

Public Prosecutor v Christeen d/o Jayamany and another
[2015] SGHC 126

Case Number : Criminal Case No 19 of 2015
Decision Date : 08 May 2015
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Anandan Bala, Carene Poh and Nicole Evangeline Poh (Attorney-General's Chambers) for the prosecution; Sunil Sudheesan and Diana Ngiam (RHTLaw Taylor Wessing LLP) for the first accused; Thrumurgan s/o Ramapiram, Emmanuel Lee (Trident Law Corporation) and Kalidass s/o Murugaiyan (HOH Law Corporation) for the second accused.
Parties : Public Prosecutor — Christeen d/o Jayamany and another

Criminal Law – Statutory offences – Misuse of Drugs Act

8 May 2015

Tay Yong Kwang J:

1 The two accused persons, Christeen d/o Jayamany ("Christeen") and Datchinamurthy a/l Kataiah ("Datchinamurthy"), were tried and convicted on the respective charges:

That you, **1. CHRISTEEN D/O JAYAMANY**,

on 18 January 2011, at or about 9.05 a.m., along Depot Close, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, *to wit*, by having in your possession for the purpose of trafficking, five (5) packets of granular/powdery substances, which were analyzed and found to contain **not less than 44.96 grams of diamorphine**, without any authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act, Chapter 185, read with section 5(2) of the Misuse of Drugs Act, Chapter 185, which is punishable under section 33 of the Misuse of Drugs Act, Chapter 185, or you may alternatively be liable to be punished under section 33B of the Misuse of Drugs Act, Chapter 185.

That you, **2. DATCHINAMURTHY A/L KATAIAH**,

on 18 January 2011, at or about 9.05 a.m., along Depot Close, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, *to wit*, by giving to one Christeen D/O Jayamany (NRIC No.: [xxx]) five (5) packets of granular/powdery substances, which were analyzed and found to contain **not less than 44.96 grams of diamorphine**, without any authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act, Chapter 185, which is punishable under section 33 of the Misuse of Drugs Act, Chapter 185, or you may alternatively be liable to be punished under section 33B of the Misuse of Drugs Act, Chapter 185.

The Prosecution's case

THE PROSECUTION'S CASE

2 Both accused persons were arrested on 18 January 2011 along Depot Close, Singapore, by Central Narcotics Bureau ("CNB") officers as part of a drug operation.

3 On 18 January 2011, Datchinamurthy entered Singapore via the Woodlands Checkpoint at 5.35am on his motorcycle bearing the registration plate number JMN 8716. [\[note: 1\]](#) He then travelled to a fruit stall at Woodlands Central where he met an unknown Indian man. Datchinamurthy told the said Indian man that he was supposed to deliver five packets of drugs for a person known to him as "Rajah". [\[note: 2\]](#) That Indian man replied that there were two packets in a red plastic bag in the front basket of a motorcycle bearing the registration plate number JJS 2021 ("JJS 2021") while three more packets were stuffed under its seat. JJS 2021 was Datchinamurthy's old motorcycle, which Rajah had modified to conceal the packets of drugs. [\[note: 3\]](#) Datchinamurthy retrieved the three packets of drugs from under the motorcycle seat and placed them together with the other two packets in the red plastic bag. [\[note: 4\]](#) He then contacted Christeen and arranged to meet her at Depot Close to pass her the five packets of drugs. [\[note: 5\]](#)

4 At about 9.05am, Datchinamurthy was seen on JJS 2021 along Depot Close facing the direction of Depot Road. [\[note: 6\]](#) Christeen alighted from a taxi along Depot Road and was later seen turning into Depot Close. [\[note: 7\]](#) Christeen met Datchinamurthy along Depot Close where she passed a brown sling bag ("the Sling Bag") to him. Datchinamurthy placed something red into the Sling Bag and returned the Sling Bag with its contents to Christeen. [\[note: 8\]](#) Both of them then parted ways. Datchinamurthy rode off on JJS 2021 in the direction of Depot Road and stopped at the traffic junction of Depot Close and Depot Road. [\[note: 9\]](#) Christeen walked slowly towards the same traffic junction with the Sling Bag slung over her left shoulder. [\[note: 10\]](#)

5 CNB officers then engaged Datchinamurthy at the said traffic junction. He fell onto the grass verge of Depot Close and was arrested. [\[note: 11\]](#) Almost simultaneously, SSgt Bukhari bin Ahmad arrested Christeen. He alighted from his vehicle and approached Christeen from behind and on her right. He held her right wrist, handcuffed it, brought it behind her back and then handcuffed her left wrist. [\[note: 12\]](#) While Christeen was being arrested, the Sling Bag slid down her arm to her left elbow region and SSgt Bukhari saw a red plastic bag inside the Sling Bag. [\[note: 13\]](#) SSgt Bukhari then handed her over to WSSSgt Jenny Woo Yoke Chun ("WSSSgt Jenny") and WSSgt Norizan binte Merabzul ("WSSgt Norizan"). [\[note: 14\]](#) Both of them observed that the Sling Bag was slung over Christeen's left wrist, above her handcuffs. [\[note: 15\]](#) WSSgt Norizan then escorted Christeen into a CNB vehicle. As Christeen sat down, WSSgt Norizan brought the Sling Bag from behind Christeen's back onto Christeen's lap without removing the handcuffs. [\[note: 16\]](#) Both WSSgt Norizan and WSSSgt Jenny noticed a tied-up red plastic bag inside the Sling Bag. [\[note: 17\]](#)

6 Subsequently, CNB officers seized Christeen's and Datchinamurthy's belongings, including the Sling Bag. The tied-up red plastic bag inside it contained five transparent packets of brown granular substance. This substance was later analysed and found to contain not less than 44.96 grams of diamorphine in total. [\[note: 18\]](#) This amount of diamorphine formed the subject of the respective charges. In addition, WSSSgt Jenny found Christeen's Sony Ericsson handphone and earpiece in the front right pocket of her bermudas. [\[note: 19\]](#)

7 The Prosecution tendered evidence from a total of 43 witnesses as well as phone records and

police statements. A contemporaneous statement from Datchinamurthy, recorded by SSI Tony Ng and interpreted by SSgt Ravichandran s/o Ramu, was admitted into evidence unchallenged. Over the course of investigations, the Investigating Officer, ASP Deng Kaile ("the IO"), with the help of an interpreter, P Manickam, recorded from each accused person one statement pursuant to s 23 of the Criminal Procedure Code (Act 15 of 2010) ("CPC 2010") and a series of statements pursuant to s 22 of the CPC 2010. These were also admitted, although parts of Christeen's second and third s 22 statements were redacted.

8 Christeen admitted in her s 23 statement that Datchinamurthy had passed her the Sling Bag containing the red plastic bag in the morning of 18 January 2011. She also said that she had collected "a packet" from Datchinamurthy the week before and had delivered it. Datchinamurthy had paid her \$200. What was absent, however, was her subsequent claim that she had called Datchinamurthy intending to return the Sling Bag to him after seeing the brown rock-like substance in the packets. In Christeen's s 22 statements, she admitted that she had met Datchinamurthy once prior to 18 January 2011 and had taken four packets of drugs from him on that occasion. She provided a detailed account of how she distributed the drugs and collected money pursuant to Datchinamurthy's instructions. On that occasion, he called her after passing the Sling Bag to her. She then went home to await instructions regarding the persons to whom she was to deliver the packets, where to meet the recipients and what to collect from them in return. Upon his instructions, she passed the four packets to four different sets of recipients—one Malay male, two Chinese males, one Indian male and another Malay male. Regarding the transaction on 18 January 2011, she admitted that she had received the Sling Bag from Datchinamurthy.

9 In Datchinamurthy's contemporaneous statement, he admitted that he knew that the packets contained "drugs". When questioned as to the nature of the drugs, he stated that he did not know. He stated in his s 23 statement that he committed this offence because of family and financial hardship and debt problems. He said that this was why "I had taken the risk to lose my life". In his s 22 statements, he stated that he had approached Rajah to take up Rajah's earlier offer to deliver drugs within Singapore because he needed money. He also stated that he knew Christeen and had met her on one prior occasion in January 2011 where he passed two packets of drugs to her. He stated that his role was simply that of a middleman between Rajah and Christeen. He stated that although he suspected that the drug in question was heroin (a street name for diamorphine), he did not enquire as to whether it was truly heroin.

The defence

10 Both accused persons elected to give oral testimony in their own defence. No other defence witness was called.

Christeen's defence

11 Christeen's defence, in essence, was that she did not know that the five packets contained drugs and that she did not know the nature of the drugs (*ie*, that they were diamorphine).

12 Christeen was unemployed and in financial difficulty. As she needed money to support her children, she accepted a job offer to receive and deliver a bag. The offer was first communicated to her by a person known to her as "Land". [\[note: 20\]](#) She had been introduced to Land by Thiru, a family friend. [\[note: 21\]](#) Land had heard of Christeen's plight and told her that his friend would provide her with the details of the job and the person to whom she was to pass the bag. Later, Datchinamurthy contacted Christeen and told her that Land had spoken about her. He briefed her about the job. In particular, he said that he would pass her a bag which she was to pass to a person to be specified by

him and that person would give her an envelope which she was to pass back to him upon his request. If she did this, Datchinamurthy would give her \$200. [\[note: 22\]](#)

13 Christeen received packets from Datchinamurthy and delivered them on at least one occasion in the week prior to 18 January 2011. [\[note: 23\]](#) After receiving the Sling Bag containing four packets from Datchinamurthy, she brought the Sling Bag home and waited for him to tell her to whom the packets should be delivered to. According to her, the packets she had received were wrapped in newspaper, secured by scotch tape and were heavy. [\[note: 24\]](#) She thought that they contained “valuable” things. [\[note: 25\]](#) Datchinamurthy instructed Christeen to distribute those packets to certain individuals and to collect an envelope containing money from them. She went on to make four deliveries to four sets of persons. [\[note: 26\]](#) On 15 January 2011, Datchinamurthy sent his friend to collect the envelopes from her at the lift landing of her flat and this friend handed her \$200 for the job. [\[note: 27\]](#)

14 On 17 January 2011, Christeen and Datchinamurthy had a phone conversation. He asked Christeen to bring the Sling Bag to Depot Close the next day. [\[note: 28\]](#) On 18 January 2011, Christeen brought the Sling Bag expecting to receive similar packets wrapped in newspaper and secured with scotch tape. [\[note: 29\]](#) She did not notice anything wrong with the red plastic bag when he placed the red plastic bag into the Sling Bag. Thereafter, the Sling Bag was handed over to her. [\[note: 30\]](#) Datchinamurthy told her to hold on to the Sling Bag and await his call. [\[note: 31\]](#) Christeen said that, after they parted ways, she put the Sling Bag on the ground because it was heavy and it was then that she noticed that the red plastic bag inside was torn. [\[note: 32\]](#) She noticed that there were clear transparent plastic packets containing brown substance inside the red plastic bag and suspected that something was wrong. [\[note: 33\]](#) She stated that she quickly took out her phone to call Datchinamurthy to ask him to return and to take back the Sling Bag. However, she was arrested before her call went through. [\[note: 34\]](#)

Datchinamurthy’s defence

15 Datchinamurthy, in his defence, raised facts which were relevant to whether he had knowledge of the nature of the drugs and to his role in the transactions.

16 He stated that, after he had taken up Rajah’s job offer, he asked Rajah out of curiosity as to the nature of the drugs to be delivered and was told by Rajah that they were “not serious drugs”. [\[note: 35\]](#) He said that he had suspected that the drugs were heroin when he did his first delivery of the drugs in Singapore on 7 January 2011. To quell his suspicion, he opened the bag containing the packets and saw that there was brown, rocky/granular substance in the transparent packets and thought that it was Chinese medicine. As far as he knew, from newspapers and television, heroin was a white powder. [\[note: 36\]](#) Since he thought the substance was Chinese medicine and not a serious drug, he did not have any suspicions thereafter and did not ask Rajah about the exact nature of the drug. [\[note: 37\]](#)

17 As for his role in the transactions, he said that his job was to deliver drugs to Christeen and to relay messages between Rajah and Christeen. [\[note: 38\]](#) However, he was made to do other jobs which he disliked. In particular, he had to pass messages to Christeen regarding the distribution of the packets of drugs after he had delivered them to her. Rajah had given Datchinamurthy a Singapore mobile phone number and had informed him that a person, one “Kishor Friend”, would then call him

from that number to inform him of the persons Christeen had to deliver the drugs to. [\[note: 39\]](#)

The court's decision

18 The essence of both accused persons' defence concerned their knowledge of the contents of the packets in question.

19 However, I will first address a point which was somewhat contested by Christeen at trial, that is, how many transactions there were in total. I found that there were three transactions in total, *ie*, on 7, 14 and 18 January 2011 (the last being the date of arrest). Christeen had, in her s 22 statements, referred to the two incidents—one on 18 January 2011 and another in the week prior. She was initially reluctant to admit that the incident on 7 January 2011 took place. However, the evidence led me to conclude that it did. First, Datchinamurthy, both in his statements and in his oral testimony, spoke of the 7 January 2011 incident in detail. [\[note: 40\]](#) He described how he collected two packets from a fruit stall in Woodlands in the morning and passed them to Christeen later. Second, the phone records show that Christeen had travelled to meet Datchinamurthy in the early morning of 7 January 2011. At 6.31am, Christeen sent an SMS to Datchinamurthy saying "Getting readi... wen I taking cab... I call you!" At 7.42am, she sent another SMS, saying "Wil be der in 5 min". [\[note: 41\]](#) This is consistent with another SMS sent on 10 January 2011 which read, "I bankin already" and which meant that some sort of dealing had taken place by 10 January 2011. Third, Christeen said she had forgotten the transaction on 7 January 2011, to the extent of completely omitting to make any reference to it in her statements and initially giving oral testimony that she could not recall it. [\[note: 42\]](#) However, she could recall the 14 January 2011 transaction in remarkable detail—she could cogently recall the race of the persons to whom she had delivered the packets, the number of packets she delivered and the sequence in which they were delivered. It was only when Christeen was confronted with the phone records that she eventually conceded that the transaction on 7 January 2011 could have happened. It seemed that she simply did not want to admit being involved in another transaction on 7 January 2011.

Whether the presumption of knowledge applied

20 Section 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") provides that any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug. This applies to both Christeen and Datchinamurthy by virtue of s 18(1)(a) of the MDA, since they did not dispute they were in physical possession of the bag containing the five packets containing diamorphine on 18 January 2011. Christeen's allegation that she put the bag on the floor is irrelevant since she admitted receiving the bag from Datchinamurthy. To rebut the presumption of knowledge in the context of s 18(2) of the MDA, they must prove on a balance of probabilities that they did not know or could not reasonably be expected to have known that the thing in their possession contained that controlled drug (*Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [21]). Knowledge will be established under the doctrine of wilful blindness if they had a strong suspicion that they were carrying diamorphine but had turned a blind eye to that fact.

Whether Christeen had rebutted the presumption of knowledge

21 Essentially, Christeen claimed that she did not know that the packets which she had collected contained drugs and she wanted to return the packets after realising that they contained drugs. However, I found that virtually all the evidence pointed to the contrary.

22 I begin with the objective evidence, which in my view shows that Christeen had a strong suspicion that she was carrying diamorphine and that she turned a blind eye to that fact.

23 First, she was paid \$200 for a relatively simple task of travelling to collect packets from Datchinamurthy and thereafter passing those packets to other parties on his instructions. This should have raised suspicions in her mind that what she was carrying was possibly illegal.

24 Second, the job was arranged in a surreptitious manner. The job was arranged through an acquaintance, Thiru (her ex-husband's friend), and two virtual strangers (Datchinamurthy and Land). The job itself also required Christeen, on Datchinamurthy's instructions, to pass those packets to people who would in turn pass her large amounts of cash (*ie*, \$5,000 on two occasions and \$2,900 on a third occasion) in an envelope. It is incredible that she expressed no curiosity whatsoever about the contents of the packages she was delivering. Even with her history as an odd-job worker, this job would have been unusual and suspicious in many respects. For this reason, I was not impressed with her contention that this job appeared to a respectable one since it was obtained through Thiru, a man who worked at a town council and who was held in high regard by her family.

25 The evidence shows that Christeen closed her eyes to the suspicious circumstances of the transactions as she was in financial straits and needed the money. In cross-examination, she conceded that she suspected that the packets she carried contained something "valuable" [\[note: 43\]](#) but kept saying that she did not think too much about the contents of the packages she had collected as she needed the money. The answers Christeen gave when I asked her some questions to clarify her evidence amply demonstrates this point: [\[note: 44\]](#)

Q: And by "valuable", what do you think? What sort of valuable things are we talking about?

A: That there must be a price to that thing. I did not—it did not occur to me what it might be.

Q: Yes, so I am asking you now, what did you think you were delivering on that occasion?

A: Nothing occurred to me then, Your Honour, I needed money. If I—if—I was told that if I give them this thing, I would be given money and—

Q: Understand, understand. But my point is what did you think you were delivering? Okay, yes, you said "could be something valuable", then my next question is what is valuable to you?

A: There are a lot of things, Your Honour, and nothing occurred to me at that time.

Q: So do I hear you as saying, "I really don't care what it was"? Because you are telling me you never even thought about what you are delivering, that means, "I don't care, as long as I get money". Is that what you are saying?

A: No, Your Honour, it was wrapped in newspaper and I was told to deliver it, so my thought at that time was just to deliver it.

Q: You see, you just led me to the next question. Why would something valuable be wrapped in newspaper and scotch-taped?

A: I—I did not think—I did not think about all this at that time, Your Honour. I did not think too much about it. And I was not in a good situation then. I did not think much about it.

26 In fact, Christeen had ample opportunity to check the packets and it was likely that she actually knew right from the start that the contents were drugs. Christeen claimed that the packets were wrapped in newspaper and secured by scotch tape and she therefore could not have checked the packets. However, I did not believe this claim. I found that there were two other transactions on 7 January 2011 and 14 January 2011. Datchinamurthy testified that, in both transactions, the drugs were delivered to him (and, later, by him to Christeen) in clear transparent bags. This explained why Datchinamurthy saw brown granular substances in the packets. [\[note: 45\]](#) There was no suggestion that Datchinamurthy wrapped the drugs in newspaper. Christeen must have seen the drugs and have had ample time and opportunity to check the contents of the packets. She also admitted in her statement that she knew the brown substances were drugs as she had seen such before in the newspapers. Even if the packets were wrapped in newspaper, she admitted to feeling the packets and realising that there were rock-like substances inside. [\[note: 46\]](#) It defies belief to say that Christeen was not curious at all and that nothing crossed her mind as to what was inside the packets on those previous occasions.

27 I now move on to Christeen's statements. Her s 22 statements were replete with admissions that she suspected what she was carrying was illegal and they are consistent with the evidence I have reviewed above. I reproduce a few excerpts:

12. After [Datchinamurthy] hung up the phone [after a conversation during the week before 18 January 2011], *I suspected that he might be telling me to do something illegal. I suspected that he might be telling me to do something illegal because he did not tell what will be inside the bag that I was supposed to take from him. So, I suspected that there might be something illegal inside that bag.* Despite my suspicions, I still agreed to do this because I really needed the money and by doing this, I could get the money immediately so that my children can go to school and I could buy necessities for my third child.

...

19. ... [Regarding the transaction on 14 January 2011] I wish to say that if I wanted to, I would have been able to check what was inside the packets as there was nobody else at home at day. I am now being asked why I did not check what was inside those packets since I suspected that they might contain something illegal. I wish to say that I did not check the contents of the packets because [Datchinamurthy] had told me not to do anything to the packet. By this, I understood [him] to be telling me not to open the newspaper wrapping of the packet. *I am now being asked if I had suspected if the packets contained anything illegal after doing all the deliveries. I wish to say that after doing all the deliveries, I suspected even more that the packets contained something illegal.* This is because of the large amount of money I received every time I handed over a packet. When [Datchinamurthy] called me at about 9pm plus ..., he told me that he can make a lot of money from this, and if I help him get more customers to buy "jaman" from him, he will give me more than what I am getting. I am now being asked what I understand by the word "jaman" when [he] used the word "jaman". I wish to say that I understood the word "jaman" to be the Tamil street slang for drugs. When [he] used the word "jaman", I understood it to be mean drugs because I know the packets cost a lot of money so drugs are probably inside the packets. ...

20. *After [Datchinamurthy] hung up, I realized that the 4 packets which I had delivered actually contained drugs.* ...

...

29 On the day that I was arrested, at about 7am plus, [Datchinamurthy] called me on my handphone. He told me to meet him at Depot Close with the brown bag. He also told me that he would be passing the packets to me again. I said ok and then he hung up. I am now being asked what I understood the packets to contain. *I understood the packets to contain the same thing as the packets he passed me the previous time.*

[emphasis added]

28 At trial, Christeen attempted to disown copious amounts of inculpatory material from her statements. Various parts from at least 20 paragraphs were contested in total. [\[note: 47\]](#) She effectively alleged that the interpreter did not accurately record everything she said, that he added several incriminating portions and that he did not interpret the entire statement back to Christeen. [\[note: 48\]](#) She further alleged that she was made to sign the hard copies of all the statements in one sitting after her last s 22 statement was taken on 22 January 2011 and she did not have a chance to peruse the statements. [\[note: 49\]](#) I could not believe these claims. First, both the IO and the interpreter were consistent in their testimony on when the signatures were appended to the statements—the signatures on each statement were appended after that statement was taken. [\[note: 50\]](#) Second, Christeen was educated up to the “N” level in the English stream and she admitted to having a reasonable command of the English language. [\[note: 51\]](#) Her SMSes to Datchinamurthy were composed exclusively in English, except for one message in transliterated Tamil. [\[note: 52\]](#) Both the interpreter and IO testified that she understood and conversed in English. [\[note: 53\]](#) Even if the interpreter did not read the statement back to her, she would have been able to detect at least some of the numerous incriminating references to her knowledge that the packets contained drugs. For this reason, I found that any discrepancy between the IO’s and the interpreter’s evidence (on how much English and Tamil were used in the statement recording) did not really matter. Third, Christeen exercised her right to make amendments. The s 23 statement, which was the first statement taken from her, contained three amendments which were countersigned by her. If she did not know that the packets contained drugs, it is puzzling why she did not dispute those parts of the statement when she was asked to sign against them. I could only conclude that Christeen was aware of and in full agreement with the statements that she signed.

29 I will now turn to Christeen’s version of what happened on 18 January 2011 (see above at [14]). She made a number of assertions which I will address in sequence.

30 First, I was unconvinced that she put the Sling Bag on the floor. The reason that she gave (*ie*, the Sling Bag was heavy) was a feeble one, since the drugs weighed only about 2.27 kilograms and Christeen was an able-bodied woman who had worked as an odd-job worker. In fact, all the CNB witnesses were consistent in their testimony that the Sling Bag was slung over Christeen’s left shoulder and it was still being carried by her when she was arrested. Specifically, after she was handcuffed behind her back, the sling bag slid down her arm to a region between her left elbow and her wrist. [\[note: 54\]](#)

31 Second, it was also very unlikely that Christeen saw the drugs through the tear in the tied-up red plastic bag after placing it on the floor. The tear was on the bottom side corner of the red plastic bag, whereas the red plastic bag was placed into the brown bag in the upright position such that the knot was visible. [\[note: 55\]](#) The tear would have been obscured from her vision.

32 Finally, I did not believe that Christeen did, or wanted to, place a call to Datchinamurthy. Her

evidence on this point was inconsistent to begin with. In her s 22 statement, she said that "before I could call him, I was arrested". [\[note: 56\]](#) However, in her evidence she said that she had dialled Datchinamurthy's number and she could hear a ringing tone but before the call connected, she heard a loud noise (Datchinamurthy supposedly fell off his motorcycle) and her earpiece fell to her collar region. [\[note: 57\]](#) Her phone records show that their last connected call was one placed at 9.03:19am and which lasted 33 seconds. There were no dialled calls to Datchinamurthy's mobile phone. [\[note: 58\]](#) Counsel suggested that when Datchinamurthy fell off the motorcycle during his arrest, the answer button could have been pressed inadvertently, hence accounting for the 33 seconds of call time. [\[note: 59\]](#) However, in my view, Christeen changed her version of events to better suit her defence at trial. I agree with the Prosecution that Christeen's statement suggests strongly that she had not even dialled the number, much less that she heard a ringing tone. [\[note: 60\]](#) Given her fair command of English, she would have said that she tried to call Datchinamurthy but was arrested before he could pick up his phone. Christeen claimed that she left the earpiece inside her collar when it fell [\[note: 61\]](#) but it was undisputed that WSSSgt Jenny found Christeen's earpiece in the front right pocket of her bermudas. [\[note: 62\]](#) From the time she was arrested, she had no opportunity to put her mobile phone into her bermudas pocket. [\[note: 63\]](#) This suggests that Christeen did not even take her mobile phone out of her front right pocket.

33 Based on all the evidence above, I was satisfied that the presumption of knowledge operated against Christeen and that she failed to rebut it on a balance of probabilities.

Whether Datchinamurthy had rebutted the presumption of knowledge

34 Essentially, Datchinamurthy's defence was that he thought the drugs he was carrying were illegal Chinese medicine and not diamorphine. He trusted Rajah when Rajah told him that the drugs were not "serious".

35 However, based on the evidence which follows, it was clear to me that Datchinamurthy had at least a strong suspicion that he was carrying diamorphine and that he turned a blind eye to it.

36 First, Datchinamurthy was rewarded rather generously for the simple acts of collecting and delivering the drugs. For the three trips on 7, 14 and 18 January 2011, he was paid \$300, \$300 and RM700 respectively. He conceded during cross-examination that these were large amounts of money, each being a quarter of his monthly salary, for a relatively easy job of collecting and delivering drugs to Christeen and arranging for her to deliver the drugs to the eventual recipients. [\[note: 64\]](#) The fact that Rajah told him he would be dealing in drugs and that he was being paid well for an apparently easy task should have created a strong suspicion that what he was carrying might be illegal. It was argued that Datchinamurthy, in his work as a lorry driver's assistant, had seen how the driver had obtained \$300 to \$800 for bringing in items like pirated DVDs and cigarettes from Malaysia to Singapore and therefore his suspicions would not have been aroused as to the nature of the drugs that he was carrying. [\[note: 65\]](#) I cannot agree. Datchinamurthy's job was not to traffic drugs from Malaysia to Singapore. It was to bring drugs from one place in Singapore to another place in Singapore; there were no checkpoints that he had to pass and the risk (and corresponding remuneration) should have been quite lower. Rajah had made the same point to Datchinamurthy. [\[note: 66\]](#) As I will elaborate below, Datchinamurthy was aware of the entire scale and nature of the drug operations which he was involved in and this must have overshadowed any thoughts that the drugs he was carrying were not serious in nature. Further, Datchinamurthy needed money to settle his debts. He was therefore willing to do a highly risky job for the money. In his words, "This is why I

had taken the risk to lose my life". [\[note: 67\]](#) It seems that he was fully aware that he was carrying something which, if he was caught, would attract a capital charge.

37 Second, Datchinamurthy claimed that he had trusted Rajah's bare assurances that the drugs were not serious, [\[note: 68\]](#) despite conceding in cross-examination that he knew that drug offences in Singapore were very serious and that trafficking in heroin was also a serious offence. [\[note: 69\]](#) It is incredible that he could trust Rajah's bare assurances since the evidence shows at most an arms-length relationship between Rajah and Datchinamurthy. They had met only thrice before he accepted the job [\[note: 70\]](#) and he neither knew Rajah well nor considered Rajah to be a close friend. In fact, Datchinamurthy did not even know where Rajah stayed and what he did for a living. [\[note: 71\]](#) The fact that Datchinamurthy vacillated on whether he trusted Rajah also showed me that he did not really trust Rajah very much at all. He stated that he trusted Rajah because he got to know Rajah through his friend, Mani, but stated later that it was precisely because he did not trust Rajah that he had opened the bag given to him to inspect its contents. [\[note: 72\]](#)

38 Third, Datchinamurthy had no real basis to conclude that the drugs were "illegal Chinese medicine". When he saw the drugs for the first time, he assumed almost immediately that they were not heroin but "illegal Chinese medicine". However, he admitted that he was not an authority on Chinese medicine and the little knowledge he possessed came from the newspapers. [\[note: 73\]](#) When asked why he did not enquire further whether it was really illegal Chinese medicine and not heroin, he simply said that he trusted Rajah. [\[note: 74\]](#) However, as I have found above, he had no basis to trust Rajah and in fact did not really trust him.

39 Fourth, the scale of the operations and the furtiveness of the transactions would also have led Datchinamurthy to think that whatever he was carrying would be far more illegal and serious than paltry "illegal Chinese medicine". From a macroscopic viewpoint, Datchinamurthy could see the scale of the operations in which he was involved. He knew that Christeen was a mere intermediary since he had given her instructions on 7 and 14 January 2011 on the persons to deliver the individual packets to (I will elaborate on this below at [52]–[59]). He received instructions and information from Rajah and Kishor Friend. He was also involved in collecting large amounts of money (see below at [62]–[64]) from Christeen, who in turn had collected the money from various third parties. From a microscopic viewpoint, he would have seen the surreptitious nature of each transaction. It was pointed out that he kept the drugs exposed in the front basket of his motorcycle at his workplace when he had access to a private locker and passed Christeen the drugs in broad daylight. Such actions, it was argued, showed his lack of knowledge about the nature of the drugs. However, for the trip on 18 January 2011, he had to retrieve three packets of drugs from under the seat of his old motorcycle before daybreak. [\[note: 75\]](#) It must have taken a significant amount of time and effort to prepare and conceal the drugs. Datchinamurthy also had to dismantle the seat with special tools. He was also told that the Indian man from whom he collected the drugs could not extract the three packets because there were members of the public around. I cannot see how Datchinamurthy did not think that these drugs were highly illegal. As for the fact that Datchinamurthy left the drugs exposed in his motorcycle, the reply is simple: he was not afraid because things had never been stolen from his motorcycle at his workplace. [\[note: 76\]](#)

40 Fifth, as Datchinamurthy had done two prior transactions before he was arrested on 18 January 2011, he would have had ample time to check what the drugs were. It seems to me that the overriding reason that he did not conduct his own checks was because he was willing to ferry the drugs around Singapore regardless of what they were, simply because he wanted to earn money

quickly to pay back his debts.

41 I completely agree with the Prosecution's submission that Datchinamurthy turned a blind eye to what he suspected he was dealing with and weaved his defence as an afterthought. In his contemporaneous statement, he had told the recorder that the packets contained "drugs". However, when asked what type of drugs they were, he stated "I don't know" instead of stating that they were only Chinese medicine. During the recording of the s 23 statement, when he was charged with trafficking "diamorphine", which carried the death sentence, and asked to state his defence, he stated that he did not know the consequence of what he was doing, instead of stating that he did not know the true nature of the drugs he had trafficked. Moreover, he said that he risked his life because he needed money to settle his debts. Any person who really believed that he was innocent would have clarified his belief that the drugs were merely illegal Chinese medicine. It was only during the second s 22 statement recorded by the IO, taken more than six weeks after his arrest, that he stated his belief that the drugs were "illegal Chinese medicine".

42 It was argued that less weight should be placed on the omissions in Datchinamurthy's statements because the statements were not recorded in a verbatim question-and-answer format but paraphrased into a narrative format. To this end, the defence relied on the Police General Orders reproduced in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205, which provides that notes which are likely to become the subject of legal proceedings should be recorded in the "fullest possible detail" including "actual words of relevant statements". Although it would be ideal for all statements to be recorded verbatim, I cannot say that Datchinamurthy's statement was recorded in breach of procedure. In my view, Datchinamurthy should have stated that he believed the drugs to be illegal Chinese medicine, since this was obviously relevant to his defence to a charge of trafficking diamorphine. Further, the IO had informed him that it was better to say whatever he had to say in defence to the charge and he was invited to make additions to his statement before he signed on it. If he had stated this defence, it would have been part of the statement however it was paraphrased. The fact remained that this defence was not stated in the early part of the investigations.

43 Based on all the evidence above, I was also satisfied that the presumption of knowledge operated against Datchinamurthy and that he failed to rebut it on a balance of probabilities.

Conclusion on Christeen's and Datchinamurthy's guilt

44 The presumption of knowledge operated against both Christeen and Datchinamurthy. Since both of them were not able to rebut the presumption of knowledge on a balance of probabilities, I found them guilty and convicted them on their respective charges.

The sentence

45 I reserved judgment as the Prosecution had asked for more time to consider whether it would be issuing a certificate of substantive assistance under s 33B(2)(b) of the MDA ("Certificate") to the accused persons. Further, I also wanted to consider more fully the issue whether Datchinamurthy was a courier.

46 I pause here to make an observation in relation to the Certificate. In general, the Prosecution should, upon conviction of an accused person, be ready to address the court on whether the Public Prosecutor would be issuing a Certificate to the accused. A criminal trial often commences some time after investigations have been completed. Unless an accused person suddenly volunteers information at trial which he had not given to CNB earlier, the Public Prosecutor would have all the material

required to decide whether the accused has substantively assisted the CNB. Although this decision may be a multi-factorial inquiry (see my decision in *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2014] 4 SLR 773 ("*Ridzuan*") at [50]), it should not depend on whether the accused is found by the court to be a courier. The issue whether an accused is a courier is an independent one. I will now turn to the issue of sentence, beginning with Datchinamurthy.

Datchinamurthy

Whether Datchinamurthy had substantively assisted the CNB

47 The Public Prosecutor did not certify that Datchinamurthy had substantively assisted the CNB. This means that Datchinamurthy did not satisfy one of the two essential limbs of s 33B(2) of the MDA and was therefore not eligible to be sentenced under s 33B(1)(a) of the MDA. For completeness, however, I will also address the courier issue since it was argued before me.

Whether Datchinamurthy was a courier

48 This courier issue concerned whether Datchinamurthy fell within s 33B(2)(a) of the MDA. Although this is commonly known as the courier exception, the word "courier" is parliamentary shorthand and appears nowhere in s 33B(2)(a) (or in s 33B(3)(a), to which the following analysis would also apply). To fall within the scope of this exception, the accused's involvement in the drug offence must have been 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 sub-paragraphs (i), (ii) and (iii) ...

49 The Prosecution argued that Datchinamurthy's role exceeded that of a mere courier. The disputes centred around two questions:

- (a) what Datchinamurthy's role in his offence was; and
- (b) whether Datchinamurthy, based on his role, fell outside the scope of s 33B(2)(a) of the MDA.

50 I will consider the facts to determine what Datchinamurthy's role was, before reviewing the law on s 33B(2)(a) of the MDA and deciding whether his role made him more than a mere courier.

Datchinamurthy's role in the offence

51 The trial revealed four aspects of Datchinamurthy's involvement in the offence that arguably went over and above that of a mere courier (even though the Prosecution only pursued the first two aspects in submissions). For clarity, I will refer to each of these aspects as "functions" and I will refer to the entirety of Datchinamurthy's functions as his "role". In making a determination on these facts, I was aware that Datchinamurthy bore the burden on proving on a balance of probabilities that he was a courier (s 33B(2)(a) of the MDA; *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 at [19]).

Passing instructions regarding subsequent deliveries

52 The Prosecution argued that the first of Datchinamurthy's extra functions was to arrange Christeen's subsequent deliveries of drugs to persons whom I will refer to as "Clients". Specifically, he had to pass messages from Rajah or Kishor Friend to Christeen informing her of the following information:

- (a) the identity of or the description of the Clients;
- (b) the quantity of drugs to be passed to each Client;
- (c) the time of these subsequent deliveries; and
- (d) how much money, if any, was to be collected from each Client in exchange for the drugs.

53 He also had to ask Christeen where the delivery would take place and pass the message to Rajah, Kishor Friend or, at least on one occasion, a Client. [\[note: 77\]](#) Sometimes Rajah would tell Datchinamurthy to instruct Christeen where to deliver the drugs instead. [\[note: 78\]](#) After these subsequent deliveries, he would also confirm with Christeen that the drugs had been delivered. According to Christeen, he would either call her to check whether she had delivered the drugs or tell her to inform him of the same. [\[note: 79\]](#) The Prosecution also submitted that Datchinamurthy would have done the same after the delivery on 18 January 2011 but for his arrest.

54 In his defence, Datchinamurthy essentially said that he had disavowed this function by 14 January 2011. He had been forwarding messages to Christeen from Rajah regarding the drugs delivered on 7 January and 14 January 2011. However, he said that he had expressed his displeasure at having to convey messages from Rajah to Christeen since it apparently disrupted his routine work. [\[note: 80\]](#) Out of the four packets conveyed to Christeen on 14 January 2011, he had only conveyed instructions to Christeen for the first three packets. [\[note: 81\]](#) This was because he had told Rajah (after delivering the third packet on 14 January 2011) that he would not be forwarding messages any more. There was no evidence that, on 18 January 2011, he would have conveyed instructions to Christeen later on in the day regarding the deliveries had he not been arrested. Datchinamurthy also denied that he told Christeen how much money to collect from each Client. [\[note: 82\]](#)

55 First, it was undisputed that Datchinamurthy had conveyed instructions to Christeen on at least four occasions, at least three of which were on 14 January 2011. She said that he had conveyed four sets of instructions for the delivery on 14 January 2011 itself. [\[note: 83\]](#) This would explain why Datchinamurthy sent Christeen 11 SMSes and exchanged 26 phone calls with Christeen on 14 January 2011 itself after delivering the drugs. The contrary position taken by Datchinamurthy (*ie*, that on 7 and 14 January 2011, he conveyed one set and three sets of instructions respectively) was not specifically put to Christeen. [\[note: 84\]](#) Counsel had also confirmed earlier that the four occasions where messages were passed took place on *one* of these dates. [\[note: 85\]](#) This must have been the transaction on 14 January 2011 where four packets of drugs were given to Christeen. Accepting Christeen's testimony does not mean that no messages were passed on 7 January 2011. Christeen obviously could not be expected to admit that any of the instructions were conveyed on 7 January 2011 since she was reluctant to admit that a transaction even happened that day in the first place. However, the phone records showed that, after the delivery, Datchinamurthy sent Christeen five SMSes and exchanged five phone calls with Christeen. Since Christeen received instructions

exclusively from Datchinamurthy, [\[note: 86\]](#) I conclude that Datchinamurthy had been conveying instructions to her for all the deliveries. Given this history, it made perfect sense to presume that Datchinamurthy would continue this trend of conveying instructions to Christeen on or after 18 January 2011 if they had not been arrested that day.

56 Second, I was unconvinced that Datchinamurthy managed to excuse himself from having to convey messages to Christeen by telling Rajah that he was unhappy about having to do so. [\[note: 87\]](#) This was a bare assertion. When Christeen was questioned, she could not remember whether Datchinamurthy was unhappy about having to pass these messages. [\[note: 88\]](#) I also found it hard to believe that Datchinamurthy could and would disavow his job of passing messages so easily. He turned to the drug trade because he was desperate for money to settle his debts. He would not have the bargaining power to set terms for Rajah. It is unbelievable that Rajah would simply say "okay" to what Datchinamurthy allegedly told him, [\[note: 89\]](#) when it entailed having to reassign this task to someone else. Moreover, if Christeen's position (*ie*, that four sets of instructions were conveyed on 14 January 2011) was true, then it must mean that Datchinamurthy had failed to relieve himself of his messenger duties as he had claimed.

57 Third, Christeen stated both in her statement and oral testimony that, during their meeting on 18 January 2011, Datchinamurthy told her that he would call her later to instruct her on how to distribute the five packets of drugs. [\[note: 90\]](#) When she received the five packets, she had no idea whom the packets were for. Christeen received instructions exclusively from Datchinamurthy for the previous deliveries [\[note: 91\]](#) and there was no suggestion that Christeen would receive instructions from another person this time. Datchinamurthy also admitted his role in his s 22 statement without saying that he had tried to relieve himself of this role. [\[note: 92\]](#)

58 I also found that Datchinamurthy did tell Christeen how much money to collect from each Client. Christeen testified that Datchinamurthy instructed her to collect envelopes [\[note: 93\]](#) and her statements repeatedly referred to his instructions on how much money was to be collected from each recipient of the drugs. [\[note: 94\]](#) Christeen was also consistent in her testimony that no one other than Datchinamurthy had arranged to collect money from her. [\[note: 95\]](#) Datchinamurthy's testimony, conversely, was evasive and inconsistent. He took the position that essentially all matters involving money were between Land and Christeen. [\[note: 96\]](#) However, Christeen had sent him SMSes on 10, 11 and 13 January 2011 which read, respectively, "I bankin already.", "I goin to meet boy later..shall I pass d moni 2 him?" and "My pl deposit unavailable...can i do it 2mr..?i m so sorry." When confronted with this, he conceded that he was a messenger for financial matters as well. [\[note: 97\]](#)

59 I therefore found that, but for the arrest, Datchinamurthy would have conveyed messages from Rajah or Kishor Friend to Christeen pertaining to the drugs given to her on 18 January 2011, informing her of who the Clients were, when to meet them, the amount of drugs to be given to them and the amount of money to be collected from them. He would find out from Christeen where the delivery was going to take place and pass the message accordingly. Subsequently, he would seek a confirmation from Christeen that the deliveries had been effected.

Collecting money

60 The second extra function which the Prosecution submitted Datchinamurthy was involved in was the collection of money. There were two specific ways in which he was alleged to be involved.

61 The first overlaps with what has been discussed above at [58]—the passing of instructions regarding the collection of money between Rajah and Christeen. The second sub-function which Datchinamurthy performed was the collection of money from Christeen. This, in turn, manifested in two ways: physical collection and arranging bank transfers. Christeen mentioned an episode on the night of 15 January 2011 when she passed the money she had collected to, and received \$200 from, Datchinamurthy's friend at the lift landing of the block of flats where she lived. She was told that Datchinamurthy was waiting downstairs for that friend. [\[note: 98\]](#) Datchinamurthy had entered Singapore by car at 9:47 pm on 15 January 2011 with a male Indian friend. [\[note: 99\]](#) In light of this, I could not believe Datchinamurthy's vehement denials that this physical collection of money ever happened. Similarly, his claim that the physical collection of moneys happened directly between Land and Christeen [\[note: 100\]](#) were attempts to distance himself from his true involvement in the offence. The SMSes produced at [58] above also revealed that Christeen appeared to have been involved in transferring money which was collected by her in relation to the transaction on 7 January 2011. Given that Datchinamurthy had conveyed instructions on how much money to collect from each of Christeen's subsequent deliveries and how he had arranged for the money to be collected or transferred, I am satisfied that he would have continued to do the same for the 18 January 2011 delivery but for the arrest.

Employing and paying Christeen

62 Datchinamurthy's third function was essentially his role in recruiting Christeen into the drug syndicate and in administering her remuneration. Christeen said that he had told her about the nature of *her* job (*ie*, to pass the drugs to the Clients and, if necessary, to collect money from them) and that she would be paid \$200 for the job. [\[note: 101\]](#) He also arranged for his friend to pass her \$200 (at the same time as she gave his friend the money collected from the drug deliveries). [\[note: 102\]](#)

63 It was undisputed that Christeen first received a job offer from Land. [\[note: 103\]](#) However, Datchinamurthy denied having ever repeated the job details to Christeen after Land told her about the job. In my opinion, Datchinamurthy not only conveyed the details of the job to Christeen, he also played a larger role in Christeen's recruitment into the drug syndicate. The totality of the evidence also suggested that Christeen communicated mostly with Datchinamurthy on both the details of her jobs and her remuneration. Christeen said in her statement that she wanted to tell Datchinamurthy that she no longer wanted to deliver packets for him. [\[note: 104\]](#) She claimed at trial that she did not say this in her statement but I am of the view that all the statements of both accused persons had been properly and accurately recorded. While Christeen may not have truly intended to stop delivering drugs, the fact that she named Datchinamurthy suggested that she felt Datchinamurthy would have some kind of decision-making power in relieving her of her job.

64 Datchinamurthy also denied having gone to Christeen's block of flats (and, by extension, having passed her \$200 there). [\[note: 105\]](#) For the reasons I have given above at [61], I find that Datchinamurthy gave Christeen \$200 through his friend as remuneration for her efforts on 14 January 2011. I am also satisfied that he would have passed Christeen her remuneration after she delivered the five packets of drugs given to her on 18 January 2011 to the Clients.

Finding customers

65 The fourth extra function was essentially that of expanding the drug syndicate's customer base. In Christeen's s 22 statement dated 20 January 2011, she stated that, in a phone call on 14 January 2011 after 9pm, Datchinamurthy asked her to find more customers to buy "*jaman*". He

said that if Christeen did so, he could give her more than what she was getting. She then replied that she did not know anyone who consumed or bought "*jaman*". In response, Datchinamurthy said that there was no hurry and she could do it slowly. [\[note: 106\]](#) At trial, Christeen denied having said those words. This position was only put to the IO and the interpreter and raised in Christeen's evidence-in-chief by counsel for Christeen. [\[note: 107\]](#) Although Datchinamurthy denied it in his statement, [\[note: 108\]](#) this issue never surfaced in Datchinamurthy's oral testimony.

66 I was unconvinced by Christeen's and Datchinamurthy's bare denials. In my view, Christeen was trying to distance herself from a statement that was truthful and, as it turns out, adverse to both Datchinamurthy and herself. She would have to deny saying this because she claimed that when she used the word "*jaman*" in her statement, she meant "things" and not "drugs". It would have been illogical for her to say that Datchinamurthy asked her to find customers to buy "things" if she did not even know what those "things" were. There is no other reasonable explanation to say how these claims made their way into Christeen's statements. As I explained above at [28], Christeen was afforded an opportunity to review and to make corrections to her statement—one which she used in the very first statement taken from her by the IO. The reference to finding or getting "customers" appeared thrice in her statements. Accordingly, I was satisfied that Datchinamurthy did ask Christeen to find more customers to buy drugs and promised her higher payment if she could do so.

Whether Datchinamurthy's role exceeded that of a courier

67 Based on the facts I have found above, I held that Datchinamurthy was more than a mere courier.

The law on s 33B(2)(a) of the MDA

68 Whether a person is a courier is clearly a fact-specific inquiry. The conditions in s 33B(2)(a) were intended to be "tightly-defined" (*Singapore Parliamentary Debates, Official Report* (12 November 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs)) and essentially covered only offenders whose involvement was limited to conveying drugs from point A to point B (*Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 ("*Abdul Haleem*") at [51]; *Chum Tat Suan* at [63]). However, a few factors (which are non-exhaustive) may be distilled from the statutory language, the Parliamentary debates and case law to provide some guidance on whether a particular role makes an accused person more than a mere courier:

- (a) whether the role is a common and ordinary incident of transporting, sending or delivering a drug;
- (b) whether such involvement is necessary to deliver the drugs, including:
 - (i) the degree of alteration to the drugs; and
 - (ii) the extent to which such involvement looks beyond his immediate recipient of the drugs;
- (c) the extent in scope and time of the functions which the offender performs;
- (d) the degree of executive decision-making powers which the accused has; and
- (e) whether the offender receives a distinct form of benefit for performing his extra functions.

69 The first factor is whether the role was a common and ordinary incident of couriering. The very words of s 33B(2)(a) show that Parliament intended the distinction to be primarily an activity-based one. This is also borne out in the debates, where a courier must “only have been involved as a courier and not in any other type of activity associated with drug supply and distribution” (*Singapore Parliamentary Debates, Official Report* (9 July 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs)) (“*Official Report* (9 July 2012)”). Parliament also intended that those involved in “packing, storing or safekeeping” fall out of the exception (*Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs)). It was also recognised in *Abdul Haleem* at [55] (and endorsed by *Chum Tat Suan* at [67]) that mere incidental acts of storage or safe-keeping by an offender do not take him outside the exception.

70 The second factor (*ie*, necessity) is also borne out by the language of s 33B(2)(a)(iii), which refers to acts “preparatory to or for the purpose of *his* transporting, sending or delivering a controlled drug” (as opposed to the transporting, sending, or delivering of a drug *to its eventual recipient*). *Chum Tat Suan* at [68] recognised this by stating that acts “necessary for transporting, sending or delivering the drugs cannot include packing, for instance, as packing is not a necessary element of moving an object from one point to another.” The degree of alteration to the drugs is one particular aspect discussed in *Chum Tat Suan* at [68]. For example, packing and processing are not necessary elements of moving something from point A to point B. Likewise, an accused person should not be concerned with the movement of the drugs beyond his immediate recipient if he hopes to come within the ambit of s 33B(2)(a).

71 The third factor (*ie*, the extent in scope and time of an offender’s functions) considers whether the accused person was called upon to perform one-off, *ad hoc* duties. As a general proposition, it can be said that the more functions an accused person performs beyond bringing drugs from point A to point B, and the longer the duration of those functions, the less he can be said to be a mere courier.

72 The fourth factor (*ie*, decision-making powers) is correlated to the power and position which an accused person has within a drug syndicate. This is borne out in *Chum Tat Suan* at [62] which states categorically that a person who intends to sell controlled drugs is not a courier. A seller is driven by profit and he makes executive decisions on how to conduct his business. Conversely, a courier simply carries out the instructions given to him. There is practically no room for discretion or decision-making. I think it accords with the case law and with common sense to say that the more decision-making power an accused person has, the less he can be said to be a mere courier.

73 The fifth factor (*ie*, distinct benefit) was contemplated in *Abdul Haleem* at [54] and considers that accused persons who are given a benefit attributable to additional functions performed by them are more likely to have engaged in these functions with a higher degree of regularity and responsibility (as opposed to an *ad hoc* errand).

74 With these guidelines in mind, I now consider whether the various extra functions that Datchinamurthy performed made him more than a courier.

Application of the factors to Datchinamurthy’s role

75 I shall first address Datchinamurthy’s function of collecting money.

76 The Prosecution submitted that Datchinamurthy’s collection of money from Christeen fell outside the courier exception because Christeen was not the buyer and Datchinamurthy was aware that she

had collected the money from the various Clients. The defence however cited my decision in *Public Prosecutor v Siva a/l Sannasi* [2015] SGHC 73 ("*Siva a/l Sannasi*") to say that offenders involved in the collection of monies were still couriers.

77 On the facts, I did not think the mere fact that Datchinamurthy collected money from Christeen made him any more a courier than if he had brought the drugs from point A to point B. The collection of money, while not strictly necessary, is incidental to the delivery of goods. Parliament could not have intended that someone who transports drugs from point A to point B and collects payment for those drugs upon delivery is not a courier. Here, Datchinamurthy only collected money for the drugs which he delivered. It makes no difference whether he collected the money on a separate occasion or if the money he collected in one delivery related to a previous delivery by him. This is the ordinary result when credit is extended to purchasers. Even if he is paid for the collection of money, that would not by itself make him more than a courier (see, eg, my decision in *Siva a/l Sannasi* at [8] and [26]). However, the analysis might be different if, for example, he regularly collected payment for drugs which he did not deliver or if he could decide how much to charge the recipients for the drugs. To me, Datchinamurthy's knowledge of the fact that the money came from the Clients (and not Christeen herself as the intermediate recipient) was not material. The money for the drugs ultimately comes from its end-users but I think the law allows for a "relay team" of couriers in one transaction as appears to be the case on the facts here.

78 Next, I will address Datchinamurthy's function of passing of instructions regarding subsequent deliveries to the Clients.

79 The Prosecution argued that this made him involved not only in the transportation but also in the distribution of the drugs. Counsel argued that it was necessary to pass messages for the purposes of delivery, especially in an unusual case like this where a "relay team" was involved and this did not change the situation to one where Datchinamurthy became the one running the drug syndicate.

80 Parliament was clear in its intention that the scope of s 33B(2)(a) did not include supply and distribution (*Official Report* (9 July 2012)). However, it did not specify what "distribution" meant. An analogy may be drawn with repacking and storage here. Although Parliament intended that offenders who engage in packing, storing and safekeeping are not couriers, it has been held that incidental acts of storage or safe-keeping do not take an offender outside the scope of the courier exception (*Abdul Haleem* at [55] (and endorsed by *Chum Tat Suan* at [67])). Similarly, incidental acts related to subsequent distribution might not make an offender more than a mere courier. However, where distribution involves executive business decisions, they are less likely to fall within the scope of the courier exception.

81 On the facts, I was of the view that the act of forwarding information to Christeen by itself did not make Datchinamurthy more than a courier. First, it is common for a courier to deliver goods to an intermediary, who is then informed of who the ultimate recipient of the goods should be. For example, the annotation "c/o" is often used in mail addressed to individual employees in a large organisation via a common mailing address or a mail room. It should not matter that Datchinamurthy conveyed these instructions by forwarding SMSes to Christeen or by calling her. For example, if Rajah had pasted instructions on each packet of drugs which Datchinamurthy had to pass to Christeen, or if Datchinamurthy had passed those instructions by word-of-mouth while delivering the drugs, Datchinamurthy could hardly be said to have done anything more than a mere courier would have. Second, and more importantly, there was no evidence that Datchinamurthy possessed executive decision-making powers. He was acting on instructions. My conclusion may well be different if, for example, Datchinamurthy could decide on whom to give the drugs to. His involvement in distribution

was therefore largely incidental. However, I note that there were two slight variations in the procedure—Datchinamurthy passed information from Christeen to Kishor Friend on where the subsequent deliveries would take place and sought confirmation that the deliveries were successful. In this limited sense, Datchinamurthy was not just a one-way conduit of information about subsequent deliveries but was playing an active role in the distribution process. That would disentitle him to claim to be a mere courier.

82 I now turn to Datchinamurthy's function of recruiting Christeen and administering her remuneration.

83 The recruitment of other drug couriers is akin to the human resource function in an organisation and is not incidental to being a courier. In particular, the fact Datchinamurthy was entrusted to pass Christeen her pay hints at the trust that the drug syndicate has reposed in him and the position which he held within the syndicate. This, too, precluded him from claiming to be a mere courier. It did not help very much that the evidence did not show that Datchinamurthy had any authority to decide whether to recruit Christeen or that he recruited anyone else into the drug syndicate.

84 Finally, I turn to Datchinamurthy's function of asking Christeen to find more customers.

85 Asking someone to find more customers clearly falls outside the definition of a courier. Doing so is unnecessary and irrelevant to the delivery of goods from point A to point B. This is analogous to a marketing or business development function in a business. This, in my view, was the most important distinguishing factor in this case. Datchinamurthy had asked Christeen to find more customers. Further, the fact that he said he could increase Christeen's remuneration showed his authority in determining her remuneration. Even if he had said all this on Rajah's instructions (there was no evidence on this), this was not incidental to being a courier at all. His involvement in business development therefore disentitled him from claiming to be a mere courier.

86 It was submitted by the defence that, on the basis that Datchinamurthy had relieved himself of the function of conveying messages by 14 January 2011, his involvement in the present offence (committed on 18 January 2011) should not be taken to include conveying messages. By the same token, since he asked Christeen to find more customers on 14 January 2011, it should not be taken as part of his involvement in the present offence. As mentioned earlier, this is a fact-specific inquiry. First, a request to find customers (such as that in the present case) is a free-standing action unrelated to any delivery. Second, Datchinamurthy told Christeen that there was no hurry to find customers and she could do it slowly. In this sense, his request was very much alive even on 18 January 2011 when they were arrested. Accordingly, I think that his request to find more customers should be viewed as part of his involvement in the offence within the meaning of s 33B(2)(a) of the MDA.

87 All the facts, especially the fact that he had asked Christeen to find more customers and offered her higher payment if she could do so, cumulatively showed that his involvement in the offence was not limited to acts "preparatory to or for the purpose of his transporting, sending or delivering" the drugs. Accordingly, I was satisfied, on a balance of probabilities, that Datchinamurthy fell outside s 33B(2)(a) of the MDA.

Conclusion on Datchinamurthy's sentence

88 As Datchinamurthy was not certified to have provided substantial assistance and as he was not a mere courier, I held that he did not satisfy the twin conditions in s 33B(2) of the MDA. Accordingly, I passed the mandatory death sentence on him.

Christeen

89 The Public Prosecutor certified that Christeen substantively assisted the CNB. Both Prosecution and defence agreed that Christeen's involvement in the offence was restricted to transporting and delivering the drugs. I also found on a balance of probabilities that this was the case. She therefore fell within the courier exception in s 33B(2)(a) of the MDA. As I explained above at [77], the mere fact that a courier collected money for the drugs she delivers (as Christeen did) would not make her more than a mere courier. The fact that she could apparently decide on the meeting place to hand the drugs to their recipients and that she gave Datchinamurthy confirmation that the subsequent deliveries were successful are incidental to her task of delivering the drugs. Having satisfied both requirements in s 33B(2) of the MDA, she could be sentenced under s 33B(1)(a) of the MDA, which provides that the court may, instead of imposing the death penalty, sentence her to life imprisonment. As a female, she was not liable to be caned (s 325(1)(a) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)).

90 The Prosecution did not argue that the death penalty should be imposed on Christeen and in view of her limited role in the entire drug transaction, this did not appear to be a case where the death penalty was appropriate. Accordingly, I sentenced her to life imprisonment, which was the only other sentence provided by law. I ordered the sentence to commence from 18 January 2011, the date of her arrest.

Final matters

91 I ordered the exhibits to be disposed of after any appeal has been dealt with. Christeen has since filed a notice of appeal against sentence only, whereas Datchinamurthy has filed a notice of appeal against both conviction and sentence.

92 Finally, I thank the Prosecution and defence counsel for conducting their cases in a fair and sensible manner and the Prosecution for preparing two helpful *aides-mémoires* detailing Christeen's mobile phone records and Datchinamurthy's travel patterns.

[\[note: 1\]](#) AB 373 (Exhibit P14); AB 558 (s 22 statement of DW2 dated 4 March 2011), at paras 23–24.

[\[note: 2\]](#) AB 554 (s 22 statement of DW2 dated 3 March 2011) at para 13; AB 558 (s 22 statement of DW2 dated 4 March 2011), at para 24.

[\[note: 3\]](#) AB 555–556 (s 22 statement of DW2 dated 3 March 2011) at paras 17–20; AB 558 (s 22 statement of DW2 dated 4 March 2011), at para 24.

[\[note: 4\]](#) AB 559–560 (s 22 statement of DW2 dated 4 March 2011), at paras 24–.

[\[note: 5\]](#) AB 561 (s 22 statement of DW2 dated 4 March 2011), at para 28.

[\[note: 6\]](#) AB 404 (Statement of Sgt Muhammad Fardlie bin Ramlie), at para 4; AB 441 (Statement of SSgt Alwin Wong), at para 4.

[\[note: 7\]](#) AB 421 (Statement of SSI2 Sea Hoon Cheng), at para 4; AB 487–488 (Statement of SSgt Chew Thy Kwang), at paras 3–5.

[\[note: 8\]](#) AB 404–405 (Statement of Sgt Muhammad Fardlie bin Ramlie), at para 4; AB 421 (Statement of SSI2 Sea Hoon Cheng), at para 4; AB 454 (Statement of SSSgt Kua Boon San), at para 4.

[\[note: 9\]](#) AB 405 (Statement of Sgt Muhammad Fardlie bin Ramlie), at para 5; AB 421 (Statement of SSI2 Sea Hoon Cheng), at para 5; AB 454 (Statement of SSSgt Kua Boon San), at para 5.

[\[note: 10\]](#) AB 405 (Statement of Sgt Muhammad Fardlie bin Ramlie), at para 5; AB 421 (Statement of SSI2 Sea Hoon Cheng), at para 6; AB 454 (Statement of SSSgt Kua Boon San), at para 5; AB 468 (Statement of SI David Ng), at para 5; AB 488 (Statement of SSgt Chew Thye Kwang), at para 6; NE, Day 1, pp 31:30–32:3, 33:13–33:20 (EIC of PW3).

[\[note: 11\]](#) AB 442 (Statement of SSgt Alwin Wong), at para 5.

[\[note: 12\]](#) NE, Day 1, pp 32:6–33:12 (EIC of PW3); Day 1, pp 34:29–35:4, 35:29–35:31 (XX of PW3 by DC1).

[\[note: 13\]](#) NE, Day 1, p 32:24 (EIC of PW3).

[\[note: 14\]](#) NE, Day 1, p 15:14–15:20 (EIC of PW2); Day 2, p 5 (EIC of PW7).

[\[note: 15\]](#) NE, Day 1, p 27 (XX of PW2 by DC1) p 29 (RX of PW2); Day 2, p 4 (EIC of PW7).

[\[note: 16\]](#) NE, Day 1, p 27 (XX of PW2 by DC1); Day 2, pp 6:17–22 (EIC of PW7), 12:24–13:6 (XX of PW7 by DC1).

[\[note: 17\]](#) NE, Day 1, p 17:9–17:21 (EIC of PW2); Day 2, p 7:21–7:24 (EIC of PW7), p 12:13–12:19 (XX of PW7 by DC1).

[\[note: 18\]](#) AB 74–78 (Exhibits P43–P47).

[\[note: 19\]](#) NE, Day 1, pp 17–18 (EIC of PW2), pp 27–28 (XX of PW2), p 30 (RX of PW2).

[\[note: 20\]](#) NE, Day 5, pp 78–79 (EIC of DW1).

[\[note: 21\]](#) NE, Day 5, p 79 (EIC of DW1).

[\[note: 22\]](#) AB 536 (s 22 statement of DW1 dated 20 January 2011), at para 11; NE, Day 5, p 79 (EIC of DW1); Day 6, p 21 (XX of DW1 by PP).

[\[note: 23\]](#) AB 536 (s 22 statement of DW1 dated 20 January 2011), at para 11.

[\[note: 24\]](#) AB 537–538 (s 22 statement of DW1 dated 20 January 2011), at para 15; NE, Day 5, p 82 (EIC of DW1).

[\[note: 25\]](#) NE, Day 6, p 22 (XX of DW1 by PP); Day 6, pp 59–60 (Questions by the Court to DW1).

[\[note: 26\]](#) AB 538–539 (s 22 statement of DW1 dated 20 January 2011), at paras 16–18; NE, Day 5,

p 82 (EIC of DW1).

[\[note: 27\]](#) AB 540 (s 22 statement of DW1 dated 20 January 2011), at para 21; NE, Day 5, p 83 (EIC of DW1).

[\[note: 28\]](#) AB 540 (s 22 statement of DW1 dated 20 January 2011), at para 22; AB 543 (s 22 statement of DW1 dated 21 January 2011), at para 27.

[\[note: 29\]](#) AB 540 (s 22 statement of DW1 dated 20 January 2011), at para 23; AB 543 (s 22 statement of DW1 dated 21 January 2011), at para 29.

[\[note: 30\]](#) NE, Day 6, pp 33–34 (XX of DW1 by PP).

[\[note: 31\]](#) NE, Day 6, p 34 (XX of DW1 by PP).

[\[note: 32\]](#) NE, Day 5, p 86:13–14 (EIC of DW1).

[\[note: 33\]](#) NE, Day 5, p 86:14–22 (EIC of DW1).

[\[note: 34\]](#) NE, Day 5, p 86:17–87:6 (EIC of DW1).

[\[note: 35\]](#) AB 554 (s 22 statement of DW2 dated 3 March 2011), at para 11; NE, Day 7, p 12 (EIC of DW2); Day 8, p 13 (XX of DW2 by PP).

[\[note: 36\]](#) AB 554 (s 22 statement of DW2 dated 3 March 2011), at para 13; NE, Day 7, pp 18–19 (EIC of DW2).

[\[note: 37\]](#) NE, Day 8, pp 13–14 (XX of DW2 by PP).

[\[note: 38\]](#) NE, Day 8, p 2:17–2:30 (XX of DW2 by DC1); Day 8, p 25:15 (XX of DW2 by PP); Day 8, p 42:10–42:15 (RX of DW2).

[\[note: 39\]](#) NE, Day 8, p 24 (XX of DW2 by PP).

[\[note: 40\]](#) NE, Day 7, p 18 *et seq* (EIC of DW2).

[\[note: 41\]](#) Exhibit E, No 23 and 32.

[\[note: 42\]](#) AB, pp 527–549. NE, Day 5, p 83:2–4 (EIC of DW1); Day 6, p 7:21–30 (XX of DW1 by DC2).

[\[note: 43\]](#) NE, Day 6, p 22:5 (XX of A1 by PP).

[\[note: 44\]](#) NE, Day 6, pp 59–60 (Questions by the Court to A1).

[\[note: 45\]](#) AB 554 (s 22 statement of DW2 dated 3 March 2011), at para 13; NE, Day 7, pp 18–20 (EIC of DW2); Day 8, p 6 (XX of DW2 by PP).

[\[note: 46\]](#) AB 538 (s 22 statement of DW1 dated 20 January 2011), at para 15.

[\[note: 47\]](#) NE, Day 4, pp 37–57 (XX of PW11 by DC1).

[\[note: 48\]](#) NE, Day 5, p 93 (EIC of DW1).

[\[note: 49\]](#) NE, Day 5, pp 93 and 98–99 (EIC of DW1).

[\[note: 50\]](#) NE, Day 4, pp 28, 33, 44–45 and 58–59 (XX of PW11 by DC1); Day 5, pp 6–7, 28–32, (XX of PW12 by DC1).

[\[note: 51\]](#) NE, Day 6, p 59 (Questions by the Court to DW1)

[\[note: 52\]](#) Exhibit E.

[\[note: 53\]](#) NE, Day 4, p 22 (EIC of PW11); Day 5, pp 7 and 17–19 (XX of PW12).

[\[note: 54\]](#) NE, Day 1, p 16 (EIC of PW2); p 27 (XX of PW2 by DC1); p 29 (RX of PW2); pp 32–33 (EIC of PW3); p 36 (XX of PW3 by DC1); p 52 (XX of PW6 by DC1); Day 2, p 6 (EIC of PW3), pp 12–13 (XX of PW3 by DC1).

[\[note: 55\]](#) NE, Day 1, p 17 (EIC of PW2); p 41 (EIC of PW4); Day 2, p 7 (EIC of PW7).

[\[note: 56\]](#) AB, p 544 (s 22 statement of DW1 dated 21 January 2011), at para 32.

[\[note: 57\]](#) NE, Day 5, pp 86–87 (EIC of DW1).

[\[note: 58\]](#) Exhibit E, Entry 211.

[\[note: 59\]](#) NE, Day 7, p 33 (XX of DW2 by DC1); Day 9, p 15 (Closing submissions of DC1).

[\[note: 60\]](#) NE, Day 9, p 25 (Reply closing submissions by PP).

[\[note: 61\]](#) NE, Day 5, p 87 (EIC of DW1).

[\[note: 62\]](#) NE, Day 1, p 17 (EIC of PW2).

[\[note: 63\]](#) NE, Day 1, p 30 (RX of PW2); p 39 (RX of PW3).

[\[note: 64\]](#) NE, Day 8, p 16 (XX of DW2 by PP).

[\[note: 65\]](#) NE, Day 7, pp 5–6 (EIC of DW2).

[\[note: 66\]](#) AB 554 (s 22 statement of DW2 dated 3 March 2011), at para 11.

[\[note: 67\]](#) AB 525 (s 23 statement of DW2).

[\[note: 68\]](#) NE, Day 8, pp 13–14 (XX of DW2 by DC1).

[\[note: 69\]](#) NE, Day 8, p 8 (XX of DW2 by DC1).

[\[note: 70\]](#) NE, Day 7, pp 9–14 (EIC of DW2).

[\[note: 71\]](#) NE, Day 8, pp 9 and 18 (XX of DW2 by PP).

[\[note: 72\]](#) NE, Day 8, pp 14 and 35 (XX of DW2 by PP).

[\[note: 73\]](#) NE, Day 8, p 18 (XX of DW2 by PP).

[\[note: 74\]](#) NE, Day 8, pp 13–14 and 36 (XX of DW2 by PP).

[\[note: 75\]](#) AB 558–560 (s 22 statement of DW2 dated 4 March 2011), at paras 24–26.

[\[note: 76\]](#) AB 555 (s 22 statement of DW2 dated 3 March 2011), at para 14.

[\[note: 77\]](#) NE, Day 8, p 2:17–2:30 (XX of DW2 by DC1); Day 8, pp 24:14–24:17 and 25:5–25:19 (XX of DW2 by PP); Day 8, p 42:10–42:15 (RX of DW2).

[\[note: 78\]](#) NE, Day 8, p 26:28–32 (XX of DW2 by PP).

[\[note: 79\]](#) NE, Day 6, p 27:1–27:12 (XX of DW1 by PP).

[\[note: 80\]](#) NE, Day 7, p 23:22–23:29 (EIC of DW2).

[\[note: 81\]](#) NE, Day 8, p 23:3–23:20 (XX of DW2 by PP).

[\[note: 82\]](#) Day 8, pp 22 and 27 (XX of DW2 by PP); Day 8, pp 30:21–31:25 (XX of DW2 by PP).

[\[note: 83\]](#) AB 537–539, para 15–18 (s 22 statement of DW1 dated 20 January 2011).

[\[note: 84\]](#) NE, Day 6, pp 7–8 (XX of DW1 by DC2).

[\[note: 85\]](#) NE, Day 6, pp 54–55 (FXX of DW1 by DC2).

[\[note: 86\]](#) NE, Day 6, p 27:13–16 (XX of DW1 by PP).

[\[note: 87\]](#) NE, Day 7, p 23 (EIC of DW2); Day 8, p 32:3–7 (XX of DW2 by PP).

[\[note: 88\]](#) NE, Day 6, pp 8–9 (XX of DW1 by PP).

[\[note: 89\]](#) See, eg, NE, Day 8, p 32:13 (XX of DW2 by PP).

[\[note: 90\]](#) AB 544 (s 22 statement of DW1 dated 21 Jan 2011), at para 31; NE, Day 6, pp 34:21–32

(XX of DW1 by PP).

[\[note: 91\]](#) NE, Day 6, p 27:13–16.

[\[note: 92\]](#) AB 568–569 (s 22 statement of DW2 dated 5 March 2011), at para 52.

[\[note: 93\]](#) NE, Day 6, p 28 (XX of DW1 by PP).

[\[note: 94\]](#) AB 538–539 (s 22 statement of DW1 dated 20 January 2011), paras 16–19.

[\[note: 95\]](#) NE, Day 6, p 30 (XX of DW1 by PP); Day 6, pp 53–54 (FXX of DW1 by DC2); NE, Day 6, p 59 (Question by the Court to DW1).

[\[note: 96\]](#) NE, Day 6, pp 53–54 (FXX of DW1 by DC2).

[\[note: 97\]](#) NE, Day 8, pp 29–30 (XX of DW2 by PP).

[\[note: 98\]](#) AB 540 (s 22 statement of DW1 dated 20 January 2011), para 20; NE, Day 6, pp 30–32 (XX of DW1 by PP); Day 6, p 53 (FXX of DW1 by DC2).

[\[note: 99\]](#) AB 373 (Exhibit P14); NE, Day 8, p 28 (XX of DW2 by PP).

[\[note: 100\]](#) See, eg, NE, Day 8, p 10 (XX of DW2 by PP).

[\[note: 101\]](#) AB 536 (s 22 statement of DW1 dated 20 January 2011), at para 11; NE, Day 5, p 79 (EIC of DW1); Day 6, p 21 (XX of DW1 by PP).

[\[note: 102\]](#) AB 540 (s 22 statement of DW1 dated 20 January 2011), at para 20; NE, Day 6, p 32 (XX of DW1 by PP).

[\[note: 103\]](#) NE, Day 5, p 80 (EIC of DW1); Day 6, pp 3–6 and 16 (XX of DW1 by DC2).

[\[note: 104\]](#) AB 540 (s 22 statement of DW1 dated 20 January 2011), at para 20; AB 542 (s 22 statement of DW1 dated 21 January 2011), at para 26; NE,

[\[note: 105\]](#) NE, Day 8, p 3 (XX of DW2 by DC1); Day 8, p 27 (XX of DW2 by PP).

[\[note: 106\]](#) AB 539 (DW1's s 22 statement dated 20 Jan 2011, para 19) and 542 (DW1's s 22 statement dated 21 Jan 2011, para 26).

[\[note: 107\]](#) NE, Day 4, pp 40–41 and 48–51 (XX of PW11 by DC1); Day 5, pp 34–35 (XX of PW12 by DC1), pp 95–96 (EIC of DW1).

[\[note: 108\]](#) AB 566 (s 22 statement of DW2 dated 4 March 2011), at para 47.