

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 219

Criminal Case No 7 of 2018

Between

Public Prosecutor

And

- (1) Khor Chong Seng
- (2) Han Fang Guan

GROUND OF DECISION

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

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Public Prosecutor
v
Khor Chong Seng and another

[2018] SGHC 219

High Court — Criminal Case No 7 of 2018
Hoo Sheau Peng J
30 January, 1, 2, 6, 7 February 2018; 3 July 2018

5 October 2018

Hoo Sheau Peng J:

Introduction

1 The two accused persons were jointly tried for offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). The first accused, Khor Chong Seng (“Khor”), claimed trial to a charge of importing into Singapore three packets containing not less than 57.05g of diamorphine, an offence under s 7 of the MDA. The second accused, Han Fang Guan (“Han”), claimed trial to a charge of attempting to possess one packet containing not less than 18.62g of diamorphine for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) and s 12 of the MDA.

2 At the conclusion of the trial, I found that the charges against Khor and Han had been proved beyond a reasonable doubt, and convicted them accordingly.

3 Under s 33(1) read with the Second Schedule to the MDA, the prescribed punishment for the offences is death. However, s 33B(1)(a) provides that if the two requirements set out in s 33B(2) of the MDA are satisfied, the court has a discretion not to impose the death penalty. The first requirement is that the acts of the accused are confined to those of a “courier”. The second requirement is that the Public Prosecutor (“PP”) certifies that the accused has substantively assisted the Central Narcotics Bureau (“CNB”) in disrupting drug trafficking activities within or outside Singapore.

4 I found that Khor met both requirements, and exercised my discretion to impose the sentence of life imprisonment and the mandatory minimum of 15 strokes of the cane. However, Han met neither of the requirements. Therefore, I passed the mandatory death sentence on Han.

5 Han has filed an appeal against conviction and sentence. I now provide the reasons for my decision.

The Prosecution’s case

Events leading up to Khor’s arrest and seizure of the drugs

6 On 2 March 2016, at about 12.10am, Khor arrived at the Woodlands Checkpoint, Singapore, on his Malaysian-registered motorcycle bearing registration number JQT1173. Khor was subjected to a search. From within the inner lining of Khor’s two motorcycle helmets bearing the logos “LTD” and “ARC” respectively, the CNB officers recovered seven bundles of controlled drugs (“the drugs”) as follows:¹

¹ AB 546–547 at para 9.

- (a) a large bundle wrapped in black tape, with a yellow sticker bearing the word “KEN”, marked C1B;
- (b) a large bundle wrapped in black tape, with a yellow sticker bearing the word “KEN”, marked C1C;
- (c) a small bundle wrapped in black tape, with a yellow sticker bearing the words “KEN 水 500”, marked C1D;
- (d) a bundle wrapped in transparent tape, with a yellow sticker bearing the word “KEN”, marked C1E;
- (e) a large bundle wrapped in black tape, with a yellow sticker bearing the word “KEN”, marked D1B;
- (f) a bundle wrapped in transparent tape, with a yellow sticker bearing the word “KEN”, marked D1C; and
- (g) a bundle wrapped in transparent tape, with a yellow sticker bearing the word “KEN”, marked D1D.

7 The charge against Khor concerned the diamorphine contained in exhibits C1B, C1C and D1B, while the charge against Han concerned the diamorphine in exhibit D1B.

8 Khor informed the CNB officers that he was tasked to deliver the drugs to a few recipients. He was waiting for instructions from his boss known as “Lao Ban”. He was willing to assist in a follow-up operation against the intended recipients of the drugs. Thereafter, Khor proceeded to communicate with “Lao Ban”, as well as the intended recipients of the drugs to make arrangements to meet them for the delivery of the drugs.² The various phone

² AB 557–558 at paras 7–15; AB 560–561 at paras 4–12.

calls between Khor and the intended recipients, including Han, were recorded by the CNB officers.³

Han's arrest

9 Sometime before 2 March 2016, Han contacted a drug supplier based in Malaysia known to him as “Ah Tiong” to place an order for drugs. Han contacted “Ah Tiong” at +60 146101016, the same mobile number used by the drug supplier known to Khor as “Lao Ban”. The mobile phone which Han used to contact “Ah Tiong” (which was seized upon his arrest and marked as “HFG-HP4”) bore the number 98676050.⁴

10 On 2 March 2016 at about 2.04am, while in the custody of the CNB officers, Khor received an SMS message from “Lao Ban” stating “T-98676050=\$3600”.⁵ As mentioned, the number 98676050 corresponds to Han’s mobile phone number. Shortly after receiving the SMS message, Khor received a phone call from “Lao Ban”. During this conversation, “Lao Ban” instructed Khor to deliver one of the three “yellow” “big” bundles to “T”. Khor was also instructed to collect \$3,600 from “T”.⁶

11 At about 2.43am, the call records show that Han received a phone call from “Ah Tiong” (using the number +60 146101016).⁷

³ AB 557 at para 7; AB 560 at para 4.

⁴ AB 233; AB 378; AB 650 at para 4.

⁵ AB 94.

⁶ AB 513–514; AB 563–564.

⁷ AB 408.

12 At about 2.44am, Khor received a phone call from “Lao Ban” on his mobile phone. During this conversation, “Lao Ban” told Khor that he would ask “T” to call Khor.⁸

13 At about 2.45am, Han received an SMS message from “Ah Tiong”, stating “T-86531409=\$3600”.⁹ The number 86531409 corresponds to Khor’s mobile phone number.

14 At about 2.47am, Han called Khor and introduced himself as “T”. Han told Khor to proceed to Lorong 7, Toa Payoh.¹⁰ Over four further phone calls from 4.02am to 4.40am, arrangements were made for Khor to meet Han at Block 5, Lorong 7, Toa Payoh.¹¹

15 Acting on the information received from this operation, CNB officers SSgt Bukhari bin Ahmad (“SSgt Bukhari”) and Sgt Yogaraj s/o Ragunathan Pillay (“Sgt Yogaraj”) from the CNB Special Task Force (collectively, “the STF officers”), along with another team of CNB officers led by Insp Tong Hyeng Ji Xanthus (“Insp Tong”), proceeded to Block 5, Lorong 7, Toa Payoh to arrest Han.

16 SSgt Bukhari and Sgt Yogaraj stopped their CNB operational car on Lorong 7, shortly after passing the entrance leading to Block 5. Insp Tong followed closely behind the operational car in a taxi.

17 Sometime after 4.35am, from their vehicle, the STF officers spotted Han standing at the void deck of Block 5.¹² There was nobody else at the void

⁸ AB 382, 520.

⁹ AB 234.

¹⁰ AB 521.

¹¹ AB 408, 531, 536–538.

deck at the material time.¹³ The STF officers were then instructed to effect arrest. As the STF officers began to approach Han, he started walking quickly towards Block 4, Lorong 7, Toa Payoh where he was eventually arrested.

18 Insp Tong's team arrived shortly after and took custody of Han and searched his belongings. W/SSgt Vigneshwari d/o Thanabal recovered \$3,600 in cash from the front left pocket of Han's shorts. The cash was found bundled with a rubber band, kept separately from some other loose cash kept in a wallet.¹⁴

19 Subsequently, Han was brought to his place of residence at Block 5, Lorong 7, Toa Payoh, #11-133, Singapore, where various other amounts of drugs were recovered. This included one bundle marked "A1C1A1A" which was subsequently analysed and found to contain not less than 6.77g of diamorphine. For the sake of clarity, I highlight that this bundle was not the subject of the charge against Han.

Analysis of the drugs

20 The contents of the seven bundles of drugs seized from the two helmets were sent to the Health Sciences Authority ("HSA") for analysis. Exhibits C1B, C1C and D1B were large black bundles of roughly the same size. They contained a granular/powdery substance. The results of the HSA analysis were as follows:

- (a) Exhibit C1B: total weight of 458.9g, analysed and found to contain not less than 18.80g of diamorphine.¹⁵

¹² Tr/01.02.18/36/8.

¹³ AB 636 at para 6.

¹⁴ Tr/30.01.18/104/26–32.

- (b) Exhibit C1C: total weight of 457.3g, analysed and found to contain not less than 19.63g of diamorphine.¹⁶
- (c) Exhibit D1B: total weight of 457.4g, analysed and found to contain not less than 18.62g of diamorphine.¹⁷

21 Exhibit C1D was a considerably smaller bundle, also wrapped in black tape. It contained a crystalline substance with a total weight of 49.85g, which was analysed and found to contain not less than 34.04g of methamphetamine.¹⁸ For completeness, the other three bundles recovered from Khor, namely Exhibits C1E, D1C and D1D, were wrapped in transparent tape and contained strips of nimetazepam tablets.

Statements made by Khor

22 Pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”), the Prosecution sought to admit four statements recorded from Khor in the course of investigations. Khor did not object to the admissibility of any of his statements.¹⁹ The four statements were:

- (a) One contemporaneous statement recorded under s 22 of the CPC by SI Pang Hee Lim (“SI Pang”) on 2 March 2016.
- (b) The cautioned statement recorded under s 23 of the CPC by the Investigating Officer, Insp Teh Chee Sim Karlson (“IO Teh”), on 3 March 2016.

¹⁵ AB 306.

¹⁶ AB 307.

¹⁷ AB 309.

¹⁸ AB 308.

¹⁹ Khor’s closing submissions at paras 35, 39.

- (c) Two long statements recorded under s 22 of the CPC by IO Teh on 8 and 9 March 2016.

23 In his contemporaneous statement, Khor said that the bundles found in the two helmets contained drugs belonging to his boss, which he was to deliver to various persons according to his boss's instructions after he had cleared the Singapore customs. After his arrest on 2 March 2016, he received instructions from "Lao Ban" to send "02 big black bundle" to the person codenamed "99", "01 big black bundle" to the person codenamed "T", and the rest of the bundles to the person codenamed "kent" (elsewhere also referred to as "Ken"). He was also instructed to collect \$6,800 from "99" and \$3,600 from "T". Khor stated that he "[did] not know what kind of drug [was] packed in both the helmet[s]" and that "boss told me it won't 'hang' me".²⁰

24 In his cautioned statement, Khor's stated defence was that he "did not see the 3 bundles of things before [his] arrest" and that his boss had told him that "the amount will not lead to a death penalty". He added that he "d[id] not know much", and that he would simply deliver the drugs "according to [his boss's] instruction" and "the markings on the packages".²¹

25 In his first long statement, Khor detailed how he had met "Lao Ban" and the jobs he had done for "Lao Ban" up to his arrest. I outline the salient points:

- (a) Khor had been introduced to "Lao Ban" by a friend by the name of "Ah De". "Ah De" knew that Khor was in financial difficulty, and had suggested that Khor take up a job delivering drugs to

²⁰ AB 567.

²¹ AB 712.

recipients in Singapore some two months prior to Khor's arrest.²² Khor said that he had been repeatedly assured by "Ah De" that "the amount would not cause [him] to face the death penalty"²³ and that he "[would] not die due to it".²⁴

(b) According to Khor, he did not agree at first, but eventually relented and made his first delivery on 26 February 2016. He successfully made two subsequent deliveries thereafter, and also made one trip to collect payment on behalf of "Lao Ban". Khor was arrested while on his fourth delivery.²⁵

(c) The *modus operandi* for the deliveries was as follows:

(i) Khor would collect the drugs from "Lao Ban" at a condominium in Malaysia. The drugs were packed in motorcycle helmets. According to Khor, he did not see nor was he told what type of drugs were packed into the helmet, or how much drugs were packed. However, he was assured by "Lao Ban" and one "Xiao Di" (the person who handed him the helmets) that the quantity was "little" and "would not cause [him] to face the death penalty".²⁶

(ii) After Khor had cleared customs and crossed into Singapore, he would call "Lao Ban", who would then send him a text message containing instructions as to who to deliver the drugs to, as well as the amount of payment to collect. For this

²² AB 714 at para 5.

²³ AB 714 at para 5.

²⁴ AB 714 at para 6.

²⁵ AB 714 at paras 5–6.

²⁶ AB 715 at para 9, 724 at para 43.

purpose, Khor was given a SIM card by “Lao Ban” with the number 86531409. He was instructed to contact “Lao Ban” at a Malaysian phone number, +60 146101016.²⁷

(iii) After Khor had made the deliveries and collected the payments, he would return to Malaysia to hand the money to “Lao Ban” at the condominium.²⁸

26 In relation to his fourth delivery, during which he was arrested, Khor recounted the following in his first long statement:

(a) On 2 March 2016, he was stopped at the Singapore checkpoint for a search. When one of the officers removed the inner cushion from the helmet, Khor knew the drugs had been exposed.²⁹

(b) Khor was asked to “cooperate with the authorities and provide useful assistance” and he agreed. He was instructed to call “Lao Ban” to explain his delay in calling to ask for instructions. “Lao Ban” accepted Khor’s explanation, and sent him the delivery instructions via text message.³⁰ Khor recounted that “Lao Ban” also verbally instructed him to deliver “two big black bundles” to “99” and to deliver “one big black” bundle to “T”. The remaining bundles were to be delivered to one “Ken”.³¹

(c) Khor was instructed by the CNB officers to contact the person codenamed “99” to set up a meeting at Teck Whye.³² Shortly after,

²⁷ AB 715 at paras 8, 10.

²⁸ AB 716 at para 14.

²⁹ AB 723 at para 37.

³⁰ AB 723 at para 37.

³¹ AB 723 at para 38.

“Ken” called Khor, and Khor was directed to set up a meeting at “Big Hotel”.³³ Khor was then asked to contact “T”. “T” had initially asked to meet on the tenth floor of Block 5, but the CNB officers instructed Khor to set up a meeting at the roadside, to which “T” agreed.³⁴ Khor later learnt that all three persons had been arrested.

(d) Khor was “shocked” when shown the amount of drugs taken out from the helmets. It was the first time he found out that the helmet contained diamorphine. He did not know “how much drugs or the type of drugs hidden in the helmets”.³⁵

27 In his second long statement, Khor confirmed that he had not seen the bundles of drugs until the CNB officer removed them from the helmet after his arrest. Khor said that he did not know what the bundles contained, though he did suspect that they contained something illegal, such as “Five” (a street name for Erimin-5 or nimetazepame). However, according to Khor, he never expected that the bundles would contain “heroin” (a street name for diamorphine).³⁶

Statements made by Han

28 Pursuant to s 258(1) of the CPC, the Prosecution sought to admit six statements recorded from Han in the course of investigations. No objections were made to the admissibility of any of these statements. The six statements were:

³² AB 723 at para 39.

³³ AB 724 at para 41.

³⁴ AB 724 at para 42.

³⁵ AB 724 at para 43.

³⁶ AB 730 at paras 45 and 46.

- (a) Two contemporaneous statements recorded under s 22 of the CPC on 2 March 2016 by SSSgt Ho Poh Wah and Insp Tong respectively.
- (b) The cautioned statement recorded under s 23 of the CPC by IO Teh on 2 March 2016.
- (c) Two long statements recorded under s 22 of the CPC by Insp Huang Yixia on 8 and 9 March 2016.
- (d) One long statement recorded under s 22 of the CPC by IO Teh on 31 August 2016.

29 In his contemporaneous statements, Han explained that the sum of \$3,600 found on him at the time of his arrest was meant for gambling. He also said that the phone number 86531409 belonged to a friend known to him as “mu chi”, and that the number +60 146101016 belonged to a Malaysian friend known to him as “Ah Tiong”.³⁷ Han later clarified in his 8 March 2016 long statement that the number 86531409 belonged to a stranger who had contacted him (and not “mu chi”).³⁸

30 Han’s cautioned statement was given in respect of the initial charge, which had been framed in terms of abetment of Khor’s importation offence by conspiracy. To that charge, Han said that he “did not personally tell [Khor]” to bring the drugs into Singapore, and that he did not know that Khor would be coming, or even who Khor was.³⁹

³⁷ AB 607.

³⁸ AB 650 at para 4.

³⁹ AB 701.

31 In his first two long statements, Han recounted the events leading up to his arrest on 2 March 2016:

(a) Han confirmed that the number +60 146101016 belonged to “Ah Tiong”, whom he knew as a drug supplier from Malaysia. Han said that he ordered drugs like Ice (a street name for methamphetamine), Ketamine and Erimin from him.⁴⁰

(b) Han had only recently begun placing orders for drugs with “Ah Tiong”. The first order was made around end February 2016, and was for 500 tablets of Erimin and about 50g of Ice. His second (and last) order of drugs from “Ah Tiong” was placed on 1 March 2016, and was for 100g of Ketamine and 25g of Ice. This would have cost him a total of \$3,200. The drugs that he ordered were both for consumption and for sale.⁴¹ Han stressed that he had never ordered “peh hoon” (a street name for diamorphine) from “Ah Tiong”.⁴²

(c) Han would call “Ah Tiong” to place his order when he needed drugs. “Ah Tiong” would then call back to arrange for someone to deliver the drugs to Han. The person delivering the drugs would then call Han, and Han would collect the drugs from that person, and make payment.⁴³

(d) On 2 March 2016, he woke up at about 3am and decided to go to the market to gamble. The gambling session was to be held at the food centre at Toa Payoh Lorong 8.⁴⁴

⁴⁰ AB 650 at para 4.

⁴¹ AB 651 at para 12.

⁴² AB 652 at para 13.

⁴³ AB 652 at para 12.

(e) At around 4am or 5am, he headed to the market to gamble. While he was walking to the market, a “stranger” – using the number 86531409 – called him and asked him to meet at the ground level of his flat.⁴⁵ Curiously, however, Han later said at para 12 of the same statement that “no arrangement was made with the stranger for us to meet up”.⁴⁶ There was also some inconsistency as to how much Han knew about this call. At para 4 of his 8 March 2016 statement, Han said that he did not know who the stranger was or what the stranger wanted.⁴⁷ However, in that same statement at para 12, Han said that he had “suspect[ed] that there is a possibility that the person could be delivering the drugs that [he] ordered”.⁴⁸

(f) On 2 March 2016, before he could reach the food centre for a gambling session, he was arrested.⁴⁹

(g) When Han was arrested, over \$4,000 in cash was found on him. \$3,600 was found tied with a rubber band in his front pocket and the rest was found in his back pocket. In his 8 March 2016 statement, Han said that he had specifically split the \$3,600 from the rest of his money because he intended to use it during the gambling session.⁵⁰ He expressly denied that the \$3,600 was meant for paying for the diamorphine.⁵¹ In the 9 March 2016 statement, he said that the \$3,200

⁴⁴ AB 650 at para 3.

⁴⁵ AB 650 at para 3.

⁴⁶ AB 651 at para 12.

⁴⁷ AB 650 at para 4.

⁴⁸ AB 651 at para 12.

⁴⁹ AB 650 at para 5.

⁵⁰ AB 651 at para 8.

⁵¹ AB 652 at para 12.

that he owed “Ah Tiong” for the Ketamine and Ice would have been paid out of the \$3,600.⁵²

(h) Part of Han’s 9 March 2016 statement was recorded in a ‘Question and Answer’ format. When he was asked what the message “T-86531409=\$3600” meant, Han said that he had not seen the message, and in any case did not know what the reference to \$3,600 meant because he owed “Ah Tiong” \$3,200.⁵³

32 In his third long statement recorded on 31 August 2016, Han stated again that his order, placed before the day of his arrest, was for 100g of Ketamine and 25g of Ice, and was to cost \$3,200. Han emphasised that he did not order any “heroin” from Ah Tiong.⁵⁴ Han also said that on the day of his arrest, he had received a call from a Singapore-registered phone number. The caller told Han that he had been instructed to call Han by someone “inside”, which Han understood to mean “from Malaysia”. Han assumed that the caller had been instructed by Ah Tiong to deliver his order of drugs.⁵⁵

Close of the Prosecution’s case

33 At the close of the Prosecution’s case, I found that there was sufficient evidence against both Khor and Han and called upon them to give evidence in their own defence.

Khor’s defence

34 Khor did not deny that he had imported the diamorphine into

⁵² AB 666 at A4.

⁵³ AB 666 at A5.

⁵⁴ AB 748 at paras 23–24.

⁵⁵ AB 748 at para 23.

Singapore. His defence was that he did not know that the bundles contained diamorphine and that he did not know that the quantity of drugs he was carrying would attract the death penalty.⁵⁶

35 I highlight the key aspects of his evidence. When Khor collected the drugs from “Lao Ban”, he did not see the drugs being packed into the helmets, nor was he told what the helmets contained.⁵⁷ While he had suspected that the bundles contained illegal drugs, he thought they contained only “soft drugs” such as Ice or Erimin.⁵⁸ In fact, “Ah De” had assured him that the job would involve “soft drugs”.⁵⁹

36 Further, he had received repeated assurances from “Lao Ban”⁶⁰ and “Xiao Di” that the amount of drugs he was carrying “would not cause [him] to face the death penalty”.⁶¹ “Ah De” had also given Khor assurances to that effect, and Khor had trusted him because “Ah De” was a friend who knew of his concerns.⁶²

37 Also, he had no reason to believe that the bundles contained diamorphine since, on his previous deliveries, Khor had delivered clear bundles which he could see contained Erimin tablets. Although there were also bundles wrapped in black tape on his previous deliveries, those bundles were considerably smaller than the black bundles which are the subject of the charge.

⁵⁶ Tr/06.02.18/21, 44, 45.

⁵⁷ Tr/06.02.18/20–21, 54.

⁵⁸ Tr/06.02.18/17.

⁵⁹ Tr/06.02.18/9/18–21, 19/5–6, 46/7–8.

⁶⁰ Tr/06.02.18/19–20, 45, 64.

⁶¹ AB 715 at para 9.

⁶² Tr/06.02.18/64/24 – 65/10.

38 Khor also said that he could not have checked the contents of the bundles as the journey from the condominium in Johor Bahru, Malaysia, was a short one without any side roads where Khor could have stopped to check the contents of the helmets.⁶³ After his arrest, while on a call with “Lao Ban” as part of the CNB operation against the intended recipients of the drugs, he had asked “Lao Ban” what was in the big bundles, but “Lao Ban” cut him off, saying “you don’t need to care”.⁶⁴

Han’s defence

39 Han admitted that he had ordered drugs from “Ah Tiong” but denied that he had ordered any *diamorphine* from “Ah Tiong”. According to Han, his order was only for 100g of Ketamine and 25g of Ice.⁶⁵ To the extent that Khor’s instructions were to deliver diamorphine to him, this was a due to a “mix-up” in the orders on the part of “Ah Tiong”.⁶⁶ Han pointed out that Khor had been instructed to deliver a yellow bundle to him, when in fact there were no yellow bundles amongst those that Khor had been caught with on 2 March 2016.

40 On the morning of 2 March 2016, Han had been on his way to gamble at a nearby market when he received a call in respect of the order of Ketamine and Ice he had placed the previous day. He was told to wait at the ground floor of Block 5, Toa Payoh, and was kept waiting for a long time.⁶⁷ When he was arrested, he was walking from Block 5 to Block 4 in the direction of the market.⁶⁸

⁶³ Tr/06.02.18/48/1–18.

⁶⁴ Tr/06.02.18/19/1–9.

⁶⁵ Tr/07.02.18/7/30–31, 18/18–22, 21/24–25.

⁶⁶ Tr/07.02.18/70/1–6.

⁶⁷ Tr/07.02.18/34/28–32.

41 Exactly \$3,600 in cash was found in Han's front pocket. He had intended to use this money at the gambling session. However, should his order of drugs arrive, he would use that money to pay for the drugs. He expected to pay \$2,200 for 100g of Ketamine and \$1,000 for 25g of Ice. The remaining \$400 was a prior debt owed to "Ah Tiong".⁶⁹

Decision on conviction

42 I shall now state the law applicable to the charge against each of the accused persons, analyse the relevant evidence and then state my findings.

Khor

Overview

43 Khor was charged with importing the diamorphine into Singapore without prior authorisation, an offence under s 7 of the MDA. Section 7 of the MDA provides:

Import and export of controlled drugs

7. Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

44 There are two elements to this offence (*Ng Kwok Chun and another v Public Prosecutor* [1992] 3 SLR(R) 256 at [15] and [39]):

- (a) the drug was brought into Singapore without prior authorisation; and
- (b) the accused had the intention or knowledge to bring the said drug into Singapore.

⁶⁸ Tr/07.02.18/27–28.

⁶⁹ Tr/07.02.18/9/1–11.

45 It was not disputed that Khor brought the diamorphine into Singapore. The twin issues were whether Khor had the requisite knowledge of the nature of the drug and the quantity of the drug he had brought into Singapore, being two facts constituting the offence. While I deal with these issues in turn, they are closely connected matters.

Knowledge of the nature of the drugs

46 In relation to knowledge of the nature of the drug, s 18(2) of the MDA provides:

Presumption of possession and knowledge of controlled drugs

18.—(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.

Under s 18(2) of the MDA, an accused is presumed to know the nature of drugs in his possession. In this regard, the Court of Appeal has stated in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [37]:

... The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities.

47 As Khor did not deny that he was in possession of the drugs, the presumption of knowledge under s 18(2) of the MDA operated against him. To rebut the presumption, Khor must prove, on a balance of probabilities, that he did not know or that he could not reasonably be expected to have known the nature of the drugs in question. The focus of this inquiry is on the

accused's subjective knowledge, albeit assessed with reference to what an ordinary, reasonable person would have been expected to know or do if placed in that situation.

48 Khor readily admitted that he knew that what he was importing into Singapore was illegal drugs.⁷⁰ His defence was that he had thought he would only be delivering "soft drugs" (of a non-capital amount) and not diamorphine.⁷¹ Having considered the evidence before me, I agreed with the Prosecution that Khor's entire defence was not believable.

49 There was no reason for Khor to believe that the bundles contained only "soft drugs" (of a non-capital amount). Khor did not see the drugs being packed into the helmets, nor was he told what the helmets contained.⁷² Although he claimed that he did not have the opportunity to check on the contents of the helmets on the way from Johor Bahru to Singapore, this rang hollow in light of the fact that he had not made any efforts to do so; he had not so much as enquired as to what was in the helmets before he left for Singapore. In fact, as I note at [54] below, he did not conduct any checks for any of the previous deliveries, even after he was alone, having cleared the Woodlands Checkpoint.

50 Even if "Lao Ban" and "Ah De" had told him that the drugs he would be carrying would not attract capital punishment, Khor had no reason to rely on those assurances. He barely knew "Lao Ban"; he had first met "Lao Ban" on 26 February 2016, less than a week before his arrest. Khor knew that "Lao Ban" was a drug dealer, and their only interactions were in relation to illegal

⁷⁰ Khor's closing submissions at para 53

⁷¹ Khor's closing submissions at para 67; Khor's reply submissions at para 4.

⁷² Khor's closing submissions at para 23.

transactions involving controlled drugs.

51 Indeed, the reason why Khor trusted “Lao Ban” was because “Ah De” had introduced them, and he trusted “Ah De”.⁷³ However, there was no reason for Khor to trust “Ah De” either, so as to rely on the assurances by “Ah De” (including assurances that he would only be dealing with “soft drugs”). There was no evidence that their relationship had been close. On Khor’s own evidence, the extent of their relationship was that they had “met a few times and had a few chats”. Moreover, prior to embarking on his fourth delivery, Khor had asked “Lao Ban” to remove “Ah De” as a middleman as Khor felt that “Ah De” was “leeching [his] earnings and taking too much from [him]”.

52 Khor said that his belief that he was carrying only “soft drugs” was also “based on [his] previous three experiences” delivering drugs for “Lao Ban”. In this connection, counsel for Khor referred me to *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 (“*Khor Soon Lee*”) which involved an appellant who denied knowledge of the nature of the drugs he had imported – a capital amount of diamorphine. In that case, the Court of Appeal held that the appellant had succeeded in rebutting the presumption of knowledge under s 18(2) of the MDA because there had been a consistent pattern of prior deliveries involving only controlled drugs that did not carry the sanction of capital punishment.

53 However, the specific facts and circumstances of that case were – as the Court of Appeal itself took great pains to stress – “rather unusual” and “finely balanced” (at [29]). There had been a significant number of prior deliveries that involved only Erimin, Ketamine, Ice, and Ecstasy. Further, the appellant had directly asked the drug supplier, one Tony, whether he would

⁷³ Khor’s closing submissions at para 93.

be carrying diamorphine as he was afraid of the death penalty, and was assured that there was no diamorphine involved.

54 The facts of the present case are quite different. There was no evidence to suggest that Khor knew with certainty that his three previous deliveries did not involve diamorphine. Unlike the appellant in *Khor Soon Lee*, Khor was never told what type of drugs he would be carrying into Singapore. Neither did he ask “Lao Ban” what types of drugs the bundles contained. The one occasion on which Khor had questioned “Lao Ban” on what the bundles contained was on a call with the latter *after* Khor had been arrested.⁷⁴

55 Further, as set out above at [35], while for the previous deliveries, there were bundles wrapped with transparent tape such that the contents could be seen, there were also bundles wrapped with black tape such that the contents were hidden from view. Khor did not check on the contents of the black bundles in his previous deliveries. At best, Khor had simply *assumed* that his prior deliveries were of soft drugs. In the circumstances, there was no basis for me to find that Khor’s previous deliveries had led him to believe that he was carrying only “soft drugs”.

56 If Khor was as concerned about the type of the drugs he was carrying as he claimed to be, I would have expected him to have appreciated the significance of the distinction between “soft drugs” and diamorphine when responding to questions about what the bundles contained during the recording of his statements. Yet, when asked at the recording of his contemporaneous statement, all that Khor said was that the bundles were “drugs”, and that it would not “hang” him.⁷⁵ Further, when confronted with a

⁷⁴ Khor’s closing submissions at paras 72–75.

⁷⁵ AB 567 at A8.

charge that he had imported *diamorphine*, Khor did not deny that the bundles he was carrying contained diamorphine, or say that he had brought in only “soft drugs”. Indeed, his stated defence in his cautioned statement was that he had been told that the *quantity* of drugs was not such as to render him liable under the death penalty.⁷⁶ It was only in his long statements that Khor denied that he knew he was dealing with diamorphine.⁷⁷ Even so, he did not specifically mention “soft drugs” in any of his long statements. Instead, he said he did not know what type of drugs he was carrying (see [26(d)] above), and then mentioned that he thought it could be “Five” (or Erimin) (see [27] above). He also did not mention in his statements any assurances by “Ah De” that he was not carrying diamorphine, or that he was only involved with “soft drugs”.

57 In an attempt to address this omission of “soft drugs”, Khor claimed during cross-examination that he had told IO Teh that the drugs were “soft drugs”, but that IO Teh did not record this in the statements.⁷⁸ However, this point was not put to the witness. Khor also claimed that he had told Cpl Tao (the CNB officer who served the mandatory death penalty notice on Khor under s 33B of the MDA) that the bundles contained “soft drugs”.⁷⁹ However, this alleged exchange was unrecorded and Cpl Tao quite candidly said during his cross-examination that he could not remember if Khor had said that.⁸⁰

58 Based on the above, I did not accept Khor’s assertion that he thought he was only dealing with “soft drugs”, or drugs of a nature which would not

⁷⁶ AB 712.

⁷⁷ AB 730 at para 46.

⁷⁸ Tr/06.02.18/49/16–21.

⁷⁹ Tr/06.02.18/49/21–30.

⁸⁰ Tr/30.01.18/32/20–30.

attract the death penalty. I found that Khor had failed to rebut the presumption of knowledge under s 18(2) of the MDA.

Knowledge of the quantity of the drugs

59 Besides denying knowledge that he was carrying diamorphine, Khor also said that he had thought the *quantity* of drugs involved was not such as to attract the death penalty. In fact, Khor had raised this point in the cautioned statement, and was fairly consistent in taking this position in his statements and at trial.

60 In this regard, counsel for Khor referred me to *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16 (“*Muhammad Farid*”). In that case, the Court of Appeal upheld the trial judge’s decision that it was reasonable for the respondent to have expected that the weight of the methamphetamine trafficked in was not more than 250g as the three prior deliveries that the respondent had made all involved quantities of less than 250g. He was not wilfully blind in doing so. I did not consider *Muhammad Farid* to be of any assistance to Khor as the facts of *Muhammad Farid* are quite different from the facts of the present case. In *Muhammad Farid*, there was an agreement with the drug supplier that the weight of the drugs for each delivery would not exceed 250g, and the respondent had *himself weighed* the drugs he received to ascertain their gross weight (at [32]).

61 Here, Khor did not know the quantities of drugs he had imported on his previous three deliveries. He certainly did not make any effort to ascertain the quantity for each delivery for each type of drugs. In fact, he did not see the items while they were packed. All he could say was that the black bundles that he carried on the previous deliveries were smaller than the bundles which formed the subject of the charge against him.⁸¹

62 Even if Khor’s previous deliveries were indeed of a non-capital amount of controlled drugs, there was a significant deviation in his fourth delivery – on that occasion, he was given not one but two helmets containing drugs. While Khor attempted to explain why he did not notice the additional weight of the helmets,⁸² the fact remained that he knew that there were, this time, *two* helmets containing drugs.⁸³ I agreed with the Prosecution that this ought to have put Khor on notice that the quantity of drugs he would be carrying might be far larger.⁸⁴ Yet, he made no attempt to further inquire as to the quantity of drugs involved.

63 At the end of the day, Khor’s belief was in large part predicated on the same assurances given to him by “Lao Ban” and “Ah De” which, as I have held at [50]–[51] above, Khor could not reasonably have relied on. Based on all the facts and circumstances discussed above, especially the fact that there were two helmets containing drugs compared to the previous deliveries, I found that Khor was wilfully blind to fact that the quantity of drugs that he was delivering on this fourth occasion attracted capital punishment.

Conclusion

64 Based on the foregoing, the Prosecution had proved the charge against Khor beyond a reasonable doubt. I found him guilty and convicted him of the charge.

⁸¹ Khor’s reply submissions at para 19; AB 724 at para 43.

⁸² Khor’s closing submissions at paras 29, 95.

⁸³ Tr/06.02.18/44/28 – 45/3.

⁸⁴ Prosecution’s reply submissions at para 11.

Han*Overview*

65 Han was charged with attempting to possess for the purpose of trafficking one packet of granular/powdery substance analysed and found to contain not less than 18.62g of diamorphine, an offence under s 5(1)(a) read with s 5(2) and s 12 of the MDA. I set out the parts of ss 5 and 12 of the MDA which are germane to the charge:

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.

...

Abetments and attempts punishable as offences

12. Any person who abets the commission of or who attempts to commit or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

66 The elements of the primary offence of possession for the purpose of trafficking are (a) possession of a controlled drug; (b) knowledge of the nature of the drug; (c) proof that possession of the drug was for the purpose of trafficking which was not authorised (*Muhammad Ridzuan bin Md Ali v Public Prosecutor* [2014] 3 SLR 721 at [59]).

67 The elements of the offence of attempt under s 12 of the MDA are the same as those for the general offence of attempt under s 511 of the Penal Code

(Cap 224, 2008 Rev Ed) (*Public Prosecutor v Mas Swan Bin Adnan and another appeal* [2012] 3 SLR 527 at [37]). Applying therefore the principles for the general offence of attempt, the *mens rea* to be proved is the intention to commit the primary offence; *ie*, intention to possess not less than 18.62g of diamorphine for the purpose of trafficking. The *actus reus* to be proved is that the accused has undertaken steps toward the commission of the offence such that it might be said that he had “embarked on the crime proper” (*Chua Kian Kok v Public Prosecutor* [1999] 1 SLR(R) 826 at [36]).

68 It was undisputed that Han was not authorised to possess or traffic in any controlled drug. Accordingly, in order to make out the charge the following must be proved beyond a reasonable doubt:

- (a) that Han intended to possess one bundle of drugs containing not less than 18.62g of diamorphine;
- (b) that Han intended to traffic in the drugs contained in the said bundle; and
- (c) that Han had undertaken steps toward the commission of the offence such that it might be said that he had “embarked on the crime proper”.

69 I now consider each element in turn.

Whether Han intended to possess one bundle containing not less than 18.62g of diamorphine

70 In summary, the Prosecution’s case was as follows:

(a) Sometime before 2 March 2016, Han ordered diamorphine from the drug supplier known to him as “Ah Tiong” and to Khor as “Lao Ban”.

(b) In fulfilment of this order, Khor was instructed by “Lao Ban” to deliver one bundle containing diamorphine to Han. To this end, “Lao Ban” gave Khor’s mobile phone number to Han.

(c) In the early hours of 2 March 2016, sometime between 2am and 4am, Han made arrangements with Khor (who, unbeknownst to Han, had been caught and was cooperating with the CNB) to meet for Khor to pass Han one bundle containing diamorphine and collect \$3,600 as payment for that delivery of diamorphine.

(d) Han, expecting to deal with Khor, went to the arranged meet-up point at Block 5. When he saw the CNB officers approaching him, Han quickly walked away in the direction of Block 4 but was eventually arrested in the vicinity.

71 Of the seven bundles of drugs seized from Khor, three contained similar amounts of diamorphine, each of which would, on its own, attract capital punishment. These three bundles were roughly of the same size and shape and were wrapped in black tape. They were marked C1B, C1C and D1B. The Prosecution’s case was that Han intended to possess any one bundle out of the three bundles.⁸⁵ Since Exhibit D1B was the bundle which contained the least amount of diamorphine, *ie*, not less than 18.62g, Han was charged with attempting to possess one bundle of not less than 18.62g of diamorphine.

⁸⁵ Prosecution’s closing submissions at para 69.

72 Han denied that he intended to possess the diamorphine and disputed several aspects of the Prosecution’s case as follows:

(a) Han had indeed placed an order with “Ah Tiong”, but the order was only for Ketamine and Ice. Han did not order diamorphine.

(b) Khor had been instructed by “Lao Ban” to deliver a *yellow* bundle to Han. However, there simply were no yellow bundles amongst the bundles that Khor had carried with him on 2 March 2016. Further, the bundles were all marked “Ken”. None of them bore Han’s name, or Han’s codename, “T”. All of this suggested that there had been a “mix-up” in the drug order, such that Khor was mistakenly under the impression that he was to deliver a bundle containing diamorphine to Han.

(c) Han had made no prior arrangement to meet Khor. He had been on his way to the market to gamble when he received a call from Khor asking to meet at the ground floor of Block 5. He then went to meet Khor to collect his order of Ketamine and Ice, and to make payment of a total of \$3,600 to Khor; \$3,200 being payment for the order, and \$400 being an outstanding sum owed to “Ah Tiong” in respect of the previous order.

73 Having reviewed the evidence before me, I found that the weight of the evidence accorded with the narrative put forth by the Prosecution.

(1) Instructions by “Lao Ban” on the bundle for delivery to Han

74 First, I turn to the instructions given by “Lao Ban” to Khor. In the material conversation between Khor and “Lao Ban”, the latter instructed Khor

to deliver one *yellow* bundle to the person codenamed “T” (which, it was accepted, referred to Han) as follows:

“Lao Ban”: Okay, first one, that belongs to number 99, 99 one ah, you collect 6800, give two bundles.

...

“Lao Ban”: 6800 give him two bundles lah.

Khor: Correct, correct, I know.

“Lao Ban”: Two bundles, [t]wo big bundles, yellow one.

...

“Lao Ban”: Understood? Okay, then second number is T mah, right?

...

Khor: T ah, ah.

“Lao Ban”: Ah. T that one orh, [y]ou give him one yellow bundle.

...

“Lao Ban”: A total of three bundles mah, yellow one.

Khor: Orh, okay.

...

“Lao Ban”: ... Okay. Two is for the first one, for 99.

Khor: Ah.

“Lao Ban”: Collect 6800.

...

“Lao Ban”: The second one is for T. You collect 3600 from T.

75 This call was made as part of the follow up operation against the intended recipients of the drugs that Khor was caught importing into Singapore. Unfortunately, it appeared that neither Khor nor SI Pang (the CNB officer listening in on the conversation) realised that there were no yellow bundles amongst those seized from Khor. As a result, SI Pang did not instruct

Khor to clarify what “Lao Ban” meant when he referred to “yellow” bundles, nor did Khor do so on his own initiative.⁸⁶

76 Nevertheless, I agreed with the Prosecution that it is clear from the context of the conversation reproduced above that the reference to the three bundles – one of which was to be delivered to Han, and two to the person codenamed “99” – must have been in respect of three bundles which were similar in shape and size.⁸⁷ If “Lao Ban” had been referring to dissimilar bundles, he would have had to specify, by description, which bundles were to go to whom. The fact that he referred to the three bundles interchangeably meant that, notwithstanding his reference to the bundles being yellow, “Lao Ban” was in fact referring to the three *black* bundles of similar shape and size (marked C1B, C1C and D1B) which contained the same controlled drug – diamorphine. The further reference to the bundles being “big” more explicitly differentiated them from Exhibit C1D, a black bundle which was considerably smaller and found to contain methamphetamine. Neither could “Lao Ban” have been referring to the three bundles wrapped in clear tape (being Exhibits C1E, D1C and D1D), since they were of different dimensions. Exhibit D1D (with 200 tablets of nimetazepam) was a significantly longer and narrower bundle compared to Exhibits C1E and D1C (each with 400 tablets of nimetazepam). In sum, “Lao Ban” could only have been referring to the three black bundles marked C1B, C1C and D1B.

77 I note that Khor’s clear understanding of the instructions, after having been shown what the bundles looked like, had also been that one of the “big black bundle” was for Han.⁸⁸ While Khor’s subjective understanding of those

⁸⁶ Tr/30.01.18/75/6–14.

⁸⁷ Prosecution’s closing submissions at para 72.

⁸⁸ AB 567 at A6.

instructions certainly was not conclusive on its own, it certainly fortified my conclusion that the reference to “yellow” big bundles was to the big black bundles.

78 The fact that all seven bundles were labelled “Ken” did not change my view that one of the large black bundles was intended for Han. Khor explained under cross-examination by counsel for Han, that he delivered the bundles either according to their labels, *or* according to the instructions of “Lao Ban”.⁸⁹ That the labels were not conclusive as to the intended recipient was clearly demonstrated by Khor’s account of a previous delivery where he had delivered two bundles, both marked “A”, to two different recipients according to instructions from “Lao Ban”.⁹⁰

79 Han’s case turned on his allegation that there had been a “mix-up” in the drug order, such that the bundle which Khor was to deliver to Han contained diamorphine instead of the Ketamine and Ice he had ordered. I rejected this allegation. I agreed with the Prosecution that it was extremely unlikely that “Lao Ban” or his associates in Malaysia would have inadvertently arranged to deliver diamorphine to Han by mistake. The three bundles each contained quantities of diamorphine high enough to attract capital punishment. The value of the drugs contained therein would have been high. Given the high stakes involved in transporting such large quantities of drugs, the bundles of diamorphine would not have been given to Khor by mistake, or instructions wrongly given to Khor to deliver a bundle to Han.⁹¹

⁸⁹ Tr/06.02.18/25/25–31.

⁹⁰ AB 716 at para 12; Tr/06.02.18/26/1–12.

⁹¹ Prosecution’s closing submissions at para 104.

80 Further, none of the seven bundles contained Ketamine, which Han claimed to have ordered. Also, Exhibit C1D, the smaller bundle wrapped in black tape, contained Ice with a total weight of 49.85g, and a net weight of not less than 34.04g, and not 25g as purportedly ordered by Han. In other words, there was not a single bundle or bundles which corresponded to Han's purported order. Again, I did not accept that there could be a mistake in the orders such that Han's order was not given to Khor at all. After all, "Ah Tiong" had contacted Han various times concerning the delivery, after Khor had arrived in Singapore, to confirm with Han that the delivery of Han's order would take place. I rejected Han's contention that there had been such a "mix-up" in the drug order that a bundle of diamorphine had been earmarked for delivery to him by mistake, while his order was not with Khor.

81 Another allegation, first made in Han's closing submissions, was that it was one "Ah Tiao" who was the intended recipient of the bundle of diamorphine.⁹² The basis for this allegation was Han's evidence that "Ah Tiao" had on previous occasions ordered heroin from "Ah Tiong", and, that "Ah Tiao", using the mobile number 83853816, had been in contact with Khor on the night of 26 February 2016, the day of Khor's first delivery for "Ah Tiong". I note that this point was only touched on very briefly at the trial and was not seriously pursued in Han's written closing submissions. Counsel for Han did not cross-examine Khor on this alleged conversation with "Ah Tiao", and so it was not established if the alleged conversation had even taken place, much less that it pertained to an order of diamorphine that "Ah Tiao" had placed with "Ah Tiong" for delivery on 2 March 2016. Even assuming that "Ah Tiao" and Khor had indeed spoken on 26 February 2016, this was, in my view, neither here nor there. There was no evidence to link the alleged

⁹² Han's closing submissions at para 135.

conversations on 26 February 2016, the date of Khor's first delivery, with the consignment of drugs intercepted on 2 March 2016, Khor's fourth delivery. Furthermore, "Ah Tiong" had specifically communicated with Han various times on 2 March 2016 to arrange for the delivery. Accordingly, I rejected Han's allegation that the bundle of diamorphine was intended for "Ah Tiao".

(2) Purpose of the \$3,600

82 Next, I turn to the bundle of \$3,600 in cash which Han had on him at the time of his arrest, which was kept separately from his other possessions and cash. I found that this amount was intended as the exact payment for the bundle of diamorphine. SI Pang testified that from his experience, the market price of one pound of heroin was approximately \$3,600.⁹³

83 In order to make good his defence that he had not ordered any diamorphine, Han had to account for the \$3,600 found on him. At the trial, Han's evidence was that \$3,200 of the \$3,600 was intended as payment for his most recent order of Ketamine and Ice, and that the remaining \$400 was in payment for a past debt owed to "Ah Tiong" in respect of a previous order.⁹⁴ However, this account was vastly different from the versions given in his statements.

(a) In his contemporaneous statement recorded on 2 March 2016 shortly after his arrest, Han claimed that the \$3,600 cash was meant for gambling. He did not mention that he had intended to pay "Ah Tiong" with the money.

⁹³ Tr/30.01.18/85/29–31.

⁹⁴ Tr/07.02.18/15/16–26.

(b) In his long statement recorded on 8 March 2016, Han said that he had ordered 100g of Ketamine and 25g of Ice from “Ah Tiong” for \$3,200, but did not mention that he owed any outstanding sum to “Ah Tiong” in respect of a previous order. In that same statement, Han recounted that his previous order had been for 500 tablets of “Erimin” and 50g of Ice, which he had spent \$3,500 on. Han did not say that he had paid only partially, and made no mention of any sum owing to “Ah Tiong”.

(c) In his long statement recorded on 9 March 2016, when confronted with the text message from “Ah Tiong”, which read “T-86531409=\$3600”, Han could not explain the reference to \$3,600. Instead, he said:

I did not see the message. I did not even know I had a message. I did not open the message. *I owe “Ah Tiong” S\$3200 not S\$3600. I do not know what it means.* [emphasis added]

84 If Han’s explanation that he owed “Ah Tiong” \$400 was true, there is no reason why he would not have said so in his 9 March 2016 statement. When asked why he had not done so, Han simply said that he “did not have to explain further”.⁹⁵ When pressed further, he said that he had been feeling weak and wanted to go back to the lock-up quickly to lie down. He admitted, however, that he did not notify the interpreter of this at the time.⁹⁶ In my view, it was clear that Han did not mention the \$400 owing to “Ah Tiong” at the recording of his 9 March 2016 statement (and the earlier statements) because it was an afterthought concocted to explain why he had prepared \$3,600 to pay for the drugs, when, on his case, the drugs would only have cost \$3,200.

⁹⁵ Tr/07.02.18/44/27–30.

⁹⁶ Tr/07.02.18/44/31 – 45/6.

(3) Failure to mention the order of Ketamine and Ice

85 Moving on, I note that Han had failed to mention the order of Ketamine and Ice in his cautioned statement of 2 March 2016. In that statement, Han was invited to state his defence in respect of a charge that he had engaged in a conspiracy with Khor and persons unknown in Malaysia to import *diamorphine* into Singapore. Despite the references to *diamorphine* in the charge, Han did not state his defence that he had ordered only Ketamine and Ice. Instead, Han’s only defence was that he had not personally told Khor to bring the “thing” into Singapore, where the “thing” presumably refers to the bundle of drugs in general:

I did not tell him to bring this over to Singapore. I did not personally tell him to do so. Someone from JB called me asking if I want this thing. The person asked me what I needed and I told him. I do not know who will be coming, and I do not know who this person is. So how could you say that I told him to bring this into Singapore.
[emphasis added]

86 When confronted with his omission to refer to Ketamine and Ice in his cautioned statement, Han’s only explanation was that “it did not occur to [him] anything about *peh hoon* or heroin”.⁹⁷ I could not accept this explanation, given that the charge explicitly referred to diamorphine. Han also claimed that the interpreter, Mr Wong Png Leong, had not interpreted the charge to him accurately and had only referred to “drugs” generically.⁹⁸ This however, was not put to the interpreter during his cross-examination. Counsel for Han had also earlier confirmed that Han would not be challenging the cautioned statement.⁹⁹ His failure to mention this key aspect – that he ordered only Ketmaine and Ice – undermined his defence.

⁹⁷ Tr/07.02.18/60/25–26.

⁹⁸ Tr/07.02.18/60/7–12.

⁹⁹ Tr/02.02.18/21/21–32.

(4) Arrangements made to collect the order of drugs

87 According to the call records and transcripts, not only was Han expecting a courier to deliver his order of drugs on 2 March 2016, Han himself had taken *active steps* to arrange the meeting.

88 At 2.45am, Han received a message from “Ah Tiong”, which read “T-86531409=\$3600”. Two minutes later, at 2.47am, Han called Khor at the phone number that “Ah Tiong” had just given him, introduced himself as “T”, and arranged for a meeting at Toa Payoh Lorong 7. Over the next four calls from 4.02am to 4.40am, Han agreed to meet Khor at the ground floor of Block 5. Their last conversation at 4.40am makes clear that Han was to collect something from Khor:¹⁰⁰

Han: Hello!

Khor: Hello! Where are you?

...

Han: Where is your taxi parking at, you came in ah?

Khor: At that---

Han: Downstairs, you come into Number Five.

Khor: I go in? Then you said main road?

Han: Come in via main road mah. *How can I take from you at main road?*

Khor: Orh, ok. Understood, I tell the taxi to go in.

[emphasis added]

89 However, in his 8 March 2016 statement, Han sought to give the impression that he had not been expecting any delivery of drugs, and that he had been on his way to gamble at the market when he received the call from a stranger:¹⁰¹

¹⁰⁰ AB 538.

... While I was walking to the market, a stranger called me up and asked me to go down to the ground level of my residential address. However, I was already at the ground floor on my way to the market. I was heading to the market to gamble. ...

...

... When the stranger called me, I did suspect that there is a possibility that the person could be delivering the drugs that I ordered. However, no arrangement was made with the stranger for us to meet up. The S\$3600 found on me was meant for gambling and not for paying for this delivery.

90 As pointed out, the objective evidence supports the Prosecution’s case that it was in fact *Han* who had called Khor, and that he had called to arrange a meeting for him to collect his order from Khor. Such objective evidence contradicted Han’s assertion that “no arrangement was made with the stranger for us to meet up”.¹⁰² The impression that Han sought to give – that Khor was a “stranger” whose call had interrupted Han’s plan to go to the market to gamble – was completely disingenuous and indicated that Han had been less than candid in his statements. The fact that Han called the number 86531409 after receiving the message from “Ah Tiong” also contradicted his assertions that he had not seen or had not understood the message,¹⁰³ which evidently were falsehoods aimed at distancing himself from the drug transaction he had initiated.

91 The fact that Han had arranged the meeting and then waited for Khor was corroborated by the testimony of the CNB officers involved in Han’s arrest. At the trial, SSgt Bukhari, one of the STF officers who arrested Han, had observed Han at the foot of Block 5, where Han was “just standing and looking up at the main road”.¹⁰⁴ Insp Tong also confirmed that Han had been

¹⁰¹ AB 650–651 at paras 3, 12.

¹⁰² AB 651–652 at para 12.

¹⁰³ AB 666 at A5.

“just standing at the void deck looking around”, and was “facing the road”, ie, Lorong 7, Toa Payoh.¹⁰⁵

(5) Conclusion

92 For all the above reasons, I found that Han had ordered diamorphine from “Ah Tiong” for which he was to pay \$3,600, and that Han had specifically arranged to meet Khor on the morning of 2 March 2016 at the foot of Block 5 to receive his order from Khor. I rejected his contention that there had been a “mix-up” in the order. As such, the Prosecution had satisfied its burden of proving beyond reasonable doubt that Han intended to possess one bundle containing diamorphine, and that he knew that that bundle contained diamorphine.

Whether Han intended to traffic in the drugs contained in the said bundle

93 Having established that Han had intended to possess the bundle containing diamorphine, I turned to consider whether it was proven that he had also intended to *traffic* in the drugs contained therein.

94 The Prosecution accepted that the statutory presumption in s 17(c) of the MDA, under which a person who has been proven to have possessed more than 2g of diamorphine is presumed to have intended to traffic in that diamorphine, does not apply.¹⁰⁶ However, rationale behind that presumption, as stated by the Privy Council in *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 (at [29]), remains relevant: where the quantity of the drug being transported is many times what a typical addict would be able to

¹⁰⁴ Tr/01.02.18/36/7–8.

¹⁰⁵ Tr/30.01.18/109/7–17.

¹⁰⁶ Prosecution’s closing submissions at para 119.

consume on a daily basis, the likelihood is that the drug is being transported not for personal consumption, but for the purpose of trafficking. Even where the statutory presumption does not apply to shift the burden of proving intention, the quantity of the drugs in the accused's possession is still relevant in assessing if the Prosecution has discharged that burden. This would be especially so in situations where the quantity possessed is many times the amount that would have triggered the statutory presumption under s 17, although I should add that evidence as to that specific accused person's rate of consumption of the drug in question would also be relevant.

95 Counsel for Han confirmed that Han was not running the defence that he had ordered the diamorphine for his own consumption, since his case was that he had not been expecting diamorphine.¹⁰⁷ Even if Han had made such an argument, I would have dismissed it. Han admitted that he already had in his possession 6.96g of diamorphine which was intended for his own consumption.¹⁰⁸ This quantity was more than three times the amount to trigger the s 17 presumption, and would certainly have been sufficient to cover Han's personal consumption for quite some time, especially in light of the evidence that Han's rate of opioid consumption was low.¹⁰⁹

Whether Han had "embarked on the crime proper"

96 The final element to be proved was that Han had undertaken such steps toward obtaining possession of the bundle of diamorphine that it might be said that he had "embarked on the crime proper".

¹⁰⁷ Tr/07.02.18/64/5–22.

¹⁰⁸ Tr/07.02.18/63/14–21.

¹⁰⁹ AB 370.

97 Although Han was arrested before he could have obtained possession of the bundle, he had taken the following steps toward obtaining the said bundle:

- (a) Han had been in communication with “Ah Tiong” in the early hours of 2 March 2016 regarding the order of diamorphine he had placed;
- (b) Han had contacted Khor and arranged to meet Khor at the foot of his flat at Block 5 to collect the bundle;
- (c) Han went to the meeting point at the ground floor of Block 5 and had been waiting for Khor’s arrival; and
- (d) Han had brought with him \$3,600 which, as I have found, was to be used to make payment for the bundle of diamorphine.

98 In my judgment, these steps taken by Han toward obtaining possession of the bundle of diamorphine from Khor were sufficient to show that Han had “embarked on the crime proper”.

Conclusion

99 By the foregoing, I found that the Prosecution had proved the charge against Han beyond a reasonable doubt. I found him guilty and convicted him of the charge. For completeness, I should add that I found that Han was, on the whole, not a credible witness. His testimony and statements were riddled with inconsistencies in relation to the intended use of the \$3,600, as well as his involvement in making the arrangements to meet Khor. Also, his defence at trial was different from the defence he had stated in his cautioned statement. On the other hand, despite my rejection of Khor’s defence to the case against

him, I found that his evidence in relation to the charge against Han – such as the instructions given by “Lao Ban” to him on the delivery, and the arrangements for the two to meet – was reliable and corroborated by the objective evidence such as the phone records.

Decision on sentence

100 As I had earlier mentioned, the prescribed punishment under s 33(1) read with the Second Schedule of the MDA is death, although the alternative sentencing regime in s 33B(1)(a) of the MDA provides the court a discretion to impose a mandatory term of life imprisonment and 15 strokes of the cane provided that certain requirements are met. These are that (i) the offender must show that his acts fall within s 33B(2)(a)(i)–(iv) of the MDA, and (ii) the PP certifies that the offender has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore. Under s 33B(4) of the MDA, the PP has sole discretion as to the determination of whether to give or withhold a certificate of substantive assistance.

Khor

101 The Prosecution did not contest Khor’s assertion that he was a mere courier.¹¹⁰ On the facts, Khor’s role in the drug transaction was restricted to importing the diamorphine, and then delivering it to the various recipients according to the instructions of “Lao Ban”. While he was also expected to collect payments from the various recipients, these could be considered as acts incidental to the delivery of the drugs. I therefore found on a balance of probabilities that his acts fell within the acts of a courier under s 33B(2)(a)(i) of the MDA. Khor was issued a certificate of substantive assistance by the PP. I saw no reason to impose the death penalty, nor did the Prosecution

¹¹⁰ Tr/03.07.18/6/27–29.

submit that there was any such reason. Accordingly, I imposed the alternative sentence of life imprisonment, backdated to the date of his arrest on 2 March 2016, and the mandatory minimum of 15 strokes of the cane.

Han

102 Han was the intended recipient of the diamorphine. As I had found above, Han had attempted to obtain possession of the diamorphine for the purpose of trafficking in it. Given the nature of his defence, which went to his knowledge of the nature and quantity of the drugs rather than the degree of his involvement, Han did not adduce any evidence that he was merely a courier. I therefore found that Han had not proved on a balance of probabilities that he was a mere courier. The PP did not issue Han a certificate of substantive assistance. Since Han met neither of the requirements in s 33B of the MDA, the alternative sentencing regime was not available. Accordingly, I imposed the mandatory sentence of death on Han.

Hoo Sheau Peng
Judge

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