

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 17

Court of Appeal / Criminal Appeal No 5 of 2023

Between

Affandi bin Mohamed Hassan

... Appellant

And

Public Prosecutor

... Respondent

Court of Appeal / Criminal Motion No 49 of 2024

Between

Affandi bin Mohamed Hassan

... Applicant

And

Public Prosecutor

... Respondent

GROUNDS OF DECISION

[Abuse of process — Collateral purpose]

[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]
[Criminal Procedure and Sentencing — Trials — Whether accused person
received inadequate legal assistance from trial counsel]
[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Procedure and Sentencing — Sentencing]

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Affandi bin Mohamed Hassan
v
Public Prosecutor and another matter

[2026] SGCA 17

Court of Appeal — Criminal Appeal No 5 of 2023 and Criminal Motion No 49 of 2024

Tay Yong Kwang JCA, Steven Chong JCA and Ang Cheng Hock JCA
6 March 2026

14 April 2026

Tay Yong Kwang JCA (delivering the grounds of decision of the court):

Introduction

1 The appellant was tried in the General Division of the High Court on the following charge:

... you, on 10 December 2020, at about 3.21 p.m., at Blk 305 Serangoon Avenue 2, #04-88, 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, seventy (70) packets and two (2) straws containing not less than 2,752.64g of granular/powdery substances, which was analysed and found to contain not less than 24.64g of diamorphine, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the MDA, and further, upon your conviction, you may alternatively be liable to be punished under section 33B of the MDA.

2 At the close of the trial, the trial judge was satisfied that the charge was proved beyond reasonable doubt and he therefore convicted the appellant. Although the appellant was issued a certificate of substantive assistance, he could not avail himself of the alternative sentencing regime under s 33B(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) as the trial judge held that his role in the drug trafficking transaction was not restricted to that of a mere courier. The grounds of decision are published as *Public Prosecutor v Affandi bin Mohamed Hassan* [2023] SGHC 182.

3 On appeal, the appellant’s key contention was that he was a mere courier in relation to some of the drugs found on him. As part of his appeal, he filed a criminal motion to adduce new evidence.

4 On 6 March 2026, we heard and dismissed both the criminal motion and the appeal. These are the grounds of our decision.

The proceedings in the High Court

5 At the trial, the undisputed facts were that on 10 December 2020, the appellant was arrested at Block 305 Serangoon Avenue 2, #04-88, Singapore, where he resided. Three sets of drugs (referred to at the trial as the “A”, “B” and “D” drugs) were recovered from different locations within the flat. The total quantity of the drugs was 2,752.64g of granular/powdery substance which was analysed subsequently and found to contain not less than 24.64g of diamorphine. The “A” drugs (containing not less than 6.96g of diamorphine) were found under the bed in the appellant’s bedroom, the “B” drugs (containing not less than 0.24g of diamorphine) were found in a box on the bedside table in the same bedroom and the “D” drugs (containing not less than 17.44g of diamorphine) were found on a table in the living room. The appellant was in

possession of all the drugs and he knew that the drugs contained diamorphine. There were other drugs found in the flat (referred to at the trial as the “C” and “E” drugs) but these were not the subject matter of the charge.

6 Various statements were given by the appellant voluntarily. The appellant confirmed under cross-examination that these statements were recorded accurately and he did not challenge the admissibility of all the statements.

7 The appellant was assessed by Dr Derrick Yeo Chen Kuan (“Dr Yeo”) from the Institute of Mental Health (“IMH”). Dr Yeo opined in his psychiatric assessment report that although the appellant was suffering from opioid use disorder, he was not of unsound mind at the material time of the offence and he was fit to plead in court. The report by Dr Yeo was included in the agreed bundle of documents for trial.

8 The Prosecution’s case was that the appellant intended to traffic in the “A”, “B” and “D” drugs. The trial judge observed that the Prosecution did not state expressly that it intended to rely on the presumption of trafficking under s 17(c) of the MDA.

9 The Appellant did not dispute that he intended to traffic in the “A” and “D” drugs. In relation to the “D” drugs, his defence was that he was only a mere courier. He had agreed to work for one “Ah Kwang” to take delivery of the “D” drugs on instructions from Ah Kwang and to pass them to “Salim” and “Pekboon”. In relation to the “B” drugs, his defence was that they were solely for his own consumption (the “consumption defence”).

10 At the trial, the appellant's evidence in relation to the "D" drugs was riddled with inconsistencies, contradictions and flaws. The trial judge found his evidence to be "confused" and that he could not prove that he was a mere courier. He was unable to provide a consistent narrative as to how he came into possession of the "D" drugs and what he was required to do as a courier for Ah Kwang. For example, he offered a slew of different and continually evolving accounts of the quantity of drugs meant for delivery to Salim and Pekboon. By the end of the trial, he had offered various accounts that he would end up giving either one, two, three, four or even all five "stones" to Pekboon, none, half, one, two, three or four "stones" to Salim and leaving either none, half or one "stone" for himself. In the circumstances, the trial judge saw that the only reasonable inference was that the appellant was making things up as he went. The appellant even let slip during cross-examination that he was arrested before he could repack the "D" drugs for sale.

11 The trial judge held that the appellant intended to traffic in the "B" drugs as both the "A" and "B" drugs were found in the appellant's bedroom and packed in the same manner and using the same plastic bags. The appellant had admitted that the plastic bags containing the "A" drugs were meant for sale. The trial judge also found that the appellant's argument that the "B" drugs were for his own consumption was an obvious afterthought. Prior to and during the trial, the appellant vacillated between denying and accepting that he possessed and owned the "B" drugs. The argument that the "B" drugs were for his own consumption was only raised at the trial after he had no other option but to concede his possession of the "B" drugs. Further, the appellant conceded that he had no reason for failing to state in his fourth investigative statement that the "B" drugs were solely for his own consumption although he had stated so for the "C" drugs.

12 The mere fact that the “B” drugs were found together with drug consumption utensils in a blue basket was not sufficient to raise a reasonable doubt in the trial judge’s mind that the “B” drugs were intended solely for the appellant’s own consumption. In any case, the appellant had admitted that these utensils were only for methamphetamine consumption. The appellant also did not suggest at any time that he had a practice of keeping all the items intended for his personal use in the same blue basket.

13 Even without relying on the presumption of trafficking, the trial judge was satisfied that the evidence left no reasonable doubt that the appellant was trafficking in the “B” drugs. It would also have followed that the presumption, which was operative on the facts, would not have been rebutted in any event.

14 Accordingly, the trial judge convicted the appellant and imposed the mandatory death sentence on him. The trial judge also granted an order of discharge amounting to an acquittal on the other charges which were not proceeded with by the Prosecution at the trial.

The appeal and the criminal motion

15 The appellant filed CA/CCA 5/2023 (“CCA 5”) on 19 April 2023. Although the appellant appealed against both conviction and sentence, it was stated clearly in his written submissions that “the only purpose of this appeal is to have the appellant’s sentence of death commuted to one of life imprisonment with the application of s 33B of the MDA on the finding of him being a courier”. As the appellant was already 60 years old at the time of the hearing before us, the mandatory caning of 15 strokes was inapplicable to him.

16 In CA/CM 49/2024 (“CM 49”) filed on 24 October 2024, the appellant applied to adduce new evidence in the form of a psychiatric report by Dr Jacob

Rajesh (“Dr Rajesh”) from Winslow Clinic & Promises Healthcare Pte Ltd dated 14 August 2024. The report stated that the appellant suffered from an abnormality of the mind caused by his moderate opioid use disorder at the material time of the alleged offence. It appeared that the objective of the new evidence was to establish that the confusion in the appellant’s evidence at the trial on the courier issue was a result of opioid use disorder rather than dishonesty.

17 The sum of CM 49 and CCA 5 was therefore that the new evidence would help the appellant to prove that he was a mere courier for the “D” drugs and that he should qualify for the alternative sentencing regime. This was because he had received a certificate of substantive assistance from the Public Prosecutor.

18 Where fresh evidence is sought to be admitted in a criminal appeal, s 392(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) (“CPC”) provides that the appellate court may admit the evidence if it thinks that the evidence is “necessary”. To succeed, the appellant must show that the requirements of (a) non-availability; (b) relevance; and (c) reliability are satisfied (*Ladd v Marshall* [1954] 1 WLR 1489, cited with approval by this court in *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 (“*Ariffan*”) at [1]). In the context of a criminal appeal, the requirement of non-availability is regarded as “less paramount than the other two conditions”, although it is not dispensed with altogether (*Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [32]). If the court is satisfied that the additional evidence which is favourable to the accused fulfils the requirements of relevance and reliability, that evidence is likely to be regarded as “necessary” within the meaning of s 392(1) of the CPC and admitted (*Ariffan* at [61]). The requirement of non-availability requires the applicant to show that the evidence “could not have been obtained with reasonable diligence

for use at the trial” or that the evidence “was reasonably not thought to be necessary at trial” (*Ariffan* at [66] and [68]).

19 To explain why the reports by Dr Rajesh were not sought and adduced as evidence at the trial, the appellant put the blame on both his former counsel appointed under LASCO (Legal Assistance Scheme for Capital Offences). At the trial, the lead counsel for the Defence was Mr Mahesh Rai s/o Vedprakash Rai (“Mr Mahesh Rai”) and the assisting counsel was Mr Subir Singh Grewal.

20 The appellant alleged that his former counsel did not explain to him the medical report by Dr Yeo of IMH before or during the trial. He recalled that he only saw that medical report as part of a bundle of documents. He also recalled that during the trial, a specialist testified but he did not understand his evidence. An interpreter was present in court but the interpreter did not interpret the medical report to him. That medical report was admitted in evidence without challenge at the trial. There was no cross-examination of Dr Yeo and the appellant did not recall his former counsel explaining the significance of not cross-examining a witness.

21 The appellant stated that he felt that during the conduct of his trial, his former counsel “were not putting in full effort”. He alleged that “they did not bring any documents to go through with me and they did not discuss any documents with me. Although they spoke in simple Malay and English, I felt they were not making the effort to explain everything to me. I felt that they thought I was not clever enough to understand”.

22 Both former counsel were informed about the appellant’s complaints against them. In a joint letter dated 12 February 2025 and in Mr Mahesh Rai’s affidavit affirmed on 28 February 2025 and filed on 3 March 2025, both former

counsel refuted the appellant's allegations against them. They produced numerous records of their interviews with the appellant to show that they went through the contents of the agreed bundle of documents with the appellant and explained it to him on multiple occasions. The medical report by Dr Yeo was in the agreed bundle. The appellant had no objections to the contents of the agreed bundle.

23 They also produced the appellant's eleven-page handwritten notes from his own review of the case for the Prosecution and the agreed bundle. In those notes, the appellant discussed specific aspects of the documents disclosed by the Prosecution. Even if the appellant's assertion was true that a portion of the notes was written by a fellow inmate who was helping him with his case, it was evident from these notes that the appellant had conducted a thorough review of the documents.

24 The appellant instructed both former counsel to advance only a "courier defence". At no point did he inform them that he might want to cross-examine Dr Yeo or to pursue any defence based on opiate use disorder. He indicated that he would be the only witness in his defence. Both former counsel questioned the appellant about his defence on more than one occasion and presented him with different options. Several of their questions were met with silence.

25 On 3 February 2023, after both former counsel had gone through the agreed bundle of documents with the appellant, he informed them that he would not be challenging any of his statements given during the investigations. On 23 March 2023, the appellant signed a confirmation stating that his only defence would be the "courier defence" for the "D" drugs. This occurred on the first day of the trial.

26 At the hearing before us, the present lead counsel for the appellant, Mr Suresh s/o Damodara, emphasised to the Court of Appeal that he was merely putting forward the appellant’s complaints against his former counsel and did not associate himself in any way with those complaints. He stressed that he believed both former counsel had fulfilled their responsibilities dutifully as members of the legal profession.

Decision on CM 49

27 In order to demonstrate that inadequate legal assistance was provided, the appellant must prove that the former counsel’s conduct of the case amounted to “flagrant or egregious incompetence or indifference”. He must also show that there is a real possibility that the inadequate legal assistance resulted in a miscarriage of justice (*Mohammad Farid bin Batra v Public Prosecutor* [2020] 1 SLR 907 at [135] and [139]).

28 In the absence of any corroborative evidence put forward by the appellant, we rejected the appellant’s accusations against the former counsel. His mere feelings that the former counsel were not putting in their fullest effort in their conduct of the trial and that they did not think that he was clever enough were nowhere near to meeting the high threshold of the test for miscarriage of justice by reason of inadequate legal assistance. It was plain from the numerous records produced by the former counsel of their interviews with the appellant that the appellant was advised about the medical report by Dr Yeo and could have sought a separate medical opinion if he wanted to refute or to qualify that report. Instead, he confirmed in writing on 23 March 2023 that the only defence that he wished to put forward in relation to the “D” drugs was that he was a mere courier. He even wanted to plead guilty at the start of the trial. The statement of agreed facts (at paragraphs 94 and 95) mentioned the medical

report by Dr Yeo and stated that Dr Yeo opined that the appellant was likely to be suffering from opiate (heroin) use disorder, was not of unsound mind and was fit to plead in court.

29 It was also not open to the appellant to argue that he was so confused by his mental condition that he could not even understand what he was doing when he signed the said confirmation concerning his only defence for the trial. This was more than two years after his arrest and after the psychiatric assessment by Dr Yeo. It was also not stated by Dr Rajesh that the appellant was suffering from an abnormality of mind when he signed the confirmation of his defence more than two years after his arrest.

30 In the circumstances here, the appellant clearly could not satisfy the requirement of non-availability in respect of the new evidence sought to be adduced. It was available at the trial but would not be relevant to his defence in the light of his instructions to his former counsel at the relevant time.

31 On the issue of relevance of the further evidence, even if it was relevant to explain the inconsistencies in the appellant's statements, particularly the earlier ones, it could hardly be relevant to explain the inconsistencies in his evidence during the trial more than two years after his arrest. Dr Rajesh did not state that the appellant's abnormality of the mind persisted up to and during the trial such that he could not comprehend fully the questions he was asked or give coherent answers to the questions in court. Instead, Dr Rajesh agreed with Dr Yeo's assessment that the appellant was fit to plead in court.

32 CM 49 was another clear instance of a convicted person seeking a retrial under the guise of introducing further evidence. It was unfortunate that the appellant was prepared to make completely unfounded allegations against his

former counsel who appeared to us to have discharged their duties responsibly and honourably. Recently, the Court of Appeal expressed its strong disapproval of such baseless allegations against trial counsel, especially if they are made by fellow members of the legal profession (see *Masri bin Hussain v Public Prosecutor* [2025] SGCA 9 at [26]–[28]).

33 The usual justification put forward by appellants convicted of capital offences is that they are fighting for their lives and are therefore entitled to grasp at whatever they can to possibly save themselves. Even so, we do not think this justifies trampling on the rights and legitimate interests of other persons by making unfair and unfounded accusations against their personal or professional reputation in the hope of achieving a retrial or even an acquittal or simply a reduction in the severity of punishment.

34 CM 49 and the supporting affidavits were drafted by a different set of lawyers who did not represent the appellant at his appeal. At the hearing before us, Mr Suresh s/o Damodara, the present lead counsel for the appellant, stated fairly that while he could not withdraw the appellant’s allegations, he did not associate himself in any way with those allegations. He stressed that he believed both former counsel had fulfilled their responsibilities dutifully as members of the legal profession. He also acknowledged that once these allegations were not sustained, there would be no basis to argue that the reports by Dr Rajesh could not have been made available at the trial.

35 For the above reasons, we dismissed CM 49.

Decision on CCA 5

36 Once CM 49 was dismissed, there was really nothing to explain the utter confusion in the appellant’s evidence on the courier issue. The only logical

conclusion is that the confusion was a result of dishonesty and not any disorder of mind. The appellant was untruthful, not unwell. In any case, besides his confused evidence, there was also ample evidence that the appellant was intending to repack the “D” drugs for sale. In our judgment, the trial judge was entitled to find that the appellant could not prove that he was a mere courier in respect of the “D” drugs.

37 The appellant also raised various procedural arguments in his appeal. We found them to be without merit.

38 First, the appellant argued that separate charges involving the different sets of drugs (“A”, “B” and “D”) ought to have been preferred against him. Instead, there was a single charge in respect of all three sets of drugs. The appellant submitted that this was in breach of the general rule that each distinct offence must be framed in a separate charge as required by s 132(1) of the CPC.

39 However, there was no issue of distinct offences on the facts here. The appellant was charged with the offence of possession of drugs with the intention to traffic them. The drugs were found in the flat at the same time and the appellant admitted that he was in possession of all the drugs. The law does not require the Prosecution to prove that all the drugs found in the flat came into the appellant’s possession at the same time or on the same occasion. This was therefore a single offence of possession.

40 Further, even if there was a breach of s 132(1) of the CPC, the conviction and sentence would not be reversed or altered unless the appellant was able to show that there was a “failure of justice” (see s 423 of the CPC). The purpose of a charge is to ensure that the accused person knows the offence which he is accused of and is thus able to meet the case against him (*Soh Chee Wen v Public*

Prosecutor [2025] 2 SLR 176 at [212]–[213]). The appellant was not able to show how the charge, as framed, caused him to be unable to meet the case against him. This argument was also not raised during the trial but only at the appeal. This showed that the charge did not pose any difficulty to the appellant in putting up his defence during the trial.

41 Second, the appellant argued that because the Prosecution was not relying on the presumption of trafficking under s 17(c) of the MDA, the burden did not fall on the appellant to prove on a balance of probabilities that he was a mere courier (the “courier defence” as he called it). Instead, he submitted that it was for the Prosecution to prove beyond reasonable doubt that the appellant could not avail himself of the “courier defence”. This meant that the Prosecution had to prove that, in addition to being a mere courier of the “D” drugs, the appellant was doing more, such as repacking the “D” drugs for sale. The appellant further argued that by putting to the appellant during cross-examination at the trial that his involvement in the “A”, “B” and “D” drugs was “not restricted to transporting, sending or delivering” the same, the Prosecution had accepted his “courier defence” and/or that the burden fell on the Prosecution to prove that the appellant could not avail himself of the “courier defence”.

42 The term “courier defence” emerged from around 2013 as a convenient shorthand to mean that the accused person’s involvement in the drug trafficking transaction was restricted to “transporting, sending or delivering” a controlled drug (see s 33B(2) and (3) of the MDA which came into operation as law with effect from 1 January 2013). Establishing the fact that the accused person was a mere courier is not a defence to a trafficking charge because a mere courier of drugs does not cease to be a trafficker. This is so because “transporting, sending or delivering” a controlled drug is still trafficking within the meaning of the MDA. This is made clear in s 2 of the MDA which defines “traffic” to mean “to

sell, give, administer, transport, send, deliver or distribute” or to offer to do any of those acts.

43 Being a mere courier of drugs satisfies one of the two conjunctive requirements set out in s 33B(2) and (3) in order to qualify for the alternative sentence of life imprisonment. The other conjunctive requirement in s 33B(2) is that the Public Prosecutor has issued a certificate of substantive assistance to the accused person while the other conjunctive requirement in s 33B(3) is that the accused person was suffering from an abnormality of mind. If both conjunctive requirements in s 33B(2) or (3) are satisfied, the court is given the discretion to sentence the accused person to life imprisonment instead of having to impose the death penalty.

44 The burden of showing that the accused person was a mere courier in the drug transaction always rests on the accused person, not on the Prosecution. This is made clear in s 33B(2) and (3) which require that “the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted to transporting, sending or delivering a controlled drug” and the related activities. The fact that the Prosecution put to the appellant that his involvement in the “A”, “B” and “D” drugs was “not restricted to transporting, sending or delivering” meant simply that the Prosecution did not accept the appellant’s contention that he was a mere courier. The appellant was therefore obliged to prove his contention to the court on a balance of probabilities, as required under s 33B of the MDA. We could not see how such a “put” could mean that the Prosecution had accepted that the appellant was a mere courier, as argued by the appellant.

45 Third, the appellant argued that by issuing him a certificate of substantive assistance, the Prosecution had accepted the fact that the appellant

was a mere courier. Here again, there appeared to be a complete failure to understand the alternative sentencing regime introduced by s 33B of the MDA. A certificate of substantive assistance is issued on the basis that an accused person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore. It is a totally separate consideration from the requirement that the accused's involvement in the drug transaction was restricted to being a mere courier. The two requirements in s 33B(2) are separate but conjunctive factors to be met in order to qualify for the alternative sentencing regime under s 33B(1)(a) of the MDA. They are completely independent from each other.

46 Fourth, the appellant argued that the trial judge dealt with the courier issue prematurely as this issue should be considered only after conviction and when the issue of sentencing arose. The complaint was that in his grounds of decision, the trial judge rejected the appellant's argument that he was a mere courier before stating that he found the appellant guilty as charged and convicted him.

47 Evidence on the courier issue would be adduced as part and parcel of the overall evidence in a trial as it was in this case. The alternative sentencing regime introduced by s 33B of the MDA was not meant to create a dichotomous trial process (see the majority judgment in *Public Prosecutor v Chum Tat Suan and another* [2014] SGCA 59 at [76] to [84]). Evidence relating to the courier issue, like evidence about an accused person's mental disability for the purpose of s 33B(3)(b) of the MDA, should be adduced at the same trial. At the close of the evidence, the trial judge would be able to determine the issue of guilt as well as the courier issue. In MDA cases, these two issues are invariably intertwined and particularly so on the facts of this case since the appellant's sole "defence" at the trial in respect of the "D" drugs was that he was a mere courier. The result

is that both issues are often considered together. We could see no prejudice at all to the appellant's case from the mere fact that the trial judge stated in the conclusion section of his grounds of decision that he found the "courier defence" in relation to the "D" drugs was not credible before stating that he was satisfied that the Prosecution had proved the charge beyond reasonable doubt. This was especially so since the appellant did not dispute at the trial that he had intended to traffic the "A" and the "D" drugs and was therefore admitting guilt in so far as those two sets of drugs were concerned.

48 At the appeal, the appellant did not raise any argument about his consumption defence in respect of the "B" drugs. We agreed with the trial judge that the consumption defence was not credible and should be rejected. This defence was raised only at the trial and was an obvious afterthought.

49 In any case, the consumption defence would be of no consequence to the final outcome. The "B" drugs contained only 0.24g of diamorphine. The "A" drugs had 6.96g of diamorphine and the "D" drugs had 17.44g of diamorphine. Therefore, even if the "B" drugs were excluded from the trafficking charge, the amount of diamorphine would still be much more than 15g and the offence would remain a capital offence punishable with the death penalty.

Conclusion

50 We have dismissed the application in CM 49 (see [35]). For the above reasons, we dismissed the appeal in CCA 5 as well.

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Ang Cheng Hock
Justice of the Court of Appeal

Suresh s/o Damodara (Damodara Ong LLC) and Josephine Iezu
Costan (David Nayar and Associates) for the appellant;
Chin Jin Cheng, Heershan Kaur, Ng Jun Kai and Anandan Bala
(Attorney-General's Chambers) for the respondent.
