

Public Prosecutor v Yogaras Poongavanam
[2015] SGHC 193

Case Number : Criminal Case No 33 of 2015
Decision Date : 24 July 2015
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Lin Yinbing and Lee Pei Rong Rachel (Attorney-General's Chambers) for the prosecution; Thrumurgan s/o Ramapiram, A Sangeetha (Trident Law Corporation), and Mahadevan Lukshumayeh (S T Chelvan & Company) for the accused.
Parties : Public Prosecutor — Yogaras Poongavanam

Criminal Law – Statutory offences – Misuse of Drugs Act

24 July 2015

Tay Yong Kwang J:

1 The accused, born on 23 May 1989, was tried and convicted on the following charge: [\[note: 1\]](#)

That you, **YOGARAS POONGAVANAM**,

on 17 April 2012, at or about 4.52p.m., at Motorcycle Arrival Booth 41 at Woodlands Checkpoint, Singapore ("the said place"), in a motorcycle bearing registration number JKP 1996, did import into the said place a controlled drug listed in Class A of the First Schedule of the Misuse of Drugs Act, to wit, three (3) packets containing 908.8 grams of granular/powdery substance, which was analyzed and found to contain **not less than 36.27 grams of Diamorphine**, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under Section 7 and punishable under Section 33 of the said Act, and further upon your conviction under Section 7 of the said Act, you may alternatively be liable to be punished under Section 33B of the said Act.

2 At the start of the trial, the accused said he wanted to plead guilty to the charge. As is the practice, I rejected his plea as the offence is punishable with death. The Prosecution then proceeded to prove its case.

3 Nevertheless, the Prosecution and the Defence had already agreed on all the material facts. The Prosecution tendered a statement of agreed facts [\[note: 2\]](#) ("SOAF") which was to be read in conjunction with an agreed bundle. [\[note: 3\]](#) The agreed bundle, which included the accused's statements and the forensic analysis reports, was thus admitted as evidence by consent.

4 The accused confirmed that he fully understood the SOAF and had no objection to anything in it.

The Prosecution's case

The Statement of Agreed Facts

5 The entire SOAF is reproduced as follows:

The Prosecution and the Defence hereby agree that:

1. The accused is Yogaras Poongavanam, FIN: XXXXXXXXXX, male/26 years old (date of birth: 23 May 1989). He is a Malaysian citizen employed as a cleaner at Esplanade Theatres, Singapore. At the material time, he resided at Johor Bahru, Malaysia.

A) Circumstances leading to the accused's arrest

2. On 17 April 2012, at about 4.52p.m., the accused rode into Woodlands Checkpoint, Motorcycle Arrival Booth 41, alone on a Malaysian registered motorcycle bearing registration number JKP 1996 ("the said motorcycle"), from Malaysia. The accused is the registered owner of the said motorcycle.

3. The accused was stopped by officers from the Immigration and Checkpoints Authority ("ICA") and subsequently referred to officers from the Central Narcotics Bureau ("CNB") for checks. Officers from the CNB escorted the accused and the said motorcycle to Woodlands Arrival Car Secondary Team office carpark lot A41, where a search was conducted on the said motorcycle.

4. The officers from the CNB conducted a check on the front fender area of the said motorcycle, where they noticed that the screws on the front fender were not identical. As such, they proceeded to open up the front fender area using a screwdriver issued by CNB, in the presence of the accused.

5. In the presence of the accused, officers from the CNB found two (2) black bundles concealed in the front fender area of the said motorcycle. The two (2) black bundles were seized and marked as "A1" and "A2" respectively.

6. The exhibit marked "A1" was unwrapped and found to contain two (2) packets of granular/powdery substance. The two (2) packets of granular powdery substance were marked "A1A" and "A1B" respectively. The exhibit marked "A2" was unwrapped and found to contain one (1) packet of granular/powdery substance. The packet of granular/powdery substance was marked as "A2A". The accused was subsequently placed under arrest.

B) Investigations conducted after the accused's arrest

7. On 17 April 2012, at or about 6.40p.m., officers from the CNB proceeded to list down the personal effects seized from the accused in a Receipt for Articles Seized from a Person. The accused signed on the receipt to acknowledge that the items were taken over from him.

8. On 17 April 2012, at or about 8.17 p.m., officers from the Forensic Management Branch ("FMB") of the Criminal Investigation Department took photographs of the scene at Woodlands Checkpoint, the said motorcycle and the case exhibits.

9. In addition, officers from the FMB produced a sketch plan of a scene at Woodlands Checkpoint Immigration car/motorcycle clearance building (arrival), and of a scene at Woodlands Checkpoint, Block B Customs car/motorcycle clearance building (arrival).

10. On 17 April 2012, at or about 9.05p.m., officers from the CNB seized a screwdriver from the said motorcycle, which was subsequently marked as "B1A".

11. On 17 April 2012, at or about 10.30 p.m., officers from the CNB escorted the accused to his workplace at Esplanade Theatres, Singapore to conduct a search.

12. On 18 April 2012, at or about 12.36 a.m., the accused was examined by Dr Koh Juexi Casey of Alexandra Hospital for his pre-statement medical examination. The accused was discharged to the police stable. On 18 April 2012, at or about 5.20 a.m., the accused was again examined by Dr Koh Juexi Casey at the Alexandra Hospital for his post-statement medical examination. The accused had no complaints of pain or discomfort and was discharged to the police stable.

13. Two (2) medical reports bearing Report Nos. 2014-3818-0 and 2013-1389-0, dated on 27 October 2014 and 19 April 2013 respectively were prepared in respect of the accused's abovementioned medical examinations.

C) Forensic Analysis

14. On 18 April 2012, the exhibits marked "A1A", "A1B" and "A2A" were handed over to the Health Sciences Authority ("HSA") for analysis.

15. Upon analysis of the exhibits marked "A1A", "A1B" and "A2A", on 12 November 2012, Lim Hui Jia Stephanie of the Illicit Drugs Laboratory of the HSA issued the following (3) certificates under Section 16 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):

- a. HSA certificate bearing Lab No: ID-1232-00781-001 in respect of the exhibit marked "A1A";
- b. HSA certificate bearing Lab No: ID-1232-00781-002 in respect of the exhibit marked "A1B"; and
- c. HSA certificate bearing Lab No: ID-1232-00781-003 in respect of the exhibit marked "A2A".

16. The results of the analysis are as follows:

Exhibit	HSA Certificate No.:	Gross weight	Result
A1A	Lab No: ID-1232-00781-001	228.2g of granular/powdery substance	Not less than 8.66g of diamorphine
A1B	Lab No: ID-1232-00781-002	224.3g of granular/powdery substance	Not less than 9.46g of diamorphine
A2A	Lab No: ID-1232-00781-003	456.3g of granular/powdery substance	Not less than 18.15g of diamorphine

17. Collectively, the exhibits marked "A1A", "A1B" and "A2A" containing 908.9g of granular/powdery substance were found to contain not less than 36.27 grams of diamorphine. Diamorphine is a controlled drug specified in Class A of the First Schedule of the Misuse of Drugs Act.

18. The accused is not authorized under the MDA or the Regulations made thereunder to import

into Singapore the said drugs.

19. On 25 April 2012, at or about 12.30 p.m., the accused voluntarily provided a blood sample for the purpose of forensic DNA analysis. The accused's blood sample was subsequently sent to HSA for DNA analysis. Upon analysis of the accused's blood sample, on 23 August 2012, Tang Wai Man of the DNA Database Laboratory of the HSA issued one (1) certificate under Section 263 of the Criminal Procedure Code 2010 (Act 15 of 2010) ("CPC"), bearing Lab No: DB-2012-04831. The accused's DNA profile is labelled as "S123875".

20. On 23 April 2012, at about 2.41 p.m., the front fender of the said motorcycle, the screw driver marked "B1A", the external plastic wrapping of the two black bundles "A1" and "A2", and swabs taken from the exhibits marked "A1A", "A1B" and "A2A", were sent to HSA for DNA analysis. Upon analysis of these case exhibits, on 1 October 2012, Wong Hang Yee of the DNA Profiling Laboratory of the HSA issued one (1) certificate under Section 263 of the CPC, bearing Lab No: DN-1243-00713.

21. The DNA profile obtained from the exterior and tapes and plastic sheet of exhibit "A1" and also the exterior and interior of exhibit "A2" was found to a mixed DNA profile. The DNA profile belonging to the accused, S123875, can be included as a contributor of the mixed DNA profile.

22. On 30 April 2012, at about 11.25 a.m., 4 screws and 4 washers obtained from the front fender area of the said motorcycle which were collectively marked as "A-SCREWS", and 4 screws and 3 washers obtained from the said motorcycle which were collectively marked as "SCREWS", were sent to HSA for analysis. On 16 May 2012, the screwdriver marked "B1A" was transferred from the DNA Profiling Laboratory to the Forensic Chemistry and Physics Laboratory. Upon analysis of the abovementioned case exhibits, on 27 July 2012, Dr Alaric Koh Chin Wai of the Forensic Chemistry and Physics Laboratory of the HSA issued one (1) certificate, bearing Lab No: FC-1241-00081-A.

23. The certified true copy of the ICA record of the entry and exit movement of the accused from 1 April 2012 to 30 April 2012 was obtained.

24. The integrity and custody of all the case exhibits were not compromised in any way at any point in time.

D) Statements recorded from the accused

25. During the course of investigation, the following statements were voluntarily recorded from the accused without threat, inducement or promise:

(a) First investigation statement of the accused recorded by Assistant Superintendent of Police Tan Chor Huang Janet under Section 22 of the CPC on 20 April 2012 from 11.15 a.m. to 2.32 p.m.;

(b) Second investigation statement of the accused recorded by Assistant Superintendent of Police Tan Chor Huang Janet under Section 22 of the CPC on 21 April 2012 from 2.30 p.m. to 5.10 p.m.;

(c) Third investigation statement of the accused recorded by Assistant Superintendent of Police Tan Chor Huang Janet under Section 22 of the CPC on 22 April 2012 from 1.36 p.m. to 3.37 p.m.; and

(d) Fourth investigation statement of the accused recorded by Assistant Superintendent of Police Tan Chor Huang Janet under Section 22 of the CPC on 23 April 2012 from 4.34 p.m. to 7.21 p.m.

26. There were no threats, inducements or promises which were issued by any police officers, CNB officers, or auxiliary police officers involved in the investigation of the accused. The contents of all statements were accurately recorded from the accused.

The above facts are not disputed and are agreed upon between the Prosecution and Defence pursuant to Section 267(1) of the Criminal Procedure Code (Cap. 68, 2012 Rev Ed).

[emphasis in original]

The evidence in the agreed bundle

6 The Prosecution relied on the evidence in the agreed bundle, including the accused's inculpatory statements and the results of the forensic analyses. Besides the four long statements referred to at [25] of the SOAF, the accused made two contemporaneous statements at the scene of the incident on 17 April 2012 at about 5.09 pm and 6.14 pm. [\[note: 4\]](#) He also made a cautioned statement – pursuant to s 23 of the Criminal Procedure Code 2010 (Act No 15 of 2010) – on 18 April 2012, after the drug importation charge was explained to him. [\[note: 5\]](#)

The accused's involvement in the drug syndicate

7 The accused was originally from Penang. He said that he was recruited by his "boss" to deliver drugs from Johor. The runners, like himself, were all from remote villages in Malaysia. Based on a roster system, the runners delivered different types of drugs (eg, heroin and ice) each day. The amount of the drugs would also vary. [\[note: 6\]](#) The payment received depended on the amount of drugs delivered. [\[note: 7\]](#) He claimed that about 600 or more runners – all of whom had work permits [\[note: 8\]](#) – were working for the "boss". [\[note: 9\]](#)

8 When he first met the "boss" in Johor in March 2012, he was taken to a "very nice" place with "many rooms and a lot of money, in different currencies". [\[note: 10\]](#) He was given drinks and told that he could also have the money to buy cars and motorcycles. With the drug delivery job, he thought that he could lead a comfortable lifestyle, [\[note: 11\]](#) support his mother and pay for her medical expenses. [\[note: 12\]](#) He had to perform three drug deliveries over a period of time before he could become a permanent runner who worked on a daily basis. [\[note: 13\]](#) He was arrested on his third drug delivery to Singapore. At that time, he was a cleaner at the Esplanade Theatres. He had worked there for less than a week before he was arrested. [\[note: 14\]](#)

The accused's involvement in the present offence

9 The accused was arrested on 17 April 2012. Earlier that day, he had followed a group of Chinese, including a female, to a godown. At the warehouse, he was taught and told to pack the drugs into two black bundles by using cut pieces from a black garbage bag and black tape. [\[note: 15\]](#) In one of his long statements, he said that he was told that the drugs were "ubat": [\[note: 16\]](#)

They told me to cut the black garbage bag into smaller pieces then they told me how to place the drugs onto the cut pieces. They asked me to fold then I used a black tape to tape over the packet of drugs wrapped in the cut pieces. They told me that after it was taped, the packet of drugs could not be scanned. Similarly, I did the same thing for the other packet of drugs. The drugs that they asked me to wrap inside the cut pieces were 'chocolate' in colour. Compared to the 1st and 2nd time, the packets of drugs that they asked me to deliver were a lot bigger. So I asked the female Chinese what the drugs were and she told me it was "ubat" (Recorder's note: "ubat" is the Malay street name for heroin). She told me not to worry as this was a small case.

10 The accused's admission of his involvement in the wrapping was supported by forensic DNA analysis on the two "plastic bags" that were made from the cut pieces of the black garbage bag and black tape. The DNA profile obtained from the exterior, the tapes and the plastic sheet of one bag and the exterior and interior of the other bag, was found to be a mixed DNA profile. The accused's DNA profile could be included as a contributor to the mixed profile. [\[note: 17\]](#)

11 The accused was told that the drug prices were high. He was told to collect \$4,900 for the biggest packet (contained in one bundle) and \$2,900 and \$2,800 for each of the two smaller ones (contained in the second bundle). [\[note: 18\]](#) This was the first time he was collecting such a big sum for a delivery. He kept the two black bundles in the front fender area of his motorcycle after using his screwdriver to remove the screws from the fender cover. [\[note: 19\]](#) He was then told to return home and wait for a call. [\[note: 20\]](#)

12 The accused made multiple other admissions that he knew that the drugs were "ubat". In his statement on 20 April 2012, he said: "I know the drugs in the photographs are "ubat" as that was what the female Chinese told me and I was the one who wrapped the "ubat" in the cut pieces of black garbage bag and placed them in the fender of my motorbike." [\[note: 21\]](#)

13 In his statement on 22 April 2012, he said that he told an officer that the drugs were "ubat" when asked if they were "ganja" (ie, cannabis). [\[note: 22\]](#) Elsewhere in the same statement, where the accused recounted being taken by CNB officers to witness the weighing of the drugs, he said: "I know that the drugs were 'ubat'". [\[note: 23\]](#)

14 In his statement on 23 April 2012, he said that he started to feel afraid when he was told that the drugs were "ubat": [\[note: 24\]](#)

61. ... For the 3rd delivery, I began to suspect that something was wrong as the drugs were in such big packets and they told me that it was 'ubat'. I began to feel frightened as the female Chinese told me that if I were arrested, I would spend 1 week in jail. That was the first time they told me I could be arrested for delivering such drugs.

15 While portions of the accused's contemporaneous statements and cautioned statement (referred to at [6] above) appeared to be exculpatory, he later retracted those statements. In his contemporaneous statement on 17 April 2012 at about 5.09pm [\[note: 25\]](#) ("the first contemporaneous statement"), it was recorded:

Q1) What is this? (Pointing to the 2 black bundles)

A1) It is medicine.

Q2) What kind of medicine?

A2) I do not know its name but it is in brown colour.

However, he said that he knew the bundles were "ubat" in his subsequent long statement on 21 April 2012: [\[note: 26\]](#)

23. I am now being asked about the answer I gave to Question 1 of my contemporaneous statement by the investigation officer (Recorder's note: Question 1 was "What is this? Officer pointed to the 2 black bundles). I wished to say that I told the officer the 2 bundles were Marunthu (Recorder's notes: "Marunthu" refers to drugs in Tamil). I used "Marunthu", which is my translation of "ubat" in Malay (Recorder's note: "ubat" is the Malay street name for heroin). The recording officer wrote it down as medicine in English.

24. I am now being asked about the answer I gave to Question 2 of my contemporaneous statement by the investigation officer (Recorder's note: Question 2 was "What kind of medicine?"). I wished to say that I know the bundles were "ubat". But I know "ubat" as a term to refer to all drugs. I do not know the specific name of the drugs that were in the bundles.

16 In his statement of 21 April 2012, the accused also clarified that he had lied about his lack of knowledge in his cautioned statement of 18 April 2012. He explained that he lied because he had hoped that his "boss" would bail him out. In the said cautioned statement, he said: [\[note: 27\]](#)

I did so as I was told by a person. He told me to bring the things along and hand it over to a person in Singapore. I did not know what the thing was as it was packed and given to me.

In his statement of 21 April 2012, he explained: [\[note: 28\]](#)

26. I am now being asked about my caution statement which I gave to my investigation officer, W/ASP Tan Chor Huang Janet on 18/4/2012 at 0417hrs at CNB office level 3 interview room 1 (B0306) (Recorder's note: The caution statement was read to accused person by Mr. P Manickam). I wished to say that at that time, I was scared and was instructed not to reveal anything. Also, the "boss" told me that if I was caught by officers, I would be let out on bail in one week's time so I trusted my "boss" and did not say anything. However, after I went to court and told of the serious consequences of my act and that I would be facing the death penalty, I began to tell the truth. The caution statement I gave was not correct. I was hoping that my "boss" would come and bail me out but he did not. He deceived me. I wished to say that the thing that was found in my bike, I knew it was "ubat" which was in a package as I was told by them (Recorder's notes: 'them' refers to "boss" and his men). The packet was in fact done by me as I was told to pack the "ubat" as I was new and I had to learn. The female Chinese flattened the drugs by hitting it with the side of her hand and I was told to place the drugs on a piece of cut black garbage bag. Then I folded the cut piece of garbage bag from side to side and rolled the drugs to wrap it inside and taped it (Recorder's note: accused person was able to demonstrate the wrapping process to the investigation officer). I then placed the packed drugs in my front fender of my motorbike, JKP 1996.

17 After returning home from the warehouse, the accused said that he received a call from his "boss" at about 2pm or 3pm to deliver the drugs. [\[note: 29\]](#) As directed, he rode his motorcycle to the Woodlands Checkpoint. After he showed his passport at the motorcycle arrival hall, an officer told him to push his motorcycle to the parking lot. Officers checked his motorcycle and found the two bundles

of drugs after unscrewing the cover of the front fender. He was then arrested. [\[note: 30\]](#)

18 In his first contemporaneous statement, the accused claimed that he was supposed to pass the black bundles to a male Chinese: [\[note: 31\]](#)

Q3) What is this bundle for?

A3) I am suppose to pass this bundles to a male Chinese.

Q4) Do you have the male Chinese h/p number or any contacts?

A4) I do not have his number but once I enter Singapore the male Chinese will SMS and will give me the location.

However, he subsequently clarified that this was a lie. In fact, he would not know the identity of the buyers until after he had cleared the immigration checks. In his statement of 22 April 2012, he said: [\[note: 32\]](#)

47. I am now being asked about the answer I gave to Question 3 of my contemporaneous statement by the investigation officer (Recorder's note: Question 3 was "What is this bundle for?"). I stated in my statement that I was supposed to pass the bundles to a male Chinese. I wished to say that I had lied in my answer. I would not know the identity of the customers whom I deliver the drugs to. I will only know where to deliver the drugs after I reached Singapore. Usually after I clear the custom at Woodlands checkpoint, I will call my "boss" to inform him. Then after that, I will receive either a sms or call from these customers. Those who speak English will sms me the location as to where I am supposed to deliver the drugs. Those who speak malay will call me on the phone. I will then take a taxi at the taxi stand from Woodlands Checkpoint to deliver the drugs to the customers.

48. The reason I lied in my answer was because I thought my "boss" would come in 1 week's time to bail me out so I did not want to betray or expose him. However since I was arrested, nobody has come to see me. They had promised that if I were to be arrested, they will get someone to come and see me and bail me out. So I decided to tell the truth.

The decision of the court

19 To summarise the Prosecution's case, the accused had actual knowledge of the heroin that he imported into Singapore on his motorcycle. [\[note: 33\]](#) His four long statements (referred to at [25] of the SOAF) contained explicit admissions that he knew the contents of the bundles to be drugs and that he knew they were "ubat", the street name for heroin in Malay. [\[note: 34\]](#) He was aware that the amount of drugs he was importing was greater than on previous occasions and that the prices were higher than usual. [\[note: 35\]](#) He also admitted to packing the three packets of drugs into two black bundles [\[note: 36\]](#) and hiding the bundles in the front fender area of the motorcycle [\[note: 37\]](#) before entering Singapore. Further, his DNA profile was found on parts of the two black bundles, which substantiated his account that he had assisted to pack the drugs with black plastic sheets and black tape. [\[note: 38\]](#)

20 Alternatively, the Prosecution submitted that the accused failed to rebut the presumption of knowledge in s 18(2) of the Misuse of Drugs Act (Cap 185, Rev Ed 2008) ("the MDA") on a balance of

probabilities. [\[note: 39\]](#) Section 18(2) provides that 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. The accused was in actual physical possession of the drugs. Accordingly, he was presumed to be in possession of the drugs under s 18(1), which triggers the operation of s 18(2). [\[note: 40\]](#) As he was the owner and in charge of the motorcycle, s 21 (which concerns the presumption of possession relating to drugs found in a vehicle) would also trigger the operation of s 18(2). [\[note: 41\]](#) On the facts, the accused failed to prove on a balance of probabilities that he did not know or could not reasonably have known that the bundles in his possession contained heroin. [\[note: 42\]](#)

21 The Prosecution's evidence was clearly not inherently incredible and satisfied every element of the charge. I therefore called on the accused to give his defence by administering the standard allocution in s 230(1)(m) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). Having agreed with the entire Prosecution's case as set out in the SOAF and the agreed bundle, he confirmed that he would not testify and would not call any witnesses.

22 The defence counsel made no submissions in relation to guilt. Based on the evidence admitted by consent, I was satisfied that the Prosecution had proved its case beyond reasonable doubt. I therefore convicted the accused on the charge.

The sentence

23 The punishment for drug importation in s 7 of the MDA is provided for in s 33 of the MDA, which refers to the Second Schedule. Under the Second Schedule, the punishment for importing more than 15g of diamorphine is death.

24 However the court has the discretion not to impose the death penalty under s 33B. Under s 33B(1)(a), the court may order life imprisonment and caning of at least 15 strokes if the twin requirements in s 33B(2) are met. First, the person convicted must prove on a balance of probabilities that his involvement in the offence was as a mere courier: see s 33B(2)(a)(i)-(iv). Second, the Public Prosecutor must certify that the person convicted had substantively assisted the CNB in disrupting Drug Trafficking activities: see s 33B(2)(b).

25 The Prosecution tendered the certificate of substantive assistance. [\[note: 43\]](#) It agreed that the evidence showed that the accused's role was that of a courier in the drug delivery.

26 I agree, on a balance of probabilities, that the accused's role was that of a courier. His involvement in the offence was restricted to transporting and delivering the drugs. Based on the evidence, his involvement was limited to conveying drugs from point A to point B: see *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 ("*Abdul Haleem*") at [51] and *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 at [63] ("*Chum Tat Suan*").

27 In *Chum Tat Suan*, the Court of Appeal held at [68] that acts "necessary for transporting, sending or delivering the drugs cannot include packing, for instance, as packing is not a necessary element of moving an object from one point to another". Nevertheless, I was satisfied that the accused's participation in packing the bundles did not disentitle him from claiming to be only a courier. On his first two drug deliveries, the consignments had been packed for him. [\[note: 44\]](#) For the third drug delivery that is the subject of the present case, he could, at the highest, only be said to have assisted in the wrapping of the drugs. His statement on 23 April 2012 made this clear: [\[note: 45\]](#)

55. I am now asked about my 3rd drug delivery when I was arrested. I wished to say I saw 2 big packets of drugs placed on a newspaper, spread on the floor. The drugs were "chocolate" in colour. As I mentioned previously in my statement, I asked the female Chinese, who was the girlfriend of one of the men present there, what the drugs were. The female Chinese told me that it was "ubat". I understood "ubat" as "Marunthu", which meant drugs in Tamil. I thought the drugs I saw was just one kind of drugs. I asked the same female Chinese if I would be in trouble for delivering the drugs, seeing that they were quite big packets. She told me that at most I would be detained for one week and after that I would be bailed out.

56. One of the men working for the "boss" then divided the 1 packet of the drugs into 2 equal halves. He weighed it to make sure that the 2 packets of drugs were of equal weight. I was told by the same man to hold onto the opening of the 2 plastic packets of drugs while he used a lighter to burn and seal the opening of the 2 plastic packets (Recorder's notes: Accused person was shown photographs of exhibits marked "A1", "A1A", "A1B", A2" and "A2A". Accused person identified the 2 packets of "ubat" that he held onto were exhibits marked "A1A" and "A1B". He identified exhibit "A2A" as the big packet of "ubat" that was remained intact). They then cut a piece of black garbage bag and put the big packet of "ubat" (Recorder's note: Accused identified the packet of "ubat" to be exhibit marked "A2A") onto the cut piece of black garbage bag and told me to watch. They demonstrated how to fold the cut piece of black garbage bag and then told me to do the same. I then folded the cut piece of garbage bag and wrapped the big packet of "ubat" inside. After that I used black tape to tape around the cut piece of black garbage bag. For the other 2 packets of "ubat", I wrapped them together as one bundle and also used black tape to tape all over the cut piece of black garbage bag.

28 In my opinion, the "packing" done by the accused on the above facts was incidental to his delivery job as he had to ensure that the bundles were compact enough to fit into the space behind the front fender of his motorcycle. The fact that the wrapping material was also supposed to help him evade scanning at the checkpoint was not really different from a courier trying to camouflage bundles of drugs by wrapping them in some food packaging. Similarly, a courier might decide to "pack" the bundles in some clothing in his bag in order to avoid detection. The "packing" contemplated by the Court of Appeal in *Chum Tat Suan* which would enlarge the role of the deliverer to that beyond a mere courier would be in the nature of someone who packs drugs into bundles as a routine after ensuring that the right type and quantity of drugs go into the right packaging. It does not encompass the wrapping and camouflaging work that I have mentioned.

29 As the accused satisfied both requirements in s 33B(2), he could either be sentenced to death or to life imprisonment and caning under s 33B(1)(a) of the MDA. In mitigation, defence counsel asked that the accused be sentenced to life imprisonment with 15 strokes of the cane, the minimum punishment prescribed under s 33B(1)(a). [\[note: 46\]](#)

30 The amount of drugs involved (36.27g of heroin) was fairly substantial. The weight was more than twice the 15g threshold that attracts the death penalty. By the accused's own admission, the present offence was his third drug delivery, although the quantities and types of drugs involved in the previous two deliveries were unclear. However, he was relatively young, at 22 years of age, when he committed the offence. [\[note: 47\]](#) He also acknowledged his wrong doing (although he told a few inconsequential lies initially) and cooperated fully with the authorities. [\[note: 48\]](#) Through defence counsel, he informed the prosecution as early as 17 April 2015 that he did not intend to challenge the evidence against him at trial. [\[note: 49\]](#) I was told that he has appeared as a prosecution witness at other trials and continues to provide the authorities with more details about the drug syndicate

whenever he managed to obtain information from other inmates.

31 In the light of all these circumstances, I saw neither the necessity to impose the death penalty on the accused nor any reason to punish him beyond the minimum prescribed by law. Accordingly, I sentenced the accused under s 33B(1)(a) of the MDA to life imprisonment and 15 strokes of the cane. The imprisonment sentence was backdated to 17 April 2012, the date of his arrest.

[\[note: 1\]](#) Exhibit A.

[\[note: 2\]](#) Exhibit B.

[\[note: 3\]](#) Exhibit D.

[\[note: 4\]](#) See Agreed bundle ("AB") at p87 and p89.

[\[note: 5\]](#) See AB p126 for cautioned statement recorded on April 18 2012.

[\[note: 6\]](#) See AB pp127-8 for statement recorded on April 20 2012 at [3].

[\[note: 7\]](#) See AB p131 for statement recorded on April 20 2012 at [15].

[\[note: 8\]](#) See AB p136 for statement recorded on April 21 2012 at [31].

[\[note: 9\]](#) See AB p137 for statement recorded on April 21 2012 at [34].

[\[note: 10\]](#) See AB p131 for statement recorded on April 20 2012 at [14].

[\[note: 11\]](#) See AB p132 for statement recorded on April 20 2012 at [16].

[\[note: 12\]](#) See AB p147 for statement recorded on April 23 2012 at [62].

[\[note: 13\]](#) See AB p131 for statement recorded on April 20 2012 at [14].

[\[note: 14\]](#) See AB p135 for statement recorded on April 21 2012 at [28].

[\[note: 15\]](#) See AB p130 for statement recorded on April 20 2012 at [9], p135 for statement recorded on April 21 2012 at [26] and AB p145 for statement recorded on April 23 2012 at [56].

[\[note: 16\]](#) See AB p130 for statement recorded on April 20 2012 at [9].

[\[note: 17\]](#) See AB pp49-56.

[\[note: 18\]](#) See AB p130 for statement recorded on April 20 2012 at [9].

[\[note: 19\]](#) See AB p135 for statement recorded on April 21 2012 at [27].

[\[note: 20\]](#) See AB p131 for statement recorded on April 20 2012 at [13].

[\[note: 21\]](#) See AB p130 for statement recorded on April 20 2012 at [10].

[\[note: 22\]](#) See AB pp139-140 for statement recorded on April 22 2012 at [38].

[\[note: 23\]](#) See AB p140 for statement recorded on April 22 2012 at [42].

[\[note: 24\]](#) See AB p147 for statement recorded on April 23 2012 at [61].

[\[note: 25\]](#) See AB p87 for statement recorded on April 17 2012.

[\[note: 26\]](#) See AB p134 for statement recorded on April 21 2012 at [23]-[24].

[\[note: 27\]](#) See AB at p126 for cautioned statement recorded on April 18 2012.

[\[note: 28\]](#) See AB pp134-135 for statement recorded on April 21 2012 at [26]-[27].

[\[note: 29\]](#) See AB p145 for statement recorded on April 23 2012 at [58].

[\[note: 30\]](#) See AB p139 for statement recorded on April 22 2012 at [37]-[38].

[\[note: 31\]](#) See AB p86 for contemporaneous statement recorded on April 17 2012 at about 1709.

[\[note: 32\]](#) See AB p142 for statement recorded on April 22 2012 at [47].

[\[note: 33\]](#) See Prosecution's opening address at [19]-[21] and Prosecution's closing submissions at [49]-[55].

[\[note: 34\]](#) Prosecution's closing submissions at [50].

[\[note: 35\]](#) Prosecution's closing submissions at [53].

[\[note: 36\]](#) Prosecution's closing submissions at [51].

[\[note: 37\]](#) Prosecution's closing submissions at [51].

[\[note: 38\]](#) Prosecution's opening address at [21].

[\[note: 39\]](#) Prosecution's closing submissions at [56]-[59].

[\[note: 40\]](#) Prosecution's closing submissions at [43].

[\[note: 41\]](#) Prosecution's closing submissions at [45]-[46].

[\[note: 42\]](#) Prosecution's closing submissions at [57].

[\[note: 43\]](#) See Exhibit H.

[\[note: 44\]](#) See AB p129 for statement recorded on April 20 2012 at [8].

[\[note: 45\]](#) See AB pp-144-5 for statement recorded on April 23 2012 at [55]-[56].

[\[note: 46\]](#) Mitigation plea at [24].

[\[note: 47\]](#) Mitigation plea at [5].

[\[note: 48\]](#) Mitigation plea at [13]-[18].

[\[note: 49\]](#) Mitigation plea at [17].

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