

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 71

Criminal Case No 71 of 2018

Between

Public Prosecutor

And

Lim Koon Eng Jeremiah

FOUNDATIONS OF DECISION

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

TABLE OF CONTENTS

INTRODUCTION	1
THE PROSECUTION’S CASE	2
EVENTS LEADING TO THE ACCUSED’S ARREST AND THE DISCOVERY OF THE DRUGS	2
THE ACCUSED’S STATEMENTS	3
<i>The contemporaneous statements</i>	4
<i>The s 23 statement</i>	5
<i>The s 22 statements</i>	6
ANALYSIS OF THE DRUGS	10
DNA ANALYSIS.....	10
PSYCHIATRIC ASSESSMENT OF THE ACCUSED	11
CLOSE OF THE PROSECUTION’S CASE	11
THE DEFENCE	12
THE LAW	15
DECISION ON CONVICTION	16
EVIDENCE OF THE ACCUSED’S INTENTION AND CONDUCT UPON FIRST FINDING OUT THE BLACK BAG CONTAINED HEROIN	18
EVIDENCE OF THE ACCUSED’S INTENTION AND CONDUCT UPON LATER DISCOVERING THAT THE BLACK BAG CONTAINED FIVE BUNDLES OF HEROIN .	19
DECISION ON SENTENCE	21

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Lim Koon Eng Jeremiah

[2019] SGHC 71

High Court — Criminal Case No 71 of 2018
Hoo Sheau Peng J
18, 19, 21 September; 30 November 2018; 30 January 2019

14 March 2019

Hoo Sheau Peng J:

Introduction

1 The accused, Lim Koon Eng Jeremiah, claimed trial to a charge of possession of not less than 21.25g of diamorphine for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”).

2 At the conclusion of the trial, I found that the charge against the accused had been proved beyond a reasonable doubt, and convicted him accordingly. The mandatory sentence of death was passed on the accused.

3 The accused has filed an appeal against conviction and sentence. I now provide the full reasons for my decision.

The Prosecution’s case

Events leading to the accused’s arrest and the discovery of the drugs

4 On 1 December 2016 at about 2.55pm, Central Narcotics Bureau (“CNB”) officers raided Block 21 Chai Chee Road #07-456 (“the Unit”). The accused and one other man, Oh Yew Lee, were placed under arrest.¹

5 At about 3.15pm, the accused was escorted to the Unit’s utility room (the “Utility Room”) by Senior Staff Sergeant Tay Keng Chye, also known as Sunny (“SSSgt Sunny”), to witness a search. Before the search commenced, SSSgt Sunny asked the accused if he had anything to surrender. The accused then volunteered the information that there were two bundles in a cabinet in the Utility Room.²

6 Upon searching the cabinet, SSSgt Sunny found and seized, *inter alia*, two bundles wrapped in newspaper,³ later marked as “A1A” and “A1B” by CNB (the “first two bundles”). The first two bundles each contained one plastic re-sealable bag (marked as “A1A1” and “A1B1”), which in turn contained one packet of granular/powdery substance each (marked as “A1A1A” and “A1B1A”). This search ended at about 3.30pm.

7 At 4.45pm, Yogaraj s/o Ragnathan Pillay (“Sgt Yogaraj”) commenced a second search of the Utility Room in the accused’s presence, and eventually found three more bundles in a basket in the Utility Room, wrapped in newspaper⁴ (the “further three bundles”). These were later marked “C1A1”,

¹ Agreed Bundle (“AB”) at p 112, para 5.

² Notes of Evidence (“NEs”) (18 September 2018) p 18 ln 11–16.

³ AB at p 128.

⁴ AB at p 110.

“C1A2” and “C1A3” by CNB. When SSSgt Sunny asked the accused why he did not surrender the further three bundles, the accused replied in Hokkien words to the effect that he wanted to try his luck.⁵ The accused was then escorted to CNB’s headquarters.⁶

8 The contents within the five bundles, collectively referred to as “the drugs”, formed the subject matter of the charge.

The accused’s statements

9 The Prosecution relied on a total of nine statements provided by the accused in the course of investigations, which it sought to admit pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). The Defence did not object to their admissibility.⁷ Three contemporaneous statements from the accused were recorded by Station Inspector Wong Kah Hung Alwin (“SI Wong”) under s 22 of the CPC at the Unit on 1 December 2016. Thereafter, Investigation Officer Mohammad Imran bin Salim (“IO Imran”) recorded one statement from the accused under s 23 of the CPC on 2 December 2016 (the “s 23 statement”) and five statements under s 22 of the CPC from 15 December 2016 to 21 June 2017. I set out the evidence from only the pertinent statements – two of the three contemporaneous statements, the s 23 statement and the first, second and fourth s 22 statements.

⁵ NEs (18 September 2018) p 18, ln 27–30.

⁶ AB at p 112 at para 7.

⁷ NEs (19 September 2018) p 3, ln 16–18; p 40, ln 7–10; p 41 ln 8–9, ln 19; p 42, ln 2–4.

The contemporaneous statements

10 The first contemporaneous statement was recorded in the Utility Room on 1 December 2016 at about 3.46pm, after the seizure of the first two bundles but before the seizure of the further three bundles (the “first contemporaneous statement”).⁸ The salient points are as follows:

(a) The accused admitted that the first two bundles belonged to him only, and that he had purchased them for \$8,000 through a transaction with an unknown Malay male, arranged beforehand by “Ah Tiong”.⁹

(b) The accused stated that the intended purpose of the first two bundles was for his own consumption.¹⁰

(c) The Unit belonged to the accused’s sister, but he had hidden the drugs in the Unit instead of his own house as he was wanted by the authorities and his own house was not safe.¹¹

(d) The accused stated that the other people present in the house during his arrest – including his sister and Oh Yew Lee – were unaware of the presence of the drugs and uninvolved with his drug activity.¹²

11 After seizing the further three bundles, a third contemporaneous statement was recorded in the Utility Room on 1 December 2016 at 5.35pm¹³ (the “third contemporaneous statement”). Here, the accused stated that:

⁸ AB at pp 143–146.

⁹ AB at pp 143, 145.

¹⁰ AB at p 145.

¹¹ AB at p 145.

¹² AB at p 144.

¹³ AB at pp 147–149.

(a) He knew the further three bundles contained heroin. They were for selling and his own consumption.¹⁴ He had not bought a weighing scale, Ziploc bags and straws to repack the drugs because he had not started to sell them yet.¹⁵ No one else besides him had a share in them.¹⁶

(b) He did not surrender the further three bundles at first because it would be good for him “if [he] can ‘siam’ (escape)”.¹⁷

(c) He had collected all five bundles that morning. While they cost \$15,000 in total, he had paid up \$8,000 first upon collection.¹⁸

The s 23 statement

12 The accused, in his s 23 statement, repeated that “these things belong to me”,¹⁹ referring to the drugs seized.

The s 22 statements

13 In the s 22 statement recorded on 15 December 2016 (the “first s 22 statement”),²⁰ the accused discussed his acquisition of the five bundles through one “Ah Chong”, and his relationship with Ah Chong. Though the accused occasionally refers to one “Ah Tiong” in these statements, this is a reference to Ah Chong,²¹ and I will use the name “Ah Chong” to avoid confusion.

¹⁴ AB at pp 147–148.

¹⁵ AB at p 148.

¹⁶ AB at p 149.

¹⁷ AB at p 148.

¹⁸ AB at p 149.

¹⁹ AB at p 169.

²⁰ AB at pp 170–174.

²¹ AB at p 224, A30.

(a) About one week before his arrest, the accused was at the coffee shop at Blk 21 Chai Chee Road (the “coffee shop”) when the accused met Ah Chong fortuitously. The accused knew Ah Chong prior to this, as the accused used to sell the illegal cigarettes which Ah Chong supplied to his former boss.²² When the accused approached Ah Chong,²³ Ah Chong asked the accused if he was willing to work for him. The accused agreed, and Ah Chong said that he would look for the accused again.²⁴ The two men then parted ways.

(b) About two days before his arrest, the accused met Ah Chong, and agreed to work for Ah Chong as a deliveryman for contraband *hoonki*, which is Hokkien for “cigarettes”.²⁵ The agreement was that Ah Chong would arrange for someone to pass the cigarettes to the accused, and the accused was to keep them until Ah Chong arranged for someone else to meet him for collection. Upon collection, the recipient was to pass more than \$500 to the accused as payment for his services.²⁶

(c) The accused also received instructions from Ah Chong regarding the pickup of the cigarettes, as per their arrangement. Accordingly, one day before his arrest, the accused met with a Malay man unknown to him (the “Malay man”), who passed him a black bag and told him that both cigarettes and *ubat* were inside. The accused knew that “*ubat*” was the Malay street name for heroin. The accused took the black bag from the Malay man, stated that Ah Chong informed him that he was to

²² AB at p 172, para 6.

²³ AB at p 171, para 5.

²⁴ AB at p 172, para 6.

²⁵ AB at p 172, paras 7–8.

²⁶ AB at p 172, para 8.

receive cigarettes, and queried why there was *ubat* involved as well.²⁷ In response, the Malay man told the accused not to worry, to bring it back home, and that someone would be collecting the items in the afternoon. Upon hearing this, the accused “agreed and decided to just go along with the plan since [he] needed the money”.²⁸

(d) The accused took the black bag home with him, where he unpacked it. The accused found two black recycled bags inside the black bag, of different weights. The heavier black recycled bag was torn, and the accused saw three packets wrapped in newspaper within. The accused did not open these three packets; he knew that they contained heroin as they were not shaped like cigarette packages. The accused placed these three packets in a basket. The accused looked inside the other black recycled bag, and saw two similar packets wrapped in newspaper. The accused unwrapped one of the two packets by tearing the newspaper wrappings, and found pinkish cubes wrapped inside a layer of plastic within. The accused knew that this was *ubat* as he had seen *ubat* before.²⁹ He then placed the two packets in the cupboard.

14 In his second s 22 statement recorded on 17 December 2016 (the “second s 22 statement”),³⁰ the accused further explained that:

(a) During the handover of the black bag, when the Malay man told him that it contained both cigarettes and *ubat*, the accused was initially

²⁷ AB at p 173, para 9.

²⁸ AB at p 173, para 9.

²⁹ AB at pp 173–174, para 10.

³⁰ AB at pp 175–219.

angry, and told the Malay man that if Ah Chong had notified him earlier that he would be collecting *ubat*, then he would not mind.³¹

(b) About 10 minutes after collecting the black bag, the accused returned to the coffee shop in search of the Malay man or Ah Chong, to ask them why the black bag did not contain cigarettes.³²

(c) The accused continued to keep the *ubat* in the Unit because he had already taken it, and the Malay man had told him that someone would collect it from him. After seeing the packets inside the recycled bags, the accused estimated that the black bag contained a total of about 2kg of *ubat*.³³

(d) Two days before his arrest, as instructed by the Malay man, the accused went to the coffee shop in the afternoon to wait. The accused was expecting someone to approach him to let him know to whom he should deliver the black bag and its contents. However, as no one approached him after some time, the accused returned to the Unit.³⁴

(e) On the day of his arrest, at about 8.00am, the accused went to the coffee shop to loiter around, hoping that someone will approach him to inform him of what to do with the contents of the black bag. No one approached him, so the accused returned to the Unit. At the Unit, the accused consumed some *ubat* which he had bought for himself that morning. Soon after he finished smoking the *ubat*, the CNB raid occurred.³⁵

³¹ AB at p 175, A3.

³² AB at p 175, A3.

³³ AB at p 175, A4 and Q5.

³⁴ AB at p 176, para 12.

15 In the s 22 statement recorded on 17 April 2017 (the “fourth s 22 statement”),³⁶ the accused’s third contemporaneous statement was read back to him. The accused then stated that he did not pay the Malay man any money for the *ubat*. He explained that he had only stated in his third contemporaneous statement that he paid for the *ubat* because he was “nervous and worried” after he was arrested, and “just gave an answer to the officer”. The accused reiterated that he did not pay the Malay man any money when he collected the black bag. When asked whether the bundles of *ubat* were meant for selling or delivery for Ah Chong, the accused stated that they were “not for selling”.³⁷

Analysis of the drugs

16 After the five bundles were seized from the house, they were sent to the Health Sciences Authority for analysis. It was found to be five packets containing a total of not less than 2240.1g of granular/powdery substance which was analysed and found to contain not less than 21.25g of diamorphine.³⁸

17 There was no dispute as to the integrity and proper custody of all the exhibits at the material times, and I shall not go into the details here.

DNA analysis

18 The accused’s DNA was found on the following relevant locations:³⁹

- (a) the exterior surface of the re-sealable bag containing drugs (A1A1), in bundle A1A;⁴⁰

³⁵ AB at pp 176–177.

³⁶ AB at pp 225–226.

³⁷ AB at p 224.

³⁸ AB at pp 71–75.

³⁹ AB at pp 80–81.

- (b) the interior surface of the re-sealable bag containing drugs (A1B1) in bundle A1B;⁴¹
- (c) the two swabs from the packaging within the re-sealable bags, which was in direct contact with the drugs (A1B1A);⁴² and
- (d) the exterior (Area 1) and interior (Area 2) surfaces of C1A (a black recyclable bag).⁴³

Psychiatric assessment of the accused

19 The accused was examined during his remand period, on 3, 7 and 9 January 2017 by Dr Yeo Chen Kuan Derrick (“Dr Yeo”) of the Institute of Medical Health (the “IMH”). Dr Yeo prepared an IMH report thereafter.⁴⁴

20 The relevance of the IMH report in this case is the accused’s account of the offence to Dr Yeo. The accused stated that he had obtained the five bundles from a Malay man on the morning of 1 December 2016. Upon questioning the Malay man, the Malay man informed the accused that these were packets of heroin. The accused was reassured that he would still be paid \$500, “whether it was cigarettes or heroin”. The accused said he then accepted the proposal notwithstanding the change of goods, and returned home to conceal the bundles. He had planned to wait for instructions from Ah Chong to deliver the bundles.⁴⁵

Close of the Prosecution’s case

⁴⁰ Exhibit P27.

⁴¹ Exhibit P27.

⁴² Exhibit P28.

⁴³ Exhibit P32.

⁴⁴ AB at pp 97–100.

⁴⁵ AB at p 99, paras 8–9.

21 At the close of the Prosecution's case, I found that there was sufficient evidence against the accused and called upon him to give evidence in his own defence.

The defence

22 The accused was the only witness for the Defence. The essence of the accused's evidence-in-chief was that he acted merely as a courier, because the drugs were meant only for delivery and not re-sale. He sought to establish this through a revision of several aspects of his statements. I noted that the potential defence that the drugs were for his own consumption, as raised in the accused's first and third contemporaneous statements, was abandoned in the process.

23 First, the accused testified that the drugs did not belong to him, and that he had simply received them on Ah Chong's instruction:

(a) The accused stated that the drugs in fact belonged to Ah Chong, not him. He had placed the drugs in his sister's house without her consent. He was afraid that it would implicate her, which was why he answered in the first contemporaneous statement and second s 22 statement that the drugs had belonged to him.⁴⁶

(b) The accused did not pay \$8,000, or any money at all, for the drugs, contrary to his first and third contemporaneous statement. He did not have the ability to pay for them. The drugs were passed to him on Ah Chong's instruction.⁴⁷

⁴⁶ NEs (21 September 2018) p 19 ln 25–32; p 20 ln 1–10.

⁴⁷ NEs (21 September 2018) p 20 ln 13–23; p 21 ln 23–26; p 23 ln 2–8.

24 Second, in relation to the first two bundles, the accused stated that they “were to be delivered for Ah Chong”, as per the instructions from Ah Chong; he had no intention to consume them, contrary to his first contemporaneous statement.⁴⁸

25 Third, the accused stated that he neither intended to sell nor consume the further three bundles of drugs, contrary to his third contemporaneous statement. Instead, he was “just in charge of delivering goods for Ah Chong”.⁴⁹ He also stated that the true reason why he had not acquired any weighing scale or bags to pack the drugs in was not because he had not started to sell the drugs, but because he had no intention to sell them at all. Instead, they were “meant for delivery”.⁵⁰

26 Fourth, the accused sought to revise answers in his various s 22 statements regarding his arrangement with Ah Chong:

(a) The agreement with Ah Chong was for “at least \$500” to be paid to the accused in exchange for delivery of the *hoonki*.⁵¹

(b) The accused explained that when he said in his second s 22 statement that he told the Malay man “if Ah Chong had told me earlier that I would be collecting *ubat* from him, I don’t mind”, he actually meant that if Ah Chong had mentioned that the job involved drugs, then he would not have taken the black bag from the Malay man.⁵² This is because he did not want to sell “this kind of white powder any more”.⁵³

⁴⁸ NEs (21 September 2018) p 20 ln 29 – p 21 ln 9.

⁴⁹ NEs (21 September 2018) p 22 ln 16–18.

⁵⁰ NEs (21 September 2018) p 22 ln 24–28.

⁵¹ NEs (21 September 2018) p 25 ln 3–8.

⁵² NEs (21 September 2018) p 25 ln 16–26.

(c) The accused stated, in relation to his admission in his second s 22 statement that the drugs belonged to him, that “[t]he fact was that [he] was working for Ah Chong and delivering goods for him”.⁵⁴

27 Fifth, the accused stated that he only knew the weight of the five packets of *ubat* when they were weighed at CNB’s headquarters, not before that.⁵⁵

28 Separately, the accused also clarified that the drugs he consumed on 1 December 2016, or at any other time, were never taken from the five bundles.⁵⁶

29 However, under cross-examination, the accused disputed having any intention to deliver the five bundles of drugs.⁵⁷ The accused offered a variety of explanations as to why he returned to the coffee shop on the morning of the arrest. These went towards what he intended to do with the five bundles of drugs upon receiving them:

(a) The accused’s first explanation was that he returned to “get instructions of the delivery”.⁵⁸

(b) The accused’s second explanation was that he returned to seek “clarif[ication]” from Ah Chong or the Malay man on why he had been given drugs, which was “not things that [he] was supposed to be delivering”. Even though at the point when the Malay man had passed

⁵³ NEs (21 September 2018) p 25 ln 27–28.

⁵⁴ NEs (21 September 2018) p 27 ln 13–17.

⁵⁵ NEs (21 September 2018) p 26 ln 2–8.

⁵⁶ NEs (21 September 2018) p 26 ln 12–15.

⁵⁷ NEs (21 September 2018) p 40 ln 29–31.

⁵⁸ NEs (21 September 2018) p 36 ln 4–9.

the black bag to him, the accused intended to go through with the delivery because he needed the money, he was then thrown into a “shock” when he noticed that there were “so many things” in the black bag. He thus wanted to seek an explanation.⁵⁹

(c) The accused also stated that he returned to the coffee shop so he could pass the drugs back to Ah Chong or the Malay man and not go through with the transaction.⁶⁰

The law

30 I briefly turn to the applicable law. The relevant provisions in the MDA constituting the charge read:

Trafficking in controlled drugs

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

(a) to traffic in a controlled drug;

...

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

31 The Court of Appeal held in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (at [59]) that the elements of a charge of trafficking under s 5(1)(a) read with s 5(2) of the MDA are (a) possession of a controlled drug; (b) knowledge of the nature of the drug; and (c) proof that possession of the drug was for the purpose of trafficking which was not authorised. There was no dispute between the parties as to the law.

⁵⁹ NEs (21 September 2018) p 36 ln 13–15, p 37 ln 1–3.

⁶⁰ NEs (21 September 2018) p 36, ln 15–18.

Decision on conviction

32 Essentially, the accused definitively admitted to the first two elements of the offence. The accused was in physical possession of the five bundles, which were found to contain not less than 21.25g of diamorphine. They were found under his physical control, where he had hidden them in the Utility Room. I also accepted that the accused had actual knowledge of the nature of the drugs. He admitted that he knew the five bundles discovered in the black bag were heroin, or *ubat*, after he checked the packages.⁶¹ In any event, possession and knowledge were elements of the offence which were undisputed in the Defence’s written submissions.⁶²

33 The only point the accused apparently and belatedly disputed was the remaining element of the offence, of having an intention to traffic in the drugs. He did so by claiming under cross-examination that he intended to return the drugs to Ah Chong. In this regard, I shall go further into the law regarding this element, analyse the relevant evidence and state my findings.

34 As per s 2 of the MDA, the third element of the offence of drug trafficking requires that the accused have the purpose to traffic a controlled drug by selling, giving, administering, transporting, sending, delivering or distributing it.

35 The intention to traffic can be presumed by relying on the presumption under s 17 of the MDA. To trigger the said presumption, the Prosecution must first adduce evidence to prove knowing possession of the threshold quantity of

⁶¹ NEs (21 September 2018) p 33, ln 1–6.

⁶² Defence’s Submissions (“DS”), at para 7.

the drugs stated in s 17 of the MDA (*Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 119 at [49]).

36 The Prosecution's case was that the accused's consistent intention, from the time he received the drugs until his arrest, was to deliver the drugs to whomever Ah Chong directed him to. The intention to traffic in the drugs had been proven beyond a reasonable doubt, based on the accused's willing acceptance and storage of the drugs for a subsequent delivery on Ah Chong's behalf. Alternatively, having established both possession and knowledge, the presumption of trafficking was invoked under s 17 of the MDA, and the burden was on the accused to rebut the presumption. This, the accused failed to do.⁶³

37 Having considered the evidence, I did not accept the accused's claim that he intended to return the drugs to Ah Chong for the following reasons which I summarise below:

- (a) the accused's claim was inconsistent with the evidence of his intention and his conduct upon first finding out the black bag contained heroin; and
- (b) the accused's claim was inconsistent with the evidence of his intention and his conduct upon later discovering that the black bag contained five bundles of heroin.

38 I shall explain each reason in turn.

⁶³ Prosecution's Submissions, at paras 39–54.

Evidence of the accused's intention and conduct upon first finding out the black bag contained heroin

39 It was undisputed that at the point of receipt, the accused was willing to accept the black bag from the Malay man despite being told that it contained *ubat*. He did not refuse to do so.

40 The accused's s 22 statements did not indicate any intention to return the drugs to anyone. In fact, the accused was not just willing to accept receipt of the heroin, he also fully intended to carry out the plan to deliver it to the next recipient. The Malay man had, after all, informed the accused that the intended recipient would be collecting the contents of the black bag from the accused that very afternoon. The accused was agreeable to adhere to this plan as he "needed the money".

41 In this regard, I noted that the accused had stated in his second s 22 statement that he told the Malay man, "if Ah Chong had told me earlier that I would be collecting *ubat* from him, I don't mind", thus indicating that he would not have minded if the delivery job involved drugs instead of contraband cigarettes. However, the accused claimed in his evidence-in-chief that he had in fact said "I would not take", instead of "I don't mind" to IO Imran, and that his statement was therefore wrongly recorded. This was put to both IO Imran and the interpreter, Mr Wong Png Leong ("Mr Wong"), who both disagreed with the accused's claim.⁶⁴ Mr Wong explained that an interpretation error was "impossible" given the significant difference in meaning of the words.⁶⁵ I was therefore unconvinced by the accused's argument, and rejected it.

⁶⁴ NEs (19 September 2018) p 33, ln 1–7; p 49, ln 5.

⁶⁵ NEs (19 September 2019) p 33, ln 4–7.

Evidence of the accused's intention and conduct upon later discovering that the black bag contained five bundles of heroin

42 The accused's intention to deliver the drugs did not cease to exist upon his discovery that he was in possession of five bundles of *ubat* and no cigarettes. It is crucial to note that the accused continued to keep the *ubat* in his house "as [he] had already took it [*sic*] and also because the Malay man had already told [him] that someone will collect it from [him]".⁶⁶ This is further bolstered by the fact that the accused had thereafter acted on the instructions of the Malay man by returning to the coffee shop the same day he received the drugs, in anticipation of further instructions relating to the delivery of the drugs.⁶⁷ The accused had waited for about an hour in hope of such instructions.⁶⁸ After this first attempt turned out to be in vain, the accused made a *second* attempt the next morning, on the day of his arrest, hoping that someone would "tell [him] what to *do*"⁶⁹ [emphasis added] with the black bag. He was neither seeking an explanation for the heroin, nor seeking to return it.

43 Further, the accused's testimony reinforced the notion that he had intended to deliver the drugs. Contradicting his third contemporaneous statement, the accused stated that he neither intended to sell nor consume the further three bundles of drugs, but instead was "just in charge of *delivering* goods for Ah Chong" [emphasis added].⁷⁰ He also explained that his lack of any weighing scale or bags was not because sale of the drugs had not yet commenced, but because the drugs were "meant for *delivery*" [emphasis added],⁷¹ not sale. The accused testified to the same effect regarding the first

⁶⁶ AB at p 175, A4.

⁶⁷ AB at p 176, para 12.

⁶⁸ AB at p 176, para 12.

⁶⁹ AB at p 176, para 13.

⁷⁰ NEs (21 September 2018) p 22 ln 16–18.

two bundles – they “were to be delivered for Ah Chong”, and were not for his consumption, contrary to his first contemporaneous statement.⁷²

44 The accused’s account of his offence to Dr Yeo is also telling. The accused had stated that after separating the five bundles of drugs for concealment, he planned to “wait for instructions to deliver the bundles whenever [Ah Chong] told him to do so”.⁷³ This account was not challenged by the Defence in Dr Yeo’s cross-examination.

45 Running contrary to all this evidence was the claim, raised for the first time during cross-examination, that the accused intended to return the drugs to Ah Chong or the Malay man. In my judgment, this defence was evidently an afterthought. When the accused was given an opportunity in cross-examination to explain why he had omitted to mention this defence to IO Imran when his s 22 statements were being recorded, the accused explained that he had simply been too “afraid” to offer it.⁷⁴ In my view, this explanation was unsatisfactory, and in fact, the accused agreed thereafter that there had been nothing to prevent him from raising this to IO Imran.⁷⁵ Even during cross-examination, the accused was inconsistent in raising this defence. Shortly before mentioning the defence, he said that he had still been in hope of “get[ting] the instructions of the delivery” when he returned to the coffee shop on the morning of his arrest.⁷⁶ Viewed in totality, the accused’s evidence that he did not intend to deliver the drugs was implausible.

⁷¹ NEs (21 September 2018) p 22 ln 24–28.

⁷² NEs (21 September 2018) p 20 ln 29 – p 21 ln 9.

⁷³ AB at p 99, para 9.

⁷⁴ NEs (21 September 2018) p 38, ln 24–28.

⁷⁵ NEs (21 September 2018) p 38, ln 29–31.

⁷⁶ NEs (21 September 2018) p 36, ln 4–9.

46 In any event, I noted that in the accused's closing submissions, there was no dispute as to his intention to traffic. It was accepted that when the accused received the black bag, the accused had agreed to go along with the plan notwithstanding the change in arrangement, as he needed the money. Further, it was not disputed that upon discovering the five packets of drugs, the accused still waited for instructions from Ah Chong, as the arrangement was that someone would collect the drugs from the accused.⁷⁷ In fact, in the accused's submissions, it was argued that the accused was merely a courier,⁷⁸ thus implicitly accepting that the accused did have the intention to traffic in the drugs.

47 By the foregoing, I found that it had been proven beyond a reasonable doubt that the accused had the intention to traffic in the drugs. Alternatively, the accused did not successfully rebut the presumption of trafficking under s 17 of the MDA on a balance of probabilities. The charge against the accused had been established beyond a reasonable doubt. Accordingly, I convicted the accused of the charge.

Decision on sentence

48 Turning to the decision on sentence, the prescribed punishment under s 33(1) read with the Second Schedule of the MDA is death. However, the alternative sentencing regime in s 33B(1)(a) of the MDA provides the court with the discretion to impose a mandatory term of life imprisonment and 15 strokes of the cane where (i) the offender satisfies the court that his acts fall within s 33B(2)(a)(i)–(iv) of the MDA, and (ii) the Public Prosecutor certifies that the

⁷⁷ DS at paras 6(n), 6(v).

⁷⁸ DS at paras 8–11.

offender has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore under s 33B(2)(b).

49 I found on a balance of probabilities that the accused's role in the drug transaction was restricted to that of a courier, and fell within s 33B(2)(a) of the MDA. His involvement was limited to delivering or conveying the drugs. While waiting for instructions to do so, he stored the drugs, and did nothing further to alter or adulterate their form. However, as the Public Prosecutor did not issue a certificate of substantive assistance, the requirement within s 33B(2)(b) was not met. As the alternative sentencing regime was not available, I imposed the mandatory sentence of death on the accused.

Hoo Sheau Peng
Judge

Tan Wee Hao and Tan Yanying (Attorney-General's
Chambers) for the Prosecution;
Lam Wai Seng (Lam W.S. & Co) and Balakrishnan Chitra (M/s
Regency Legal LLP) for the accused.