IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 151

Criminal Case No 21 of 2019

Between

Public Prosecutor

And

Vashan a/l K Raman

GROUNDS OF DECISION

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

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Public Prosecutor
v
Vashan a/l K Raman

[2019] SGHC 151

High Court — Criminal Case No 21 of 2019
Vincent Hoong JC
22 May 2019

13 June 2019

Vincent Hoong JC:

1 The accused, a 25-year-old male, pleaded guilty to a charge of importing into Singapore not less than 14.99g of diamorphine under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), punishable under s 33(1) of the same Act. Upon conviction, I sentenced the accused to 25 years' imprisonment and 15 strokes of the cane, to be backdated to 22 December 2016, the date of his remand.

2 The accused has appealed against the sentence imposed. I set out the reasons for my decision.

Facts

3 On 21 December 2016, at about 5 am, the accused met "Kash Abang", a male Malaysian with whom he had become acquainted with about one week prior to his arrest. The accused received two packets containing granular/powdery substances ("the packets") from "Kash Abang", and was instructed to deliver the packets to someone in Singapore. He was told to keep the packets in his underwear as he entered Singapore, and to wait at the first traffic junction after exiting Tuas Checkpoint ("the checkpoint") for an Indian male riding a Yamaha motorcycle to collect them from him. "Kash Abang" promised to pay the accused RM1000 for delivering the packets. The accused agreed to this arrangement as he needed the money for his daily expenses. The accused knew that the packets contained diamorphine.

4 At about 6.07 am, the accused entered Singapore from Malaysia via the checkpoint. At the checkpoint, he was stopped by Immigration and Checkpoints Authority ("ICA") officers. When he was searched, the officers discovered a clear plastic wrapper protruding from the waistband of the accused's underwear. The packets of granular/powdery substances were found hidden in the accused's groin area, and Central Narcotics Bureau ("CNB") officers were called in. The packets were seized and labelled A1 and A2.

5 The accused informed the CNB officers that the packets were to be delivered to an unknown Indian Malaysian male at the first traffic junction after exiting the checkpoint. As such, CNB officers mounted a follow-up operation in a bid to arrest the intended recipient. However, the operation did not bear fruit.

6 When the packets were analysed by the Health and Sciences Authority, A1 and A2 were found to contain not less than 13.01g and 13.33g of diamorphine respectively. In total, the two packets contained not less than 14.99g of diamorphine, which is a Class A controlled drug listed in the First Schedule to the MDA. The accused was not authorised under the MDA or the Regulations made thereunder to import any controlled drugs into Singapore.

7 As such, I convicted the accused on the charge under s 7 MDA, punishable under s 33(1) of the same Act.

The parties' submissions on sentence

The Prosecution's submissions

8 The Prosecution submitted that a sentence of at least 26 years' imprisonment, with the mandatory 15 strokes of the cane, would be appropriate. It relied on the indicative starting points formulated by the High Court in *Amin bin Abdullah v Public Prosecutor* [2017] 5 SLR 904 (at [100]) ("*Amin*"). For trafficking 13g to 14.99g of diamorphine, the indicative sentencing range is between 26 to 29 years' imprisonment. Within that band, the Prosecution argued the precise appropriate starting point was 29 years' imprisonment, given that the quantity of diamorphine involved was at the highest end of the sentencing band.

9 The Prosecution further submitted that the culpability of the accused did not justify any significant deviation from the indicative starting point. This was because the culpability enhancing factors (*ie*, that the accused had committed the offence for financial gain and taken steps to avoid detection of the offence by hiding the drugs in his underwear) were balanced by the fact that he was a courier acting under directions. The proposed downward adjustment from the

indicative starting point of 29 years to 26 years was due to the "paucity of aggravating factors" as well as the presence of two mitigating factors. These were the accused's plea of guilt, which should be given little weight as he had been caught red-handed, and the accused's voluntary cooperation with the authorities. The proposed sentence would also be consistent with the sentences imposed in *Public Prosecutor v Hari Krishnan Selvan* [2017] SGHC 168 ("*Hari Krishnan Selvan*"), *Public Prosecutor v Adri Anton Kalangie* [2017] SGHC 217 and *Public Prosecutor v Nimalan Ananda Jothi and another* [2018] SGHC 97 (*"Nimalan Ananda Jothi*").

The accused's submissions on sentence

10 The accused submitted that his involvement was at the lower end of the spectrum: he had been following the instructions given to him by "Kash Abang" and his role was merely that of a courier. He was not part of any syndicate or larger gang, and only knew of "Kash Abang", who had "used" him. The drugs did not belong to him, and he had agreed to transport the drugs into Singapore because "Kash Abang" had loaned him RM1500 after he had asked for RM1000. Further, he had no previous convictions either in Malaysia or Singapore, and had co-operated fully with the investigators. He was remorseful and had pleaded guilty at the earliest opportunity.

11 In light of the mitigating factors, the accused submitted that while the starting point is between 26 to 29 years, a downward calibration to between 20 to 23 years' imprisonment would be appropriate. He relied on the decision in *Public Prosecutor v Muhammad Nor Haiqal bin Shaman* [2017] SGHC 292 ("*Nor Haiqal*"), in which the offender was sentenced to 23 years' imprisonment and 15 strokes of the cane for the offence of possessing 249.9g of methamphetamine for the purposes of trafficking. It was argued that the

offender in that case had previous drug-related antecedents, had profited from the sale of drugs, and had been more involved than the accused in the present case, who was a mere courier.

My decision

12 The High Court in *Amin* determined that the indicative sentencing range where 13 to 14.99g of diamorphine is concerned would be between 26 to 29 years' imprisonment. This was not disputed. However, while the Prosecution submitted that the precise indicative starting point was 29 years' imprisonment, the accused submitted that this "need not necessarily" be the case.

13 As a matter of principle, the indicative starting point within this range should be identified based on the weight of the drugs involved. This would be consistent with the Court of Appeal's observation in *Adri Anton Kalangie v Public Prosecutor* [2018] 2 SLR 557 ("*Adri Anton Kalangie*") at [81] that indicative starting sentences should be broadly proportional to the quantity of the drugs trafficked or imported. In *Adri Anton Kalangie*, the charge pertained to the importation of not less than 249.99g of methamphetamine. The Court of Appeal observed that the appropriate indicative starting sentence should be between 26 to 29 years' imprisonment, and, more specifically, at the higher end of the range (at [81]).

14 Further, as observed by the Prosecution, the indicative starting point where the offender trafficked not less than 14.99g of diamorphine was identified to be 29 years' imprisonment in *Nimalan Ananda Jothi* at [38]. This was derived through an application of the *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 (*"Suventher*") guidelines at [29] (from which the indicative sentences in *Amin* at [100] had been derived) as well as the approach taken in

Public Prosecutor v Tan Lye Heng [2017] 5 SLR 564 ("*Tan Lye Heng*"). In the latter case, Steven Chong JA similarly calibrated the appropriate indicative starting point by having regard to the weight of the drugs involved and the range encapsulated in the second band of *Suventher* (at [126]). The starting point identified in *Tan Lye Heng* was therefore a sentence around the one-third mark of the second band, *ie*, 23 years and 8 months' imprisonment for 11.95g of diamorphine.

15 I acknowledge that this approach might not have been expressly adopted in all cases: for example, the accused cited the cases of *Nor Haiqal* and *Hari Krishnan Selvan*. In particular, in *Hari Krishnan Selvam*, the "indicative starting point" identified by the High Court was 26 to 29 years' imprisonment (at [16] and [19]). However, to my mind, this did not detract from the more principled approach adopted in *Nimalan Ananda Jothi* and *Tan Lye Heng*.

16 As I noted above, the Prosecution submitted that the appropriate starting point was 29 years' imprisonment since the quantity of diamorphine involved is at the highest end of the sentencing band. While this was not cited to me by either party, I should state that I was aware of Chan Seng Onn J's calibration of the indicative starting point as 28 years' imprisonment for trafficking offences involving 14.99g of diamorphine in *Soh Qiu Xia Katty v Public Prosecutor* [2019] 3 SLR 568 at [38], [43] and [44]. Notwithstanding the logical appeal of Chan J's sentencing framework, I considered it more consistent with the guidelines set out by the Court of Appeal in *Suventher* at [29], as applied to diamorphine in *Amin* at [100], to find that the starting point for trafficking offences involving 14.99g of diamorphine is 29 years' imprisonment. This would fully utilise the third band set out in these cases: in *Amin*, this was 26 to 29 years' imprisonment for 13 to 14.99g of diamorphine (at [100]). I therefore

concluded that the indicative starting point in the present case was 29 years' imprisonment.

17 I then considered the accused's culpability, having regard to the non-exhaustive factors identified in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*") at [51]. Despite the accused's assertion that "Kash Abang" had "clearly used him", this was not an exploitative relationship. While the accused had suggested that he felt a sense of obligation towards "Kash Abang" arising from the earlier loan extended to him, it was not disputed that the accused was also motivated by financial gain. The Statement of Facts ("SOF") states that the accused was promised RM1000 for the delivery of the drugs, and that the accused had agreed because he needed money for his expenses. That said, I did not place much weight on the financial motivations of the accused. As the Court of Appeal held in *Adri Anton Kalangie* at [82], most drug traffickers or importers would be motivated by some form of material gain, and the mere presence of such motivation did not render the offence materially more serious, or the offender more culpable.

18 In the present case, the accused had also placed the packets inside his underwear as he entered Singapore. The taking of active steps to avoid detection was identified to be a factor pointing towards higher culpability in *Vasentha*, at [51]. However, in assessing the weight that ought to be placed on this fact, it would be appropriate to consider the extent to which steps had been taken to conceal the drugs. This is particularly since, in the vast majority of trafficking offences, *some* efforts at concealment would have been made. In the present case, these steps were limited and unsophisticated, particularly in contrast with the steps taken in three of the cases cited to me by the parties: in *Nor Haiqal*, this consisted of hiding the drugs in boxes and packets of Chinese tea (at [4]); in *Hari Krishnan Selvam*, in cabbages (at [11]), and in *Adri Anton Kalangie,* by

ingesting the drugs (at [82]). I therefore gave little weight to this factor in the present case.

19 Finally, I also accepted that the accused played a limited role and had been operating under the directions of "Kash Abang".

20 Turning to the aggravating and mitigating factors, I noted that the accused had pleaded guilty in a timely manner. The Prosecution submitted that this should be given little weight since the accused had been caught red-handed, with the drugs concealed on him in a "highly suspicious manner". A plea of guilt may result in a discount to the aggregate sentence if it evidences the offender's remorse, saves the victim the prospect of relieving his or her trauma at trial, or saves the public costs which would have been expended by holding a trial: *Gan Chai Bee Anne v Public Prosecutor* [2019] SGHC 42 at [73], citing *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [66], [69] and [71]. In the present case, some weight should be given to the accused's relatively early plea of guilt. This resulted in the saving of costs and time that would otherwise have been expended on a trial. Further, while there was strong evidence against him, his remorse was also evidenced by his co-operation with the authorities. As indicated in the SOF, he provided the CNB officers with information that enabled a follow-up operation to be carried out. Accordingly, I gave his voluntary co-operation substantial weight in the present case: see *Vasentha* at [73].

21 Finally, I considered the sentencing precedents cited by both parties. In relation to the cases cited by the Prosecution, I was satisfied that an imprisonment term shorter than the 26 years' imprisonment imposed in *Hari Krishnan Selvan* and *Nimalan Ananda Jothi* would be appropriate. In *Hari Krishnan Selvan*, the offender similarly pleaded guilty and co-operated with the

authorities (at [19]). However, he had recruited and paid two other people to assist in the delivery of the heroin, which had been hidden in cabbages. The cabbages were then placed under other vegetables to avoid detection (at [11] and [19]). In my opinion, the offender in *Hari Krishnan Selvan* was more culpable than the accused in the present case. In *Nimalan Ananda Jothi*, while the first accused was, like the accused in the present case, a first time offender, little weight had been accorded to this given that he admitted to having made heroin deliveries into Singapore on five or six occasions (at [39]).

22 The accused relied on the case of *Nor Haiqal*. In that case, the offender pleaded guilty to and was convicted of three drug-related offences. Two further drug-trafficking charges were taken into consideration for the purposes of sentencing. The accused referred me specifically to the first charge, which pertained to the possession of not less than 249.99g of methamphetamine for the purposes of trafficking. The accused submitted that the "participation and involvement" of the offender in *Nor Haiqal* was "far greater" than in the present case. In *Nor Haiqal*, the offender had been involved in the repacking and delivery of drugs over a four month period before being arrested (at [6]). While this was not indicated in the grounds issued for *Nor Haiqal*, as alluded to in the present accused's mitigation plea, the offender in *Nor Haiqal* had previously committed other drug-related offences. On the other hand, as the Prosecution noted, while the drug operation in *Nor Haiqal* was more sophisticated, Choo Han Teck J also observed there was no evidence the offender had any role in or knowledge of the sophistication of the operation (at [6]). The accused was sentenced to 23 years' imprisonment and 15 strokes of the cane for the first charge of trafficking. The global sentence imposed was 24 years' imprisonment and 20 strokes of the cane. In my opinion, it is significant that the offender in

Nor Haiqal was only 20 years old at the time of the offence and arrest. This was a key distinguishing factor.

23 I also considered *Adri Anton Kalangie*, in which the sentence of 25 years and 15 strokes was upheld by the Court of Appeal. While the offender in that case had taken active and sophisticated steps to avoid detection of the offence by ingesting the drugs, he had also voluntarily confessed to his crime, pleaded guilty at an early stage, and co-operated with the authorities.

24 Balancing the considerations above, I concluded that the appropriate sentence would be 25 years' imprisonment and 15 strokes of the cane. This represented a significant downward calibration from the starting point of 29 years' imprisonment, primarily on account of the limited role he played and his substantial co-operation with the CNB.

Conclusion

25 For the reasons set out above, I deemed the appropriate sentence in the present case to be 25 years' imprisonment and 15 strokes of the cane. I sentenced the accused accordingly.

Vincent Hoong
Judicial Commissioner

Tan Wee Hao (Attorney's General Chambers)
for the Public Prosecutor;
Mahadevan Lukshumayeh (Lukshumayeh Law Corporation)
for the accused.
