

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 23

Court of Appeal / Criminal Appeal No 12 of 2023

Between

Low Sze Song

... Appellant

And

Public Prosecutor

... Respondent

Court of Appeal / Criminal Appeal No 13 of 2023

Between

Sivaprakash Krishnan

... Appellant

And

Public Prosecutor

... Respondent

JUDGMENT

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

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Low Sze Song
v
Public Prosecutor and another appeal

[2026] SGCA 23

Court of Appeal — Criminal Appeals Nos 12 and 13 of 2023
Sundaresh Menon CJ, Tay Yong Kwang JCA and Kannan Ramesh JAD
23 January 2026

19 May 2026

Judgment reserved.

Tay Yong Kwang JCA (delivering the judgment of the court):

Introduction

1 The appellant in CA/CCA 12/2023 (“CCA 12”), Low Sze Song (“Mr Low”), is a 73-year-old Singaporean. He appealed against his conviction and sentence on the following charge:

That you, LOW SZE SONG, on 30 May 2019, at about 6.45am, at the void deck of Block 986C Buangkok Crescent, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), *to wit*, by having in your possession for the purpose of trafficking four packets containing not less than 1,379.5g of granular/powdery substance which was analysed and found to contain not less than 43.26g of diamorphine, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the MDA, being an offence punishable under s 33(1) of the MDA, and if you are convicted thereof, you may alternatively be punished under s 33B of the MDA.

2 The appellant in CA/CCA 13/2023 (“CCA 13”), Sivaprakash Krishnan (“Mr Sivaprakash”), is a 38-year-old Malaysian. He appealed against his conviction and sentence on the following charge:

That you, SIVAPRAKASH KRISHNAN, on 30 May 2019, at about 6.20am, at a bus stop in the vicinity of Block 326A Sumang Walk, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185, 2008 Rev Ed) (“MDA”), *to wit*, by giving four packets containing not less than 1,379.5g of granular/powdery substance which was analysed and found to contain not less than 43.26g of diamorphine to one Low Sze Song, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) of the MDA, being an offence punishable under s 33(1) of the MDA, and if you are convicted thereof, you may alternatively be punished under s 33B of the MDA.

3 The above charges against the appellants contained capital offences. Both appellants were convicted by the trial judge (“the trial Judge”) on their respective charges on 14 April 2023. The trial Judge held that both appellants were mere couriers within the meaning of s 33B(2)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). However, they did not receive a certificate of substantive assistance under s 33B(2)(b) of the MDA. They therefore did not qualify to be sentenced under the alternative sentencing regime in s 33B of the MDA. Accordingly, the trial Judge imposed the mandatory death penalty on them.

4 After considering the parties’ written submissions and hearing their oral arguments, we reserved judgment. This is our judgment dismissing both appeals against conviction and sentence.

Facts

5 On 30 May 2019 at about 5.40am, Mr Low was with his personal mobility device (“PMD”) at the ground floor of Block 326A Sumang Walk. At about 6.18am, Mr Sivaprakash, who was riding a motorcycle and wearing a red helmet, approached Sumang Walk. Mr Low and Mr Sivaprakash then travelled together in the same direction on their respective vehicles.

6 At a bus stop along Sumang Walk, Mr Sivaprakash passed Mr Low a white plastic bag and Mr Low handed him a stack of cash totalling \$9,000. Mr Low then placed the white plastic bag inside the black storage bag on his PMD.

7 After this, Mr Low and Mr Sivaprakash went their separate ways.

(a) Mr Low travelled towards Buangkok Crescent and was arrested by Central Narcotics Bureau (“CNB”) officers at about 6.45am at the lift lobby of Block 986C Buangkok Crescent.

(b) Mr Sivaprakash travelled towards Sungei Kadut Way and was arrested by CNB officers at about 6.49am at a canteen at Block 16A Sungei Kadut Way.

8 Mr Low was escorted to Block 986C Buangkok Crescent #11-88 (“Unit #11-88”) after his arrest. The Prosecution’s case was that his PMD was brought up to Unit #11-88 by one of the CNB officers. The following exhibits were recovered and seized by the CNB officers:

Description and Marking of Exhibit		Description and Marking of sub-Exhibit		Description and Marking of sub-sub-Exhibit	
A1	One black “Fiido Electric Scooter” bag	A1A	One black tape packaging with clear plastic	A1A1	One clear plastic
				A1A1A	One packet of brown granular substance (found to contain not less than 8.64g of diamorphine)
		A1B	One white plastic bag	A1B1	One clear plastic packaging with black tape
				A1B1A	One clear plastic
				A1B1A1	One packet of brown granular substance (found to contain not less than 14.47g of diamorphine)
				A1B2	One clear plastic packaging with black tape
				A1B2A	One clear plastic
				A1B2A1	One packet of brown granular substance (found to contain not less than 14.12g of diamorphine)

				A1B3	One clear plastic packaging with black tape
				A1B3A	One clear plastic
				A1B3A1	One packet of brown granular substance (found to contain not less than 6.03g of diamorphine)

9 We will refer to Exhibits A1A1A, A1B1A1, A1B2A1 and A1B3A1 collectively as the “Drug Bundles”. The Drug Bundles were found to contain not less than 43.26g of diamorphine in total. A DNA analysis was conducted on the above exhibits and the following results were obtained:

(a) Mr Low’s DNA was detected on the interior and exterior of the white plastic bag (*ie*, Exhibit A1B) and the adhesive sides of the tape of one of the Drug Bundles (*ie*, Exhibit A1A).

(b) Mr Sivaprakash’s DNA was detected on the adhesive sides of the tape and cling film of all the Drug Bundles (*ie*, Exhibits A1A, A1A1, A1B1, A1B2 and A1B3).

10 The following two exhibits were also recovered and seized from Mr Sivaprakash’s motorcycle basket after his arrest:

Description and Marking of Exhibit		Description and Marking of sub-Exhibit	
E1	One black haversack	E1A	One stack of cash amounting to S\$9,000, tied with two rubber bands

The appellants’ cases at the trial

11 The appellants did not dispute that they met in the morning of 30 May 2019 and that Mr Sivaprakash passed Mr Low a white plastic bag while Mr Low handed Mr Sivaprakash a stack of cash totalling \$9,000. Mr Low’s defence was that he had no knowledge of what was in the white plastic bag that was passed to him.

12 On 28 May 2019, Mr Low met his friend, “Liu Lian Kia”. Low asked Liu Lian Kia to lend him \$500 and to recommend him a job. A day later, Liu Lian Kia called him and asked to meet at the void deck of Block 326A Sumang Walk. Liu Lian Kia then passed Mr Low \$9,000 in cash and told him that someone would be calling him to provide further instructions. Liu Lian Kia did not inform him that he was going to be delivering diamorphine. Mr Low also did not have any reason to suspect the same as he had never come across or been involved with drugs.

13 In the early morning of 30 May 2019, Mr Low received a phone call from “Ah Boy”. The call was from the same phone number that Liu Lian Kia had used to contact Mr Low the day before. Ah Boy instructed Mr Low to go to the bus stop near Block 326A Sumang Walk and to pass the \$9,000 to a person riding a motorcycle and wearing a red helmet.

14 As instructed, Mr Low went to the bus stop and passed the \$9,000 to Mr Sivaprakash who handed a white plastic bag to him. Mr Sivaprakash was initially reluctant to take the cash but Mr Low scolded him and asked him to pass it to Ah Boy. Mr Low then placed the white plastic bag in a red bag in the PMD storage bag. He did not check the contents of the white plastic bag.

15 Subsequently, he received a call from Ah Boy to confirm whether he had received the bag. Ah Boy then instructed him to bring the bag to Block 986C Buangkok Crescent and pass it to someone who will be waiting there. Mr Low did not ask Ah Boy what was in the white plastic bag and did not give any thought as to what was in it.

16 Mr Sivaprakash's defence to his charge was that he did not know he was delivering diamorphine. Instead, he thought he was picking up and delivering "paan parak" (betel nuts). At about 4.00am on 30 May 2019, Mr Sivaprakash was in Johor and getting ready to travel to Singapore for work when he received a call from his friend, "Joe". Joe asked Mr Sivaprakash to help him collect "paan parak" and deliver it to a person wearing a cap at Block 326A Sumang Walk. Mr Sivaprakash agreed to help as he had asked Joe earlier for a loan of RM1,000 to pay for his brother's medical fees. Joe then informed him that the "paan parak" would be in a black bag behind a dustbin located near a bus stop after the roundabout which was after the Tuas Checkpoint.

17 Subsequently, Mr Sivaprakash rode his motorcycle into Singapore through the Tuas Checkpoint and proceeded to the bus stop as instructed by Joe. He went to the dustbin near the bus stop and saw a torn black plastic bag with a few bundles inside. He opened the bundles to check and confirm that they contained "paan parak". He then placed the bundles in a white plastic bag and

discarded the torn black plastic bag. After that, he brought the “paan parak” to Block 326A Sumang Walk and passed the white plastic bag with its contents to Mr Low. At that point, Mr Low handed Mr Sivaprakash a stack of cash. Initially, Mr Sivaprakash did not accept the cash because he was not told to collect anything in return for delivering the “paan parak”. However, he took the cash when Mr Low became aggressive verbally.

18 Both appellants also submitted that the Prosecution was unable to establish a complete and unbroken chain of custody in respect of the Drug Bundles. Specifically, Mr Low claimed that one of the packets of diamorphine seized by the CNB, Exhibit A1A1A (“the Fourth Drug Bundle”) which contained 8.64g of diamorphine, was not recovered from his PMD.

Decision of the trial Judge

19 The Prosecution relied on the presumptions in ss 18(1) and 18(2) of the MDA in its case against both Mr Low and Mr Sivaprakash. The trial Judge held that no reasonable doubt arose in relation to the integrity of the chain of custody of the Drug Bundles and whether the Fourth Drug Bundle was recovered from the PMD. The trial Judge found that the Drug Bundles were the same exhibits that were recovered and seized from the PMD. Consequently, the presumption of possession in s 18(1)(a) of the MDA applied to both appellants and it was not rebutted. The trial Judge also held that both appellants could not rebut the presumption of knowledge in s 18(2) of the MDA (“s 18(2) presumption”).

20 In respect of Mr Low, the trial Judge did not accept his contention that he had no knowledge of what was in the white plastic bag or that he could not reasonably be expected to have known the nature of the drugs in the white plastic bag. The clandestine nature of the “job” and the fact that he was paid

\$500 to pass \$9,000 in cash to Mr Sivaprakash would have put any reasonable person on notice as to the contents of the white plastic bag.

21 The trial Judge found that the \$500 from Liu Lian Kia was not a loan but was money given to Mr Low for making the delivery. This was because Mr Low had referred to the \$500 consistently as payment for making the delivery in his investigative statements. He was never told that the \$500 was a loan or that he had to repay the money. He was unemployed then and had only \$600 on hand which was insufficient to pay his rent and for him to gamble.

22 Even if Mr Low was indifferent as to what was in the white plastic bag, that was insufficient in law to rebut the s 18(2) presumption. Further, there was evidence suggesting that he would have been keenly aware of the cost-benefit analysis involved before accepting any instructions that could implicate him in a crime. Mr Low had testified that in the previous robberies that he committed, he would ascertain what were the intended spoils and what his role would be before committing the robberies.

23 In respect of Mr Sivaprakash, the trial Judge found his claim that he believed he was delivering “paan parak” for Joe to be contradicted by the objective evidence. Mr Sivaprakash could not provide a credible account of the nature of his relationship with Joe that would explain why he would agree to help Joe deliver such things. Further, he could not explain why there was a need to pack and deliver the “paan parak” in such a clandestine manner, why he was paid RM1,000 in return for performing the delivery and why he received \$9,000 from Mr Low. The relatively large sums of money would have put Mr Sivaprakash on notice that he was not delivering something innocuous or some low-value items. The trial Judge also rejected Mr Sivaprakash’s claims that the

RM1,000 was a loan from Joe and that he initially refused to accept the \$9,000 that Mr Low handed to him.

24 In addition, the trial Judge did not accept Mr Sivaprakash’s claim that he opened the Drug Bundles when he first picked them up and checked that they contained “paan parak”. This was because his evidence regarding whether he knew what “paan parak” looked and smelled like was inconsistent. Further, his account of how he checked the contents of the Drug Bundles was contradicted by the objective evidence and he also did not mention unwrapping the Drug Bundles in any of his investigative statements.

The appellants’ cases on appeal

Mr Low’s submissions

25 Mr Low’s submissions on appeal focused solely on the issue of whether he was able to rebut the s 18(2) presumption. Broadly, he submitted as follows:

- (a) First, his assertion that he had no knowledge of what was in the white plastic bag should suffice to rebut the s 18(2) presumption.
- (b) Second, the trial Judge erred in rejecting his claim that he had no knowledge of the contents of the white plastic bag.
- (c) Third, the trial Judge erred in rejecting his submission that the nature and circumstances of the transaction between him and Mr Sivaprakash were not so suspicious as to put him on notice.
- (d) Fourth, the trial Judge erred in finding that Mr Low would not have complied with instructions from a stranger without knowing exactly what the job entailed.

Mr Sivaprakash's submissions

26 Mr Sivaprakash's submissions on appeal were similarly largely focused on the issue of whether he was able to rebut the s 18(2) presumption. He submitted as follows:

- (a) First, the trial Judge's decision to reject his defence that he believed he was delivering "paan parak" was wrong and against the weight of the evidence.
- (b) Second, the trial Judge failed to consider other important pieces of evidence which corroborate his defence.
- (c) Third, the trial Judge erred in finding that there was no reasonable doubt as to the integrity of the chain of custody of the Drug Bundles, particularly in respect of the identity of the Fourth Drug Bundle.

Whether Mr Low can rebut the s 18(2) presumption

A claim of indifference is insufficient to rebut the s 18(2) presumption

27 Mr Low contended that he did not know that the white plastic bag contained the Drug Bundles as the question of what was in the white plastic bag never arose in his mind. He argued that his lack of knowledge is a coherent mental state supported by his background, conduct and the objective circumstances. If he was required to articulate what he believed he was carrying, that would amount to requiring him to fabricate a belief he never held. In essence therefore, Mr Low's point was that one could rebut the s 18(2) presumption by asserting that he never thought about what he was carrying.

28 We do not accept this argument because it contradicted the principles on the s 18(2) presumption set out comprehensively and authoritatively in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 (“*Gobi*”). In *Gobi*, the Court of Appeal clarified that an accused person must establish that he did not in fact know the nature of the drugs in his possession in order to rebut the s 18(2) presumption. He should be able to say what he thought or believed he was carrying and adduce sufficient evidence disclosing the basis upon which he claims to have arrived at that subjective state of mind (*Gobi* at [57(a)] and [58]). The court will then assess the veracity of the accused person’s assertion as to his subjective state of mind against the objective facts and examine his actions and conduct relating to the item in question in coming to a conclusion on the credibility of his assertion (*Gobi* at [57(c)]). The s 18(2) presumption will only be rebutted if the court accepts that the accused person formed a positive belief that was incompatible with knowledge that the thing he was carrying was the specific drug in his possession (*Gobi* at [60]).

29 The Court of Appeal also observed in *Gobi* that it would not suffice to rebut the s 18(2) presumption if an accused person claimed simply that he did not know or that he was indifferent to what he was carrying, save that he did not know or think it was drugs (*Gobi* at [64]). Indeed, an accused person who is indifferent to what he is carrying cannot be said to believe that the nature of the thing in his possession is something other than or incompatible with the specific drug he is in possession of. This is because an accused person who is indifferent is simply nonchalant about what the thing in his possession is and therefore cannot be said to have formed any view as to what it is or is not (*Gobi* at [65]).

30 To reiterate, an accused person would be indifferent to the nature of the thing in his possession if he had the means and opportunity to verify what he

was carrying but failed to take the steps that an ordinary reasonable person would have taken to establish the nature of the thing (*Gobi* at [65]). In such circumstances, the accused person has to show that there were reasons special to him or to his situation as to why he did not take the sort of steps that an ordinary reasonable person would have taken to establish the nature of the thing he was carrying. Where he fails to show such reasons, it would be appropriate to conclude that he was indifferent to the nature of what he was carrying (*Gobi* at [66]). The accused person will then be found not to have rebutted the s 18(2) presumption.

31 Such an approach to the s 18(2) presumption is justified because of the need to give full purposive effect to the policy underlying the MDA, which is to stem the threat that drug trafficking posed. As explained in *Gobi*, the s 18(2) presumption was enacted to address the difficulties faced by the Prosecution in establishing the element of knowledge of the nature of the drugs by placing the burden on the accused person in limited circumstances to adduce evidence in relation to matters which are peculiarly within his knowledge. An accused person is unlikely to admit to actual knowledge of the nature of the drugs in his possession and he can disavow such knowledge easily, given the surreptitious nature inherent in drug offences and the severe penalties that are imposed upon conviction (*Gobi* at [68]–[69]). Therefore, Parliament could not have intended the s 18(2) presumption to be rebutted simply by a person being indifferent to what he was carrying. Such an approach ensures that the s 18(2) presumption does not become “all bark and no bite” (*Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [39]).

32 Mr Low’s defence that he was not concerned with the contents of the white plastic bag as the thought of what was in it did not arise in his mind was

not different from the situation of a person who was wholly indifferent to the nature of what he was carrying (*Gobi* at [67(a)]). In both situations, the person in question cannot be said to have formed any view as to what the thing is or is not. He would not have formed a positive belief that the nature of the thing in his possession was something other than or incompatible with the specific drug he was in possession of (*Gobi* at [60] and [65]).

33 It is clear that Mr Low had the ready means and opportunity to verify what was in the white plastic bag. He was in possession of it after Mr Sivaprakash handed it to him and he could have checked its contents by looking inside.

34 It is plain that an ordinary reasonable person would have taken steps to establish the nature of the contents in the white plastic bag. There were suspicious circumstances surrounding the transaction in the early morning of 30 May 2019. First, Mr Low was paid \$500 by Liu Lian Kia for a relatively simple task of handing over \$9,000 and following the instructions of someone who would be calling him. He did not even know who that someone was. We agree with the trial Judge that the \$500 was given to Mr Low as payment and not as a loan. This was admitted to by him in his investigative statements where he did not mention that the \$500 was a loan but instead stated that he would be paid \$500 for the “job”.

(a) In Mr Low’s cautioned statement recorded on 30 May 2019 at about 11.14am, he stated:

I told a friend that I do not have money to pay HDB rental. My friend told me he got a job for me and I asked him how much is the pay. He told me I will get \$500. I told him I am interested and asked when will I get paid.

He said he can give me the money now but the work is only about 2 to 3 days later. ...

(b) In his long statement recorded on 2 June 2019 at about 1.35pm (“Mr Low’s 2 June Long Statement”), he stated:

... I told a friend, “Liu Lian Kia”, that I do not have enough money to pay HDB rental. ... “Liu Lian Kia” told me there is a job for me that would pay me SGD\$500. I asked “Liu Lian Kia” when would I be paid and he told me he could pay me now but the job would only be done 2 to 3 days later. I agreed to take the job and “Liu Lian Kia” handed me SGD\$500 cash on the spot ...

35 Mr Low argued that \$500 would not have been viewed by him as a highly suspicious amount and that it would make no sense for him to be involved in drug trafficking for this small amount. He highlighted that his past criminal activities, which concerned less serious offences, involved far larger amounts of money. He claimed that he had even declined a legitimate job at a petrol kiosk after his release from prison in July 2018 because the pay offered was too low. His contention was that if he “was unwilling to accept low-paying lawful work, it is entirely illogical to suggest that he would knowingly accept extreme criminal risk for small amounts”.

36 We do not accept Mr Low’s contention on this issue. It ignores the factual situation that he was in at the time he accepted Liu Lian Kia’s offer of \$500 for the “job”. At that point in time, he was around 66 years old. He was released from prison less than a year earlier and did not have a regular monthly income as he was doing odd jobs. His highest education level was Primary 3. He had only \$600 with him. He was in need of money for his gambling habit. In addition, as shown by his statements above, he could not pay the rent for his flat. Given those circumstances, the \$500 offered by Liu Lian Kia would be an enticing offer. In return for the \$500, he only had to help deliver \$9,000 in cash

to another person and follow instructions. This “job” would not require much effort and would not take up much time. In contrast, if he had accepted the job at the petrol kiosk, he would have a steady income but would have to do physical work for fairly long hours for many days a month. The offer of \$500 for such a simple job would certainly have raised questions in any ordinary reasonable person’s mind as to what it was that he was supposed to do. It was just too good to be true unless it involved something dangerous or illegal. Mr Low was not a simpleton. He was a 66-year-old man accustomed to criminal activities.

37 The second factor which would have caused an ordinary reasonable person to take steps to establish the contents of the white plastic bag was the chain of events that took place on or just before 30 May 2019. Mr Low was instructed over the phone by a person he did not know and had never spoken to before (Ah Boy) to proceed to the bus stop along Block 326A Sumang Walk, pass \$9,000 in cash to a person wearing a red helmet and riding a motorcycle and collect things from that person in return. Mr Low was not given any details about what he was supposed to collect or whom he was supposed to meet. Moreover, these events took place early in the morning from around 6.00am. In those circumstances, the trial Judge was justified in finding that the “job” that he was asked to perform was clandestine in nature.

38 Mr Low has also not provided evidence to show that there were reasons special to him or to his situation which would justify why he did not take the sort of steps that an ordinary reasonable person would have taken to establish the nature of the items in the white plastic bag. Therefore, pursuant to the principles set out in *Gobi*, it would be just to conclude that Mr Low was indifferent at best about the nature of the contents of the white plastic bag. It follows that he will not be able to rebut the s 18(2) presumption.

39 Mr Low also claimed that he did not have any interest in and had never dealt with drugs despite his past criminal activities. He explained that this was because he was part of a gang and the chief of the gang in Thailand had warned that no member should be involved with drugs and that any member who was involved with drugs would be expelled. Even if this was true, there would be all the more reason that he would be concerned to confirm with Liu Lian Kia that the “job” did not involve drugs. This made it even harder to believe that he did not even think about what was inside the white plastic bag.

40 Accordingly, we agree with the trial Judge that Mr Low failed to rebut the s 18(2) presumption. It follows that Mr Low’s appeal against conviction fails.

Whether Mr Sivaprakash can rebut the s 18(2) presumption

41 Mr Sivaprakash’s defence was that he believed he was delivering “paan parak”. This was because his friend Joe had asked him to help pick up “paan parak” from a bus stop near the Tuas Checkpoint and deliver it to a person at Block 326A Sumang Walk. Mr Sivaprakash opened all the Drug Bundles to ensure that they contained “paan parak”. On that basis, he submitted that he should be found to have rebutted the s 18(2) presumption.

42 To determine the credibility of Mr Sivaprakash’s assertion about his subjective state of mind, the court assesses the assertion against the objective facts and examines his actions relating to the item in question. This is a highly fact-specific inquiry and the relevant considerations would include the physical nature, the value and the quantity of the item, any reward that was to be paid for transporting it and any amount that was to be collected upon delivering it (*Gobi* at [57(c)]). To succeed in his defence, Mr Sivaprakash must adduce sufficient

evidence to show that he held a positive belief that was incompatible with knowledge that the thing he was carrying was the specific drug in his possession (*Gobi* at [60]).

43 In our judgment, Mr Sivaprakash’s claim that he believed he was helping his friend Joe to deliver “paan parak” was patently unbelievable. All the evidence pointed to a clandestine drug transaction in the early morning of 30 May 2019, not an innocuous delivery of some lawful and cheap consumable item.

Mr Sivaprakash could not have believed he was delivering “paan parak” for Joe

44 The first indication why Mr Sivaprakash could not have believed he was helping Joe to deliver “paan parak” was because he was promised a relatively large amount of money for delivering an item which he knew to be inexpensive. Joe promised to pay him RM1,000 for helping to deliver the “paan parak”. This is clear from Mr Sivaprakash’s investigative statements:

- (a) In his long statement recorded on 2 June 2019 at about 7.07pm (“Mr Sivaprakash’s 2 June Long Statement”), he stated as follows:

14. I am now asked why did I help “Joe” take the black plastic bag from the bus stop when I was told by him to do so. This is because “Joe” told me that he would give me money if I helped him to take those things and to give it to the man. I agreed to help “Joe” because I needed the money. I needed the money because my brother is warded in ICU at Sultan Aminah, which is a hospital in JB. ...

15. ... After one of the clubbing sessions, as we were going out to eat, “Joe” asked me since I am working in Singapore, if I could pass “paan parak” to an Indian man. I did not know that I had to give it to a Chinese man then. ... At that time, I refused to do. This time I

agreed, because I needed the money for my brother's medical expenses. "Joe" told me that he will pay me RM\$1000 for giving this to the man. I am asked now if I suspected that there was something wrong for getting RM\$1000 for passing "paan parak". I did not suspect because "Joe" had the habit of spending a lot for alcoholic drinks at clubbing sessions. ...

(b) In Mr Sivaprakash's long statement recorded on 3 June 2019 at about 2.35pm, he stated as follows:

31 I am now asked about the RM\$1000 which "Joe" said that he would give me. The RM\$1000 is not given to me yet. "Joe" told me he would give me the RM\$1000 once this task has been successfully completed.

45 We do not accept Mr Sivaprakash's contention that the RM1,000 which he was expecting to receive was not conditional on him completing the delivery of the "paan parak". He contended that Joe had agreed to give him RM1,000 for his step-brother's medical expenses and he therefore agreed to help Joe make the delivery upon Joe's request in order to thank Joe. However, the investigative statements made it clear that Mr Sivaprakash would receive the RM1,000 only after the delivery of the "paan parak" was "successfully completed" and he had testified that he "would only get the [RM1,000] from Joe after the delivery was completed".

46 The evidence also showed that Mr Sivaprakash knew that "paan parak" was an inexpensive item that was easily available. He said that "paan parak" referred to betel nuts. He testified that he had seen "paan parak" being sold at sundry shops and drink stalls and that they were food items purchased and consumed by Indian nationals. His wife testified that she was able to purchase a packet of betel nuts for \$3.

47 In our view, any ordinary reasonable person in Mr Sivaprakash's position would have been put on clear notice that something was not right when he was offered RM1,000 to help deliver such a low-value and easily available item. In May 2019, when the transaction took place, RM1,000 would be equivalent to about \$330. Even if the package for delivery contained 20 packets of betel nuts worth about \$60, the payment offered for the delivery job would be more than five times the worth of the entire package. It must have been clear therefore to Mr Sivaprakash that the delivery job involved something illegal and probably risky.

48 We agree with the trial Judge that the circumstances of the delivery of the "paan parak" were clearly clandestine. Mr Sivaprakash's evidence was that, at around 4.00am on 30 May 2019, Joe called him and asked him to pick up a black bag containing "paan parak" from behind a dustbin at a bus stop located near the Tuas Checkpoint and deliver it to someone wearing a cap at Block 326A Sumang Walk. According to Joe, an unnamed person had entered Singapore from Johor with the "paan parak" but there had been "an issue" and so that person left the "paan parak" behind a dustbin at the bus stop near the Tuas Checkpoint and returned to Johor. Any ordinary reasonable person would have found it highly questionable, if not altogether incredible, that a harmless and cheap item like "paan parak" had to be delivered in such a surreptitious manner. Even the name of the intended recipient or his contact number was not mentioned. Further, there was never any suggestion that this cheap item was available only in Malaysia and not in Singapore.

49 In addition, Mr Sivaprakash did not dispute that he received \$9,000 in cash from Mr Low in exchange for the bundles delivered. However, he claimed that Joe did not inform him to collect money and he only became aware of the

\$9,000 after he had passed the bundles to Mr Low. Although he was not told to collect anything in exchange for delivering the “paan parak”, he eventually accepted the \$9,000 from Mr Low because Mr Low was becoming aggressive verbally. The following exchange took place in court:

Q After you gave the plastic bag to Mr Low, anything happened after that?

A Yes, Your Honour. After I gave it, he had---he stretched to pass some money. I glanced at him, wondering, “I was not informed to collect money, what.” He then pa---tried to pass the money to me. “Eh, *kan ni na. Ini wang kasi sama dia sembilan ribu(?)*.”

Q Did you take the money?

A Yes, Your Honour. I did not---I was scared. It was early in the morning. I did not know what to do. He was using vulgarities on me. I was afraid that he may hit me, so I just took the money.

Q Did Joe ask you to take the money? Was his instructions to you to take money upon delivering the plastic bag?

A No, Your Honour.

50 Mr Low’s evidence on this point was similar to Mr Sivaprakash’s testimony:

Q And can you confirm to this Court that at Sumang Walk, when you met Sivaprakash, he delivered the white plastic bag and you deli---you gave him the \$9,000 cash, correct?

A He passed me the white plastic bag. I passed him the money, but he didn’t accept it immediately. I then used abusive language to scold him, then he took the money.

51 However, as pointed out by the trial Judge, both appellants’ evidence at the trial regarding the \$9,000 differed materially from what they had stated in their investigative statements.

(a) In Mr Sivaprakash’s 2 June Long Statement, he stated:

... When I stopped there, I gave the things in the white plastic bag to the man wearing the white cap. Then the man wearing the white cap took out money from his bag and gave it to me. I was wondering why the man wearing the white cap gave me money. The man wearing the white cap told me “Sembilan ribu”, which means SGD\$9000. ... I then put the money inside my bag and put my bag in the front basket of my bike. I did not ask the man wearing the white cap why he gave me the money. I did not ask the man wearing the white cap because it did not occur to me and it was because I was getting late for work. I did not utter any word to the man wearing the white cap. After that, I left the bus stop. I left first.

(b) In Mr Low’s 2 June Long Statement, he stated:

... The man with the red helmet stopped his motorcycle beside me and I took the SGD\$9000 ... from my bag and handed it to the man. The man wearing the red helmet took the money from me and passed me a white plastic bag. ... The man with red helmet left after handing me the white plastic bag. We did not talk to each other at all.

52 Mr Sivaprakash was unable to explain this material inconsistency between his testimony at the trial and his investigative statement. He claimed that he did not state in his investigative statement that Mr Low scolded him with vulgarities because he “did not know if it was okay to use a vulgar term in [his] statement”. We agree with the Judge that this explanation is wholly unpersuasive. As for Mr Low, he did not even attempt to give any explanation for the discrepancies on whether or not he spoke to Mr Sivaprakash during the delivery of the bundles.

53 On either account, it was plain that Mr Sivaprakash did not think of calling or messaging Joe, immediately or while he was riding his motorcycle to his workplace, to ask about the \$9,000 and what he was supposed to do with it. Mr Sivaprakash testified that he intended to reach his workplace first, then give

Joe a phone call about what he was supposed to do with the \$9,000. However, he was arrested at his workplace by the CNB officers and therefore could not call Joe. Mr Sivaprakash also testified that he went to a canteen near his workplace after he left Sumang Walk to buy breakfast and when he was doing so, he was arrested by the CNB officers.

54 It appeared therefore that Mr Sivaprakash was not concerned about the fact that he had a substantial amount of cash in his possession and saw no urgency to call or to message Joe for instructions about the \$9,000. That casts serious doubt on his claim that Joe did not inform him to collect any money in exchange for delivering the “paan parak”.

55 Mr Sivaprakash argued further that his behaviour at the time of delivery and after the delivery showed that he truly believed he was delivering a harmless item like “paan parak”. He argued that he passed the bundles to Mr Low openly at a public bus stop and continued on his way to work in Singapore instead of returning to Johor. Further, upon being arrested by the CNB officers, he cooperated with them readily and did not attempt to escape. He was also recorded to have broken down in tears during the recording of his investigative statement. This, he submitted, reflected his anguish at being “cheated” by Joe.

56 We do not think that these points gave credence to Mr Sivaprakash’s claim that he truly believed that he was delivering “paan parak”. The exchange with Mr Low took place at a public bus stop at around 6.20am when there were likely to be few (if any) members of the public in the vicinity. Mr Sivaprakash remained in Singapore after passing the bundles to Mr Low because he had to report for work as a production operator at his regular workplace in Sungei Kadut Way, Singapore. He was no longer in possession of the Drug Bundles.

He also did not know at that time that the CNB was on his and Mr Low's trails and that Mr Low was also about to be arrested. As for his breaking down in tears during the recording of his investigative statement, when the recording officer asked him through the interpreter what was wrong, he did not reply. After a few minutes, he stopped crying and said he was okay to continue with the recording. He did not explain the reason for crying. It is not unusual for people to shed tears when they are arrested, especially for serious offences, due to the realisation that they have to face the consequences of their unlawful conduct.

57 In the light of all this evidence, we are not persuaded that Mr Sivaprakash held the genuine belief that he was merely helping Joe to deliver "paan parak", left behind a dustbin at a bus stop, to some unknown person in Singapore. His assertions as to his belief were plainly unbelievable. Further, if it was true that Joe had told him how the "paan parak" came to be left at the said bus stop, Joe could have easily informed the intended recipient (whether it was Mr Low or someone else) about the location and to pick it up there. There would have been no need to involve Mr Sivaprakash and to pay him RM1,000 just to make the delivery. All the evidence pointed clearly to a clandestine drug transaction in the early morning of 30 May 2019, not an innocuous delivery of some lawful and cheap consumable item.

Mr Sivaprakash did not open the Drug Bundles to check their contents

58 We are also not persuaded by Mr Sivaprakash's claim that he opened and checked all the Drug Bundles to satisfy himself that they contained "paan parak". He did not mention this in any of his investigative statements.

- (a) In his cautioned statement recorded on 30 May 2019 at about 11.20pm ("Mr Sivaprakash's Cautioned Statement"), he stated:

I was told by Joe that the things that I was supposed to give is “panparak”. This is called “sireh” in Malay. ... I did not know these were drugs. I was told that it was “pan parak”. Furthermore, I did not suspect the things to be drugs as it smelt like “sireh”. ...

(b) In Mr Sivaprakash’s 2 June Long Statement, he stated:

8 ... I took what is inside the black plastic bag and put it in a white plastic bag. I thought the things inside the black plastic bag were “paan parak” because “Joe” told me it was that. It was also because it was aromatic. There were 2 which were wrapped up in white bag and there were 2 which were wrapped with black cello tape. ...

(c) In his long statement recorded on 3 June 2019 at about 2.35pm, he stated as follows:

19. ... I have seen the item marked as A1A in Photo 10 before my arrest, at the bus stop after clearing Tuas Checkpoint. It was already like that and it was in a torn black plastic bag when I took it. There should be 2 of this. I put this in a white plastic bag after I took it out from the torn black plastic bag. ...

20. ... For the items marked as A1B1, A1B2 and A1B3, in Photo 14, they were the items in the torn black plastic bag which I picked up at the bus stop after clearing Tuas Checkpoint. They were already like that when I picked them up. After I picked the items marked as A1B1, A1B2 and A1B3, I took them out of the torn black plastic bag and put it into a white plastic bag. I then threw the torn black plastic bag away. ...

(d) In his long statement recorded on 15 January 2020 from about 10.44am, he stated as follows:

Question 1: In paragraph 8 of your statement, you mentioned that the ‘Paan Parka’ was ‘aromatic’ and in paragraph 33 of your statement, you mentioned that you ‘have never seen what the things inside the packet look like and therefore do not know how ‘Paan Parak’ actually looks like’. How then are you able to tell how ‘Paan Parak’ smells like without actually having seen it before?

Answer 1: All I said was that when I took out the bundles from the torn black plastic bag, it was aromatic. I do not know if “Paan Parak” is aromatic or not. It smells like betel nut.

59 It was only at the trial that Mr Sivaprakash took the position that he opened and checked the Drug Bundles. He testified:

A ... I noticed that there was a plastic---black plastic bag that seemed to be torn and it seemed to contain bundles. I then sat down and opened it. It was aromatic. I took out a bundle and looked like it was packed. I did not know what it contained. Joe said that it was *paan parak*. I recalled this. Therefore, I tried to see if I could check that it was indeed *paan parak*. When I opened it, it seemed to smell like *paan parak*. It was aromatic. Apologies, Your Honour. The aroma was alike to betel nuts. I believed then that it was indeed as Joe said *paan parak*. I then it closed up, I packed it back. I opened the others and it was similar. I then gathered the items. I throw away the torn plastic bag. There was a bag in my motor basket that was containing my raincoat. I took the bag and I placed all these items into that bag and I put the bag into my basket. ...

60 Mr Sivaprakash claimed that he did not state in his investigative statements that he opened and checked the Drug Bundles because he was not asked specifically about it. When challenged during cross-examination that he did not mention checking the Drug Bundles because the checking did not happen, he replied:

A I disagree. I disagree. This is because in the heat of the moment of being arrested, my statement was being taken. I had informed that I had taken this from a bus--a dustbin at the bus-stop. As I was saying this, I started crying. The officer asked me to stop crying. I had been cheated. I had been backstabbed. I had forgotten. When the IO took the statement from me, I did not know to what extent I was supposed to inform in the statement. If the I--the IO did not ask me. If the IO asked me, I would have told him.

61 We find Mr Sivaprakash’s explanation to be completely unconvincing. In Mr Sivaprakash’s Cautioned Statement, he stated that he “did not suspect the things to be drugs as it smelt like “sireh” [or “paan parak”]”. In Mr Sivaprakash’s 2 June Long Statement, he stated that he “thought the things inside the black plastic bag were “paan parak” because Joe told him so and because it was aromatic. This shows that Mr Sivaprakash was giving the reasons in his investigative statements on why he believed that the Drug Bundles contained “paan parak” when he picked them up. The reasons were simply that Joe had told him what the contents were and because the contents were aromatic. If he did unwrap and check the Drug Bundles visually as well, and therefore performed a smell and sight test, he would certainly have added this assertion in his statements as a further confirmation of his belief. After all, he did provide details about handling the Drug Bundles and putting them into another plastic bag because the original black plastic bag was torn and he decided to discard it. Mr Sivaprakash’s belated claim at the trial that he opened and checked all the Drug Bundles therefore could not be true.

62 In addition to the above, Mr Sivaprakash testified that he had unravelled the black tape around the various bundles in one intact piece smoothly, checked their contents and then re-wrapped the bundles tightly. The photographs of the Drug Bundles, Exhibits A1A, A1B1, A1B2 and A1B3 (see below), taken during the processing of the exhibits show that they were wrapped neatly and tightly:



Figure 1: Photograph of Exhibit A1A



Figure 2: Photograph of Exhibit A1B1, Exhibit A1B2 and Exhibit A1B3

63 The two black Drug Bundles (Exhibits A1A and A1B3) showed no sign of tampering or broken tape at all. They were wrapped so tightly that the investigating officers had to cut the black tape in order to get to the layers underneath. When Mr Sivaprakash arrived at the bus stop after the Tuas

Checkpoint, it was about 5.30am. He agreed that it was dark and there were only lights on the road. In that situation, it was highly unlikely that Mr Sivaprakash could have unwrapped such sticky black tape on the bundles so smoothly and then re-wrapped each of them so neatly and tightly while holding on to them at the dimly lit bus stop.

64 On the totality of the evidence, we agree with the trial Judge that Mr Sivaprakash has not rebutted the s 18(2) presumption. The evidence does not support to any extent Mr Sivaprakash’s assertion that he genuinely believed he was picking up and delivering only “paan parak”. The trial Judge’s decision to convict Mr Sivaprakash on his charge is therefore unimpeachable.

Whether there is a reasonable doubt in respect of the integrity of the chain of custody of the Drug Bundles

65 Mr Sivaprakash also argued that the trial Judge was wrong in finding that there was no reasonable doubt in respect of the integrity of the chain of custody of the Drug Bundles. He highlighted the following:

(a) There was no photograph showing that Mr Low’s PMD was searched in Unit #11-88 and that the Drug Bundles were recovered from the PMD.

(b) A photograph of the white plastic bag and its contents taken in Unit #11-88 showed only three packets of drugs. There was no explanation why the Fourth Drug Bundle (Exhibit A1A1A which contained 8.64g of diamorphine) was left out of the photograph.

66 It cannot be disputed that the results of the DNA analysis showed that (a) Mr Sivaprakash’s DNA was found on the tape and cling film of all the Drug

Bundles and (b) Mr Low's DNA was found on the tape of the Fourth Drug Bundle and the interior and exterior of the white plastic bag. The presence of DNA is generally probative as it tends to establish that the subject did in fact come into contact with the surface or point where his DNA was found (*Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [62]). There is therefore no reason to doubt that the Drug Bundles analysed by the Health Sciences Authority were the ones recovered from Mr Low's PMD by the CNB.

67 Although there was no photograph showing the PMD being searched in Unit #11-88 and the Drug Bundles being recovered from the PMD, there was ample evidence from the CNB officers that the PMD was brought up to Unit #11-88. Sergeant Merabel Lee Yi Shan ("Sgt Merabel") testified that she "remember[s] pushing the PMD from the place where Low was arrested to [Unit #11-88]". Inspector Tay Cher Yeen Jason and Sergeant Muhammad Fauzi bin Mohamed Said testified that Mr Low and the PMD were brought up to Unit #11-88. In addition, Sgt Merabel recorded in the field diary that, among other things, the following exhibits were seized from Unit #11-88: (a) "01 black tape bundle"; (b) "02 clear tape bundles with black tape containing brown granular substance"; and (c) "01 black tape bundle". All the evidence showed clearly that the four Drug Bundles were indeed recovered from Mr Low's PMD after it was searched in Unit #11-88.

Conclusion

68 For the above reasons, we agree with the trial Judge that the respective charges against Mr Low and Mr Sivaprakash were proved beyond reasonable doubt. Their convictions were therefore correct.

69 Although both appellants were found by the trial Judge to be mere couriers in the drug transaction within the meaning of s 33B(2)(a) of the MDA, they did not receive a certificate of substantive assistance from the Public Prosecutor under s 33B(2)(b) of the MDA. As both these requirements must be satisfied to qualify for the alternative sentencing regime in s 33B of the MDA, it follows that the mandatory death penalty must apply to both appellants.

70 Accordingly, we dismiss Mr Low's appeal in CCA 12 and Mr Sivaprakash's appeal in CCA 13.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Kannan Ramesh
Judge of the Appellate Division

Peter Keith Fernando (Leo Fernando LLC) and Wang Shi Mei (MSC Law Corporation) for the appellant in CA/CCA 12/2023;
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Anandan Bala, Gabriel Gan and Foo Yang Yi (Attorney-General's Chambers) for the respondent in CA/CCA 12/2023 and CA/CCA 13/2023.