), Muhammad bin Abdullah ("the 1st Accused") and Yu Ching Thai ("the 2nd Accused"), for the offence of drug trafficking under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The charge against the 1st Accused was that he

on the 24th day of May 2012 at or about 7.15 p.m., at the third floor corridor near the lift lobby of Block 707 Woodlands Ave 4, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Ed) ("MDA"), to wit, by having in your possession for the purpose of trafficking, four (04) packets containing 915.60 grams of granular/powdery substance which were analysed and found to contain not less than 19.84 grams of diamorphine, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the MDA and punishable under section 33(1) of the MDA, and further, upon your conviction under section 5(1)(a) read with section 5(2) of the MDA, you may alternatively be liable to be punished under section 33B of the MDA.

The 2nd Accused was charged that he

on the 24th day of May 2012 at or about 6.17 pm, at the carpark of Block 315 Woodlands Street 31, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the MDA, to wit, by giving four (04) packets containing 915.60 grams of granular/powdery substance which were analysed and found to contain not less than 19.84 Grams of diamorphine, to one Muhammed bin Abdullah (NRIC: [xxx]), without authorisation under the MDA or the Regulations made

thereunder, and you have thereby committed an offence under section 5(1)(a) of the MDA punishable under section 33(1) of the MDA, and further, upon your conviction under section 5(1) (a) of the MDA, you may alternatively be liable to be punished under section 33B of the MDA.

The Arrests

2 The Accused Persons were arrested by officers of the Central Narcotics Bureau (“the CNB”) who were conducting an operation with respect to a suspected drug transaction. The officers observed a car bearing registration number SGQ 9129 K (“the car”) in the carpark between Blocks 316 and 317 Woodlands Street 31 (“the carpark”) with the 1st Accused in the driver’s seat. A motorcycle bearing registration number JNP 3997 (“the motorcycle”) subsequently arrived at the carpark and stopped near the car. The 2nd Accused dismounted from the motorcycle and entered the car. The 1st Accused then drove the car out of the carpark. A few minutes later, the 1st Accused drove the car back to the carpark. The 2nd Accused came out of the car and returned to the motorcycle, while the 1st Accused drove the car out of the carpark again. The 2nd Accused was arrested by the CNB officers before he could leave the carpark. A stack of cash amounting to S\$9,800 was seized from him.

3 Other officers in the operation gave chase to the car, but lost sight of it. Subsequently, the car was found abandoned at the junction of Woodlands Avenue 4 and Avenue 7 where it had collided with a taxi. Although he ran off from the car, the 1st Accused did not evade arrest for long. He was spotted by CNB officers at the third floor common corridor of Block 707 Woodlands Avenue 4. The officers saw him throw a white plastic bag over the parapet wall of the corridor when they moved in to arrest him. The 1st Accused was arrested and a white plastic bag was recovered from the ground floor of the block as well as a red and black sling bag which was in a drain. [\[note: 1\]](#)

4 The white plastic bag [\[note: 2\]](#) held a purple plastic bag. [\[note: 3\]](#) The purple bag in turn held four packets each wrapped in newspaper [\[note: 4\]](#) (these packets were at times referred to as bundles). After the four packets were unwrapped, each packet was found to contain granular/powdery substance wrapped in clear plastic. [\[note: 5\]](#) The four packets were sent to the Health Sciences Authority (“HSA”) where the granular/powdery substance contained in each packet was weighed and underwent qualitative and quantitative analysis. The results of the analysis were as follows:

| Packet | Weight of substance | granular/powdery Diamorphine weight |
|--------|---------------------|-------------------------------------|
| 1 | 229.7 grams | 4.90 grams |
| 2 | 227.4 grams | 5.02 grams |
| 3 | 229.0 grams | 4.19 grams |
| 4 | 229.5 grams | 5.73 grams |

In total, the four packets contained 915.60 grams of granular/powdery substance which were found to contain not less than 19.84 grams of diamorphine.

5 The red and black sling bag [\[note: 6\]](#) (which was also referred to as a pouch) was found to contain, *inter alia*, a red foil packet which in turn held three small packets of granular/powdery

substance which were also sent to HSA where they were weighed and analysed. The weight of the granular/powdery substance was 22.91 grams, and the diamorphine content weighed 0.70 grams. [\[note: 7\]](#)

6 The drugs in the sling bag were not included in the charges against the Accused Persons. The 1st Accused admitted that the sling bag and its contents belonged to him, and that he had thrown it down the block together with the white plastic bag.

The 1st Accused's statements

7 Following his arrest, and the recovery of the white plastic bag and the sling bag, the 1st Accused was questioned by Senior Station Inspector Tony Ng Tze Chiang ("SSI Ng") at about 7.30pm while they were still at Block 707 Woodlands Avenue 4. SSI Ng showed him the white plastic bag, questioned him and recorded the questions and answers in his pocketbook: [\[note: 8\]](#)

Q: Do you understand English?

A: Yes.

Q: What was inside the bag?

A: Peh Hoon.

Q: Where did you throw this white plastic bag?

A: From this block 707, third floor.

Q: Where did you take this plastic bag that you say is "Peh Hoon" from and from where?

A: A Malaysian Chinese at the carpark of somewhere near polyclinic Blk 317 Woodland.

Q: How many heroin is inside this plastic bag that you throw and you say you collected from the Malaysian Chinese?

A: 4 pounds are inside this plastic bag.

8 Later on in the evening, SSI Ng recorded a signed statement from the 1st Accused: [\[note: 9\]](#)

Q1 What language do you choose to speak?

Ans English.

Q2 Where were you arrested at?

Ans Block 707 Woodlands.

Q3 Before your arrest what did you do?

Ans I was inside vehicle: SGQ 9129 G and I hit into a taxi at the junction of don't know what Avenue of Woodlands.

Q4 What did you do after that?

Ans I left the key and ran away with a white plastic bag.

Q5 What is inside the white plastic bag?

Ans Four bundles of Heroin and a little bit of ICE.

Q6 Recorder's Note: B1 [\[note: 10\]](#) was shown a deposited polymer bag inside contain a white plastic bag and another deposited polymer bag of red and black colour sling bag and I asked B1: Is this the plastic bag of heroin and the red and black sling bag of ICE?

Ans Yes, this were the plastic bag of heroin and ICE I throw at Blk 707, Woodlands.

Q7 This plastic bag of what you says that contained 4 bundle of heroin and the red and black sling bag of ICE collected from where and who?

Ans The plastic bag of 4 bundles of heroin, I collected from a male Malaysian Chinese at Block 317 inside the car park of Woodlands Street 31 just now about 5 something. The ICE from Singapore people but not collected from the male Malaysian Chinese at about last week.

Q8 Recorder's Note: B1 was shown a image of male Malaysian Chinese Yu Ching Thai Fin: G7006441W and I asked: Is this the male Malaysian Chinese that you are talking about?

Ans Yes, it's him.

Q9 How much you pay him for this plastic bag of heroin and did you pay him at the same place?

Ans Actually, the money that I pay for this plastic of heroin goes to a male Indian but not him and he only pass this plastic of heroin to me.

9 On 28 May 2012, four days after his arrest, a cautioned statement was recorded from the 1st Accused in answer to a charge of trafficking in 914.78 grams of diamorphine (the gross weight before analysis). His statement was:

I admit to all the drugs that were found at that Blk 707 and I admit to all charges. I plead for leniency for the mistake.

10 The cautioned statement was followed up by a series of investigation statements which began on 29 May 2012, the day after the recording of the cautioned statement. I shall set out the parts of the statements which presented the background to the 1st Accused's involvement in drug trafficking and consumption, and the circumstances in which he was arrested. In his statement recorded on 29 May 2012 at 2.45pm, he revealed that:

4 I started as a middleman, meaning that when my drug customers look for me to buy drugs, I would act as the middleman and go and get the drug supply from my supplier. I would then in turn sell the drugs to my customers. This was because I did not have capital of my own. I only sell Heroin. I would sell in sets. One set is 10 packets of Heroin of about 8 grams each. My cost price for one set of Heroin is about \$1100 and I would sell them at \$1400. As time goes by, I accumulated my own capital. About one month ago, I then contacted my Malaysian friends to get Heroin directly from them. I started with one pound of Heroin. The drugs would be brought in by a

Malaysian. One pound of Heroin would cost me \$4900. I would usually break half a pound into smaller portions for sales in sets and sell the other half pound directly to one of my customers. I have been doing this about once every two or three days for the past month. I would only order two pounds of Heroin at most each time. From the two pounds of Heroin, I can earn a profit of about one thousand plus.

5 My wife is aware that I am on the run and she has always been encouraging me to go surrender myself. However, I would always tell her that I would do so when I think the time is ripe. I do not smoke Heroin in front of my wife and my family. I usually smoke Heroin outside at places such as hotels, friends' houses or secluded areas. My wife is not aware of my drug activities except that I have a pending case and that I am also on the run. Last Thursday which was the 24.05.2012, I was at my Tampines home the whole day. The address is Blk 299B Tampines St 22 on the 10th floor but I cannot remember the unit number now. I left house at around 4 plus in the afternoon. I also told my wife to follow me along. My actual intention was to collect some money back from my runners and also to wait for my order of two pounds of Heroin to come in. I did not tell my wife anything about all these. I did not manage to collect any money from my runners yet as the Malaysian "horse" arrived earlier than expected. "Horse" is the term used for the person who delivers the drugs. My wife told me that she wanted to go somewhere on that day but I cannot remember now where she wanted to go. I intended to send her to wherever she wanted to go after I am done with the drugs.

6 I made order for these two pounds of Heroin one day before the day I was arrested. I called a Malaysian Indian called "Makel" to place order for two pounds of Heroin. He then told me that I can collect the two pounds of Heroin in the following day. On Thursday (24.05.2012), the "horse" called me at around 4 plus 5 in the evening. The "horse" that I am referring to is "Ah Meng". "Makel" told me that the name of this person is "Ah Meng". "Ah Meng" was also arrested together with me. "Ah Meng" told me over the phone that he has finished work already and told me to go down to Woodlands Blk 300 something near the polyclinic where he will pass me the Heroin. If I remember correctly, I have met up with "Ah Meng" about three times previously to collect Heroin. On previous occasions, "Ah Meng" delivered to me only one pound of Heroin. I remember so because it was only recently that I started to order two pounds of Heroin. Other than "Ah Meng", there were other horses of "Makel" whom I have met before to collect drugs from them. They are mostly of the Indian race who came in motorbikes.

7 On the day that I was arrested, I remember that I reached the arranged transaction place at about 5 pm plus. I just told my wife that I need to go somewhere and follow me along for a while. When I reached there "Ah Meng" was already there. Usually I would get out of the car to collect Heroin from him, but this time round, I asked him to come into my car instead, reason being that I saw one car which had two people seated in it nearby my car and I sensed that they could be CNB officers. I preferred not to get out of my car so I signalled "Ah Meng" to come into my car. I felt safer this way. "Ah Meng" came in and sat at the back passenger seat. After "Ah Meng" was in my car, I drove one round out of the carpark and back into the carpark again. Along the way, I took over the drugs from "Ah Meng" and I also passed him \$9800 for these two pounds of Heroin. Usually, the money for the drugs would not be handed over to the horse directly except for this time round. I would think that it is because "Makel" trust "Ah Meng" enough for him to collect the money on his behalf. The usual practice is to hand over the money for payment for the drugs to somebody else. I heard from "Makel" that there were past cases whereby the horses ran away with the money. When I reached back at the carpark after one round I saw the car which I suspected to be CNB officers right behind me. I immediately confirmed that they are CNB officers. I quickly told "Ah Meng" to leave but I did not tell him that I suspected there are CNB officers around.

8 I drove out of the carpark immediately and speed up. My wife asked me why I was driving so fast and I told her to keep quiet. She did not ask further. I tried to drive as fast as possible to brush off the car following me. At Woodlands Ave 7, I checked again and realized that there seemed to be no one following me anymore. I could not stop in time for a red light ahead and I collided into a taxi. I then left the car and told my wife to run somewhere else. I told her to go to my uncle's house at Blk 986 Buangkok Crescent somewhere on the 4th and 5th floor which I cannot remember exactly now. My wife has been there with me a few times before. The reason why I ask her to go there is because my uncle is my closest relative to me and she would be able to get help from him as I know that this time round if I am arrested, I may go into Prison for a very long time. My uncle's name is "Saiful" but I do not know his full name. As I was running away, I called my wife and I told her to take care.

9 I brought along with me the two pounds of Heroin together with a black colour pouch and my sling bag. I ran towards Blk 707 Woodlands and went up to the third floor. I changed into a shirt that I took from outside a house which was left to dry and I threw away the original shirt which I was wearing also on the same floor. I then saw the CNB officers coming towards me and I threw down the plastic bag containing the two pounds of Heroin and the black pouch from the third floor. I was then placed under arrest by the CNB officers shortly after.

On 30 May he added that:

11 After I was arrested, I was brought down to the first floor of the block. The officers asked me whether I threw down the plastic bag and I admitted that I had thrown the plastic down from the third floor. An officer then recorded a statement from me in a notebook and I told that the plastic bag and the stuff inside belong to me and I also admitted that the contents are Heroin. I told him that there are four packets inside the plastic bag. I was escorted to a carpark where my car was parked. The officers conducted a search on the car but nothing else was found. Next I was escorted to Woodlands Checkpoint where my car was checked by the Police dog and was also subjected to x-ray scan as informed by the officers.

...

14 I am shown a photograph showing a white plastic bag with marking A1 and a purple plastic bag with marking A1A. The white plastic bag belongs to me and I had placed it on the floorboard in front of me when I drove the car. The purple plastic bag with marking A1A was the one that "Ah Meng" passed to me. This white plastic bag contained a black pouch in it as well. I am shown a black and red colour pouch with marking A2 and I can recognise it as the pouch that I had put inside the white plastic bag with marking A1. After I took over the purple plastic bag from "Ah Meng", I put it inside the white plastic bag together with the black and red colour pouch.

15 After taking over the purple plastic bag from "Ah Meng", I did not open up the bag to take a look at the contents inside. I felt the contents physically and could tell that there were four packets inside and I put it straight into the white plastic bag. I am shown a photograph showing four newspaper bundles with markings A1A1A, A1A1B, A1A1C and A1A1D. I can identify them as the four packets that were taken out from the purple plastic bag during the photography. These four packets are Heroin which I had ordered from "Makel" I had ordered from "Makel" two "stones" of Heroin, which stands for two pounds of Heroin. I am shown a photograph with four packets of brown granular substances with markings A1A1A1, A1A1B1, A1A1C1 and A1A1D1. The newspapers were unwrapped in my presence and these are the four packets of Heroin and were wrapped beneath the newspapers. I did not write the alphabet "C" on them. I do not know what does it stands for.

16 I am shown a photo of a red packet with marking A2A and three packets of brown granular substances with marking A2A1. These were found from the black and red colour pouch with marking A2. The three packets of brown granular substances are Heroin which I had repacked into packets of 7.8 grams each. They are meant for my own consumption but if close friends ask from me I would sell at about \$100 per packet. If nobody ask from me, I will smoke them on my own.

11 The 1st Accused's use of the terms 'packets' and 'pounds' needs to be clarified. He referred to the four half-pound packets wrapped in newspaper recovered from the white plastic bag as 'packets'. These four half-pound packets made up the two pounds of heroin that he had ordered. He would divide a half-pound packet into smaller packets for the purpose of consumption and sale. His use of the terms "packets" and "pounds" were not references to measurements of weight, but were the units by which the heroin was ordered and sold. The 1st Accused confirmed that a small packet weighed about 7.5 grams [\[note: 11\]](#) and his counsel and the prosecution put the weight of a small packet at 7.5 grams in their submissions as well. [\[note: 12\]](#) For the avoidance of confusion, the half-pound newspaper-wrapped packets will be referred to as 'packets' and the smaller 7.5 grams packets will be referred to as 'small packets'.

The 1st Accused's defence

12 The 1st Accused admitted that he had been buying heroin from a Malaysian Indian known to him as 'Makel' who resided in Johore, and that the heroin would be delivered to him in Singapore by the 2nd Accused. He agreed with the prosecution that between 9 May 2012 and 24 May 2012, the 2nd Accused had made four deliveries of heroin to him [\[note: 13\]](#) and that the deliveries were for two, three, four and four packets successively. [\[note: 14\]](#)

13 He admitted that he had trafficked diamorphine, but not in the amount stated in the charge. This was because one of the four packets he received was meant for his personal consumption. On that basis, his defence was that the 5.73 grams weight of the heaviest packet (*ie*, packet 4) should be deducted from the total weight of 19.84 grams of the four packets, leaving 14.11 grams. The effect of the reduction was that he would not face the death penalty on conviction.

14 Unfortunately, the 1st Accused was inconsistent about the amount of heroin he consumed. In his investigation statement of 31 May 2012, he said "I smoke about one packet of Heroin each day" [\[note: 15\]](#) and when he was interviewed by psychiatrist Dr Winslow Rasaiah Munidasa on 3 February 2014, he told Dr Winslow the same thing. However, when he was interviewed by psychiatrist Dr Ung Eng Khean on 20 January 2015 and 5 March 2015 in the presence of his counsel, he stated that he consumed "between three quarters to two packet [*sic*] of heroin daily (average of one packet a day)". [\[note: 16\]](#) During the trial, he said 30 small packets would last him for "1 week plus to 2 weeks". [\[note: 17\]](#) That worked out to 4.3 packets a day for a one-week period and 2.1 packets a day for a two-week period.

15 Similarly, the 1st Accused's account as to the amount of heroin that he would keep for his own consumption was inconsistent. In his investigation statement of 31 May 2012, he stated that:

28 ... Normally, I will keep ten packets of Heroin with me and I will not sell them. The reason is because there may be times whereby Heroin supply does not come into Singapore from my supplier. I would need these ten packets for my own consumption.

29 For those two pounds of Heroin that I am arrested with, I already have orders placed with me for one and a half pound of heroin. The remaining half pound is for my own consumption which I will pack into smaller packs and keep with me. ...

The 1st Accused confirmed during the trial that half a pound of heroin could be divided into 30 small packets. [\[note: 18\]](#) The 1st Accused also clarified that that was the first time he had intended to keep 30 small packets for his own consumption, although he had kept 20 small packets previously. [\[note: 19\]](#)

16 However, in the psychiatric report prepared by Dr Winslow, it was recorded that 1st Accused had "always kept about ~5 packets as a reserve for his own consumption which he carried with him all the time". [\[note: 20\]](#) This was not denied by the 1st Accused.

17 The prosecution did not dispute that the 1st Accused consumed heroin, and accepted that he would have kept some of it for his own consumption, but it disputed his claim that he would have kept one of the four packets for his own consumption. It argued that he had not proved that he had the financial means to keep 30 small packets for himself, that he had the physical means to store 30 small packets, that it was his practice to keep 30 small packets for himself, or that there was a need for him to keep 30 small packets. [\[note: 21\]](#) It took the position that he would have kept no more than ten small packets, or one-third of a packet, for his own consumption. By its calculation, ten small packets would contain 1.91 grams of diamorphine (on the basis that a packet contained 5.73 grams of diamorphine), and deducting that from the total of 19.84 grams, he was trafficking 17.93 grams of diamorphine. [\[note: 22\]](#) In those circumstances, the prosecution ought to amend the charge to reflect that, but that was not done.

Review of the 1st Accused's defence

18 The essential question before the court was how much of the 19.84 grams of diamorphine which the 1st Accused collected from the 2nd Accused was intended to be kept for his own consumption?

19 It is evident that the 1st Accused was unable to maintain a consistent position (see above at [14]–[16]). He told Dr Winslow that he had always kept about five small packets for his own consumption. He stated in his investigation statement that he normally kept ten small packets for his consumption, but with the four packets he was arrested for, he would have re-packed and kept 30 small packets for himself, something he had not done before. It should be borne in mind that he was referring to heroin to be kept *for his personal consumption*. There was no suggestion that his heroin appetite was given to sharp fluctuations. If his practice was to always keep five packets for that purpose (as he told Dr Winslow) or that he normally kept 10 packets (based on his investigation statement of 31 May), there would be no cause for him to keep 30 small packets out of the four packets he was arrested for unless he intended to go on an unbridled binge. By his own admission, his sole source of income was from the re-sale of the heroin. Why would he disappoint his customers and deprive himself of the profits by holding on to so much stock? It is also pertinent that the 2nd Accused had given evidence that in the third delivery, about one week before 24 May 2012, he had delivered four packets to the 1st Accused. This was not disputed by the 1st Accused. However, on 24 May 2012, the 1st Accused only had three small packets left in his sling bag where he stored his heroin reserve. [\[note: 23\]](#) There was no reason for him to keep so much more from the fourth delivery as compared to the third delivery. His professed anxiety over getting supplies was unfounded – the evidence was that he had regular and liberal supplies from Makel from whom he received four deliveries of a total of 13 packets between 9 or 10 May 2012 and 24 May 2012. I found his claim that he intended to keep 30 small packets unworthy of belief, and that he was more likely to keep five or

ten small packets. I was prepared to give him the benefit and accept the higher figure of ten small packets.

20 I found that the prosecution and the 1st Accused were incorrect in the way they worked out the amount of diamorphine that was intended for trafficking (*ie*, after deducting the diamorphine reserved for his own use). Both of them used a packet as a unit for the calculation, and they took the weight of a packet to be 5.73 grams – the weight of the heaviest packet. However, there was no basis for that as the 1st Accused had not seen the four packets when he was arrested, and was never in a position to choose the one to keep. Since no selection had been made, there was no reason to use the weight of the heaviest packet in the computation. There was another basis to work out the figure without resorting to arbitrariness. There was agreement on the weight of one small packet, and the total weight of the four packets was known. The question was simply whether ten or 30 small packets were intended to be kept for personal use. Since that had been determined to be ten small packets, the amount of diamorphine he was trafficking could be derived by deducting the diamorphine content of ten small packets (which can be worked out) from the diamorphine content of the four packages (which is known).

21 I amended the charge to take out the ten small packets intended for self-consumption. The quantity of diamorphine which he trafficked was calculated as follows –

- (a) Total weight of drugs in the 4 packets received – 915.6 grams
- (b) Total weight of drugs in 10 small packets – (10 x 7.5 grams) – 75 grams
- (c) Weight of drugs for trafficking – (a - b) – 840.6 grams
- (d) Diamorphine content in 915.6 gm of drugs – 19.84 grams
- (e) Diamorphine content in 840.6 grams of drugs --

(c) ÷ (a) x (d), or

$$840.6 \text{ grams} \div 915.6 \text{ grams} \times 19.84 \text{ grams} = 18.21 \text{ grams}$$

The amended charge read:

You, Muhammed bin Abdullah on the 24th day of May 2012 at about 7.15 pm, at the third floor corridor near the lift lobby of Block 707 Woodlands Drive 40, Singapore, did traffic in a Class A controlled drug listed in the Misuse of Drugs Act (Cap. 185, 2008 Rev Ed) ("MDA"), to wit, by having in your possession for the purpose of trafficking 840.6 grams of granular/powdery substance containing not less than 18.21 grams of diamorphine, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 33(1) of the MDA, and further, upon your conviction under section 5(1)(a) read with section 5(2) of the MDA, you may alternatively be liable to be punished under section 33B of the MDA.

I note that there was a typographical error in the amended charge – "Woodlands Drive 40" should read "Woodlands Drive 4".

22 The 1st Accused claimed trial to the amended charged. The 1st Accused, the prosecutor and the 2nd Accused declined to recall any witness for further examination.

23 After calling for written submissions and giving them careful consideration, I found the 1st Accused guilty on the amended charge and convicted him. The prosecutor submitted that he was not a courier whose involvement was restricted to the activities set out in s 33B(2)(a) of the MDA, and when his counsel accepted that, I imposed the death penalty on the 1st Accused.

The 2nd Accused's statements

24 The 2nd Accused made a cautioned statement on 28 May 2012 in response to a charge of trafficking in 914.78 grams of diamorphine on 24 May 2012. The statement read:

I did not know that there were so much things. I knew that they were drugs but I did not know that it was death penalty. If I knew it was death penalty, I would not have done it.

25 He also made investigation statements, the first of which was recorded on 29 May 2012. In that statement he revealed that he resided in Johor Bahru and commuted to Singapore daily on his motorcycle for work in installing aluminium window grills, and that he consumed heroin. I set out the relevant extracts from his statement:

5 I have been getting my Heroin supply from one "Ah Zhor" in Johor Bahru for the past four years plus. He is my main Heroin supplier. I would only get from other suppliers if "Ah Zhor" runs out of stock. "Ah Zhor" also sells Heroin at a cheaper price. For example, "Ah Zhor" sells a packet of about 6.5 grams of Heroin at RM\$240 while other suppliers would charge about RM\$260 or RM\$270 for the same amount of Heroin. "Ah Zhor" is an Indian man who is around my age. I do not know where he stays. Usually "Ah Zhor" does not come personally to sell drugs to me. His runners would come to sell the drugs to me. I only seen "Ah Zhor" face-to-face more often in the past and I rarely see him face to face these days. I also know his runners well as I am their regular customer.

6 About two weeks ago, I asked one of Ah Zhor's runners whether there is any drug-related job that I can do in Singapore. With this, I am referring to whether I can do the job of delivering drugs for them to people in Singapore. I think that it is risky for me to smuggle drugs into Singapore due to the immigration checks. I know that "Ah Zhor" does send drugs Singapore and I am thinking whether I can earn extra money if I can help them to deliver drugs inland in Singapore, which I think is less risky. I needed extra money because I am heavily addicted to Heroin and I needed money for my Heroin supply. I was also thinking that I can save up a sum of money which would allow me to take a long leave and go back Malaysia to quit the drug habit. The S\$2000 income I earn every month is not enough to cover my drug expenses. Ah Zhor's runner then told me that he will ask Ah Zhor and get back to me. A few days later, this runner gave me a call and asked me the typical timings that I arrive in Singapore. I then told him that I would usually report to my Boss at Blk 429 Woodlands at about 6.30am every morning. The runner then told me that if there is a drug delivery job to do, "Ah Zhor" will call me.

7 A few days later at night, "Ah Zhor" called me when I was back in Johor Bahru to tell me that there is drug delivery job for me to do. He asked me where would be convenient for me to meet the person who would pass me the drugs. I told him at the car park around Blk 428 and 429 Woodlands St 41 as I need to report to my Boss there for work. He told me ok and that on the following day, someone would meet me at the car park near Blk 428 and 429 Woodlands St 41 to pass drugs to me. I told him to arrange the meet up at 6.00am. "Ah Zhor" knows my motorbike number as he has seen it before. The following day when I reach the car park, there was a male Indian there and I took over a plastic bag containing two bundles of Heroin wrapped in newspaper.

In a further statement recorded on 30 May 2012 he added:

9 After I took over the two bundles of Heroin inside the plastic bag from the Indian man, I kept the plastic bag in the basket (Recorder's note: The accused refers to a storage compartment at the front of his bike) at the front of my motorbike which was parked at the carpark at Blk 428 and 429 Woodlands. I knew that the bundles contain Heroin because "Ah Zhor" had told me so. I then left for work with my Boss. Around evening time after I knock off from work, I made arrangement with the person whom I am supposed to hand over the Heroin to. "Ah Zhor" has already informed me previously the number of this person so I just called him directly. I arranged to meet him at the 4th storey of the muti-storey car park and to pass the Heroin to him. The person who came is a male Malay. I do not know his name, but he address me as "Ah Meng" as he had asked for my name earlier in the phone conversation. That was the first time I pass drugs to him. This male Malay is the same person who was arrested together with me. I am shown a photo of a male Malay (Recorder's note: The accused is shown a photo of one Muhammad Bin Abdullah, NRIC: [xxx]) and I can positively identify him as the person whom I have handed over Heroin to.

10. Other than the first time, I also passed Heroin to this male Malay on two other occasions. I remember for the first time I passed heroin to this male Malay, it was two bundles of Heroin. For the second time, it was three bundles of Heroin and for the third time, it was four bundles of Heroin. For the fourth time, which is also the time when I am arrested, there were also four bundles of Heroin. I remember that for the second, third and fourth time that I met this male Malay, I had arranged it at the Blk 315 Woodlands carpark. "Ah Zhor" and I agreed on a payment of RM\$500 per bundle of Heroin. "Ah Zhor" did not tell me the weight of each bundle of Heroin. "Ah Zhor" also told me that he would not let me do something that would let me face the death penalty. "Ah Zhor" mentioned that at most I would go into prison for about 6 or 7 years if I am caught. After I handed over the Heroin to the male Malay, I would also collect money from him for the payment of the Heroin which I would go back to Johor Bahru to give to "Ah Zhor". If I could not get "Ah Zhor" I would contact his runners and hand over the money to them instead. It is also during the time when I meet up with "Ah Zhor" or his runners that I would be paid for the job done.

11 On last Wednesday (23.05.2012) around 8pm plus, I was at my room in Johor Bahru when "Ah Zhor" called. "Ah Zhor" told me that there is a job for me to do the following day. "Ah Zhor" told me that there will be four bundles of Heroin and I would be paid RM\$2000. The person to hand it over to is also the same male Malay. "Ah Zhor" also told me to collect S\$9800 from the male Malay as payment for the Heroin. The time and place to collect the Heroin is the same, which is at the carpark of Blk 428 and 429 Woodlands at about 6am. On that morning, I left Johor Bahru at around 4 plus in the morning and after clearing the immigration, I went to the coffeeshop at Blk 305 Woodlands to smoke Heroin in the toilet first. After I was done with smoking Heroin, I headed to the multi-storey car park near Blk 428 Woodlands and reached there at about 6am. A male Indian handed over to me a plastic bag which contained the 4 bundles of Heroin. I did not open up the plastic bag to check the contents but I knew that there are four bundles inside based on physically feeling the contents in the plastic bag. I then kept the plastic bag containing the four bundles of Heroin at the basket in front of my motorbike. I then reported to my Boss and left for work as usual. I knocked off on that day at about 4pm. I then made a call to the male Malay and told him that I had knocked off from work and I could pass him the Heroin. The place to meet is the same at Blk 315 Woodlands. The male Malay told me that he may be late and he would call me when he arrived. Since I have some time left before meeting with the male Malay, I went to Kranji to look for a fellow Malaysian friend who works at a factory but he

had already left and I just hanged around to wait for the call from the male Malay.

12 At around 6pm, the male Malay called and told me that he has already reached the car park at Blk 315 Woodlands. I told him to wait for me as I needed some time to get to there from Kranji. The male Malay drives a car but I cannot remember the exact model of the car now. I looked around the carpark and managed to identify the male Malay who was inside the car. I went into his car and sat at the back passenger seat and handed over the plastic bag containing the four bundles of Heroin to him. I remembered that the male Malay drove one round around the car park. He also handed me S\$9800 as payment for the four bundles of Heroin. While in the car, I counted the money to ensure that the total amount is correct. I remember that there was also a female Malay who was seated at the front passenger seat at that time. She was playing with a laptop. She did not talk at all and I do not know who she is. She could be the wife or girlfriend of the male Malay.

13 After ensuring that the sum of \$9800 is correct. I got out of the car and walked back towards my motorbike which was parked nearby. The male Malay also left in his car. Shortly after, a few men came towards me and handcuffed me. At that moment I realized that I had been arrested by law enforcement officers. They conducted a search on me and found the \$9800 in my jean pocket and I also told them I have one straw of Heroin in my wallet. I told them that the straw of Heroin is meant for me to smoke on my own. One of the officers then recorded a statement from me. I was then escorted to Woodlands Checkpoint where the Police brought a dog to check my motorbike. A vehicle also came in to check my motorbike and I was told that it was scanning of my motorbike.

In his statement of 31 May 2012, he explained how the drugs were kept and transported:

18 After I took over the purple plastic bag which contained the four bundles of Heroin from the Indian man, I placed it in the basket that is attached to the front of my motorbike. I then used a rain coat to cover the purple plastic bag to conceal it. I then put my motorbike helmet on top of the rain coat. The basket has no cover and as such it cannot be locked. I am not afraid that the Heroin would be stolen or go missing because nobody knows about it and I do not think anyone would take the items away. On previous occasions, I have forgotten to take out the motorbike key and left it on the bike after parking it and left for work. I had not met with any issues of theft of my motorbike or missing items from the motorbike while I am in Singapore. On previous three occasions, I also put the Heroin in the basket in front of my motorbike as well.

19 To ensure that the contents in the plastic bag are still intact, I would check by opening up the plastic bag to see before I hand it over to the recipient. For this time round, I opened up the purple plastic bag to check the contents inside it once I reached back at my motorbike which was parked at deck 4A of the multi-storey carpark at Blk 428 and 429 Woodlands. I opened up the plastic bag and saw that there were still four newspaper bundles inside and I knew that all the four bundles of Heroin were still there.

The 2nd Accused's defence

26 The 2nd Accused did not deny that he was trafficking diamorphine. His defence to the charge against him was that he did not know that the quantity of diamorphine he trafficked would attract the death penalty, and he did not intend to traffic that quantity of diamorphine. [\[note: 24\]](#)

27 When he made his defence during the trial, he admitted that he had not been truthful about the manner in which he delivered heroin to the 1st Accused. He admitted that the practice was that he

would receive the packets of heroin in Johore and conceal them in his motorcycle. He would then bring the heroin packets into Singapore and deliver them to the 1st Accused. He had lied that the packets were delivered to him in Woodlands because after he was arrested, he was told that he could face the death penalty. He added that sometime in late April 2012, two weeks before his arrest, he had asked 'Ah Zhor' about bringing drugs into Singapore. [\[note: 25\]](#) Subsequently they met, and Ah Zhor handed to him two bundles and told him that he would be paid RM\$500 for delivering each packet. Ah Zhor also told him that the penalty for delivering them would not be the death penalty, but eight to ten years imprisonment. [\[note: 26\]](#) He trusted Ah Zhor and made the first delivery of two packets on 9 or 10 May 2012. He did not know at that time whether trafficking was punishable by death in Singapore [\[note: 27\]](#) (he only came to know about it on 28 May 2012 when his cautioned statement was recorded).

28 The second delivery involved three packets which were handed to him by Ah Zhor's runner. The second delivery took place four to five days after the first delivery. Four packets were delivered on the third delivery about a week before the fourth delivery on 24 May 2012 when he was arrested. [\[note: 28\]](#) All the deliveries were made to the 1st Accused. The packets delivered in the first three deliveries were similar to the packets seized from the fourth delivery. He did not examine or weigh any of the packets he delivered. Under cross-examination he agreed with the prosecutor that there was no real agreement between him and Ah Zhor that he would only be required to deliver amounts of heroin which did not attract the death penalty. [\[note: 29\]](#) With respect to the fourth delivery, Ah Zhor called him on 23 May 2012 and told him that the delivery was to be made to the recipient of the third delivery. The four packets were handed to him in the purple plastic bag and he provided the white plastic bag that was seized.

29 During his examination-in-chief, his counsel referred him to para 10 of his investigation statement of 30 May 2012 where it stated that Ah Zhor told him that at most he would go to prison for six or seven years if he was caught, rather than the eight to ten years he had mentioned in court. He explained that there was this discrepancy because he had given the wrong information during the recording of the statement. [\[note: 30\]](#) However, when it was pointed out that it had been put to the recording officer ASP Eugene Tan that the 2nd Accused had actually said eight to ten years imprisonment, [\[note: 31\]](#) the 2nd Accused admitted that he could not recall whether he had given the wrong information or he was misunderstood. [\[note: 32\]](#)

Review of the 2nd Accused's defence

30 The 2nd Accused's twofold defence was detailed in his closing submissions at para 10:

10.1 He did not know that the quantity of the diamorphine which he had in fact trafficked would attract the death penalty in Singapore. If he had known, he would not have done so and therefore could not have intended to traffic the quantity of diamorphine that he was charged with

10.2 Further and/or in the alternative, even if the Court finds that [he] knew that the penalty for trafficking morphine above a certain amount is death, [he] had only intended to traffic a non-capital amount of diamorphine (even though he did not know the exact weight that would attract capital punishment). Hence, he did not know, or could not have reasonably suspected, any excess diamorphine which he was in fact carrying at the time of his arrest.

31 The 2nd Accused had made it very clear that he did not know about the death penalty when he

delivered the heroin to the 1st Accused. His counsel had asked him: [\[note: 33\]](#)

Q ...You were aware at that time there is a punishment of death penalty in Singapore for drug trafficking and trafficking in heroin without authorisation. Correct?

A I did not know.

Counsel appeared to be taken by surprise and asked again:

Q No, Mr Yu, listen to my question carefully. Did know [*sic*] there was a punishment of death penalty in Singapore in 2012? That do you know of this in 2012?

A I did not know.

Counsel then asked a third time:

Q You did not know in Singapore that if you are caught for drug trafficking, you can actually in some situation be in s---be liable to suffer a death penalty?

A I did not know.

The prosecutor also went through this with him in cross-examination: [\[note: 34\]](#)

Q Okay, so up to the 24th of May 2012, Mr Yu, you confirm that you did not know importing or trafficking in heroin could carry the death penalty?

A Yes.

32 He made his position clear beyond doubt that he did not know about the death penalty until he was informed about it on 28 May 2012 when his cautioned statement was recorded. Ah Zhor's assurance, that if he was caught he would not face the death penalty but would be imprisoned, must be taken in the context that it was made in relation to the first delivery of two packets on 9 or 10 May 2012. The 2nd Accused did not ask Ah Zhor if the assurance applied to deliveries of greater numbers of packets.

33 The conclusion to be drawn was that when he delivered the four packets on 24 May 2012, he simply did not know that drug trafficking is punishable with death. He was not mistaken or misled into thinking that the death penalty did not apply – he simply did not know about the death penalty. Since he did not know about the death penalty, the quantity of diamorphine would be of no significance to him because he believed that he would not be punished with death regardless of the amount of diamorphine he delivered. That disposed of the first limb of his defence.

34 The alternate line of defence was raised against the contingency that the court found that the 2nd Accused knew about the death penalty. On the evidence referred to at [31] above, there was no basis for finding that he only intended to traffic a non-capital amount of diamorphine. The simple truth was that he did not say that he knew about the death penalty and thought that it would not apply. In all his evidence, he had not said that he was told by Ah Zhor that delivering four packets would not set off the death penalty. He had not done anything to ensure that he was 'safe' with four packets. This militated against his argument that his intention was to only traffic an amount of drugs which fell below the critical threshold.

35 In the circumstances, I found the 2nd Accused guilty on the charge he faced and convicted him thereon. On the issue of sentencing, the prosecution accepted that he was a courier, but the Public Prosecutor was not issuing a certificate under s 33B(2)(b) of the MDA because he had not rendered substantive assistance to the CNB. His counsel accepted that decision. In the circumstances, I imposed the death penalty on the 2nd Accused.

[\[note: 1\]](#) See photograph PH35-37

[\[note: 2\]](#) See photograph PH1-2

[\[note: 3\]](#) See photograph PH2-3

[\[note: 4\]](#) See photograph PH3-4

[\[note: 5\]](#) See photograph PH5

[\[note: 6\]](#) See photograph PH6-8

[\[note: 7\]](#) Exhibit P6

[\[note: 8\]](#) Exhibit P 60

[\[note: 9\]](#) Exhibit P 61

[\[note: 10\]](#) B1 refers to the 1st Accused

[\[note: 11\]](#) NE 21 April 2015 p 93 ll 17-19

[\[note: 12\]](#) 1st Accused's closing submissions paras 64 and 70

[\[note: 13\]](#) NE 22 April 2015 p41 ll 30 to p42 ll 1.

[\[note: 14\]](#) NE 22 April 2015 p16 ll 2-9

[\[note: 15\]](#) P72 investigation statement of the 1st Accused dated 31 May 2012 para28

[\[note: 16\]](#) D1 Specialist Report of Dr Ung Eng Khean para 12

[\[note: 17\]](#) NE 23 April 2015 p 15 ll 6-13

[\[note: 18\]](#) NE 23 April 2015 p 15 ll 6-8

[\[note: 19\]](#) NE 23 April 2015 p 11 ll12-18

[\[note: 20\]](#) P 49 Psychiatric report of Dr M. Winslow & Dr Julia Lam para 7

[\[note: 21\]](#) Prosecution's Reply to the Defence submissions para 3

[\[note: 22\]](#) *Ibid*, para 5

[\[note: 23\]](#) NE 23 April 2015 p 12 II 14-15

[\[note: 24\]](#) Closing Submissions of the 2nd Accused para 10

[\[note: 25\]](#) NE 23 April 2015 p 40 II 14-22

[\[note: 26\]](#) NE 23 April 2015 p43 II 18-19

[\[note: 27\]](#) NE 23 April 2015 p63 II 12-21

[\[note: 28\]](#) NE 24 April 2015 p3 II 27-30

[\[note: 29\]](#) NE 24 April 2015 p81 II 9-11 and p82 II 11-14

[\[note: 30\]](#) NE 24 April 2015 p23 II 12-20

[\[note: 31\]](#) NE 20 April 2015 p98 II 24-28

[\[note: 32\]](#) NE 24 April 2015 p51 II 1-2

[\[note: 33\]](#) NE 23 April 2015 p 63 II 12-21

[\[note: 34\]](#) NE 24 April 2015 p 76 II 5-7

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