IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 10

Criminal Case No 69 of 2017

Between

Public Prosecutor

And

Siva Raman

GROUNDS OF DECISION

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

CONTENTS

Public Prosecutor
v
Siva Raman

[2018] SGHC 10

High Court — Criminal Case No 69 of 2017
Hoo Sheau Peng J
17, 19–20, 24–26 October; 14 November 2017

12 January 2018

Hoo Sheau Peng J:

Introduction

1 The accused, Siva Raman ("the Accused"), claimed trial to the following charges:

1ST CHARGE

> [That you,] on 16 May 2016, at about 5.00 a.m., at Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, six (6) packets containing not less than 2749.9 grams of granular/powdery substance which was analysed and found to contain not less than **108.81 grams of diamorphine**, whilst travelling into Singapore on a lorry bearing Malaysian registration number NDB 9549, without authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), and punishable under Section 33(1) of the said Act.

2ND CHARGE

> [That you,] on 16 May 2016, at about 5.00 a.m., at Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, three (3) packets containing not less than 473.6 grams of crystalline substance which was analysed and found to contain not less than **315.74 grams of methamphetamine**, whilst travelling into Singapore on a lorry bearing Malaysian registration number NDB 9549, without authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), and punishable under Section 33(1) of the said Act.

2 At the conclusion of the trial, I found that the Prosecution had proved the charges beyond a reasonable doubt against the Accused, and convicted him of the charges. By s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") read with its Second Schedule, the punishment prescribed for each of the charges is death. Section 33B(1)(*a*) provides that in the prescribed circumstances set out in s 33B(2), the court has a discretion not to impose the death penalty. I found that the Accused had satisfied the requirements under s 33B(2) of the MDA. Instead of the death penalty provided for under s 33(1), pursuant to s 33B(1)(*a*), I passed the sentence of life imprisonment backdated to 17 May 2016. In addition, I imposed the minimum mandatory caning of 15 strokes on each of the charges. Pursuant to s 328 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), the aggregate sentence of caning imposed was limited to 24 strokes.

3 The Accused has appealed against the sentence imposed on him on the ground that it is manifestly excessive. I now furnish my reasons.

The Prosecution's case

4 By and large, the facts were undisputed. These were contained in a statement of agreed facts which was furnished pursuant to s 267(1) of the CPC ("ASOF"). I now set out the key aspects contained in the ASOF.

Arrest of the Accused

5 The Accused is a 34-year-old Malaysian. On 16 May 2016, at about 5am, the Accused drove a Malaysian-registered lorry bearing registration number NDB9549 ("the Lorry") from Johor Bahru into Singapore. He was accompanied by Anathan Kanapathy ("Anathan"), a lorry attendant. At the Woodlands Checkpoint, the Lorry failed an image check, and the Accused was directed to drive the Lorry to the Cargo Command Centre for further checks.

6 At the Cargo Command Centre, officers of the Immigration and Checkpoints Authority ("ICA") searched the Lorry. Nothing incriminating was found at the back of the Lorry. When the Accused was informed that the front cabin of the Lorry would be searched, he sighed.

7 During the search of the front cabin of the Lorry, Sgt Muhammad Adi bin Zaroni ("Sgt Adi") discovered three dark green plastic bags (which were later marked as "A1", "A2" and "A3") inside a compartment beneath a brown mattress placed behind the passenger seat. Sgt Adi took a black bundle out of one of the dark green plastic bags. The Accused then shouted twice in Malay "Bukan saya punya" – which means "It's not mine".

8 Suspecting that the black bundle contained drugs, W/Insp Siti Chotidjah binte Mohd Ali ("W/Insp Chotidjah") instructed the officers to stop the search, and to place the Accused under arrest. The black bundle taken out by Sgt Adi

was placed between the driver seat and the passenger seat, while the three dark green plastic bags were placed on the passenger seat. W/Insp Chotidjah proceeded to inform the Central Narcotics Bureau ("CNB") of the matter.

Recovery of the drug exhibits

9 At about 5.15am, a party of CNB officers arrived at the scene. At about 5.25am, in the presence of the Accused, Sgt Muhammad Zuhairi bin Zainuri ("Sgt Zuhairi") emptied the remaining contents of the three dark green plastic bags. In total, there were six packets of powdery/granular substance (later established to contain diamorphine) and three packets of crystalline substance (later established to contain methamphetamine). Specifically, including the black bundle taken out earlier by Sgt Adi, the three dark green plastic bags contained the following:

(a) In the dark green plastic bag marked as "A1", there were three bundles wrapped with black tape (which were marked as "A1A", "A1B" and "A1C" respectively), each containing a packet of powdery/granular substance (which were marked as "A1A1A", "A1B1A" and "A1C1A" respectively). There was also one block wrapped with black tape (which was marked as "A1D"), containing one packet of crystalline substance (which was marked as "A1D1A1").

(b) In the second dark green plastic bag marked as "A2", there were three bundles wrapped with black tape (which were marked as "A2A", "A2B" and "A2C" respectively), which in turn contained three packets of powdery/granular substance (which were marked as "A2A1", A2B1" and A2C1A" respectively).

(c) In the third dark green plastic bag marked as "A3", there was one block wrapped with black tape (which was marked as "A3A1A"), which in turn contained two packets of crystalline substance (which were later marked as "A3A1A1A1" and A3A1A1B1").

Analysis of the drug exhibits

10 Subsequently, the CNB submitted the nine packets to the Health Sciences Authority for analysis. The six packets of granular/powdery substance contained not less than 2,749.9 grams of the granular/powdery substance which was found to contain not less than 108.81 grams of diamorphine. As for the three packets of crystalline substance, these were found to contain not less than 473.6 grams of the crystalline substance which was found to contain not less than 315.74 grams of methamphetamine.

Statements of the Accused

11 Apart from the undisputed facts set out above, the Prosecution also relied on ten statements which were recorded from the Accused in the course of investigations. The Accused accepted that he provided the ten statements voluntarily, and did not challenge the admissibility of any of them. However, the Accused questioned whether, in the course of the recording of the statements, the term "drugs" was properly interpreted to the Accused in Tamil, and/or whether the Tamil terms used by the interpreters were properly understood by the Accused. He also challenged aspects of his knowledge of the different types of drugs. I shall return to deal with the objections at [24] below.

12 In a contemporaneous statement recorded on 16 May 2016 at about 7.50am by W/Sgt Rajendran Janani, the Accused denied any knowledge of the bundles in the Lorry. In the two cautioned statements recorded on 16 May 2016

at about 9.46pm and 10.32pm by ASP Prashant s/o Sukumaran under s 23 of the CPC with the assistance of a Tamil interpreter Raman Narayanan ("Mr Raman"), the Accused denied the charges. He claimed that one Ganesan A/L Sukumaran ("Ganesan") placed the "stuff" in the Lorry.

13 The remaining seven statements were recorded by the Investigation Officer, ASP Mohammad Imran bin Salim ("IO Imran"), pursuant to s 22 of the CPC between 18 May 2016 and 24 October 2016 ("the long statements"). In the recording process, IO Imran was assisted by a Tamil interpreter, Malliga Anandha Krishnan ("Mdm Malliga"). In the first two long statements, the Accused maintained that he did not know of the nine bundles of drugs in the Lorry. From the third long statement onwards, the Accused admitted that he brought the nine bundles of drugs into Singapore. While he knew that the bundles contained drugs, he denied knowledge of the type of drugs. I now set out the contents of the long statements in more detail:

(a) In the first long statement recorded on 18 May 2016, the Accused said that he knew what drugs were, and that drugs "ruin[ed] people's lives". He said he had seen people taking "ice" in his hometown, and that he had seen "other types of drugs such as Heroin and Ganja in the Malaysian newspapers".

Turning to the Lorry, the Accused said that he owned it, and used it to make deliveries to Singapore. In February 2016, Ganesan asked to hire the Lorry from the Accused. The Accused agreed. He was newly married, and he intended to go on a honeymoon with his wife. Also, he had bought three shops, and was renting each for RM$1,500 per month. Financially, he was able to take a break from driving the Lorry. The Accused asked Ganesan to pay him RM$1,400 for every delivery made

using the Lorry. Ganesan agreed and began using the Lorry to make deliveries into Singapore. In total, Ganesan hired the Lorry on 10 occasions, being five times each in March and April 2016. Ganesan paid him promptly after each delivery.

Before the last time Ganesan hired the Lorry on 29 April 2016, the Accused started hearing rumours that Ganesan was using the Lorry to bring drugs into Singapore. The Accused did not know "what type of drugs they were but the word that was generally used was 'bothai marunthu'". In Tamil, the term means drugs. After the Accused handed Ganesan the key on 29 April 2016, a friend of Ganesan's called "Prakash" confirmed that Ganesan was using the Lorry to bring drugs into Singapore. When Ganesan returned the Accused the Lorry on 1 May 2016, the Accused confronted Ganesan. Ganesan denied that he was using the Lorry to bring drugs into Singapore. The Accused scolded him, and they almost got into a fight. Thereafter, the Accused stopped renting the Lorry to Ganesan.

(b) In the second long statement, also recorded on 18 May 2016, the Accused said that he had known Ganesan for about six years. When he first met Ganesan, both of them were lorry attendants. Thereafter, they would sometimes meet at petrol stations and rest stops for lorry drivers. On one such occasion, they exchanged contact numbers. The Accused invited Ganesan to his wedding reception, and it was at the wedding reception that Ganesan asked to borrow the Lorry.

On 16 May 2016, the Accused was delivering a consignment of empty paint tin cans and spare parts in the Lorry to Singapore. During the search of the Lorry by the ICA officers at Woodlands Checkpoint, he

was shown a plastic bag. He did not know what was inside the plastic bag.

(c) In the third long statement recorded on 19 May 2016, the Accused provided descriptions of "ice", "ganja" and "heroin". The Accused said he did not know who the items in the Lorry belonged to. Then, he said that he thought Ganesan might have put the drugs inside the Lorry to take revenge on him. After that, according to IO Imran's note recorded within the third long statement, the Accused hesitated. Then, the Accused admitted that he brought the drugs into Singapore. He explained that on 12 May 2016, Ganesan had called him on his handphone. Ganesan told him that after he had taken the Lorry back, Ganesan got into some trouble. As Ganesan was not able to make a delivery, he had to pay some money for the failed delivery. Ganesan asked the Accused to help him make the delivery. The Accused said that "I know that 'Ganesan' wants me to deliver drugs into Singapore. I suspected that it was drugs as he had not denied it when I had confronted him on 1st May 2016." Ganesan offered the Accused RM$10,000 as payment.

Ganesan called the Accused on 13 and 14 May 2016 about the same matter. Ganesan confirmed that the payment would be RM$10,000. The Accused agreed to carry out the delivery. Ganesan told the Accused to go to a "Petron" petrol station at Skudai on 16 May 2016, at about 2am.

On 16 May 2016, as the Accused was driving the Lorry, Ganesan called and asked him if he had reached the "Petron" petrol station. The Accused said that he would arrive in about five to ten minutes' time. Ganesan told him to wait there at the "Petron" petrol station, and that a "Perdana" car

would go there. Someone would pass him the "*jaman*". "*Jaman*" meant "thing" in Tamil. The Accused did not ask Ganesan what the "thing" was but he knew it was "drugs". Ganesan also told the Accused to drive straight to Sungei Kadut after clearing Singapore customs, and that he would contact the Accused again.

As instructed by Ganesan, the Accused arrived at the "Petron" petrol station, and less than five minutes later, a silver coloured "Perdana" car arrived. An Indian man in the passenger seat passed some plastic bags to the Indian driver. The Accused walked over to the car, and the driver passed the plastic bags to him. They did not talk. The Accused returned to the Lorry, and placed the plastic bags in the Lorry. He realised that there were three plastic bags, and that they were quite heavy. He did not look inside. He could "roughly see and feel the shape of the drugs inside the plastic bags". He did not tell Ananthan about the plastic bags, and Ananthan did not know anything about the drugs.

Thereafter, they were arrested at Singapore customs. The Accused did not know who the drugs were meant for. Ganesan was supposed to call him again after he had reached Sungei Kadut. He was not paid the RM$10,000 as Ganesan had promised.

(d) In the fourth long statement recorded on 20 May 2016, the Accused explained that he decided to tell the truth about the drugs because he did not wish to get Anathan into trouble. Anathan was not involved in the matter. He said that he did not know where Ganesan stayed, and agreed to deliver the drugs for Ganesan because of the sum of money offered by Ganesan.

(e) Finally, in the sixth long statement recorded on 12 July 2016, the Accused confirmed that he knew that Ganesan wanted him to deliver drugs. However, he maintained that he did not know what type of drugs they were.

Tamil terms for drugs

14 As mentioned at [11] above, there was some dispute by the Accused over the interpretation of the word "drugs" to him during the recording of the statements, and his understanding of the Tamil terms used by the interpreters. According to both Mr Raman and Mdm Malliga, the two Tamil terms "*bothai porul*" and "*bothai marunthu"* are commonly used to mean drugs. Both also testified that literally, "*bothai*" means intoxicating, and "*marunthu*" means medicine. Put together, however, "*bothai marunthu*" is commonly understood and used to refer to controlled drugs.

The Defence

15 At the close of the Prosecution's case, I found that there was sufficient evidence against the Accused for the defence to be called. In giving evidence, the Accused gave an account that was largely consistent with what he stated in the long statements. Specifically, he related how Ganesan came to rent the Lorry from him to transport "*jaman*" (which means "thing"), and paid him RM$1,400 for each trip. Then, he was told by Prakash that Ganesan "was bringing *bothai marunthu*" in the Lorry. Upon learning of this, the Accused became angry. He confronted Ganesan. He fought with Ganesan to get back the Lorry.

16 Despite cheating him, Ganesan called him to ask him for help with medicine. The Accused did not know it would get him into such big trouble. Explaining further, the Accused said that on 12 May 2016, Ganesan called him,

and asked him to transport "*bothai marunthu*", and that he would give him RM$10,000. Ganesan called him again on the subsequent days. Eventually, the Accused agreed to the arrangement, and he brought the items into Singapore.

17 In cross-examination, the Accused explained that to him, "*bothai marunthu*" is a "head-shaking" medicine used in pubs. When consumed, it would make heads shake. However, he said it was not illegal in nature. To the Accused, "*bothai porul*" would refer to illegal drugs. Referring to the long statements, he accepted that to refer to drugs, Mdm Malliga used both terms – "*bothai porul*" and "*bothai marunthu*" – when interpreting the long statements to him. In relation to the first long statement, while he agreed that he mentioned "ice", he denied mentioning "ganja" or "heroin". Those terms were used by Mdm Malliga. Nonetheless, he admitted to reading about "ganja" and "heroin" in the newspapers, and that he knew that these were illegal things. Eventually, the Accused conceded that he knew he was being asked to deliver something illegal, but that he did not know it would lead to such serious consequences.

The law

18 The applicable law was not in dispute. The relevant provision within the MDA constituting the charges reads:

> **Import and export of controlled drugs**
>
> **7.** Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

While "import" is not defined in the MDA, it is defined in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) to mean "to bring or cause to be brought into Singapore by land, sea or air", and I adopted the meaning accordingly.

19 As for the *mens rea* of the charges, being that of knowledge of the nature of the drugs, s 18(2) of the MDA provides:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.** ...
>
> (2) 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.

If the prosecution is able to invoke the presumption of knowledge, an accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug: *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [37].

Decision

20 The Accused admitted that pursuant to an arrangement with Ganesan, he had brought the nine packets of drugs which were in the Lorry into Singapore, being the *actus reus* of the charges. Further, the Accused did not dispute that at the material time, he was in possession of the nine packets of drugs which were in the Lorry, and was supposed to deliver them upon receiving further instructions from Ganesan. Thus, the Prosecution was able to invoke the presumption of knowledge of the nature of the drugs contained in s 18(2) of the MDA against the Accused. The burden was for the Accused to rebut the presumption that he knew that the drugs were diamorphine and methamphetamine respectively. This formed the sole issue in the case.

21 The Prosecution submitted that the Accused had failed to rebut the presumption, while Defence Counsel argued the contrary. To reiterate, at trial, the Accused's claim was that he thought he was delivering "*bothai marunthu*" which was a form of "head-shaking" medicine used in pubs. Upon a review of

the whole of the evidence, I found that the Accused had not rebutted the presumption of knowledge on a balance of probabilities. These are my reasons.

22 To begin with, the Accused's claim that by "*bothai marunthu*", he thought Ganesan meant a form of legal "head-shaking" medicine used in pubs was unbelievable. This assertion, in my view, was an afterthought. If indeed this was what the Accused believed, it was incredible that he did not mention this in any of the ten investigation statements. In particular, from the third long statement onwards, the Accused gave a detailed account of the events leading to the transactions, and described his state of mind at various points in time. Yet, there was no mention of this belief. More critically, even in his examination-in-chief, he did not make this claim of what he thought "*bothai marunthu*" was. It was only during cross-examination that the Accused explained he believed "*bothai marunthu*" was a "head-shaking" medicine used in pubs.

23 Further, this assertion was inconsistent with the contents of the long statements. In the first and third long statements, the Accused mentioned three specific controlled drugs – being "ice", "ganja" and "heroin". Then, in the third and sixth long statements, the Accused admitted that he knew that he was being asked to deliver drugs by Ganesan. Instead of stating that he thought the drugs was a "head-shaking" medicine (which was legal in nature), he specifically stated that he did not know what type of drugs he was being asked to deliver. It was evident that the Accused had shifted his position on a material aspect of his defence.

24 At this juncture, I digress to deal with the Accused's contention that in the course of the recording of the statements, somehow, the term "drugs" was not properly interpreted to him in Tamil, and/or that he did not properly

understand the Tamil terms used. Specifically, the Accused knew that "*bothai porul*" and "*bothai marunthu"* were both terms which referred to drugs, and that Mdm Malliga had used both terms. However, he thought that the former referred to illegal drugs, but not the latter (see [17] above). Also, in the first long statement, the Accused claimed that "ganja" and "heroin" were words used by Mdm Malliga.

25 In this regard, Mdm Malliga explained that although she could not recall the exact words in Tamil that the Accused used for her to interpret into "drugs" in English, the common terms for drugs would be either "*bothai porul*" or *"bothai marunthu*". When she read back the long statements to the Accused, she would interpret "drugs" as "*bothai porul*" or *"bothai marunthu*". The Accused did not say that he did not understand her. More importantly, if the Accused had merely used the word "*marunthu*", Mdm Malliga would have interpreted it as "medicine". As for the references to "ice", "ganja" and "heroin", again, Mdm Malliga could not recall what the Accused said. However, when she read back the first long statement, she thought she used the same words as recorded, that being "ice", "ganja" and "heroin". The Accused did not say that he did not understand the words.

26 I accepted that the statements were accurately recorded, with the Accused properly understanding the Tamil terms – be it "*bothai porul*" or *"bothai marunthu*" – to refer to controlled or illegal drugs, and not merely to medicine. In particular, I found that the contents of the long statements were accurate. In this regard, I accepted the clear evidence of Mdm Malliga. The long statements were replete with references to drugs. After the recording of each of the long statements, it was read back to the Accused. As the Accused admitted, Mdm Malliga used both Tamil terms. The Accused did not express any confusion over the contents of the long statements, and did not raise any concern

about any difference between the two terms to Mdm Malliga. In fact, in the first long statement, when using the term "*bothai marunthu*", he confirmed that it meant drugs (see [13(a)] above). In my view, his attempt to draw the tenuous distinction between "*bothai porul*" and *"bothai marunthu*" was merely meant to support his belated claim that he thought the "head-shaking" medicine was legal in nature.

27 Although the Accused denied mentioning "ganja" and "heroin" in the first long statement, he provided a description of these drugs in the third long statement. In fact, at trial, the Accused did not deny knowing "ice", "ganja" and "heroin" to be illegal drugs. I did not believe his claim that Mdm Malliga mentioned the drugs "ganja" and "heroin". Again, the fact that the Accused named the three specific illegal drugs showed that the Accused did not have any problems with understanding the term "drugs" during the recording process.

28 Furthermore, the assertion that he thought the drugs were a form of "head-shaking" medicine which was not illegal in nature was inconsistent with his conduct. When the Accused was told by Prakash that Ganesan had used the Lorry to transport *bothai marunthu,* the Accused, by his own account, became very angry. He confronted Ganesan, and even fought with him. He accused Ganesan of cheating him. The Accused's reaction showed that he knew that "*bothai marunthu"* (which he was being asked to deliver on 16 May 2016) consisted of illegal drugs, and not merely substances which were legal in nature. Moreover, when the Accused was asked by Ganesan to collect and deliver the drugs, the Accused did not immediately agree. He was worried about the consequences of doing so. Again, this indicated that he knew of the serious and illegal nature of the drugs. For these main reasons, I rejected the assertion that he thought the nine packets contained "head shaking" medicine used in pubs which were legal in nature.

29 Moreover, the Accused had received the nine packets of drugs in very suspicious circumstances, but failed to take any steps to establish the nature of the contents. Apart from the circumstances discussed at [28] above, there was no reason for the Accused to trust Ganesan. After all, Ganesan had not been upfront with the Accused when he rented the Lorry. The Accused even admitted that he had no reason to trust Ganesan. Yet, he did not ask Ganesan about the items to be delivered. The furtive circumstances in which he received the drugs from two men without any conversation around 2am in the morning (see [13(c)] above) would also have been telltale signs that his task was illicit in nature.

30 Also, the Accused knew that he was being promised a substantial sum of RM$10,000 to collect the items, and to deliver the items in Singapore. Since the Accused was supposed to deliver a consignment of empty paint tins and spare parts to Singapore, there was little extra work involved. I appreciated that the Accused was not in financial difficulties. However, as the Accused admitted in the fourth long statement (see [13(d)]), the quantum promised was attractive enough for the Accused to agree to carry out the task. The Accused was not a naïve person, and appeared to be financially savvy. As such, the substantial payment promised to him would have indicated to the Accused the illegal nature of the items.

31 Indeed, eventually in the course of cross-examination, the Accused admitted that he knew he was being asked to deliver something illegal. With his knowledge of all the surrounding circumstances, the Accused did not check on the nine packets of drugs. He had every opportunity to do so after he collected the nine packets of drugs in Johor Bahru. With the Accused's knowledge of the different types of illegal drugs, including "ice", "ganja" and "heroin", such a check would not have been futile.

32 Accordingly, I rejected the Accused's contention that he thought the drugs were merely a "head-shaking" medicine which was not illegal, and found that he had failed to rebut the presumption that he knew of the nature of the drugs. For completeness, I should add that given all the facts and circumstances, his bare claim that he did not know what type of drugs he was being asked to deliver (which was his position in the long statements) also did not suffice to rebut the presumption of knowledge. I found that the Prosecution had proved both the charges against the Accused, and convicted him of both the charges.

Sentence

33 By s 33(1) of the MDA, read with its Second Schedule, the punishment prescribed for importing more than 15 grams of diamorphine or 250 grams of methamphetamine under s 7(1) is the death penalty. However, pursuant to s 33B, the court has the discretion not to impose the death penalty. Under s 33B(1)(*a*), the court may order life imprisonment and caning of *at least* 15 strokes if two requirements within s 33B(2) are satisfied. First, the person convicted must prove, on a balance of probabilities, that his involvement in the offence under s 7(1) is restricted to that of a mere courier, as set out in s 33B(2)(*a*)(i)–(iv). Second, the Public Prosecutor must certify that the person convicted has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

34 On the first requirement, the Court of Appeal in *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 at [63], observed that as recognised in the High Court case of *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 at [51], the definition of a courier in s 33B(2)(*a*) is a narrow one. In that case, the High Court concluded that a courier is one whose involvement is limited to delivering or conveying drugs from point A to point B.

35 On the evidence before me, the Accused's role was to collect the drugs at a petrol station in Johor Bahru, bring them into Singapore, and then deliver them in Singapore upon receiving instructions from Ganesan. I found that the Accused had established, on a balance of probabilities, that he was only involved in delivering the drugs, which brought him within the ambit of s 33B(2)(*a*) of the MDA. The Prosecution did not dispute this.

36 For the purpose of sentencing, the Prosecution tendered a certificate of the Public Prosecutor under s 33B(2)(*b*) of the MDA. The Prosecution left sentencing to the court. Defence Counsel urged the court to exercise its discretion to impose the alternative sentence.

37 As the Accused had satisfied the requirements of section 33B(2) of the MDA, in the exercise of my discretion within s 33B(1)(*a*), instead of imposing the death penalty, I imposed the sentence of life imprisonment backdated to 17 May 2016 (being the date of remand). In addition, I imposed the mandatory minimum caning of 15 strokes for each charge. By virtue of s 328 of the CPC, the aggregate sentence of caning was limited to 24 strokes.

Hoo Sheau Peng
Judge

Tan Zhongshan and Chan Yi Cheng
(Attorney-General's Chambers) for the Prosecution;
Suppiah S/O Pakrisamy (P Suppiah & Co) and Elengovan S/O V Krishnan (Elengovan Chambers) for the defendant.