

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 217

Criminal Case No 21 of 2016

Between

Public Prosecutor

And

- (1) Ranjit Singh Gill Menjeet
Singh
- (2) Mohammad Farid Bin Batra

FOUNDATIONS OF DECISION

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

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Public Prosecutor
v
Ranjit Singh Gill Menjeet Singh and another
[2016] SGHC 217

High Court — Criminal Case No 21 of 2016
Hoo Sheau Peng JC
5–8, 12–15 April 2016; 27 June 2016

6 October 2016

Hoo Sheau Peng JC:

1 The first accused, Ranjit Singh Gill Menjeet Singh (“Ranjit”), claimed trial to a charge of trafficking in a Class-A controlled drug under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”). Specifically, Ranjit was said to have trafficked by giving to the second accused, Mohammad Farid Bin Batra (“Farid”), five packets containing not less than 1,359.9 grams of a granular/powdery substance which was analysed and found to contain not less than 35.21 grams of diamorphine (“the drugs”). As for Farid, he claimed trial to a capital charge of trafficking in a Class-A controlled drug under s 5(1)(a) read with s 5(2) of the MDA. Farid was said to have trafficked by having in his possession the drugs for the purpose of trafficking. The offences were punishable under s 33(1) or, alternatively, s 33B of the MDA.

2 At the conclusion of the joint trial, I found that the Prosecution had proved both charges beyond a reasonable doubt. I convicted Ranjit and Farid of the respective charge against each of them. Under s 33(1) of the MDA, the punishment prescribed for the charges is death. However, s 33B(1)(a) of the MDA gives the court a discretion to impose the alternative sentence of life imprisonment and a minimum of 15 strokes of the cane provided the conditions under s 33B(2)(a) and (b) of the MDA are met.

3 I found that Ranjit had fulfilled the requirements under s 33B(2)(a) and (b) of the MDA, and exercised my discretion to impose life imprisonment and 15 strokes of the cane on Ranjit. Farid, on the other hand, had not fulfilled either requirement. Thus, I imposed the mandatory sentence of death. I now provide my reasons for my decision.

The Prosecution's case

Events leading to the arrests

4 The basic facts were not disputed, and were contained in a Statement of Agreed Facts which was furnished pursuant to s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC").

5 Ranjit, a 42-year old Malaysian, was a self-employed driver. Farid, a 43-year old Singaporean, was employed as a house mover. In the evening of 6 February 2014, a party of officers from the Central Narcotics Bureau ("CNB") began surveillance in the vicinity of Choa Chu Kang Way. In particular, they were looking out for Farid, who was expected to be using a car bearing registration number SJK 5768J ("the Car"), and for a Malaysian-registered bus which was suspected to be carrying a consignment of drugs.

6 At about 8.35pm, a Malaysian-registered bus bearing registration number JHD 5635 (“the Bus”) was seen parked beside the multi-story car park at Block 610A Choa Chu Kang Way. About 45 minutes later, the Car, which was driven by Farid, pulled up and stopped in front of the Bus. Ranjit, who was the driver of the Bus, then got down. He was carrying a white Robinsons plastic bag (“the Robinsons bag”) in his hand. He approached the Car. Through the open window on the front passenger side of the Car, Ranjit placed the Robinsons bag on the front passenger seat. In return, he received a red-and-yellow package from Farid, which he brought back to the Bus.

7 Following the exchange, Ranjit and Farid went their separate ways in their respective vehicles. One group of CNB officers followed the Car. Another group followed the Bus. The Car was intercepted at about 9.25pm near Yew Tee MRT and Farid was arrested. The Bus was intercepted at about 10.10pm along Seletar Expressway Exit 3 and Ranjit was arrested.

Recovery of the drug exhibits and other exhibits

8 In the Bus, two envelopes containing cash amounts of S\$4,050 and S\$1,470 respectively were found under the driver’s seat.

9 In the Car, the Robinsons bag was found. It contained (within two more layers of plastic bags) *three* newspaper-wrapped packages. One newspaper-wrapped package contained a plastic packet containing a brownish granular/powdery substance. Each of the other two newspaper-wrapped packages contained two packets, each in turn containing another plastic packet containing a brownish granular/powdery substance. In total, there were five plastic packets.

10 Following his arrest, Farid was escorted to his residential address on record at Block 542 Choa Chu Kang Street 52 #04-62 at about 11.15pm. Nothing incriminating was found there. However, upon questioning by Senior Station Inspector David Ng at about 11.32pm, Farid stated “Got balance. About half.” in his unit at Regent Grove Condominium, Tower B1 #04-25 (“the Unit”). CNB officers immediately escorted Farid to the Unit and found, among other things, numerous empty plastic packets, two electronic weighing scales, and four amounts of cash adding up to a total of S\$13,888.

Analysis by Health Sciences Authority

11 Subsequently, the five packets containing the granular/powdery substance were submitted by CNB to the Health Sciences Authority (“HSA”) for analysis. An officer of the HSA, Hu Yiling Charmaine, found that the packets contained, in total, not less than 1,359.9 grams of the brownish granular/powdery substance, which contained not less than 35.21 grams of diamorphine. The HSA also found that the surface of the Robinsons bag carried genetic material which matched the DNA profile of Ranjit. There was no dispute as to the integrity and proper custody of all the exhibits at all material times.

Admissibility of evidence concerning other transactions

12 Up to this point, all the facts stated formed part of the Statement of Agreed Facts. In the course of the proceedings, a preliminary question (“the preliminary objection”) arose as to whether further evidence concerning the two areas described below should be admitted:

- (a) Previous transactions involving heroin and/or other illegal items. In Farid’s statements furnished to CNB in the course of

investigations, he mentioned transactions with “Abang” (whom he claimed to be Ranjit) involving heroin. In Ranjit’s statements furnished to CNB in the course of investigations, there were transactions said to involve something illegal (which he referred to as “*makan*” or “*barang*”), and concerned Farid and other parties.

(b) A series of dealings involving one quantity of methamphetamine. Eventually, the methamphetamine was found in the red-and-yellow package which Ranjit received from Farid, and which Ranjit subsequently delivered to another party. In the statements of both Ranjit and Farid, there were details of how and why Farid came to be in possession of the methamphetamine, and how and why the methamphetamine was later transferred to Ranjit.

13 Ranjit’s counsel, Mr Singa Retnam (“Mr Retnam”), made an application to exclude from evidence (i) the portions of the statements made by Ranjit and Farid regarding those two areas (the “Disputed Portions”); (ii) two HSA certificates relating to the methamphetamine in the red-and-yellow package; and (iii) three photographs of the red-and-yellow package and the methamphetamine. In addition to the evidence concerning those two areas, Mr Retnam also objected to the admissibility of one photograph of other drug exhibits recovered in the Unit.

14 At this juncture, I pause to observe that Ranjit and Farid accepted that the statements they made to CNB were made voluntarily; without any threat, inducement or promise made to them before or during the recording of the statements. Mr Retnam’s ground of objection to the Disputed Portions was that such evidence concerned Ranjit’s acts on previous and/or unrelated

occasions, and constituted similar fact evidence of which the prejudicial value outweighed its probative force.

15 The Prosecution submitted that the Disputed Portions went towards proving Ranjit’s state of mind (in particular, his knowledge) at the time of the offence and with regard to the drugs. Therefore, the Prosecution submitted that such evidence was admissible under ss 14 and 15 of the Evidence Act (Cap 97, 1997 Rev Ed) (the “EA”) which state:

Facts showing existence of state of mind or of body or bodily feeling

14. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

...

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

16 In relation to evidence on the series of dealings concerning the methamphetamine (including parts of the Disputed Portions, the HSA certificates and the three photographs) and the photograph of other drug exhibits recovered from the Unit, the Prosecution also submitted that such evidence was admissible to provide the court “with a complete account of the facts”. Otherwise, there would be gaps in the evidence, with difficulties in making sense of the events. Reliance was placed on ss 6 and 9 of the EA which provide:

Relevancy of facts forming part of same transaction

6. Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction are relevant, whether they occurred at the same time and place or at different times and places.

Facts necessary to explain or introduce relevant facts

9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.

17 Turning to Mr Retnam's contentions, I note that even adopting the more rigid stance of the older English cases which Mr Retnam (unhelpfully, in my view) relied on, the exclusionary rule was meant to prevent past offences from being used to prove that an accused had a propensity to commit offences of that sort. It did not prevent such evidence from being used to rebut an attempt to disprove intent or to raise a defence: see, *eg*, *Makin v Attorney-General for New South Wales* [1894] AC 64 at 65. In any event, the older position on similar fact evidence had been superseded by that as set out by the Court of Appeal in *Tan Meng Jee v Public Prosecutor* [1992] 2 SLR(R) 178 ("*Tan Meng Jee*"), which was cited by the Prosecution. There, the Court of Appeal superimposed the common law balancing test of weighing the probative force of a piece of evidence against its prejudicial value (derived from *Boardman v Director of Public Prosecutions* [1975] AC 421) onto ss 14 and 15 of the EA. In determining whether a piece of evidence is sufficiently probative to be admitted, the court must consider three main factors: its cogency (*ie*, the reliability), the strength of inference it provides (*ie*, the extent to which such evidence supports the inference sought to be drawn from it), and its relevance: see [41], [48] and [52].

18 The case of *Ng Beng Siang and others v Public Prosecutor* [2003] SGCA 17 (“*Ng Beng Siang*”), also relied on by the Prosecution, provided guidance in the application of these factors. In particular, it identified two situations when the test would likely be passed: first, where the evidence of past offences was being used to prove the accused’s state of mind, rather than his propensity to commit crimes, and second, where it was adduced “for the limited purpose of providing the court with a complete account of the facts”: *Ng Beng Siang* at [41]–[42].

19 Applying the test in *Tan Meng Jee*, I found that the Disputed Portions were admissible. They formed cogent evidence given that they were contained in Ranjit’s and Farid’s statements, of which there was no challenge as to admissibility on the ground of voluntariness. They formed relevant evidence as they were pertinent to the mental state of Ranjit at the time of the offence. As for the strength of the inference to be drawn, I considered that the evidence was sufficiently weighty for consideration of Ranjit’s state of mind and, specifically, the merits of any potential defence that he did not know what the white plastic bag contained apart from “something illegal”. Therefore, relying on *Tan Meng Jee* and *Ng Beng Siang*, I found that there was probative value in such evidence which outweighed its prejudicial effect.

20 Two further points militated in favour of admitting the Disputed Portions. First, in relation to Farid’s statements, Farid’s counsel, Mr Amarjit Singh (“Mr Singh”), submitted that he did not object to any part of them being admitted and that he would, for the purposes of Farid’s defence, be relying on them in their entirety. Second, the preliminary objection had been brought at a fairly early stage of the trial. At that juncture, it remained unclear what Ranjit’s defence would be; it would thus have been premature to exclude the Disputed Portions at that stage. Depending on the issues subsequently raised

by parties, it remained open to Mr Retnam to submit on the relevance and/or weight to be accorded to such evidence in due course. As the trial unfolded, it turned out that Ranjit's defence was that he had either no knowledge of the contents of the Robinsons bag or no knowledge of the contents beyond their illegality. This confirmed that the Disputed Portions were indeed relevant. I will deal with the weight to be accorded to the Disputed Portions later.

21 Mr Retnam had a sounder basis to object to the admission of the two HSA certificates: that the evidence on the quality and quantity of methamphetamine was not relevant to Ranjit's state of mind (or any other element of the offence), or to the case against Farid. I agreed, and therefore excluded the two HSA certificates.

22 As for the photographs, I accepted the Prosecution's submission that the photographs marked 74, 75 and 76 (which were photographs of the red-and-yellow package and the methamphetamine) should be adduced as a matter of completeness only. However, photograph 51 (which was of another quantity of drugs subsequently found in the Unit) had no relevance to the charge against Ranjit, and appeared to have little or no relevance to the charge against Farid. It was not necessary even as a matter of completeness. I therefore excluded photograph 51.

Statements made during investigations

23 With that, I turn to the contents of the statements of Ranjit and Farid made during investigations, including the Disputed Portions.

Statements made by Ranjit

24 Ranjit gave the following statements to CNB:

- (a) A contemporaneous statement recorded by Senior Staff Sergeant Muhammad Faizal Bin Baharin on 6 February 2013, during the CNB operation itself;
- (b) A cautioned statement recorded by Assistant Superintendent Lim Changwei Edmund (“ASP Lim”) on 7 February 2014 pursuant to s 23 of the CPC; and
- (c) Three long statements recorded by ASP Lim between 9 and 14 February 2014 pursuant to s 22 of the CPC.

25 In summary, the pertinent aspects of these statements are as follows:

- (a) Ranjit had been delivering what he referred to as “*barang*” (which literally meant “thing(s)”) or “*makan*” (which literally meant “food”) into Singapore for a person known as Siva, a tour operator, since December 2013. He was facing financial difficulties at the time. He understood “*makan*” and “*barang*” to mean something illegal. When Ranjit asked Siva what “*makan*” was, Siva replied that he did not know because it would already have been packed. Ranjit started to deliver “more times into Singapore when Farid started to order”. However, he had only met Farid twice before the day of the offence.
- (b) When Ranjit was unable to make a delivery for Siva, he would ask a woman known as Perl to make the delivery instead. On one occasion, he had conveyed to Perl Siva’s instructions to pass 75 grams of “*Air Batu*” (which literally meant “ice”) to a person known as “Bro Choa Chu Kang”, to collect S\$7,400 as payment, and thereafter to change the money into a different currency and deposit it (after subtracting her own salary of RM1,000) into Ranjit’s account. It turned

out that “Bro Choa Chu Kang” was not contactable at the number provided, so Ranjit instructed Perl to deliver the “*Air Batu*” to a person known as “Bro Bukit Timah” instead. Perl did so. “Bro Bukit Timah” was identified to be Farid, while “Bro Choa Chu Kang” was identified to be Mohd Hafiz bin Mohamad Arifin (“Hafiz”). Subsequently, Farid informed Ranjit that he was unable to pass the “*Air Batu*” to Hafiz. Ranjit then asked Farid to hold on to it.

(c) In his first long statement, Ranjit claimed to have delivered the Robinsons bag at the request of a person known as Roy, who was Ranjit’s friend. Roy had told him that the Robinsons bag had been left behind on the Bus by a customer who had already returned to Singapore, and who needed the Robinsons bag returned to him. However, in his third long statement, Ranjit claimed instead to have delivered the Robinsons bag after receiving a telephone call from Siva sometime between 2 to 3pm informing him that there was “*barang*” to be delivered into Singapore.

(d) At around 6pm, Ranjit picked up the Bus from the house of his driver, Rajan. He cleared immigrations at about 7.10pm to 7.15pm and thereafter called Roy, who gave him Farid’s telephone number. Ranjit then called Farid and they arranged to meet at 8pm. Farid showed up over an hour later.

(e) Ranjit was also supposed to collect a bag (which was the red-and-yellow package) from Farid and deliver it to Hafiz. After collecting the red-and-yellow package and before his arrest, Ranjit managed to successfully deliver this bag to Hafiz, and to collect from Hafiz two envelopes containing cash.

(f) Ranjit did not know what was in the Robinsons bag and did not at any point check for himself. In his contemporaneous statement, he said that there were three packages within the Robinsons bag, but that he did not know what was inside the packages.

Statements made by Farid

26 Farid gave the following statements to CNB:

(a) Four contemporaneous statements recorded by SSgt Bukhari Bin Ahmad on 6 February 2014, during the CNB operation itself;

(b) A cautioned statement recorded by ASP Lim on 7 February 2014 pursuant to s 23 of the CPC; and

(c) Five long statements recorded by ASP Lim between 9 and 14 February 2014 pursuant to s 22 of the CPC.

27 The pertinent contents of these statements can be summarised as follows:

(a) Farid knew that the Robinsons bag contained heroin although he did not know the quantity of the drug. He had collected it on the instructions of a person known to him as “Abang”.

(b) Farid had been making deliveries to customers for “Abang” twice a week for about two to three weeks. He had started working for “Abang” in order to pay his fiancée’s medical bills and the rental of the Unit. Each time, “Abang” or his subordinates would pass him at least two pounds of heroin and issue him instructions to repack and deliver the heroin to customers. Before 6 February 2014, he had already

received, repacked and redistributed two previous consignments of heroin. He was to be paid S\$300 per pound of heroin, but had not received any payments at the time of his arrest as he had not discussed payment terms with “Abang”.

(c) The empty sachets and weighing scales found in the Unit belonged to Farid and were used by him to divide, weigh and pack the heroin. With one weighing scale, he would measure the heroin so as to pack for half or one pound orders. With the other weighing scale, he would be able to weigh the heroin so as to pack it into packets of 7.7–7.9 grams each. He had done this with the previous two consignments of heroin.

(d) On 5 February 2014, “Abang” called Farid on the telephone and asked him to collect and find buyers for a consignment of “*Air Batu*” as the original customer was uncontactable. Farid agreed. That same day, “Abang” also called to inform Farid that a consignment of heroin would be coming in the next day.

(e) Also on 5 February 2014, Farid collected a red-and-yellow package from a Chinese woman who was accompanied by an Indian man. These were the same persons from whom Farid had received the previous two consignments of heroin. Farid was subsequently unable to find buyers for the “*Air Batu*” contained in the package and therefore passed it to Ranjit.

(f) When Farid met Ranjit on 6 February 2014, Ranjit had wanted to discuss the terms of Farid’s payment, but Farid had declined to have the discussion at that time as he had other matters to attend to.

(g) From a photograph, Farid identified Ranjit as being “Abang”.

28 At the close of the Prosecution’s case, I found that there was sufficient evidence against both Ranjit and Farid for the defence to be called. They each gave evidence in their own defence and did not call any other witnesses.

Ranjit’s defence

29 Essentially, Ranjit’s defence was that he had no knowledge that the Robinsons bag contained anything illegal, or at any rate, that it contained heroin specifically. On 6 February 2014, he was asked by Roy, who was Siva’s tour coordinator, to deliver the Robinsons bag to Farid, Siva’s customer, at Choa Chu Kang. The Robinsons bag was kept in a “pocket” at the side of the Bus. When they finally met up, he placed the Robinsons bag in the Car, and he collected the red-and-yellow package from Farid.

30 Farid told Ranjit to call Siva to ask about the red-and-yellow package. Then, Ranjit called “Bro Choa Chu Kang” (being Hafiz), and received instructions to go to Teck Whye to pick up Hafiz. Ranjit proceeded accordingly, and picked up Hafiz, who gave him two envelopes with cash. Ranjit did not count the money. Hafiz also asked for a lift to a bus stop in Woodlands. When Hafiz was about to alight, he asked Ranjit for the red-and-yellow package. Ranjit passed it to him.

31 Thereafter, CNB officers stopped Ranjit, and arrested him. Before that day, Ranjit had not met Farid before. He referred to Farid as “Bro Bukit Timah” because Siva told him that the person stayed at Bukit Timah. He did not know of the contents of the Robinsons bag and the red-and-yellow package. He had not given any money to Farid, and did not direct Farid’s activities. He denied being Farid’s boss.

Farid’s defence

32 Farid did not dispute that he had possession of the Robinsons bag and was aware of its contents. Indeed, his counsel submitted in closing submissions that “Farid has conceded the elements required to prove the case against him”. Instead of contesting his guilt, Farid attempted to show that he had acted as a courier and had co-operated with CNB by providing valuable information about other persons involved in drug trafficking. He also reiterated his claim to have been acting on the instructions of a person known to him as “Abang”. By and large, his account at trial was consistent with that in the statements. However, departing from the certainty in his statements, he said that he believed that Ranjit was “possibly” “Abang”, based on the voice of “Abang” on the telephone. “Abang” had been issuing him instructions for two to three weeks regarding the receipt, repacking and distribution of heroin and methamphetamine.

The law

33 The relevant provisions within the MDA constituting the charges read:

Trafficking in controlled drugs

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

(a) to traffic in a controlled drug;

...

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

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

34 In respect of a charge of trafficking under s 5(1) read with s 5(2) of the MDA (as faced by Farid), the elements to be established are (i) possession of the drugs; (ii) knowledge of the nature of the drugs; and (iii) proof that possession of the drugs was for the purpose of trafficking which was not authorised: *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Muhammad Ridzuan*”) at [59]. For a charge of trafficking under s 5(1) of the MDA (as faced by Ranjit), the elements to be established are (i) the act of trafficking in the controlled drug which was not authorised *ie*, by *giving*; and (ii) knowledge of the nature of the drug.

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

Presumption of possession and knowledge of controlled drugs

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

(a) anything containing a controlled drug;

...

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

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

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

Decision

Ranjit

37 I turn to consider the case against Ranjit. Ranjit admitted that he gave the Robinsons bag containing the drugs to Farid, satisfying the act of trafficking. However, Ranjit denied any knowledge that the Robinsons bag contained the drugs. This formed the main dispute.

38 On the knowledge element, the Prosecution invoked the presumption within s 18(2) of the MDA. The Prosecution highlighted factors for the court's consideration, including the evidence relating to the previous transactions involving illegal items and methamphetamine. The Prosecution contended that on a balance of probabilities, Ranjit had failed to rebut the presumption of knowledge. Mr Retnam argued to the contrary. At most, Ranjit knew that he was delivering something illegal or even drugs generally (should the court accord weight to the evidence concerning the methamphetamine), but not that he was delivering diamorphine. In any case, Mr Retnam continued to object to any reliance on the circumstances relating to the previous transactions for very much the same reasons put forth in the course of the preliminary objection (see [12]–[22] above).

39 To reiterate, Ranjit admitted possession of the Robinsons bag with the five packets containing the drugs, which in any event had been conclusively proven by the objective evidence. By s 18(1) of the MDA, he was presumed to have been in possession of the drugs. Ranjit did not seek to rebut this. In turn, this triggered the presumption of knowledge within s 18(2) of the MDA. Thus, I agreed with the parties that the only question was whether the presumption of knowledge under s 18(2) of the MDA had been rebutted on a balance of probabilities. As for Mr Retnam's continued objection to the reliance on the

evidence of the previous transactions, I was of the view such evidence may be given due weight if assessed to be reliable in light of all the other evidence, but only insofar as to the issue of the state of mind of Ranjit. I also refer to my earlier analysis (at [18]–[20] above).

40 On a review of all the evidence, I found that Ranjit had failed to rebut the presumption of knowledge. Three aspects of the transaction in particular, taken together, made the transaction so clearly suspicious that Ranjit’s failure to check or enquire into the contents of the Robinsons bag must have been deliberate.

41 First, Siva was the person involved in the transaction, and the context in which Ranjit knew Siva must have made him suspicious of the contents of the Robinsons bag. According to Ranjit, from about December 2013, Siva started giving him jobs to deliver illegal items. In Ranjit’s second long statement, he stated that for about two months, he had been delivering, on Siva’s instructions, what he and Siva referred to as “*makan*”. Ranjit stated that “[*m*]akan’ would have meant that it is something illegal.” When he asked Siva what “*makan*” was, Siva did not give a straight answer; he claimed not to know as the items would have been packed already. In my view, such an evasive answer would surely have increased Ranjit’s suspicions rather than assuaged them.

42 In this regard, I noted that in his first long statement, Ranjit claimed to have delivered the Robinsons bag at the request of a person known as Roy, who was Ranjit’s friend. However, in his third long statement, Ranjit claimed instead to have delivered the Robinsons bag after receiving a telephone call from Siva instructing him to do so. Then, in court, he shifted his position and said that he had been asked by Roy, who was Siva’s tour coordinator, to

deliver the Robinsons bag to Farid, Siva's customer. At the end of the day, Ranjit conceded that he had acted on Siva's instructions on 6 February 2014.

43 Second, Siva had earlier tasked him to procure the delivery of "*Air Batu*" (which Ranjit did through Perl). In cross-examination, Ranjit claimed that he understood "*Air Batu*" to refer to "ice cubes", and not methamphetamine. I found this assertion unbelievable. It would have made no sense for Ranjit to direct Perl to deliver 75 grams of ice cubes to Farid, and to collect S\$7,400 in exchange for them. He obviously knew that "*Air Batu*" did not refer to ice cubes. For the purposes of the present case, it was not necessary for me to make a definitive finding on whether Ranjit was aware that "*Air Batu*" referred to methamphetamine specifically. What was material was that the circumstances of the transaction – in particular, the high value placed on a mere 75 grams of the substance – would, at the very least, have alerted Ranjit to the highly illegal nature of the "*Air Batu*". Thus, when Siva directed Ranjit to deliver the Robinsons bag to the same person to whom Ranjit had directed Perl to deliver the "*Air Batu*" to, Ranjit would also have known or suspected that he was delivering something highly illegal.

44 Third, it was, in fact, clear that Ranjit had known that the Robinsons bag contained something illegal. In the first long statement, Ranjit claimed that Roy told him that the Robinsons bag had been left behind by a customer. This was neither here nor there; the fact that a bag had been left behind did not mean that its contents could not be controlled drugs. In any case, Ranjit shifted his position. In his third long statement, he stated that on the day of the alleged offence, Siva had asked him to deliver "*barang*" into Singapore, and that the "*barang*" was (or was contained in) the Robinsons bag. Ranjit stated that "*barang*' to me is something which is illegal but I do not know the contents." In cross-examination, he also conceded that Siva contacted him to deliver

“*barang*” into Singapore. On the basis of these admissions, I found that Ranjit knew that the Robinsons bag contained something illegal.

45 At some points in his cross-examination, Ranjit claimed that he did not understand “*barang*” and “*makan*” (which he said meant the same thing, at times using the phrase “*barang makan*”) to mean anything illegal. Therefore, I now deal with Ranjit’s attempt to disavow the portions of his statements that he knew “*makan*” and “*barang*” referred to illegal items, claiming that he had informed ASP Lim that there had been “typo errors”. He claimed that his use of the word “*barang*” had been “contorted”. When asked why he had signed the statements if he had known there were errors, he claimed to have had “blackout[s]” at some points in the recording of his statements as he was diabetic and had not been given food or drink. Upon further cross-examination, Ranjit clarified that by “blackout” he meant only “giddiness”. Eventually, Ranjit admitted that he had not even been giddy and that his statements had been accurately recorded. This was consistent with the testimony of ASP Lim that Ranjit did not behave unusually during the recording of his statements. I noted as well that Mr Retnam did not cross examine ASP Lim at all about the statement recording process. I accepted that Ranjit had understood the terms “*makan*” and “*barang*” to refer to something illegal, and found that his statements were accurately recorded. Therefore, Ranjit understood the Robinsons bag to contain something illegal when he brought it into Singapore.

46 By all of the above, the surrounding circumstances were such that Ranjit ought to have been – and must have been – highly suspicious of the contents of the Robinsons bag. Ranjit also had ample opportunity to check its contents; by his own account, over three hours passed between his receipt of the Robinsons bag (which was in the Bus) and his subsequent delivery of it to

Farid. For most of this duration, he was alone in the Bus and could have checked the contents of the Robinsons bag free from observation. Yet, he claimed he did not do so at all. In fact, this position contradicted the contents of the contemporaneous statement where he stated that he knew there were “three packages” in the Robinsons bag: see [25(f)]. I noted that in cross-examination, he tried to explain this inconsistency by stating that he only found out about the packages when Farid opened the Robinsons bag. I was not inclined to accept this explanation. It seemed to me to be a mere afterthought. More importantly, neither version of Ranjit’s account assisted him. Regardless of whether Ranjit failed to check the contents of the three packages or he failed to check the contents of the Robinsons bag at all, he still failed to check the contents of what he was delivering despite circumstances which should and must have made him highly suspicious.

47 Further, I also considered that he could have called to ask Siva about the contents of the Robinsons bag. Under cross-examination, Ranjit did not expressly state whether he did or did not so ask Siva, but claimed that “[e]ven Siva did not know” what the contents were. To my mind, even if this was true, the added layer of uncertainty only added to the suspiciousness of the circumstances.

48 Finally, I considered Ranjit’s attempts to explain his omissions. Under cross-examination, Ranjit attempted to justify his failure to enquire or check in the following way:

Q So for over 3 hours, Mr Ranjit, you had every opportunity to check the contents of the Robinsons bag?

A This is not my bag. There was no need for me to check. This bag had gone through the Customs twice. It has been checked by the Customs. So there was no need for me to look into it.

He went on deny even being at all curious about the Robinsons bag's contents, stating, "I was not interested. I had no interest." I was not at all convinced by this explanation. Ranjit admitted to being aware, prior to bringing the Robinsons bag into Singapore, that trafficking certain substances carried a potential death penalty. It was improbable, therefore, that Ranjit could have been genuinely indifferent as to what he was transporting. Moreover, the fact that the Robinsons bag was not his own bag would have made it all the more important for him to check its contents before bringing it into Singapore. As for Ranjit's claim that the Robinsons bag had been checked by customs officers, there was no evidence for this beyond his bare assertion. In fact, Ranjit himself did not claim that the customs officers had inspected the Robinsons bag; he merely stated that he had seen them "looking at something" in the Bus. If they had inspected the Robinsons bag, there was no doubt in my mind that they would have found its contents (being three bundles wrapped in newspaper and tape) highly suspicious and would have opened the bundles up and discovered the heroin. That the Robinsons bag made it through customs is strong evidence that it was passed over when customs officers inspected the Bus. Finally, Ranjit stated that he had taken over the Bus and the Robinsons bag at "six plus, just sometimes [*sic*] past six", and that he had arrived in Singapore after 7pm. Thus, even before going through customs, there was a significant window of time in which Ranjit could have checked the contents of the Robinsons bag for himself.

49 To sum up, the crucial question was whether Ranjit could be said to have deliberately failed to enquire or to check the Robinsons bag himself, or whether there was some reasonable explanation for his omission. In the light of the suspicious circumstances detailed above, and given that Ranjit had failed to provide any sensible explanation for his failure to check or enquire, I found that he had failed to rebut the presumption of knowledge. His mere

assertion that he did not know the nature of the drugs did not suffice. In assessing the evidence described above, I took into account the overall low level of credibility which Ranjit had demonstrated in his oral testimony. Many of his answers were self-serving, evasive or nonsensical; some of them were eventually retracted after their flaws became apparent upon further questioning. In addition to the aspects discussed above, I should also point out that while Ranjit said in his statements that he had met Farid twice before, he changed his stance when giving his evidence, and said that they first met on 6 February 2014. His lack of credibility was a further reason to doubt his assertion that he had no knowledge of the nature of the Robinsons bag's contents and that he believed there was no need to check. Given all these circumstances, I found that Ranjit had not discharged the burden of proving that he lacked such knowledge.

50 Accordingly, I convicted Ranjit of the offence as charged. For completeness, I discuss Farid's allegations that Ranjit was the person known to Farid as "Abang" who was Farid's "boss" and had been issuing him instructions with regard to the collection, repacking, and delivery of heroin and methamphetamine for about two to three weeks. It was clear from Farid's statements that he claimed that he had never met Ranjit or "Abang" prior to the day of the offences within the charges. In his testimony, it emerged that Farid had concluded that Ranjit was "Abang" based on only two facts: first, the day before the offences, "Abang" had told Farid that he would be coming to Singapore, and second, that Ranjit sounded like "Abang" had on the telephone. Significantly, Farid did not express the same confidence on the stand that he had expressed in his statements, saying that "Ranjit was *possibly* the person that I talked to on the phone" (emphasis added). On such a tenuous basis, the notion that Ranjit was "Abang" could not be said to be more than a possibility. It also appeared to me to be unlikely, if Ranjit was indeed Farid's

“boss”, that Farid would have been able to treat Ranjit’s inquiries as to Farid’s arrival at the meeting point so casually, and to make Ranjit wait for him at the meeting point – exposing himself to an increased risk of apprehension – for more than an hour. At the end of the day, in coming to my decision on Ranjit’s state of mind, I did not rely on Farid’s claims that there were previous dealings in heroin between the parties, and that Ranjit was “Abang”.

Farid

51 Farid admitted every element of the offence with which he was charged. He sought merely to show that he had co-operated with CNB and given valuable information. In his various statements to CNB, he consistently and candidly admitted that the Robinsons bag was in his possession, that he knew it contained heroin, and that his purpose in receiving the heroin was to distribute it. He confirmed the accuracy of his statements in evidence-in-chief and cross-examination, except that he said that he had “assumed” that the Robinsons bag contained heroin because the two previous consignments he had received contained heroin. It was clear to me that Farid had actual knowledge of the nature of the drugs; in any event, it was plain that he had not rebutted the presumption of knowledge under s 18(2) of the MDA which arose against him. I therefore convicted Farid of the offence as charged.

Sentence

Conditions for the court’s exercise of discretion under s 33B(1)(a) of the MDA

52 The relevant provisions concerning the alternative sentencing regime read:

Discretion of court not to impose sentence of death in certain circumstances

33B.—(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court —

(a) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes ...

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

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

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

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

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

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

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

53 Simply put, an offender must show that his acts fell within s 33B(2)(a)(i)–(iv) of the MDA (which the courts have referred to, for the sake of convenience, as “being a courier”) and must also receive a certificate of substantial assistance from the Public Prosecutor. Section 33B(4) of the MDA further states that the decision to give or withhold such a certificate is at the sole discretion of the Public Prosecutor.

Ranjit

54 Following the conviction of Ranjit and Farid, I was informed that the Public Prosecutor would be issuing a certificate of substantive assistance under s 33B(2)(b) of the MDA in respect of Ranjit. This was duly issued and tendered to the court. Additionally, both Mr Retnam and the Prosecution submitted that Ranjit had acted only as a courier, and had thus satisfied s 33B(2)(a) of the MDA.

55 As noted above at [50], I was unable to conclude that Ranjit was the person known as “Abang” who had been issuing instructions to Farid. I was also of the view that the “possibility” raised by Farid was too speculative to warrant serious consideration at the stage of considering whether Ranjit had been proven to be acting as a courier. However, one apparent difficulty for Ranjit was that on his own statements, he had issued delivery instructions to Perl in respect of the methamphetamine, and had collected two envelopes of money from Hafiz thereafter. The Prosecution submitted, and I accepted as self-evident, that these were not the acts of a mere courier.

56 However, the Prosecution also submitted that in determining whether an offender was a courier, the court should look only to his role in respect of the capital charge for which he was tried, and disregard his role in respect of any other distinct drug transactions. I was directed to the wording of s 33B(2)(a) of the MDA, which specifically referred to the offender’s “involvement in *the* offence” (emphasis added), and to the cases of *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 (“*Abdul Haleem*”) and *Public Prosecutor v Christeen d/o Jayamany and another* [2015] SGHC 126 (“*Christeen d/o Jayamany*”).

57 In *Abdul Haleem*, the court found that both the offenders were couriers despite the fact that their role in respect of other non-capital offences with which they had been charged clearly went beyond that of a mere courier. However, in *Christeen d/o Jayamany* (at [78]–[87]), one of the accused persons, Datchinamurthy, was found to have carried out certain other functions which included arranging for Christeen (the co-accused) to make subsequent deliveries and passing instructions as to such deliveries, recruiting Christeen and paying her, and asking Christeen to find more customers. The court found that these aspects were to be considered as part of Datchinamurthy’s involvement in the particular offence. Based on these aspects, Datchinamurthy was found not to be a courier.

58 At the end of the day, whether an offender is a courier necessarily involves a highly fact-specific inquiry. The Prosecution submitted that I should only be concerned with Ranjit’s role in respect of the drugs which were the subject matter of the offence charged, and not with his role in respect of the methamphetamine (or, for that matter, in respect of the earlier heroin consignments, if Ranjit was indeed “Abang”). It was submitted that Ranjit’s role, when considered *solely* in relation to the offence for which he was tried, was that of a courier.

59 Applying the above analysis to Ranjit’s acts, I concluded that his role in giving delivery instructions to Perl and collecting the two envelopes of cash (as described at [25(b)] above) did not disqualify him from being a courier. As the Prosecution submitted, these were acts in respect of distinct and separate drug transactions. It was apparent that what Ranjit would do with respect to a particular consignment of drugs would depend on what needed to be done with regard to that consignment. The circumstances of the dealings in methamphetamine required him to issue instructions to Perl, and then to

collect payment from Hafiz. The circumstances of the offence for which he was tried did not require him to do either of those things. Based on Ranjit's statements to CNB and the objective evidence that was available, I found on a balance of probabilities that Ranjit's role in dealing with the drugs was merely to deliver to Farid the drugs in the Robinsons bag on the instructions of Siva. This fell squarely within the acts of a courier set out at s 33B(2)(a)(i)–(iv) of the MDA.

60 Since Ranjit had fulfilled both requirements, I considered whether to exercise my discretion under s 33B(1)(a) of the MDA to impose a penalty of life imprisonment instead of death. On the evidence, given Ranjit's role in the offence, I could see no reason to impose the death penalty, nor did the Prosecution submit that there was any such reason. I thus imposed the alternative mandatory sentence of life imprisonment and the mandatory minimum of 15 strokes of the cane.

Farid

61 I was informed that the Public Prosecutor had not issued, and would not be issuing, a certificate of substantive assistance in respect of Farid. This was despite Mr Singh's attempts to show that Farid had been co-operative with CNB and had provided valuable information regarding other participants in the drug trafficking operations. Mr Singh pursued these points with vigour in his cross-examination of ASP Lim and his examination-in-chief of Farid, and argued in his closing submissions that the evidence on the record showed that the assistance Farid had given "warrant[ed] the exercise of the Public Prosecutor's discretion to give Farid the Certificate". The Prosecution on its part objected to some of Mr Singh's questions on the basis of irrelevance and

submitted that Farid's co-operation was not a question that was before the court.

62 With respect to Mr Singh, I was in the end unable to see the relevance of his submissions regarding Farid's alleged assistance of CNB. Section 33B(4) of the MDA made it clear that it was for the Public Prosecutor to decide, in his sole discretion, whether to certify that an offender had given substantive assistance. A trial judge may not go behind that decision and substitute his views on the value of the assistance provided. Even in the exceptional situation in which there is a reasonable suspicion that the Public Prosecutor has exercised his power unconstitutionally or with bad faith or malice – which was at no point suggested in this case – the appropriate course would be to seek leave to commence judicial review proceedings in respect of the Public Prosecutor's decision: *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 at [34]–[36].

63 For completeness, I wish to state that Farid had not shown, on a balance of probabilities, that he was a mere courier. It was clear that repacking drugs for the purpose of further distribution was integral to Farid's role. Paraphernalia such as weighing scales and empty plastic bags, meant for weighing and repacking drugs, were found in the Unit. In fact, Farid clearly admitted in cross-examination that he was going to use that paraphernalia to repackage the heroin in the Robinsons bag before delivering it. Mr Singh sought to downplay that admission in closing submissions, pointing out that the heroin in five packets in the Robinsons bag had come “pre-packed into one and half pound packages ... unlike the first two consignments that were all delivered in one pound packages”. I did not think the point assisted Farid, as he had also testified that the paraphernalia found in the Unit were used by him to repack heroin into smaller packages as light as 7.7–7.9 grams. Thus, the fact

that the consignment on 6 February 2014 came in one pound and half pound packages did not suggest that repacking by Farid would have been unnecessary.

64 I noted Mr Singh’s argument that even if Farid’s role with regard to the offence charged involved repacking, such repacking was merely incidental to his role as a courier. However, Mr Singh did not (and could not) dispute that a person who does acts which are “not a necessary element of moving an object from one point to another” goes beyond playing the role of a courier: *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 at [68]. Thus, although a person who repacks drugs because such repacking is necessary to transport the drugs may still be a courier, “someone who packs drugs into bundles as a routine after ensuring that the right type and quantity of the drugs go into the right packaging” – in other words, someone like Farid – would certainly not be: *Public Prosecutor v Yogaras Poongavanam* [2015] SGHC 193 at [28]. This distinction explained the outcome in *Public Prosecutor v Siva a/l Sannasi* [2015] SGHC 73, which Mr Singh relied on. That case concerned an accused who had wrapped already packaged drugs in newspaper secured with rubber bands for transportation purposes. In contrast, Farid’s role to weigh and repack the drugs (into half pound packages or smaller packets of 7.7–7.9 grams as required), was essentially a matter of convenience for facilitating *distribution or sale*; it was not necessary for or incidental to enabling the drugs to be *transported*. I was therefore unable to accept Mr Singh’s submission that Farid’s repacking were the acts of a mere courier.

65 Finally, there was significant dispute over whether Farid was an independent actor or was merely carrying out the instructions of another, *ie*, “Abang”, whom Farid alleged to be Ranjit. As I stated at [50] above, I was not convinced beyond a reasonable doubt that “Abang” was Ranjit. Even on the

lower standard of proof on a balance of probabilities which Farid had to meet, it was still unclear to me whether “Abang” was Ranjit. Ultimately, nothing turned on this point. Even if Farid was acting on the instructions of “Abang” (who may or may not have been Ranjit), the fact that his role with regard to the offence charged would have included non-incidentally repacking was sufficient to show that he was not a mere courier. It did not matter whether he was working independently or not.

66 Since Farid had not proved on a balance of probabilities that he had been acting as a courier, and since he had not received a certificate of substantive assistance from the Public Prosecutor, there was no room for the exercise of the court’s discretion under s 33B(1)(a) of the MDA. Accordingly, I imposed the mandatory punishment of death.

Hoo Sheau Peng
Judicial Commissioner

Han Ming Kuang and Jason Chua (Attorney-General’s Chambers) for
the Prosecution;
Singa Retnam (Aziz Tayabali & Associates), Dhanaraj James
Selvaraj (James Selvaraj LLC) and Gino Hardial Singh (Prestige
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Amarjit Singh (Donaldson & Burkinshaw LLP) and Mahesh Rai
(Drew & Napier LLC) for the second accused.
