

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

[2021] SGHC 17

Criminal Case No 19 of 2020

Between

Public Prosecutor

And

- (1) Salzawiyah Binte Latib
- (2) Shisham Bin Abdul Rahman
- (3) Jumadi Bin Abdullah

EX TEMPORE JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Sentencing]

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Public Prosecutor
v
Salzawiyah bte Latib and others

[2021] SGHC 17

General Division of the High Court — Criminal Case No 19 of 2020
Tan Siong Thye J
26 January 2021

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Tan Siong Thye J:

Introduction

1 The first accused is Salzawiyah Binte Latib (“Salzawiyah”), a 43-year-old female Singaporean. The second accused is Shisham Bin Abdul Rahman (“Shisham”), a 48-year-old male Singaporean. The third accused is Jumadi Bin Abdullah (“Jumadi”), a 47-year-old male Singaporean. I shall refer to Salzawiyah, Shisham and Jumadi collectively as “the accused persons”.

2 A joint trial of the accused persons was conducted under s 143(a) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). Jumadi and Shisham each faced a charge for the offence of trafficking under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) and s 34 of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”) for trafficking in not less than 41.86g (analysed weight) of diamorphine in furtherance of the

common intention of the accused persons. Salzawiyah faced the same charge, except that the analysed weight of diamorphine reflected in her charge was not less than 14.99g.

3 At the end of the trial, I was satisfied that the Prosecution had proven each of the charges against the accused persons beyond a reasonable doubt and convicted the accused persons accordingly. I sentenced Jumadi and Shisham to the mandatory sentence of death. The facts of the case and the reasons for my decision are set out in *Public Prosecutor v Salzawiyah bte Latib and others* [2021] SGHC 16 (“the Main Judgment”).

4 The charge on which Salzawiyah has been convicted does not attract the mandatory sentence of death. I shall now consider the appropriate sentence to be imposed on Salzawiyah. As the facts of the case and the findings of the court have been set out in detail in the Main Judgment, it suffices for me to highlight the relevant facts where necessary in the analysis below. For convenience, I also adopt the abbreviations used in the Main Judgment.

TIC Charges

5 Salzawiyah has consented to the following charges (“the TIC Charges”)¹ being taken into consideration by the court for the purpose of sentencing.

- (a) Three charges for possession of the following Class A controlled drugs for the purpose of trafficking, in furtherance of the common intention with Jumadi and Shisham, which is an offence under s 5(1)(a)

¹ Prosecution’s Sentencing Submissions (“PSS”), at para 2.

read with s 5(2) of the MDA and s 34 of the Penal Code, and punishable under s 33(1) of the MDA:

- (i) not less than 50.2g of methamphetamine;
- (ii) not less than 30.61g of cannabis; and
- (iii) not less than 3.59g of cannabis mixture.

(b) Two charges for possession of the following controlled drugs, in furtherance of the common intention with Jumadi, which is an offence under s 8(a) of the MDA read with s 34 of the Penal Code, and punishable under s 33(1) of the MDA:

- (i) not less than 29.09g of methamphetamine, a Class A controlled drug; and
- (ii) eight tablets found to contain nimetazepam, a Class C controlled drug.

(c) Two charges for consumption of methamphetamine and nimetazepam, which are specified drugs listed in the Fourth Schedule to the MDA, which is an offence under s 8(b)(ii) of the MDA and punishable under s 33A(2) of the MDA.

The applicable law

6 Pursuant to s 33(1) read with the Second Schedule to the MDA, the prescribed punishment for unauthorised trafficking in a controlled drug containing not less than 10g and not more than 15g of diamorphine is a minimum sentence of 20 years' imprisonment and 15 strokes of the cane, and a maximum sentence of 30 years' imprisonment or imprisonment for life and 15 strokes of the cane. Caning is not applicable in this case as, pursuant to

s 325(1)(a) of the CPC, Salzawiyah is exempted from caning as she is a woman. However, s 325(2) of the CPC grants the discretion to the court to impose an additional term of imprisonment of not more than 12 months in lieu of caning.

7 The applicable sentence of imprisonment for trafficking in diamorphine was set out by Sundaresh Menon CJ in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 (“*Vasentha*”) at [44], as follows:²

- (a) The quantity of the diamorphine provides an indicative starting point for the appropriate sentence.
- (b) This indicative starting point may be adjusted upwards or downwards based on the offender’s culpability and the presence of relevant aggravating or mitigating factors.
- (c) The court may also take into account the time spent by the offender in remand prior to the conviction either by backdating the sentence or discounting the intended sentence.

² PSS, at para 4; Salzawiyah’s Mitigation and Submissions on Sentence (“DSS”), at para 13.

8 For a first-time offender, the indicative starting point for trafficking in 13g to 15g of diamorphine is 26 years' to 29 years' imprisonment and 15 strokes of the cane (see *Public Prosecutor v Lai Teck Guan* [2018] 5 SLR 852 at [42] and *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 at [125]).³

My decision

9 I would like to state that the fact that Salzawiyah's charge had been amended from a capital charge to a non-capital charge (see [4]–[5] of the Main Judgment) is not relevant to sentencing.⁴ As the Court of Appeal observed in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 at [36]:

The fact that the charge has been reduced from one which would have attracted the death penalty to one which would not is not relevant to sentencing. This principle was explained by Yong Pung How CJ in *Sim Gek Yong v PP* [1995] 1 SLR(R) 185 at [15] in this way:

The onus lies on the Prosecution in the first place to assess the seriousness of an accused's conduct and to frame an appropriate charge in the light of the evidence available. Once an accused has pleaded guilty to (or been convicted of) a particular charge, it cannot be open to the court, in sentencing him, to consider the possibility that an alternative – and graver – charge might have been brought and to treat him as though he had been found guilty of the graver charge.

We agree that the court should not 'regard the DPP's decision to amend the charge to a non-capital one as justifying a higher sentence in itself' ([*Public Prosecutor v Rahmat Bin Abdullah and Another* [2003] SGHC 206 at [9]]).

10 Salzawiyah's counsel do not dispute that the applicable sentencing framework is that set out above. Furthermore, the Prosecution and Salzawiyah's

³ PSS, at para 5; DSS, at para 14.

⁴ DSS, at para 8.

counsel agree that based on the quantity of diamorphine involved in this case (ie, 14.99g), the indicative starting point is at the higher end of the sentencing range of 26 years' to 29 years' imprisonment.⁵ It appears that they also agree that life imprisonment is not appropriate in this case, as the Prosecution has not sought such a sentence. However, the Prosecution and Salzawiyah's counsel disagree as to how the indicative starting point should be adjusted, based on Salzawiyah's culpability and the aggravating or mitigating factors present in this case.

(a) The Prosecution submits that the indicative starting point should be adjusted upwards, resulting in a sentence of 30 years' imprisonment.⁶

(b) Salzawiyah's counsel submit that the indicative starting point of 29 years' imprisonment should be adjusted downwards to 25 years' imprisonment.⁷ They further submit that this sentence should be backdated to 22 June 2017, the date of Salzawiyah's arrest.⁸

Salzawiyah's culpability

11 I shall first consider the issue of Salzawiyah's culpability. Having regard to all the circumstances of the case, including the factors set out in *Vasentha* ([7] *supra*) at [49]–[51], I find that Salzawiyah's culpability is relatively high. Although she may not be the mastermind of the drug trafficking operation, she

⁵ PSS, at para 6; DSS, at para 15.

⁶ PSS, at para 3.

⁷ DSS, at para 16.

⁸ DSS, at para 6.

nevertheless played an active and significant role in the drug trafficking operation, in particular (see the Main Judgment at [42] and [283]):⁹

- (a) she helped to pack the diamorphine into smaller packets for the purpose of trafficking over a relatively long period;
- (b) she recorded drug-related transactions in various notebooks and managed the accounts of the drug trafficking operation, albeit in an informal and rudimentary way;
- (c) she taught Jumadi how to keep the accounts of the drug trafficking activities;
- (d) she safekept the sale proceeds of the diamorphine, passing the money to Jumadi for the purchase of drugs whenever necessary; and
- (e) she sold drugs, delivered drugs, coordinated deliveries, recruited drug runners for drug deliveries and dealt with customers' complaints.

12 I also consider the fact that the drug trafficking operation had been run by the accused persons for personal and financial profit.¹⁰ Salzawiyah's actions, therefore, were self-interested and motivated by financial gain. As observed by Menon CJ in *Vasentha* at [40], "[o]ne who engages in drug trafficking activities for personal gain would bear a higher degree of culpability". In this regard, Salzawiyah submits that she had been reluctant to participate in the drug trafficking operation and that it was Jumadi who had been the main driving force behind the drug trafficking operation, including the decision to ramp up the

⁹ PSS, at paras 8(a) and 8(c).

¹⁰ PSS, at para 8(e).

quantity of diamorphine bought and sold.¹¹ However, the fact remains that notwithstanding any reservations Salzawiyah may have had, she *continued* to participate actively in the drug trafficking operation (see [273]–[277] of the Main Judgment).¹² This was a conscious and voluntary decision on her part, for which she must now bear the consequences.

Mitigating and aggravating factors

13 I shall now consider the mitigating and aggravating factors present in this case, beginning with the aggravating factors.

Aggravating factors

14 First, Salzawiyah has relevant criminal antecedents, including prior convictions for possession of a controlled drug under s 8(a) of the MDA and for consumption of specified drugs under s 8(b)(ii) of the MDA.¹³ This suggests a pattern of drug-related offending. Furthermore, it appears that the severity of the offending has escalated from possession and consumption of drugs to trafficking in them. As Menon CJ observed in *Vasentha* at [56], the presence of these relevant antecedents signals a greater need for specific deterrence.

15 Second, Salzawiyah has also consented to the TIC Charges being taken into consideration for the purpose of sentencing (see [5] above).¹⁴ It is trite that the presence of TIC charges may result in an uplift in sentence, especially where the TIC charges and the charges proceeded with are similar in nature (see *Public*

¹¹ DSS, at paras 11–12.

¹² PSS, at para 11.

¹³ PSS, at para 10.

¹⁴ PSS, at para 9.

Prosecutor v UI [2008] 4 SLR(R) 500 at [38]). In the present case, all seven of the TIC Charges are drug-related – three relate to drug trafficking, two relate to drug possession, and two relate to drug consumption. Thus, they are similar to the charge proceeded with by the Prosecution against Salzawiyah. This reinforces the need for specific deterrence.

16 Finally, I am cognisant of the fact that Salzawiyah was involved in trafficking a variety of drugs, including diamorphine, methamphetamine, cannabis and cannabis mixture. In *Vasentha* ([7] *supra*) at [67], Menon CJ explained this factor as follows:

In my judgment, a higher sentence for an offender who is trafficking in a variety of drugs would be warranted where it can be reasonably inferred from this, together with any other circumstances including the absence of any other explanation, that there is a higher degree of sophistication in the offender's drug operations or that these exist on a larger scale or that he is reaching out to a wider range of abusers. ... In the final analysis, the question for the sentencing judge in each case is whether it can safely be inferred from this that the offender is more culpable or blameworthy such that this should be reflected in a more onerous sentence.

17 In my view, the inferences referred to by Menon CJ should be drawn in this case. The variety of drugs, along with the evidence and findings made in the Main Judgment, show that the drug trafficking operation existed on a relatively large scale and that there was a certain degree of organisation. For instance, I found that the accused persons frequently dealt with large quantities of diamorphine (see [157] of the Main Judgment). Furthermore, the accused persons' evidence and the notebooks in which they recorded drug-related transactions show that they had numerous customers and that they dealt with various types of drugs apart from diamorphine, such as methamphetamine, cannabis and methadone (*eg*, see [158(a)], [158(b)] and [273] of the Main Judgment). The drugs were found in many parts of the Unit such as the living

room, on both the beds in the bedroom and in the wardrobe located in the bedroom. There were also several digital weighing scales, many small empty plastic sachets, an electric plastic sealer and other paraphernalia for drug trafficking activities. In this context, Salzawiyah's drug trafficking activities are clearly more blameworthy and require the imposition of a more onerous sentence.

Mitigating factors

18 I shall now consider Salzawiyah's mitigating factors. Salzawiyah's counsel submit that she cooperated with the authorities upon arrest and was honest and truthful in her oral evidence at the trial.¹⁵ On the other hand, the Prosecution submits that no sentencing discount should be accorded to Salzawiyah as she did not plead guilty and showed no remorse for her actions.¹⁶

19 Having considered the parties' submissions, I find that minimal mitigatory weight should be given to Salzawiyah's cooperation. Contrary to Salzawiyah's submissions, she *did not* cooperate with the authorities upon arrest, nor was she *fully* truthful in her statements to the CNB or in her evidence at the trial. It was Salzawiyah's case that she struggled during her arrest, which led to the CNB officers pinning her to the floor (see [286] of the Main Judgment). After her arrest, although Salzawiyah disclosed information regarding the drug trafficking operation and her involvement therein, she continued to deny the charge brought against her. This was similarly the case with her evidence at the trial, where she only admitted to possession of 9.81g of diamorphine for the purpose of trafficking (see [51]–[52] of the Main

¹⁵ DSS, at para 9.

¹⁶ PSS, at para 12.

Judgment). Although Salzawiyah disclosed her involvement with Jumadi and her general role in the drug trafficking operation, she maintained that she had no involvement in the purchase of the Bundles and the packets of diamorphine marked A1E1 and A1F1. In particular, she claimed that she had ceased her involvement in the drug trafficking operation by June 2017 and that she had not given Jumadi the money he used to purchase the Bundles. I rejected her evidence in this regard (see [277] and [285] of the Main Judgment). In these circumstances, the selective nature of Salzawiyah's cooperation does not suggest true remorse for her actions. Furthermore, I disagree with Salzawiyah's counsel that she was honest, as she was not fully forthright in her statements to the CNB and in her evidence at the trial. Therefore, little mitigating weight should be accorded in this respect.

Conclusion on sentence

20 Taking into account the indicative starting point, Salzawiyah's culpability, as well as the aggravating and mitigating factors discussed above, I find that a sentence of 29 years' imprisonment is appropriate. In reaching this decision, I am cognisant of the fact that the indicative starting point is already at the higher end of the sentencing range of 26 years' to 29 years' imprisonment. Given this significant length of imprisonment, any adjustment upwards should be made judiciously. Furthermore, as I have observed above, Salzawiyah was *not* the mastermind of the drug trafficking operation. She followed Jumadi's lead in many respects. Thus, it might not be appropriate to impose the maximum sentence of life imprisonment, which is ordinarily reserved for the worst type of cases falling within the prohibition (see *Vasentha* ([7] *supra*) at [45], citing *Angliss Singapore Pte Ltd v Public Prosecutor* [2006] 4 SLR(R) 653 and *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185). Instead, having regard to Salzawiyah's relatively high culpability and the aggravating factors discussed

above, as well as the absence of any significant mitigating factors, a sentence of 29 years' imprisonment is fair under the circumstances.

21 This sentence of imprisonment is also in line with the sentencing precedents cited by the Prosecution and Salzawiyah's counsel in their submissions. In this regard, I make two brief observations. First, many of the precedents cited by Salzawiyah's counsel were cases in which the accused had pleaded guilty or where the accused had been a mere courier. These include the District Court's decision in *Public Prosecutor v Herman bin Juma'at* [2020] SGDC 9, which was emphasised by Salzawiyah's counsel in their submissions.¹⁷ Given these significant points of distinction, I find such cases to be of limited precedential value. Furthermore, it bears noting that even in those cases, notwithstanding the mitigatory effect of a guilty plea and/or the lower culpability of a courier, the courts in those cases imposed imprisonment sentences ranging from 25 years to 29 years, depending on the factual matrix of those cases.

22 Second, the Prosecution and Salzawiyah's counsel rely on unreported cases in support of their submissions. I place little weight on such cases, bearing in mind Valerie Thean J's words of caution in *Public Prosecutor v BMF* [2019] SGHC 227 at [57] as follows:

... The danger of placing undue reliance on unreported cases was highlighted by Chan Sek Keong CJ in *Luong Thi Trang Hoang Kathleen v Public Prosecutor* [2010] 1 SLR 707 at [21]. As Chan CJ noted, the court would not be able to properly appraise the facts and circumstances of the particular case, making it difficult to draw any meaningful comparison with the case at hand. Moreover, as observed by Chao Hick Tin JA in *Keeping Mark John v Public Prosecutor* [2017] 5 SLR 627 at [18], sentencing precedents without grounds or explanations are of

¹⁷ DSS, at para 18.

relatively little precedential value, if at all, as they are unreasoned.

23 Finally, I shall consider whether the imprisonment term of 29 years should be enhanced given that Salzawiyah is exempted from caning. As the High Court observed in *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 (“*Amin*”) at [53], the starting point is that an offender’s term of imprisonment should not be enhanced unless there are grounds to justify doing so. Furthermore, where deterrence is the dominant sentencing principle behind the imposition of caning, one of the court’s considerations is whether an additional term of imprisonment would be effective in replacing the deterrent effect of caning (see *Amin* at [68]). As the court in *Amin* observed at [69]:

... A key factor in this context is the length of imprisonment that the offence already carries. For example, if an offence carries a long minimum term of imprisonment, it is less likely to be the case that an enhancement of the sentence ... in lieu of caning would likely provide an effective or meaningful deterrent to would-be offenders having regard to the sentence already prescribed for the offence. The marginal deterrent value of additional imprisonment would generally diminish in relation to the length of the original contemplated term of imprisonment.

24 In this case, I note that the Prosecution is not seeking for an additional term of imprisonment to be imposed. This is an appropriate and fair approach. In my view, the appropriate punishment for Salzawiyah is 29 years’ imprisonment. Therefore, no additional term of imprisonment shall be imposed in lieu of caning.

25 Having determined the appropriate length of imprisonment, the remaining issue is the date on which the sentence should take effect. In this regard, I accept Salzawiyah’s submission that her sentence should be backdated to 22 June 2017, the date of her arrest.

Summary of findings

26 In summary, I make the following findings:

(a) Given that Salzawiyah has been convicted for trafficking in not less than 14.99g of diamorphine, the indicative starting point for the appropriate sentence is at the higher end of the sentencing range of 26 years' to 29 years' imprisonment.

(b) In this case, Salzawiyah's culpability is relatively high. Although she was not the mastermind of the drug trafficking operation, she played an active and significant role in the drug trafficking operation. Furthermore, her actions were self-interested and motivated by financial gain. Notwithstanding any reservations she may have had, she continued to participate in the drug trafficking operation, a decision for which she must now bear the consequences.

(c) There were several aggravating factors present in this case.

(i) Salzawiyah has drug-related criminal antecedents, which evince an escalating pattern of offending.

(ii) Salzawiyah has seven TIC Charges, which are drug-related and similar to the trafficking charge on which she was convicted.

(iii) Salzawiyah was involved in trafficking a variety of drugs, which shows that the drug trafficking operation existed on a relatively large scale and required a certain degree of organisation. This renders her conduct more blameworthy.

(d) Minimal mitigatory weight should be given to Salzawiyah's cooperation. Salzawiyah did not cooperate with the authorities upon arrest, nor was she fully truthful in her statements to the CNB and in her evidence at the trial. The selective nature of her cooperation does not suggest that she was truly remorseful for her actions. I also disagree with Salzawiyah's counsel that she was honest, having regard to her statements to the CNB and her evidence at the trial.

(e) Having regard to the indicative starting point, Salzawiyah's culpability, the aggravating and mitigating factors, as well as the sentencing precedents, a sentence of 29 years' imprisonment is appropriate in this case. No additional term of imprisonment shall be imposed in lieu of caning. This sentence will be backdated to 22 June 2017, the date of Salzawiyah's arrest.

Conclusion

27 For all of the above reasons, I sentence Salzawiyah to 29 years' imprisonment and order that her sentence be backdated to 22 June 2017.

Tan Siong Thye
Judge of the High Court

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