Quek Hock Lye *v* Public Prosecutor
[2015] SGCA 7

Case Number : Criminal Motion No 25 of 2014

Decision Date : 29 January 2015

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Quentin Loh J

Counsel Name(s) : Eugene Thuraisingam (Eugene Thuraisingam) and Ker Yanguang (Stamford Law Corporation) for the applicant; Francis Ng and Wong Thai Chuan (Attorney General's Chambers) for the respondent.

Parties : Quek Hock Lye — Public Prosecutor

Constitutional Law – Equal protection of the law – Equality before the law

[**LawNet Editorial Note**: The decision from which this criminal motion arose is reported at [2012] 2 SLR 1012.]

29 January 2015

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This was an application by Quek Hock Lye ("the Applicant") for an order that the death sentence imposed on him in Criminal Appeal No 20 of 2010 ("CCA 20/2010") be set aside and a sentence of life imprisonment be imposed in lieu thereof, on constitutional grounds.

2 The Applicant had been tried and convicted in the High Court on a charge of engaging in a criminal conspiracy to traffic a controlled drug under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") (see *Public Prosecutor v Phuthita Somchit and another* [2011] 3 SLR 719). The mandatory punishment under the charge was the death penalty. The Applicant's appeal against his conviction and sentence *vide* CCA 20/2010 was dismissed by this court in *Quek Hock Lye v Public Prosecutor* [2012] 2 SLR 1012. Subsequently, the Applicant brought the present application to set aside the death sentence imposed on him on the basis that s 27(6) of the Misuse of Drugs (Amendment) Act 2012 (No 30 of 2012) ("the Amendment Act") is inconsistent with Art 12(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution").

3 At the conclusion of the hearing, we dismissed the application. We now give the detailed reasons for our decision.

Background

The arrest

4 On 3 October 2008, the Applicant, a male Singapore citizen who was then 44 years old, was arrested next to his rented vehicle by a team of officers from the Central Narcotics Bureau ("CNB"). The team of CNB officers proceeded to conduct a raid at the Applicant's residence at a condominium

unit in Bedok ("the Unit"). Numerous items were seized from the Unit, including 124 packets of granular substances, which were subsequently analysed and found to contain a total of not less than 62.14g of diamorphine, a controlled drug specified in Class A of the First Schedule to the MDA.

5 On the same day (*ie*, 3 October 2008), the CNB officers also arrested two Thai nationals, Phuthita Somchit ("Somchit") and Winai Phutthaphan ("Winai"). At the material time, Somchit and Winai were residing together with the Applicant at the Unit. Somchit was the Applicant's girlfriend, whereas Winai was a male relative of Somchit.

The High Court Trial

6 The Applicant and Somchit were jointly charged with engaging in a criminal conspiracy to traffic in diamorphine, an offence under s 5(1)(*a*) read with s 5(2) of the MDA. While Winai was a named party to the criminal conspiracy alleged in the charge preferred against the Applicant and Somchit, Winai had earlier pleaded guilty to a separate charge of possession of not less than 14.99g of diamorphine for the purpose of trafficking in furtherance of a criminal conspiracy with the Applicant and Somchit. Winai gave evidence for the Respondent in the trial against the Applicant and Somchit.

7 Both the Applicant and Somchit claimed trial in the High Court. On 2 September 2010, after a 17-day trial, the High Court judge ("the Judge") convicted both the Applicant and Somchit, albeit on different charges from the original charge preferred against them. The Judge acquitted Somchit of the original charge on the basis of his finding that on a balance of probabilities she did not have knowledge of the nature of the drug that was the subject of the charge. Instead, the Judge convicted Somchit on a lesser charge of attempting to traffic in a controlled drug classified as a Class C drug in the First Schedule to the MDA, and sentenced her to nine years' imprisonment.

8 In view of his finding that Somchit did not have knowledge of the nature of the drugs, the Judge amended the charge against the Applicant such that Somchit was no longer a named co-conspirator and the Applicant, rather than Somchit, was stated to have been in possession of not less than 62.14g of diamorphine for the purpose of trafficking in pursuance of a criminal conspiracy. The Judge proceeded to examine the evidence against the Applicant on the amended charge and found that there was sufficient evidence to prove the Applicant's guilt beyond a reasonable doubt. The Judge accordingly convicted the Applicant on the amended charge and sentenced him to the mandatory death penalty under s 120B of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") read with s 33 of the MDA.

The Appeal against Conviction and Sentence

9 The Applicant appealed against his conviction and sentence *vide* CCA 20/2010 on two separate grounds, which were both dismissed by this court on 9 April 2012. First, he argued that the Judge had erred in law in proceeding to hear the charge against him after he had pleaded guilty to the amended charge, in that the Judge had failed to follow the procedural safeguards set out in ss 139 and 187 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) in relation to the recording of his plea of guilt. This ground of appeal was rejected by this court, since what had in fact transpired was that the Judge had rejected the Applicant's guilty plea and offered him the opportunity to call such witnesses as he might wish in his defence. The approach taken by the Judge did not cause the Applicant any prejudice.

10 The Applicant's second ground of appeal related to the constitutionality and propriety of the charge preferred against the Applicant. The issue was whether the Public Prosecutor's exercise of prosecutorial discretion in preferring different charges against the Applicant and Winai, who were

parties to the same criminal conspiracy, was unconstitutional. The Applicant argued, *inter alia*, that it was a breach of Art 12(1) of the Constitution to charge him with trafficking in the total seized quantity of 62.14g of diamorphine whereas Winai was only charged with possession of not less than 14.99g of diamorphine, since the Applicant and Winai essentially fell within the same class of accused persons and shared the same legal guilt. This court also dismissed this second ground of appeal, finding that the Applicant had not discharged his burden of establishing a *prima facie* case that the Public Prosecutor had infringed Art 12(1) of the Constitution in charging the Applicant but not Winai with a capital offence.

Events Leading Up to the Present Application

The 2012 Amendments to the MDA

11 On 14 November 2012, Parliament passed the Amendment Act, which made certain changes to the application of the mandatory death penalty for drug offences. The Amendment Act introduced a new s 33B into the MDA with effect from 1 January 2013, the relevant parts of which read as follows:

> **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; or
>
> …
>
> (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.
>
> …
>
> (4) The determination of whether or not any person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities shall be at the sole discretion of the Public Prosecutor and no action or proceeding shall lie against the Public Prosecutor in relation to

any such determination unless it is proved to the court that the determination was done in bad faith or with malice.

12 Section 27 of the Amendment Act created a transitional framework allowing a person convicted of an offence under ss 5(1) or 7 of the MDA to be sentenced in accordance with s 33B of the MDA. The following parts of s 27 of the Amendment Act were pertinent to the present application:

Savings and transitional provisions

27.—(1) Where, on or after the appointed day, a person is convicted of a relevant offence committed before that day, he may be sentenced in accordance with section 33B of the principal Act if the court determines that the requirements referred to in that section are satisfied.

...

(6) Where on the appointed day, the Court of Appeal has dismissed an appeal brought by a person for a relevant offence, the following provisions shall apply:

(*a*) the person may apply to the High Court to be re-sentenced in accordance with section 33B of the principal Act;

(*b*) the High Court shall determine whether the requirements referred to in section 33B of the principal Act are satisfied after hearing any further arguments or admitting any further evidence, and —

(i) if the requirements referred to in section 33B of the principal Act are not satisfied, affirm the sentence of death imposed on the person; or

(ii) if the requirements referred to in section 33B of the principal Act are satisfied, re-sentence the person in accordance with that section;

...

(9) In this section —

"appointed day" means the date of commencement of this section [*ie*, 1 January 2013];

"relevant offence" means an offence under section 5(1) or 7 of the principal Act, or an attempt to commit an offence under section 5(1) or 7 of the principal Act, and which offence is punishable by death under the sixth column of the Second Schedule to the principal Act.

13 It was not in dispute that the offence for which the Applicant was convicted is a "relevant offence" within the meaning of s 27(9) of the Amendment Act.

CM 40/2014 and the present application

14 According to the Applicant, he was asked by the Attorney-General's Chambers ("AGC") on 15 November 2012 whether he would be willing to render assistance to the CNB in disrupting drug trafficking activities within or outside Singapore. On 28 November 2012, the Applicant apparently expressed to the AGC that he was indeed willing to render such assistance and requested from the AGC a certificate confirming that the Applicant had substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore (also known as a "certificate of co-operation")

pursuant to s 33B(2)(*b*) of the MDA.

15 On 22 January 2014, the Applicant was informed at a pre-trial conference that his request for a certificate of co-operation pursuant to s 33B(2)(*b*) of the MDA was rejected.

16 On 4 March 2014, the Applicant filed the present criminal motion, Criminal Motion 25 of 2014 ("CM 25/2014"), in the Court of Appeal, seeking an order that the death sentence imposed on him in CCA 20/2010 be set aside and a sentence of life imprisonment be imposed in lieu thereof. On 22 April 2014, the Applicant sought a similar order from the High Court in Criminal Motion No 40 of 2014 ("CM 40/2014"). Eventually, the Applicant elected to proceed with CM 25/2014 in the Court of Appeal instead of CM 40/2014 in the High Court. Leave to withdraw CM 40/2014 was granted by the High Court on 8 September 2014.

The Applicant's Case

17 The Applicant's case was that s 27(6) of the Amendment Act violated Art 12(1) of the Constitution because it operated retroactively to afford different treatment to individuals previously within the same class. More specifically, s 27(6) of the Amendment Act retroactively put some members of the same class (*ie*, persons convicted of trafficking in more than 15g of diamorphine and sentenced to death prior to the passing of the amendments by Parliament) in a better position after conviction and sentence, by allowing them to avail themselves of s 33B of the MDA whereas other members of the same class would remain subject to the mandatory death penalty. The Applicant argued that this was unfair discrimination because at the time of the commission of his offence, he had no way of knowing that the law would be amended after his offence had been committed and thus no way of availing himself of certain mitigating factors which might have helped him qualify for re-sentencing in accordance with s 33B of the MDA. Therefore, the Applicant submitted that the only way forward was to permit him to have the benefit of a sentence of life imprisonment and caning which other members of the same "class" were given.

18 It was clear from the Applicant's written submissions as well the oral submissions by counsel for the Applicant, Mr Eugene Thuraisingam ("Mr Thuraisingam"), that the Applicant did not take issue with the retroactive nature of s 27(6) of the Amendment Act *per se*. Also, the Applicant was not seeking to invoke the re-sentencing framework in s 27 of the Amendment Act or challenging the exercise of discretion by the Public Prosecutor not to issue him a certificate of cooperation pursuant to s 33B(2)(*b*) of the MDA. Finally, we note for completeness that the constitutionality or legality of the death penalty was not in issue.

The Respondent's Case

19 The Respondent's position was that the application had no merit and should be dismissed. The Respondent raised two points in its written submissions, one procedural and the other substantive.

20 The first point was that the Applicant's death sentence had already been affirmed on appeal on 9 April 2012 and there was no basis for this court to reopen its own decision that he be sentenced to death. The Respondent argued that while the court could in certain circumstances reconsider its decision even where an offender had exhausted his right of appeal (see *eg*, *Yong Vui Kong v Public Prosecutor* [2010] 2 SLR 192 and *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 ("*Ramalingam*")), the present case did not merit any exception being made to the principle of finality of litigation.

21 The second point raised by the Respondent was that in any event, s 27(6) of the Amendment

Act did not violate Art 12(1) of the Constitution. The Respondent argued that the Applicant had not rebutted the presumption of constitutionality that attached to validly-enacted legislative provisions such as the Amendment Act. Further, the Respondent submitted that the classification in the Amendment Act, which distinguishes between offenders who have satisfied the requirements in either s 33B(2) or s 33B(3) of the MDA and offenders who have not, was based on an intelligible differentia that bears a rational relation to the social object of the MDA.

Our Decision

Whether this court should hear the present criminal motion

22 On the first point raised by the Respondent, we agreed with the Respondent that although the present application took the form of a criminal motion, it was in substance an attempt to re-open or revisit the issue of the Applicant's death sentence imposed on him by the High Court and affirmed by this court on 9 April 2012. Indeed, this characterisation of the application was not contested by Mr Thuraisingam.

23 Nevertheless, we were of the opinion that we should hear the criminal motion, given that it concerned, as in *Ramalingam*, a constitutional issue in relation to a capital offence. The applicant in *Ramalingam* had been convicted in the High Court for drug trafficking offences which carried the mandatory death penalty. His appeal to this court was dismissed. Subsequently, he applied again to this court by way of a criminal motion to re-open the decision to dismiss his appeal, on the basis that the prosecution leading to his conviction in the High Court was unconstitutional. In particular, he argued that Art 12(1) of the Constitution had been violated when the Public Prosecutor decided to charge the applicant with capital offences while charging another person, who was involved in the same criminal enterprise, with non-capital offences. The court hearing the criminal motion noted that it was essentially an attempt to re-open a conviction which had been unsuccessfully appealed against, and that the substantive issue in the motion concerned a constitutional point which the applicant could have raised during the trial in the High Court as well as on appeal (*Ramalingam* at [16]). Nevertheless, the court decided to hear the motion, given that it involved a constitutional point (*viz*, the interaction between the prosecutorial discretion in Art 35(8) of the Constitution and the right to equality before the law under Art 12(1) of the Constitution) which needed to be clarified in the public interest (*Ramalingam* at [17]).

24 The present application similarly involved a constitutional issue of whether the Amendment Act was consistent with Art 12(1) of the Constitution. Notably, unlike in *Ramalingam*, this point obviously could not have been raised by the Applicant either during his trial in the High Court or at the hearing of the appeal in CCA 20/2010 since the Amendment Act was only passed after CCA 20/2010 was decided. Given that this case involves capital punishment and given also the public interest in the legality of the Amendment Act under the Constitution, we therefore proceeded to hear the parties on the substantive issues raised in the criminal motion.

Whether the Amendment Act violated Art 12(1) of the Constitution

25 At the outset, it should be noted that the exact nature of the Applicant's arguments were difficult to comprehend. On the one hand, the Applicant's stated complaint was that s 27(6) of the Amendment Act operated retroactively to afford different treatment to individuals previously within the same class. Indeed, Mr Thuraisingam argued that the amendments to the MDA should not apply retroactively. On the other hand, the Applicant, recognising that this argument would necessarily mean that he could not invoke the new law to apply for re-sentencing and his sentence to suffer death would remain, effectively had to retract the argument. It therefore appeared to us that the

fact that s 27(6) of the Amendment Act operated retroactively was largely irrelevant to the Applicant's case. Rather, the pertinent question was whether the criteria or differentia adopted in s 27(6) of the Amendment Act bore a rational relation to the object sought to be achieved by the MDA.

26 However, even assuming that this latter point is valid, it would not affect the outcome of the Applicant's case. This was because showing that s 27(6) of the Amendment Act was inconsistent with Art 12(1) of the Constitution would only mean that the Amendment Act would be void to the extent of any such inconsistency, and hence that re-sentencing in accordance with s 27(6) of the Amendment Act read with s 33B of the MDA would not be available to an offender like the Applicant who had already been sentenced to the mandatory death penalty. What would follow would be that s 27(6) of the Amendment Act would be struck down for being unconstitutional and the death sentence already imposed on the Applicant would remain. Mr Thuraisingam, upon realising the practical implications of his arguments, then stated that the object of the application was to give Parliament a chance to reconsider the law in the event that s 27(6) of the Amendment Act was ruled to be unconstitutional. Mr Thuraisingam argued that the Applicant would be in no worse a position than if the application had not been made, but conceded that the present application, even if successful, could not benefit the Applicant.

27 In any event, we were of the opinion that there was no merit in the Applicant's argument that s 27(6) of the Amendment Act violated Art 12(1) of the Constitution. In our view, the Applicant had not rebutted the presumption of constitutionality that attached to s 27(6) of the Amendment Act (see *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 ("*Taw Cheng Kong*") at [60] and [79]–[80]).

28 The established test for constitutionality under Art 12(1) of the Constitution is the "reasonable classification" test (see *Ong Ah Chuan and another v Public Prosecutor* [1979-1980] SLR(R) 710 ("*Ong Ah Chuan*") at [37], *Taw Cheng Kong* at [58], *Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 at [70], *Yong Vui Kong v Public Prosecutor* [2010] 3 SLR 489 ("*Yong Vui Kong*") at [109], *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [124]; *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR(R) 26 ("*Lim Meng Suang*") at [57]–[60]). Under this test, a differentiating measure prescribed by legislation will not be held to be inconsistent with Art 12(1) if:

(a) the classification prescribed by the legislation is founded on an intelligible differentia; and

(b) that differentia bears a rational relation to the object sought to be achieved by the legislation in question.

29 The starting point is to identify the differentiating measure prescribed by legislation that was in issue in this case. On this the Applicant pointed to s 27(6) of the Amendment Act. The essence of the Applicant's contention was that the class of persons convicted of drug trafficking offences and sentenced to death prior to the passing of the Amendment Act by Parliament should not be treated differently (*ie*, by re-sentencing only some of those persons to life imprisonment). On the basis of s 27(6) of the Amendment Act, how a person in that class would be treated would depend on whether that person satisfied the requirements referred to in s 33B of the MDA.

30 The requirements specified in s 33B of the MDA are the relevant differentia on which the classification that the Applicant complained of is based. Offenders who have been convicted of drug trafficking offences and sentenced to death prior to the passing of the Amendment Act qualify for discretionary sentencing under s 33B(1)(*a*) of the MDA or life imprisonment under s 33B(1)(*b*) of the

MDA depending on whether two conjunctive requirements are satisfied. In the case of discretionary sentencing under s 33B(1)(*a*) of the MDA, the two conjunctive requirements are: (1) that the offender proves, on a balance of probabilities, that his involvement in the offence was restricted to activities such as transporting, sending, or delivering a controlled drug (commonly known as acting as a "courier"); and (2) the Public Prosecutor certifies that, in his determination, the person has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore. In the case of mandatory life imprisonment under s 33B(1)(*b*) of the MDA, the offender must prove, on a balance of probabilities, that: (1) he was suffering from such abnormality of mind as substantially impaired his mental responsibility for his acts and omissions in relation to the offence; and (2) his involvement in the offence was restricted to activities such as transporting, sending, or delivering a controlled drug. It is these requirements in s 33B of the MDA which must be examined to see whether they satisfy the "reasonable classification" test under Art 12(1) of the Constitution.

31 In our view, the first limb of the "reasonable classification" test was undoubtedly satisfied in this case. The first limb requires that the classification prescribed by the impugned legislation be based on an intelligible differentia, which means that the differentia embodied in the legislation "must not only identify a clear distinguishing mark or character, but must *also* be *intelligible* (as opposed to illogical and/or incoherent) [emphasis in original]" (*Lim Meng Suang* at [67]). The differentia in s 33B of the MDA identified in the previous paragraph is clearly intelligible. The requirements that the offender must sufficiently prove that his involvement in the offence was restricted to acting as a courier and that he was suffering from such abnormality of mind as substantially impaired his mental responsibility, or that he must have received a certificate of co-operation from the Public Prosecutor pursuant to s 33B(2)(*b*) of the MDA, all bear a clear distinguishing character and certainly cannot be said to be illogical or incoherent.

32 The real crux of the matter, as pointed out by the Respondent, was whether the differentia in s 33B of the MDA bore a "rational relation" to the social object of the MDA. This related to the second limb of the "reasonable classification" test under Art 12(1) of the Constitution, which required that the purpose and object of the statute in question first be determined or ascertained (*Lim Meng Suang* at [68]).

33 The social object of the MDA is to prevent the spread of drug addiction in Singapore by stamping out the illicit drug trade (see *Ong Ah Chuan* at [38]; *Yong Vui Kong* at [112]). During the second reading of the 1973 Misuse of Drugs Bill, the then Minister for Health and Home Affairs, Mr Chua Sian Chin, emphasised the need to deter drug trafficking as follows (see *Singapore Parliamentary Debates, Official Report* (16 February 1973) vol 32 at cols 414–416):

> This Bill is a consolidation of the Dangerous Drugs Act enacted in 1951 and the Drugs (Prevention of Misuse) Act of 1969. It also incorporates additional provisions to provide for a firm and extensive control on certain dangerous and harmful drugs of addiction as well as heavier penalties. …
>
> …
>
> Singapore, by its geographical position and development, is now a strategic centre of communication and international trade. Whilst welcoming trade, visitors and tourists, we must at the same time be constantly on the alert for the trafficker, the addict and the hidden consignment of controlled drugs. Law enforcement officers must be adequately empowered to stop, search any ship, aircraft, train or vehicles whenever there are reasonable grounds to suspect that controlled drugs are hidden and, if found, to seize such drugs and to detain any person found therein. Such vehicle[s] will be liable to seizure under certain conditions.

The ill-gotten gains of the drug traffic are huge. The key men operating behind the scene are ruthless and cunning and possess ample funds. They do their utmost to push their drugs through. Though we may not have drug-trafficking and drug addiction to the same degree as, for instance, in the United States, we have here some quite big-time traffickers and their pedlars moving around the Republic selling their evil goods and corrupting the lives of all those who succumb to them.

They and their trade must be stopped. To do this effectively, heavy penalties have to be provided for trafficking. Clause 15 specifies the quantities of controlled drugs which, i[f] found in the possession of a person unless the contrary is proved, will be presumed to be in his possession for the purposes of trafficking.

… The existing law on dangerous drugs provides for the offence of trafficking, but there is no distinction as regards the age of the person to whom the drugs are sold. The penalties for the offence of trafficking in the existing law are $10,000 or five years, or both. ***These penalties are obviously totally inadequate as deterrents.***

Government views the present situation with deep concern. To act as an effective deterrent, the punishment provided for an offence of this nature must be decidedly heavy. We have, therefore, expressly provided minimum penalties and the rotan for trafficking. However, we have not gone as far as some countries which impose the death penalty for drug trafficking.

[emphasis added]

34 More recently, Mr Teo Chee Hean, Deputy Prime Minister and Coordinating Minister for National Security and Minister for Home Affairs, explained the policy reasons behind the 2012 amendments to the MDA as follows (see *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89):

But before I do so, let me speak about the sentencing discretion for the death penalty for drug couriers with an abnormality of mind which satisfies the diminished responsibility test. While there is strong support for the mandatory death penalty, there is also a legitimate concern that it may be applied without sufficient regard for those accused persons who might be suffering from an abnormality of mind.

The policy intent is for this exception to operate in a measured and narrowly defined way. We want to take this into account, where an accused can show that he has such an abnormality of mind that it substantially impairs his mental responsibility for his acts in relation to his offences. Such cases are worthy of special consideration. However, in Mr de Souza's words, we do not want to inadvertently "open the backdoor for the offender to escape harsh punishment notwithstanding his or her understanding of the consequence of the crime".

We do not want the application of the mandatory death penalty in such cases to call into question the appropriateness of applying the mandatory death penalty regime on traffickers in general. But we do not want to open the doors wide. Otherwise, we would have undermined our strict penalty regime and its deterrence value. And as Mr Shanmugam has pointed out, we might even encourage drug syndicates to recruit more couriers who think they can easily escape the gallows by claiming any condition without medical evidence.

The exception for drug couriers who provide substantive cooperation serves a different purpose.

…

… ***The policy intent of this substantive cooperation amendment to our mandatory death penalty regime is to maintain a tight regime – while giving ourselves an additional avenue to help us in our fight against drugs, and not to undermine it.***

Couriers do play a key role in the drug network. In fact, they are often our key point of contact with the drug network. Let me explain why. Illicit drugs are not manufactured or grown in Singapore because of our tough laws and enforcement. All our drugs therefore have to be couriered into Singapore. Thus, couriers are a key part of the network which has to be vigorously targeted and suppressed in order to choke off the supply to Singapore. And they are the main link to the suppliers and kingpins outside Singapore.

…

We cannot be sure how exactly couriers or the syndicates will respond to this new provision. But we have weighed the matter carefully, and are prepared to make this limited exception if it ***provides an additional avenue for our enforcement agencies to reach further into the networks, and save lives from being destroyed by drugs and hence make our society safer*** .

[emphasis added]

35 The extract above demonstrates that the intent behind the 2012 amendments to the MDA was to maintain a strong law enforcement regime against drugs whilst refining the prescribed punishments to reflect the culpability of each offender (with regard to the "diminished responsibility" exception in s 33B(3) of the MDA) and providing an additional avenue to combat the drug trade (with regard to the "courier" or "substantive cooperation" exception in s 33B(2) of the MDA).

36 The differentia in s 33B of the MDA for discretionary sentencing or life imprisonment to apply clearly bear a rational relation to the social object of the MDA. In relation to the requirements in s 33B(3) of the MDA, the fulfilment of which entitles offenders to be sentenced to life imprisonment, there is nothing unreasonable in Parliament's decision not to impose the ultimate punishment of the death penalty on an offender who has played a relatively restricted role in the offence and who suffers from such abnormality of mind as substantially impaired his mental responsibility. As a matter of logic, there is generally less justification for a strong deterrent sentence to be imposed on someone whose responsibility for the offence has been substantially impaired by reason of a mental condition. An analogy to this is Exception 7 to s 300 of the Penal Code which provides that culpable homicide is not murder if the offender's mental condition substantially impaired his moral responsibility for causing death. As for s 33B(2) of the MDA which relates to the "substantive cooperation" exception, there is an obvious relation between this differentia and the object sought to be achieved, which is to reach further into drug networks by obtaining assistance in disrupting drug trafficking activities from offenders who have performed a "key role", *viz*, that of "courier", in drug operations, and who could furnish a lead to the CNB to identify the "suppliers and kingpins outside Singapore".

37 It bears reiterating that all that is required under the "reasonable classification" test is that there be a rational relation between the differentia and the object of the law in question. There is no need for a perfect relation or "complete coincidence" between the differentia in question and the object of the legislation concerned (*Lim Meng Suang* at [68]). Moreover, the "reasonable classification" test does not require that the differentia adopted must be the best differentia possible and that there is no other better or more efficacious differentia which would further the social object

and purpose of the particular statute (*Yong Vui Kong* at [113]).

38 For all these reasons, we were of the opinion that the application brought by the Applicant had no merit and accordingly dismissed it.

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