

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 103

Criminal Case No 78 of 2017

Between

Public Prosecutor

And

- (1) Ravan s/o Samubil
- (2) Ilango s/o Venayagam
- (3) Noor Azmi bin A Rahman

GROUND OF DECISION

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

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Public Prosecutor
v
Ravan s/o Samubil and others

[2018] SGHC 103

High Court — Criminal Case No 78 of 2017
Hoo Sheau Peng J
11, 12 January 2018

26 April 2018

Hoo Sheau Peng J:

Introduction

1 The first accused, Ravan s/o Samubil (“Ravan”), is a 43-year-old Singaporean, who was employed as a cleaner. The second accused, Ilango s/o Venayagam (“Ilango”), is a 46-year-old unemployed Singaporean. The third accused, Noor Azmi bin A Rahman (“Noor Azmi”), is a 41-year-old Malaysian, who was employed as a driver.

2 On 11 January 2018, the three accused persons pleaded guilty to and were convicted of one charge each arising from drug activities which took place on 22 October 2015. Specifically, Noor Azmi was charged for trafficking by delivering to Ilango three blocks of vegetable matter (“the original three blocks”) containing not less than 499.99 grams of cannabis (“the cannabis”), an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed)

(“MDA”). The charge against Ilango was that of having the original three blocks containing the cannabis in his possession for the purpose of trafficking, being an offence under s 5(1)(a) read with s 5(2) of the MDA. As for Ravan, the charge against him was that of abetting by intentionally aiding Ilango to weigh and cut the original three blocks containing the cannabis, which he knew Ilango possessed for the purpose of trafficking without authorisation, being an offence under s 5(1)(a) read with ss 5(2) and 12 of the MDA.

3 On 12 January 2018, I sentenced Ravan to 24½ years of imprisonment, Ilango to 26½ years of imprisonment and Noor Azmi to 25 years of imprisonment. The imprisonment terms for Ravan and Ilango were backdated to 24 October 2015, and for Noor Azmi to 14 November 2015. I also imposed 15 strokes of the cane on each of them.

4 Ravan has filed an appeal against his sentence, on the ground that the sentence is manifestly excessive. I now provide the reasons for the sentences imposed on the three accused, focusing on the sentence imposed on Ravan.

Statement of facts

5 I begin with the statement of facts (“Statement of Facts”), which related to *all* the three charges.

Arrests of Ravan, Ilango and Noor Azmi

6 On 22 October 2015, based on information received, a group of officers from the Central Narcotics Bureau (“CNB”) proceeded to the vicinity of Block 422 Clementi Avenue 1 (“Block 422”) to carry out surveillance on Ilango, who resided at #05-333 of Block 422.

7 Sometime after 3.15pm, the CNB officers saw Ilango meeting up with Ravan at the void deck of Block 422. Ravan resided at #06-349 of Block 422. Thereafter, the CNB officers tailed Ravan, and at about 4.00pm, they arrested him along the Ayer Rajah Expressway.

8 At about 4.30pm, at the basement carpark of Block 422, the CNB officers arrested Ilango. They also arrested Abdul Karim bin Mohamed Kuppai Khan (“Abdul Karim”), who was with Ilango at the time.

9 On 13 November 2015 at about 7.30am, Noor Azmi was arrested at the Woodlands Checkpoint after he entered Singapore in a lorry with registration number WCH1672 (“the Lorry”).

Seizure and analysis of the drug exhibits

10 After Ravan’s arrest, the CNB officers searched his flat at #06-349 of Block 422, and recovered the following items:

- (a) A black haversack (A1) containing two orange plastic bags (A1A and A1B) and a Sheng Shiong plastic bag. In each of the orange plastic bags, there was one bundle each wrapped in aluminium foil (A1A1 and A1B1). In the Sheng Shiong plastic bag, there was also a foil-wrapped bundle (A1B2A). Each of the three foil-wrapped bundles contained vegetable matter (A1A1A, A1B1A and A1B2A1).
- (b) A beige bag (A2) containing a black and blue bag (A2A) containing an aluminium foil-wrapped bundle (A2A1) containing vegetable matter (A2A1A).
- (c) A diaper (B1) containing a turquoise plastic bag (B1A) which in turn contained three plastic bags (B1A1, B1A2 and B1A3). In two of

these plastic bags (B1A1 and B1A2), there were 11 small packets of vegetable matter each (B1A1A and B1A2A). In the last plastic bag (B1A3), there were 12 small packets of vegetable matter (B1A3A). This made for a total of 34 small packets of vegetable matter.

11 The items seized from Ravan's flat were sent to the Health Sciences Authority ("HSA") for analysis. The *four* blocks together with some loose vegetable matter comprising A1A1A, A1B1A, A1B2A1 and A2A1A, were found to cumulatively contain not less than 815.2 grams of cannabis and 783.2 grams of cannabis mixture. As for the 34 small packets of vegetable matter (B1A1A, B1A2A and B1A3A), these were found to contain not less than 83.05 grams of cannabis mixture.

12 In Ilango's flat at #05-333 of Block 422, the following items were recovered:

- (a) A red carrier bag (G1) containing one bundle in aluminium foil (G1A) containing vegetable matter (G1A1).
- (b) A silver carrier bag (G1B) containing three bundles wrapped in magazine paper (G1B1, G1B2 and G1B3), each containing vegetable matter (G1B1A, G1B2A1 and G1B3A1).

13 The items seized from Ilango's flat were also sent to the HSA for analysis. The *four* blocks together with some loose vegetable matter comprising G1A1, G1B1A, G1B2A1 and G1B3A1, were found to cumulatively contain not less than 502.5 grams of cannabis and 595.6 grams of cannabis mixture.

14 In total, the *eight* blocks and some vegetable matter were found to cumulatively contain not less than 1,317.7 grams of cannabis and 1,378.8 grams

of cannabis mixture. As stated earlier, the 34 small packets of vegetable matter were found to contain not less than 83.05 grams of cannabis mixture.

Events prior to 22 October 2015

15 Based on investigations, it transpired that sometime in early October 2015, Ilango came to know Abdul Karim, and they exchanged phone numbers. During one of their subsequent meetings, Ilango informed Abdul Karim that he was facing financial difficulties. On the night of 21 October 2015, Abdul Karim called Ilango and offered him a job. The job involved Ilango collecting some items for Abdul Karim from Jurong Port the following morning. Ilango took up the offer, and he suspected that he would be collecting illegal drugs.

16 Noor Azmi's work as a lorry driver involved delivering piling concrete to work sites in Singapore using the Lorry. Noor Azmi was recruited by a Malaysian Indian known to him as "Gobi" to transport drugs into Singapore. In Singapore, the drugs would then be collected by third parties who were unknown to Noor Azmi. Gobi promised Noor Azmi RM600 per delivery of drugs into Singapore.

17 On 21 October 2015 between 10.00pm to 11.00pm, Gobi arranged to meet Noor Azmi at a petrol kiosk in Johor Bahru. There, Gobi passed Noor Azmi the black haversack (A1). Noor Azmi knew that the black haversack contained "*ganja*" (being a street name for cannabis). He placed the black haversack under the floor board of the front passenger seat of the Lorry.

Events on 22 October 2015

18 On Gobi's instructions, Noor Azmi entered Singapore on 22 October 2015 at about 6.00am. Upon clearing Customs, Noor Azmi called Gobi who

then told him to drive to an SPC Petrol Kiosk at 33 Jalan Buroh to wait for someone to collect the black haversack. Noor Azmi followed Gobi's instructions and waited.

19 Meanwhile, Abdul Karim called Ilango that morning, and told him to head to Jurong Port Road to collect the item for him. Ilango asked Ravan to accompany him to complete a job. Ravan agreed, knowing that the job involved illegal drugs. Shortly after 7.00am, they boarded a taxi from Clementi Avenue 1 and headed to Jurong Port Road.

20 In the taxi, Ilango conversed with Abdul Karim on the phone. Ilango clarified with Abdul Karim the location for the collection of the item. Ilango was told to head to the SPC Petrol Kiosk along Jalan Buroh. Ravan heard Ilango talking to someone over the phone in Tamil, asking for the destination Ilango should be heading to. While on the way to the SPC Petrol Kiosk, during one of the phone conversations with Abdul Karim, Ilango came to know that he would be collecting "*ganja*".

21 After alighting from the taxi at the flyover near the SPC Petrol Kiosk at 33 Jalan Buroh, Ilango crossed an overhead bridge and walked into the petrol kiosk. Ravan remained near the bridge to wait for Ilango.

22 In compliance with Abdul Karim's instructions, Ilango entered the Lorry through the unlocked front passenger door. He collected the black haversack (A1). Noor Azmi saw him collect the black haversack. Shortly after, Ilango alighted from the Lorry and walked towards Ravan with the black haversack (A1). Ravan then flagged a taxi and both of them boarded it.

23 While in the taxi, Abdul Karim called Ilango and told him that there

were three blocks of “*ganja*” inside the black haversack (A1). Abdul Karim told Ilango to hold onto the drugs which he would collect later from Ilango. Ilango told Ravan that there were “three *books*” inside the haversack. Ravan understood this to mean that there were three kilograms of “*ganja*”. Ilango then suggested that Ravan take medical leave for the day. Ravan did not agree but decided to report late to work.

24 When they reached their destination, Ilango passed Ravan the black haversack (A1) while he paid the taxi fare.

25 After alighting from the taxi, Ilango suggested that the “*ganja*” be kept at Ravan’s house and told Ravan that there would be people coming to collect the “*ganja*”. Ravan agreed and brought Ilango to his flat. Ravan was still holding on to the black haversack (A1) containing the “*ganja*”.

26 Ilango then received specific instructions from Abdul Karim to help cut and repack the drugs. Ilango then told Ravan that he wanted Ravan’s help to cut and repack the three kilograms of “*ganja*”. Ravan agreed.

27 Ilango then instructed Ravan to cut the three blocks of “*ganja*” into halves. Ravan then took a kitchen knife from his house and, together with Ilango, cut the three blocks of “*ganja*” into six half blocks weighing approximately 500 grams each. In cutting each block, Ilango helped hold down the block while Ravan used the knife to cut the block in half. In the process of cutting the blocks, some loose “*ganja*” fell out. Ilango and Ravan packed these loose “*ganja*” into small packets.

28 After cutting the “*ganja*”, they packed two of the six half blocks using the aluminium foil that came with the initial three blocks of “*ganja*”. They

placed these two blocks in the black haversack (A1). Then, they packed the four remaining half blocks of “*ganja*” into individual bags. After Ravan took a shower, they headed down to Ilango’s flat.

29 In Ilango’s flat, Ravan spotted a weighing scale. He suggested to Ilango that they could use the weighing scale to measure and ensure that they had indeed cut each block into half blocks of 500 grams each. Ilango agreed and they brought the weighing scale back to Ravan’s unit to weigh the six half blocks. As the six half blocks weighed more than 500 grams, Ilango removed the excess from each block, and they both repacked these into small packets. In total, there were 34 small packets of vegetable matter (including the ones packed earlier).

30 Ravan placed the 34 small packets inside a diaper (B1) which he then placed in the bottommost drawer of a brown wardrobe in his flat. The rest of the “*ganja*” were placed on the floor of the living room in front of a brown wardrobe. It was then about 1.15pm. Ilango then told Ravan that he wanted to rest in Ravan’s flat while waiting for someone to come to collect the drugs. Ravan told Ilango to return to his own flat as he wanted to drop by his workplace. Both of them left Ravan’s flat at about 1.40 pm.

31 After dropping by his workplace, Ravan returned to Block 422 at about 2.45pm. He met Ilango at the void deck at about 3.15pm. Ilango commented that there was no good place in the vicinity to hand over the “*ganja*” to people later. Ravan then suggested and showed Ilango some places where he could handover the “*ganja*”.

32 Shortly after, Ilango received a phone call from Abdul Karim who gave instructions to cut the “*ganja*” further and relayed specific instructions on how

to do so. Ilango then told Ravan that they needed to cut two of the six half blocks of drugs into further halves to make four smaller blocks and also to pack the “*ganja*”. Both Ravan and Ilango proceeded back to Ravan’s flat where they carried out the instructions. Abdul Karim also instructed Ilango in the phone call to set aside one half block and three smaller blocks for Abdul Karim’s collection.

33 Shortly before 4.00pm, Ilango told Ravan that someone would be coming to collect all the “*ganja*”. Ravan then told Ilango that he had to return to his workplace. Ilango then brought one half block (G1A1) and three smaller blocks of drugs (G1B1A, G1B2A1 and G1B3A1) to his flat. Ilango told Ravan that someone would collect the “*ganja*” first and that the remainder would be collected by some people within the day. The “*ganja*” left in Ravan’s flat were three half blocks and one smaller block (A1A1A, A1B2A1, A2A1A and A1B1A), and the 34 small packets in the diaper (B1). For his assistance, Ilango promised Ravan \$50 after he had asked Ravan to cut the “*ganja*” the second time.

34 At about 4.00pm, Abdul Karim called Ilango, and asked him to meet him downstairs without the drugs first. They were arrested at the basement carpark of Block 422. By then, Ravan had already been arrested.

Conviction

35 Ravan admitted to the Statement of Facts without qualification in relation to his role in the drug activities. However, it was accepted by all parties that he would not be aware of specific matters relating to Noor Azmi’s role, as well as certain details of the dealings between Ilango and Abdul Karim. Nonetheless, based on the facts admitted to by Ravan, it was clear that all the elements of the charge against him were established beyond a reasonable doubt.

In particular, the original three blocks in the black haversack (A1) was vegetable matter containing not less than 499.99 grams of cannabis. Ravan clearly abetted by intentionally assisting Ilango in dealing with the “*ganja*”, and he knew that the substance was “*ganja*”. Accordingly, I convicted Ravan of the charge of abetment of a trafficking offence. Similarly, based on the admissions without qualification by Ilango and Noor Azmi to the portions of the Statement of Facts which related to their roles in the drug activities, I found that all the elements of the charge against each of them were made out. I convicted them of one trafficking charge each.

Sentencing

Antecedents

36 Turning to their antecedents, Ravan admitted to a string of previous convictions, dating back to 1995. In particular, in 2007, Ravan was convicted on a charge of drug consumption under s 8(b)(ii) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed), and given his previous admissions into the drug rehabilitation centre, he was sentenced to five years of imprisonment and three strokes of the cane. Ilango similarly admitted to a string of previous convictions, dating back to 1989. In particular, in 2000, he was convicted of a drug trafficking offence, as well as a drug consumption offence, and the global sentence imposed on him was eight years of imprisonment with five strokes of the cane. As for Noor Azmi, he was untraced.

Charges taken into consideration

37 Apart from the charges for which they were convicted of, each of the accused persons also faced additional charges. As set out above at [14], upon analysis by the HSA, in addition to the cannabis, the original three blocks were

also found to contain not less than 999.99 grams of cannabis mixture. Thus, Ilango faced a second charge of possessing for the purpose of trafficking not less than 999.99 grams of cannabis mixture, Noor Azmi faced a second charge of trafficking involving not less than 999.99 grams of cannabis mixture, while Ravan faced a second charge of abetting Ilango in trafficking the cannabis mixture. Further, Ravan and Ilango faced a third charge each, of joint possession for the purpose of trafficking the 83.05 grams of cannabis found in the 34 small packets (which were fragments from the original three blocks). The accused persons consented to having these charges be taken into consideration for the purpose of sentencing.

The prescribed punishment

38 For an offence under s 5(1) of the MDA, and an offence under s 5(1) read with s 5(2) of the MDA, by virtue of s 33(1) read with the sixth column of the Second Schedule of the MDA, the prescribed punishment for trafficking in not less than 330 grams and not more than 500 grams of cannabis, is a minimum of 20 years of imprisonment and 15 strokes of the cane, with the maximum of 30 years of imprisonment or life imprisonment and 15 strokes of the cane. By s 12 of the MDA, for abetting the commission of a trafficking offence within s 5(1) read with s 5(2) of the MDA, the prescribed punishment is that for the trafficking offence. In other words, in relation to trafficking, as well as abetting the trafficking, of 499.99 grams of cannabis, the prescribed punishment is between 20 to 30 years of imprisonment, or life imprisonment, and 15 strokes of the cane.

The applicable legal principles

39 The applicable legal principles were not seriously disputed by the parties. In *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115

(“*Suventher*”), the Court of Appeal set out the principles in determining the sentences to be imposed for the offence of drug trafficking.

40 To summarise, the Court of Appeal stated where the offence concerns the trafficking of drugs, the gravity of the offence is measured by the quantity of drugs involved (see *Suventher* at [21]). The court should first determine the indicative starting point of the sentence, which should be broadly proportional to the quantity of drugs involved (see *Suventher* at [29]).

41 Specifically, the Court of Appeal determined that the sentencing guidelines for trafficking in cannabis as follows (*Suventher* at [29]):

- (a) 330 to 380 grams: 20 to 22 years’ imprisonment;
- (b) 381 to 430 grams: 23 to 25 years’ imprisonment; and
- (c) 431 to 500 grams: 26 to 29 years’ imprisonment.

42 The Court of Appeal emphasised that the sentencing guidelines should not be applied mechanistically. After determining the indicative starting point of the sentence, the court should consider the *culpability* of the accused, as well as the presence of *aggravating or mitigating factors*, and adjust the sentence upwards or downwards appropriately (see *Suventher* at [30]).

43 As regards the assessment of an offender’s culpability in relation to a drug trafficking offence, the High Court stated in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 (“*Vasentha*”) that this would include consideration of an offender’s “motive as well as the nature and extent of his role and involvement in the drug trade” (see [49]). As for aggravating factors, the High Court identified these to include the presence of relevant antecedents

and offences taken into consideration for the purpose of sentencing (see [54]). Mitigating factors would include the admission of guilt, and the cooperation accorded to the authorities in the investigations (see [70]).

Prosecution's submissions

44 Given that the quantity of drugs involved in this case was 499.99 grams of cannabis, the Prosecution submitted that the indicative starting point should be at the uppermost end of the *range* of 26 to 29 years' imprisonment stipulated in *Suventher* for between 431 to 500 grams of cannabis, and that in fact, a starting point of 29 years' imprisonment would be appropriate.

45 Of the three accused persons, the Prosecution submitted that Ilango was the most culpable, followed by Noor Azmi, with Ravan being the least culpable offender. The analysis was as follows:

(a) Ilango had approached Abdul Karim for work. Then, he took up Abdul Karim's job offer, suspecting that it would involve illegal drugs. He did so purely for financial gain. Thereafter, Ilango recruited Ravan in the operation, offering Ravan money for his help. He also progressively directed Ravan to carry out more tasks, from cutting, repacking, to storing the drugs. However, the Prosecution conceded that Ilango was not the mastermind in the operation, as compared to Abdul Karim. They also conceded that Ilango had offered information to the CNB after his arrest.

(b) As for Noor Azmi, he had clearly established a working relationship with Gobi to transport drugs into Singapore at RM600 per delivery. However, unlike Ilango, he had not recruited anyone else into

the drug operation. His involvement was strictly limited to that of a courier.

(c) Turning to Ravan, he performed a limited role under the supervision of Ilango. His participation was also a short one, having been recruited on the day of the offence itself, being 22 October 2015. Furthermore, when he agreed to help Ilango, Ravan did not know the full scale of assistance that was required of him. Thus, he complied with Ilango's direction to cut and repack the drugs on a piecemeal basis. Ravan's expected gain was also relatively modest, being a sum of \$50.

46 In terms of the aggravating factors, the Prosecution highlighted that Ravan and Ilango had relevant antecedents. All three accused persons had outstanding charges being taken into account for the purpose of sentencing, specifically two each for Ilango and Ravan, and one for Noor Azmi.

47 In light of the above, for Ilango, the Prosecution submitted that a small reduction from the starting point of 29 years' imprisonment was warranted, recognising that Ilango was not the mastermind of the operation. Given Ilango's cooperation with the CNB, the Prosecution submitted for a sentence of around 26 to 27 years' imprisonment. For Noor Azmi, a downward calibration from any sentence imposed on Ilango was warranted. An appropriate sentence would be not less than 26 years' imprisonment. As for Ravan, a further downward calibration was warranted from any sentence imposed on Noor Azmi. Thus, Ravan should be sentenced to not less than 25 years' imprisonment. Each accused person should also be sentenced to caning of 15 strokes.

48 The Prosecution submitted that the sentencing position was in line with the sentences imposed in the case of *Public Prosecutor v Esvaran A/L Mohamet*

Mustaffa and 2 others (CC 74/2017, unreported), on the three offenders Esvaran A/L Mohamet Mustaffa (“Esvaran”), M Shanmugam (“Shanmugam”) and Denish A/L Subramaniam (“Denish”). There, the offenders were convicted of charges involving 14.99 grams of diamorphine, which was an amount of diamorphine just below the threshold attracting capital punishment. Specifically, Denish had offered Esvaran RM1,000 to transport the drugs from Malaysia into Singapore, and to pass the drugs to Shanmugam. In turn, Shanmugam intended to sell the drugs to his own customers. Esvaran was arrested when entering Singapore. With his assistance, the authorities were able to locate and arrest Denish and Shanmugam. Of the three offenders, only Shanmugam was traced for drug related offences, including drug trafficking. For possessing the drugs for the purpose of trafficking, Esvaran was sentenced to 24 years’ imprisonment, while Denish was sentenced to 29 years’ imprisonment. Shanmugam was sentenced to 28½ years’ imprisonment for attempted possession of the drugs for the purpose of trafficking. Esvaran has discontinued his appeal (CCA 56/2017), while Denish’s appeal against sentence is pending determination (CCA 61/2017).

49 The Prosecution submitted that Ilango’s culpability was most akin to Shanmugam’s. Both Ilango and the Shanmugam were traced for drug trafficking offences, and both were the intended recipients of the imported drugs. Although Shanmugam had intended to profit from the resale of the drugs, Ilango was only acting on Abdul Karim’s instructions. Nonetheless, the Prosecution submitted that Ilango had recruited another person into the enterprise, thus increasing his culpability in this case. The Prosecution therefore submitted that Ilango’s sentence should be lower than Shanmugam’s, justifying the call for a sentence of about 26 to 27 years’ imprisonment to be imposed on Ilango (see [47]).

50 The Prosecution submitted that Noor Azmi's culpability was most akin to Esvaran's. However, Noor Azmi's sentence should be higher than that imposed on Esvaran because unlike Noor Azmi, Esvaran played a crucial role in the identification and arrest of the other two offenders. Therefore, the Prosecution argued that the submission of not less than 26 years of imprisonment for Noor Azmi (see [47]) was warranted. As for the appropriate sentence for Ravan, again as stated at [47], it should be lower than that for Noor Azmi.

Ravan's sentence

51 I now turn to Ravan's plea in mitigation. Ravan's counsel submitted that Ravan should be sentenced to 21 years' imprisonment with the mandatory 15 strokes of the cane.

52 In terms of Ravan's culpability, Ravan's counsel raised the following main points. First, given the prior relationship between Ravan and Ilango, Ravan felt pressured into assisting Ilango. He did not assist Ilango for the money, as he agreed to help even before Ilango said that he would give him any money. Ilango had clearly made use of Ravan. Second, the drugs did not belong to Ravan, and he did not plan to do anything with the drugs. In fact, Ravan could not do anything with the drugs. Ravan's involvement in the offence was limited. Third, he did not know who Ilango was dealing with, and did not know who Ilango was going to pass the drugs to. He acted on Ilango's instructions, and for Ilango.

53 Turning to the mitigating factors, Ravan's counsel highlighted that Ravan had pleaded guilty. After his arrest, he cooperated fully during investigations. He admitted fully to his involvement in the offence. This was his first time being involved in drug trafficking activities.

54 Ravan's counsel cited *Public Prosecutor v Muhammad Nor Haiqal bin Shaman* [2017] SGHC 292 ("*Nor Haiqal*") (from which an appeal filed by the Prosecution by way of CCA 51/2017 was subsequently withdrawn), where Nor Haiqal was sentenced to 23 years of imprisonment and caning for a charge of trafficking in not less than 249.99 grams of methamphetamine. It was submitted that Ravan's culpability was a lot lower than that of Nor Haiqal, and Ravan should accordingly get a sentence of 21 years of imprisonment.

55 I now turn to my analysis. As Ravan pleaded guilty to a charge of abetting by intentionally aiding Ilango to traffic in not less than 499.99 grams of cannabis, I agreed with the Prosecution that the indicative starting point is a sentence of 29 years of imprisonment, being the highest end of the range of 26 to 29 years for the weight of between 431 to 500 grams of cannabis.

56 Further, I found that Ravan's culpability, considered in the round, warranted a *substantial* downwards adjustment from the indicative starting point. First, I agreed with both the Prosecution and Ravan's counsel that Ravan performed a limited role in this drug trafficking offence. Ravan was only recruited on the morning of the arrest. He had no idea of the extent of the drug trafficking activities he was helping in. He acted only on the instructions of Ilango, and he acted as and when the instructions were given. Second, Ravan's financial gain was rather meagre. Ravan was only promised \$50 for helping Ilango on the day itself.

57 However, I agreed with the Prosecution that Ravan's role, though minor, was not a passive one. At this juncture, I turn to deal with the submission by Ravan's counsel that Ravan only agreed to help Ilango in this drug trafficking offence because he was pressured by Ilango. Specifically, it was submitted that Ravan and Ilango knew each other prior to Ilango's previous conviction. Ravan

was convinced that Ilango possessed the means and resources to harm his family. Some time ago, Ravan's son was assaulted, and the attacker was not apprehended. This happened when Ilango was in prison, awaiting trial for an offence in which Ravan was to be a prosecution witness. When Ilango completed his sentence, Ravan recalled Ilango asking Ravan how his son was doing. To Ravan, this indicated that Ilango was responsible for procuring the assault on Ravan's son. When Ilango asked for Ravan's help on the date of the drug trafficking offence, Ravan felt pressured into agreeing.

58 Having considered this submission, I did not place much weight on this assertion. Even taking Ravan's account at the highest, there was hardly any basis for Ravan to link Ilango to the purported assault on Ravan's son. Furthermore, Ravan did not allege that Ilango actually exerted any pressure on Ravan to assist in the present offence. In particular, over a large part of the day, Ravan had accompanied Ilango to collect the drugs, and assisted him in cutting, weighing, repacking and storing those drugs. There was no suggestion by Ravan that during this time, Ilango made any actual threats against him or his family.

59 I should add that Ravan's counsel submitted that by suggesting to Ilango to weigh the drugs using Ilango's weighing scale, Ravan wanted Ilango to remove the drugs from Ravan's flat and store the drugs at Ilango's flat instead. Also, Ravan showed Ilango a place with a CCTV camera to handover the drugs because he wanted some proof that it was Ilango who handed over the drugs. These were the supposed reasons for his actions, and throughout, he was actually reluctant to assist Ilango. As stated above, I placed little weight on the allegation that Ilango pressured Ravan to assist in the matter. Furthermore, notwithstanding this submission on Ravan's motives, it was clear that Ravan had actively participated in various activities in dealing with the drugs, so as to assist Ilango. The main point I wish to make here is that the assistance he

rendered was not trivial, and that he was not under any actual pressure by Ilango to provide such assistance.

60 In terms of the mitigating factors, I found that weight should be given to Ravan's timely plea of guilt, and his cooperation with the authorities. In terms of the aggravating factors, there was a relevant antecedent, in terms of the drug consumption charge in 2007. While there were two other charges taken into consideration for the purpose of sentencing Ravan, I noted that they involved drugs found within the original three blocks of drugs which Ravan helped to cut, re-pack, and store. Thus, although this was an aggravating factor, this did not weigh heavily in my consideration.

61 Given all of the above, I agreed with the Prosecution that Ravan was the least culpable amongst the three accused persons. A substantial *downwards* adjustment from the 29 years' imprisonment indicative starting point was warranted, in view of his limited role, and the mitigating factors. Finally, taking into account the aggravating factors, I was of the view that a sentence of 24½ years' imprisonment and the mandatory 15 strokes of the cane was appropriate. This sentence was the lowest amongst all three accused persons in this case as Ravan was the least culpable amongst them. The sentence was backdated to 24 October 2015, being the date of remand.

62 For completeness, I also dealt with Ravan's counsel's submission that Ravan should receive a sentence lower than that imposed on Nor Haiqal. In that case, the offender pleaded guilty to, and was convicted of three charges. The first was that of having not less than 249.99 grams of methamphetamine in his possession for the purpose of trafficking. The second offence was for trafficking in not less than 97.9 grams of methamphetamine, while the third offence was for consumption of methamphetamine. The two charges being taken into

consideration for the purpose of sentencing were for trafficking in methamphetamine. Nor Haiqal also had an antecedent for drug possession, for which he was sentenced to probation, and was admitted to the drug rehabilitation centre for drug consumption. Given that Nor Haiqal faced more charges, Ravan's counsel stressed that Nor Haiqal was more culpable. Further, the drug activities involved a syndicate. Finally, Nor Haiqal's role was to help pack and deliver drugs. He had been doing this for four months before the arrest.

63 I noted that the High Court found that the role played by Nor Haiqal was minimal despite the involvement of a syndicate. Nor Haiqal was only 20 years old at the time, and had agreed to help out so as to feed his own drug addiction and not to be an active part of the syndicate's operations. The High Court sentenced him to 23 years' imprisonment and 15 strokes of the cane for the first offence, five years' imprisonment and five strokes of the cane for the second offence and one year's imprisonment for the third offence. The sentences of the first and the third offences were ordered to run consecutively, with the sentence for the second offence to run concurrently. As a result, Nor Haiqal faced a global sentence of 24 years' imprisonment with 20 strokes of the cane.

64 In my view, there were two factors that distinguished Ravan's case from *Nor Haiqal*. First, Ravan was older in age, being 41 years old at the time of his arrest, while Nor Haiqal was a young offender. Second, Ravan had more previous convictions, and a more aggravated drug consumption history. The sentence imposed on Ravan was half a year more than the global sentence imposed on Nor Haiqal, and I did not consider the sentence to be excessive.

Ilango's sentence

65 Turning to Ilango, at the outset, I highlight an error in the charge that has come to my attention. As Ilango had a drug trafficking antecedent, *ie*, he

had previously been convicted for an offence under s 5(1)(a) read with ss 5(2) and 33(1) of the Misuse of Drugs Act (Cap 185, 1998 Rev Ed), the charge against him relied on the enhanced sentencing regime under s 33(4A)(i) of the MDA. This provision states that a repeat offender who traffics in a Class A drug shall be punished with imprisonment for a term of not less than 10 years and not more than 30 years, and not less than 10 strokes and not more than 15 strokes of the cane.

66 In preparing these grounds of decision, I have come to the view that the reliance on this punishment provision is an error. By s 33(4D) of the MDA, the punishment provided under subsection (4A) “shall apply only if the punishment as shown in the *sixth column* of the Second Schedule is not applicable in relation to that offence” [*emphasis added*]. As stated at [38], for the offence of trafficking in not less than 330 grams and not more than 500 grams of cannabis under s 5(1), or s 5(1) read with s 5(2), the punishment is prescribed by the *sixth column* of the Second Schedule of the MDA. To reiterate, such punishment is that of 20 years’ to 30 years’ imprisonment or life imprisonment, with a mandatory minimum of 15 strokes of the cane. This is *heavier* than that provided for under the enhanced sentencing regime under s 33(4A)(i) of the MDA. In fact, this is the purpose of s 33(4D), which allows the *heavier* punishment to prevail.

67 Given that the trafficking charge against Ilango involved not less than 499.99 grams of cannabis, the applicable punishment provision should have been s 33(1) read with the sixth column of the Second Schedule of the MDA, and the charge should have been framed accordingly. I should also add that the same error arose in the second charge against Ilango, of possessing for the purpose of trafficking not less than 999.99 grams of cannabis mixture, which was taken into consideration for the purpose of sentencing. Again, the

applicable sentencing provision should have been s 33(1) read with the sixth column of the Second Schedule of the MDA, and not s 33(4A)(i) of the MDA.

68 In my view, the errors did not cause any injustice in the case, especially to Ilango, and that they do not render the proceedings invalid: see s 423 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). The substantive elements of the charges were set out, and Ilango admitted to committing the offences. As far as sentencing is concerned, parties had, in fact, *correctly* applied the framework within *Suventher*, and argued for an appropriate sentence within the range of 20 years to 30 years: see the Prosecution’s position at [44], [47] and [49] above, and that of Ilango’s counsel below at [69]. There was also no dispute that 15 strokes of the cane should be imposed. In fact, there is no appeal against Ilango’s sentence. Had the charges been framed with the applicable punishment provision, there would have been no difference to my sentence. As there is no appeal against Ilango’s sentence, I have informed the Prosecution, Ilango’s counsel and Ilango of this matter.

69 With that, I turn to the main points raised by Ilango’s counsel in his mitigation plea, in support of a submission of 23 years’ imprisonment and 15 strokes for Ilango:

(a) First, within the range of 26 to 29 years set out in *Suventher*, the indicative starting point for Ilango should be 26 years’ imprisonment because there has been no suggestion that Ilango’s conduct was among the “worst conceivable” for the offence in question.

(b) Second, Ilango’s culpability should be regarded as relatively low. This was because Ilango did not direct or organise the drug trade on a commercial scale, and he did not take active steps to avoid detection of the offence. Although Ilango involved Ravan in the commission of

the offence, his doing so cannot be described as an act of “recruiting” Ravan into a drug operation in the typical sense.

(c) Ilango’s culpability was also low because he was in desperate need for financial sustenance. He was not intimately involved in the drug trade. He had no knowledge of who the drugs he had collected were intended to be distributed to. He merely took Abdul Karim’s job offer and followed Abdul Karim’s instructions closely.

(d) Ilango did not profit from the commission of the offence. He was motivated by desperation stemming from his inability to find legitimate employment following his release from prison and his fear that he would be unable to provide for his family. In this case, Ilango did not even ask Abdul Karim if he would get paid for his help in collecting the drugs.

(e) As for the mitigating factors, Ilango was deeply remorseful and had pleaded guilty early.

(f) As for aggravating factors, the charges to be taken into consideration for sentencing should carry little weight, because they related to the same drug transaction.

70 To begin with, I disagreed with Ilango’s counsel that the indicative starting point for Ilango’s sentence should be 26 years of imprisonment, on the basis that it was not the “worst” case for such an offence. As set out above at [40], in determining the indicative starting point for an offence of drug trafficking, the quantity of drugs involved would be the main factor. In view of the sheer weight of cannabis involved, the indicative starting point of Ilango’s sentence of 29 years, close to 30 years of imprisonment, was appropriate. In fact, this was the starting point I applied for Ravan, and as I shall set out later,

for consistency, this was also the starting point I applied for Noor Azmi: see [77].

71 In terms of culpability, I found that Ilango's culpability warranted a *downwards* adjustment from the 29 years' imprisonment as the starting point. In this regard, I agreed with Ilango's counsel that Ilango's involvement in the drug trade did not involve him directing or organising the drug trade on a commercial scale. The Prosecution also rightfully pointed out that Ilango was not the mastermind of this drug operation. He was merely following instructions given by Abdul Karim.

72 However, I disagreed with Ilango's counsel that little weight should be given to the fact that Ilango recruited Ravan into this operation. On the contrary, the fact of the matter was that Ilango asked Ravan along for the trip to collect the drugs, and that Ilango later offered Ravan \$50 for his continued help in relation to the drugs. Further, I also found that Ilango committed this offence for his own personal financial gain. He asked Abdul Karim for work, and expected to be financially rewarded for taking up this job from Abdul Karim.

73 In terms of mitigating factors, I took into account the fact that Ilango pleaded guilty in this case, thus saving resources that would otherwise be expended at trial. He had also assisted the authorities by providing information to the CNB.

74 Turning to the aggravating factors, I took into account the drug trafficking and consumption antecedents. I also noted that Ilango faced two other charges in this case. However, I agreed that I should not place too much weight on this as the drugs involved were contained in the original three blocks. I refer to my view expressed at [60] above.

75 Taking all the matters in the round, I agreed with the Prosecution that Ilango was the most culpable of the three accused persons, but that a downwards adjustment from Shanmugam's sentence in CC 74/2017 was warranted (see [48] to [50] above). Ilango's culpability was lower than Shanmugam's, and he had assisted the CNB. In light of the Ilango's culpability, and the relevant aggravating and mitigating factors present in his case, I was of the view that a sentence of 26½ years' imprisonment was appropriate, and that 15 strokes of the cane was warranted. The sentence was backdated to 24 October 2015, being the date of remand.

Noor Azmi's sentence

76 Turning to Noor Azmi, his counsel submitted that he should be sentenced to the minimum sentence of only 20 years' imprisonment and the mandatory 15 strokes of the cane. To support this argument, Noor Azmi's counsel put forward three key arguments. First, Noor Azmi's culpability was lower than that of Esvaran's (CC 74/2017), and so he should receive a sentence lower than the 24 years' imprisonment which was imposed on Esvaran. Also, Noor Azmi was cooperative and honest as to his guilt and the part he played in this case. There was no aggravating factor present in this case.

77 Similar to the approach taken in sentencing Ravan and Ilango, I applied 29 years of imprisonment, at the highest end of the spectrum, as the indicative starting point for Noor Azmi.

78 Based on culpability, I found that a *downwards* adjustment from the indicative starting point of 29 years' imprisonment was warranted. For one, Noor Azmi's role was limited to that of a courier only. He did not recruit anyone into the operation. However, I also agreed with the Prosecution that Noor Azmi was motivated by profit when he committed this crime. There was an

arrangement between Noor Azmi and Gobi whereby he would receive RM600 per delivery of drugs into Singapore. Thus, while I found that Noor Azmi was less culpable than Ilango in this case, he was more culpable than Ravan.

79 Turning to the mitigating factors, again, Noor Azmi pleaded guilty. Although he did not have any antecedents, this was a neutral factor.

80 Noor Azmi's counsel took issue with the Prosecution's submission that Noor Azmi should face a higher sentence than Esvaran because the latter cooperated with the authorities and played a crucial role in the identification and arrest of the two other offenders, and the disruption of drug trafficking activities while the same cannot be said of Noor Azmi. Noor Azmi's counsel argued that such an argument should carry no weight because it was unfair on Noor Azmi. In this case, Noor Azmi was the last of the three accused persons to be arrested. Further, Noor Azmi's counsel argued that Noor Azmi was cooperative and honest as to his guilt and the part he played in this offence and this should be a mitigating factor.

81 As no evidence was led on whether Noor Azmi cooperated with the authorities in the investigations, I did not place any weight on this point in deciding whether Noor Azmi's sentence should be equal or not to the sentence imposed on Esvaran. Even if I was inclined to give Noor Azmi the benefit of the doubt and find that he did cooperate with the authorities, I nonetheless found that Noor Azmi's sentence should not be reduced to one that was lower than Esvaran's because Noor Azmi had another charge taken into consideration for the purpose of sentencing. More importantly, I did not see how the minimum sentence could be justified. In light of the above, I imposed a sentence of 25 years' imprisonment backdated to the date of remand, being 14 November 2015, and the mandatory 15 strokes of the cane.

Conclusion

82 To conclude, I should add that the sentences imposed on the three accused persons above are in line with the principle of parity, which is that the sentences meted out to co-offenders who are party to a common criminal enterprise should not be unduly disparate from each other and that those of similar culpability should receive similar sentences, while those of greater culpability should generally be more severely punished (*Chong Han Rui v Public Prosecutor* [2016] SGHC 25 at [1]). As Ilango was the most culpable of the three accused persons, he was sentenced to imprisonment of 26½ years, followed by Noor Azmi for 25 years of imprisonment, and then Ravan for 24½ years of imprisonment. The sentences were backdated to the date of remand for each of them. Each of them was also sentenced to 15 strokes of the cane.

Hoo Sheau Peng
Judge

Anandan Bala, Zhou Yihong and Gabriel Choong
(Attorney-General's Chambers) for the Public Prosecutor;
Ramesh Tiwary (M/s Ramesh Tiwary) and Ravinderpal Singh
(Kalco Law LLC) for the first accused;
Paul Tan and Jared Dass
(M/s Rajah & Tann Singapore LLP) for the second accused; and
Johan Ismail (Johan Ismail & Co) and Gino Hardial Singh
(Eugene Thuraisingam LLP) for the third accused.