

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 86

Criminal Case No 55 of 2016

Between

Public Prosecutor

And

Suhaimi Bin Said

FOUNDATIONS OF DECISION

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

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Public Prosecutor

v

Suhaimi Bin Said

[2017] SGHC 86

High Court — Criminal Case No 55 of 2016
18-21, 25-28 October 2016; 22 March 2017

25 April 2017

Foo Chee Hock JC:

1 The accused – Suhaimi Bin Said – a Singaporean male, claimed trial to the following charge:

That you, **SUHAIMI BIN SAID**,

on the 19 June 2014 at about 10.40 am, at Blk 26 Sector A Sin Ming Industrial Estate #09-138, Singapore, did traffic in a controlled drug specified in Class A of 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, eighty three (83) packets containing not less than 1747.04 grams of granular/powdery substance, which was analysed and found to contain not less than 45.58 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section

5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under Section 33(1) of the said Act, and further upon your conviction, you may alternatively be liable to be punished under Section 33B of the same Act.

2 On 19 June 2014, at or about 10.40am, the accused was arrested by Central Narcotics Bureau (“CNB”) officers outside Block 26 Sector A, Sin Ming Industrial Estate #09-138 (“the Sin Ming Unit”).¹ At the time of his arrest, the accused was 41 years old and was an odd job worker.² A search of the Sin Ming Unit yielded several drug exhibits, including 83 packets containing not less than 1747.04g of granular/powdery substance (“83 Packets”)³ as follows:⁴

- (a) One envelope (“B1A”) containing ten packets of brown/granular powdery substance (“B1A1”);
- (b) One envelope (“B1B”) containing ten packets of brown/granular powdery substance (“B1B1”);
- (c) One envelope (“B1C”) containing ten packets of brown/granular powdery substance (“B1C1”);

¹ Agreed Statement of Facts at paras 2–3.

² P70 in Statements of the Accused at p 177, para 1.

³ Agreed Statement of Facts at para 9.

⁴ Agreed Statement of Facts at para 4; Prosecution’s Closing Submissions at para 26.

- (d) One envelope (“C2A”) containing ten packets of brown/granular powdery substance (“C2A1”);
- (e) One envelope (“C2B”) containing ten packets of brown/granular powdery substance (“C2B1”);
- (f) One newspaper (“C2C”) containing a bundle wrapped with black tape (“C2C1”) which was cut open and found to contain a bundle of brown/granular powdery substance (“C2C1A”);
- (g) One white envelope (“D1A1A”) containing ten packets of brown/granular powdery substance (“D1A1A1”);
- (h) One white envelope (“D1A1B”) containing ten packets of brown/granular powdery substance (“D1A1B1”);
- (i) One white envelope (“D1A1C”) containing ten packets of brown/granular powdery substance (“D1A1C1”);
- (j) A transparent plastic bag (“D1A2A”) containing one bundle of brown/granular powdery substance (“D1A2A1”); and

- (k) One black taped bundle (“D1B1A”) which was cut open and found to contain a bundle of brown/granular powdery substance (“D1B1A1”).

3 The 83 Packets found in the accused’s possession formed the subject matter of the charge. After being seized, they were analysed by the Health Sciences Authority (“HSA”) and were found to contain not less than 45.58g of diamorphine in total.⁵ The HSA analysis revealed that:⁶

- (a) B1A1 contained not less than 1.61g of diamorphine;⁷
- (b) B1B1 contained not less than 2.02g of diamorphine;⁸
- (c) B1C1 contained not less than 1.74g of diamorphine;⁹
- (d) C2A1 contained not less than 1.93g of diamorphine;¹⁰
- (e) C2B1 contained not less than 2.01g of diamorphine;¹¹

⁵ Agreed Statement of Facts at para 9.

⁶ Prosecution’s Closing Submissions at para 30.

⁷ P49 in Agreed Bundle at pp 68–69.

⁸ P50 in Agreed Bundle at pp 70–71.

⁹ P51 in Agreed Bundle at pp 72–73.

¹⁰ P53 in Agreed Bundle at pp 76–77.

¹¹ P52 in Agreed Bundle at pp 74–75.

- (f) C2C1A contained not less than 11.06g of diamorphine;¹²
- (g) D1A1A1 contained not less than 1.81g of diamorphine;¹³
- (h) D1A1B1 contained not less than 1.81g of diamorphine;¹⁴
- (i) D1A1C1 contained not less than 1.79g of diamorphine;¹⁵
- (j) D1A2A1 contained not less than 6.51g of diamorphine;¹⁶ and
- (k) D1B1A1 contained not less than 13.29g of diamorphine.¹⁷

4 Sometime around May or June 2014,¹⁸ the accused was at a coffee shop located at “Blk 22 Sin Ming” when an Indian man approached him.¹⁹ The Indian man identified himself as either

¹² P54 in Agreed Bundle at p 78.

¹³ P59 in Agreed Bundle at pp 83–84.

¹⁴ P60 in Agreed Bundle at pp 85–86.

¹⁵ P61 in Agreed Bundle at pp 87–88.

¹⁶ P56 in Agreed Bundle at p 80.

¹⁷ P57 in Agreed Bundle at p 81.

¹⁸ Transcript, Day 8, p 4.

“Siva” or “Selvam” (hereinafter “Siva”), and offered the accused a part-time job.²⁰ The accused asked Siva what the part-time job entailed, and Siva explained that the accused would be a “packer” of heroin²¹ (a street name for diamorphine).²² The accused was told that he “would need to receive the heroin and repack it into smaller packets and [Siva] would inform [him] [whom] to deliver the heroin to”.²³ In return, the accused would receive \$200 for every *batu* (meaning “bundle”) of diamorphine that he packed and delivered.²⁴ Incentivised by the monetary rewards, the accused accepted the job offer.²⁵ Siva then gave the accused a SIM card,²⁶ which would subsequently be used by drug suppliers and customers to contact the accused.

5 On the morning of 19 June 2014, at about 6.30am, the accused met two unknown males at a bus stop opposite “Blk 26 Sin Ming”.²⁷ The accused boarded their car and was asked to retrieve a

¹⁹ P70 in Statements of the Accused at p 179, para 8.

²⁰ P70 in Statements of the Accused at p 179, para 9.

²¹ P70 in Statements of the Accused at p 179, para 9; Transcript, Day 6, p 5.

²² Prosecution’s Closing Submissions at para 36.

²³ P70 in Statements of the Accused at p 179, para 9.

²⁴ Transcript, Day 6, p 5.

²⁵ Transcript, Day 6, pp 6–7.

²⁶ Transcript, Day 6, pp 6–7.

cloth bag containing four *batus* of diamorphine from beneath the car seat (referred to as the “Third Batch” for the reason stated at [10]).²⁸ The unknown males told the accused that he would earn \$300 for each *batu*, which was \$100 more than what Siva had promised him.²⁹ The accused was initially reluctant to take the cloth bag because it contained four *batus* of diamorphine, which he thought were “too many”,³⁰ but he eventually agreed to do so.³¹

6 At this juncture, it ought to be noted that the Defence did not allege duress.³² But the accused claimed at trial that he was afraid that “something would happen to [him]” if he had refused to take the four *batus*.³³ After considering the evidence in its entirety, I found that there was no duress and that his allegations could not be believed. First, this fear was not mentioned in the accused’s statements,³⁴ wherein he stated that he agreed to help out because it would be his “last assignment”.³⁵ Second, while under cross-

²⁷ Transcript, Day 6, p 28; P71 in Statements of the Accused at p 209, para 31.

²⁸ Transcript, Day 6, pp 29 and 32.

²⁹ P71 in Statements of the Accused at p 210, para 33.

³⁰ Transcript, Day 6, p 29.

³¹ P71 in Statements of the Accused at p 210, para 33.

³² Transcript, Day 10, p 12.

³³ Transcript, Day 8, p 38.

³⁴ Transcript, Day 8, p 38.

examination, he insisted that he would not have counted the sale proceeds from the four *batus*.³⁶ Third, he claimed that he did not care whether or not he could repack a *batu* into the instructed number of small packets.³⁷ A person who operated under fear amounting to duress would not have been so nonchalant about complying with the instructions given to him. I thus agreed with the Prosecution's submissions that there was no duress made out on the facts.³⁸

7 Upon returning to the Sin Ming Unit with the cloth bag, the accused received a call from an unknown caller who apologised for passing four *batus* of diamorphine to the accused.³⁹ The accused "scolded the caller and told him that [the accused] will be sentenced to death if [the accused] was arrested".⁴⁰ But the caller assured him that there were already customers waiting for the four *batus* and that it was possible to finish delivering all the diamorphine on the same day.⁴¹ Upon hearing this, the accused

³⁵ P71 in Statements of the Accused at p 210, para 33.

³⁶ Transcript, Day 8, pp 24–25.

³⁷ Transcript, Day 8, p 16.

³⁸ Prosecution's Closing Submissions at paras 57–58.

³⁹ P72 in Statements of the Accused at p 211, para 35.

⁴⁰ P72 in Statements of the Accused at p 211, para 35.

⁴¹ P72 in Statements of the Accused at p 211, para 35.

agreed to “help” but told the caller that he “[did] not want to work anymore for them after [the] job”.⁴²

8 Within the cloth bag, the accused found a box containing small plastic packets and a piece of paper instructing the accused to repack the four *batus*.⁴³ The instructions were as follows:⁴⁴

The first instruction was to standby 40 smaller packets of heroin for their customers. ... The second instruction was to standby 20 packets of heroin with 1 ‘batu’. The third instruction was to standby 30 packets of heroin and half ‘batu’ in one plastic bag. The fourth instruction was to place 1 ‘batu’ into a plastic bag.

9 The accused proceeded to repack two of the *batus* into 90 small packets and half a *batu*.⁴⁵ Thereafter, hours before his arrest, the accused passed ten of these small packets to an unknown Eurasian lady and received \$850.⁴⁶ Since the accused had already parted with possession of the ten small packets, they did not form part of the present charge. To be sure, the remaining 83 Packets (comprising 80 small packets, two *batus* and half of a *batu*) found in the Sin Ming Unit were from the Third Batch,⁴⁷ and these **83 Packets** formed the subject matter of the charge.⁴⁸

⁴² P72 in Statements of the Accused at p 211, para 35.

⁴³ P72 in Statements of the Accused at p 211, para 36.

⁴⁴ P72 in Statements of the Accused at p 211, para 37.

⁴⁵ P72 in Statements of the Accused at p 212, para 38.

⁴⁶ P72 in Statements of the Accused at p 213, paras 44–45.

10 At this point, it ought to be noted that evidence pertaining to the accused's prior drug dealings, which were not part of the present charge, was adduced by the Prosecution ("Collateral Evidence"). Without specifying the details, the Collateral Evidence showed that the accused, prior to the Third Batch, had *inter alia* repacked a number of *batus* from **two separate batches** of diamorphine into smaller packets and had delivered diamorphine to various people and collected money.⁴⁹ For completeness, it should be added that the Collateral Evidence also included the evidence concerning the ten small packets that were delivered to the unknown Eurasian lady hours before the accused's arrest.

11 The Defence **did not** object to the admission of the Collateral Evidence, which it initially sought to rely on for the purposes of showing that the accused was a mere courier under s 33B(2)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") ("mere courier") (see [20] below).⁵⁰ Nevertheless, given the "thorny difficulties" that could arise out of the Collateral Evidence (see *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 ("Rosman") at [32]), the Prosecution and the Defence were invited

⁴⁷ P72 in Statements of the Accused at p 212, paras 36–42.

⁴⁸ Prosecution's Closing Submissions at para 16.

⁴⁹ P71 in Statements of the Accused at p 206, paras 16–20 and p 208, paras 26–27.

⁵⁰ Defence's Closing Submissions at pp 13–14 at paras 20–22.

to evaluate the relevant and potential issues. Both parties then made a considered decision to confine their submissions only to evidence relating to the 83 Packets (from the Third Batch).⁵¹ Given that all parties had decided not to rely on the Collateral Evidence, I directed my mind solely to the evidence in relation to the 83 Packets and disregarded the Collateral Evidence and its “possible effect(s)”: see *Rosman* at [33]. So much for the evidence and the parties’ position relating to the issue of whether the accused was a mere courier. As for the evidence to be utilised for the purpose of the conviction, it was common ground that the evidence was to be restricted to the evidence relating to the 83 Packets.

The conviction

12 With regard to the 83 Packets, I was satisfied that the Prosecution had established the following elements of the offence under s 5(1)(a) read with s 5(2) of the MDA: (a) **possession** of a controlled drug; (b) **knowledge** of the nature of the drug; and (c) possession of the drug for the **purpose of trafficking** which was not authorised:⁵² see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59].

⁵¹ Transcript, Day 10, pp 5–6 and 30–31.

⁵² Prosecution’s Closing Submissions at para 21.

13 First, the element of possession was established beyond contest. The 83 Packets were recovered from the Sin Ming Unit which the accused had rented, and the accused admitted that he had possession of the 83 Packets.⁵³ He also did not challenge the HSA's analysis that the 83 Packets collectively contained not less than 45.58g of diamorphine.⁵⁴

14 Second, it was also clear that the accused had known that the 83 Packets contained diamorphine. On the stand, the accused admitted to knowing that the substance which he had repacked into the 83 Packets was heroin⁵⁵ because the people who passed him the *batus* told him so.⁵⁶ Although the accused was unaware that heroin was a street name for diamorphine,⁵⁷ I agreed with the Prosecution that this was not an obstacle to a finding of knowledge on the accused's part.⁵⁸ see *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [23]–[24].

15 Third, the accused had undoubtedly possessed the 83 Packets for the purpose of trafficking without authorisation. The lack of

⁵³ Transcript, Day 8, pp 56–57.

⁵⁴ Transcript, Day 8, p 56.

⁵⁵ Transcript, Day 8, pp 3 and 7.

⁵⁶ Transcript, Day 7, p 26; Transcript, Day 8, p 58.

⁵⁷ Transcript, Day 8, p 58.

⁵⁸ Prosecution's Closing Submissions at paras 36–38.

authorisation was not (and could not be) challenged by the Defence.⁵⁹ As for purpose, under s 2 of the MDA:

“traffic” means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning.

16 The accused admitted that he was given instructions to deliver the diamorphine to various people⁶⁰ and that the diamorphine was for “selling”.⁶¹ He said in his contemporaneous statement as follows:⁶²

Q8 All the heroin claimed by you that you say is heroin were meant for what purpose?

Ans ***For delivery.***

Q9 For delivery to who?

Ans ***For my customers.***

[emphasis added]

17 It was therefore patent that the accused had intended to traffic in the 83 Packets and would have delivered the drugs as

⁵⁹ Transcript, Day 8, p 60.

⁶⁰ P72 in Statements of the Accused at p 211, paras 35–37.

⁶¹ P70 in Statements of the Accused pp 177–178, paras 2–5.

⁶² P67 in Statements of the Accused at p 119.

instructed. In any event, the accused's possession of not less than 45.58g of diamorphine also triggered the presumption under s 17(c) of the MDA, which read:

Presumption concerning trafficking

17. Any person who is proved to have had in his possession more than —

...

(c) 2 grammes of diamorphine;

...

whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

18 The onus was thus on the accused to rebut the presumption on a balance of probabilities. However, apart from his assertions, he did not adduce any evidence to do so. While the accused agreed with the Prosecution that he was in possession of the 83 Packets, he disagreed that he had possessed them for the purposes of trafficking⁶³ or that he was a distributor of diamorphine for Siva.⁶⁴ Such baseless denials were insufficient to rebut the presumption under s 17(c) of the MDA, given the overwhelming objective evidence and the accused's own admissions that he was only a mere courier⁶⁵ helping to "send" the 83 Packets.⁶⁶

⁶³ Transcript, Day 8, p 58.

⁶⁴ Transcript, Day 8, pp 40–41.

19 I therefore found that the Prosecution had proved beyond a reasonable doubt the elements of the offence under s 5(1)(a) read with s 5(2) of the MDA. Accordingly, I convicted the accused on the charge.

The sentence

20 Pursuant to s 33(1) and the Second Schedule of the MDA, the accused faced the death sentence for trafficking in excess of 15g of diamorphine. The Defence did not contest that the elements of the offence were made out.⁶⁷ Instead, the main issue on which the Defence sought the court's determination was whether the accused had met the conditions of s 33B(2)(a) of the MDA ("Courier Exception").⁶⁸ In other words, the principal finding sought by the Defence was whether the accused's role was that of a mere courier.

21 Under s 33B of the MDA, an accused who had been convicted of an offence under s 5(1) and who faced the death sentence may instead be sentenced to life imprisonment and caning of not less than 15 strokes if the requirements of s 33B(2) were met. The requirements were as follows:

⁶⁵ Transcript, Day 7, pp 7 and 10.

⁶⁶ Transcript, Day 7, p 3.

⁶⁷ Transcript, Day 10, pp 2–3.

⁶⁸ Defence's Closing Submissions at pp 5–7, paras 1–5.

(a) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted —

(i) to transporting, sending or delivering a controlled drug;

(ii) to offering to transport, send or deliver a controlled drug;

(iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

(iv) to any combination of activities in subparagraphs (i), (ii) and (iii); and

(b) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

22 In short, there were two requirements that had to be satisfied before the accused could avoid the death sentence. First, the accused had to show on a balance of probabilities that he fell within the Courier Exception because his involvement was restricted to the acts set out under s 33B(2)(a). Second, the Public Prosecutor must certify under s 33B(2)(b) that he had substantively assisted the CNB in disrupting drug trafficking activities (“Certificate of Substantive Assistance”). Both requirements must be satisfied, and the issue of whether an offender was a mere courier under s 33B(2)(a) was distinct from whether he had rendered substantive assistance to the CNB: see *Public Prosecutor*

v Christeen d/o Jayamany and another [2015] SGHC 126 (“*Christeen*”) at [46].

23 I begin by first setting out the law on the Courier Exception. In *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 (“*Chum Tat Suan*”) at [63]–[66], the Court of Appeal noted that Parliament intended for the Courier Exception to apply only in **very narrow circumstances** where the offender’s involvement was limited to “transporting, sending or delivering the drugs”. Hence, acts such as packing of drugs would bring the offender out of the Courier Exception. The Court of Appeal explained as follows at [68]:

... **packing is not a necessary element of moving an object from one point to another.** Simply put, a courier is someone who receives the drugs and transmits them in **exactly the same form** in which they were received without any alteration or adulteration.

[emphasis added]

Ultimately, however, “whether an offender [was] a courier necessarily involve[d] a highly fact-specific inquiry”: see *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 (“*Ranjit Singh*”) at [58].

24 In this regard, I was referred to *Christeen*, which provided invaluable guidance at [68]–[73] on the key factors to consider

when determining whether an offender was a mere courier. These non-exhaustive factors could be distilled as follows:

(a) ***Was the role a common and ordinary incident of transporting, sending or delivering a drug?*** To qualify as a mere courier, an offender must not have been involved in “any other type of activity associated with drug supply and distribution”: see *Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs). Thus, acts of ***storage or safekeeping*** did not bring an offender out of the Courier Exception if such acts were merely incidental to the transporting of the drugs: see *Christeen* at [68(a)] and [69].

(b) ***Were such acts necessary to deliver the drugs?*** This would involve considering the degree to which the drugs were ***altered*** and the extent to which an offender’s involvement looked beyond his immediate recipient of the drugs. Hence, an offender would not be a mere courier if his acts of ***packing*** were not necessary to move the drugs from point A to point B: see *Christeen* at [68(b)] and [70].

(c) ***What was the extent in scope and time of the functions which the offender performed?*** An offender who had numerous functions going beyond transportation over an extensive period of time was less likely to be a mere courier

than an offender who performed such functions on a one-off basis: see *Christeen* at [68(c)] and [71].

(d) ***What was the degree of executive decision-making powers given to the offender?*** An offender who intended to ***sell*** drugs for profit and who had the ability to make executive decisions was not a mere courier. In contrast, an offender who could exercise no discretion and could only carry out instructions given to him was more likely to be within the Courier Exception: see *Christeen* at [68(d)] and [72].

(e) ***Did the offender receive a distinct form of benefit for performing his extra functions?*** An offender who regularly performed extra functions and was rewarded for such functions was more likely to fall outside the Courier Exception: see *Christeen* at [68(e)] and [73].

25 With the above considerations in mind, I examined the accused's "involvement in the offence" (see s 33B(2)(a) of the MDA) of trafficking in the 83 Packets.

26 The Defence urged me to find that the accused was a mere courier within the meaning of s 33B(2)(a) because the accused only had the intention to ***deliver*** (as opposed to ***sell***) the 83 Packets.⁶⁹

⁶⁹ Defence's Closing Submissions at p 18, paras 32-33.

Presumably, the Defence was attempting to overcome the holding in *Chum Tat Suan* at [62] that an offender was not merely a courier if he had the intent to sell controlled drugs.⁷⁰ To this end, the Defence challenged the accuracy of the recording done by CNB officer Nicholas Quah Chee Fook (“Quah”) with the aid of an interpreter, Mr Mohammad Farhan Bin Sani (“Farhan”). In view of the parties’ decision to confine their submissions only to evidence relating to the 83 Packets, my analysis is similarly restricted to references in the statements with regard to the 83 Packets. There were multiple instances of the word “sell” in P70 suggesting that the accused had intended to sell the 83 Packets. P70 also recorded the accused as having stated that “[a]ll the heroin recovered from [the] black sling bag belongs to [him] and is meant for *selling*” [emphasis added].⁷¹ Levelling two main arguments, the Defence challenged the accuracy of the instances where the word “sell” or its different forms appeared.

27 First, the Defence submitted that the accused did not tell Quah or Farhan that he had intended to sell the drugs, and that “[t]he words ‘sell’ [and] ‘sold’ were misunderstood and/or misconstrued by [Farhan]”.⁷² It was alleged that Farhan had

⁷⁰ Transcript, Day 10, p 10; Prosecution’s Closing Submissions at para 45.

⁷¹ P70 in Statements of the Accused at p 177, para 2.

⁷² Defence’s Closing Submissions at pp 18–19, paras 33–34.

incorrectly interpreted the Malay words “*menghantar*” (which means “deliver”) and “*menjual*” (which means “sell”).⁷³ The accused also gave evidence that he did not use the words “sell” or “sold”. Instead, according to the accused, he only said that he would send the diamorphine and collect money.⁷⁴

28 Second, relying on the “Interpreter’s Notes” taken by Farhan during and after the recording of P70,⁷⁵ the Defence averred that the accused was prevented from clarifying in his statements that he did not intend to sell the diamorphine.⁷⁶ The notes indicated that the accused had informed Farhan that “he did not have the intention to sell and was only helping to send the drugs” (“the Exculpatory Statement”).⁷⁷ The Exculpatory Statement was made after the recording of P70,⁷⁸ and it was the Defence’s position that Quah had deprived the accused of a chance to clarify by failing to take an additional statement immediately.⁷⁹

⁷³ Transcript, Day 4, p 64.

⁷⁴ Transcript, Day 6, p 54.

⁷⁵ Transcript, Day 4, p 52.

⁷⁶ Defence’s Closing Submissions at p 19, para 35.

⁷⁷ P152 at note dated 23 June 2014.

⁷⁸ Transcript, Day 4, p 16.

⁷⁹ Defence’s Closing Submissions at p 19, para 35.

29 In my judgment, the accused had intended to use the word “sell” (or its different forms) where it had been so recorded. I found that the contention that the accused’s words were incorrectly interpreted and recorded was incredible and self-serving. To begin with, the Defence could not show that Quah or Farhan had any reason to incriminate the accused, and the accused also admitted that he did not know Quah or Farhan prior to his arrest.⁸⁰ On the contrary, the fact that Farhan recorded the Exculpatory Statement in the Interpreter’s Notes showed that he had no motive to incriminate the accused and that he was dutifully carrying out his role as an interpreter. I also disagreed with the Defence’s submission that the accused was prevented from clarifying what he had said. Both Quah and Farhan testified that the accused was informed that he could make the necessary clarifications in his further statements.⁸¹ This fact was also recorded in Farhan’s Interpreter’s Notes.⁸² Accordingly, the Defence’s contentions were far-fetched, and it was always open to the accused to make any necessary clarifications in his later statements.

30 Putting aside deliberate acts, I also considered whether there could have been mistakes. Having heard and seen Farhan giving

⁸⁰ Transcript, Day 8, pp 45–46.

⁸¹ Transcript, Day 4, pp 10 and 63.

⁸² P152 at note dated 23 June 2014.

his testimony, I did not believe that he could have been mistaken about the two Malay words “*menghantar*” and “*menjual*”. These were common words that anyone familiar with the Malay language would have readily known and understood. Indeed, Farhan was unequivocal in his position that he understood both words, and that they did not have any other possible meanings.⁸³ I did not doubt his competence or veracity on this point.

31 In the light of the foregoing, including considering the Exculpatory Statement, I found that the accused had deliberately used the word “sell” (or its other forms) as recorded, indicating how he had perceived his role. I should add that even if I had taken into account references in the statements with regard to the Collateral Evidence, my conclusions on this issue would have remained unchanged. In any case, the accused’s choice of words in his statements was not determinative of the issue of whether he was a mere courier on our facts. Ultimately, the court still had to decide, on a holistic assessment of the facts, whether the accused’s involvement in the offence was restricted to the acts set out under s 33B(2)(a) of the MDA.

32 Certainly, while the Defence harped on the question of whether the accused had intended to “sell” the 83 Packets or whether he would have merely *delivered* them and *collected* money

⁸³ Transcript, Day 5, p 25.

(see *Christeen* at [72] and [77]),⁸⁴ this issue was overshadowed by the fact that he had repacked the 83 Packets. The accused's act of repacking turned out to be the decisive point on the question of whether he met the conditions of the Courier Exception.

33 In this regard, recalling the considerations in *Chum Tat Suan* and *Christeen* as canvassed above at [23]–[24], alongside the principle that an offender's act must be assessed cumulatively (see *Christeen* at [87]), I noted that the accused had been arrested with a digital weighing scale and numerous empty plastic packets.⁸⁵ These were paraphernalia used by the accused to weigh and repack the two *batus*, and his statement set out in detail how he had actually repacked them.⁸⁶

I then took out the digital weighing scale and started repacking the heroin. I had opened up 2 'batu' and repack it into 90 smaller packets of heroin. I had a remaining half 'batu' which I had used a black sticky tape to tape up the plastic packet so as to prevent the heroin from spilling out.

...

I then place [sic] 10 packets of heroin into one white envelope. I had a total of 9 white envelopes each containing 10 packets of heroin.

...

⁸⁴ Defence's Closing Submissions at pp 18–21, paras 32–37 and pp 22–23, para 43; Transcript, Day 10, p 8.

⁸⁵ P70 in Statements of the Accused at p 178, para 5.

⁸⁶ P72 in Statements of the Accused at p 212, paras 38–42.

All the heroin that I had surrendered from the unit #09-138 was packed by me. ...

34 In submitting that the accused was a mere courier, the Defence argued that not all instances of repacking would preclude an offender from falling within the Courier Exception.⁸⁷ However, in my view it was clear from the case authorities that acts of repacking had to be *necessary for or incidental to the delivery (and other statutory acts)* if the accused were to be a mere courier: see *Chum Tat Suan* at [68]; *Ranjit Singh* at [64]; and *Christeen* at [68]. In this regard, *Ranjit Singh* was especially instructive given its close similarities with the present case. Therein, the second accused (“Farid”) was charged for possessing 35.21g of diamorphine for the purpose of trafficking. Weighing scales and empty plastic bags were found in Farid’s rented apartment, which Farid had intended to use to repackage the diamorphine into smaller packets each containing 7.7–7.9g of the drug. In rejecting Farid’s submission that such acts of repacking were that of a mere courier, the High Court found that Farid’s role of weighing and repacking the drugs “was essentially a matter of convenience for *facilitating distribution or sale*; it was not necessary for or incidental to enabling the drugs to be transported” [emphasis

⁸⁷ Defence’s Closing Submissions at pp 16–18, paras 24–31; Transcript, Day 10, pp 20–21.

added] (at [64]). The High Court therefore imposed the mandatory death sentence on Farid.

35 The facts of *Ranjit Singh* were much like those in the present case, and in the circumstances, I agreed with the Prosecution that the accused fell outside the Courier Exception.⁸⁸ It was apparent from the above facts that one of his core functions was to **weigh** and **repack** the *batus* into small packets after he had collected them from the drug suppliers. As the Prosecution highlighted, the accused's act of repacking had substantially altered the form of the drugs.⁸⁹ Such repacking was neither necessary for nor incidental to the acts listed under s 33B(2)(a) of the MDA. Instead, one could fairly describe what the accused did as "breaking bulk" for his suppliers. Certainly, the two *batus* were broken down into small packets of retail size, and this act of repacking was done "essentially [as] a matter of convenience for facilitating **distribution or sale**" [emphasis added]: see *Ranjit Singh* at [64]. In my view, this formulation in *Ranjit Singh* was most apposite for the present case. It applied *a fortiori* to the present case given that the accused had **already** repacked the diamorphine unlike Farid in *Ranjit Singh* who had not actually repacked the diamorphine at the time of his arrest.

⁸⁸ Prosecution's Closing Submissions at para 48.

⁸⁹ Transcript, Day 10, p 33.

36 With regard to the contention that the accused was merely carrying out Siva's and the drug suppliers' instructions and had no executive decision-making powers (see *Christeen* at [68(d)] and [72]),⁹⁰ I was of the view that this was insufficient to show that the accused was a mere courier. While I accepted that the lack of executive discretion was a relevant indicator (see [24(d)] above), this was only one of the many factors which the court had to consider. As was the case in *Ranjit Singh*, even if an offender was acting on instructions, "the fact that his role with regard to the offence charged would have included non-incidental repacking was sufficient to show that he was not a mere courier" (at [65]). Therefore, given my finding that the accused's repacking of the diamorphine was not necessary for or incidental to the transporting, sending, delivery, or the other acts under s 33B(2)(a) of the MDA, the fact that the accused was executing instructions did not change the conclusion that he was not a mere courier: see *Ranjit Singh* at [65].

37 In conclusion, based on a common sense reading of the MDA and the guidance of the relevant precedents, the facts led me inescapably to the finding that the accused was not a mere courier. This was *a fortiori* when the MDA placed the burden on the Defence to prove on a balance of probabilities that the accused was

⁹⁰ Defence's Closing Submissions at pp 15–16, para 23 and pp 20–21, para 37; Transcript, Day 10, p 5.

a mere courier. In this connection, it ought to be mentioned that even if the Collateral Evidence had been considered, it would not have made a difference to my finding bearing in mind that the accused had already repacked the drugs in our case.

38 Finally, the Defence also sought to impugn the Prosecution's decision not to issue a Certificate of Substantive Assistance under s 33B(2)(b) of the MDA. However, aside from assertions that the Prosecution had not been transparent in its refusal to issue a Certificate of Substantive Assistance, the Defence did not adduce any evidence to suggest that the Prosecution had acted without propriety.⁹¹ I therefore dismissed the Defence's challenge for want of merit. In any event, this issue was ultimately immaterial to the sentence, as acknowledged by the Defence, in the light of my finding that the accused fell outside the Courier Exception.

39 In the premises, I imposed the mandatory sentence of death.

Foo Chee Hock
Judicial Commissioner

⁹¹ Defence's Closing Submissions at pp 28–29, paras 1–4.

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