

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

[2025] SGHC 37

Criminal Case No 28 of 2023

Between

Public Prosecutor

And

Tan Jinxian

GROUND OF DECISION

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

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Public Prosecutor

v

Tan Jinxian

[2025] SGHC 37

General Division of the High Court — Criminal Case No 28 of 2023

Pang Khang Chau J

22–24, 29 August 2023, 23 April 2024, 7 August 2024

4 March 2025

Pang Khang Chau J:

Introduction

1 Tan Jinxian (the “Accused”), a Singaporean male, born in 1985, claimed trial to the following four charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”):

(a) One charge of having in his possession for the purpose of trafficking nine packets and 11 straws containing not less than 2,307.32 grams of granular/powdery substance which was analysed and found to contain not less than 38.78 grams of diamorphine, under s 5(1)(a) read with s 5(2) and punishable under s 33(1), or alternatively, s 33B of the MDA (the “First Charge”).

(b) One charge of trafficking in not less than 7.22g of diamorphine by passing the said drugs to one Mr Chu Kok Thye (“Chu”), under

s 5(1)(a) and punishable under the enhanced punishment provision under s 33(4A) of the MDA (the “Second Charge”), as the Accused was previously convicted in 2008 under s 5(1)(a) of the MDA.

(c) One charge of trafficking in not less than 17.62g of methamphetamine by passing the said drugs to Chu, under s 5(1)(a) and punishable under the enhanced punishment provision under s 33(4A) of the MDA (the “Third Charge”), as the Accused was previously convicted in 2008 under s 5(1)(a) of the MDA.

(d) One charge of having in his possession one packet containing one fragment of a blue tablet and blue granular/powdery substance which was analysed and found to contain 4-Fluoro-MDMB-BUTICA or its fluoro positional isomer in the butyl group (the “synthetic cannabinoid”), under s 8(a) and punishable under s 33(1) of the MDA (the “Fifth Charge”).

2 One other charge, pertaining to the Accused having not less than 1.01g of methamphetamine in his possession (the “Fourth Charge”), was stood down by the Prosecution as the Accused indicated on the first day of trial that he wished to plead guilty to the Fourth Charge.¹

3 I convicted the Accused on the four proceeded charges and sentenced him to death on the First Charge and to 14 years’ imprisonment in the aggregate on the remaining three proceeded charges. The Accused has appealed against my decision.

¹ Notes of Evidence (“NE”), 22 August 2023, at p 4 line 7.

The Undisputed Facts

4 The Accused was arrested together with Chu on 28 January 2021 at about 11.55am at the carpark of Hotel Boss, Singapore (“Hotel Boss”).²

5 At the time of his arrest, the Accused was carrying a white bag bearing the words “Calvin Klein Jeans” (the “White Bag”) and a blue bag bearing the words “Pasaraya C Mart” (the “Blue Bag”).³ The diamorphine referred to in the First Charge was packed in three brown paper bags, one of which was found in the White Bag while the remaining two were found in the Blue Bag.⁴ The White Bag also contained the synthetic cannabinoid referred to in the Fifth Charge.⁵

6 The diamorphine referred to in the Second Charge was found in a green bag bearing the “Starhub” logo which Chu was carrying at the time he was arrested, while the methamphetamine referred to in the Third Charge was kept inside a green pouch found in one of Chu’s trouser pockets.⁶ (For completeness, Chu was also found in possession of other drugs which were not the subject matter of any of the charges in these proceedings. At the time of these proceedings, Chu had already been separately charged and sentenced for drug trafficking in respect of these other drugs.⁷)

7 The events leading up to the arrest of the Accused and Chu, insofar as these could be pieced together from Hotel Boss’ CCTV footage, from the

² Statement of Agreed Facts (“SOAF”) at para 2.

³ Conditioned Statement of Low Yi Xun (“PS38”) at para 16, S/N 22 and 36; Photographs P1-51 and P1-55.

⁴ PS38 at para 16, S/N 23, 37 and 41; Photographs P1-51, P1-56 and P1-58.

⁵ PS38 at para 16, S/N 25; Photograph P1-53.

⁶ PS38 at para 16, S/N 9 and 13; Photographs P1-67 and P1-69 to P1-73.

⁷ NE, 23 August 2023, at p 82 ln 13–18.

dashcam footage of the Accused's car, from the transcripts of messages found on the Accused's phone and from the unchallenged aspects of the Accused's and other witnesses' testimony are set out at [8] to [12] below.

8 The Accused had first met Chu in jail.⁸ From January 2021, Chu was sharing a room in a condominium unit in Geylang with the Accused and was paying half of the rent for that room.⁹ The Accused was unemployed at the time of his arrest.¹⁰

9 On 27 January 2021, the Accused was asked by one "Paul" to collect something from a place known as Lam Soon Singapore Pte Ltd ("Lam Soon") at 3000 Marsiling Road.¹¹ Prior to arriving at Lam Soon, the Accused first stopped in Woodlands, at a place referred to in the evidence as "Block 806", where a person walked up to the Accused's car and left a white paper bag (the "Paper Bag") on the front passenger seat.¹² After collecting the Paper Bag but before arriving at Lam Soon, the Accused received a number of instructions from "Paul" by WhatsApp voice messages. In these voice messages, Paul spoke in a mixture of Hokkien and Mandarin, which were translated into English for use in court by a Central Narcotic Bureau ("CNB") interpreter.¹³ The relevant messages went as follows:

⁸ NE, 29 August 2023, at p 6 ln 13–17.

⁹ NE, 29 August 2023, at p 6 ln 27–31.

¹⁰ NE 29 August 2023, at p 2 ln 19–20.

¹¹ DCS at para 17; NE 29 August 2023, at p 4 ln 13–21.

¹² NE 29 August 2023, at p 24 ln 11–14.

¹³ Exhibit P63; NE 23 August 2023, at p 55, ln 29 to p 56, ln 3 (exhibit containing transcription of the Accused phone records initially marked as "P219"); NE 24 August 2023, at p 1, ln 13–22 (exhibit marking for "P219" amended to "P63").

(a) at 7.31pm: “Bro, bro, you take and leave ... this can’t take picture (or record) one, you take and leave”;¹⁴

(b) at 7.33pm: “The person is out already, the person is out already, He (she) will throw in your car ... and leave”;¹⁵

(c) at 7.34pm: “... A Chinese will pass to you. Ok? Then, ah, you leave ... and halfway, you check inside to see it if it is fragmented or wrapped nicely or separated, as long as not opened is ok already”.¹⁶

10 After the Accused arrived at Lam Soon, a man approached the Accused’s car, collected the Paper Bag and placed the Blue Bag on the front passenger seat.¹⁷ The Accused then received the following voice message from Paul:

Heng, there you need to retain two bundles of *Sio Zui*, two bundle the green one. Got people order already, you don’t let go ah! Later this whole bundle will be dropped one ah, want to throw one ah.¹⁸

In this message “Heng” was the name by which the Accused was known to “Paul”.¹⁹ As for the term “*Sio Zui*”, CNB interpreter testified that, while it literally means “hot water” in the Hokkien dialect, it may also be a slang term “which refers to the drug or heroin”.²⁰ The CNB interpreter’s opinion in this regard was not challenged by the Defence during cross-examination.

¹⁴ Exhibit P63, at S/N 32.

¹⁵ Exhibit P63, at S/N 37.

¹⁶ Exhibit P63, at S/N 38.

¹⁷ NE 29 August 2023, at p 24, ln 19–22.

¹⁸ Exhibit P63, at S/N48.

¹⁹ NE 29 August 2023, at p 33, ln 10–12.

²⁰ NE 23 August 2023, at p 50, ln 19–21.

11 The Accused then drove to Hotel Boss with the Blue Bag, where he had obtained a room earlier that day, and brought the Blue Bag with him up to his hotel room.²¹ The Accused subsequently left Hotel Boss to pick up Chu from their shared residence and returned with Chu to Hotel Boss.²²

12 During cross-examination, the Accused admitted that, while at Hotel Boss, he:

- (a) took out the contents of the Blue Bag;²³
- (b) removed the yellow tape wrapped around those contents;²⁴
- (c) observed that the contents were brown granular substances;²⁵
- (d) repacked those contents and placed them into three new brown paper bags;²⁶ and
- (e) placed one of these brown paper bags in the White Bag and the remaining two in the Blue Bag.²⁷

Applicable law

13 Section 5 of the MDA provides:

²¹ NE 29 August 2023, at p 5, ln 10–23.

²² NE 29 Aug 2023, at p 7 ln 23–25.

²³ NE 29 August 2023, at p 19, ln 3–5.

²⁴ NE 29 August 2023, at p 19, ln 6–7.

²⁵ NE 29 August 2023, at p 19, ln 26–28; p 21, ln 20–22.

²⁶ NE 29 August 2023, at p 19, ln 10–15.

²⁷ NE 29 Augusts 2023, at p 19, ln 24–25; p 22, ln 9–13.

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.

The term “traffic” is defined in s 2 of the MDA to include “give, administer, transport, send, deliver or distribute”.

14 As noted above, the First Charge alleged that the Accused had trafficked in a controlled drug by having the drugs in his possession for the purpose of trafficking contrary to s 5(1)(a) read with s 5(2), while the Second Charge and Third Charge alleged that the Accused had trafficked in controlled drugs by passing the drugs to Chu contrary to s 5(1)(a) of the MDA.

15 The elements required to be established for a charge of possession for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA are (see *Chong Hoon Cheong v Public Prosecutor* [2022] 2 SLR 778 at [4]; *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 at [49]):

- (a) The Accused was in *possession* of the controlled drug;
- (b) The Accused had *knowledge* of the nature of the drug; and,
- (c) The Accused’s possession of the controlled drugs was for the *purpose of trafficking* which was not authorised.

16 The elements to be established for a charge of trafficking under s 5(1)(a) of the MDA are (see *Raj Kumar s/o/ Aiyachami v Public Prosecutor and another appeal* [2022] 2 SLR 676 at [54]):

- (a) the act of trafficking, without authorisation, in a controlled drug;
and
- (b) knowledge of the nature of the drug.

17 In relation to the element of knowledge of the nature of the controlled drug, apart from proving actual knowledge, the Prosecution may rely on the presumption of knowledge as set out in s 18(2) of the MDA, which read as follows:

- (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.

Where the presumption of knowledge is successfully invoked, the burden of proof shifts to the accused person to rebut that presumption on a balance of probabilities (*Munusamy Ramarmurth v Public Prosecutor* [2023] 1 SLR 181 at [54]).

18 The s 18(2) presumption is rebutted where the court finds that the accused person formed a positive belief that was incompatible with the knowledge that the thing he was carrying was the specific drug in his possession, such as by (a) showing that he believed he was in possession of something innocuous, even if he cannot specify exactly what that was, or (b) showing that he believed that he was in possession of some contraband item or drug other than the specific drug in his possession: *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 (“*Gobi*”) at [57] and [60]. However, it would not

suffice for the Accused to simply claim that he did not know what he was carrying, save that he did not think it was drugs: *Gobi* at [64], citing *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [39] with approval.

19 Where the Prosecution has proved actual possession and knowledge instead of relying on the presumptions in s 18 of the MDA, the Prosecution may rely on the presumption of possession for the purpose of trafficking laid out in s 17 of the MDA as follows:

17. Any person who is proved to have had in his possession more than —

...

(c) 2 grammes of diamorphine;

...

(h) 25 grammes of methamphetamine;

...

whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

20 Where the Prosecution had relied on the presumption of trafficking under s 17 of the MDA, it could not simultaneously rely on the presumptions of possession and knowledge under ss 18(1) and 18(2) of the MDA respectively (see *Zainal* at [38] and [42]–[45]).

21 In relation to the Fifth Charge, which was for possession under s 8(a) of the MDA, the Prosecution must prove that (see *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 (“*Adili*”) at [34]–[35]):

- (a) The Accused was in physical possession, custody or control of the drugs in question;
- (b) The Accused knew that the drugs were in fact in his possession, custody or control; and
- (c) The Accused knew the nature of the drugs that he was in possession of, which may be proved or presumed under s 18(2) of the MDA.

The parties' cases

The Prosecution's Case

22 In respect of the First Charge, as it was undisputed that the drugs in question were in the Accused's possession at the time of arrest, the Prosecution relied on the presumption in s 18(2) of the MDA to establish that the Accused knew the nature of the drugs. The Prosecution submitted that the Accused could not rebut this presumption, as he could not point to what he thought or believed he was carrying instead.²⁸ As for whether the drugs were in the Accused's possession for the purpose of trafficking, the Prosecution first relied on Chu's evidence that the diamorphine in the White Bag and Blue Bag belonged to the Accused.²⁹ The Prosecution also pointed to the Accused's acts of "breaking bulk" by repacking the drugs and writing the words "one set" on some of the packets containing the drugs as evidence that the Accused intended to distribute the drugs.³⁰ Finally, the Prosecution relied, in the alternative, on the Accused's admission that he collected the Blue Bag for the purpose of passing it to

²⁸ Prosecution's Closing Submissions ("PCS") at para 12.

²⁹ PCS at para 19.

³⁰ PCS at paras 20–22.

someone else as evidence that he was in possession of the drugs for the purpose of trafficking by delivering.³¹

23 On the Second Charge and Third Charge, the Prosecution relied on Chu's evidence that he obtained the diamorphine referred to in the Second Charge and the methamphetamine referred to in the Third Charge from the Accused.³² Chu testified that he was asked by the Accused to go to Hotel Boss on 27 January 2021 to collect heroin from the Accused.³³ Chu also testified that the Accused handed Chu a packet of heroin after they entered the Accused's hotel room at Hotel Boss.³⁴ Thereafter, the Accused left the hotel room while Chu remained in the hotel room to repack the packet of heroin into smaller packets.³⁵ Chu also testified that the methamphetamine found in his possession was obtained from the Accused.³⁶ Chu's evidence was that he was supposed to pay the Accused \$3,500 for the diamorphine and \$750 for the methamphetamine.³⁷ The Prosecution submitted that Chu's evidence should be accepted because it was logical, and Chu was a credible witness, being candid about discussing his own drug activities at trial.³⁸ The Prosecution further submitted that Chu's testimony that the Accused supplied Chu with drugs also found support in the Accused's Whatsapp communications with other persons in which the Accused offered to sell methamphetamine to them.³⁹

³¹ PCS at para 23.

³² PCS at para 26.

³³ NE 23 August 2023, at p 66, ln 22–29.

³⁴ NE 23 August 2023, at p 67, ln 9–10.

³⁵ NE 23 August 2023, at p 67, ln 12–19.

³⁶ NE 23 August 2023, at p 78, ln 15–16.

³⁷ NE 23 August 2023, at p 76, ln 28–p 77, ln 5; p 78, ln 19–24.

³⁸ PCS at paras 25–28.

³⁹ PCS at para 29.

24 For the Fifth Charge, the Prosecution relied on the s 18(2) presumption under the MDA. The Prosecution submitted that the Accused had not rebutted the presumption as he did not say what he thought or believed he was carrying.⁴⁰

The Defence's Case

25 The Accused testified, by way of background, that he had been consuming drugs since 2003, and that the *only* drugs he consumed were methamphetamine and ketamine.⁴¹

26 In relation to the First Charge, the Accused explained that he was owed a few thousand dollars by one “Shawn” (also spelled as “Sean” in some court documents), and the Accused’s friend Paul informed the Accused that Paul had a way to help the Accused get the money back from Shawn.⁴² In return, Paul asked the Accused to “help take something and pass to someone” on 27 January 2021.⁴³ Following Paul’s instructions, the Accused collected the Blue Bag from Marsiling and brought it to Hotel Boss. During examination-in-chief, the Accused testified that he did not open the Blue Bag to ascertain its contents until he was about to check out of the hotel, and saw that the Blue Bag contained “packets of items inside with tape around it”.⁴⁴ At Chu’s suggestion, the Accused removed the tape to pack the bundles together when packing up before checking out of the hotel.⁴⁵ The Accused’s evidence was that he did not know

⁴⁰ PCS at paras 32–33.

⁴¹ NE 29 August 2023, p 2 ln 21–34.

⁴² NE 29 August 2023, p 3, ln 2–p 4, ln 5.

⁴³ NE 29 August 2023, p 4, ln 8–12.

⁴⁴ NE 29 August 2023, p 5, ln 22–31.

⁴⁵ NE 29 August 2023, p 9 ln 6–18.

what these items were.⁴⁶ The Defence submitted that the Accused's lack of knowledge of the nature of the drugs was corroborated by the remarks he made expressing surprise at the time of arrest, which the CNB officers making the arrest failed to record down.⁴⁷

27 In respect of the Second Charge and Third Charge, the Defence submitted that the Accused had not given the drugs to Chu.⁴⁸ In this regard, the Defence submitted that Chu's testimony was riddled with inconsistencies and should not be believed.⁴⁹

28 The Accused did not address the Fifth Charge in his testimony in court, nor did the Defence make any submissions in relation to the Fifth Charge in its closing submissions.

Issues to be determined

29 In the light of the parties' respective cases as described above, and having regard in particular to the fact that the Accused's possession of the drugs in relation to the First Charge and Fifth Charge was not disputed and that the Prosecution had relied on the presumption of knowledge of the nature of the drugs pursuant to s 18(2) of the MDA, the issues to be determined are:

- (a) in relation to the First Charge:
 - (i) whether the Accused has successfully rebutted the presumption of knowledge of the nature of the drug; and

⁴⁶ NE 29 August 2023, p 6 ln 1–3.

⁴⁷ Defence Closing Submissions ("DCS") at paras 38–42.

⁴⁸ DCS at para 10.

⁴⁹ DCS at paras 43–45.

- (ii) whether the Accused possessed the drug for the purpose of trafficking;
- (b) in relation to the Second Charge and Third Charge:
 - (i) whether the Accused had delivered the drugs to Chu; and
 - (ii) whether the Accused knew the nature of the drugs; and
- (c) in relation to the Fifth Charge, whether the Accused has successfully rebutted the presumption of knowledge of the nature of the drug.

First Charge

30 As noted above, the issues to be determined in relation to the First Charge are whether the Accused has successfully rebutted the presumption of knowledge of the nature of the drug and whether the Accused possessed the drug further purpose of trafficking.

Whether the Accused has successfully rebutted the presumption of knowledge of the nature of the drug

31 Since the Accused's possession of the diamorphine referred to in the First Charge was undisputed, the presumption under s 18(2) of the MDA that the Accused knew the nature of the drug is triggered. It therefore falls on the Accused to rebut that presumption on a balance of probabilities.

32 Paul had, in a Whatsapp message to the Accused, described the items which the Accused collected at Marsiling as “*Sio Zui*”. Since “*Sio Zui*” literally meant “hot water” and the items collected by the Accused were clearly not hot water, the term “*Sio Zui*” must have been a euphemism for something else. The

CNB interpreter gave evidence that “*Sio Zui*” would have meant “drug or heroin” in this context. This evidence was not challenged by the Defence in cross-examination. Apart from a bare denial that “*Sio Zui*” referred to heroin, the Accused did not attempt to explain to the court what he thought or believed “*Sio Zui*” meant in the context of Paul’s message to him.

33 Even if we were to put aside for the sake of argument the CNB interpreter’s opinion that “*Sio Zui*” referred to heroin, it is clear from Paul’s instructions to the Accused not to take any pictures that “*Sio Zui*” referred to some illicit item. When the Accused unwrapped the yellow tape around the “*Sio Zui*” at Hotel Boss and saw that it was a brown granular substance, there could have been no doubt in the Accused’s mind that it was heroin.

34 In the light of the foregoing, the Accused’s bare denial, without attempting to explain (whether in the statements he gave to the CNB officers or in his testimony in court) what he thought the items he collected in the Blue Bag were, was simply insufficient to rebut the presumption of knowledge of the nature of the drugs.

35 In any event, I did not believe the Accused’s bare denial defence because I did not find him to be a credible witness. In this regard, I agreed with the Prosecution’s submission that the Accused provided multiple inconsistent accounts of his activities prior to his arrest, which were based on illogical assumptions.

36 The Accused provided the following accounts of how he came into possession of the White Bag and the Blue Bag:

(a) Initially, the Accused claimed that he had packed some unknown items into the White Bag and the Blue Bag as he was rushing to check out of the hotel room, and that the Blue Bag was already in the hotel room when he checked in. He also said that he did not open the brown paper bag that was inside the Blue Bag.⁵⁰

(b) When confronted with the hotel's CCTV footage showing him entering the hotel room with the Blue Bag the night before his arrest, he then changed his position and revealed that he obtained the Blue Bag from a dark-skinned man on the instructions of Paul, who told him someone would collect that bag from him. He maintained that he did not open the Blue Bag.⁵¹

(c) When he was informed that his DNA was found on the yellow tape wrapped around the contents of the Blue Bag, the Accused changed his position again to say that he did open the Blue Bag and saw four bundles of brown substances, which he repacked "on the instruction of [Chu]".⁵²

37 The Accused's multiple changes in position appear to be a series of piece-meal concessions which he was forced to make when confronted with objective evidence which contradicted versions of events he previously gave. In my view, this seriously affected the Accused's credibility as a witness. I therefore did not accept the Accused's evidence as to how he came into possession of the Blue Bag, his lack of knowledge of its contents, and what he chose to do with them.

⁵⁰ PCS at para 13(a); Exhibit P212 at paras 8, 11–16.

⁵¹ Exhibit P212 at para 37.

⁵² Exhibit P214 at para 57.

38 For the foregoing reasons, I found that the Accused has failed to rebut the presumption of knowledge of the nature of the drug.

Whether the Accused possessed the diamorphine for the purpose of trafficking

39 The Accused’s own evidence is that he was supposed to *deliver* the Blue Bag and its contents to someone.⁵³ The Prosecution did not accept that the Accused’s role was limited to that of mere delivery. Instead, the Prosecution submitted that the Accused had also engaged in the act of “breaking bulk”. However, this dispute is more relevant to the issue of sentencing (as explained at [49] to [52] below). For present purposes, it suffices to note that, whether on the Prosecution’s case or on the Defence’s own case, the requirement of possession for the purpose of trafficking is satisfied. This is because s 2 of the MDA defined the term “traffic” as including “deliver”. Therefore, even if the Accused’s evidence is believed, the fact that the Accused was in possession of the drugs for the purpose of delivering it to someone meant that he was undoubtedly in possession of the drugs for the purpose of trafficking.

Conclusion on the First Charge

40 For the foregoing reasons, I found the Accused guilty of the First Charge.

Second Charge and Third Charge

41 As noted at [29(b)] above, the issues to be determined for the Second Charge and Third Charge are whether the Accused had delivered the drugs to Chu and whether the Accused knew the nature of the drugs. To establish the

⁵³ NE, 29 August 2023, at p 38 lines 1–4.

Second Charge and Third Charge, the Prosecution relied on Chu's evidence that he received the drugs from the Accused, which Chu had agreed to purchase from the Accused. If Chu's evidence that the Accused had sold the drugs to Chu is accepted by the court, the Prosecution would have succeeded on both of the issues referred to above. Since the Accused had denied Chu's account, the determination of the Second Charge and Third Charge turned largely on the assessment of Chu's and the Accused's credibility as witnesses.

42 As pointed out at [35] above, I found that the Accused was not a credible witness. With specific reference to the Second Charge and Third Charge, there are two further points worth highlighting.

43 First, there is evidence, in the form of Whatsapp messages, of the Accused offering to sell methamphetamine to various persons.⁵⁴ This shows that the Accused was engaged in drug trafficking. The Accused sought to explain away these messages by saying that the recipients of those messages owed the Accused money and the Accused was merely trying to scam the recipients to give the Accused money, without intending to deliver any drugs in return, as a way of recovering the money he was owed. I did not find this explanation credible.

44 Second, when the cautioned statements in relation to the Second Charge and Third Charge were administered, the Accused declined to state his defence for these charges, choosing instead to merely state "I would like to say everything at trial".

⁵⁴

45 As for Chu's credibility, the Defence pointed to various inconsistencies in Chu's testimony, as set out in paragraph 44 of the Defence Closing Submission. In my view, these were minor inconsistencies which did not detract from the overall credibility of Chu's evidence. First, Chu was candid about his past actions as a drug trafficker who sold drugs to pay for the drugs that he consumed.⁵⁵ I also found that he had no reason to lie about the events surrounding 27 and 28 January 2021, since he was already convicted for his own offences arising out of other drugs found on him at the time of his arrest and was serving his sentence at the time of the trial.⁵⁶ Second, Chu claimed that the Accused asked him to go to Hotel Boss to collect the heroin that was set aside for him.⁵⁷ This was consistent with how, even on the Accused's own account, the Accused had booked the room at Hotel Boss, brought Chu to the hotel, and was in possession of the Blue Bag containing drugs, which he had brought to the hotel.⁵⁸ Finally, Chu's account is consistent with the Whatsapp messages found on the Accused's phone demonstrating that the Accused was in the business of trafficking drugs to others.

46 Having regard to the foregoing, I preferred Chu's evidence over the Accused's. I therefore found the Accused guilty of the Second Charge and Third Charge.

⁵⁵ NE, 23 August 2023, at p 95 lines 10–20.

⁵⁶ NE, 23 August 2023, at p 63 lines 23–27.

⁵⁷ NE, 29 August 2023, at p 43 lines 5–16.

⁵⁸ NE, 23 August 2023, at p 76 line 28 to p 78 line 24; NE, 23 August 2023, at p 87 lines 19–28.

Fifth Charge

47 In relation to the Fifth Charge, as the Accused's possession of the synthetic cannabinoid was not disputed, the only issue is whether the Accused has successfully rebutted the presumption of knowledge of the nature of the drug. As noted at [28] above, the Defence made no attempt at all to rebut the said presumption. I therefore found that the Accused has failed to rebut the presumption. Consequently, I found the Accused guilty of the Fifth Charge.

Sentences

48 Having convicted the Accused on all four proceeded charges, I turned to consider the sentences to be imposed.

First Charge

49 As the First Charge involved more than 15g of diamorphine, the prescribed sentence was death. However, s 33B(1)(a) of the MDA provides that the court may, instead of imposing the death penalty, sentence an offender to imprisonment for life and caning of not less than 15 strokes if the offender satisfies the requirements of s 33B(2). Section 33B(2) provides:

(2) The requirements referred to in subsection (1)(a) are as follows:

(a) the person convicted proves, on a balance of probabilities, that his or her involvement in the offence under section 5(1) or 7 was restricted —

(i) to transporting, sending or delivering a controlled drug;

(ii) to offering to transport, send or deliver a controlled drug;

(iii) to doing or offering to do any act preparatory to or for the purpose of his or her transporting, sending or delivering a controlled drug; or

(iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and

(b) the Public Prosecutor certifies to any court that, in his or her determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

50 The Accused satisfied the requirements of s 33B(2)(b) as the Public Prosecutor had issued a certificate of substantive assistance. However, the Prosecution submitted that the Accused had not satisfied the requirements of s 33B(2)(a). This is because the Accused's conduct had gone beyond the acts listed in s 33B(2)(a)(i) to (iv) when he divided and repacked the drugs into smaller packets on his own initiative.⁵⁹ (For brevity, I shall refer to the alternative sentencing regime under s 33B as the "courier exception" and to the acts listed in s 33B(2)(a)(i) to (iv) as acts of a "courier".) The Defence submitted that the Accused's act of repacking the drugs was not "breaking bulk". Instead, the Accused was merely assisting Chu with the repacking as he was asked by Chu to do so and he thought the drugs belonged to Chu.⁶⁰ In this regard, the Accused gave evidence that he was asked by Paul to deliver the Blue Bag to "someone" and he had assumed that Chu was the person Paul referred to as no one else had approached the Accused to collect the contents of the Blue Bag from him.⁶¹

51 In *Zainudin bin Mohamed v PP* [2018] 1 SLR 4494 ("*Zainudin*"), the Court of Appeal considered whether the division and packing of drugs into packets containing smaller quantities takes an offender outside the courier exception, and gave the following guidance (at [92]):

⁵⁹ Prosecution's Sentencing Submissions ("PSS") at para 14.

⁶⁰ Defence Sentencing Submission ("DSS") at para 19.

⁶¹ DSS at para 21.

92 We must emphasise at the outset of this part of our analysis that not every act of division and packing of drugs would *necessarily* take such an offender outside the courier exception. In our judgment, the case law illustrates that in determining whether an offender's division and packing of drugs is preparatory to or for the purpose of transporting, sending or delivering the drugs, it is of the first importance to have close regard to the reason or purpose for the division and packing, objectively ascertained. In line with this court's observation in *Rosman* at [30] (see [56] above), such reason or purpose is to be determined with careful reference to the facts and context of the case. The corollary of this observation is that one cannot, without having due regard to such reason or purpose, properly arrive at the conclusion that an offender who either intends to or has carried out acts of division and packing is not a courier. It is of critical importance to bear in mind that the analysis is inherently fact-sensitive and no a priori conclusion can be drawn as to whether an offender is or is not a courier based on his acts (or intended acts) of division and packing alone.

[italics in original]

The Court of Appeal further explained that (at [109]):

109 Given the cardinal importance of ascertaining the reason or purpose for an offender's division and packing of drugs, it is imperative that the *offender* furnishes an explanation for his conduct if he is seeking to persuade the court that he is a mere courier. This is plain from s 33B(2)(a) which establishes that the burden lies on the person convicted to prove, on a balance of probabilities, that his involvement in the offence was restricted to one of the permitted types of activities set out in ss 33B(2)(a)(i)–33B(2)(a)(iv). We have identified the importance of this point in our analysis of the text of the provision (see [34] above), and we note that the court in *Chum Tat Suan* ([3] *supra*) likewise emphasised this crucial point – it held at [19] that it is “obvious” that “the person convicted bears the burden of proving on a balance of probabilities that he was only a courier”. In our judgment, in the absence of any such explanation or evidence in this regard, the court will, in the face of evidence that the offender had divided and repacked the drugs which had been delivered to him, be led ineluctably to the conclusion that the offender has failed to discharge his burden, rendering him ineligible for discretionary life sentencing. We further add that the offender's reason or purpose for carrying out his acts of division and packing is a matter that is uniquely within his knowledge. He is not only legally required to provide evidence of such reason or purpose if he is to discharge the burden of

proving that he is a courier, but is also plainly in the best position to do so.

[italics in original]

52 Therefore, in determining whether an offender’s act of dividing and packing drugs takes him outside the courier exception, the court needs to inquire into the reason and purpose of such division and packing. In this regard, the burden lies on the offender to furnish the explanation for his conduct. In the absence of any such explanation, the court will “be led ineluctably to the conclusion that the offender has failed to discharge his burden”. I shall therefore begin by examining the nature of the division and packing undertaken by the Accused before consider the explanations he gave for the division and packing.

The nature of the Accused’s division and packing of the drugs

53 As noted at [12] above, the Accused admitted that, while at Hotel Boss, he took the contents of the Blue Bag out, removed the yellow tape wrapped around the contents, and repacked them into three brown paper bags. These brown paper bags were given the markings “A1A”, “A2A” and “A2B” by CNB.

54 In the brown paper bag marked “A1A” was one translucent plastic bag containing about 460 grams of heroin (gross weight).⁶²

55 In the brown paper bag marked “A2A” were:⁶³

- (a) one translucent plastic bag containing about 460 grams of heroin (gross weight);⁶⁴

⁶² Photographs P1-51 and P1-52; SOAF at para 12, S/N 1.

⁶³ Photograph P1-56

⁶⁴ SOAF at para 12, S/N 2.

(b) three smaller clear plastic bags which *together* contained about 225 grams of heroin (gross weight);⁶⁵ and

(c) ten straws of heroin which together weighed about 8 grams (gross weight).⁶⁶

56 In the brown paper bag marked “A2B” were:

(a) two translucent plastic bags each containing about 460 grams of heroin (gross weight);⁶⁷

(b) two smaller clear plastic bags which contained about 180 grams and 46 grams of heroin (gross weight) respectively.⁶⁸

57 At the time the Accused was arrested, the Blue Bag also contained several stacks of empty brown paper bags, many clear plastic bags of various sizes, a weighing scale, a black marker and a red marker.

58 The three small clear plastic bags referred to at [55(b)] above each bore the words “1 set” in black ink. The Accused admitted that these words were written by him using the black marker found in the Blue Bag.⁶⁹ As for the two small clear plastic bags referred to at [56(b)] above, one appears to have the words “180g” written on it in black ink while the other appears to have the words “45g” written on it in black ink.⁷⁰ (Unfortunately, the Prosecution did not

⁶⁵ SOAF, at para 12, S/N 4.

⁶⁶ SOAF, at para 12, S/N 5.

⁶⁷ Photograph P1-58; SOAF, para 12, S/N 6 and 7.

⁶⁸ Photograph P1-60; SOAF para 12, S/N 8 and 9.

⁶⁹ NE 29 August 2023, p 37 ln 11–19.

⁷⁰ Photograph P1-60; PS38, at para 16, S/N 44 and 45.

ask the Accused during trial whether the words “180g” and “45g” were written by him.) The Accused admitted that he had used the weighing scale found in the Blue Bag when repacking the drugs.⁷¹

59 From the matters recited at [53] to [58] above, it may be observed that, while the Accused had left some of the drugs in large bundles weighing about 460 grams each, he also divided and repacked some of the drugs into smaller portions of various sizes. When this is seen in the light of (a) the writings on some of the smaller packets, (b) the presence of a weighing scale, and (c) the presence of a large number of empty plastic bags of various sizes, the Accused’s division and packing of the drugs appeared to be more consistent with steps taken for the purpose of distribution and sale than for mere facilitation of delivery. With these observations in mind, I turned to consider the Accused’s explanation for his division and packing of the drugs.

The Accused’s explanation for the division and packing of the drugs

60 As noted at [50] above, the Accused testified that he undertook the division and packing because he was asked by Chu to assist with the division and packing of the drugs. The Accused further explained that he agreed to assist Chu because he had “assumed” the Chu was the “someone” whom Paul had wanted the Accused to deliver the drugs to because no one else apart from Chu had turned up. The Prosecution submitted that this explanation is incredible and should not be believed. I agree. First, the Accused had not provided a reasonable explanation for why he would simply assume the identity of the person whom he should deliver the drugs to without seeking confirmation with Paul. Second, this explanation is inconsistent with the objective fact that Chu did not just turn

⁷¹ NE 29 August 2023, p 37, ln 20–22.

up at Hotel Boss on his own accord and asked for the drugs, but was in fact asked by the Accused to join him at to Hotel Boss.

61 In any event, even if I were to accept the Accused's account, it does not assist the Accused in establishing on a balance of probabilities that he came within the courier exception. First, even though the Accused explained that he was asked by Chu to assist Chu in the division and packing of the drugs, the Accused did not go on to explain why Chu had allegedly wanted to divide and pack the drugs. In other words, the Accused's account does not furnish any explanation of *the reason or purpose* for the division and packing. In the absence of the Accused's explanation of the reason or purpose for the division and packing, it follows that the Accused has failed to discharge his burden of proof. Secondly, if the Accused's account were accepted as true, it means that he would have already completed the delivery of the drugs to Chu by the time he was asked by Chu to assist with the division and packing. Therefore, any division or packing performed by the Accused would have been *after* the alleged completion of delivery and cannot be regarded as an act incidental to delivery.

Conclusion on the sentence for the First Charge

62 In the light of the foregoing, I found that the Accused has failed to establish on a balance of probabilities that his involvement in the offence was restricted to the acts of a "courier". I therefore found that the Accused did not come within the courier exception and imposed the death penalty on him.

Second Charge, Third Charge and Fifth Charge

63 The Prosecution and the Defence were in agreement on the individual sentences to be imposed on the remaining charges, namely:

- (a) 12 years' imprisonment and 11 strokes of the cane for the Second Charge;
- (b) 10 years' imprisonment and 10 strokes of the cane for the Third Charge; and
- (c) two years' imprisonment for the Fifth Charge.

However, they differed on which of these sentences should be run consecutively. The Prosecution submitted that the sentences for the Second Charge and Fifth Charge should run consecutively to arrive at an aggregate sentence of 14 years while the Defence submitted that the sentences for the Third Charge and Fifth Charge should run consecutively to arrive at an aggregate sentence of 12 years. I did not accept the Defence's submission, as that would run counter to the principle that the total term of imprisonment for the sentences that are ordered to run consecutively must exceed the term of imprisonment that is imposed for the highest individual sentence: *Mohamed Shouffee bin Adam v Public Prosecutor* [2014] 2 SLR 998 at [77]. I therefore accepted the Prosecution's submission that the sentences for the Second Charge and Fifth Charge should run consecutively.

64 As I had already imposed the death penalty on the Accused, s 325(1)(c) of the Criminal Procedure Code 2010 ("CPC") provides that the Accused may not be punished with caning. Accordingly, I sentenced the Accused to 12 years' imprisonment for the Second Charge, 10 years' imprisonment for the Third Charge and two years' imprisonment for the Fifth Charge. I ordered the sentences for the Second Charge and Fifth Charge to run consecutively. Pursuant to s 318 of the CPC, I directed that the the Accused's term of imprisonment take effect from 28 January 2021, the date of arrest.

Conclusion

65 For the reasons given above, I convicted the Accused on all four proceeded charges and sentence him to death for the First Charge and to imprisonment of 14 years in the aggregate for the remaining three charges.

Pang Khang Chau
Judge of the High Court

Timotheus Koh and R. Arvindren (Attorney-General's Chambers) for
the Prosecution;
Chung Ting Fai (Ching Ting Fai & Co) and Ms Josephine Iezu
Costan (David Nayar and Associates) for the Accused
