

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 79

Criminal Case No 25 of 2017

Between

Public Prosecutor

And

Zamri Bin Mohd Tahir

GROUND OF DECISION

[Criminal law] — [Statutory offences] — [Misuse of Drugs Act]
— [Drug trafficking]

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Public Prosecutor
v
Zamri Bin Mohd Tahir

[2017] SGHC 79

High Court — Criminal Case No 25 of 2017

Foo Chee Hock JC

21, 23, 24 March 2017; 31 March 2017

3 May 2017

Foo Chee Hock JC:

1 Zamri Bin Mohd Tahir (“the accused”), a 39-year-old Singaporean male at the time of his arrest,¹ faced two charges under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) for trafficking in diamorphine. At trial, the second charge (“Charge B2”) was stood down while the Prosecution proceeded with the first charge (“Charge B1”), which read as follows:

That you, ZAMRI BIN MOHD TAHIR,

¹ P67 at para 1, at p 276 of AB.

on 14 October 2014 at about 12.25 pm, in the vehicle bearing registration number GT 5611R at the car park located at Block 609 Clementi West Street 1, Singapore, did traffic in a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by having in your possession for the purpose of trafficking five (5) packets containing not less than 1835.50 grams of granular/powdery substance which was analysed and found to contain **not less than 40.37g of diamorphine**, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) punishable under s 33(1) of the Act, and further upon your conviction under s 5(1)(a) read with s 5(2) of the Act, you may alternatively be liable to be punished under s 33B of the Act.

[emphasis in original]

2 Sometime in August 2014, the accused was contacted by an unidentified male whom the accused referred to as “Abang”.² Abang offered the accused a job involving the collection and distribution of “*barang*”, which the accused understood to mean heroin³ (a street name for diamorphine: see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Muhammad Ridzuan*”) at [15]). Because the accused was in need of money, he agreed to take up the job.⁴

² P68 at para 19, at p 293 of AB.

³ P68 at para 19, at p 293 of AB.

⁴ P68 at para 19, at p 293 of AB.

3 On 13 October 2014, Abang called the accused to ask him if he would be interested “to work”.⁵ The accused expressed his interest, and Abang called him the next day on 14 October 2014 to inform him that the *barang* could be collected from Block 606 Clementi West Street 1 at about 12.00pm.⁶ Using a van bearing registration number GT 5611R (“the Van”), the accused’s friend, Rawi Bin Amin (“Rawi”), drove the accused to the car park of Block 609 Clementi West Street 1.⁷ The accused then walked to the void deck of Block 606 and spent 15 minutes looking for the *barang* before spotting a red plastic bag in the basket of a bicycle.⁸ Upon retrieving the red plastic bag, which contained five bundles of diamorphine (hereinafter referred to as the “Fourth Consignment”, as explained below),⁹ the accused walked back to the Van with the drugs.¹⁰

4 Rawi proceeded to drive off with the accused seated in the front passenger seat.¹¹ At about 12.25pm, Rawi and the accused

⁵ P70 at para 48, at p 306 of AB.

⁶ P69 at para 31, at p 300 of AB; P70 at para 49, at p 306 of AB.

⁷ Transcript, Day 2, p 13; Transcript, Day 3, pp 30–31.

⁸ P70 at para 49, at p 306 of AB.

⁹ P67 at para 9, at p 279 of AB.

¹⁰ P70 at para 49, at p 306 of AB.

¹¹ P67 at para 8, at p 278 of AB.

were stopped by officers from the Central Narcotics Bureau (“CNB”) and were arrested before they could exit the car park.¹² Upon questioning by the CNB officers, the accused surrendered the red plastic bag that he had placed between him and Rawi.¹³ The five bundles therein (containing not less than 1835.50g of granular/powdery substance) were subsequently analysed and found by the Health Sciences Authority (“HSA”) to contain not less than 40.37g of diamorphine.¹⁴

5 In addition to the Fourth Consignment, the CNB officers found two digital weighing scales, one plastic spoon, and numerous plastic packets of various sizes (“Drug Paraphernalia”) at the back of the Van.¹⁵ The accused admitted that the Drug Paraphernalia were intended to be used to repack diamorphine.¹⁶ Specifically, the plastic spoon was for scooping diamorphine into the small packets and the weighing scales were for weighing the diamorphine.¹⁷

6 With respect to the Fourth Consignment, the accused stated

¹² P70 at para 49, at p 306 of AB; Transcript, Day 3, p 31.

¹³ P67 at para 8, at p 279 of AB; Transcript, Day 3, p 11.

¹⁴ P47, P48, P49, P50 and P51, at pp 110–114 of AB; Prosecution’s closing submissions at para 8.

¹⁵ Prosecution’s closing submissions at para 6.

¹⁶ Transcript, Day 3, pp 31 and 35.

¹⁷ P70 at para 57, at p 309 of AB; Transcript, Day 3, pp 34–35.

as follows:¹⁸

Rawi and I had intended to go back to the rented room after collecting the 'barang'. I am supposed to wait for Abang's call. He will then give me instructions on what to do with the 'barang'. Abang would tell me **how many deliveries** I need to make for this collection of 'barang'. He will tell me if I need to **pack them into smaller babalong or deliver as a bundle**. The people collecting the heroin will contact me on my Nokia handphone and I will arrange a place to meet and **deliver** the 'barang' to them. I will receive my payment of \$700 from either one of the persons collecting the 'barang'.

[emphasis added]

The conviction

7 The elements of the offence of trafficking under s 5(1)(a) read with s 5(2) of the MDA were set out by the Court of Appeal in *Muhammad Ridzuan* at [59] as follows:

- (a) **possession** of a controlled drug – which may be proved or presumed pursuant to s 18(1) of the MDA, or deemed pursuant to s 18(4) of the MDA;
- (b) **knowledge** of the nature of the drug – which may be proved or presumed pursuant to s 18(2) of the MDA; and
- (c) proof that possession of the drug was for the **purpose** of trafficking which was not authorised.

[emphasis added]

¹⁸ P70 at para 50, at p 307 of AB.

As for the meaning of “trafficking”, s 2(1) of the MDA defined “traffic” to include “sell, give, administer, transport, send, deliver or distribute”.

8 At this juncture, I pause to note that the Prosecution adduced evidence which showed that the accused had helped Abang to collect and deliver three consignments of diamorphine prior to his arrest (“Collateral Evidence”). These three consignments did not form the subject matter of Charge B1, and the Prosecution sought to use the Collateral Evidence to prove the element of knowledge in Charge B1.¹⁹

9 At the start of trial, the Defence objected entirely to the admission of the Collateral Evidence. However, after making a considered decision, the Defence changed its position during final submissions and sought to admit the Collateral Evidence for the limited purpose of determining whether the accused’s involvement in the offence was restricted to the acts under s 33B(2)(a) of the MDA (*ie*, that he was a “mere courier”) (see below at [16]). But it maintained its objection to the admission of the Collateral Evidence for the purpose of establishing the accused’s knowledge of the drugs.²⁰ The Defence argued that the Collateral Evidence

¹⁹ Prosecution’s closing submissions at paras 28–40.

²⁰ Defence’s closing submissions at para 21.

was “irrelevant and unnecessary” because the accused was not challenging the element of knowledge and because there was abundant evidence vis-à-vis the Fourth Consignment on the accused’s knowledge and possession of the drugs.²¹

10 In my view, this dispute over the admissibility of the Collateral Evidence to prove the accused’s knowledge of the diamorphine turned out to be purely academic. As will be seen below, there was sufficient evidence relating only to the Fourth Consignment to establish all the elements of Charge B1.

11 Without relying on the Collateral Evidence and confining myself to the evidence pertaining solely to the Fourth Consignment, I was satisfied that the Prosecution had proved all the elements of Charge B1 beyond a reasonable doubt. First, with respect to possession, it was incontrovertible that the accused was in actual possession of the Fourth Consignment. He physically collected it from the bicycle, brought it back to the Van and was arrested with the red plastic bag containing the Fourth Consignment placed next to him.²² He also did not challenge the finding by the HSA that the Fourth Consignment contained 40.37g of diamorphine.²³

²¹ Defence’s closing submissions at paras 21–22.

²² Transcript, Day 3, p 30.

12 Second, with regard to knowledge, the accused admitted at trial that he had actual knowledge that the Fourth Consignment contained “heroin” because he had been instructed to collect “heroin”.²⁴ Likewise, the accused’s statements made it clear beyond peradventure that he had known about the contents of the Fourth Consignment.²⁵ For example, the following exchange was recorded in his contemporaneous statement:²⁶

Q2 What were you doing at Clementi at the place where you were arrested today?

A2 Take stuff.

Q3 What stuff?

A3 **Heroin.**

[emphasis added]

In view of the above, the Prosecution did not even require the invocation of the presumption under s 18(2) of the MDA to establish the knowledge element.

13 Finally, in relation to purpose, the evidence clearly disclosed that the accused was in possession of the Fourth Consignment for

²³ Transcript, Day 3, p 36.

²⁴ Transcript, Day 3, p 34.

²⁵ See eg, P65, at p 255 of AB; P67 at para 8, at p 279 of AB; P70 at para 49, at p 307 of AB.

²⁶ P65, at p 255 of AB.

the purpose of trafficking. Although the accused said that he did not know if Abang would require him to repack the Fourth Consignment, he admitted that it was ultimately meant to be delivered to someone else.²⁷ It could also be inferred that the accused had intended to traffic in the Fourth Consignment.²⁸ It was further uncontested that the accused had no authorisation under the MDA or the regulations made thereunder to traffic in diamorphine.²⁹

14 In the light of the overwhelming evidence against the accused, the Defence did not contest the elements of the charge.³⁰ Accordingly, I found that the Prosecution had proven Charge B1 beyond a reasonable doubt. I therefore convicted the accused on Charge B1.

The sentence

15 For trafficking in excess of 15g of diamorphine, the accused faced the death sentence. Rather than contesting the elements of the offence, the Defence focused its efforts on availing the accused of the court's discretion not to impose the death penalty under

²⁷ Transcript, Day 3, pp 21, 32 and 36; P70 at para 50, p 307 of AB.

²⁸ Transcript, Day 3, pp 32 and 36.

²⁹ Transcript, Day 3, pp 1 and 36.

³⁰ Transcript, Day 5, p 6.

s 33B(1)(a) read with s 33B(2) of the MDA. In essence, and with regard to the present case, the MDA had two requirements that must be satisfied before the court could exercise its discretion not to sentence an offender to death: *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 (“*Ranjit Singh*”) at [53]. First, the offender must prove on a balance of probabilities that he was a mere courier by satisfying the conditions under s 33B(2)(a) (“Courier Exception”). Second, the Public Prosecutor must certify under s 33B(2)(b) that the offender had substantively assisted the CNB in disrupting drug trafficking activities (“Certificate of Substantive Assistance”).

16 On the present facts, the question that I had to answer was whether the accused’s “involvement in the offence” (*ie*, Charge B1) (see s 33B(2)(a) of the MDA) was restricted to that of a mere courier. The law on the Courier Exception had been canvassed in multiple cases, and it sufficed to briefly set out the salient parts of the law. In the leading case of *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 (“*Chum Tat Suan*”), the Court of Appeal noted at [63] that the Courier Exception was intended by Parliament to apply only in limited circumstances. Therefore, s 33B(2)(a) ought to be construed strictly, and acts such as repacking that were not necessary for or incidental to the “transporting, sending or delivering” of the drugs would bring the offender

beyond the pale of the Courier Exception: see *Chum Tat Suan* at [67]–[68], *Ranjit Singh* at [64] and *Public Prosecutor v Suhaimi Bin Said* [2017] SGHC 86 at [23]–[24] (“*Suhaimi*”).

17 In submitting that the accused fell within the Courier Exception, the Defence raised the argument that the court ought to look solely at what had transpired by the time of the accused’s arrest. It argued that the accused was a mere courier because he had not done anything to alter the state of the Fourth Consignment and was simply transporting it in the Van when he was arrested.³¹ But this argument was a non-starter; I agreed with the Prosecution that confining the analysis in the way suggested by the Defence ran against the grain of the decision in *Chum Tat Suan* at [62] that the court must look at what the offender ***intended*** to do with the drugs ***if he had not been arrested***. In view also of the accused’s offence of possessing the Fourth Consignment for the ***purpose of trafficking***, the determination of the extent of his “involvement in the offence” must encompass what the accused ***would have done*** but for his arrest.

18 In this regard, the Defence rightly conceded that the accused would fall outside the Courier Exception if he would have repacked the Fourth Consignment.³² And the accused candidly and

³¹ Transcript, Day 5, p 3.

unequivocally stated on the stand that he would have repacked the Fourth Consignment if Abang had told him to do so.³³ The accused also agreed that if he had to repack the Fourth Consignment, he would use the Drug Paraphernalia to scoop, weigh, and repack the diamorphine into small plastic packets.³⁴ Such repacking which included the alteration of the form of the Fourth Consignment would not have been necessary for or incidental to the “transporting, sending or delivering [of] the drugs” (see *Chum Tat Suan* at [68]), and would hence preclude the accused from being a mere courier: see *Ranjit Singh* at [64] and *Suhaimi* at [35].

19 At the same time, the accused stated that he would have simply delivered (without repacking) the Fourth Consignment if that turned out to be Abang’s instructions.³⁵ It was thus apparent that the accused (intended to act and) would have acted in accordance with Abang’s instructions, and the issue of whether the accused was a mere courier reduced itself to the question of what Abang would have asked the accused to do. The Defence therefore had to prove on a balance of probabilities that it was more likely

³² Transcript, Day 5, p 4.

³³ Transcript, Day 3, pp 32, 34–35.

³⁴ Transcript, Day 3, p 35.

³⁵ Transcript, Day 3, pp 32 and 34–35; P65, at p 255 of AB; P70 at para 50, at p 307 of AB.

than not that Abang would have instructed the accused to deliver the Fourth Consignment without first repacking it. However, at the time of his arrest, the accused had not yet received any instructions from Abang.³⁶ The following exchange between the accused and his counsel during examination-in-chief was pertinent:³⁷

Q So on that day when you collected the drugs or the heroin from Blocks [sic] 606, you --- would I be right then you have yet to receive instructions? But what sort of instructions would you expected to get from *Abang* on that day?

A It's either to deliver or to pack but --- but most probably is to deliver. Even if I have to pack thereafter I need to deliver as well.

Q Can you --- could you do anything as you like about this consignment of drugs?

A No, I can't.

The Defence therefore sought to rely on the Collateral Evidence in its attempt to show that Abang would have asked the accused to simply deliver and not repack the Fourth Consignment.

20 I turn now to the Collateral Evidence. The first consignment took place sometime in early September 2014 ("First Consignment").³⁸ Abang called the accused and instructed him to

³⁶ Transcript, Day 3, p 32.

³⁷ Transcript, Day 3, p 21.

³⁸ P68 at para 21, at p 294 of AB; Transcript, Day 3, p 38.

collect a *barang* from the front basket of a bicycle parked at Block 606 Clementi West Street 1. The accused then asked Rawi to drive him to the said location, where he (the accused) retrieved a plastic bag containing three bundles of diamorphine from a bicycle's front basket.³⁹ Later in the day, the accused placed the diamorphine near the rubbish bin on the fifth floor staircase of his workplace, which was located within Toa Payoh Industrial Park,⁴⁰ for the diamorphine to be collected by an unknown person.⁴¹ The accused thereafter received \$700 for his services.⁴²

21 The second consignment occurred around 7 September 2014 ("Second Consignment").⁴³ Abang called the accused to tell him that there was "work" for him, and the accused replied that he wanted "to work" but did not have transportation. Abang then informed the accused that the *barang* would be sent to his workplace.⁴⁴ The next day, Abang informed the accused that the *barang* was in the basket of a bicycle located at the car park of the accused's workplace at Toa Payoh.⁴⁵ After retrieving a red plastic

³⁹ P68 at paras 22–24, at pp 294–295 of AB.

⁴⁰ Transcript, Day 3, pp 39–40.

⁴¹ P68 at para 24, at p 295 of AB; Transcript, Day 3, pp 40–41.

⁴² P68 at para 24, at p 295 of AB; Transcript, Day 3, p 41.

⁴³ P68 at paras 25–26, at pp 295–296 of AB.

⁴⁴ P68 at para 25, at p 295 of AB.

bag containing three black bundles from the bicycle,⁴⁶ the accused placed the diamorphine near the rubbish bin on the fifth floor staircase of his workplace for it to be collected.⁴⁷ The accused subsequently received \$700 from an unknown person⁴⁸ ***who also passed the Drug Paraphernalia to the accused.***⁴⁹

22 The third consignment involved the repacking of diamorphine and transpired around late September 2014 and October 2014 (“Third Consignment”).⁵⁰ Abang called the accused and told him to collect a *barang* placed at Block 606 Clementi West Street 1.⁵¹ The accused enlisted Rawi to drive him to the said location, where the accused collected a plastic bag from the basket of a bicycle.⁵² The plastic bag contained five bundles in total – three big bundles and two small bundles.⁵³ Abang told the accused that there would be two deliveries and also instructed him to repack

⁴⁵ Transcript, Day 3, p 26.

⁴⁶ P68 at para 26, at p 296 of AB.

⁴⁷ Transcript, Day 3, p 42; P68 at para 26, at p 296 of AB.

⁴⁸ P68 at para 26, at p 296 of AB.

⁴⁹ Transcript, Day 3, p 43.

⁵⁰ P69 at paras 29–30, at p 300 of AB; Transcript, Day 3, p 47; Prosecution’s closing submissions at para 33.

⁵¹ P69 at para 31, at p 300 of AB.

⁵² P69 at para 31, at p 301 of AB.

⁵³ P69 at para 33, at p 301 of AB.

the two small bundles of diamorphine into 60 smaller packets.⁵⁴ Thereafter, the accused and Rawi (who helped pursuant to the accused's request)⁵⁵ repacked the two small bundles into 60 small packets, each weighing "about 7.8 to 7.9 grams".⁵⁶

23 Some time later, the accused passed two big bundles (in their original form) to an unknown person in exchange for \$700.⁵⁷ It was also around this time that the accused placed the Drug Paraphernalia in the back of the Van.⁵⁸ The accused then asked Rawi to deliver the remaining big bundle and 60 small packets.⁵⁹ However, this delivery did not take place. When the accused was arrested, one big bundle and 39 small packets of diamorphine were found in the back of the Van and were the subject matter of Charge B2 (collectively "Charge B2 Drugs"). The accused stated that the Charge B2 Drugs were from the said remaining big bundle and 60 small packets (*ie*, from the Third Consignment) that Rawi was supposed to deliver.⁶⁰ As an aside, because Charge B2 had been

⁵⁴ P69 at para 33, at p 301 of AB.

⁵⁵ Transcript, Day 3, p 48.

⁵⁶ P69 at para 34, at p 301 of AB.

⁵⁷ P69 at paras 38–39, at p 303 of AB.

⁵⁸ Transcript, Day 3, pp 27–29.

⁵⁹ P69 at para 39, at p 303 of AB.

⁶⁰ P70 at para 45, at p 305 of AB.

stood down, both parties agreed that the Charge B2 Drugs were to be assessed solely as part of the Collateral Evidence.⁶¹

24 At this point, it ought to be noted that both parties were in agreement that the Collateral Evidence was admissible to determine whether the accused fell within the Courier Exception. As mentioned above at [9], the Defence initially objected to the admission of the Collateral Evidence for this purpose but withdrew its objection after careful consideration. If the Collateral Evidence were excluded, the Defence would have been more hard pressed to show that the accused was a mere courier of the Fourth Consignment based solely on the evidence in relation to it (*ie*, the presence of the Fourth Consignment juxtaposed with the Drug Paraphernalia in the Van where the accused was arrested). As will be seen below, although I ultimately held that the Defence could not prove that the accused was a mere courier, this conclusion would have been *a fortiori* if the Collateral Evidence had been excluded.

25 In this connection, there was also a question as to whether the Collateral Evidence was similar fact evidence (“SFE”). Both parties had assumed that the Collateral Evidence was admissible in law, and this point was therefore not fully explored in the

⁶¹ As evidenced in Transcript, Day 3, p 15.

arguments after the Defence had confirmed that it would withdraw its objection to the Collateral Evidence on this issue. It might have constituted SFE if the parties had used it to draw inferences from the accused's past actions to determine what he would have done with the Fourth Consignment. But this was not the case because the accused had been candid in averring that he would have either repacked or only delivered the diamorphine, depending on Abang's instructions.⁶²

26 The present case was also not a situation where the accused's state of mind was in doubt. This was a rather unusual situation because there was unequivocal evidence as to what the accused intended to do – it was common ground that he would have acted in accordance with Abang's instructions. Hence, the Collateral Evidence was *not* being used to infer a propensity on the accused's part to repack the diamorphine. Rather, the Collateral Evidence was being used to determine what *Abang's instructions* to the accused were likely to be. And it was submitted by the Prosecution that the Collateral Evidence, admitted for this limited purpose, did not constitute SFE simply because there was no dispute vis-à-vis the accused's state of mind and what he would have done.⁶³

⁶² Transcript, Day 3, pp 21, 32 and 34–35; P65, at p 255 of AB; P70 at para 50, at p 307 of AB.

27 In any event, even if the Collateral Evidence were SFE, there would have been no difficulty admitting it under ss 11(b), 14 or 15 of the Evidence Act (Cap 97, 1997 Rev Ed). This was of course subject to the balancing test as set out in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 at [52] (see also *Lee Kwang Peng v Public Prosecutor and another appeal* [1997] 2 SLR(R) 569 at [38] and [43], and *Public Prosecutor v Radhakrishna Gnanasegaran* [1999] SGHC 107 at [121]–[124]), which provided that SFE was admissible only if its probative value outweighed its prejudicial effect.

28 In the present case, the Collateral Evidence would have readily satisfied the balancing test given the material similarities across the four consignments. Moreover, it was noteworthy that while the Defence continued to object to the Collateral Evidence to prove knowledge (see [9] above), after much consideration, it withdrew its objections to the admission of the Collateral Evidence to show that the accused was a mere courier during final submissions. Obviously, the Defence found it necessary to rely on the Collateral Evidence and regarded the Collateral Evidence as being more probative than prejudicial (in the SFE sense) to its case (see also [24] above).

⁶³ Prosecution's closing submissions at para 49.

29 Having regard to all four consignments outlined above, the Defence strenuously argued that the accused was, on a balance of probabilities, a mere courier. Employing an essentially numerical analysis, the Defence highlighted that the accused had ***twice*** delivered bundles of diamorphine in their original form (*ie*, the First and Second Consignments) and had only helped to repack ***once*** (*ie*, the Third Consignment).⁶⁴ On this premise, it was submitted that Abang was therefore more likely to instruct the accused to simply deliver the Fourth Consignment without repacking.

30 However, notwithstanding the Defence's valiant efforts, I respectfully disagreed with its submissions. Its analysis defied the inherent logical flow presented by the evidence of the four consignments, and I found that the accused fell outside the Courier Exception because it was more likely than not that Abang would have instructed him to repack the Fourth Consignment. To this end, I agreed with the Prosecution that Abang had effectively empowered the accused to repack the diamorphine after equipping the accused with the Drug Paraphernalia after the Second Consignment had been delivered.⁶⁵ It was also relevant that the Drug Paraphernalia contained a large number of small plastic

⁶⁴ Defence's closing submissions at paras 33 and 46.

⁶⁵ Prosecution's closing submissions at para 50.

packets, each of which could contain 7g to 8g of diamorphine.⁶⁶ By the accused's own concession, there were "a thousand" such small plastic packets,⁶⁷ suggesting that Abang had intended for the accused to repack more than just the Third Consignment and that it was more likely than not that the accused would have been tasked to repack the Fourth Consignment. Additionally, it was pertinent that the First and Second Consignments (which the accused was asked to only deliver) each contained only *three bundles* of diamorphine. Conversely, the Third Consignment contained *five bundles* of diamorphine, some of which the accused was asked to repack. And like the Third Consignment, the Fourth Consignment contained *five bundles* of diamorphine. In my evaluation of the evidence, the Defence's mathematical treatment of the four consignments failed to account for the increasing amount of diamorphine that the accused was given to handle over time.

31 Confronted with the above facts, the Defence could only submit that the sum total of the evidence "cannot come to the ineluctable inference that the drugs collected on [14 October 2014] were meant to be repacked into smaller packets".⁶⁸ In fact, during closing submissions, the Defence conceded that the accused

⁶⁶ Transcript, Day 3, pp 45–46.

⁶⁷ Transcript, Day 3, pp 45–46.

⁶⁸ Defence's closing submissions at para 38 (see also para 53).

himself had “said it was - *equivocal, uncertain*” [emphasis added] what Abang would have instructed him to do.⁶⁹ In other words, it was also indeterminate whether Abang would have instructed the accused to only deliver (without repacking) the Fourth Consignment. Unfortunately for the Defence, this was tantamount to saying that the evidence could not prove anything on a balance of probabilities.

32 Here, it ought to be emphasised that s 33B(2)(a) of the MDA placed the burden of proof on the accused to prove on a balance of probabilities that he was a mere courier. The starting point was effectively that an offender was more than a mere courier unless proven otherwise. And given the nature of the evidence relied on by the Defence, it was unable to discharge its burden of proof even with the best case that it could make of the evidence, with the result that the accused remained outside the Courier Exception.

33 Faced with these difficulties, the Defence fell back to its last redoubt and mounted the argument that the accused would not have repacked the Fourth Consignment because he had wanted to return the Drug Paraphernalia. In this regard, the Defence relied on the accused’s contemporaneous statement wherein he stated as

⁶⁹ Transcript, Day 5, p 3 (see also P70 at para 50, at p 307 of AB).

follows:⁷⁰

Q16 In the big red bag at the back of the van which you saw the officer searched containing one black bundle, one packet containing nine small packets containing brown substance, one black plastic bag tied with red rubber band containing three packets containing small packets (30 packets altogether), two digital weighing scale, one plastic spoon and empty plastic bags. All these belong to whom?

A16 Mine.

Q17 What are all these for?

A17 ***To give back to my boss, 'Abang'.***

[emphasis added]

34 But the effect of this evidence was nullified by the accused's clear and candid evidence that he would have acted in accordance with Abang's instructions with respect to the Fourth Consignment. In the same contemporaneous statement relied upon by the Defence, the accused stated as follows:⁷¹

Q11 What will you do with the five bundles?

A11 See what instruction from my boss, 'Abang'. Sometimes he asked to send, sometimes asked to pack.

35 Thus, although the accused said that he had brought the Drug Paraphernalia while collecting the Fourth Consignment to return

⁷⁰ P65, at p 256 of AB.

⁷¹ P65, at p 255 of AB.

them to Abang, the fact remained that the accused had kept the Drug Paraphernalia and *did not return them*. It was also noteworthy that the accused admitted to bringing the Drug Paraphernalia with him when he went to deliver a part of the *Third Consignment*.⁷² It was therefore apparent that the accused would simply bring the Drug Paraphernalia along with him in the event that Abang had wanted them back. This was supported by the accused's examination-in-chief where he stated as follows:⁷³

Q And in your statement in P256, you see this talks about the red plastic bag containing all the drugs and the weighing machine and all that, shown in that exhibits, you have given the answer that you want to give back to Abang, your boss. Why is that so?

A Because these items belong to him. ***At any point of time, if he wants it, I have to give back.***

[emphasis added]

36 In the premises, I found that the Defence failed to meet the conditions of the Courier Exception. This point was ultimately moot in relation to the sentence because the Prosecution decided not to provide a Certificate of Substantive Assistance. I was therefore bound by the law to impose the sentence of death on the accused for Charge B1. As for Charge B2, I granted the

⁷² Transcript, Day 3, p 27.

⁷³ Transcript, Day 3, p 17.

Prosecution's application to withdraw it under s 147 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

Foo Chee Hock

Judicial Commissioner

Andrew Tan and Zhou Yihong (Attorney-General's
Chambers) for the Public Prosecutor;
Ismail Bin Hamid (A Rohim Noor Lila & Partners)
and Ho Thiam Huat (T H Ho Law Chambers) for the
accused.
