

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 66

Criminal Case No 17 of 2016

Between

PUBLIC PROSECUTOR

And

NGUYEN THI THANH HAI

FOUNDATIONS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Sentencing] — [Principles]

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Public Prosecutor
v
Nguyen Thi Thanh Hai

[2016] SGHC 66

High Court — Criminal Case No 17 of 2016
Tay Yong Kwang J
22 March 2016

15 April 2016

Tay Yong Kwang J:

1 The accused is a female Vietnamese national who is now 50 years old. She pleaded guilty to the following charge:

That you, NGUYEN THI THANH HAI,

are charged that you, on 10 August 2013, at about 8.45 a.m., at Changi Airport Terminal 2, Singapore (“the said place”), did import into the said place a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185 (“the said Act”), to wit, two (2) bundles of crystalline substances weighing 3,666 grams, which were analyzed and found to contain not less than 249.99 grams of Methamphetamine, without authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the said Act.

2 The punishment prescribed by s 33(1) read with the Second Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) is a minimum

punishment of 20 years' imprisonment and 15 strokes of the cane and a maximum punishment of 30 years' imprisonment or life imprisonment and 15 strokes of the cane.

3 Taking into consideration the fact that the accused is female and therefore not liable to caning as provided in s 325(1)(a) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), I sentenced her to 23 years' imprisonment with effect from the date of her arrest (10 August 2013). This includes the maximum of 12 months' imprisonment that I imposed *in lieu* of caning pursuant to s 325(2) of the CPC.

The Statement of Facts

4 The accused admitted all the facts set out in the following statement of facts:

I. THE ACCUSED

1 The accused is Nguyen Thi Thanh Hai, FIN: GXXXXXXXX, a 50-year-old female Vietnamese national (Date of Birth: 22 December 1965) and holder of a Vietnamese Passport bearing number BXXXXXXXX.

II. ACCUSED'S ARREST AND SEIZURE OF DRUG EXHIBITS

2 On 10 August 2013, at about 8.45 a.m., the accused landed at Changi Airport Terminal 2, Singapore ("the said place"). She had arrived in Singapore via Air India flight AI 342. The said flight departed from New Delhi to Singapore via Chennai. Upon arrival in Singapore, the accused had a "Star Express" brown-coloured luggage bag (the 'luggage bag') with her. She came to Singapore on transit and was on her way to board a Silk Air flight MI 350 bound for Penang. At the arrival hall of the said place, the accused was stopped by officers from the Immigration and Checkpoints Authority of Singapore ('ICA') for a check.

- 3 When the ICA officers conducted an X-ray screening of the luggage bag, they noticed anomalies along the sides of the said luggage bag. Suspecting the presence of drugs concealed in the luggage bag, officers from the Central Narcotics Bureau ('CNB') were alerted. Thereafter, and in the accused's presence, CNB officers cut open the interior of the said luggage bag at the ICA Baggage Office. After opening up the bottom cloth layer of the luggage, the CNB officers noticed screws and glue stains on both inner sides of the luggage bag. Using a screwdriver, the officers took out the screws and pried open the inner side walls of the luggage bag. Thereafter, the officers recovered two slabs wrapped in aluminium foil from the hidden compartments found on both inner sides of the luggage bag (one slab from each side of the luggage bag) – these two slabs were later marked as 'A1A1' and 'A2A1' respectively. Samples from the two slabs were drawn out for testing and the results were positive for methamphetamine. The accused was then placed under arrest.

III. ANALYSIS OF DRUG EXHIBITS

- 4 The two packages marked 'A1A1' and 'A2A1' were sent by the CNB to the Health Sciences Authority ('HSA') for analysis on 12 August 2013.
- 5 HSA analyst Lim Jong Lee Wendy analysed the exhibits marked 'A1A1' and 'A2A1', and on 17 February 2014 issued the following two certificates under Section 16 of the Misuse of Drugs Act (Cap 185,2008 Rev Ed) ('MDA'):
 - a) One certificate bearing Lab No.: ID-1332-01633-001 (annexed at TAB A) stating that the exhibit marked 'A1A1' was found to be one packet containing 1797 grams of crystalline substance which was pulverised and homogenised into a powdery substance. The powdery substance was analysed and found to contain not less than 989.0 grams of methamphetamine, at a confidence level of 99.9999%.
 - b) One certificate bearing Lab No.: ID-1332-01633-002 (annexed at TAB B) stating that the exhibit marked 'A2A1' was found to be one packet containing 1869 grams of crystalline substance which was pulverised and homogenised into a powdery substance. The

powdery substance was analysed and found to contain not less than 1,052 grams of methamphetamine, at a confidence level of 99.9999%.

- 6 The two exhibits marked 'A1A1' and 'A2A1' were found to contain a total of not less than 249.99 grams of methamphetamine. Methamphetamine is a Class 'A' Controlled Drug listed in the First Schedule to the MDA.

IV. FURTHER INVESTIGATIONS

- 7 According to the accused, sometime in 2012, while at a park in Ho Chi Minh City, the accused befriended a Vietnamese lady known as "Phuong". Phuong asked the accused to go to India where she could look for a husband and told her that the expenses for the trip would be paid for by Phuong's friend in India. The accused agreed to go to India.
- 8 A few days later, Phuong gave the accused the visa for entry into India, a plane ticket, a bunch of SIM cards, a hotel voucher and US\$500 for her expenses. Phuong gave the accused the contact details of her friend in India and instructed the accused to call him once she reached her hotel in India.
- 9 When the accused reached her hotel in India, she messaged Phuong's friend in India. On the next day, a dark-skinned man introduced himself as "Ben Siji" to the accused and brought food for her.
- 10 On the next day, the same dark-skinned man brought her to a one-bedroom flat unit and showed her the said "Star Express" brown-coloured luggage bag. The said dark-skinned man then instructed the accused to bring the said luggage bag to Malaysia.
- 11 Once the accused reached Malaysia, she was supposed to call the said dark-skinned man. He would, in turn, call another person and that person will come and collect the luggage bag from the accused.
- 12 The said dark-skinned man then passed the accused US\$1,000 and the plane tickets to Malaysia. After that, the said dark-skinned man brought the accused to the airport where she boarded the plane for Singapore on the evening of 9 August 2013. The accused was subsequently arrested at Changi Airport on the morning of 10 August 2013 after the packages marked

‘A1A1’ and ‘A2A1’ respectively were recovered from the accused’s “Star Express” brown-coloured luggage bag.

- 13 Prior to her arrest sometime in early 2013, the accused had previously made a similar delivery for Phuong and an unknown “black man”. Similarly, she was instructed to deliver a luggage bag to a person in another country. On this trip, she was also given US\$1,000.
- 14 The accused was wilfully blind to the presence of methamphetamine in her luggage bag due to the following:
 - a) the accused was aware that she was carrying out an illegal act. When the accused was asked to bring the clothes to Malaysia, she called Phuong to ask if she would get into trouble for bringing the clothes. In response, Phuong told the accused that the worst case scenario is a jail term of 1-2 months;
 - b) despite her knowledge that she was carrying out an illegal act, she did not make any further enquiries about the contents of the luggage bag as she had wilfully turned a blind eye to the possibility of drugs being concealed within the luggage bag;
 - c) her suspicions were aroused when her air tickets were fully paid for and she was further paid US\$1,000 just for the delivery of “clothes”;
 - d) her suspicions were also aroused when the said dark-skinned man needed her assistance to deliver the luggage bag to Malaysia when it would have made more sense for the said dark-skinned man to make the trip himself;
 - e) despite her suspicions, she did not make any further enquiries and instead wilfully turned a blind eye to the possibility of drugs being concealed inside the luggage bag.

V. CONCLUSION

- 15 The accused was wilfully blind to the presence of methamphetamine in the luggage bag. By knowingly importing not less than 249.99 grams of Methamphetamine, which is a Class ‘A’ Controlled Drug into Singapore, when she was not authorised

under the MDA or the Regulations made thereunder to do so, she has committed an offence under Section 7 of the MDA.

[Tabs A and B are not reproduced here.]

The accused's antecedents

5 The accused did not have any known antecedents.

The Prosecution's submissions on sentence

6 Although the Prosecution had argued for a sentence of about 24 years' imprisonment in its written submissions, in court, it submitted that a sentence of 22 years' imprisonment would be sufficient in the present case.

7 The Prosecution submitted that a custodial sentence of higher than the minimum of 20 years' imprisonment would be justified in the present case as the quantity of drugs imported was "high". In support of its position, the Prosecution cited the cases of *PP v Yap Siew Luan* [2002] SGHC 93 ("*Yap Siew Luan*"), *PP v Pienaar Hermanus Nicolaas*, Criminal Case No. 40 of 2014 (28 October 2014, unreported) ("*Pienaar*"), *PP v Muhammad Farid bin Mohd Yusop* [2014] SGHC 125, *PP v Hoang Thi Tuong Van*, Criminal Case No. 42 of 2014 (28 May 2015, unreported) ("*Hoang Thi Tuong Van*"), *PP v Nalanggal Norma Verano*, Criminal Case No. 46 of 2015 (15 September 2015, unreported) ("*Nalanggal*") and *PP v Eliya*, Criminal Case No. 54 of 2015 (3 November 2015, unreported) ("*Eliya*"). For instance, in *Pienaar*, where the actual amount imported was 1,891g of methamphetamine, the accused was sentenced to 20 years' imprisonment and 15 strokes of the cane. In *Hoang Thi Tuong Van*, the accused was sentenced to a longer term of 22 years' imprisonment where not less than 2,871.7g of methamphetamine was actually involved. In *Eliya*, a 24-year imprisonment term was imposed where

the quantity of methamphetamine imported was even higher, at not less than 3,049.03g. Notably, the accused persons in these cases had also pleaded guilty and the sole or the most significant charge involved the importation, exportation, trafficking (or attempt thereof) of methamphetamine, the amount of which was reduced to just below the level attracting the death penalty. In the present case, the HSA certificates revealed that the two packages imported by the accused contained a total of not less than 2,041g of methamphetamine, hence justifying a sentence of more than the minimum of 20 years' imprisonment.

8 The Prosecution also noted that pursuant to s 325(1) of the CPC, the accused, being female, could not be subject to caning. Nonetheless, s 325(2) of the CPC gives the court the discretion to order, *in lieu* of caning, an additional term of imprisonment of up to 12 months. For instance, in *Yap Siew Luan*, a case decided before the introduction of s 325(2) of the CPC, the court added two years to the female offender's imprisonment term for importing not less than 249.99g of methamphetamine because she was not liable to be punished with the mandatory 15 strokes of the cane.

9 Taking into account the amount of methamphetamine involved, the seriousness of the present offence and the need to deter future cases of drug importation, the Prosecution submitted that a total sentence of at least 22 years of imprisonment would be appropriate.

The mitigation plea

10 The Defence submitted that a term of 22 years' imprisonment would suffice. In support of its position, the Defence also cited the cases of *Yap Siew Luan*, *Piennar*, *Hoang Thi Tuong Van*, and *Nalanggay*. In *Piennar*, *Hoang Thi*

Tuong Van, and *Nalanggay*, a sentencing range of 20 to 22 years' imprisonment was imposed by the court. In *Yap Siew Luan*, I sentenced the accused to a total of 24 years' imprisonment. The Defence distinguished *Yap Siew Luan* on the basis that the accused in *Yap Siew Luan* had actual knowledge that she was transporting "Ice". The accused in the present case, however, had lower culpability because she did not see or know about the drugs but had merely suspected that there were drugs in the bag.

11 The bulk of the mitigation centred on the circumstances in which the accused committed the offence. The accused had the equivalent of our Primary five education. She has been divorced for more than a decade and has two married daughters aged 22 and 19. She came from a poor family plagued by financial problems. She used to work as a freelance manicurist and a prostitute.

12 The accused became acquainted with a lady by the name of "Phuong" in Vietnam in late 2012. Phuong had asked the accused if she wished to have a foreign boyfriend. The accused agreed as she was previously advised by a fortune teller that she would meet a foreign man and have a successful relationship with him. This was despite the fact that she had a Vietnamese lover at that time. Phuong then made arrangements for the accused to travel overseas for her to meet a foreign boyfriend who could eventually become her husband and who would support her financially.

13 The accused was later informed by Phuong that a man was interested to meet her. Phuong provided the accused with an air ticket and USD\$500. It was her first flight overseas. She eventually made a total of three trips, on the third of which she was arrested for the present offence. On this first trip, she

did not know which country she was travelling to until the plane landed and she realised that it was India.

14 The accused had apparently gone to a wrong city. Becoming lost after many mishaps took place, she returned to the airport where an unknown lady somehow provided her with an air ticket and she took another flight. She was not able to speak English or the local language and was unsure about what was going on. After some further mishap, she finally reached her hotel.

15 Sometime later, two fair-skinned women went to meet her. They did not speak. They took her on a long hike and then took transport to another place. There, the accused was handed over to two dark-skinned men. They were not Indian but could be African. The accused communicated with the men using hand gestures. They gave her winter clothes and some fried chicken and then drove her to a house. One of the men went into the house with her. There the accused washed herself, ate and then fell asleep.

16 The man turned out to be the foreigner (“AB”) that Phuong mentioned earlier. The next day, he left the house, leaving the accused locked inside. In the evening, a man and a woman went to the house and slept there. The next day, the woman cooked for the accused. The man and the woman then left the house and returned only in the evening. This cycle of events repeated itself for the next 20 days.

17 During the first week, the accused was ill. AB did return to the house during this time. In the second week, AB had sex with the accused at least six times. She did not know his name and could not communicate with him.

18 The accused contacted Phuong and her daughter. Phuong told her she had to stay in the house. During or after the said 20 days, AB returned to the house with a red bag which contained clothing and a pair of sandals. AB spoke to Phuong over the telephone. Phuong then told the accused that AB wanted her to bring the bag to his family in Malaysia. For the trip, she was given US\$1,000. The accused took a flight to Malaysia and handed the red bag to a man. She then went to a hotel to stay a night before she returned to Vietnam.

19 After that first trip, AB called the accused occasionally for about four to five months. The communication then stopped. In the meantime, the accused became even closer to Phuong, meeting her every day.

20 Around May 2013, AB called the accused and asked her whether she wanted to visit him again in India. The accused agreed, motivated mostly by the money she had received on her first trip. Phuong gave her an air ticket and US\$400, telling her they were from AB. The accused assumed that the money was for her time, companionship and sexual services.

21 On this second trip to India, many mishaps happened again. Eventually, a man (“CD”) went to meet the accused but later abandoned her at a market. The accused then went to stay in a cheap hotel and called Phuong. That night, another man (“EF”) went to the hotel to bring her to his house where she stayed for the next ten days. The accused was extremely distressed during this time. She was not given anything to bring to Malaysia or to Vietnam on this trip.

22 Back in Vietnam, the accused cut off contact with Phuong. However, Phuong called her after two months and told her that she (Phuong) was going

to India. Phuong returned from India ten days later. She gave the accused a black handbag and the good news that another Indian man (“GH”) was interested to meet the accused. Due to her dire financial situation, the accused agreed to travel to India a third time “on the off-chance that she would receive some measure of remuneration for any sexual favours she might render” (Plea in mitigation at [32]). Subsequently, Phuong gave the accused an air ticket and the travel visa, telling the accused that they were paid for by GH.

23 Upon the accused’s arrival in India, she did not know which city she was in. Again, she was lost and confused as she did not speak English or the local language. That night, she stayed in a hotel. The next day, a man went to meet her, bringing KFC chicken as requested by her earlier. They did not ask for each other’s name but she presumed he was the man whom she was supposed to meet.

24 After eating the food, they had sex because GH communicated his intention by taking off his clothes. There was no discussion about payment and no money was given to the accused. In the evening, GH left the hotel but returned the next morning. He indicated to the accused to pack up, paid for her hotel stay and they then left the hotel for his apartment which was over an hour away by taxi.

25 In the apartment, the accused took her shower and lay down on a mattress. She was afraid that GH would want to have sex again as she did not wish to have any because she was still in pain from the previous day’s sex. She then locked herself in the bathroom as she did not know how to communicate with him about this. GH tried unsuccessfully to persuade her to leave the bathroom. It was only after he had spoken to Phuong and Phuong

had reassured the accused that she emerged from the bathroom. By then, GH had transferred her belongings into a luggage bag (the bag referred to in the statement of facts) which also contained some clothing and some accessories. An empty red bag was also placed in the luggage bag. Over the telephone, Phuong told the accused to assist by bringing the clothing and accessories to GH's family in Malaysia. Phuong also explained that the empty red bag was meant for the accused to repack her own items after the luggage bag was passed to the man's family. GH then gave the accused USD\$1000 and procured her air ticket for immediate departure.

26 The accused was confused and distressed as she thought that he was sending her back to Vietnam due to her refusal to have sex with him. She left her own luggage in GH's apartment and took a taxi with GH to the airport, bringing the said luggage bag with her. She did not check its contents as she was naïve. She also did not think that this was unusual since it was not the first time that she was asked to help transport clothing and accessories for another person's family members. Further, she trusted Phuong.

27 The accused presumed that the air ticket was for a flight from India to Malaysia and she intended to buy her own ticket to return to Vietnam from Malaysia. However, she was in fact provided with an air ticket to Singapore. Upon her arrival at the Singapore airport, the accused proceeded to retrieve her luggage bag. As she was exiting the baggage carousel hall, she was asked to put the luggage bag through the baggage scanner. When she confirmed that the luggage bag was hers, the officers brought her to an office where she was asked to identify which items in the luggage bag belonged to her. The officers then cut open the luggage bag and removed a bundle wrapped in aluminium

foil and scotch tape. After the bundle was opened and found to contain methamphetamine, she was arrested.

28 Although the accused did not know for a fact that there was anything illegal inside the luggage bag, she admitted that she did suspect that there might have been drugs inside. However, she was unsure about the type or the quantity of drugs in the package as she was not the one who packed the luggage bag in which the drugs were hidden.

29 The accused had initially embarked on these trips for the purpose of meeting a foreign companion but realised later that she was there to provide sexual services to foreign males in exchange for payment. She was a trusting and gullible person.

30 In addition to recounting the events that led to the commission of the offence, the Defence also raised the following points in mitigation:

- (a) The accused had pleaded guilty. Her plea of guilt had mitigating effect as it was motivated by genuine remorse.
- (b) The accused had rendered her fullest cooperation to the investigation officers and willingly supplied all information necessary for the investigations.
- (c) The accused had no previous convictions in Singapore or elsewhere.
- (d) The accused did not have actual knowledge of the type of drugs or the amount of drugs that were in the luggage bag. She suspected that there might have been drugs inside but did not know that as a fact. She

was, however, not disputing that the presumption of knowledge under the MDA applied in her case.

(e) The accused was naïve and ignorant. She had spent the most part of her life living in the rural countryside. The series of trips she made to India was the first time the accused travelled overseas. She was often left alone in a foreign country and was unable to converse in the foreign language or English. She was also unfamiliar with the nature of drug trafficking and the severe penalties for doing so. Had she known the type of punishment that she could face, she would have checked the contents of the bag.

The court's decision

31 The maximum punishment under the MDA is life imprisonment. The accused has pleaded guilty, has no known criminal record and there were no aggravating factors that would justify the imposition of life imprisonment.

32 The evidence from the HSA certificates indicated that the accused had imported 2,041g of methamphetamine. This was admitted by the accused. Nonetheless, the Prosecution exercised its discretion to proceed on a non-capital charge, which is that of the unauthorised importation of not less than 167g but not more than 250g of methamphetamine. The unauthorised import of more than 250g of methamphetamine would have attracted the death penalty. Given that the actual amount of methamphetamine that the accused admitted to importing far exceeded 250g, a sentence above the minimum of 20 years' of imprisonment was warranted.

33 The accused's account of the events that led to the commission of the offence was convoluted and confusing. It was difficult to understand how the accused could travel to places she knew nothing about and, despite the language barrier, meet people whose names she did not even know. Although the accused alleged that communication was made through telephone calls with Phuong on certain occasions, I found it illogical that the accused would unquestioningly obey Phuong's instructions to go to foreign countries to meet unknown individuals, have sex with them without verifying their identity and assist them in transporting bags of items to another country without question. As I mentioned in court, her story in essence was that "I went to I know not where, to meet I know not whom and to do I know not what". There is no evidence that a mature adult like the accused could be so extremely naïve and subservient. She was 47 years old at the time of the offence.

34 The accused may have come from the rural area in her country and could have been unfamiliar with Singapore's laws against drug importation. Her financial needs may also have been the motivating factor to go on these trips. These matters, however, were of little mitigating value. At the time of the offence, the accused was a mature adult. It was at least the second time the accused went on such a trip and assisted in bringing things to another country on behalf of unknown foreign men. Having suspected that the luggage bag could contain drugs, she should have checked the contents. There was no indication that she could not do so. Instead, she made the conscious decision not to ask further (even if it is through Phuong) or to look at the interior of the luggage bag despite the very suspicious circumstances.

35 Pursuant to s 33(1) and the Second Schedule of the MDA, a person convicted for the unauthorised importation of not less than 167g but not more

than 250g of methamphetamine would be given the mandatory 15 strokes of the cane. However, because the accused is a woman, she was not liable for caning (as per s 325(1) of the CPC). In *Yap Siew Luan*, I imposed an additional two years of imprisonment on an accused person *in lieu* of caning because she was female. That case must now be read subject to s 325(2) of the CPC, which provides that the maximum imprisonment term that may be imposed *in lieu* of caning is 12 months.

36 In my opinion, the court should consider imposing an additional imprisonment term in respect of offenders who are exempted from caning unless there are special circumstances that justify doing otherwise. As I have stated in *PP v Kisshahllini a/p Paramesuvaran* [2016] SGHC 57, which also concerned the unauthorised importation of a controlled drug by a female and which was heard one day before the present case, the purpose is to deter individuals to whom this exemption applies from being involved in the drugs trade. The most dreaded form of punishment is probably caning. For the present offence, caning is not discretionary and it is set at 15 strokes, which is significantly high considering that the maximum number of strokes that can be inflicted on an offender at any one time is 24. Given the severity of the mandatory punishment of 15 strokes of the cane for non-exempted offenders, the maximum of 12 months' imprisonment should be added if an offender is exempted from caning, even if an additional 12 months might not appear to make a big difference when viewed against the minimum sentence of 20 years' imprisonment. In this case, I see no special circumstances to justify otherwise. This is to ensure that such exempted persons have less incentive to be involved in the drugs trade.

37 Accordingly, I sentenced the accused to 23 years' imprisonment, which included the maximum additional 12 months' imprisonment allowed under s 325(2) of the CPC. The sentence took effect from the date of her arrest on 10 August 2013.

Tay Yong Kwang
Judge

Bhajanvir Singh and Ma Hanfeng (Attorney-General's Chambers) for
the prosecution;
Shashi Nathan, Tania Chin and Jeremy Pereira (KhattarWong LLP)
for the accused.