IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 37

Criminal Case No 3 of 2020

Between

Public Prosecutor

And

Poopathi Chinaiyah s/o Paliandi

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act (Cap 185, 2008 Rev Ed)]

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v
Poopathi Chinaiyah s/o Paliandi

[2020] SGHC 37

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Chua Lee Ming J:

Introduction

1 The accused, Mr Poopathi Chinaiyah s/o Paliandi, 48 years of age, faced four charges:

(a) having in his possession not less than 499.99g of cannabis (a Class 'A' controlled drug) for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") and punishable under s 33(1) of the MDA ("the 1st Charge");

(b) having in his possession not less than 8.21g of diamorphine (a Class 'A' controlled drug) for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the MDA and punishable with

enhanced punishment under s 33(4A)(i) of the MDA as a result of a previous trafficking conviction ("the 2nd Charge");

(c) having in his possession not less than 25.45g of methamphetamine (a Class 'A' controlled drug) for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the MDA and punishable with enhanced punishment under s 33(4A)(i) of the MDA as a result of a previous trafficking conviction ("the 3rd Charge"); and

(d) possession of not less than 6.64g of cannabis (a Class 'A' controlled drug), an offence under s 8(*a*) of the MDA and punishable with enhanced punishment under s 33(1) of the MDA as a result of a previous conviction for drug possession ("the 4th Charge").

2 On 30 January 2020, the accused pleaded guilty to the 1st, 2nd and 4th Charges, and admitted without qualification to all the facts alleged against him in the Statement of Facts. I therefore convicted him on these three charges.

3 The accused also admitted to having committed the offence set out in the 3rd Charge and consented to the offence being taken into consideration for the purpose of sentencing.

4 I sentenced the accused as follows:

(a) 1st Charge: 28 years' imprisonment and 15 strokes of the cane.

(b) 2nd Charge: 13 years' imprisonment and 12 strokes of the cane.

(c) 4th Charge: two years' imprisonment.

(d) The sentences for the 1st and 4th Charges were to run consecutively whilst the sentence for the 2nd Charge was to run concurrently. The overall sentence was 30 years' imprisonment and 24 strokes of the cane.

(e) The sentences of imprisonment were to commence on the date of arrest, *ie*, 8 January 2018.

5 The accused has appealed against the sentences.

The facts

6 The material facts, taken from the Statement of Facts, are set out below.

7 On 8 January 2018, Central Narcotics Bureau ("CNB") officers observed one Suresh Ganesan ("Suresh") waiting at the reception area of YO:HA hostel at 26 Evans Road, Singapore, from about 5.45am. At about 6.29am, the accused drove into the driveway of YO:HA hostel in a van bearing licence plate number GY9118X ("the Van"). Suresh was then observed leaving YO:HA hostel on a motorcycle at about 6.37am.

8 At about 6.40am, the CNB officers moved in and arrested the accused in the Van. Suresh was arrested at about 6.55am on the same day.

9 Following the accused's arrest, the CNB officers searched the reception area of YO:HA hostel and seized the following from the bottom drawer of a cabinet under the security counter ("the Drawer"):

(a) seven blocks of vegetable matter;[1] and

(b) one packet of brownish granular substances and one packet of granular/powdery substances.[2]

10 The CNB officers also searched the Van and seized one block of vegetable matter.[3]

11 Investigations revealed the following:

(a) The accused was employed as a driver to ferry security officers to their workplaces. He was first acquainted with Suresh sometime in January 2017 when he ferried Suresh to the latter's workplace. Suresh then introduced him to one "Mala", a male Malaysian Indian, and the three men would meet occasionally for drinks.

(b) The accused knew that "Mala" was a drug trafficker who was based in Malaysia and had at least two persons in Malaysia working as his couriers. Suresh was one such courier. "Mala" asked the accused to collect, store and deliver drugs on his behalf. The accused agreed. On two occasions prior to 8 January 2018, the accused had, acting on instructions from "Mala", collected drugs from one person and delivered the same to others. On one of these occasions, he kept the drugs for a day before making the delivery. The accused was paid $350 for each delivery that he completed.

(c) About two weeks before 8 January 2018, the accused received a consignment of drugs from an unknown male Malaysian Indian on behalf of "Mala". The consignment of drugs included, among other drugs, six of the seven blocks of vegetable matter which formed the subject matter of the 1st Charge. The accused locked these drugs in the

Drawer. He knew that he would receive instructions from "Mala" to pass these drugs to other persons.

(d) On the evening of 7 January 2018, "Mala" informed the accused that Suresh would be delivering another consignment of drugs.

(e) On 8 January 2018, at about 6.00am, an unknown Indian male handed the accused cash amounting to $4,500. The accused was told to pass the money to Suresh. The accused drove the Van into the driveway of YO:HA hostel at about 6.29am. Suresh boarded the Van and showed the accused a blue plastic bag before placing it in the Van. The accused told Suresh to retrieve the $4,500 that he had left on the car amplifier box. Thereafter, Suresh left on his motorcycle.

(f) The accused brought the blue plastic bag into YO:HA hostel and asked one Abilasha Narasiah, a security officer at the hostel, to store it in the Drawer. Of the items seized by the CNB officers from the Drawer, the packet of brownish granular substances and one of the blocks of vegetable matter were found in a blue plastic bag.

The 1st Charge

12 The seven blocks of vegetable matter referred to at [9(a)] above were sent to the Health Sciences Authority ("HSA") for analysis. The HSA certified that the seven blocks contained, in aggregate, not less than 499.99g of cannabis, a Class 'A' controlled drug listed in the First Schedule to the MDA. These seven blocks of vegetable matter formed the subject matter of the 1st Charge.

13 The accused admitted to possession and ownership of the seven blocks of vegetable matter, which he knew were cannabis. He admitted that the seven

blocks of vegetable matter were intended to be passed to other people as instructed by "Mala". The accused was not authorised under the MDA or the regulations made thereunder to possess a controlled drug for the purpose of trafficking.

The 2nd Charge

14 The two packets referred to at [9(b)] above were sent to the HSA for analysis. The HSA certified that both packets contained, in aggregate, not less than 8.21g of diamorphine, a Class 'A' controlled drug listed in the First Schedule to the MDA. The substances in both packets formed the subject matter of the 2nd Charge.

15 The accused admitted to possession and ownership of the two packets of granular/powdery substances, which he knew were diamorphine. The accused admitted that these substances were intended to be passed to other people as instructed by "Mala". The accused was not authorised under the MDA or the regulations made thereunder to possess a controlled drug for the purpose of trafficking.

16 Further, on 25 January 2007, the accused was convicted in Subordinate Court No 12, *vide* DAC 00758/2007, of an offence of trafficking in a controlled drug, to wit, cannabis, under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) and punished under s 33(1) of the said Act, and was sentenced to 12 years' imprisonment and 10 strokes of the cane, which conviction and punishment have not been set aside to date.

The 4th Charge

17 The block of vegetable matter referred to at [10] above was sent to the HSA for analysis. The HSA certified that it contained not less than 6.64g of cannabis. This formed the subject matter of the 4th Charge.

18 The accused admitted to possession and ownership of the block of vegetable matter, which he knew was cannabis. The accused admitted that the cannabis was meant for his own consumption.

19 The accused was not authorised under the MDA or the regulations made thereunder to be in possession of a controlled drug. Further, on 9 February 1993, the accused was convicted in Subordinate Court No 14, *vide* MAC 12414/92, of an offence of possession of a controlled drug under s 8(*a*) of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) and punished under s 33(1) of the said Act, and was sentenced to a fine of $800, which conviction and punishment have not been set aside to date.

The sentences imposed

The 1st Charge

20 The prescribed punishment for the offence in the 1st Charge was a minimum of 20 years' imprisonment and 15 strokes of the cane and a maximum of 30 years' imprisonment or imprisonment for life and 15 strokes of the cane: s 33(1) read with the Second Schedule to the MDA.

21 The indicative starting sentence for unauthorised trafficking of 431g to 500g of cannabis is 26 to 29 years' imprisonment; the indicative starting sentence may then be adjusted upward or downward to take into account the offender's culpability and the presence of aggravating or mitigating factors:

Suventher Shanmugam v Public Prosecutor [2017] 2 SLR 115 ("*Suventher*") at [29]–[30].

22 The Prosecution's submissions were as follows:

(a) Based on the weight of the cannabis (not less than 499.99g) in the 1st Charge, the indicative starting sentence should be 29 years' imprisonment and the mandatory minimum of 15 strokes of the cane.

(b) The accused's role was to receive, store and deliver consignments of drugs. He did not exercise any executive functions but acted under the direction of "Mala". The accused's culpability was therefore moderate, and the indicative starting sentence of imprisonment should be adjusted downwards to 27 years.

(c) Taking into account the aggravating and mitigating factors, the sentence of imprisonment should be adjusted to 28 years. The final sentence would be 28 years' imprisonment and 15 strokes of the cane. The aggravating factors were as follows:

(i) The accused was convicted in 2007 for trafficking in cannabis and was released sometime in 2015. He was demonstrably undeterred by his previous imprisonment and caning.

(ii) The 3rd Charge, which was taken into consideration, was similar in nature to the 1st Charge in that it also involved trafficking in a Class 'A' controlled drug.

(iii) Given the variety of drugs trafficked (cannabis, diamorphine and methamphetamine) and the accused's

admission that he was willingly assisting a drug trafficker who had at least two couriers, it could be inferred that the accused was facilitating drug operations that existed on a larger scale and reached out to a wider range of abusers.

(d) The Prosecution submitted that some mitigating weight could be given to the accused's co-operation with the authorities in terms of disclosing his previous drug deliveries and his relationship with Suresh, but little mitigating weight should be placed on his plea of guilt as he was caught red-handed with the drugs.

23 The accused submitted that the indicative starting sentence of imprisonment should be 26 years. On the basis that he was not part of any syndicate and had merely been keeping the drugs for "Mala", he submitted that the sentence should be reduced to 24-25 years in view of his minimal role, before being adjusted upwards to 26 years after taking the aggravating and mitigating factors into account.

24 I disagreed with the accused's submission as to the indicative starting sentence of imprisonment. *Suventher* made it clear (at [21]) that where the offence concerned the trafficking or importation of drugs, the sentence imposed should be proportional to the quantity of drugs in the offender's possession in order to reflect the gravity of the offence. The same point was made in *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 (at [124]) that " … the indicative starting points for sentencing should be broadly proportional to the quantity of drugs trafficked or imported".

25 The weight of the cannabis in this case was 499.99g. Based on the *Suventher* guidelines (see [21] above), the correct indicative starting sentence

of imprisonment should be 29 years. I note that in *Public Prosecutor v Ravan s/o Samubil* [2018] SGHC 103, the High Court similarly held (at [55], [70] and [77]) that the indicative starting sentence for trafficking in 499.99g of cannabis was 29 years' imprisonment in respect of all three accused persons.

26 I also disagreed with the accused's submission that he was merely keeping the drugs for "Mala". The accused admitted that he had agreed to collect, store and deliver the drugs.

27 I largely agreed with the Prosecution's submissions as to the sentence for the 1st Charge, save that I did not accord significant aggravating weight to the fact that the accused had trafficked in a variety of drugs. While the accused had indeed trafficked in multiple types of drugs, there was scant evidence of the degree of sophistication or scale of "Mala"'s drug operations, and so it could not inferred that the accused was more blameworthy: *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [67]. Nevertheless, considering the aggravating factors in totality, I agreed with the Prosecution's proposed final sentence. I therefore sentenced the accused to 28 years' imprisonment and 15 strokes of the cane.

The 2nd Charge

28 As stated at [16] above, on 25 January 2007, the accused was convicted of an offence of trafficking in cannabis and was sentenced to 12 years' imprisonment and 10 strokes of the cane. As he was a repeat offender, the punishment for the offence in the 2nd Charge was a minimum of 10 years' imprisonment and 10 strokes of the cane and a maximum of 30 years' imprisonment and 15 strokes of the cane: s 33(4A)(i) MDA.

29 The indicative starting sentence for unauthorised trafficking of eight to nine grammes of diamorphine is ten to 13 years' imprisonment and nine to ten strokes of the cane: *Vasentha* at [47]. In the case of a repeat offender, an indicative uplift of four to seven years' imprisonment and three to four strokes of the cane should be applied to the indicative starting sentence: *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852 ("*Lai Teck Guan*") at [42]. The indicative sentence may then be adjusted upwards or downwards to take into account the offender's culpability and the aggravating or mitigating factors: *Lai Teck Guan* at [38], [43].

30 The Prosecution submitted as follows:

(a) Based on the weight of the diamorphine in this case (8.21g), the indicative starting sentence should be at least ten years' imprisonment and nine strokes of the cane, before applying the uplift. After applying an uplift of four years' imprisonment and three strokes of the cane, the indicative starting sentence would be at least 14 years' imprisonment and 12 strokes of the cane.

(b) Given the accused's limited role and therefore moderate culpability, the indicative starting sentence should be adjusted to 13 years' imprisonment and 12 strokes of the cane.

(c) The aggravating factors listed at [22(c)(ii)] and [22(c)(iii)] above and the mitigating factors at [22(d)] above were relevant to the 2nd Charge. However, no further adjustment on account of the aggravating or mitigating factors was necessary.

31 The accused agreed with the Prosecution's proposed final sentence of 13 years' imprisonment and 12 strokes of the cane.

32 In my view, the final sentence proposed by the Prosecution was appropriate. I agreed with the Prosecution's proposed indicative starting sentence and the adjustment thereof on account of the accused's moderate culpability. I also agreed that no further adjustment on account of the aggravating and mitigating factors was necessary as the aggravating factors were balanced by the mitigating factors. The fact that the Appellant had a similar antecedent was not an additional aggravating factor as it had already been factored into the sentence through the provision of enhanced punishment for repeat offenders. Accordingly, I sentenced the accused to 13 years' imprisonment and 12 strokes of the cane.

33 I add that in its written submissions on sentence, the Prosecution noted that the High Court in *Soh Qiu Xia Katty v Public Prosecutor* [2019] 3 SLR 568 ("*Katty Soh*") proposed revisions to the sentencing guidelines in *Lai Teck Guan*. It was not necessary for me to deal with *Katty Soh* because applying the revised guidelines in *Katty Soh* would have resulted in the same indicative starting sentence of 14 years' imprisonment and 12 strokes of the cane (*Katty Soh* at [44] and [55]), which the Prosecution had proposed in this case. Besides (and perhaps for that reason), both parties before me did not make any substantive submissions on *Katty Soh*. I therefore say no more about the proposed revisions in *Katty Soh* other than to note that in *Mohd Akebal s/o Ghulam Jilani v Public Prosecutor* [2019] SGCA 81, the Court of Appeal observed (at [20]) that (a) sentencing guidelines are meant to guide the court towards the appropriate sentence in each case using a methodology that is broadly consistent, and (b) the fine differences in methodology between *Katty Soh* and *Lai Teck Guan* are matters of detail that did not invite further comment. I was satisfied that the application of the sentencing guidelines in *Lai Teck Guan* resulted in a just sentence in the present case.

The 4th Charge

34 As stated at [19] above, on 9 February 1993, the accused was convicted of an offence of possession of a controlled drug and sentenced to a fine of $800. As the accused was a repeat offender, the punishment for the offence in the 4th Charge was a minimum of two years' imprisonment and a maximum of 10 years' imprisonment or a fine of $20,000 or both: s 33(1) read with the Second Schedule to the MDA. As the amount of cannabis involved was relatively low, the Prosecution submitted that the imposition of the mandatory minimum sentence of two years' imprisonment was sufficient to reflect the accused's culpability.

35 I saw no reason to disagree and I therefore sentenced the accused to two years' imprisonment.

Which sentences should run consecutively and the totality principle

36 Where an offender is convicted and sentenced to imprisonment for at least three distinct offences, the sentences for at least two of those offences must run consecutively: s 307(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

37 In deciding which of multiple sentences should run consecutively, the sentencing judge must have regard to two principles in particular, namely, the one-transaction rule and the totality principle, as well as a number of ancillary principles: *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 ("*Shouffee*") at [25].

38 The one-transaction rule requires that where two or more offences are committed in the course of a single transaction, all sentences in respect of those

offences should be concurrent rather than consecutive: *Shouffee* at [27], citing *Public Prosecutor v Law Aik Meng* [2007] 2 SLR(R) 814 at [52]. The basis of the rule is unity of the violated interest that underlies the various offences; multiple offences that are proximate as a matter of fact but violate different legally protected interests would not, at least as a general rule, be regarded as forming a single transaction: *Shouffee* at [31].

39 The accused agreed with the Prosecution's submission that the sentences for the 1st and 4th Charges should run consecutively as they involved different legally protected interests. The sentence for the 2nd Charge would run concurrently. I agreed.

40 I turn next to the totality principle. This principle requires the court to consider (a) whether the aggregate sentence is substantially above the normal level of sentences for the most serious of the individual offences committed, and (b) whether the effect of the sentence on the offender is crushing and not in keeping with his past record and future prospects: *Shouffee* at [54], [57]. If the aggregate sentence looks wrong, it may be reduced by re-assessing which of the appropriate sentences ought to run consecutively or by re-calibrating the individual sentences so as to arrive at an appropriate aggregate sentence: *Shouffee* at [58]–[59].

41 In applying the totality principle, the court has to consider another principle, which is that the total term of imprisonment for the sentences that are ordered to run consecutively must exceed the term of imprisonment that is imposed for the highest individual sentence: *Shouffee* at [77]. There is no rule that the most severe individual sentence must be selected to run consecutively: *Shouffee* at [25]. However, in the present case, the sentence for the 1st Charge necessarily had to be one of the sentences selected to run consecutively since

the total term of imprisonment would not exceed the highest individual sentence otherwise.

42 Based on the sentences for the 1st and 4th Charges running consecutively, the aggregate sentence of imprisonment was 30 years. Although the sentence of imprisonment for the 2nd Charge would run concurrently, the sentence of caning imposed for the 2nd Charge would be aggregated with that imposed for the 1st Charge (*Public Prosecutor v Chan Chuan* [1991] 1 SLR(R) 14 at [41]), subject however to a maximum of 24 strokes of the cane, as prescribed in ss 328(1) and 328(6) CPC.

43 Turning to the first limb of the totality principle, the normal level of sentences imposed for the 1st Charge (which was the most serious of the offences committed) would be the higher end of the range of 26 to 29 years' imprisonment. The 1st Charge also carried a mandatory minimum of 15 strokes of the cane. Accordingly, I was satisfied that the aggregate sentence of 30 years' imprisonment and 24 strokes of the cane was not substantially above the normal level of sentences for the 1st Charge.

44 As for the second limb of the totality principle, the Prosecution submitted that the aggregate sentence could not be said to be crushing, considering the fact that the accused had trafficked in a quantity of cannabis that was just short of that which would have attracted the death penalty, and the accused's recalcitrance.

45 I agreed with the Prosecution. I was mindful that the accused was 48 years of age and that the totality principle should ordinarily apply with greater force in cases involving longer aggregate sentences: *Public Prosecutor v Raveen Balakrishnan* [2018] 5 SLR 799 at [79]. However, I could not ignore

the sheer weight of the cannabis trafficked and the severity of the offences committed. In light of the accused's culpability and antecedents, I was of the view that the aggregate sentence was proportional to his overall criminality.

46 I was also conscious of the fact that the accused had re-offended merely three years after his release from prison for the very same offence of drug trafficking, and that he had demonstrated his criminal proclivities by trafficking in an even wider variety of drugs than before. Considering all the circumstances of this case, the aggregate sentence of 30 years' imprisonment and 24 strokes of the cane was, in my judgment, wholly appropriate.

Chua Lee Ming
Judge

Mark Tay, Jaime Pang and Benedict Chan for the Prosecution;
Ramesh Tiwary (Ramesh Tiwary) and Sankar s/o Kailasa Thevar Saminathan (Sterling Law Corporation) for the accused.

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1 Exhibits "A1B1", "A2A1", "A3A1A", "A3A2A", "A3A3A", "A3A4A" and "A3A5A".
2 Exhibits "A1A1A" and "A4A".
3 Exhibit "D1A1".