

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2018] SGHC 176**

Criminal Case No 76 of 2017

Between

Public Prosecutor

And

Jumaat bin Mohamed Sayed

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**GROUND OF DECISION**

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

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**Public Prosecutor**  
**v**  
**Jumaat bin Mohamed Sayed**

**[2018] SGHC 176**

High Court — Criminal Case No 76 of 2017

Hoo Sheau Peng J

28-30 November, 1 December 2017, 28 February, 1 March 2018; 7 May 2018

6 August 2018

**Hoo Sheau Peng J:**

**Introduction**

1 The accused, Jumaat bin Mohamed Sayed (“Jumaat”), a 48-year-old Singaporean, claimed trial to a charge of having in his possession for the purpose of trafficking eight packets of granular/powdery substance which was analysed and found to contain not less than 147.98 grams of diamorphine (“the drugs”). This is an offence under section 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”).

2 At the conclusion of the trial, I found that the charge against Jumaat had been proved beyond a reasonable doubt, and convicted him accordingly.

3 Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the prescribed punishment for the offence is death. However, s 33B(1)(a) provides that if the two requirements set out in s 33B(2) of the MDA are

satisfied, the court has a discretion not to impose the death penalty.

4 Jumaat met only the first requirement. I found, on a balance of probabilities, that Jumaat’s role in the offence was restricted to that of a courier and fell within s 33B(2)(a) of the MDA. As for the second requirement within s 33B(2)(b) of the MDA, the Public Prosecutor did not certify that Jumaat had substantively assisted the Central Narcotics Bureau (“CNB”) in disrupting drug trafficking activities within or outside Singapore. As the alternative sentencing regime under s 33B(1)(a) of the MDA was not available for consideration, I passed the mandatory death sentence on Jumaat.

5 Jumaat has filed an appeal against his conviction and sentence. I now provide the reasons for my decision.

### **The Prosecution’s case**

#### ***Events leading up to the drug transaction***

6 On 13 August 2015, at about 4.10am, CNB officers were deployed to the vicinity of Block 505, Ang Mo Kio Street 53, Singapore (“Block 505”) to keep a look out for Jumaat. On arrival, CNB officers placed the vicinity of Block 505 under surveillance.

7 At about 5.30am, Station Inspector Wong Kah Hung Alwin (“SI Wong”) saw Jumaat leave his residence at unit #04-2610 (“the flat”) of Block 506, Ang Mo Kio Street 53, Singapore (“Block 506”).<sup>1</sup> A short while later, Jumaat was observed by Senior Staff Sergeant Eng Chien Loong Eugene (“SSSgt Eng”) at

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<sup>1</sup> Agreed Bundle (“AB”) 243.

the void deck of Block 506 riding his bicycle towards Block 505.<sup>2</sup> At about 5.32am, Station Inspector Tay Cher Yeen (“SI Tay”) observed Jumaat riding his bicycle along the pavement beside Block 505, and then parking it there before walking into Aik Leong Eating House at Block 505 (“the Coffeeshop”).<sup>3</sup>

8 Footage from a closed circuit television (“CCTV”) camera at Block 506 showed Jumaat at the lift lobby of the ground floor at around 5.39am. From the CCTV footage, it was observed that Jumaat was on his bicycle. There was a blue plastic bag in the front basket of his bicycle.<sup>4</sup>

9 At about 6.25am, SSSgt Eng and Sergeant Muhammad Hidayat bin Jasni (“Sgt Hidayat”), who were in an operational car positioned along Ang Mo Kio Street 53, observed a lorry bearing Malaysia registration number JQH5478 (“the Lorry”) coming to a stop after a bus-stop along Ang Mo Kio Street 53. The operational car was behind the Lorry at the time.<sup>5</sup>

10 A short while later, both of them observed Jumaat walking towards the passenger side of the Lorry. They saw Jumaat holding onto a blue plastic bag when he approached the Lorry.<sup>6</sup> However, they lost sight of Jumaat when he approached the Lorry. When the Lorry moved off, they saw Jumaat carrying a few larger plastic bags and walking towards the Coffeeshop. He was no longer holding on to the blue plastic bag.

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<sup>2</sup> AB 230.

<sup>3</sup> AB 221.

<sup>4</sup> Notes of Evidence (“NE”) Day 3, p 8.

<sup>5</sup> NE Day 4, p 63.

<sup>6</sup> NE Day 4, p 64; AB 231.

***Arrest of the accused, seizure of the drugs and other items***

11 To continue his observation on Jumaat, Sgt Hidayat got out of the operational car. Soon, he spotted Jumaat preparing food at a food stall called Warong Trisno (“the food stall”) in the Coffeeshop. It was not disputed that together with his wife, Jumaat owned the food stall. At about 6.48am, a group of CNB officers moved into the food stall and arrested Jumaat.<sup>7</sup>

12 A search of the food stall was conducted by Staff Sergeant Bukhari bin Ahmad (“SSgt Bukhari”), and he recovered eight cabbages from the food stall.<sup>8</sup> SSgt Bukhari retrieved four big plastic bags with the words “CCL IMPEX (S) Pte Ltd” (which were subsequently marked as “A1”, “A2”, “A3” and “A4”). Three of these big plastic bags contained two cabbages each, and each of these six cabbages was separately wrapped in cling wrap. The remaining two cabbages had been removed from the fourth big plastic bag, and their cling wrap had been removed so as to rest below them. SSgt Bukhari observed that the two “exposed” cabbages were hollow, *ie*, with leaves that were “not full” and containing a black bundle within.<sup>9</sup>

13 After seizing the cabbages, SSgt Bukhari handed them over to SI Wong, who handed them over to SSSgt Eng.<sup>10</sup> Subsequently, SSSgt Eng handed them to Woman Station Inspector Woo Yoke Chun (“W/SI Woo”). SSgt Tay seized some other items from the food stall, including some unused blue plastic bags. From Jumaat’s person, Sgt Hidayat seized some personal effects, including

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<sup>7</sup> AB 244.

<sup>8</sup> AB 248–249.

<sup>9</sup> NE Day 4, p 26.

<sup>10</sup> AB 232.

keys, a Nokia handphone (marked as “J-HP”) and some cash.<sup>11</sup> Eventually the items were also handed over to W/Insp Woo.

***Analysis of the drugs***

14 The seized items were brought back to the CNB headquarters. At the exhibit management room of the CNB headquarters, W/SI Woo handed the cabbages over to Inspector Muhammed Nizammudin bin Jailani (“Insp Nizammudin”).<sup>12</sup>

15 Each of the eight cabbages seized from the food stall was found to contain one packet of brown granular substance partially wrapped in black tape (“drug exhibits”). These drug exhibits were marked as “A1A1A1A”, “A1B1A1”, “A2A1A1”, “A2B1A1”, “A3A1A1”, “A4A1A”, “A5A1A1” and “A5B1A1” by Insp Nizammudin. These drug exhibits were also weighed and photographed in Jumant’s presence.

16 On 14 August 2015, Insp Nizammudin handed the drug exhibits to Lim Hui Jia Stephanie, an analyst with the Illicit Drugs Laboratory of the Health Sciences Authority (“HSA”), for analysis. The drug exhibits were found to be 3,655.4 grams of granular/powdery substance, and to contain not less than 147.98 grams of diamorphine.<sup>13</sup>

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<sup>11</sup> NE Day 4, p 66.

<sup>12</sup> AB 220.

<sup>13</sup> AB 167–176.



***Arrest of the persons in the Lorry and seizure of cash in a blue plastic bag***

17 After departing from Ang Mo Kio Street 53, the Lorry proceeded to the Woodlands Checkpoint. At about 6.48am, another group of CNB officers stopped the Lorry at Booth 3 of the Lorry Departure Clearance area of Woodlands Checkpoint and arrested the three persons within. They were:

- (a) Hari Krishnan Selvan (“Hari”) who was the driver of the Lorry;
- (b) Mohd Nor Kamarrudin bin Kamari (“Mohd Nor”) who was seated at the extreme left passenger seat of the Lorry; and
- (c) Vikineswaran a/l Kalidas (“Vikineswaran”) who was seated between Hari and Mohd Nor.

18 Staff Sergeant Muhammad Fardlie bin Ramlie (“SSgt Fardlie”) conducted a search of the Lorry and recovered a blue plastic bag behind the driver’s seat. This blue plastic bag was found to contain another blue plastic bag which contained cash amounting to \$18,500. The cash was found in four bundles, with each bundle being secured by a rubber band. The blue plastic bag was seized by SSgt Fardlie, and placed into a polymer bag held by SSgt Sunny Tay (“SSgt Tay”) who also sealed the polymer bag.<sup>14</sup>

***Analysis of the rubber bands***

19 SSgt Fardlie then handed the polymer bag to SI Tay, who then brought it back to the CNB headquarters.<sup>15</sup> The items were handed over to W/SI Woo subsequently. In turn, W/SI Woo handed the items to Insp Nizamuddin at the

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<sup>14</sup> AB 228.

<sup>15</sup> AB 223.

exhibit management room.<sup>16</sup> I should add that the four rubber bands were marked “F1A1”, “F1A2”, “F1A3” and “F1A4”.<sup>17</sup>

20 On 26 August 2015, Insp Nizammudin sent the blue plastic bag and the contents to the HSA for analysis. Dr Pook Sim Hwee, an analyst from the HSA, found the presence of Jumaat’s DNA on rubber band F1A3, one of the four rubber bands used to tie one bundle of cash which made up the total sum of \$18,500.<sup>18</sup>

### ***Evidence of Hari and Mohd Nor***

21 I now turn to the accounts of Hari and Mohd Nor. Hari testified that he was employed by CCL IMPEX (M) Sdn Bhd (“CCL Impex Malaysia”) as a lorry driver to deliver vegetables from Malaysia to various customers in Singapore. On 12 August 2015, he was tasked to deliver vegetables from Malaysia to Singapore.<sup>19</sup> Prior to the start of the scheduled delivery, a person by the name of “Koma” had requested for him to deliver cabbages containing medicine to Singapore. Hari agreed to help Koma because Koma agreed to pay him. This was the second time Koma had asked him to make such a delivery.<sup>20</sup>

22 At about 7.00pm on 12 August 2015, Hari collected the eight cabbages from Koma. Koma told him the place of the delivery was the same as that for the first trip, *ie*, at Ang Mo Kio Avenue 5, Singapore, and that a “bald guy”

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<sup>16</sup> AB 220.

<sup>17</sup> Exhibit P132.

<sup>18</sup> AB 187–188, 190–191.

<sup>19</sup> NE Day 2, p 2.

<sup>20</sup> NE Day 2, pp 3–5.

would be waiting for him.<sup>21</sup> Subsequently, Hari packed the eight cabbages into four plastic bags belonging to the company, with two cabbages in each of them.<sup>22</sup> Then, Hari, Mohd Nor and Vikineswaran loaded the cabbages into the back of the Lorry and set off for Singapore. Mohd Nor and Vikneswaran were his lorry assistants. During the journey, Mohd Nor was seated at the extreme left passenger seat of the Lorry and Vikineswaran was seated in between Hari and Mohd Nor.<sup>23</sup>

23 Hari completed the delivery of CCL Impex Malaysia's vegetables to the various customers in Singapore at around 5.30am on 13 August 2015. Hari then gave instructions for the eight cabbages to be brought from the back of the Lorry to the front seat and proceeded to Ang Mo Kio.<sup>24</sup> When Hari checked his handphone, he realised that Koma had called him for about five to six times. Hari called Koma to explain that as he was working and he could not pick up Koma's calls. Then, he called Koma a second time to tell him that he had reached the place of delivery, and to inform the "bald guy" to collect the cabbages.<sup>25</sup>

24 When shown the photograph of a Samsung handphone seized from the Lorry marked as "G1", Hari said that it was the handphone which he had used to call Koma that morning.<sup>26</sup> When referred to the phone records of the Samsung

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<sup>21</sup> NE Day 2, pp 4 - 5.

<sup>22</sup> NE Day 2, p 7.

<sup>23</sup> NE Day 2, p 8.

<sup>24</sup> NE Day 2, p 9.

<sup>25</sup> NE Day 2, pp 9 - 10.

<sup>26</sup> NE Day 2, pp 10 - 11.

handphone,<sup>27</sup> Hari identified the number “60 14 9833552” as that belonging to Koma.<sup>28</sup> I shall refer to this as the “Malaysian number”. I should add that the phone records showed that there were two calls from the Samsung handphone to the Malaysian number at 6.13am and 6.23am on 13 August 2015.<sup>29</sup>

25 Returning to the events that morning, Hari said he stopped the Lorry along the road of Ang Mo Kio Street 53, where according to him, the “bald guy” was waiting. Hari requested Mohd Nor to pass the eight cabbages to the person waiting by the roadside. After the “bald guy” collected the cabbages, the “bald guy” threw a blue plastic bag into the Lorry. This made a sound. Hari knew that the bald guy had thrown something into the Lorry because he heard the sound.<sup>30</sup> Mohd Nor picked up the blue plastic bag and handed it to Vikineswaran. Vikineswaran then handed it to Hari.<sup>31</sup> Hari felt the blue plastic bag and felt that it contained money but did not open it. He then placed the blue plastic bag behind his seat and drove to Woodlands Checkpoint where he was subsequently arrested.<sup>32</sup>

26 In the material aspects, Mohd Nor’s evidence corroborated Hari’s evidence set out above.<sup>33</sup> In particular, Mohd Nor stated that Hari requested for his help to deliver the eight cabbages to someone in Singapore, and agreed to pay him for his help. After assisting Hari to load the eight cabbages to the back

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<sup>27</sup> AB 127.

<sup>28</sup> NE Day 2, pp 11 -13.

<sup>29</sup> AB 127.

<sup>30</sup> NE Day 2, p 14.

<sup>31</sup> NE Day 2, p 15.

<sup>32</sup> NE Day 2, p 16.

<sup>33</sup> NE Day 2, pp 47, 49, 52 and 54.

of the Lorry, they went to deliver vegetables to the customers of CCL Impex Malaysia in Singapore. After the last delivery, Vikeswaran moved the eight cabbages to the front seat. Then, the Lorry travelled to Ang Mo Kio and stopped at the roadside along Ang Mo Kio Street 53. There, Hari requested for him to pass the eight cabbages to the person standing by the roadside. He did so through the Lorry window. After the person had collected the cabbages, he dropped a blue plastic bag onto the floor of the Lorry through the window. Mohd Nor picked up the blue plastic bag, and passed it to Hari, who placed it behind the driver's seat.

***Statements by the accused***

27 Pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the Prosecution tendered five statements recorded from Jumaat in the course of investigations as part of its case. There were no objections from Jumaat as to their admissibility. These were:

- (a) The contemporaneous statement recorded under s 22 of the CPC recorded on 13 August 2015 at 9.10am by Sgt Hidayat;
- (b) The cautioned statement recorded under s 23 of the CPC recorded on 13 August 2015 by Insp Nizammudin; and
- (c) Three long statements recorded by Insp Nizammudin under s 22 of the CPC on 15 August 2015, 17 August 2015 and 20 August 2015.

28 In his contemporaneous statement, Jumaat stated that he only knew the "vegetable" he collected contained heroin, the street name for diamorphine, after he opened it. He claimed that the heroin belonged to a man named Siva, and that a man named Ravi would come and collect the heroin later. While Siva was his friend from "JB", he did not know Ravi as Ravi was Siva's friend.

Jumaat provided Siva's handphone number as "+60149033552". Jumaat admitted that he collected the "vegetable plastic bag" from "the three people in the lorry".<sup>34</sup>

29 In his cautioned statement, Jumaat stated that a friend had called him at 4.30am on 13 August 2015 to ask him to help collect something. Jumaat did not know that these items would contain drugs. After collecting "the thing", he felt "strange" because "it was wrapped in plastic." He "opened it up" with a pair of scissors, and he was angry when he "discovered this thing". He did not "keep it". He just "left it there". As he knew that CNB officers were around, he could not do "anything with it", but to leave "it by itself". Jumaat told his friend to "ask his friend" to "come and collect it now".<sup>35</sup>

30 In Jumaat's first long statement recorded on 15 August 2015, he stated that he came to know a friend, Siva through his adopted brother when he was working as a technician at the Civil Service Club sometime in 2012. Siva was a Malaysian Indian. They shared a common interest in birds and he had bought three birds from Siva in the course of their friendship.<sup>36</sup>

31 On 13 August 2015, he woke up at 4.00am which was the usual time he would wake up every day, in order to clean his bird cages and get ready to head to the food stall to prepare food to sell for the day. He noticed that he had missed a call on his handphone. Before he left his home, Siva called him to ask him to help collect vegetables for a friend, Ravi.<sup>37</sup> He agreed to help Siva collect the

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<sup>34</sup> AB 278.

<sup>35</sup> AB 319.

<sup>36</sup> AB 322.

<sup>37</sup> AB 321–322.

vegetables. This was the first time Siva had asked him to collect vegetables for him. He did not feel that such a request was “weird”.<sup>38</sup>

32 After Siva’s phone call, Jumaat left his flat with his bicycle. When he arrived at the food stall, he noticed CNB officers around. When he was preparing food at the food stall, Siva called him and told him to wait opposite Anderson Secondary School to collect the vegetables. There would be a lorry coming by to pass him the vegetables. When he went to the road, there was a white lorry with three people inside it. The person sitting in the middle of the lorry passed “the vegetables inside plastic bags” to the last person seated near the door, and the last person near the door passed him the items through the window. Jumaat took the items, and went back to the food stall. He did not give the people in the lorry “anything at all”. Siva did not ask him to pay them any money, and the people inside the lorry did not ask him for anything.<sup>39</sup>

33 After collecting the vegetables, Jumaat returned to the food stall and left the items on the floor. He then noticed that “the vegetable looked totally different” as “there were wrappers around it”. He took a pair of scissors, cut the plastic, and “opened up the leave of the cabbage and ... saw heroin inside”. He cut one more cabbage open, and saw the same. He did not open the rest of the cabbages to check because the cabbages were not his.<sup>40</sup> He did not touch the heroin because the heroin did not belong to him.<sup>41</sup>

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<sup>38</sup> AB 323.

<sup>39</sup> AB 323.

<sup>40</sup> AB 323.

<sup>41</sup> AB 324.

34 At that moment, Siva called him. He scolded Siva and informed Siva that there were CNB officers outside his food stall. He told Siva to inform Ravi to come to collect the cabbages. Siva agreed. Jumaat did not inform the CNB officers who were around about the heroin because he was scared. He was of the view that he would still have to answer for the heroin in light of his drug record.<sup>42</sup>

35 In the second long statement recorded on 17 August 2015, Jumaat explained that he knew that the substance was heroin because he was a drug addict. In the first cabbage, there was a bundle that was only partially wrapped with black tape, and he could see the “light brown powder substance inside the bundle”. He saw the same type of bundle in the second cabbage. He was angry, and did not check the other cabbages. He did not open the rest of the cabbages to check because the cabbages were not his. If the CNB officers were not around, he would have waited for Ravi, Siva’s friend, to come to collect the cabbages, or he would have asked Siva to do so himself.<sup>43</sup>

36 In the third long statement recorded on 20 August 2015, Jumaat stated that did not know and had never seen the blue plastic bag containing \$18,500 which was recovered from the Lorry.<sup>44</sup>

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<sup>42</sup> AB 324.

<sup>43</sup> AB 326.

<sup>44</sup> AB 366.



***The accused's handphone records***

37 As mentioned above, when Jumaat was arrested, a Nokia handphone was seized from him which was marked J-HP.<sup>45</sup> J-HP was found to contain a Singtel SIM card with the handphone number 98947458 which I shall refer to as “Jumaat’s phone number”.<sup>46</sup> The phone records showed that there were a number of phone calls with the Malaysian number, 60 14 9833552, before the day of Jumaat’s arrest, as well as on the day of the arrest. In particular, the phone records showed that prior to Jumaat’s arrest, there were calls from the Malaysian number to Jumaat’s phone number on 10 and 11 August 2015, as well as a call at 7.47pm on 12 August 2015 and 4.49am on 13 August 2015, and three calls between 6.14am and 6.42am on 13 August 2015.<sup>47</sup> Jumaat’s position was that the Malaysian number belonged to Siva.<sup>48</sup>

***Phone call after arrest***

38 SSSgt Eng, Sgt Hidayat and Sergeant Dadly bin Osman (“Sgt Dadly”) testified that after Jumaat’s arrest, Jumaat made a request to call the Malaysian number, which Jumaat identified as belonging to Siva. SSSgt Eng allowed this request. When the call was made at 10.42am, the handphone was placed on the loudspeaker mode. Jumaat and Siva communicated in Malay. Both Sgt Hidayat and Sgt Dadly could understand the conversation. Sgt Hidayat translated the conversation for SSSgt Eng to record in the field diary.<sup>49</sup>

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<sup>45</sup> Exhibit P137.

<sup>46</sup> AB 130.

<sup>47</sup> AB 139–140.

<sup>48</sup> AB 322.

<sup>49</sup> NE Day 4, pp 50–51, 75 and 90.

39 In the relevant extract of the field diary, it was recorded that when Jumaat asked Siva when Ravi was coming to collect the drugs, Siva's reply was "Who is Ravi?". Jumaat repeated the same question a number of times during the phone conversation and received the same reply.<sup>50</sup> It was also recorded that during the phone conversation, Siva asked "Where is the 03 guys?". In reply, Jumaat said he did not know, and asked Siva to call them himself. In their evidence, Sgt Hidayat and Sgt Dadly also confirmed this version of the contents of the call.<sup>51</sup>

40 I should add that the phone records also showed that there was an incoming call from the Malaysian number to Jumaat's phone number at 10.47am which lasted about four minutes. However, SSSgt Eng said that he was not aware of this call, and that he would not have allowed Jumaat to pick up any calls after his arrest. Sgt Hidayat and Sgt Dadly testified that there were no further incoming calls. Nothing really turned on this, as the defence position was that Jumaat himself could not recollect the contents of such a call.<sup>52</sup>

### **Close of the prosecution's case**

41 At the close of the Prosecution's case, I found that there was sufficient evidence against Jumaat and called upon him to give evidence in his defence. Jumaat decided to give his evidence but did not call any other witnesses.

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<sup>50</sup> Exhibit P268.

<sup>51</sup> NE Day 4, pp 76 and 91.

<sup>52</sup> NE Day 4, p 98.

**The Defence**

42 In essence, Jumaat maintained his account of events leading up to his arrest which he provided in his statements (see above at [27] to [36]). In gist, at about 4.30am on 13 August 2015, his Malaysian friend, Siva, called him and told him that someone would be sending him vegetables. Further, Ravi would collect the vegetables from Jumaat. Jumaat agreed to help. While he was preparing food at the food stall, he received another call from Siva, telling him that the vegetables were arriving, and to wait opposite Anderson Secondary School to collect them. When the Lorry arrived, Jumaat collected the eight cabbages from the passengers in the Lorry. However, he did not pass anything to them.

43 After collecting the eight cabbages, Jumaat brought them back to his food stall, and left them on the floor. He found that the cabbages looked different because they were wrapped, and he decided to cut the wrapper of one of them. As he opened the leaves of that cabbage, he saw heroin hidden inside it. He cut open a second cabbage, and saw that it also contained heroin. After this, he received a call from Siva. He scolded Siva vulgarities, and told Siva to get Ravi to collect the cabbages. Shortly after this, he was arrested.

44 In addition, Jumaat also provided explanations for some of the evidence which the Prosecution sought to rely on:

- (a) First, to explain the blue plastic bag which was shown in the CCTV footage to be in the front basket of his bicycle when he left his flat (see [8] above), Jumaat said that the blue plastic bag contained

rubbish which his children had left behind in his bicycle. He had disposed of it before reaching his food stall.<sup>53</sup>

(b) Second, Jumaat explained that his DNA was found on the rubber band F1A3 (see [20] above) because CNB officers had contaminated the evidence.<sup>54</sup> He claimed that the CNB officers who handled the exhibits did not wear gloves and could not properly trace the movement of exhibits from the crime scene to the CNB headquarters.<sup>55</sup>

(c) Finally, Jumaat claimed that the contents of the phone conversation between Jumaat and Siva on 13 August 2015 at 10.42am were not properly recorded and reflected in the field diary (see above at [39]). Jumaat claimed that during the phone call, which was about four minutes long, Siva did not feign ignorance as to who Ravi was. In fact, Jumaat asked Siva to inform Ravi to come and collect the drugs from him and if Ravi could not come, for Siva to do so himself. According to Jumaat, Siva agreed to this.<sup>56</sup>

## The law

45 Sections 5(1)(a) and 5(2) of the MDA provide:

### **Trafficking in controlled drugs**

**5.—**(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

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<sup>53</sup> NE Day 5, p 35.

<sup>54</sup> Accused's Skeletal Closing Submissions at [75] to [81].

<sup>55</sup> Accused's Skeletal Closing Submissions at [75] to [81].

<sup>56</sup> NE Day 6, pp 17–18.

...

(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.

46 By s 2 of the MDA, “traffic” is defined to include “give”, “sell”, “send”, “transport” and “deliver”.

47 The three elements for a charge of trafficking under s 5(1)(a) read with s 5(2) of the MDA are: (a) possession of a controlled drug; (b) knowledge of the nature of the drug; and (c) proof that possession of the drug was for the purpose of trafficking which was not authorised (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]).

48 In relation to possession and knowledge, these are the relevant rebuttable presumptions in s 18 of the MDA:

**Presumption of possession and knowledge of controlled drugs**

**18.**—(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

...

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(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.

**The issues**

49 There was no serious dispute by the parties on the applicable law. The disagreements were over the facts.

50 Based on the entire facts and circumstances of the case, the Prosecution's position was that Jumaat placed an order for the drugs with his Malaysian supplier prior to 13 August 2015, and then took delivery of them for the purpose of trafficking the drugs on 13 August 2015. In the course of the transaction, Jumaat paid a sum of \$18,500 for the drugs. He also cut open two cabbages which contained the drugs as the drugs were meant for him. In fact, the Prosecution contended that Ravi was a fictional character, and Jumaat intended to *sell* the drugs for a profit, and not merely to deliver the drugs to Ravi.

51 Turning to the defence, Jumaat's position was that he did not know that the drugs were *hidden* in the cabbages. On the morning of 13 August 2015, he was asked by Siva to assist in the collection of vegetables which were then to be collected by Ravi. He did not know Ravi. He agreed to do so. He had nothing to do with the blue plastic bag containing the sum of \$18,500, and he cut open the cabbages because he thought they looked different. It was only then that he realised that the cabbages contained the drugs.

52 As the key factual disputes were pertinent to all three elements of the charge, I shall analyse the evidence, and then state my findings accordingly. Thereafter, I shall discuss why, in light of my findings on the key factual disputes, I accepted that the three elements of the charge had been established beyond a reasonable doubt against Jumaat. In this connection, I group the key factual disputes into three main areas. First, the parties disagreed over the nature of the arrangements made for the collection on 13 August 2015, and when the arrangements were made. Second, there was a dispute as to whether Jumaat dropped the blue plastic bag containing the sum of \$18,500 into the Lorry. Third, the parties disagreed as to the reasons why Jumaat proceeded to open up

two of the cabbages shortly after collecting them. I shall now deal with each area in turn.

### **The factual disputes**

#### ***Arrangements for the collection of the cabbages***

53 I turn to the first area of dispute, concerning the arrangements made for the collection of the cabbages. To reiterate, the Prosecution’s position was that Jumaat had placed the order for the drugs prior to the morning of 13 August 2015, and he then collected the drugs on the morning itself. Jumaat claimed that it was a last minute request for help by Siva on the very morning of 13 August 2015, and he thought that he was merely collecting and delivering vegetables only.

54 Based on the evidence of Hari, on 12 August 2015, Koma had arranged for Hari to deliver cabbages containing “medicine” to a “bald guy” in Ang Mo Kio Avenue 5. At about 7.00pm on 12 August 2015, Hari collected the cabbages. On the way to Ang Mo Kio on 13 August 2015, Hari simply had to call Koma to ask “the bald guy” to take delivery: see [21] to [23] above. In other words, by the evening of 12 August 2015, the delivery was scheduled to take place, and the recipient was to be a person in Ang Mo Kio. On the morning of 13 August 2015, there was no change in the venue. Nor was there any indication that there was any change in the recipient. Hari simply communicated with Koma to ask the recipient to take delivery.

55 In addition, I noted that from the phone records, Siva had contacted Jumaat on the days prior to the drug transaction, on 10, 11 and 12 August 2015.<sup>57</sup>

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<sup>57</sup> AB 139–140.

In particular, on 12 August 2015, there was a call between Siva and Jumaat that took place at 7.47pm. This would have been after Hari had agreed to carry out the delivery, and around the time Hari actually collected the drugs. It should also be highlighted that while Jumaat referred to his contact as Siva, and Hari referred to his contact as Koma, they were both communicating with the user of the Malaysian number.

56 To my mind, it was implausible for Siva to call early in the morning at 4.49am, to seek Jumaat's almost immediate help to collect the items on his behalf. There was every possibility that Jumaat might not have agreed to help. While it might be true that generally, Jumaat would be awake to prepare food for his food stall that time in the morning, he might not be available that morning. As such, if Siva needed Jumaat's help to collect a consignment from Malaysia, Jumaat's account was unbelievable in that Siva did not ask for help earlier on the previous days. It would be quite remiss of Siva not to secure the agreement for Jumaat to assist in advance, especially since the details of the drop off were being confirmed by Koma with Hari on 12 August 2015.

57 Upon consideration, I agreed with the Prosecution that prior to the morning of 13 August 2015, Jumaat had already made certain arrangements for the delivery. There was cogent evidence of planning and coordination prior to 13 August 2015 for the delivery of the cabbages at a specific location to a specific person, and these plans did not change on 13 August 2013. Given the planning and coordination involved, I was of the view that Jumaat knew that the arrangements went beyond merely collecting vegetables and involved collecting the items contained within the vegetables.

58 Even if I were to be wrong about the timing of the arrangements, and that the arrangements were made with Jumaat only on the morning of 13 August



2015, I remained of the view that Jumaat knew that the arrangements went beyond the mere collection of vegetables. According to Jumaat, it was the first time Siva had requested for his help. This was a collection in the wee hours of the morning, from persons in a Malaysian Lorry (who were unknown to Jumaat), and for further delivery to Ravi (who was also unknown to Jumaat). In cross-examination, Jumaat admitted that he did not know what Siva's full name was, where he lived or his family. He was not aware that Siva was dealing or selling vegetables.<sup>58</sup> Despite all the above, Jumaat claimed he did not find the request "weird" in any way.

59 In light of the surrounding circumstances, Jumaat's position that he merely responded to a last minute request for help made by Siva purely to collect vegetables was not credible, and I rejected it. He knew that he was collecting *more* than just the vegetables. I was fortified in this view by the very clear evidence to show that in carrying out this collection, Jumaat had prepared in advance an amount of \$18,500, and had dropped the blue plastic bag with the cash into the Lorry. I shall discuss this shortly. At this juncture, I should highlight that I did not accept the Prosecution's position that Jumaat had placed the order for the drugs for himself with the intention to sell the drugs to others. This point will be expanded on at [90] and [94].

***The blue plastic bag of cash dropped into the Lorry***

60 Next, I turn to address the question whether Jumaat dropped the blue plastic bag of cash into the Lorry. Jumaat claimed that he did not do so. He surmised that the cash was from customers of CCL Impex (S) Pte Ltd ("CCL Impex Singapore") for the vegetables delivered to them by Hari and Mohd Nor.

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<sup>58</sup> NE Day 5, pp 43 and 48.

Having evaluated all the evidence, I was unable to accept Jumaat's denial. These are my reasons.

61 To begin with, the CCTV footage showed that when Jumaat left his flat at about 5.39am, there was a blue plastic bag in the front basket of the bicycle. Jumaat stated that his bicycle would be parked along the corridor (outside his flat). However, he claimed that his children would get a plastic bag from the food stall, put their rubbish into the plastic bag and then place the plastic bag in the bicycle, rather than dispose of their rubbish in the flat. This was rather contrived. Furthermore, even if there was such a plastic bag with rubbish, it was surprising that Jumaat did not dispose of it on the fourth floor of Block 506, instead of bringing it down with him to the void deck.

62 Jumaat also referred to samples of the blue plastic bags seized from the food stall ("D1", "D3" and D4"), to show that the blue plastic bags in question seized from the Lorry ("F1" and "F1A") were different from those found at the food stall. While the blue plastic bags were not identical, I found this to be a neutral factor. It seemed to me that the blue plastic bag caught in the CCTV footage was very likely to be the same blue plastic bag which contained the cash of \$18,500.

63 Even if I were to be wrong on this point, the evidence of SSSgt Eng and Sgt Hidayat was that they saw Jumaat holding onto a blue plastic bag when he approached the Lorry at about 6.25am on 13 August 2015. When the Lorry moved off, they noticed that Jumaat was no longer holding on to the blue plastic bag (see [10] above). I saw no reason to doubt the officers' evidence. They corroborated each other's evidence, and they candidly admitted that they did not see Jumaat drop the blue plastic bag into the Lorry.

64 Next, I turn to the evidence of Hari and Mohd Nor. Hari testified that after the cabbages were passed to the “bald guy”, the “bald guy” threw a blue plastic bag into the Lorry. Mohd Nor picked up the blue plastic bag and passed it to Vikineswaran who then passed it to Hari. The blue plastic bag was tied. Hari then testified that upon feeling the blue plastic bag, he believed that the blue plastic bag contained money. Mohd Nor’s testimony corroborated Hari’s account (see above at [26]).

65 I pause here to note that while it was an unchallenged fact that Jumaat collected the cabbages from the Lorry, Hari and Mohd Nor testified that they were unable to identify Jumaat as that “bald guy” whom they passed the cabbages to. This showed that the two witnesses had no interest to implicate Jumaat. Further, Mohd Nor only spoke of what he knew. For instance, he did not speak of the phone conversation between Hari and Koma while they were in the Lorry. I found both witnesses to be credible, and I accepted their evidence.

66 In addition to all of the above, the DNA evidence linked Jumaat inextricably to the sum of \$18,500 in the blue plastic bag. To reiterate, Jumaat’s DNA was found on one of the four rubber bands, F1A3, used to secure one bundle of cash found in the blue plastic bag (see above at [20]). Jumaat tried to cast doubt on the forensic evidence by alleging that the exhibits of this case were contaminated. Specifically, he alleged that there was a cross-transfer of Jumaat’s DNA to F1A3 from the properties seized from his person to F1A3, such as the rubber band tying the cash seized from him (see above at [44(b)]).

67 Jumaat’s allegation was without merit. The blue plastic bag containing the sum of \$18,500 and the rubber band F1A3 were seized from the Lorry which was at a separate location from where Jumaat was arrested and his personal belongings seized (see above at [11] and [17]). The blue plastic bag was seized

by SSgt Fardlie (who was wearing gloves), and who placed the items into a polymer bag which was held by and later sealed by SSgt Tay.<sup>59</sup> It is also important to bear in mind that both officers did not have any physical contact with Jumaat prior to this. On the other hand, Jumaat's personal belongings were seized and collected by Sgt Hidayat at a different location and at a different time. They were placed into a tamper-proof polymer bag and sealed.<sup>60</sup>

68 Furthermore, Insp Nizammudin testified that when he received the case exhibits from W/SI Woo, the exhibits were stored in tamper-proof polymer bags which were all individually sealed. The exhibits were handed to him one at a time after which he would cut open the tamper-proof bag and pass them over to the forensic officers for photo-taking. Insp Nizammudin was wearing gloves at all times.<sup>61</sup>

69 From the evidence of SSgt Fardlie, SSgt Tay and Sgt Hidayat, and bearing in mind that these items were seized by different CNB officers in different locations and at different times, I accepted that the blue plastic bag containing the sum of \$18,500 and F1A3 were placed in one tamper-proof polymer bag and sealed and the personal belongings seized from Jumaat were placed in a separate tamper-proof polymer bag and sealed. I found it implausible that exhibits were contaminated such that Jumaat's DNA could be transferred to F1A3. Having considered the evidence of Insp Nizammudin, I also rejected the contention that there was a transfer of the DNA during the photography process.

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<sup>59</sup> NE Day 3, p 42.

<sup>60</sup> NE Day 4, pp 65–66.

<sup>61</sup> NE Day 5, pp 14–15.

70 The fact that Jumaat's DNA was on F1A3 meant that he had handled the money found in the blue plastic bag recovered from the Lorry. This indicated that initially, Jumaat was in possession of the sum of \$18,500, separated into four bundles with each bundle tied up by a rubber band, either from the time he left his flat or at the latest, from the time he left the food stall. Subsequently, he passed the money placed in the blue plastic bag to the persons in the Lorry after he collected the cabbages from them.

71 At this juncture, I should state that in a contemporaneous statement recorded from Hari on 13 August 2015 at 8.00am by Sergeant Yogaraj s/o Ragunathan Pillay, Hari said that the money in the blue plastic bag was passed to him by the persons he had delivered CCL Impex Malaysia's vegetables to.<sup>62</sup> In his cross-examination, he denied giving the contemporaneous statement, and reiterated that the blue plastic bag and its contents were dropped into the Lorry by the person who collected the cabbages from Mohd Nor. In re-examination, he stated that during his one and a half years' experience as a lorry driver for CCL Impex Malaysia, he had never collected any money from the customers whom he delivered the vegetables to.<sup>63</sup>

72 I agreed with the Prosecution that at the point of arrest, Hari knew that the blue plastic bag was a key piece of incriminating evidence against him in relation to the illegal transaction, and he sought to lie about its origin. I did not rely on Hari's contemporaneous statement on the purpose of the payment. It was clear that the delivery to the "bald guy" arose from Hari's arrangement with Koma, and had nothing to do with his employment with CCL Impex Malaysia.

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<sup>62</sup> Exhibit D1.

<sup>63</sup> NE Day 2, pp 27, 36 and 40.

As stated above, Hari's evidence was corroborated by Nor's account. Further, Nor also testified that neither he, Hari nor Vikneswaran had collected any money from the persons they delivered vegetables to on 13 August 2015.

73 In addition, according to the testimony of the managing director of CCL Impex Malaysia and CCL Impex Singapore, Chua Zhong Sheng, CCL Impex Malaysia would not receive any payment from the parties they delivered vegetables to. CCL Impex Malaysia has only one client, which is CCL Impex Singapore. CCL Impex Singapore would receive orders for vegetables from their Singapore customers and the Singapore customers would make payments directly to CCL Impex Singapore. CCL Impex Singapore would then compile the orders from their customers and place the orders for vegetables with CCL Impex Malaysia which would then deliver the vegetables to CCL Impex Singapore's clients. As such, CCL Impex Malaysia would not and need not receive any form of payment from CCL Impex Singapore's customers.

74 By all of the foregoing, not only did Jumaat know that he was not merely collecting vegetables, he also knew that the eight cabbages he collected had valuable items within them. When he placed the blue plastic bag containing the sum of \$18,500 inside the Lorry after collecting the eight cabbages, he meant it to be in exchange for the delivery of the items contained within the eight cabbages. The sum of \$18,500 is substantial. The handing over of this substantial amount in the course of the transaction completely demolished Jumaat's claim that he was merely tasked to collect vegetables, and no more.

### ***Cutting open the cabbages***

75 Third, I turn to the act of cutting open the cabbages. Within minutes of collecting the plastic bags containing the cabbages from the Lorry, Jumaat cut

open the wrapping of two of the cabbages, and peeled open the leaves. He did enough to ascertain the two cabbages contained a bundle of drugs each.

76 I agreed with the Prosecution that if Jumaat's case was true and that he was merely collecting the vegetables for Siva to pass on to Ravi, there was no reason for Jumaat to do so. In his statements and in giving evidence in court, Jumaat explained that he thought the cabbages looked strange or different, and he opened them to check on them. He also tried to explain that this was because the cabbages were packed in a "different" way (as they were wrapped within two layers of plastic rather than in newspaper). He also said that if he did not remove the wrappings, the cabbages would rot and smell.<sup>64</sup>

77 I found Jumaat's explanations illogical. If his role was merely to collect the vegetables and later pass them on to Ravi, he could have just called Siva to inform him of how the cabbages were wrapped, and the state of the cabbages. He should also have spoken to Siva to ask for permission to check on the cabbages. After all, Jumaat said the cabbages did not belong to him. Taking the decision to unwrap not just one, but two of the cabbages, and then to peel open the leaves, so as to satisfy his own concerns was not the action of someone whose task was merely to collect vegetables for a friend. On the contrary, Jumaat's conduct was far more consistent with that of someone expecting items to be in the cabbages, and proceeding to inspect the items contained within.

### **Decision on conviction**

78 With these key factual findings in mind, I turn to deal with the elements of the charge.

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<sup>64</sup> NE Day 5, pp 65–69.

***Possession of the drugs***

79 At the material time, Jumaat was in possession of the cabbages which contained the drugs. This crucial fact was not disputed by Jumaat. As such, s 18(1) of the MDA was triggered, and Jumaat was presumed to be in possession of the drugs.

80 In this connection, the Court of Appeal held in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 (“*Obeng Comfort*”) at [34] to [35] that once the Prosecution proves that the thing in issue, *ie*, the container, exists and that the accused has possession of the thing in issue, the accused is presumed to possess the drug which is contained in the thing in issue. To rebut the presumption, an accused has to prove, on a balance of probabilities, that he did not have the drug in his possession. The most obvious way is to establish “that the accused did not know that the thing in issue contained that which is shown to be the drug in question”. The Court of Appeal highlighted that the inquiry does not, at this stage, extend to the accused’s knowledge of the nature of the drug. This was a separate inquiry in relation to the second issue.

81 As I found above, Jumaat made the arrangements to collect the cabbages, and he dropped the blue plastic bag with the cash in exchange for the cabbages. Thereafter, he cut open two of the cabbages to inspect the items. I had no doubt that he knew that there were valuable items hidden within the cabbages. Accordingly, Jumaat had failed to rebut the presumption of possession of the drugs within s 18(1) of the MDA on a balance of probabilities.



***Knowledge of the nature of the drugs***

82 As Jumaat was presumed to be in possession of the drugs, s 18(2) of the MDA applied, and Jumaat was presumed to know the nature of the drugs in his possession.

83 Once again, I turn to *Obeng Comfort*, where, at [36] to [37], the Court of Appeal stated that once the presumption of knowledge has been invoked, it is for the accused to prove on a balance of probabilities that he did not know or could not reasonably be expected to have known the nature of the controlled drugs. The Court of Appeal elaborated as follows:

37 ... The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities.

84 At the risk of repetition, Jumaat made the arrangements for the collection of the cabbages to take place in the wee hours of the morning, and prepared the hefty sum of \$18,500 in exchange. He clearly knew that there would be items of substantial value contained within all the cabbages. Yet, he proceeded to assist with the collection, and took possession of the items.

85 I should add that Jumaat was not a naïve individual, and well knew the risks of dealing with drugs. He admitted as much in his statements, in the context of explaining that he would not get involved in drug dealings: see [29] and [34] above. In his evidence, again, Jumaat claimed that he had noticed the presence of CNB officers around the food stall before he collected the eight cabbages

containing the drugs.<sup>65</sup> He went ahead to collect the eight cabbages because he genuinely thought that he was collecting vegetables for Siva instead of drugs.

86 On the evidence, I did not accept this claim. If he was aware of the presence of the CNB officers, it was surprising that when he thought that the cabbages were strange or different, he proceeded to cut open the first cabbage. It was even more incredible that after finding heroin in the first cabbage, he continued to cut open the second cabbage. Further, after he found the drugs in the cabbages, Jumaat had every opportunity to inform the CNB officers of the drugs he found in the cabbages. Jumaat did not take any steps to inform them and he kept silent when CNB officers moved into the food stall to arrest him. Given Jumaat's conduct, I did not think he was aware that the CNB officers were present in the vicinity that morning.

87 In light of all of the above, Jumaat's assertion that he did not think there was anything more to the task cannot be believed. Given the suspicious surrounding circumstances and his actions, Jumaat had simply failed to discharge his burden to rebut the presumption of knowledge within s 18(2) of the MDA. I should add that it was the Prosecution's position that based on all the surrounding facts and circumstances, Jumaat had *actual* knowledge of the nature of the drugs. I did not think it necessary to make any finding on this.

***Possession of the drugs for the purpose of trafficking***

88 Turning to the last element of the offence, I found that on Jumaat's own evidence, the drugs were meant to be passed to Ravi. This would fall within

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<sup>65</sup> NE Day 5, p 55.

“give”, “send” or “deliver” within the meaning of “traffic”. It was therefore clear that Jumaat possessed the drugs for the purpose of trafficking.

89 This was further supported by the sheer quantity of the drugs involved which made it highly unlikely that Jumaat possessed the drugs for personal consumption. To reiterate, the drug exhibits contained not less than 147.98 grams of diamorphine. This was far in excess of the quantity which would trigger the presumption of trafficking in s 17 of the MDA, if applicable (at 2 grams) and the quantity which would attract the death penalty (15 grams). Indeed, where the quantity of drugs is large, a court may draw the inference that a recipient intended to traffic in them: *Ong Ah Chuan and another v Public Prosecutor* [1979-1980] SLR (R) 710. In any case, Jumaat did not raise the defence of consumption.

90 I should, however, state that I did not agree with the Prosecution’s submission that the drugs were meant for Jumaat, in that Jumaat intended to *sell* the drugs for profit. While Jumaat made arrangements for the collection and delivery of the drugs, and handed over a substantial payment in this process, without more, there was simply insufficient basis to find that his purpose was to sell the drugs. In the course of a drug transaction, a person entrusted to collect and deliver the drugs could also be tasked to hand over a payment or to collect a payment. The Prosecution had not proved beyond a reasonable doubt that Jumaat’s purpose was to traffic by selling the drugs. In any case, such a finding was not necessary to establish the third element. I shall, however, revisit this issue again in due course at [94] onwards.

### ***Conclusion***

91 In light of the foregoing, I found that the elements of the charge against Jumaat had been proved beyond a reasonable doubt and I convicted Jumaat of

the charge. In coming to this conclusion, I should state that for reasons including the implausible claim made by Jumaat as to the last minute arrangements regarding the transaction, the illogical reasons proffered as to why he cut open the two cabbages, and the vain attempt to deny that he dropped the blue plastic of cash into the Lorry in the face of incontrovertible evidence, I did not find Jumaat to be a credible witness.

### **Decision on sentence**

92 I now turn to my decision on sentence. The prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. There is an alternative sentencing regime in s 33B of the MDA, allowing the court the discretion to impose a mandatory term of imprisonment for life and 15 strokes of the cane. For a court to have the discretion to impose the alternative sentence, an offender must show that his acts fell within s 33(B)(2)(a)(i)–(iv) of the MDA and must also receive a certificate of substantive assistance from the Public Prosecutor. Section 33B(4) of the MDA also provides that the decision to give or withhold such a certificate is at the sole discretion of the Public Prosecutor.

93 In *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 (“*Zainudin bin Mohamed*”) at [34], the Court of Appeal observed that it is the offender who bears the legal burden of proving, on a balance of probabilities, that his involvement in a drug trafficking offence was restricted only to the activities listed under s 33B(2)(a) of the MDA. Further, at [111], the Court of Appeal remarked that the offender’s reasons for carrying out his acts of trafficking are matters uniquely within his knowledge, and it would be difficult for him to convince a court that he is a courier if he chose not to explain his actions at trial.

***Courier exception***

94 For the purpose of conviction, I found that the Prosecution had not proved that Jumaat intended to sell the drugs. For the purpose of sentencing, the Prosecution submitted that Jumaat had not proved on a balance of probabilities that he was merely a courier. Specifically, the Prosecution made two main points against finding Jumaat to be a courier.

95 First, the Prosecution relied on the field diary extract to show that Ravi was a fictional character made up by Jumaat, and that it was not true that he was simply collecting the drugs for Siva for collection by Ravi. To reiterate, the field diary extract contained the record of the phone call made from Jumaat's handphone to the Malaysian phone number in the presence of SSSgt Eng, Sgt Hidayat and Sgt Dadly after Jumaat was arrested (see [39] above). The field diary extract showed that when Jumaat asked Siva during this phone call when Ravi was coming to collect the drugs, Siva's reply was "Who is Ravi?". Jumaat repeated the same question a number of times during the phone conversation and received the same reply.

96 As set out in [44(c)] above, Jumaat contended that the field diary extract was inaccurate. During the conversation, Siva did not feign ignorance of Ravi. I saw no basis to doubt the contemporaneous entry within the field diary made by SSSgt Eng. There was no reason for Sgt Hidayat not to properly inform SSSgt Eng of the contents of the conversation, and for SSSgt Eng not to record the conversation inaccurately. Further, under cross-examination, Sgt Hidayat and Sgt Dadly both confirmed the gist of the conversation as recorded in the field diary extract.

97 Be that as it may, I placed little weight on the contents of the conversation in assessing whether Jumaat was a courier. Siva coordinated the

drug deal. This was a phone call made at 10.42am, almost four hours after the arrests of Jumaat, as well as Hari, Mohd Nor and Vikeswaran. By then, Siva might have appreciated something to be amiss, as he appeared to be concerned about the whereabouts of the three men in the Lorry, and asked Jumaat where they were. I should not speculate. The point to be made is that Siva's denial of any knowledge of Ravi may be for a number of reasons. Siva's denial did not detract from the consistency of Jumaat's evidence that he was to collect the cabbages, and then to pass them on to someone, whether or not the person was actually named Ravi.

98 Second, the Prosecution also relied on Jumaat dropping the blue plastic bag containing \$18,500 into the Lorry as evidence that Jumaat was purchasing the drugs to sell them. I noted that the collection of money by an offender in the course of the delivery of drugs does not usually take someone outside of the courier exception. This may be seen to be "an ordinary occurrence in the course of the handing and taking over of drugs", and thus *incidental* to the delivery of drugs. Of course, this would be different if the offender is really *selling* the drugs: *Zainudin bin Mohamed* at [86]. It is always a fact specific inquiry.

99 As stated above, I rejected Jumaat's contention that the sum of \$18,500 formed payment for vegetables by customers of CCL Impex Singapore. Given the nature of the defence, there was no further explanation from Jumaat about the money. Nonetheless, in my view, the handing over of the sum of \$18,500 alone remained incidental to the collection and delivery of the drugs. Without more, it did not render Jumaat the actual purchaser of the drugs, and the one who would then *sell* the drugs.

100 The fact of the matter is that there was no evidence that Jumaat intended to divide, repack or change the drugs in any manner, so as to sell or distribute

the drugs. For instance, as contended by Jumaat, no drug paraphernalia was found at his flat or at the food stall. Further, there was no evidence that Jumaat was involved in other acts such as recruiting couriers, sourcing for supplies and or identifying potential customers. Nothing was put before me to indicate that he was someone with a wider and larger role in drug deals or a drug ring, so as to bring him outside the courier exception in relation to this offence in question.

101 At the end of the day, Jumaat had been consistent in his defence that he was collecting the drugs on Siva's request to pass on to someone else. There was no basis not to accept this position. The passing of cash should be seen to be an *incidental* act. I accepted Jumaat's evidence, and found that Jumaat had proved on a balance of probabilities that he was a mere courier.

***Certificate of substantive assistance***

102 However, for the second requirement, the Public Prosecutor did not issue Jumaat with a certificate of substantive assistance under s 33B(2)(b) of the MDA. In light of the foregoing, Jumaat could not avail himself of the alternative sentencing regime under s 33B of the MDA. As such, I passed the mandatory death sentence on him.

Hoo Sheau Peng  
Judge

Lau Wing Yum and Zhuo Wenzhao  
(Attorney-General's Chambers) for the prosecution;  
Jason Peter Dendroff (J P Dendroff & Co), Teh Ee-von (Infinitus  
Law Corporation), Loh Guo Wei Melvin (Continental Law LLP) for  
the accused.