

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 191

Criminal Case No 8 of 2015

Between

Public Prosecutor

And

Irwan bin Ali

GROUND OF DECISION

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

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Public Prosecutor

v

Irwan bin Ali

[2016] SGHC 191

High Court — Criminal Case No 8 of 2015

Hoo Sheau Peng JC

27–28 January; 3 February 2015; 15–18, 22–24, 28–30 March; 30 May 2016

9 September 2016

Hoo Sheau Peng JC:

Introduction

1 The accused, Irwan bin Ali, a 40 year old Singaporean, claimed trial to the following charge:

That you, IRWAN BIN ALI, on the 26th day of April 2012, at about 2.15 p.m., at Block 160, Simei Road, #02-282, Singapore 520160, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) (“the Act”), *to wit*, by having in your possession for the purpose of trafficking, eleven (11) bundles containing 2520.5 grams of granular/powdery substance, which were analysed and found to contain not less than 52.87 grams of diamorphine, without any authorisation under the Act or the Regulations made thereunder and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Act and punishable under section 33 of the Act, and further, upon your conviction under section 5(1)(a) read with section 5(2) of the Act, you may alternatively be liable to be punished under section 33B of the Act.

2 At the conclusion of the trial, I found that the Prosecution had proved the charge beyond a reasonable doubt against the accused. I found him guilty and convicted him of the charge. 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 the charge is death. Section 33B(1)(a) provides that in prescribed circumstances, the court has a discretion not to impose the death penalty. However, the accused did not satisfy s 33B(2)(b) as the Public Prosecutor did not issue a certificate of substantive assistance. As the alternative sentencing option could not be considered, the sentence of death was imposed. I now provide my reasons for my decision.

The Prosecution’s case

3 By way of overview, the Prosecution’s case was based on the evidence of 30 witnesses, including officers from the Central Narcotics Bureau (“CNB”), analysts from the Health Sciences Authority (“HSA”) and medical doctors. In addition, the Prosecution sought to rely on two statements made by the accused upon arrest to Senior Station Inspector Tony Ng Tze Chiang (“SSI Tony Ng”) of the CNB (“statements made upon arrest”), as well as three statements recorded by the investigation officer Inspector Ong Wee Kwang (“Insp Ong”) of the CNB (“statements made during investigations”). The accused objected to the admissibility of the former but not the latter.

4 Specifically, Defence Counsel indicated that the statements made upon arrest were not made voluntarily for two reasons. First, the accused had been assaulted by the CNB officers at the time of arrest. Second, the accused was suffering from drug withdrawal. Given the nature of the allegations, the Prosecution required many of their witnesses to address them. At an early stage of the trial, pursuant to s 279(1) of the Criminal Procedure Code (Cap

68, 2012 Rev Ed) (“CPC”), the Prosecution applied for an ancillary hearing to be conducted so as to determine the admissibility of these statements. Further, pursuant to s 279(5) of the CPC, the Prosecution applied for any evidence which has been given in the ancillary hearing which would be relevant for the purposes of the main trial to be admissible without the need to recall any of the witnesses to give evidence. Defence Counsel did not object to this approach.

5 Accordingly, the ancillary hearing commenced with SSI Tony Ng taking the stand followed by 20 witnesses for the Prosecution. When the main trial resumed, only Insp Ong and SSI Tony Ng were recalled. In other words, only 11 out of 30 of the Prosecution witnesses gave evidence in the main trial. To facilitate understanding of the case, I will proceed to summarise the key evidence for the main trial (including the relevant evidence imported from the ancillary hearing). In fact, these aspects were largely undisputed. I shall deal with the ancillary hearing from [20] onwards.

The arrest

6 At the material time, the accused lived in a flat at Block 160, Simei Road, #02-282, Singapore 520160 (“the flat”) with his family. On 26 April 2012, at about 2.15pm, 12 CNB officers raided the flat. To gain entry, Station Inspector Larry Tay Chok Chwee (“SI Larry Tay”) and Sergeant Bukhari bin Ahmad (“Sgt Bukhari”) used a piece of equipment known as a hydraulic door breacher to force open the front door. Once it was opened, the CNB officers rushed into the flat.

7 In a bedroom of the flat (“the spare room”), Deputy Superintendent William Tan (“DSP William Tan”), Staff Sergeant Sunny Tay Keng Chye (“SSgt Sunny Tay”) and Senior Staff Sergeant Eugene Eng Chien Loong

(“SSSgt Eugene Eng”) arrested the accused. SSSgt Eugene Eng placed the handcuffs on the accused.

8 Around then, SSI Tony Ng entered the spare room. Meanwhile, DSP William Tan and SSgt Sunny Tay left the spare room to carry out other duties. SSI Tony Ng spoke with the accused. The accused made a statement to SSI Tony Ng (“the oral statement”). Its admissibility is discussed at [20] onwards.

Recovery of the drug exhibits

9 The spare room was searched. From an unlocked cupboard in the spare room, SSSgt Eugene Eng recovered a black bag (“the black bag”). I pause to observe that the black bag, as seen in photograph P14, can be described as a reusable carrier or shopping bag with two long handles and no form of fastenings. Upon inspection, SSSgt Eugene Eng saw that it contained six bundles. He described these as “one bundle of granular substances wrapped partially with black tapes [*sic*] and another five black bundles”. He placed the black bag containing the six bundles (to be collectively referred to as the “drug exhibits”) into an exhibit bag. He handed the drug exhibits to SSI Tony Ng.

10 By then, Staff Sergeant Muhammad Fardlie Bin Ramlie (“SSgt Fardlie”) was already in the spare room. Station Inspector Jason Tay Cher Yeen (“SI Jason Tay”) also entered the spare room. SSgt Fardlie and SI Jason Tay replaced the accused’s handcuffs with restraints. Then, they left the spare room, leaving SSI Tony Ng to record a statement from the accused which was written into his pocket book (“contemporaneous statement”). The challenge as to admissibility is discussed from [20] onwards.

Processing of the scene

11 At about 3.35pm, Insp Ong arrived at the scene. Other officers arrived to process the scene by taking photographs and drawing sketch plans. During this time, the accused remained in the flat.

Return to CNB Headquarters

12 At about 4.12pm, the accused was allowed to speak briefly with his wife. Shortly after, at about 4.16pm, the accused was escorted back to the CNB Headquarters (“CNB HQ”) by Staff Sergeant Chew Thye Kwang Jordi (“SSgt Jordi Chew”), Staff Sergeant Chien Lik Seong Sunny (“SSgt Sunny Chien”), Senior Staff Sergeant Wong Kah Hung Alwin (“SSSgt Alwin Wong”) and SSI Tony Ng. They arrived at the CNB HQ at about 4.40pm, and proceeded to a room known as the exhibit management room.

Medical attention given to the accused

13 At about 5.50pm, the accused was observed to be unwell. Upon the instructions of Insp Ong, the accused was escorted to Alexandra Hospital for medical attention. At about 10pm, Insp Ong instructed the escorting officers via a telephone call to send the accused from Alexandra Hospital to the Changi Medical Centre at Changi Prison (“CMC”) for medical observation. The accused was duly escorted from Alexandra Hospital to the CMC.

Chain of possession of the drug exhibits

14 Meanwhile, in the flat, during the journey to the CNB HQ and in the exhibit management room of the CNB HQ, SSI Tony Ng continued to have possession of the drug exhibits. At about 6.20pm, SSI Tony Ng handed the drug exhibits to Insp Ong for photograph taking. When the five black bundles

were unwrapped, they revealed ten other bundles. After the photograph taking, Insp Ong weighed the drug exhibits and recorded the results in the investigation diary. SSI Tony Ng and SSgt Fardlie witnessed the entire process. Thereafter, the drug exhibits remained in Insp Ong's custody.

Analysis of the drug exhibits

15 On 27 April 2012, Insp Ong handed the 11 bundles to Tan Ying Ying, an analyst with the HSA for analysis. On 2 October 2012, Tan Ying Ying handed the drug exhibits to Woo Ming Shue Michelle, another HSA analyst. Upon analysis, Woo Ming Shue Michelle found 2,520.5g of granular/powdery substance in the 11 bundles which contained not less than 52.87g of diamorphine ("the drugs").

Statements made during investigations

16 On 2 and 4 June 2012, Insp Ong recorded statements from the accused under s 22 of the CPC (collectively the "investigation statements"). On 5 June 2012, Insp Ong recorded a statement from the accused under s 23 of the CPC ("cautioned statement"). These statements were recorded with the assistance of a Malay interpreter, Mohammad Farhan Bin Sani. The accused did not object to their admissibility and they were admitted into evidence. Briefly, in these statements, the accused explained how he came to be in possession of the black bag and what he was supposed to do with it. He denied that he knew that the black bag contained the drugs.

17 To elaborate, in the investigation statement of 2 June 2012, the accused stated that in 2005, he met a person known as "Kumar" when they were both in Changi Prison. Kumar was serving a sentence for "LT-2" (which is a

reference to a drug consumption offence). Kumar was released in 2010. Sometime in 2011, the accused met Kumar by chance again.

18 In early April 2012, the accused was arrested for consumption of drugs. As a result, he lost his job. At around 2pm on 25 April 2012, which was a few days after his release pending further action relating to the consumption of drugs offence, he met Kumar at a coffee shop next to the Simei MRT station. He shared with Kumar that he had just been released, that he had “no work”, and that he “ha[d] a lot of things to pay”. Kumar handed \$100 to the accused, and instructed the accused to meet him that night at 9.30pm at a carpark near the flat. After that, Kumar left.

19 That night, at about 9.30pm, the accused met Kumar at the carpark. He described what happened as follows:

At the carpark, Kumar told me he got something to hand over to somebody and then he handed me a black bag. He told me that once the bag is handed over to the somebody, he, meaning Kumar, would pay me Singapore Dollars \$1000. Kumar told me that the somebody will come to the block which is visible from across my main door at between 4.30 pm to 5 pm on 26 April 2012. Kumar told me the somebody will be staring at my block and I will know that he is the person that I have to hand over the bag to. With the amount he wanted to give me, I was very happy and so I just accepted the deal. I never asked why such a good deal because I was very happy with the amount he wanted to pay me. After taking over the black bag, I took it back to my home and put the black bag inside the cupboard in the spare room. I did not open the black bag to check what was inside the bag from the time I took over the bag until the time I was arrested. I went to sleep and waited for the next day.

Ancillary hearing

The Prosecution's version

20 Turning to the ancillary hearing, I begin with the evidence of the 12 CNB officers. While waiting along the corridor outside the flat, SSgt Fardlie saw the accused standing outside the spare room. He shouted at him not to move. Once the front door to the flat was forced open, DSP William Tan was the first to enter, followed by SSgt Sunny Tay. DSP William Tan pushed the accused into the spare room where he landed on a bed. SSgt Sunny Tay had a shield which he had brought along for the operation to protect the CNB officers against attacks. He used it to pin the accused onto the bed.

21 Meanwhile, SSSgt Eugene Eng and SSI Tony Ng entered the spare room. After SSSgt Eugene Eng placed the handcuffs on the accused, the accused was made to sit up on the bed. There was no assault on the accused. In cross-examination, all four arresting officers – DSP William Tan, SSgt Sunny Tay, SSSgt Eugene Eng and SSI Tony Ng – disagreed with the accused's claim that anyone used a piece of equipment known as a door ram to hit the accused on the head and back through the shield while the accused was pinned onto the bed using the shield.

22 On that day, SI Larry Tay and Sgt Bukhari were tasked to force open the door to the flat. They were in charge of the equipment. Apart from the hydraulic door breacher, Sgt Bukhari brought a door ram with him. However, the door ram was not used at all. After completing their task, SI Larry Tay and Sgt Bukhari returned the equipment to the operation vehicle. They did not enter the flat with the equipment.

23 After the arrest, SSI Tony Ng questioned the accused and obtained the oral statement. It was based on the contents of the oral statement that SSSgt Eugene Eng searched the spare room and recovered the black bag from the cupboard. SSgt Fardlie was carrying the operations bag for the party which contained administrative items required for an operation such as polymer bags, gloves, masks and pens. Upon finding the black bag, SSSgt Eugene Eng requested that SSgt Fardlie enter the spare room to assist by handing the former gloves and a plastic bag to hold the drug exhibits.

24 Meanwhile, after entry into the flat, SSgt Sunny Chien, SSSgt Alwin Wong and Senior Station Inspector David Ng (“SSI David Ng”) proceeded to the kitchen to conduct a search. SI Jason Tay and SSgt Jordi Chew proceeded to the other parts of the flat to ensure that no one else was around. None of these CNB officers entered the spare room. They did not see or hear anyone assault the accused.

25 After the restraints had been placed on the accused, SSI Tony Ng was left alone in the spare room to record the contemporaneous statement. SSI Tony Ng commenced the process at 2.28pm. They were seated on the bed. The accused indicated that he wished to speak in English. He did not have any problems understanding SSI Tony Ng. To start, SSI Tony Ng questioned the accused. SSI Tony Ng then wrote the answers. He recorded everything the accused wished to say. After that, he went through with the accused all that was written. Where amendments had to be made, SSI Tony Ng informed the accused of the issues, explained them to him, and asked him to acknowledge the amendments by signing near the written amendments. SSI Tony Ng would also append his own signature to any such amendments. SSI Tony Ng further stated that there was no threat, inducement or promises made to the accused before or during the recording of the contemporaneous statement. The accused

gave his statement voluntarily. At about 2.45pm, which was about 20 minutes later, the process ended.

26 While in the flat, the CNB officers observed the accused displaying involuntary movements, described as twitching, jerking and spasms, of the face, head, upper limbs and body. However, the accused was able to understand instructions, such as the instructions given when restraints were placed on him by SSgt Fardlie and SI Jason Tay. As they left to return to the CNB HQ, instructions were given to the accused by the escorting officers, to walk from the flat to the operation vehicle and to sit properly in the operation vehicle. Again, he was able to comply with those instructions.

27 More importantly, SSI Tony Ng (who had about 23 years of experience with the CNB up till the time of the trial) said that it was only after he finished recording the contemporaneous statement that he realised that occasionally, the accused would twitch. By twitch, he meant that the accused would sway his head from side to side. However, he did not observe any typical drug withdrawal symptoms in the accused. In cross-examination, SSI Tony Ng stated that he did not think that the accused was unwell.

28 Thereafter, the CNB officers continued to observe the accused displaying these involuntary movements, which worsened when he was at the CNB HQ. According to Insp Ong, at 5pm, while the accused was waiting in the exhibit management room, he became agitated and aggressive. He had more random spasms. Thus, the accused was brought to Alexandra Hospital for medical attention and then later to the CMC. I will deal with the evidence of the medical doctors later. I proceed next to the accused's account.

The accused's version

29 According to the accused, he was already in the spare room when the door to the flat was forced open. The CNB officers rushed in to arrest him. They pinned him down onto the bed using a shield, with his face downwards. The shield covered the whole of the back of his head and his body (down to his waist area). Then, the accused felt someone hit him from behind with a hard object through the shield. He was hit more than once, and these blows landed on the back of his body and head through the shield. He could not be sure who hit him. At first, the accused said that he could not be certain of the hard object used. Then, he said that the door ram was brought into the spare room and that it was used to hit him.

30 The accused felt pain on his shoulder and back of his head. While he was being assaulted, many CNB officers entered the spare room. They ransacked it. One of them took out the black bag from the cupboard. After his hands were handcuffed, the CNB officers sat him up. One of the officers held onto the black bag, and another took out the “things in the bag”. From among the CNB officers who came to court to testify, the accused identified the latter to be SSgt Fardlie.

31 SSgt Fardlie then removed the contents from the black bag in order to put them into a plastic bag. He said to the accused, “*Banyak engkau punya heroin*”. Translated, this meant “[t]his is your heroin”. Specifically, the accused said that SSgt Fardlie took out “five black things” and “a transparent plastic, a --- brown in colour”. Then, the CNB officers made him sit on the bed. He made the oral statement after he was told by SSgt Fardlie that drugs had been recovered. After the CNB officers restrained him, the contemporaneous statement was recorded from him.

32 The accused provided a history of his drug consumption habits. From sometime in his teens, he started taking heroin. On 4 April 2012, he was arrested for consumption of drugs and other charges. He last consumed heroin earlier that day. He was released on bail for the earlier charges, and he referred to this status as “release from pending”.

33 At the time of the arrest, he was already feeling pain in his body, legs and hands. He felt more pain when the CNB officers hit him. Also, he felt scared. His mind was more disturbed after they showed him what they had found and told him that it was heroin. He thought about his family and financial problems. In that state, he made the statements. The accused explained that as a drug addict, when he stopped consuming drugs, during the first stage, he would suffer drug withdrawal symptoms. Then, after the withdrawal symptoms had subsided, he would feel pain. He contended that the statements were not made voluntarily.

Medical evidence

34 I now move to the medical evidence on the condition of the accused and drug withdrawal generally, as provided by three witnesses for the Prosecution and one for the Defence.

35 First, Dr Gary Choa Peng Hui (“Dr Choa”) examined the accused at the Alexandra Hospital on 26 April 2012 at about 6.33pm. Dr Choa noted that the accused had “involuntary jerking movements of [the] face, lips and [limbs]”. He diagnosed this as “myoclonus”, a term used to describe such symptoms which may arise from multiple causes including as a side effect to medication. At the time, the accused “was alert and able to converse”. Dr Choa has only examined patients with alcohol withdrawal, and not drug withdrawal symptoms. Nonetheless, he said that the presentation would be

similar. Typically, the patient is agitated and irritable. There may be sweating, fast heartbeat and high blood pressure. The accused did not display such signs. No injuries were noted. He did not recall the accused volunteering any information that he had suffered any injuries or that he was assaulted in any way.

36 In cross-examination, Dr Choa was referred to his advice to the CMC that “[the] patient [was] to be referred to Institute of mental Health for management of substance abuse”. This was partly based on the history given to him (that the accused was arrested for suspected consumption of heroin) and partly based on the jerking movements he had observed. Dr Choa considered the jerking movements to be symptoms of withdrawal.

37 Next, I set out the evidence of Dr Sit Kwok Hung (“Dr Sit”), who was subpoenaed as a witness for the Defence. Dr Sit attended to the accused at the CMC in the early hours of 27 April 2012. In his medical report of 13 June 2012, Dr Sit stated that “[m]oderate drug withdrawal diagnosis was made”. Dr Sit arrived at this diagnosis because the accused was slightly cold (with a body temperature of 36.2 degrees centigrade), he was twitching and shaking, and his pupils were dilated and non-reactive to light. When asked about the mental state of a person having moderate withdrawal symptoms, Dr Sit replied that it is a form of physical withdrawal. Persons with withdrawal symptoms do not suffer from cognitive defects, but are affected physically. He was of the view that the accused was feeling pain, but was not in a position to comment on whether he would have been affected psychologically or emotionally.

38 In cross-examination, Dr Sit stated that in coming to his diagnosis, he also took into account the fact that the accused also had some slurring of speech and an unsteady gait. He described the accused’s movements as a type

of movement known as “tardive dyskinesia”. He disagreed with Dr Choa that the movements were “myoclonic”. During the medical examination, the accused was able to understand him, and Dr Sit was able to understand the accused. He replied relevantly to Dr Sit’s queries. His cognitive ability remained.

39 Third, Dr Jaydip Sarkar (“Dr Jaydip”), a consultant at the General and Forensic Psychiatry Department of the Institute of Mental Health (“IMH”), examined the accused at the CMC on 10 and 18 May 2012 for a psychiatric assessment. In his medical report of 23 May 2012, Dr Jaydip noted that the accused had reported that “he had abnormal movements at the time of his arrest”. These abnormal movements are jerky movements of the limb and face, which were visible to Dr Jaydip. The accused said that he experienced them from about a week or so prior to the time of the arrest. In Dr Jaydip’s view, these were not consistent with drug withdrawal symptoms. However, Dr Jaydip noted that the accused was “tremulous excessively during [the] first visit”, although these had “subsided to a negligible level during the second visit”. These were fine tremors of the entire body which were different from the jerking movements. The accused was also sad. Based on these observations, and the accused’s reports of depression, anxiety and insomnia, Dr Jaydip opined that the accused was “experiencing *prolonged* withdrawal symptoms of heroin dependence” [emphasis added].

40 Finally, Dr Guo Song (“Dr Guo”), a Senior Consultant Psychiatrist, and Head of Research with the Addiction Management Service, IMH, was called as a rebuttal witness by the Prosecution to provide expert evidence on heroin withdrawal.

41 Dr Guo explained that heroin withdrawal refers “to a group of symptoms that ... turn up about ... 4 to 12 hours ... after the last use of heroin”. They become “gradually severe over time”, until they reach their peak on the third or fourth day. Then, the “severity of the symptoms” will “decrease” over time, until the seventh to tenth day. This is referred to as the “acute withdrawal” phase. After that, another group of symptoms, called the “prolonged withdrawal or protracted withdrawal or chronic withdrawal” will set in. These last for a very long time, up to months or years.

42 The criteria for a diagnosis of “acute withdrawal” are set out in the *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association, 5th Ed, 2013) (“DSM-5”), an extract of which was furnished as an exhibit (marked P90). The nine symptoms listed are dysphoric mood, nausea or vomiting, muscle aches, lacrimation (*ie*, tearing of the eyes) or rhinorrhea (*ie*, runny nose), pupillary dilation, piloerection (*ie*, bristling of hairs on the skin) or sweating, diarrhoea, yawning, fever, and insomnia. To make a diagnosis of withdrawal, at least three of the symptoms must be present.

43 Having heard the evidence on the manner in which the accused was behaving after he was arrested on 26 April 2012, his drug consumption habits prior to his arrest and his account of the events on 26 April 2012, as well as having examined the medical records at the material time, Dr Guo did not find any typical withdrawal symptoms.

44 Referring to Dr Sit’s diagnosis that the accused was suffering from “moderate drug withdrawal”, Dr Guo disagreed. While pupillary dilation is a sign of withdrawal, Dr Guo noted that this was not recorded in Dr Sit’s medical notes at the time of the accused’s examination at the CMC on 27 April 2012. The medical notes only stated that the accused had a poor reaction

to light. Nonetheless, in his eventual medical report on 13 June 2012, Dr Sit said that there was pupillary dilation. As for incoherent speech and unsteady gait, Dr Guo did not consider these to be signs of withdrawal. In respect of the twitches, spasms and jerks observed, Dr Guo was unable to clearly provide the medical cause for the movements. However, he was certain that these were not the symptoms of heroin dependence. Dr Sit's description of the accused's movements as a type of movement known as "tardive dyskinesia" helped Dr Guo to understand the movements. He opined that this type of movements would not be considered a sign of heroin withdrawal. While Dr Guo did not disagree with Dr Choa's descriptive diagnosis of the jerking movements as "myoclonus", again, he disagreed that such movements are features of heroin withdrawal. Instead, they might be symptoms from alcohol or benzodiazepines (sleeping pills) dependencies.

45 Turning to chronic withdrawal, Dr Guo stated that the symptoms include anxiety, dysphoria and anhedonia (which means the inability to feel happiness), insomnia and pain. Dr Guo testified that the pain described by the accused could be a symptom of chronic withdrawal. The agitation the accused felt at the CNB HQ could also be a sign of chronic withdrawal. Given the accused's evidence that he had not consumed drugs since 4 April 2012, which was about two to three weeks before the arrest, the accused might have been going through some chronic withdrawal at the material time.

46 However, even if the accused was suffering from chronic withdrawal at the time of his arrest on 26 April 2012, these symptoms would not affect cognitive function, judgment or the capacity to think. Dr Guo pointed to the fact that the accused did not have any problems remembering what happened in the flat, including talking to his wife. In the flat, he could comply with instructions of the CNB officers. When the accused was at Alexandra

Hospital, he was oriented and alert. Further, in Dr Guo's opinion, for heroin dependence, no matter how severe the symptoms are, cognitive function would not be affected. Delirium is not a feature of heroin withdrawal. It is associated with withdrawal from alcohol and benzodiazepine.

The law on voluntariness of statements

47 The law concerning voluntariness of an accused's statements is well settled, and not contested by the parties. To constitute a threat, inducement or promise rendering a statement involuntary, there must objectively be a threat, inducement or promise, and this must subjectively operate on the mind of the particular accused: *Abdul Malik bin Abdul Jamil v PP* [2002] 1 SLR(R) 591 at [17]; *Public Prosecutor v Ng Pen Tine and another* [2009] SGHC 230 at [18]. In respect of an allegation of drug withdrawal, the relevant test is that to render a statement involuntary, an accused must be in a state of near delirium, such that his mind did not go with the statements he was making: *Garnam Singh v Public Prosecutor* [1994] 1 SLR(R) 1044 at [31]. The burden falls on the Prosecution to prove beyond a reasonable doubt that a statement has been made voluntarily.

Submissions

48 In relation to the allegation of assault, the Prosecution submitted that the CNB officers were credible and consistent. Any inconsistencies, if any, were immaterial. Also, minor inconsistencies were to be expected, given the passage of time from the time of the offence to the trial. Turning to the accused's version, the Prosecution submitted that it was unbelievable. The medical evidence did not support his allegation, as there were no injuries on him. There were numerous opportunities for the accused to inform the medical doctors about the assault, but he failed to do so without any credible reasons.

As for the allegation of drug withdrawal, the Prosecution highlighted that Dr Guo's evidence should be preferred over that of Dr Sit. In any case, Dr Sit also conceded that the withdrawal symptoms would not affect the accused's cognitive ability. In these circumstances, the Prosecution argued that the statements made upon arrest were furnished voluntarily by the accused.

49 In response, Defence Counsel highlighted that the accused had been consuming heroin for a very long time. According to Dr Sit, the accused was suffering from moderate withdrawal. Such evidence should be accepted over that of Dr Guo who did not examine the accused. As the accused was agitated, in pain and troubled, he was not able to focus and concentrate. His thinking was affected. He would have wanted the process to be completed quickly. In fact, he simply echoed what was said to him by SSgt Fardlie. As for the allegation of assault, Defence Counsel pointed out that there were inconsistencies in the evidence of the CNB officers. Defence Counsel urged the court to accept the accused's version of the events. As such, the statements should be ruled inadmissible.

Findings

Allegation of assault

50 On the allegation of assault, I accepted the evidence of the CNB officers that there was no assault on the accused. DSP William Tan and SSgt Sunny Tay were upfront about the fact that the latter had used a shield to pin the accused onto the bed. They explained that there was some resistance from the accused. Both were clear that there was no assault, particularly one using a door ram on a shield placed over the head and body of the accused. In fact, SSgt Sunny Tay explained that he avoided using the shield on the accused's head to prevent causing the accused any injury, and in order for the accused to

hear him. Similarly, SSSgt Eugene Eng and SSI Tony Ng testified that there was no assault. The evidence of these four CNB officers was bolstered by the evidence of SSgt Bukhari and SI Larry Tay who refuted the claim that the door ram was brought into the flat.

51 Admittedly, there were inconsistencies in the evidence of the CNB officers. I set out some instances. Save for SSgt Fardlie, none could remember whether he shouted out to the accused. SSSgt Eugene Eng and SSI Tony Ng could not recall who used the shield. SSI Tony Ng was not sure whether the drug exhibits were placed in one or two plastic bags. Further, apart from SSgt Bukhari and SI Larry Tay, no other CNB officers could really remember whether the door ram was brought along for the operation, and if so, who did so. In my view, the differences were immaterial and did not affect the credibility of the witnesses. As submitted by the Prosecution, the human fallibility in observation, retention and recollection is both common and understandable: *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR 45 at [82]. It is true that the CNB officers could not recall all the details of the raid, especially what other officers in the raiding party did. I found this reasonable, given that there were 12 of them carrying out multiple activities quickly and simultaneously. Indeed, it seemed to me that the CNB officers did not collude by ensuring that their evidence would be perfectly consistent in all aspects. Instead, each testified with more certainty with regards to his own role. They were reliable witnesses.

52 By contrast, I found the accused's account of the assault unbelievable for the following reasons. First, in cross-examination, the accused said that he rated the degree of pain he felt as being seven to eight on a 10-point scale. Despite the alleged pain caused, he claimed that he controlled himself and did not let out any cries of pain or for help.

53 Second, given the alleged use of a heavy door ram on the head and body region causing a great degree of pain, it was surprising that the accused did not suffer any injuries at all. It was not disputed that the shield was less than one cm thick while the door ram weighed about 15 kg. I appreciated that Dr Choa testified that it was possible that no injuries would be sustained because the force would be diffused across the surface of the shield. However, I noted that when he testified, Dr Choa was not informed of the degree of pain the accused claimed to have experienced. In any case, even if I were to accept Dr Choa's evidence, I considered this possibility remote. I found it unlikely that the accused would be completely unscathed after such an assault, especially on the head region.

54 Third, considering the physical attributes of the shield and the door ram, the accused's account was fairly implausible. It was not disputed that the shield measured 50cm in length by 35cm in width (as shown in photographs P80 and P82). It would not have covered the accused from his head to his waist as he alleged (which was measured to be around 64cm). Further, there would be considerable difficulty in carrying out an assault in the manner described. To use the shield, there is a 10cm-long handle which is in the middle of the top half of the shield (as shown in photograph P83). Meanwhile, the door ram measured about 10cm in diameter (as shown in P67) and weighed about 15 kg. It would have been fairly unmanageable for one person to handle both the shield and the door ram to carry out the assault with such force. For one person to hold onto the handle (or any other part of the shield) so as to press the shield down on the accused, there would not be very much surface area left on the shield for another person to rain blows onto it with a door ram. Given the limited space left on the shield, it would be rather difficult for the person holding the door ram to manoeuvre himself so as to hit both the head and the body of the accused while avoiding the other person.

55 Fourth, and most importantly, it was telling that the accused did not complain to any of the medical doctors about the assault. Apart from the four doctors mentioned above, I should add that the accused was also examined by Dr Lim Hock Hin (“Dr Lim”), a medical officer attached to Healthway Medical Group Pte Ltd, on 5 June 2012 (for the medical examinations before and after the recording of the cautioned statement). A year later, he was examined by Dr Stephen Phang (“Dr Phang”), a Senior Consultant at the General and Forensic Psychiatry Department of IMH, on 10, 13 and 17 June 2013 for a further psychiatric assessment. He did not tell either about the alleged assault.

56 The accused explained as follows. When he was examined by Dr Choa and Dr Sit, there were CNB officers present. When he was examined by Dr Lim, the CNB officers were not around. However, he was still in the CNB HQ and did not wish to complain. He did not tell Dr Jaydip or Dr Phang because he did not want to be kept longer at the CMC by the former or be referred back to the CMC by the latter. In my opinion, these explanations were not convincing at all. Despite the many opportunities to raise the matter, the accused failed to do so. This strongly suggested that the allegation was but an afterthought, and significantly affected the credibility of the accused. By the foregoing reasons, I dismissed the accused’s allegation of an assault.

Allegation of drug withdrawal

57 On the allegation of drug withdrawal, there were differences in opinion among the medical doctors. On the one hand, Dr Sit diagnosed the accused to be suffering from moderate drug withdrawal. Also, Dr Choa claimed that he suggested a referral to IMH for management of substance abuse partly on the basis that he thought the jerking movements were a form of drug withdrawal

symptoms. On the other hand, Dr Guo opined that the accused was not suffering from acute drug withdrawal, but at most from chronic drug withdrawal. Dr Jaydip shared Dr Guo's view that the accused was suffering from prolonged drug withdrawal.

58 Given the contradictory positions, I started by reviewing the factors considered by Dr Sit and Dr Choa in arriving at their opinions. To reiterate, both Dr Choa and Dr Sit considered the jerking movements to be withdrawal symptoms. While Dr Choa did not see any other physical signs, Dr Sit also relied on the accused's temperature, pupil dilation, unsteady gait and slurred speech to arrive at his diagnosis. Commenting on these factors, Dr Guo opined that the jerking movements, however described, were not symptoms of drug withdrawal. Also, Dr Guo disagreed that the unsteady gait and slurred speech should be taken into account. In this regard, Dr Guo referred to DSM-5 which classified the nine symptoms of acute drug withdrawal. Also, according to Dr Guo, at the minimum, three out of the nine symptoms must be observed before a diagnosis may be made of drug withdrawal.

59 Having assessed the evidence, I found Dr Guo's position cogent and credible, and adequately backed up by the literature. I accepted that the jerking movements did not constitute a symptom of drug withdrawal (particularly acute drug withdrawal). I appreciated that Dr Guo did not examine the accused. However, I noted that Dr Jaydip who examined the accused also did not consider the jerking movements to be a symptom of drug withdrawal. Even giving full account to what Dr Choa and Dr Sit observed to be the condition of the accused, there appeared to be no basis to diagnose drug withdrawal (in the acute phase). Apart from the jerking movements, Dr Choa did not observe any other signs of withdrawal. As for Dr Sit, the symptoms he finally relied on to arrive at his diagnosis (such as slurred speech and an

unsteady gait) did not fall within those in DSM-5. It appeared to me that there were insufficient symptoms for Dr Sit to arrive at his diagnosis.

60 Next, I tested the evidence of the three witnesses in the light of what the accused said, and it appeared to me that the accused's evidence was very much in accord with what Dr Guo testified. The accused stated that he last took drugs on 4 April 2012. He further stated that as a drug addict, when he stopped consuming drugs, during the first stage, he will suffer drug withdrawal symptoms. Then, after the withdrawal symptoms had subsided, he would feel pain. In my view, the accused conceded that he was not suffering from acute withdrawal, but from chronic withdrawal. Indeed, by the date of the arrest, the accused should have gone well past the period for acute withdrawal symptoms. Thus, I did not accept the evidence of Dr Sit that the accused was suffering from "moderate drug withdrawal", in the sense that the accused was suffering from "acute withdrawal" of a moderate intensity.

61 Third, I turned to consider the experience and qualification of the three witnesses. Among them, Dr Guo is clearly the expert in the field of drug withdrawal, with formal qualification (including a master's degree in psychiatry and PhD in psychopharmacology) and relevant experience treating drug withdrawal patients. While Dr Sit had considerable experience treating drug addicts in the course of his work, he did not have any formal qualification in the field, and did not provide the literature to support his views. Dr Choa had not seen any patients with drug withdrawal before.

62 For the three reasons discussed above, I preferred Dr Guo's evidence over that of the other two witnesses. I accepted that the accused was suffering only from chronic drug withdrawal.

63 Be that as it may, the more critical question is the effect of such chronic drug withdrawal on the accused. Significantly, notwithstanding the disagreements between Dr Guo and Dr Sit, it was the consistent evidence of both witnesses that drug withdrawal would not affect the cognitive function of the accused. Further, Dr Guo clarified that it would not affect a person's judgment or his capacity to think. Indeed, it was the observation of SSI Tony Ng that during the recording of the statements, the accused could understand him. The accused could answer his questions. This was also consistent with the evidence of the other CNB officers that the accused could follow their instructions while in the flat. In fact, the accused admitted that while in the flat, he was orientated as to time, space and his surroundings. He agreed that whatever SSI Tony Ng asked him, he could answer.

64 I appreciated that the accused might have been experiencing pain or discomfort from drug withdrawal. I also considered that he might have been fearful because of the arrest and worried about his family and financial problems. However, there was no sign that he was so overcome by these feelings and emotions that he was not in the state of mind to make the statements. As for the submission by Defence Counsel that the accused simply wanted the process to be over and done with, I noted that this was not the accused's evidence. In any event, the oral statement was made quickly, and the contemporaneous statement was recorded over only 20 minutes. The process for recording either was not long and arduous as to require sustained focus and concentration by the accused. It seemed to me obvious that the accused was not in such a state that his mind did not go with the statements.

Statements made upon arrest

65 In light of the foregoing, I found that the Prosecution has proved beyond a reasonable doubt that the statements made upon arrest were made voluntarily. There was no assault. The accused was not in a state of near delirium such that his mind did not go with the statements. Accordingly, I admitted both statements into evidence. I should add that I accepted the evidence of the Prosecution witnesses that the black bag was not recovered as a result of a random search, and that SSgt Fardlie did not say to the accused “*Banyak engkau punya heroin*” after recovering the black bag. Nonetheless, these aspects also pertained to the weight to be accorded to the contents of the statements made upon arrest. Therefore, I indicated that I would consider these matters afresh in the main trial.

66 Essentially, in the statements made upon arrest, the accused admitted that he knew about the heroin. The contemporaneous statement was recorded in question and answer form as follows:

Q1: What language do you choose to speak with me?

Ans: English can.

Q2: Did I asked [sic] you any question after your arrest?

Ans: Yes.

Q3: Did I asked [sic] you do you have anything to declare?

Ans: Ya actually yes.

Q4: What did you answered [sic]?

Ans: Yes.

Q5: Did I asked [sic] you what is the thing you going to declare and how many?

Ans: I answered “*Banyak*” and “*Heroin*.”

Q6: Did I asked [sic] you at where?

Ans: I said cupboard.

Q7: Did I asked [sic] you inside the cupboard where?

Ans: I said inside the black bag.

Q8: Recorder's note: [the accused] was shown the sealed plastic bag that contains the said black bag and total of 5 black wrapped bundles and 1 clear plastic bag containing granular substances and I asked: "All these things that you mentioned is belongs [sic] to whom?"

Ans: I just deliver all these things.

Q9: What is inside the 5 black tape wrapped bundles?

Ans: It is the same with the clear plastic bag all heroin.

Q10: That means from what you said all these heroin were meant for delivery by you?

Ans: Yes.

Q11: Does it belongs [sic] to you?

Ans: No. I only know it belongs to this person I call him Kumar and I only help him to deliver.

Q12: Do you have any Kumar contact number?

Ans: No.

67 SSI Tony Ng confirmed that questions 1 to 7 and the answers thereto formed the oral statement, being the conversation that took place after the arrest when he questioned the accused.

The defence

68 At the close of the Prosecution's case, the accused was called upon to provide his defence. The accused was the only witness. He provided an account consistent with that provided in the investigation statements set out at [16] – [19] above. I shall only provide some additional details.

69 The accused was working as an assistant to a caterer. He lost his job after he was arrested in early April 2012. His wife is a nurse. They have three school-going children.

70 The accused recounted how he met Kumar by chance on 25 April 2012. After Kumar left, the accused remained at the coffee shop, hoping to meet other friends to ask them about possible jobs. He met a Chinese friend named Ah Choo and chit-chatted with him for a while. He then went home. Around 9pm, the accused met Kumar at the void deck of the flat. Kumar tasked him to pass a bag to an unknown person for \$1,000. The accused was happy to be promised \$1,000 and jumped at the offer. He took the bag from Kumar, brought it up to the flat and placed it inside the cupboard.

71 On 26 April 2012, the accused entered the spare room sometime in the afternoon, after he sent his second daughter to school. He sat down on the bed. He said his prayers and waited for the afternoon when he was supposed to pass the bag so that he could get \$1,000. He did not open the bag because Kumar informed him not to. Besides, the bag was not his. He was not curious to find out what was inside the bag. When he looked at the bag, there was nothing for him to be suspicious about. The handles of the bag were tied together. He could not see inside the bag.

72 While he was saying his prayers, he heard a very loud sound. He stood up. Then, the CNB officers rushed in and arrested him. The accused then provided his account of the assault, the random search of the spare room by various CNB officers, what SSgt Fardlie said to him while showing him the six bundles which caused him to make the admissions. This was consistent with his evidence during the ancillary hearing. Further, the accused said that prior to that, he had not seen the bundles before. He has never seen heroin in the solid form. To him, heroin was in a powdery form.

73 At the time, the accused was shocked, sad and in pain. He could not think. He was suffering from withdrawal, and his body was in pain. To him,

there were two stages of withdrawal. When he used the term “*gian*” in Malay or “craving”, he meant the first phase of withdrawal. The effects of this addiction would be “watery eyes, running nose, yawning, vomiting, diarrhoea, difficulty to sleep [*sic*], unable to eat and drink, agitated”. For the second phase, he would feel bodily pain. At the time of the arrest, he did not have the first phase of withdrawal. He experienced pain. He did not have any record for trafficking or possession of drugs. With that, I turn to the applicable law.

The law

74 The relevant provisions within the MDA constituting the charge read:

Trafficking in controlled drugs

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

By s 2 of the MDA, “traffic” is defined to include “deliver”.

75 In *Muhammad Ridzuan bin Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Muhammad Ridzuan*”), the Court of Appeal held at [59] that the elements to establish a charge of trafficking under s 5(1)(a) of the MDA are (i) possession of a controlled drug; (ii) knowledge of the nature of the drug; and (iii) proof that possession of the drug was for the purpose of trafficking which was not authorised.

76 In relation to possession and knowledge, there are rebuttable presumptions within the MDA as follows:

Presumption of possession and knowledge of controlled drugs

18.—(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

...

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(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.

77 If the prosecution is able to rely on the presumption of knowledge within s 18(2) of the MDA, the burden is placed on an accused to prove, on a balance of probabilities, that he did not know or could not reasonably be expected to have known, the nature of the controlled drug found in his or her possession. An accused would not be able to rebut the presumption by a mere assertion of his lack of knowledge had he been wilfully blind as to the nature of the drugs: see *Muhammad Ridzuan* at [75].

Closing submissions

78 In their written submissions, the Prosecution argued that it was not seriously disputed that the accused was in possession of the drugs, and that he was in possession of the drugs for the purpose of delivering the drugs to someone, *ie*, for the purpose of trafficking. Therefore, the first and third elements had clearly been proven beyond a reasonable doubt. In any event, the Prosecution would rely on the presumption within s 18(1) of the MDA to prove possession of the drugs, which has not been rebutted by the accused. The real contention centred on the *mens rea* of the charge. Relying on the statements made upon arrest that he knew that the black bag contained heroin, the Prosecution contended that the accused knew the nature of the drugs.

Alternatively, the Prosecution relied on the presumption within s 18(2) of the MDA that the accused knew of the nature of the drugs. Given the facts and circumstances of the case, the Prosecution then submitted that the accused had failed to rebut the presumption of knowledge of the drugs on a balance of probabilities.

79 Defence Counsel provided written submissions, as well as reply written submissions. In the written submissions, Defence Counsel contended that there were three disputes of fact (at [10]):

- a) Whether the premises was searched and the black bag marked as P36 containing drugs were recovered by the CNB officer prior to the recording of the contemporaneous statement marked as P21 given by the accused at the point of arrest or whether the Accused pointed out to them the black bag or it was the CNB officers who retrieved the bag and showed it to the Accused.
- b) Whether the ownership of [the black bag] was established.
- c) Whether the accused has any knowledge of the content inside [the black bag].

80 Defence Counsel argued that in relation to the recovery of the drugs, the accused's version should be preferred over that of the Prosecution witnesses. The statements made upon arrest were given by the accused *after* the CNB officers recovered the drug exhibits on their own, and *after* SSgt Fardlie told the accused that the black bag contained heroin. At [33] of their written submissions, Defence Counsel also stated that the accused was labouring under withdrawal symptoms. The symptoms affected his thought processes because he was in pain. A person seized by pain would try to escape from the recording to look for comfort or a cure. The truth of the statement should be doubted. Therefore, the court should be slow to rely on the contents of the statements made upon arrest.

81 At [19] and [21] of the written submissions, Defence Counsel contended that the investigation was “incomplete” in that “the identity of Kumar” and “the actual ownership of the black bag” were not established so as to prove the *mens rea* of the accused.

82 Finally, Defence Counsel contended that that the accused had maintained throughout his investigation statements, the cautioned statement and at the trial that he did not know that the black bag contained the drugs or that he knew the nature of the drugs. He merely received the black bag from Kumar, and was instructed to pass it to someone else. Defence Counsel urged the court to accept the accused’s defence of lack of knowledge. Further, the accused had “no reason to suspect anything was amiss at any point in time”. The presumption of knowledge had been rebutted on a balance of probabilities.

Decision

83 Upon a review of the accused’s evidence, and the closing submissions of the parties, it seemed evident that there was no denial of the first and third elements of the charge. In relation to the first element of possession of the drugs, the accused admitted that he had received the black bag with the contents from Kumar, and had then placed the same in the cupboard in the spare room of the flat prior to the intended delivery. I found that the accused was in possession of the drugs. Alternatively, I found that he was in possession of the black bag, and therefore presumed under s 18(1) of the MDA to be in possession of the drugs. The accused did not seek to rebut the presumption on a balance of probabilities. As for the third element of possession for the purpose of trafficking, the accused admitted that Kumar instructed him to deliver the black bag with the contents to an unknown

person. The accused was clearly not authorised to deliver the drugs. The accused was in possession of the drugs for the purpose of trafficking which was not authorised.

84 The bone of contention was whether the accused had knowledge of the nature of the drugs. To prove knowledge, the Prosecution relied on the admissions in the statements made upon arrest. Defence Counsel contended that the accused merely repeated what was said to him by SSgt Fardlie. Upon analysis of the evidence, I rejected the version of the accused.

85 First, apart from SSgt Fardlie, SSI Tony Ng and SSSgt Eugene Eng denied that the words were said by SSgt Fardlie to the accused. Further, they confirmed that it was only after the accused confessed to SSI Tony Ng that SSSgt Eugene Eng searched the cupboard which led to the recovery of the black bag. SSgt Fardlie did not conduct the search. The other CNB officers testified that they did not enter the spare room, while DSP William Tan and SSgt Sunny Tay had left the room by then. Therefore, there was no random search of the spare room by a group of CNB officers. On the credibility of the CNB officers, I refer to my discussion at [51]. In particular, I reiterate that I found that the CNB officers were forthright as they did not seek to align all aspects of their evidence. Specifically, I found the evidence of SSI Tony Ng, SSgt Fardlie and SSSgt Eugene Eng relating to the search and recovery of the drugs reliable.

86 Second, I observed that the accused did not mention his version of the events when he could have done so earlier. At [3] of the investigation statement of 2 June 2012, the accused agreed that while in the spare room, he was questioned “Where is the thing[?]” Then, he answered, “In the cupboard”. At that time, the accused did not inform Insp Ong of what SSgt Fardlie

purportedly said and did. Again, he did not mention these aspects concerning the search and recovery of the drugs to Insp Ong during the recording of the investigation statement of 4 June 2012 and the cautioned statement on 5 June 2012. It seemed to me that his complaint at the trial was a mere afterthought to strengthen his defence. In this regard, it was also my assessment that the accused had not been truthful about the other aspects of what happened during the arrest.

87 Given my rejection of the accused's account, I found that the contents of the statements made upon arrest came entirely from the accused, and were not based on information fed by the CNB officers. Nonetheless, I considered whether in the light of the condition of the accused, the reliability of the contents of these statements should be doubted. I noted that throughout 25 and 26 April 2012, the accused was in pain but he went about his daily obligations. This included chatting with Kumar and Ah Choo, and then attending to his children. The accused also said that he could understand SSI Tony Ng, and he could answer the questions asked. Therefore, I saw no reason to doubt the veracity, accuracy and reliability of the statements. The accused fully understood what he was saying. Full weight should be accorded to the admissions.

88 Based on the admissions, there is no question that the accused knew that the black bag contained heroin. At this juncture, I deal with the Defence Counsel's argument that there was inadequate investigation as to the identity of Kumar and who owned the drugs. I had some difficulty understanding the relevance of this argument to the *mens rea* element, or indeed to any other element of the charge. Ownership of the drugs was irrelevant to the present offence. Traffickers need not be owners of the drugs in question. The failure to identify Kumar did not prejudice the accused. It was not the Prosecution's

case that the accused owned the drugs, and the Prosecution did not dispute that the accused was tasked by Kumar to deliver the drugs.

89 While the above would be sufficient to determine the case, I address the Prosecution's alternative position. Essentially, the Prosecution relied on the presumption of knowledge of the nature of the drugs within s 18(2) of the MDA, and contended that the accused had failed to rebut the same on a balance of probabilities. Having reviewed all the facts and circumstances, I agreed with the Prosecution. Defence Counsel's submission that there was no reason for the accused to suspect that anything was amiss was without merit.

90 First, the accused had been consuming drugs, especially heroin, for many years. Although he claimed to consume heroin in a powdery form, and had not seen it in solid form, he admitted in cross-examination that heroin is brown. He might not have been involved in trafficking drugs previously. However, he was not innocent as to dealings in drugs.

91 Second, the accused knew Kumar from his prison days. The accused was referred to the investigation statement of 4 June 2012, where he said "I think [Kumar] was inside the prison for *trafficking* as well as LT2" [emphasis added]. He explained that he assumed this because Kumar was serving a long sentence. While he chose to distance himself from what he said in the statement, it was clear that the accused had some basis to think that Kumar was in prison previously for trafficking in drugs. Outside of prison, the accused did not know what Kumar did. He did not know Kumar well. There was every reason for him to be cautious in his dealings with Kumar.

92 Moreover, the accused fully appreciated that he was offered a good deal. For a simple task of handing over the black bag, he would be paid

\$1,000. In cross-examination, he said that the sum of \$100 which Kumar gave him when they met at the coffee shop on 25 April 2012 would be equivalent to about two weeks of his contributions towards household expenses because he contributed \$60 per week. To him, \$1,000 was a lot of money. It was about half a month's pay as a catering assistant. By the accused's own yardstick, the transaction was suspicious.

93 Despite these surrounding circumstances, the accused did not ask Kumar any questions. After he got the black bag, he did not check its contents. While the handles of the black bag might have been tied up, it was not secured in any other way. Further, one package was partially wrapped. It would have required little effort on the accused's part to check on the contents within the black bag. There was ample time and opportunity. The accused failed to do so. The accused explained that he was afraid that if he were to ask Kumar questions, Kumar would cancel the deal. If he were to open up the bag to check its contents, he might be found out and he might not be paid. Also, Kumar told him not to open the black bag. In my view, these were but excuses. The accused had no basis to think that merely asking what was in the black bag would cause Kumar to cancel the deal. There was nothing to suggest that anyone would have been able to tell that the accused had looked inside the black bag.

94 Taking into account the matters in [90] – [93], the accused had not proved, on a balance of probabilities, that he did not know or could not reasonably be expected to have known, the nature of the drug found in his possession so as to rebut the presumption of knowledge. The mere assertion of lack of knowledge did not suffice. The Prosecution had proved the charge against the accused beyond a reasonable doubt. Accordingly, I convicted him of the charge.

Sentence

95 By s 33(1) of the MDA read with its Second Schedule, the punishment prescribed for trafficking in more than 15g of diamorphine under s 5(1) is death. Under s 33B(1)(a), instead of the death penalty, the court may order life imprisonment and caning of at least 15 strokes if the 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 5(1) is restricted to that of a mere courier, as set out in s 33B(2)(a). Second, the Public Prosecutor must certify that the person convicted has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

96 The Prosecution did not dispute that the accused was merely a courier within s 33B(2)(a). However, it was indicated that the Public Prosecutor would not be issuing a certificate under s 33B(2)(b). As the second requirement had not been met, the discretion of the court under s 33B(1)(a) did not arise. Defence Counsel did not dispute this. Accordingly, I imposed the punishment of death.

Hoo Sheau Peng
Judicial Commissioner

Jasmine Chin-Sabado, Delicia Tan and Norman Teo
(Attorney-General's Chambers) for the Prosecution;
Ismail Bin Hamid (Ismail Hamid & Co.), Ho Thiam Huat (John Tay
& Co.) and Dew Wong (Dew Chambers) for the accused.