

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 55

Criminal Case No 60 of 2018

Between

Public Prosecutor

And

- (1) Muhammad Nur Azam bin
Mohamad Indra
- (2) Mohammad Juani bin Ali

FOUNDATIONS OF DECISION

[Criminal Procedure and Sentencing] — [Sentencing]

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Public Prosecutor
v
Muhammad Nur Azam bin Mohamad Indra and another

[2020] SGHC 55

High Court — Criminal Case No 60 of 2018
Aedit Abdullah J
2 March 2020

18 March 2020

Aedit Abdullah J:

Introduction

1 The Accused, Muhammad Nur Azam Bin Mohamad Indra, a 29-year-old Singaporean,¹ pleaded guilty and was convicted of drug importation and consumption charges, and was sentenced to a total of 26 years' imprisonment and 15 strokes of the cane.² He has appealed against his sentence.

¹ Statement of Facts dated 25 February 2020 ("SOF") at para 1

² Muhammad Nur Azam Bin Mohamad Indra's Warrant of sentence dated 2 March 2020

Background

2 The Accused was arrested at the Woodlands Checkpoint, on 14 April 2016, while driving a Singapore registered car.³ When searched, the car was found to have been carrying drugs.⁴ On the same day, the police arrested one Mohammad Juani Bin Ali (“Juani”), also 29 years old.⁵ The Accused and Juani were residing together at a flat in Woodlands.⁶ Juani was also charged; he pleaded guilty and was convicted by me at the same hearing as the Accused.⁷

3 The first proceeded charge (“Importation Charge”) read:⁸

That you... on 14 April 2016 at or about 8 am, inside a motorcar bearing registration plate number... at the Woodlands Checkpoint Arrival Car Inspection Pit, Singapore, did import into Singapore a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185, 2008 Rev Ed), *to wit*, four blocks containing not less than 499.99g of vegetable matter which was analysed and found to be cannabis, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 7 and punishable under s 33(1) of the said Act.

4 The second proceeded charge (“Consumption Charge”), which was the 4th charge on the charge sheet, read:⁹

That you... on or before 14 April 2016, in Singapore, did consume a specified drug listed in the Fourth Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*,

³ SOF at para 4

⁴ SOF at para 4

⁵ SOF at para 5

⁶ SOF at para 3

⁷ Mohammad Juani Bin Ali’s Warrant of sentence dated 2 March 2020

⁸ Arraigned charges dated 25 February 2020 (“Charge sheet”) at p 1

⁹ Charge sheet at p 2

methamphetamine, without any authorisation under the said act or the Regulations made thereunder and you have thereby committed an offence under s 8(b)(ii) and punishable under s 33(1) of the said Act.

The Admitted Facts

5 The Accused admitted to the Statement of Facts.¹⁰ This included the arrest of the Accused at Woodlands. When the car the Accused was driving was searched, various items marked as exhibits E1A, F1A, H1A and H2A1A were found in the car.¹¹ These items were analysed and found to contain controlled drugs:¹²

- (a) E1A contained not less than 210.1 grams of cannabis;
- (b) F1A contained not less than 173.3 grams of cannabis;
- (c) H1A contained not less than 208.1 grams of cannabis; and
- (d) H2A1A contained not less than 504.1 grams of cannabis.

6 These exhibits contained in total not less than 1095.6 grams of cannabis, which is a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185, 2008 Rev Ed) (“MDA”).¹³

7 Investigations revealed that the drugs were imported into Singapore by the Accused on Juani’s instructions.¹⁴ The two had started to reside together at

¹⁰ Minute sheet dated 2 March 2020 (“PG Hearing”) at pp 1–2

¹¹ SOF at para 6

¹² SOF at para 7

¹³ SOF at paras 8–9

¹⁴ SOF at para 11

the Woodlands Flat in 2015.¹⁵ In 2016, as the Accused had to pay damages of S\$400 to a car company because of an accident, he approached Juani for a loan.¹⁶ Juani lent the Accused S\$500.¹⁷ However, by March 2016, the Accused could not pay the outstanding loan amount. He hence told Juani that he was in financial difficulty and asked for help about finding a job. At this point, Juani suggested that the Accused help to collect drugs in Malaysia to bring into Singapore. Juani offered to pay the Accused between S\$200 and S\$300 on each occasion. The Accused agreed to this proposal.

8 On 1, 3 and 14 April 2016, the Accused brought cannabis from Malaysia into Singapore.¹⁸ He would drive the car from Singapore into Johor Bahru, Malaysia.¹⁹ On his arrival in Malaysia, he would call Juani using a Malaysian number.²⁰ Juani then would instruct the Accused to drive to a petrol station and await instructions. At the petrol station, the Accused would receive a call from Juani, telling him to park the car with the key in the ignition. Juani told the Accused that someone would collect the car to load it with cannabis. Afterwards, Juani would call the Accused to let him know the car was ready to be driven back to Singapore. The Accused was instructed by Juani to call Juani once he had cleared Singapore immigration. Thereafter, the Accused would collect the car from the petrol station, drive into Singapore and call Juani after

¹⁵ SOF at para 12

¹⁶ SOF at para 13

¹⁷ SOF at para 13

¹⁸ SOF at para 14

¹⁹ SOF at para 14

²⁰ SOF at para 14

clearing immigration. The Accused knew that the car carried cannabis when he drove it into Singapore.²¹

9 On 1 and 3 April 2016, the Accused brought cannabis into Singapore, for which he was paid S\$300 and S\$400 respectively.²² But on 14 April 2016, the Accused was stopped and arrested. Juani grew suspicious when the Accused did not call him and he could not contact the Accused; he hence fled to another flat but was arrested there.²³

10 Phones seized from the Accused and Juani were analysed and found to show communications between the two that were consistent with what was described at [8] above.

11 After his arrest, the Accused provided urine samples which were analysed by the HSA and found to contain methamphetamine, which is a specified drug listed in the Fourth Schedule to the MDA.²⁴ The Accused was not authorised under the MDA or the Regulations made thereunder to consume methamphetamine.²⁵ He had consumed methamphetamine, having started to do so about two months prior to his arrest.²⁶ The Accused was first introduced to methamphetamine by one of his contacts,²⁷ and subsequently, the methamphetamine was supplied to him by Juani for free.²⁸

²¹ SOF at para 14

²² SOF at para 15

²³ SOF at para 15

²⁴ SOF at paras 18–21

²⁵ SOF at para 22

²⁶ SOF at para 23

²⁷ SOF at para 23

12 The facts showed that the Accused committed offences of:

(a) Importing not less than 499.99 grams of cannabis into Singapore on 14 April 2016, an offence under s 7 of the MDA and punishable under s 33(1) of the MDA; and

(b) Consumption of methamphetamine, an offence under s 8(b)(ii) and punishable under s 33(1) of the MDA.

Charges taken into consideration

13 The Accused admitted and consented to two charges to be taken into consideration:²⁹ (1) importation of not less than 198.8 grams of methamphetamine, a Class A controlled drug listed in the First Schedule of the MDA, which is an offence under s 7 and punishable under s 33(1) of the MDA; and (2) trafficking in not less than 0.16 grams of methamphetamine, a Class A controlled drug listed in the First Schedule of the MDA, which is an offence under s 5(1)(a) and punishable under s 33(1) of the MDA.

Charge withdrawn

14 One charge of importation of cannabis mixture was withdrawn, with a discharge amounting to an acquittal granted.³⁰

²⁸ SOF at para 23

²⁹ PG Hearing at p 2; Charge sheet at p 2

³⁰ PG Hearing at p 2, 5; Charge sheet at pp 1–2

Antecedents

15 The Accused had no prior criminal record.³¹

Co-accused

16 The co-accused, Juani, pleaded guilty and was convicted of five charges.³² He was sentenced to 29 years’ and 15 strokes imprisonment for the offence of conspiring with the Accused to import not less than 499.9 grams of cannabis into Singapore on 14 April 2016, an offence under s 7 read with s 12 of the MDA and punishable under s 33(1) of the MDA.³³ This mirrored the Accused’s Importation Charge. Juani’s global sentence was a total of 29 years and 10 months’ imprisonment, with caning up to the statutory maximum of 24 strokes.³⁴

The Prosecution’s Submissions

17 The Prosecution argued for a sentence of at least 26 years’ imprisonment and 15 strokes of the cane for the Importation Charge,³⁵ and at least 10 months’ imprisonment for the Consumption Charge,³⁶ with the sentences to run concurrently for a total of 26 years and 15 strokes.³⁷

³¹ CRO of Muhammad Nur Azam Bin Mohamad Indra dated 3 March 2020

³² PG Hearing at p 5

³³ Charge sheet at p 3; PG Hearing at p 5

³⁴ PG Hearing at p 5

³⁵ Prosecution’s sentencing submissions dated 25 February 2020 (“Prosecution’s sentencing submissions”) at para 2

³⁶ Prosecution’s sentencing submissions at para 2

³⁷ Prosecution’s sentencing submissions at para 2

18 For the Importation Charge, the Prosecution cited the sentencing framework for drug trafficking and importation charges in *Suventher Shanmugam v Public Prosecutor* [2017] 2 SLR 115 (“*Suventher*”) and argued that this indicated a starting point sentence of 29 years’ imprisonment and 15 strokes, based on the quantity of cannabis imported (499.99 grams).³⁸

19 The Prosecution then reduced the sentence sought to 26 years’ imprisonment and 15 strokes to account for the Accused’s lower culpability. They cited the approach in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 (“*Vasentha*”) as to the assessment of culpability. They argued that the Accused’s culpability is on the lower end as he was merely a courier acting under directions and performed a limited function.³⁹ On the other hand, he performed the role willingly for financial reward, and was not coerced, intimidated, or exploited.⁴⁰ By the point of his arrest, he had earned enough from Juani to be able to repay the loan he had taken from Juani.⁴¹ In addition, other similar charges were taken into consideration, which should be treated as aggravating factors.⁴²

20 There was little in mitigation. The plea of guilt should be given little weight as he was caught red handed with the prosecution having no difficulty in proving its case.⁴³ He had also brought drugs into Singapore on at least two

³⁸ Prosecution’s sentencing submissions at para 6

³⁹ Prosecution’s sentencing submissions at para 8

⁴⁰ Prosecution’s sentencing submissions at para 8

⁴¹ PG Hearing at p 3

⁴² Prosecution’s sentencing submissions at para 9

⁴³ Prosecution’s sentencing submissions at para 10

previous occasions and was not a first offender.⁴⁴ These were raised not as aggravating factors but to minimise any mitigatory effect of the present matters being the Accused's first conviction.⁴⁵ A sentence of 26 years' imprisonment and 15 strokes was at the lower end of the range and would not be manifestly excessive. It would be lower than the 29 years' imprisonment and 15 strokes sought against Juani, who was the person directing and instructing the Accused. Juani also faced 20 charges in all, which was five times more than the Accused, which reflected Juani's higher culpability.⁴⁶

21 As for the Consumption Charge, following *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 ("*Dinesh Singh*"), the appropriate sentence was at least 10 months' imprisonment.⁴⁷ The Accused was a casual user, who had started consuming two months before his arrest and specific deterrence was required.⁴⁸

The Mitigation

22 The personal circumstances of the Accused were referred to. He was single and was working part time at the point of arrest in order to support his mother and siblings,⁴⁹ and he had had no contact with his father.⁵⁰ The Accused

⁴⁴ Prosecution's sentencing submissions at para 10

⁴⁵ Prosecution's sentencing submissions at para 10

⁴⁶ Prosecution's sentencing submissions at para 11

⁴⁷ Prosecution's sentencing submissions at paras 12–13

⁴⁸ Prosecution's sentencing submissions at paras 12–13

⁴⁹ Mitigation plea dated 25 February 2020 ("*Mitigation Plea*") at para 2

⁵⁰ Mitigation Plea at para 3

was roped into importing drugs by Juani as he was unable to repay Juani's loan and also because he needed money for his family.⁵¹

23 Instructions were obtained from Juani and the crimes were committed at Juani's directions; the Accused was not involved in the packing or removal of the drugs and did not know to whom or where the delivery would take place until Juani informed him where to drive to. The role of the Accused was thus limited.⁵²

24 The Accused had cooperated fully and pleaded guilty early.⁵³ The prospect of a death sentence taught him a life changing lesson and he promised not to reoffend.⁵⁴ His clean record previously showed that he would be amenable to reform.⁵⁵

25 As for the Consumption Charge, this was his first such offence.⁵⁶ Given the lengthy imprisonment for the Importation Charge, the Court was urged to run it concurrently.⁵⁷ The Defence argued that an appropriate sentence would be 25 years' imprisonment and 15 strokes.⁵⁸ The backdating of the sentence to the date of arrest was also sought.⁵⁹

⁵¹ Mitigation Plea at paras 2–3

⁵² Mitigation Plea at paras 4–5

⁵³ Mitigation Plea at para 6

⁵⁴ Mitigation Plea at paras 6, 10

⁵⁵ Mitigation Plea at paras 8, 10

⁵⁶ Mitigation Plea at para 11

⁵⁷ Mitigation Plea at para 11

⁵⁸ PG Hearing at p 3

⁵⁹ Mitigation Plea at para 12

The Decision

26 I accepted the submissions of the Prosecution as to the sentences that should be imposed, bearing in mind the sentencing frameworks that have been laid down. I was satisfied that the total sentence reflected the overall criminality and was in line with the totality principle. A sentence of 26 years' imprisonment and 15 strokes was imposed for the Importation Charge, with 10 months' imprisonment imposed for the Consumption Charge. The two sentences were ordered to run concurrently, giving a total of 26 years and 15 strokes, with sentences backdated to run from 14 April 2016.

Analysis

Importation

27 The sentencing framework for importation of drugs was laid down in *Suventher* ([18] *supra*). This was submitted by the Prosecution, and not disputed by the Defence. Under this framework, there are two stages: first to determine the indicative sentence based on the quantity of drugs involved, as the quantum reflects the harm and gravity of the offence (*Suventher* at [21]); and secondly to calibrate the sentence by taking into account the accused's culpability as well as other aggravating or mitigating factors (*Suventher* at [30]).

28 The sentencing ranges laid down in *Suventher* were as follows (at [29]):

- (a) 330 to 380g: 20 to 22 years' imprisonment
- (b) 381 to 430g: 23 to 25 years' imprisonment
- (c) 431 to 500g: 26 to 29 years' imprisonment

29 Since the quantum of cannabis imported in the Importation Charge is not less than 499.99 grams, the relevant range would be 26 to 29 years, and since 499.99 is close to the maximum of 500g, the starting point should be 29 years' imprisonment which is the maximum of the range of 26 to 29 years.

30 The calibration would, as provided in *Suventher*, then need to take into account the culpability of the accused, and other aggravating or mitigating factors. Again, as submitted by the Prosecution, in *Vasentha* ([19] *supra*), the Honourable Chief Justice Sundaresh Menon listed various indicia which are relevant in determining culpability. Factors that pointed to higher culpability included being motivated by financial advantage and taking steps to avoid detection of the offence (*Vasentha* at [51]). Factors that indicated lower culpability included the accused performing a limited function under direction, being engaged by pressure, or being involved through exploitation (*Vasentha* at [51]). Although these indicia were formulated in the specific context of trafficking in diamorphine, they are similarly relevant for any drug type.

31 On the facts, the most substantial mitigating factor was the plea of guilt. However, as argued by the Prosecution, the weight that could be accorded to this was limited as the Accused was caught red handed (see *Public Prosecutor v Tay Beng Guan Albert* [2000] 2 SLR(R) 778 at [16]). Similarly, the fact that the Accused may have been acting under the direction of Juani could not avail him to a large extent, given the seriousness of the criminal act committed.

32 The Accused's absence of antecedents avoided any aggravation of culpability, but did not go so far as to push the sentence significantly downwards, given the seriousness of the present criminal conduct.

33 The Prosecution also argued that the Accused should not be treated as a first-time offender as he had committed previous acts of importation for which he was not charged (above at [20]). The Prosecution cited *Public Prosecutor v Tan Thian Earn* [2016] 3 SLR 269 at [66] to support their proposition. I find that the previous acts of importation did not necessarily preclude him from claiming the status of a first-time offender, but nevertheless reduced its mitigatory weight. In any case, given the seriousness of the importation charge, even a first offender should be punished substantially.

34 In comparison, the culpability of the Accused was increased by the charges taken into consideration. There were two other charges, one of which was for importation of methamphetamine, and another for trafficking the same (above at [13]). The fact that the Accused was involved in such charges meant that the appropriate level of culpability was greater than someone who had only a single such charge to contend with.

35 The fact that the Accused took some profit, while not perhaps seemingly large, would again point towards a higher sentence. Counsel argued that the importation was done to pay off a loan, and because of the need to provide for the family. The loan would, however, have been cleared by the second trip, as the Accused was paid S\$300 and S\$400 for the two trips, whereas the loan was only S\$500 (above at [7], [9]). As for the need to provide for the family, that is neither an excuse nor a mitigating factor. The harm caused by the importation of controlled drugs precludes taking into account any seemingly laudatory motive of helping the family; there are lawful ways of earning a living.

36 Taking these various factors into account, I was of the view that it would not be appropriate to adopt the Defence's suggestion to drop into the lower band

of 23 to 25 years. The sentence should remain in the uppermost band, at between 26 to 29 years' imprisonment.

37 Weighing the relevant factors above, 26 years' imprisonment was the most appropriate landing point; it was not necessary to vindicate the aggravating factors to go beyond that. 15 strokes was awarded as required by law.

Consumption

38 *Dinesh Singh* ([21] *supra*) found that the appropriate spectrum of sentences for a first time offender of drug consumption is between six and 18 months (at [38]). The court should consider factors such as: the amount of drug consumed; whether the offender was a casual abuser or an addict; what led to the consumption; was payment involved; and the circumstances during the consumption and preceding the consumption (*Dinesh Singh* at [39]).

39 A more severe sentence is warranted as compared to the eight months' imprisonment imposed in *Dinesh Singh* (at [58]). As noted above, the Accused had admitted that he was not a first-time consumer as he had already began consuming drugs two months before his arrest, and had received drug supplies from Juani and at least one other person. This is more serious than in *Dinesh Singh*, where the accused consumed drugs only on a one-off occasion, without premeditation or solicitation. Here, ten months' imprisonment would be appropriate in all the circumstances.

Running of sentences and comparison with co-accused

40 While the Importation Charge and Consumption Charge occurred on different occasions, it was sufficient for the sentences to run concurrently. I did not see anything that required the sentences to be run consecutively. The total

sentence imposed was also sufficiently lower than Juani, who was more culpable, and who was given 29 years' imprisonment and 15 strokes for the mirrored charge of conspiring with the Accused to import cannabis.

Conclusion

41 For the above reasons, it was appropriate for the Accused to be sentenced to a total of 26 years' imprisonment and 15 strokes of the cane. This was backdated to the date of arrest, i.e. 14 April 2016.

Aedit Abdullah
Judge

Timotheus Koh and Tan Yanying (Attorney-General's Chambers)
for the prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary) and Dhanaraj James
Selvaraj (James Selvaraj LLC) for the first accused;
Ram Goswami (Ram Goswami) and Cheng Kim Kuan (K K Cheng
& Co) for the second accused.
