IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 10

Court of Appeal / Criminal Appeal No 16 of 2024

Between

Tan Jinxian

… *Appellant*

And

Public Prosecutor

… *Respondent*

Court of Appeal / Criminal Motion No 30 of 2025

Between

Tan Jinxian

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Procedure and Sentencing — Criminal motions — Adducing fresh evidence]

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Tan Jinxian
v
Public Prosecutor and another matter

[2026] SGCA 10

Court of Appeal — Criminal Appeal No 16 of 2024 and Criminal Motion No 30 of 2025
Sundaresh Menon CJ, Belinda Ang Saw Ean JCA, Hri Kumar Nair JCA
30 January 2026

10 March 2026

Belinda Ang Saw Ean JCA (delivering the grounds of decision of the court):

1 The appellant, Tan Jinxian ("Tan"), was tried and convicted on four proceeded charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"): *Public Prosecutor v Tan Jinxian* [2025] SGHC 37 ("GD"). The first charge was for having in his possession for the purpose of trafficking not less than 38.78g of diamorphine, an offence under s 5(1)(*a*) read with s 5(2) of the MDA (the "First Charge"). The second and third charges were for trafficking not less than 7.22g of diamorphine and 17.62g of methamphetamine, respectively, to one Chu Kok Thye ("Chu"), offences under s 5(1)(*a*) of the MDA ("Second Charge" and "Third Charge" respectively). The remaining charge was for possession of a packet of synthetic cannabinoid, an offence under s 8(*a*) of the MDA ("Fifth Charge"). As Tan did not qualify for sentencing under the alternative regime in ss 33B(1) and 33B(2) of the MDA, the trial judge

("Judge") imposed, in respect of the First Charge, the mandatory death sentence under s 33(1) read with the Second Schedule to the MDA. The Judge also imposed an aggregate sentence of 14 years' imprisonment in respect of the remaining proceeded charges.

2 Tan's appeal in CA/CCA 16/2024 ("CCA 16") was against his conviction on the First, Second and Third charges. Tan also appealed against the death sentence imposed upon him, though Tan did not appeal against the sentences imposed in respect of the Second and Third Charges. Tan did not appeal against his conviction and sentence in respect of the Fifth Charge.

3 Separately, Tan filed CA/CM 30/2025 ("CM 30") for permission to adduce "additional evidence" to raise a new defence in CCA 16. Suffice to say here that the new defence was incompatible with the position that had been taken at trial. In any case, the new defence was not legally sustainable, having regard to the broad definition of trafficking under the MDA.

4 After hearing arguments on 30 January 2026, we dismissed CM 30 and CCA 16. We upheld the appellant's convictions on the capital and non-capital charges. We now give detailed grounds for our decision.

Factual background

5 The facts were set out comprehensively in the GD. We will only summarise the material background facts to provide necessary context to the appeal.

6 Tan met Chu in jail. From January 2021, Tan and Chu shared a rented room in Evergreen Residences, a residential development in Geylang. On 27 January 2021, Tan was asked by one "Paul" to collect something from someone.

Tan first drove to Woodlands, where an unknown man walked to Tan's car and left a white paper bag with the word "Prada" printed on it ("Paper Bag") on his front passenger seat. Tan then drove to Marsiling, where another unknown man approached Tan's car, collected the Paper Bag, and placed a blue bag ("Blue Bag") on Tan's front passenger seat.

7 Tan then drove to Hotel Boss, 500 Jalan Sultan Singapore 199020 ("Hotel Boss"). He took the Blue Bag to his hotel room that was booked earlier. Tan then left Hotel Boss to fetch Chu from Geylang and returned with Chu to Hotel Boss. Footage recovered from the Closed-Circuit Television ("CCTV") at Hotel Boss showed Tan and Chu entering the same hotel room on 28 January 2021, at around 12.06am. Tan then left Hotel Boss to meet his girlfriend, and he returned to the hotel room at about 3am.

8 A few hours later, Tan and Chu exited the hotel room and took an elevator to the carpark of Hotel Boss. At about 11.55am, at this carpark, Tan and Chu were placed under arrest by officers from the Central Narcotics Bureau ("CNB"). At the time of arrest, Tan was carrying a white bag with the words "Calvin Klein Jeans" printed on it ("White Bag") and the Blue Bag. The contents of the White Bag and the Blue Bag formed the subject of Tan's First and Fifth Charges.

9 At the time of arrest, Chu was carrying a green bag ("Green Bag") that contained 7.22g of diamorphine. The contents of the Green Bag formed the subject of Tan's Second Charge. A green pouch was also found in one of Chu's trouser pockets. This green pouch contained no less than 17.62g of methamphetamine, which formed the subject of Tan's Third Charge. By the time of Tan's trial, Chu had already pleaded guilty to, and was serving sentence for, drug-related charges arising from his arrest on 28 January 2021.

The decision below

10 We summarise the Judge's findings pertaining to the First Charge (*ie*, the capital charge). His reasoning will be examined in more detail in our analysis below. The First Charge read as follows:

> You … are charged that you, on 28 January 2021, at about 11.55 am at level 3 carpark of 500 Jalan Sultan Hotel Boss, Singapore 199020 Singapore, did traffic in a Class 'A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), to wit, by having in your possession for the purpose of trafficking nine packets and eleven straws containing not less than 2307.32 grams of granular/powdery substance, which was analysed and found to contain not less than 38.78 grams of diamorphine, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) and punishable under section 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), and further upon your conviction, you may alternatively be liable to be punished under section 33B of the MDA.

11 It was not disputed that Tan held the White Bag and the Blue Bag in his hands at the time of his arrest; the White Bag and the Blue Bag contained diamorphine. Both bags were in Tan's possession at the time of arrest. As possession was proved, the Prosecution relied on the presumption in s 18(2) of the MDA to establish that Tan knew the nature of the drugs. The Judge found that Tan had failed to rebut this presumption for three reasons (GD at [32]–[33]). First, Tan had received a WhatsApp voice message from Paul which described what he collected at Marsiling as "Sio Zui" (literally "hot water" in Hokkien), and Tan did not challenge the evidence of the CNB interpreter that "Sio Zui" may be slang for heroin. Second, Paul had sent a WhatsApp voice message to Tan, notifying him not to take any pictures of the "Sio Zui" that he had received. Third, on Tan's own evidence, Tan had unwrapped the yellow tape which held the bundles together and packed the bundles in the White Bag and Blue Bag before checking out of Hotel Boss. The Judge reasoned that in

doing so, Tan would have noticed the brown granular substance in the bundles and would have had no doubt in his mind that it was heroin (GD at [33]).

12 Turning to the question of whether Tan possessed the diamorphine for the purpose of trafficking, the Judge found that this was made out on Tan's own evidence. Indeed, it was Tan's evidence that he was supposed to deliver the Blue Bag and its contents to someone (see [13]–[14] below). In this regard, the Judge observed that s 2 of the MDA defines "traffic" as including "deliver". Accordingly, the Judge convicted Tan of the First Charge (GD at [40]).

13 Tan's defence at trial was that he was owed "a few thousand dollars" by one "Shawn" (variably referred to as "Sean"), and Paul had informed him that Paul had "a way" to help him get his money back from Shawn. In exchange, on 27 January 2021, Paul asked Tan to "go to a place to take something from someone", and "at a later time, someone will come and get it" from Tan.

14 According to Tan, after he arrived at Hotel Boss, he assumed that Chu was the intended recipient of the Blue Bag, since Paul had asked him to deliver the Blue Bag to "someone" and no one else had approached Tan to collect the Blue Bag from him. Tan testified that he did not open the Blue Bag till he was about to check out of the hotel, when he saw that the Blue Bag contained "packets of items inside with tape around it". According to Tan, at Chu's suggestion, he had removed the tape securing the bundles and he repacked the bundles into the White Bag and the Blue Bag before checking out of the hotel on 28 January 2021 (GD at [26]).

15 Though Tan was issued a certificate of substantial assistance under s 33B(2)(*b*) of the MDA, Tan could not avail himself of the alternative sentencing regime in s 33B of the MDA, as the Judge found that Tan was not a

courier for the purpose of s 33B(2)(*a*) of the MDA. The Judge noted that Tan had "left some of the drugs in large bundles weighing about 460 grams each", and "divided and repacked some of the drugs into smaller portions of various sizes" (GD at [59]). Accordingly, the Judge reasoned that Tan's division and packing of the drugs "appeared to be more consistent with steps taken for the purpose of distribution and sale than for mere facilitation of delivery" (GD at [59]).

Reasons for our decision in CM 30

16 In CM 30, Tan sought permission to adduce, by way of an affidavit, "certain facts" to explain why he was carrying the White Bag and the Blue Bag at the time of his arrest. Tan had characterised these "facts" as additional evidence in his affidavit filed in support of CM 30. He made two factual assertions in his affidavit. First, Tan asserted that at the time of his arrest, the diamorphine in his possession, which formed the subject matter of the First Charge, *belonged* to Chu, and that he was holding two bags (*ie* the Blue Bag and the White Bag) on *behalf* of Chu. Second, Tan asserted he was to return the two bags containing diamorphine to Chu after the two of them had returned to their rented room at Geylang. For completeness, Tan also sought to adduce the statement of facts used in Chu's guilty plea.

17 Tan sought to rely on his affidavit evidence and other evidence before the Judge to raise a new defence of bailment in the appeal.

18 CM 30 was an utterly unmeritorious application. Not only was there no satisfactory explanation for why the "additional evidence" which was readily available at trial was not adduced earlier, but the new defence of bailment was incompatible with the position that had been taken at trial. Both reasons would have disqualified the application on the basis that it failed to satisfy the *Ladd v*

Marshall [1954] 1 WLR 1489 ("*Ladd v Marshall*") conditions of non-availability at trial, reliability and relevance. In any case, the bailment defence was not legally sustainable, having regard to the broad definition of what amounts to trafficking under the MDA. We will deal with this legal error first before turning to the *Ladd v Marshall* conditions.

The bailment defence

19 Before us, counsel for Tan, Mr Daniel Chia ("Mr Chia") submitted that the factual assertions advanced in CM 30 were relevant to advance what he termed a "bailment defence". According to Mr Chia, such a defence could be made out since Tan had already delivered *all* the diamorphine to Chu before being arrested by CNB. Consequently, Chu should be considered the owner of *all* the diamorphine, and Tan had merely possessed the diamorphine *on behalf of* Chu at the material time. By this logic, Tan would not have possessed any of the diamorphine for the purpose of trafficking at the time of their arrest.

20 With respect, Mr Chia's reliance on the defence of bailment is misplaced. We reiterate three points. First, in *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 ("*Ramesh*") at [100], we clarified that the use of the term "bailment" in the context of drug trafficking was not concerned with the law of bailment, and the determination of property rights as between the "bailor" and "bailee" was not in issue. Rather, this court used the term as a convenient shorthand to refer to a situation where a person initially entrusts drugs to an accused person, and the accused person receives the drugs intending only to return them to that person. Contrary to what Mr Chia had sought to imply, ownership of the drugs is never a necessary element of the offence of trafficking under the MDA, and if it were, many traffickers would run the defence that they were transporting or delivering drugs on behalf of another.

21 Second, in *Ramesh* at [110], this court observed that "a person who returns drugs to the person who originally deposited those drugs with him would not *ordinarily* come within the definition of 'trafficking' [emphasis added]". Contrary to the logic underlying Tan's submissions on the "bailment defence" (set out above at [19]), this court did not, in *Ramesh* at [110], establish the general proposition that any "bailee" who receives drugs intending to return them to the "bailor" will never be liable for trafficking or possession for the purpose of trafficking. Instead, and as this court emphasised in *Roshdi bin Abdullah Altway v Public Prosecutor* [2022] 1 SLR 535 ("*Roshdi*") at [115], the "bailment defence" was a narrow one since the key inquiry, which was fact-specific, was whether the "bailee" in question knew, intended or had reason to believe that the "bailment" was in any way part of the process of supply or distribution of the drugs. The burden of proving the absence of such knowledge, intention or reason to believe was on the defendant.

22 To illustrate, the bailment defence succeeded in *Ramesh* on the particular facts of that case. In *Ramesh*, this court observed that the fact that the accused had allowed the bundles to remain in his lorry did not mean, without more, that he must have agreed to perform a delivery of the same. There was no evidence as to who the accused was to deliver the drugs to or how much he was offered for delivering them. In addition, the evidence of the co-accused (the supplier of the drugs found in the accused's possession) pointed to the accused's extreme reluctance to deliver the drugs for fear of the consequences he might face if he was caught. This court concluded that a reasonable inference which could be drawn from the evidence was that the accused had intended to return the bundles to the co-accused later that day (*Ramesh* at [87]).

23 Third, in *Ramesh* at [114], this court observed that "in the vast majority of cases, it can reasonably be assumed that the movement of drugs from one

person to another, anywhere along the supply or distribution chain, was done to facilitate the movement of drugs towards their ultimate consumers". In *Roshdi* at [120], we reiterated that in establishing the fact of trafficking or possession for the purpose of trafficking, there is no requirement for the Prosecution to prove that the accused person was moving the drugs in a particular direction closer to their ultimate consumer. Accordingly, the onus is on the accused person seeking to avail himself of the "bailment defence" to bring himself within this narrow defence.

24 With these observations in mind, Tan's new or revised case premised on the assertions in CM 30 did not raise a bailment defence at all; it was fundamentally flawed and misconceived. The act of trafficking, as defined in s 2 of the MDA, is constituted by, among other things, the act of transportation. Ownership of the drugs is never a necessary element of the offence. Tan's new case rested on the notion that he had already delivered the drugs to Chu, and that his subsequent possession of the drugs was incidental to his carrying of the drugs, on behalf of Chu, from the hotel room to the car. However, as explained, he was still trafficking, given his assertion that he already delivered the drugs to Chu, assisted Chu with repacking Chu's drugs, and then helped Chu transport the drugs to his car. These facts simply do not admit of an outcome that is in any way different to what was decided below because it would still amount to an inescapable conclusion that Tan had trafficked the drugs, assisted Chu in repacking the drugs, and again trafficked the drugs.

The *Ladd v Marshall* conditions

25 Without derogating from this, CM 30 was an attempt to recalibrate Tan's case on appeal using fresh factual assertions introduced by Tan after conviction.

Not only did these fresh factual assertions conflict with Tan's case below, but they also introduced additional evidentiary difficulties in Tan's case on appeal.

26 As affirmed by this court in *Masri bin Hussein v Public Prosecutor* [2025] SGCA 9 ("*Masri*"), in an application under s 392 of the Criminal Procedure Code 2010 (2020 Rev Ed), the appellate court considered whether the additional evidence satisfied the three requirements of non-availability at trial, reliability and relevance.

27 As these factual assertions emanated from Tan, they could have easily been led from Tan at trial. Tan had not explained satisfactorily why they were not. In our view, Tan had clearly failed to satisfy the condition of non-availability of these factual assertions earlier at trial. For completeness, we noted that in his examination-in-chief at trial below, Tan was expressly asked to give his account of the events leading to his arrest after he had checked out from the hotel, but Tan, for reasons best known only to him, made no mention of his carrying of the diamorphine on behalf of Chu.

28 Furthermore, we were of the view that the factual assertions which Tan sought to adduce through CM 30 were wholly unreliable, not only because they were inconsistent with the case he had advanced at trial below, but also because his affidavit and written submissions contradicted each other. We explain.

29 At trial below, as far as the First Charge was concerned, Tan's position (recounted above at [14]) was that he had assumed Chu to be the intended recipient of the Blue Bag, and that he had delivered it to Chu prior to his arrest. Tan had also stated the same in paragraph 49 of his statement recorded on 5 July 2021.

30 However, at paragraph 13 of Tan's affidavit, he clearly stated that "there was no division between mine and his as to the contents of the bags", which necessarily contradicted Tan's new case, *viz* that he had already delivered *all* the drugs to Chu by the time of their arrest. In any case, this fresh assertion introduced new evidential difficulties in Tan's own case, if it was to be believed. Crucially, Tan inexplicably omitted any mention of what the correct apportionment of the contents of the bags ought to be as between Chu and himself. This was evident in his written submissions (at paragraphs 66 and 67), where Tan instead took the position that *all* the diamorphine in his possession at the time of arrest belonged to Chu.

31 Similarly, at paragraph 15 of Tan's affidavit, it was asserted that both he and Chu had, on the morning of 28 January 2021, intended to return to Evergreen Residences without meeting any third party. Tan argued in written submissions that this meant he had "the sole intention of returning the diamorphine to Chu". However, at trial, Tan did not put it to Chu that the diamorphine was to be returned to him. Neither did he put it to Chu that he was carrying the diamorphine in the White Bag and the Blue Bag on behalf of Chu. Tan also did not testify on what he planned to do after leaving the hotel on 28 January 2021 and did not state that he was to return the diamorphine to Chu. Instead, in his statement recorded on 3 February 2021, at Answer 10 of paragraph 37, Tan stated that he intended to bring the Blue Bag "back [to] Evergreen", and that "[he] want[ed] to keep the brown substances with [him]". This directly contradicted Tan's fresh assertion that he was to return the diamorphine to Chu, and Tan has not explained why this was so.

32 As we observed in *Masri* (at [15]), evidence that is not reliable would also not be relevant. In a similar vein, Tan's unreliable factual assertions would not be relevant to the appeal.

33 Finally, as for the statement of facts used in Chu's guilty plea, we were of the view that this was not relevant, for it would have no influence on the result of CCA 16. There was nothing in the statement of facts that shed light on where the two men were to go after leaving the hotel, nothing that suggested that the diamorphine found in Tan's possession was meant for Chu and nothing that suggested that Chu owned any of the diamorphine which formed the subject of Tan's First Charge.

34 For the foregoing reasons, we dismissed CM 30.

Reasons for our decision in CCA 16

Conviction on the First Charge

35 In our view, there was no basis for appellate intervention in this appeal. The appellant had not shown that the Judge's findings were against the weight of the evidence nor were the Judge's inferences drawn from objective evidence on record completely unwarranted.

36 We agreed with the Judge that the Prosecution had proven all the elements of the capital charge beyond a reasonable doubt, and we affirmed the Judge's findings in this regard. In *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254, this court held (at [31]) that to establish the fact of possession, all that was required is that the accused person must know of the existence, within his possession, control or custody, of the thing which was later found to be a controlled drug. Plainly, Tan held the White Bag and the Blue Bag in his hands at the time of his arrest, and the diamorphine which formed the subject of the First Charge was in both these bags.

37 As for the element of knowledge of the nature of the controlled drug, we agreed with the Judge that Tan has failed to rebut the presumption in s 18(2) of the MDA. At the trial below, Tan denied that "Sio Zui" was a euphemism for heroin but offered no explanation as to what he thought or believed "Sio Zui" meant in the context of Paul's messages to him. Tan also did not state what he thought the contents of the Blue Bag were. On appeal, Tan submitted that an ordinary, reasonable person in his position, *viz*, a secondary school dropout and secret society member who had never consumed heroin before, would not know that "Sio Zui" referred to heroin, would not know to dispute the CNB interpreter's evidence that "Sio Zui" referred to heroin, and would not have defied instructions from Paul, his secret society "brother", not to open and inspect the contents of the Blue Bag.

38 Tan maintained ignorance of what the contents of the Blue Bag were. That stance was unhelpful given the law in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*"), which the Judge had applied correctly to the facts of the case. In *Gobi*, this court offered guidance on the nature of the inquiry in considering whether the s 18(2) presumption has been rebutted. As we observed in *Gobi* at [57(a)], a claim that one simply did not know what he was carrying would not usually suffice to rebut the s 18(2) presumption. Instead, the accused must establish a positive understanding that is incompatible with the presumed fact. The accused could do this by proving that he believed it was something completely innocent, or that it was some other type of contraband. Notably, in this case, Tan did not, in his statements to the police or in his testimony at trial, utter *any* belief at all as to what he thought or believed he was carrying. His claim of ignorance as to what the contents of the Blue Bag were did not satisfy the *Gobi* inquiry.

39 As for the element of possession of the controlled drug for the purpose of trafficking, Tan submitted that this was not proven, for he had already completed delivery of the Blue Bag to Chu by the time he was arrested on 28 January 2021. The Judge did not accept his submission and considered that Tan had not completed delivery of the drugs (GD at [60]). We saw no reason to disagree with the Judge. Tan had no basis to claim that Chu was Paul's intended recipient of the Blue Bag. Tan did not offer a reasonable explanation for his assumption as to the identity of the intended recipient. Tan's instructions from Paul did not name Chu as the intended recipient. In his statement recorded on 5 July 2021, Tan stated that he assumed the drugs were meant for Chu "since no one else came and only [Chu] was there [at Hotel Boss]", which led him to think "how could things be [so] coincidental" (sic). His explanation was absurd, bearing in mind his own evidence that it was he who drove Chu to Hotel Boss.

40 In addition, it was not put to Chu that it was Chu who had asked to meet with Tan. Conversely, the evidence strongly suggested that Tan was to retain the contents of the Blue Bag pending further instructions from Paul. In Paul's voice message to Tan on 27 January 2021 at 8.36pm, Paul said "got people order already, you don't let go ah" (sic). Tan admitted under cross-examination that he had heard this voice message.

41 We also noted that after the voice message at 8.36pm, Paul sent an additional voice message at 8.50pm, asking Tan to call him. This was followed by no less than seven missed calls from Paul, and two text messages from Paul telling Tan to call him. In our view, these voice messages and missed calls were consistent with Paul's voice message on 27 January 2021 at 8.36pm. Indeed, these were Paul's attempts to contact Tan and provide further instructions on how delivery of the contents of the Blue Bag was to proceed. Finally, at the trial

below, Tan agreed that he had no basis to assume that the Blue Bag was meant for Chu.

42 Moreover, and as the Judge observed correctly, even if Tan believed he had completed the delivery to Chu, it would not change the fact that he had trafficked the drugs to Chu.

43 It would follow from the evidence above that Tan possessed the diamorphine originally in the Blue Bag for the purpose of trafficking. But in any case, if he had delivered the drugs to Chu, it would no less complete the offence of trafficking because, as the Judge rightly noted, s 2 of the MDA defines trafficking to include "give, administer, transport, send, deliver or distribute".

44 Accordingly, we upheld the Judge's conviction of Tan on the First Charge.

Tan's claim as courier to qualify for the alternative sentence for the First Charge

45 Co-counsel for Tan, Ms Dawn Tan ("Ms Tan"), submitted that the Judge erred in finding that Tan failed to establish, on a balance of probabilities, that his involvement in the offence underlying the First Charge was restricted to the acts of a courier pursuant to s 33B(2)(*a*) of the MDA. Specifically, Ms Tan challenged the Judge's finding that Tan's division and packing of the drugs "appeared more consistent with steps taken for the purpose of distribution and sale than for mere facilitation of delivery" (GD at [59]).

46 In *Zainudin bin Mohamed v Public Prosecuto*r [2018] 1 SLR 449 ("*Zainudin*") at [80], this court noted that the central feature of the inquiry into whether an act of division and repacking is incidental to transporting, sending

or delivering the controlled drug (and thus, within the ambit of s 33B(2)(*a*) of the MDA) is the offender's evidence as regards the *purpose or reason* for the act of division and repacking.

47 Ms Tan asserted that Tan's act of "repacking" was limited to unwrapping the yellow tape that held the bundles of brown substance together, placing each bundle into paper bags, and then placing the bundles into the White Bag and the Blue Bag. According to Ms Tan, this did not necessarily take Tan beyond the ambit of a courier pursuant to s 33B(2)(*a*) of the MDA, for Tan was still awaiting further instructions from Paul at the time he was arrested, and thus, Tan's separation of the bundles would be facilitative of transporting the diamorphine to their intended recipients.

48 We noted that this submission in the appeal contradicted the assertions Tan sought to advance in CM 30, *viz* that he had already completed delivery of *all* the diamorphine to Chu by the time he was arrested. In any case, this submission was based on a flawed understanding of our decision in *Zainudin*.

49 In our view, the acts which Tan undertook in the course of "repacking" (recounted above at [47]) amounted to subdivision, for he had essentially taken one large block from the Blue Bag, separated it into smaller bundles, and then placed these bundles into two different bags (*ie*, the White Bag and the Blue Bag). In the circumstance, there were a limited number of inferences as to *why* Tan had done so. Ms Tan invited us to infer that Tan had performed this repacking to facilitate transportation. However, this was not what was required of Tan under s 33B(2)(*a*) of the MDA and *Zainudin*. Section 33B(2)(*a*) of the MDA requires the offender to prove, on a balance of probabilities, that he is a courier. Additionally, and as we reiterated above (at [46]), the central feature of the inquiry into the nature of one's act of division and repacking is the *offender's*

evidence as regards the purpose or reason for the act of division and repacking. However, in the instant case, Tan had not offered *any* evidence as to *why* he had divided and repacked the diamorphine in the Blue Bag. Tan's claim that he followed Chu's instruction was unsubstantiated. But even on this footing, it would make no difference because he continued to transport the drugs ostensibly for Chu. Indeed, if his reframed case was to be believed, it would mean, as we have noted, that he trafficked the drugs to Chu, repacked the drugs for Chu, and then helped Chu to transport the drugs again. Even on this footing, there would be no basis for holding that his involvement was limited to being a courier.

50 In our view, the Judge was correct to infer that Tan's involvement in repacking the diamorphine extended to subdividing the diamorphine into smaller quantities. Tan's claim to the possibility that it was not he who had subdivided the diamorphine does not, in the slightest, cast doubt on the Judge's inference.

51 We agreed with the Judge's finding that Tan's repacking of the diamorphine was consistent with steps taken for the purpose of distribution and sale rather than for mere facilitation of delivery. The clear evidence was that Tan had subdivided unequal quantities of diamorphine into distinctly identifiable plastic bags. There were three smaller plastic bags marked "A2A2", and he had written "1 set" on each of them. Numerous empty plastic bags, packets, paper bags, two markers and a digital weighing scale were also found in the Blue Bag upon Tan's arrest. It was not put to Chu that these belonged to him, and Tan offered no explanation as to why these items were found in the Blue Bag, save for a bare denial that they belonged to him.

52 The evidence also strongly suggested that Tan was awaiting further instructions from Paul as to how the diamorphine in his possession was to be delivered. As we recounted above (at [41]), Paul had made multiple attempts, bordering on the frantic, to contact Tan after Tan had acquired the Blue Bag. These facts lend themselves to the ready inference that Tan had repacked the diamorphine in anticipation of instructions to deliver to more than one recipient. Accordingly, we were satisfied that the Judge had ample basis to conclude that Tan's subdivision of the drugs "appeared more consistent with steps taken for the purpose of distribution and sale".

53 We noted that in the last sentence of [61] of the GD, the Judge stated in *obiter* that even if he accepted Tan's assertion that he subdivided and repacked the diamorphine *after* delivery to Chu, this would not be regarded as an act incidental to delivery as it would have occurred after the alleged delivery. Although it had no bearing on the outcome of CCA 16, we found that this statement warranted some clarification.

54 As we explained in *Zainudin* at [80], the central feature of the inquiry into whether an act of division and repacking is incidental to transporting, sending or delivering the controlled drug is the offender's evidence as regards the *purpose or reason* for the act of division and repacking. In our judgment, the nature of Tan's involvement, as found by the Judge, was such that it was to advance distribution and sale of the drugs. If the drugs were intended for Chu, as Tan contended, the contemporaneous nature of the transaction of delivering the drugs to Chu and then working with him to prepare the drugs for delivery, and indeed, to then further transport the drugs with Chu, would make it wholly untenable that his involvement was limited to just being a courier. And on the hypothesis found by the Judge where the drugs were being retained by Tan for onward delivery to someone else, this would be even more the case.

55 Pursuant to s 33(1) of the MDA read with its Second Schedule, the mandatory punishment prescribed is death. Tan did not qualify for the alternative sentencing regime under s 33B(1) of the MDA. The Judge therefore did not err in imposing the mandatory sentence of death on Tan. The Judge also did not err in ordering an aggregate sentence of 14 years' imprisonment in respect of the Second, Third, and Fifth Charges.

Conviction on the Second and Third Charges

56 Tan in his written submissions challenged his conviction on the Second and Third Charges. On these two non-capital charges, we agreed with the Judge's findings (GD at [46]) and affirmed Tan's conviction on the same. It was never put to Chu that he had any reason to falsely implicate Tan, and in our view, Chu had no reason to falsely implicate Tan on the Second and Third Charges in the trial below, since he was already serving sentence for MDA offences which mirrored Tan's Second and Third Charges. Additionally, we observed that Chu's evidence was consistent with the objective evidence adduced at trial below. That Tan was a drug supplier was supported by the WhatsApp correspondence exchanged between Tan and "Anan", "Xiao Ming" and "Peter Hong", wherein he offered to sell them drugs.

Conclusion

57 For the foregoing reasons, we dismissed CM 30 and CCA 16.

Sundaresh Menon
Chief Justice

Belinda Ang Saw Ean
Justice of the Court of Appeal

Hri Kumar Nair
Justice of the Court of Appeal

Daniel Chia Hsiung Wen, Ker Yanguang and Damian Tan Yi Liang (Prolegis LLC), and Tan Ly-Ru Dawn, Teo Wei Jian Tristan and Cheyenne Valenza Low (ADTLaw LLC) for the appellant in CA/CCA 16/2024 and applicant in CA/CCA 30/2025;
Timotheus Koh and Ronnie Ang (Attorney-General's Chambers) for the respondent in CA/CCA 16/2024 and CA/CCA 30/2025.