

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

[2021] SGHC 218

Criminal Case No 54 of 2019

Between

Public Prosecutor

And

A Steven s/o Paul Raj

GROUND S OF DECISION

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

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Public Prosecutor
v
A Steven s/o Paul Raj

[2021] SGHC 218

General Division of the High Court — Criminal Case No 54 of 2019

Aedit Abdullah J

1, 4 October 2019, 30 June, 1, 28 July 2020, 14–15 April, 10 August 2021

22 September 2021

Aedit Abdullah J:

1 The accused person, A Steven s/o Paul Raj (“the accused”) was charged and convicted by me of the offence of trafficking in diamorphine. The accused did not deny possession or knowledge of the Relevant Drugs found on him (see [3(d)] for the definition of the “Relevant Drugs”); his only defence was that the Relevant Drugs were meant for his personal consumption alone. I rejected this defence, which he could not establish on a balance of probabilities. Following his conviction, I sentenced him to death, as required by law. He has appealed.

Charge

2 The accused faced the following capital charge:¹

That you, **A STEVEN S/O PAUL RAJ**,

¹ Arraigned charge dated 13 September 2019.

on 24 October 2017, at about 5.43 am, at the traffic light junction under Woodsville Flyover, near 12 Woodsville Close, Woodsville Mansion, Singapore, did traffic in a controlled drug listed in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the Act”), *to wit*, by having in your possession for the purpose of trafficking, two (2) packets containing not less than 901.5g of granular/powdery substance, which was analysed and found to contain not less than 35.85g of diamorphine, without any authorisation under the Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the Act and 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.

Background

3 A statement of agreed facts, covering primarily the arrest and analysis of the drugs, was agreed between the Prosecution and Defence pursuant to s 267 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed). In brief, the statement recounted the following:

(a) The accused was at the time an odd-job labourer. He was 54 years old at the time of the trial.²

(b) An operation was conducted by the Central Narcotics Bureau on 24 October 2017, targeting the accused, who was believed to be involved in drug-related activities.³ At about 5.43 am that day, the accused was arrested while he was riding a blue motorised bicycle along Serangoon Road. The accused was subsequently searched, with crystalline substances and cash being found in his trouser pockets.⁴ Cash and other

² Agreed Statement of Facts (“ASOF”) at para 1.

³ ASOF at paras 2 to 3.

⁴ ASOF at para 5.

items were also found on him.⁵ From the basket of the bicycle, among other things, crystalline substance and granular/powdery substances were recovered.⁶ At the flat he was staying at the material time (“the Flat”), a search was conducted, and further granular/powdery substance was found, as well as empty zip lock bags, a stained aluminium foil with a smoking utensil, spoons, lighters and four digital weighing scales.⁷

(c) Statements were recorded from the accused, and he and the items seized from him were subjected to the usual processing regime.⁸

(d) The crystalline substance in the basket of the bicycle was found to be methamphetamine.⁹ The granular/powdery substances found in the basket of the bicycle (namely, Exhibits “B2B1A1A” and “B2C1A1A” or the “Relevant Drugs”) weighed a total of 901.5g, and was on analysis found to contain not less than 35.85g of diamorphine, at a confidence level of 99.9999%.¹⁰

(e) DNA analysis found, among others, the accused’s DNA on an exhibit seized from the basket of the bicycle, which exhibit in turn contained the granular/powdery substances (mentioned at [3(d)] above).¹¹

⁵ ASOF at para 6.

⁶ ASOF at para 8.

⁷ ASOF at paras 10 and 12.

⁸ ASOF at paras 14 and 25.

⁹ ASOF at para 28(c).

¹⁰ ASOF at paras 28(d), (e) and 29.

¹¹ ASOF at paras 8 and 33.

(f) Various other forensic analyses were also performed, including on his phone, and exhibits found in his trouser pockets and the Flat.¹² Bank statements were also obtained.¹³

(g) A total of five statements were recorded from the accused, which were made voluntarily with no threat, inducement or promise being made.¹⁴

(h) In his statement recorded on 22 February 2018, the accused admitted to ordering two “batu” of “panas” (a street term for diamorphine, or heroin) from his supplier, known to him as “Abang” on 23 October 2017.¹⁵ The two packets of granular/powdery substance found in the basket of the bicycle were the two “batu”. The accused knew that they contained diamorphine.

4 The accused’s defence was that of personal consumption, that is, the Relevant Drugs were meant only for his use and not for trafficking to anyone else.¹⁶

Summary of the Prosecution’s case

5 The Prosecution argued that the presumption under s 17(c) of the Act applied, such that the accused was presumed to have possessed the Relevant

¹² ASOF at paras 27, 31 and 36.

¹³ ASOF at paras 40 to 41.

¹⁴ ASOF at paras 42 to 43.

¹⁵ ASOF at para 44; P49 at para 25 (as well as P48 at paras 2 to 3) (Agreed Bundle (“AB”) at pages 186, 187 and 199).

¹⁶ Defence’s Closing Submissions (“DCS”) at para 9(i).

Drugs for the purpose of trafficking.¹⁷ The burden lay on the accused to rebut this presumption on a balance of probabilities.¹⁸ It was submitted that the defence proffered by the accused, namely that the Relevant Drugs were entirely for his own consumption, ought to be rejected.¹⁹ The accused gave multiple conflicting rates of consumption and there was no credible evidence supporting the rate of consumption claimed by him. The accused had no financial means to support his claimed rate of consumption. Even assuming that his claimed rate of consumption were true, there was also no credible evidence on why he would need to stockpile such a large quantity as the Relevant Drugs.²⁰ Furthermore, his possession of numerous drug trafficking paraphernalia indicated that the accused intended to traffic in the Relevant Drugs.²¹

Summary of the Defence case

6 As mentioned above, the defence was one of personal consumption. The accused testified that he had been a drug user since he was 17 years old. At the time of his arrest, he was consuming both methamphetamine (or “Ice”) and heroin.²²

7 On 23 October 2017, the accused had called his supplier to order one “batu” of heroin for his own consumption.²³ The supplier asked the accused to take two “batu” as it was during the Deepavali festive period and the drug

¹⁷ Prosecution’s Opening Address at para 15.

¹⁸ Prosecution’s Closing Submissions (“PCS”) at paras 1 to 2.

¹⁹ PCS at para 3.

²⁰ PCS at paras 40 to 43.

²¹ PCS at para 45.

²² DCS at para 11; P48 at para 8 (AB at page 188); P44 at paras 15 and 18.

²³ P48 at para 2; P49 at para 25 (AB at pages 186 and 199).

runners would not be coming into Singapore for a while as they would be going back to their hometowns.²⁴ The accused took up the supplier's offer, to buy two "batu" for \$5,000 so that he would have enough on hand and not run out, and suffer withdrawal symptoms.²⁵ He would also not be exposed to capture while looking for alternative suppliers. With cash from his own account and his sister-in-law, as well as cash he found in a drawer, the accused followed his supplier's directions and met a man at Boon Keng MRT, who passed him a red plastic bag in return for \$5,000 in cash.²⁶ He was then arrested before he could get home.

8 The Accused claimed to be a heavy user of diamorphine, smoking two to three packets of 8g per day.²⁷ He purchased the Relevant Drugs for his own personal consumption, though sometimes he would give a packet to his friends as part of reciprocal arrangements to help each other.²⁸ The Relevant Drugs were in his possession solely for personal consumption and not for trafficking.

The decision

9 Having considered parties' submissions and the evidence, I was satisfied that I should convict the accused of the charge preferred against him of trafficking in not less than 35.85g of diamorphine, without any authorisation.

10 The focus of the hearing was primarily on the defence of consumption raised by the accused, as well as how he came to have that quantity of the

²⁴ Notes of Evidence ("NE"), 14 April 2021, page 54 line 23 to page 55 line 7.

²⁵ NE, 14 April 2021, page 41 line 5 to line 22; page 48 line 7 to line 8.

²⁶ P48 at paras 2 to 3 (AB at pages 186 to 187); NE, 14 April 2021, page 45 line 10 to line 31.

²⁷ P48 at para 8 (AB at page 188).

²⁸ P48 at para 7 (AB at page 188); NE, 14 April 2021, page 48 line 5 to line 13.

Relevant Drugs with him. His actual possession of the Relevant Drugs was not an issue nor that he knew that the Relevant Drugs were diamorphine.²⁹ As submitted by the Prosecution, the presumption under s 17(c) of the Act that his possession was for the purpose of trafficking was not rebutted. The burden lay on the Defence to rebut this presumption on a balance of probabilities, which it failed to do.

11 The rate of consumption which the accused reported to several of the doctors did not support his contentions and his explanation for the discrepancy was not satisfactory. To establish his rate of consumption on a balance of probabilities would have required a greater degree of consistency and cogency than what was made out in these reports. While it was possible that the rate of consumption was as he claimed, given his long addiction and use of diamorphine, it was not enough on the facts here to rebut the presumption and that possibility fell short of the required strength. The fact that he had two pieces or “batu” of diamorphine also pointed against his version, the circumstances as how he described them were not plausible, and if indeed there was some choke point at Deepavali, one would not have expected this to last or go far beyond the point of delivery to him. This so far fell short of the degree of plausibility required to rebut the presumption.

12 There was also the presence of paraphernalia such as the zip lock bags and weighing scales, which weakened his argument that the Relevant Drugs were for personal consumption only, and he did not satisfactorily explain the presence of these items. I was also of the view that the financial evidence was at most neutral and did not point either way. In the circumstances, therefore, I convicted the accused.

²⁹ DCS at paras 10(d) to (e).

Analysis

13 The charge against the accused is under s 5(1) of the Act for trafficking. Section 5 reads:

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;
- (b) to offer to traffic in a controlled drug; or
- (c) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

Section 5(2) extends trafficking to include possession for the purpose of trafficking:

(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.

14 The defence that was raised was one of personal consumption. The Relevant Drugs were in his possession not for trafficking but for his own use. Both possession of the Relevant Drugs and knowledge of the Relevant Drugs were not disputed.

15 The presumption under s 17(c) of the Act of possession for the purpose of trafficking was triggered. Proof of possession was *not* in issue or disputed by the accused.³⁰ Section 17(c) specifies that “[a]ny person who is proved to have had in his possession more than ... 2[g] of diamorphine ... whether or not contained in any substance ... shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession

³⁰ DCS at para 9(i).

of that drug was not for that purpose”. The accused was caught with and did not deny having more than 2g of diamorphine in his knowing possession.

16 The burden of proof was thus on the accused to show that the Relevant Drugs were not in his possession for that purpose, and this he had to make out on a balance of probabilities: *Low Theng Gee v PP* [1996] 3 SLR(R) 42 at [78]. Consequently, this meant that he had to adduce sufficient evidence to show that it was more likely than not that he was not trafficking. In the context of this case, that specifically meant that he had to show on a balance of probabilities that the Relevant Drugs found on him were for his consumption only and not to be sold or passed on to anyone. Where an accused relies on such a defence of his own consumption to rebut the presumption in s 17, the court considers the overall circumstances of the case, including (a) whether there is credible evidence concerning the accused’s rate of consumption and the number of days the supply is meant for; (b) the frequency of supply available to the accused; and (c) whether the accused had the financial means to purchase the drugs for himself: *Muhammad bin Abdullah v PP and another appeal* [2017] 1 SLR 427 at [29]–[31]; *PP v Tan Kay Yong and another* [2018] SGHC 67 at [92]. The first factor was particularly relevant in the context of this case, as I will elaborate.

The consumption defence

17 I found that the accused’s defence fell short of what was required to make out the consumption defence on a balance of probabilities, to rebut the presumption of trafficking under s 17 of the Act.

The rate of consumption

18 The rate of consumption claimed by the accused was not made out. To show personal consumption, the accused had to make out a case that the

Relevant Drugs he had were to be consumed by him. For this to be believable, he had to show that he could indeed consume it, which meant that his rate of consumption was relevant. The evidence for such consumption had to come from him. His testimony however ran up against the testimony from several doctors who had examined him after his arrest.

19 The accused testified that he consumed two to three packets of 8g of diamorphine per day, that is 16g to 24g,³¹ which would admittedly be heavy consumption. The 35.85g of diamorphine was for his own consumption. He also consumed methamphetamine regularly. One “batu” of 450g would last him 16 days and two “batu” would last between 1 and 2 months.³² He feared that he would not have enough supply during the Deepavali period.³³ The rate of consumption was corroborated by his long statement recorded on 30 October 2017 (“30 October 2017 statement”).³⁴ He told the recorder, Assistant Superintendent of Police Seah Jin Peng, Lucas, that he consumed two to three 8g packets per day. In a further long statement recorded on 22 February 2018, he stated that he would usually buy one “batu” of which he thought he would “smoke more than ... sell”.³⁵ He had been a drug user since he was 17 years old, and was not cured despite being in the Drug Rehabilitation Centre several times.³⁶ The accused had reciprocal arrangements where his friends would give

³¹ P48 at para 8 (AB at page 188).

³² DCS at para 20.

³³ DCS at para 20.

³⁴ P48 at para 8 (AB at page 188).

³⁵ P49 at para 28 (AB at page 199).

³⁶ DCS at para 11.

him a packet of diamorphine when he needed and *vice versa*, though this happened not that frequently, about once a month.³⁷

20 The problem, as pointed out by the Prosecution, was that this contradicted the evidence given by the doctors who had examined him at various points.³⁸ The Prosecution argued that there was insufficient credible evidence of the rate of consumption, given the lack of consistency in his evidence.

21 I find that the evidence of the doctors undermined the accused’s version. Their evidence and the parties’ submissions are first considered in turn, before an assessment is made.

Dr Tan’s evidence

22 Dr Tan Chong Hun, a prison medical officer in the Complex Medical Centre in Changi Prison Complex (“CMC”) who examined the accused on 26 October 2017, recorded that the accused had been consuming 4g of diamorphine per day for 30 years on daily basis.³⁹

23 The accused claimed that what Dr Tan meant was that he had consumed 4g just before his arrest.⁴⁰ This rate was consistent with what was reported to Dr Jaydip Sarkar, a former consultant forensic psychiatrist and adjunct professor with the Institute of Mental Health (“IMH”) who had examined the accused in

³⁷ P48 at para 7 (AB at page 188); NE, 14 April 2021, page 48 line 5 to line 17.

³⁸ PCS at para 29.

³⁹ PS10 (AB at page 91); P95 at page 5.

⁴⁰ NE, 14 April 2021, page 43 line 23 to line 24.

November 2017.⁴¹ Dr Sarkar had noted in his report dated 14 November 2017 (“the IMH report”) that the accused said he consumed 4g of heroin and 0.02mg of “Ice” a few hours before his arrest.⁴² The accused also claimed that he would have consumed more but for the arrest.⁴³ The Defence argued that since the accused was experiencing withdrawal symptoms, it was plausible that he had not appreciated what he was telling Dr Tan.⁴⁴

24 The prosecution argued that the accused’s explanation could not be accepted.⁴⁵ Dr Tan was not confronted with this explanation, depriving him of the opportunity to respond. The explanation given by the accused was only raised when he testified, and even then, no explanation was given for failing to put the question to Dr Tan.⁴⁶ Dr Tan was clear that he had asked the accused how much drugs he “use[d] a day”; he also testified that there were no communication difficulties or complaints from the accused.⁴⁷

Dr Sarkar’s evidence

25 Dr Sarkar recorded in the IMH report that the accused said that he consumed one packet of about 8g of heroin daily.⁴⁸

⁴¹ NE, 28 July 2020, page 2 line 10 to line 11; P 44 at para 5.

⁴² P44 at para 18.

⁴³ NE, 14 April 2021, page 43 line 27 to line 29.

⁴⁴ DCS at para 25.

⁴⁵ PCS at para 31.

⁴⁶ PCS at para 31(a); NE, 14 April 2021, page 56 line 1 to line 9.

⁴⁷ PCS at para 31(b); NE, 4 October 2017, page 6 line 22 to line 31, page 7 line 7 to line 10.

⁴⁸ P44 at para 15.

26 The accused's explanation in Court was that one packet would be enough if the heroin was of better quality, but if it was lower, he would need up to three such packets.⁴⁹ The Defence submitted that the accused had not explained this well to Dr Sarkar as he was depressed and wanted to return to the lockup, which was in line with Dr Sarkar's diagnosis that the accused might have been suffering from a depressive disorder, and that the accused was a little confused about names and had given him an incorrect telephone number.⁵⁰

27 The Prosecution pointed out though that the accused's contention that he had consumed more than what Dr Sarkar recorded was not put to Dr Sarkar, and in fact the accused conceded that Dr Sarkar would have recorded the accused's rate of consumption of one to three 8g packets had he told Dr Sarkar as much.⁵¹ As for the accused's claim that he was not well and suffering from depression at the time he saw Dr Sarkar, and therefore failed to mention that he consumed more than 8g of heroin every day, Dr Sarkar had recorded that the accused reported hearing voices and briefly feeling depressed only after being brought to prison and not at the time that he saw Dr Sarkar.⁵² The Defence also failed to put the accused's mental state to Dr Sarkar.

Dr Winslow's evidence

28 Dr Munidasa Winslow, a psychiatrist who had *inter alia* started the addictions medicine department of the IMH and countersigned on a drug withdrawal assessment of the accused dated 28 October 2017 by Dr Sahaya

⁴⁹ NE, 14 April 2021, page 41 line 27 to page 42 line 1, page 57 line 1 to line 3.

⁵⁰ DCS at para 27; P44 at para 24; NE, 28 July 2020, page 16 line 22 to line 31; NE, 14 April 2021, page 57 line 7 to line 10.

⁵¹ PCS at para 31(c); NE, 14 April 2021, page 57 line 4 to line 7.

⁵² PCS at para 31(d); P44 at para 23.

Nathan (a prison medical officer in CMC) testified based on his experience about drug abusers.⁵³ Dr Winslow estimated that he had seen several thousands of clients with addictions to heroin and methamphetamine, having spent over 20 years with the IMH.

29 The accused pointed to Dr Winslow's testimony that what the accused described as his rate of consumption was possible, if spread out during the day.⁵⁴ Methamphetamine would counteract the drowsiness caused by heroin.⁵⁵

30 On the other hand, the Prosecution relied on Dr Winslow's testimony that the rate of consumption claimed by the accused was at an extremely high level and would not be sustainable as the accused would just be smoking and sleeping.⁵⁶ The Accused had in fact been working 2 to 3 hours daily at the time of his arrest, which contradicted his supposed high consumption.⁵⁷ The Prosecution also relied on Dr Winslow's evidence that most abusers would use up to 20 straws a day and he had hardly ever encountered anyone consuming more than 8g daily for a sustained period.⁵⁸ The accused's claimed level of two to three packets totalling 16g to 24g daily was far too high and doubtful.⁵⁹

⁵³ P93 at page 2; NE, 1 October 2019, page 35 line 8 to line 11; NE, 30 June 2020, page 6 line 20 to line 27; NE, 10 August 2021, page 5 line 3 to line 5.

⁵⁴ DCS at para 26; NE, 30 June 2020, page 22 line 6 to line 23.

⁵⁵ DCS at para 26; NE, 30 June 2020, page 22 line 21 to line 23.

⁵⁶ PCS at para 34; NE, 30 June 2020, page 15 line 13 to line 17.

⁵⁷ PCS at para 34; P48 at para 1 (AB at page 186).

⁵⁸ PCS at para 36; NE, 30 June 2020, page 13 line 25; page 14 line 9 to 10 and line 24 to 26; page 15 line 14 to line 15.

⁵⁹ PCS at para 36.

Assessment of the evidence from the doctors

31 I concluded that the accused did not adequately explain what was recorded from him by Dr Tan and Dr Sarkar. The amounts they noted differed considerably from what he claimed to be his rate of consumption.

32 The explanations he gave were not convincing. The explanation that he may have omitted to tell Dr Tan the correct amount because he was suffering from withdrawal symptoms would seem to go up against his own position that his withdrawal symptoms may not be as great as that of a supposedly less chronic abuser.⁶⁰ Dr Tan had recorded that apart from a Clinical Opiate Withdrawal Scale (“COWS”) score of 9 (which was in the “mild” category) and a running nose and body aches, the accused did not have any other complaints.⁶¹ There was nothing in Dr Tan’s report or notes that would have lent weight to the accused’s assertions. As noted by the Prosecution, Dr Tan testified that he was clear about what he had asked, which was daily consumption, and did not note any significant communication difficulties at the time when the accused saw him.⁶² The accused’s version was not made out. Similarly, Dr Sarkar did not find the accused to be in a general confused state or that his overall orientation, attention, recall and memory were compromised.⁶³ Given this and the fact that Dr Sarkar saw him over a week after his arrest, it was odd that the accused did not inform Dr Sarkar of the very high rate of consumption. Stranger still was the fact that the claimed rate of consumption which the accused

⁶⁰ DCS at paras 28 to 33.

⁶¹ P95 at page 5.

⁶² PCS at para 31(b); NE, 4 October 2019, page 6 line 22 to line 31, page 7 line 7 to line 10.

⁶³ P44 at paras 22 to 24, 26 and 34; NE, 28 July 2020, page 16 line 27 to page 17 line 6.

eventually sought to rely on was made in his 30 October 2017 statement, in between the time he was examined by Dr Tan and Dr Sarkar.⁶⁴

33 His failure to mention his claimed rate of consumption to either of these two doctors therefore undermined the credibility of his position that his rate of consumption was indeed 16g to 24g per day. One would have expected someone who was truly consuming at a particular rate to inform the doctors what it was. That he did not do so placed into doubt his veracity and weakened the strength of his case.

Withdrawal symptoms

34 The Defence argued that severity of withdrawal was not a reflection of the severity of addiction.⁶⁵ They pointed to some of the evidence from other attending physicians. Dr Nathan (see [28] above) had testified that the withdrawal symptoms did not necessarily reflect the severity of addiction; a chronic abuser such as the accused may not have symptoms as severe as those of another who was not such a chronic abuser.⁶⁶ Dr Nathan, Dr Tan and another prison medical officer in CMC, Dr Adrian Low, accepted that COWS, which had been used to assess the accused from 26 to 28 October 2017, included a subjective assessment based on reporting by the patient.⁶⁷ They had accordingly assessed him as only experiencing “mild” opioid withdrawal symptoms. The Defence argued that this showed that a patient assessed as being in the “mild”

⁶⁴ NE, 10 August 2021, page 4 line 5 to line 16.

⁶⁵ DCS at para 28.

⁶⁶ DCS at para 29; NE, 1 October 2019, page 38 line 18 to line 31.

⁶⁷ P93, P94 and P95; NE, 1 October 2019, page 33 line 15, page 37 line 24 to page 38 line 2, page 41 line 23 to line 31, page 56 line 17 to line 22; NE, 4 October 2019, page 13 line 14 to page 14 line 3.

range could in fact have moderate symptoms.⁶⁸ Dr Winslow was of the same view that the patient had to report symptoms.⁶⁹ The Defence argued that the testimony of the doctors showed that the COWS assessment was unreliable and unsatisfactory, and should not be part of the analysis.⁷⁰ Any discrepancy in the accused's evidence was possibly caused by his drug history and low education, and he might not have applied his mind fully.⁷¹ He had also previously received psychiatric outpatient assessments at the IMH for issues including a complaint in 2009 of hearing voices over six months, as noted by Dr Sarkar.⁷² Given these, no adverse inference should be drawn against the accused.⁷³

35 The Prosecution did not make much of the withdrawal symptoms in its submissions at the close of the case.⁷⁴

36 I would note that there are limitations inherent in the COWS assessment, which I accept depends to some extent on self-reporting by the drug abuser. Such self-reporting carries the risk of either exaggeration or downplaying, and affects the reliability of the assessment. Nonetheless, it may still be somewhat useful evidence of the state of withdrawal and its effect on a drug abuser, particularly as there does not appear to be any real alternative measure available at this time. While evidence about the COWS assessment has been considered in various cases including the Court of Appeal decision in *Sulaiman bin Jumari*

⁶⁸ DCS at paras 29 to 30; NE, 1 October 2019, page 41 line 23 to line 31; NE, 4 October 2019, page 13 line 28 to page 14 line 3.

⁶⁹ NE, 30 June 2020, page 25 line 2 to line 4.

⁷⁰ DCS at para 33.

⁷¹ DCS at paras 25 and 52.

⁷² P44 at paras 9 to 10.

⁷³ DCS at paras 59 to 60.

⁷⁴ NE, 10 August 2021, page 3 line 30 to page 4 line 24.

v PP [2021] 1 SLR 557, there has not been any consideration as presently advised of possible alternatives or shortcomings of the assessment. In any event, the withdrawal symptoms were not relied upon as evidence of the rate of consumption in this case.

Other evidence

37 Aside from the rate of consumption, on which the accused was inconsistent, and thus to be disbelieved, the accused’s attempted rebuttal of the presumption of possession for trafficking was also undermined by the amount of drugs involved, and his explanation for why he had that quantity with him, as well as the possession of paraphernalia normally used in trafficking.

Amount of drugs

38 The Prosecution argued that the reason that the accused put forward as to why he had two “batu” of heroin, namely, that there would be a choke point in supply at that time, was not credible.⁷⁵ The accused claimed that he had been told by his supplier that the drug runners would be going back to their hometowns because of the Deepavali holiday. However, the accused was only arrested six days after Deepavali and on his own account, he received the two “batu” of heroin earlier that day.⁷⁶

39 The Defence argued that any intention to sell heroin on the accused’s part was only for a small amount, which did not detract from his consumption of the much larger part of the Relevant Drugs.⁷⁷ According to the Defence, the

⁷⁵ PCS at para 39.

⁷⁶ P48 at para 2 (AB at page 2); NE, 14 April 2021, page 52 line 13 to line 21 and page 54 line 8 to line 25.

⁷⁷ DCS at paras 60 and 65.

accused bought heroin by the “batu” in order to lower his cost of consumption, obtain a ready supply and avoid being exposed to arrest.⁷⁸ The Defence argued that it would be conjecture to reject the explanation that the drug runners from the accused’s supplier would not be available during the Deepavali period.⁷⁹ The accused had taken the explanation from his supplier at face value.

40 The Defence argued that it would be speculative to try to determine what the actual circumstances were at that time, particularly whether there was indeed a choke point in supply because of the Deepavali holiday.

41 It was perhaps speculative to try to determine based on what was before the Court whether there was indeed any shortage of runners at that time, after Deepavali. However, the burden lay on the accused to prove on a balance of probabilities that he did not possess the two “batu” for trafficking. His explanation for how he came to be possessed of two “batu” lacked sufficient credibility to bring him over the threshold: it was for him to bring in sufficient evidence. The assertions about the effect of the Deepavali holiday and what his supplier told him were not sufficiently cogent or convincing. They seemed in fact rather flimsy for the reasons pointed out by the Prosecution: one would have expected in the normal run of things for any supply difficulties around a holiday to have been resolved after the holiday. This was a substantial discrepancy. The fact of the matter was, as the Prosecution pointed out, the accused was able to get more than usual after the holiday, obtaining two “batu”.

⁷⁸ DCS at para 61.

⁷⁹ DCS at paras 62 to 63.

Paraphernalia

42 The presence of paraphernalia normally used in drug trafficking was yet another pointer against the Relevant Drugs being only for consumption. The possession of such paraphernalia is relevant as circumstantial evidence of an accused's intentions as to drugs in his possession: *Jusri bin Mohamed Hussain v PP* [1996] 2 SLR(R) 706 at [41]; *Sharom bin Ahmad and another v PP* [2000] 2 SLR(R) 541 at [36].

43 The Defence's point here seemed to be primarily that the paraphernalia was used to prepare heroin for occasional sale to the accused's friends who needed a bit of heroin to cover a shortfall.⁸⁰

44 The Prosecution argued that the accused's evidence was inconsistent.⁸¹ While one scale had been purchased by him for his own use in confirming the weight of the drugs he bought, he denied knowing who the other three scales belonged to, despite the fact that they were found in the Flat.⁸² He also claimed that the zip lock bags were for his own use in consuming the drugs.⁸³ Yet, in his 30 October 2017 statement, he had admitted that the zip lock bags and weighing scales were used to pack heroin for sale.⁸⁴ He continued to vacillate in his testimony on whether he did sell heroin.⁸⁵ The accused's ownership or

⁸⁰ P48 at paras 7 and 19 (AB at pages 188 and 190).

⁸¹ PCS at paras 46 to 47.

⁸² NE, 14 April 2021, page 48 line 27 to page 49 line 8.

⁸³ NE, 14 April 2021, page 49 line 9 to line 19.

⁸⁴ PCS at para 45; P48 at paras 17 and 19 (AB at page 190).

⁸⁵ PCS at para 46; NE, 14 April 2021, page 60 line 9 to page 61 line 21; NE, 15 April 2021, page 1 line 17 to page 2 line 21.

possession of three additional weighing scales put paid to his version that he sold only about one packet a month on average.⁸⁶

45 Given the number of zip lock bags and weighing scales, it seemed quite doubtful that these items were only there for an occasional sale. Even then, it was incumbent on the accused to adduce more evidence to support his contention that these were only occasional sales. As it was, the natural inference from the presence of such bags and scales, in that quantity, was that this was for a more sustained level of sales to others, which was further evidence against the Relevant Drugs being for his own consumption.

Financial transactions

46 I did not, however, find that the financial evidence adduced by the Prosecution undermined the consumption defence. The evidence was at the end of the day equivocal.

47 The Defence argued that the accused was able to support his drug consumption habit at the time of his arrest based on his earnings as an odd-job labourer, savings, inheritance from his late brother and work as a runner for an unlicensed moneylender.⁸⁷ The Defence argued that the bank transactions did not conclusively show that the accused was dealing in drugs.⁸⁸ None of the witnesses testified that they were involved in such a transaction with the accused.

⁸⁶ P48 at paras 7 and 19 (AB at pages 188 and 190); NE, 14 April 2021, page 48 line 12 to line 17, page 60 line 23.

⁸⁷ DCS at paras 44 to 46.

⁸⁸ DCS at paras 48 to 51.

48 The Prosecution argued that the accused's version of his activities was not credible and that he would not have been able to sustain his drug consumption habit unless he did indeed sell heroin.⁸⁹ On any measure of his claimed rate of consumption, his income would not be sufficient to sustain him for more than a few months.⁹⁰ The Prosecution argued that the flow of funds into and out of his bank account showed a sum far exceeding his declared income and expenditure.⁹¹ His version was inconsistent with what the witnesses testified and internally inconsistent.⁹² The evidence given by the accused about the unlicensed moneylender he was supposedly working for, "Ken", was illogical in that "Ken" would purportedly give instructions over telephone calls even though there would be a high chance of error for the accused to copy down such information about bank accounts. It was also inconsistent in terms of how friendly or close they actually were.⁹³

49 In my assessment, the evidence about the financial transactions did not support any inference that the accused was involved in drug dealing. The witnesses called were not able to add to the case against the accused, and did not implicate him in drug dealing.⁹⁴ This evidence did perhaps add to the suspicion that the accused was involved in unlicensed moneylending, or possibly other criminal acts such as gambling, but that was the extent of it. I

⁸⁹ PCS at para 49.

⁹⁰ PCS at paras 51 to 52.

⁹¹ PCS at para 53.

⁹² PCS at paras 53(b) and (c).

⁹³ PCS at para 53(c).

⁹⁴ NE, 1 July 2020, page 17 line 12 to page 20 line 1, page 21 line 22 to line 26, page 26 line 11 to page 27 line 6; NE, 14 April 2021, page 5 line 7 to page 6 line 22, page 7 line 14 to line 17, page 8 line 5 to page 9 line 29, page 15 line 4 to page 16 line 28, page 17 line 11 to line 32, page 23 line 17 to page 27 line 30, page 29 line 15 to line 29.

could not say that the accused's evidence about working for "Ken" should be rejected because of any inconsistency relied upon by the Prosecution. There may have been some discrepancy in the manner in which he received instructions from "Ken",⁹⁵ or how close or friendly they were,⁹⁶ but these discrepancies were not of the scale to lead to a rejection of the accused's evidence on this score. Some discrepancy or inconsistency is to be expected in the recounting of evidence.

50 The accused's financial position was sufficient, at least at the point of arrest, for him to sustain his claimed consumption. The amount of money he had would appear to be sufficient to support that habit at the rate he claimed.⁹⁷ It may be, as argued by the Prosecution, that that rate could not be sustained for a period of time, but beyond the point of arrest, any other inferences from the financial evidence would be speculative.

Mental state

51 There was some evidence given as to the mental state of the accused. As the Defence did not take issue with the voluntariness of the statements given by the accused, the mental state was primarily relevant for the accused in explaining why he had given differing accounts of his rate of consumption. This has been dealt with above (at [32], [34] and [36]). I did not find that the purported distress, withdrawal symptoms or any depressive disorder were such as to affect his communication with the doctors or his giving of statements.

⁹⁵ NE, 14 April 2021, page 49 line 32 to page 50 line 5, page 50 line 24 to line 26; NE, 15 April 2021, page 4 line 12 to line 15.

⁹⁶ NE, 15 April 2021, page 6 line 17 to page 7 line 4.

⁹⁷ P92; NE, 1 October 2019, page 14 line 27 to line 29.

Overall assessment and conviction

52 The evidence as a whole pointed to the conclusion that the accused had not rebutted the presumption of trafficking. The lack of support from the financial transactions for that conclusion did not mean that the accused succeeded in rebutting that presumption.

53 As the accused failed to rebut the presumption, he was guilty and accordingly he was in possession of the Relevant Drugs for the purpose of trafficking. He was thus convicted.

54 The trafficking by the accused could not have been merely intended for moving the Relevant Drugs around, or transporting it from place to place or person to person. Given that his only defence was of personal consumption, and he did not put forward any other explanation for his possession of the Relevant Drugs, the only inference that could follow on the facts was that he was in possession for sale to others. This was buttressed by his possession of the zip lock bags and weighing scales. The fact that there was no evidence as to how much he charged or was paid, or that anyone in fact bought from him did not assist him in avoiding the conviction. Indeed, his version that he sold occasionally, to help his friends out, further underlined that the only alternative available on the facts was sale to others.

Sentence imposed

55 The accused did not qualify for sentencing under the alternative regime prescribed under ss 33B(1) and (2) of the Act, which requires that his involvement was limited to transportation of some sort and that the Public Prosecutor has certified his substantive assistance in the disruption of drug trafficking. The conviction on the charge of trafficking after rejecting that it was

consumption precluded any finding that the accused was only concerned with the transportation of drugs, informally termed a “courier”. The implication was that the Accused was in possession of the Relevant Drugs to sell, or that in any event, his activities were not only concerned with transportation of some sort. There was no evidence that he was merely in fact going to hand them over to someone else to deal with. The Relevant Drugs were either in his hands for consumption or for sale; as one is precluded the other must follow. In any event, no certificate of substantive assistance was granted by the Public Prosecutor under s 33B.

56 With no alternative sentencing being available, the mandatory sentence of death under s 33(1) read with the Second Schedule to the Act applied. No mitigation was made. As I had no discretion in the matter, I thus imposed the death penalty as required by the law.

Aedit Abdullah
Judge of the High Court

Lee Zu Zhao, Rimplejit Kaur and Teo Siu Ming (Attorney-General’s
Chambers) for the Prosecution;
Amolat Singh (Amolat & Partners) and Lau Kah Hee (BC Lim &
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