

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 228

Criminal Case No 2 of 2017

Between

Public Prosecutor

And

- (1) Muhammad Farid bin Sudi
- (2) Hamzah bin Ibrahim
- (3) Tika Pesik

FOUNDATIONS OF DECISION

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

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Public Prosecutor
v
Muhammad Farid bin Sudi and others

[2017] SGHC 228

High Court — Criminal Case No 2 of 2017

Hoo Sheau Peng JC

24-26, 31 January 2017; 8-10, 14-17, 21-23 February 2017, 15 May 2017; 15 June 2017

21 September 2017

Hoo Sheau Peng JC:

Introduction

1 The three accused persons in this case were tried jointly on charges of trafficking in diamorphine. The first accused person, Muhammad Farid bin Sudi (“Farid”), and the third accused person, Tika Pesik (“Tika”), each claimed trial to a single charge of trafficking in a controlled drug, namely 26.29g of diamorphine, in furtherance of their common intention, an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed). The second accused person, Hamzah bin Ibrahim (“Hamzah”), claimed trial to a charge of having the 26.29g of diamorphine in his possession for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the MDA.

2 The charges stated that Farid and Tika made arrangements between 19 and 20 December 2013 for Farid to deliver two packets of granular/powdery substance (which, on analysis, was found to contain 26.29g of diamorphine) to Hamzah on 20 December 2013, and that Farid did so on that day from about 1.40pm to 2 pm while he was in a car with Hamzah.

3 At the conclusion of the trial, I found that the elements of the respective charges were made out against each of the accused persons, and I convicted them accordingly.

4 The prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. Section 33B(1)(a) provides that if the two requirements set out in s 33B(2) are satisfied, the court has a discretion not to impose the death penalty. The first requirement is that the acts of the accused were restricted to those listed in s 33B(2)(a)(i)–(iv) – acts which have been referred to as those of a “courier”. The second requirement, as stated in s 33B(2)(b), is that the Public Prosecutor (“PP”) certifies that the accused person has substantively assisted the Central Narcotics Bureau (“CNB”) in disrupting drug trafficking activities within or outside Singapore.

5 I found that:

(a) Farid met both requirements. His role in the transaction was to deliver the drugs to Hamzah. His packing of the drugs into a plastic bag was incidental to the delivery and he thus acted as no more than a courier. The PP issued a certificate of substantive assistance. Hence, I imposed the mandatory sentence of life imprisonment and 15 strokes of the cane on him.

(b) Hamzah only met the second requirement. He was issued a certificate of substantive assistance by the PP. However, it was clear to me that his purpose after taking delivery of the drugs was to sell them. His involvement in the transaction went beyond that of a courier. I passed the mandatory death sentence on him.

(c) Tika met neither requirement. She had coordinated the supply of the drugs to Hamzah through Farid and another person and could not be said to have acted as a courier. Also, she was not issued a certificate of substantive assistance by the PP. Hence, I passed the mandatory sentence of death on her.

6 Hamzah and Tika have each filed an appeal against their conviction and sentence. I now provide the reasons for my decision.

The undisputed facts

7 I will first set out the undisputed facts.

Arrest of the accused persons and seizure of the exhibits

8 On 20 December 2013, at about 1.40pm, Farid drove a car bearing registration number SGM 8355Y (“the Car”) to Deck 5 of the multi-storey carpark at Block 632 Senja Road. He parked the Car near the walkway link on Deck 5. Hamzah walked from the walkway link towards the Car, boarded it, and sat in the front passenger seat.¹

9 Farid drove the Car to Dairy Farm Crescent. At about 2pm, Farid stopped the Car along Dairy Farm Crescent, before Dairy Farm Road, and

¹ PP’s Closing Submissions at para 8.

turned on the hazard lights. Hamzah alighted and crossed the road towards the rubbish collection point at Dairy Farm Crescent.²

10 When he was near the rubbish collection point, officers from the CNB moved in and arrested Hamzah. Farid, who was still in the driver's seat of the Car, was also placed under arrest.³

11 Farid and Hamzah were escorted by CNB officers in two vehicles to Deck A2 of the multi-storey carpark at Block 217A Petir Road. Farid was in the Car, while Hamzah was in a CNB vehicle. At the carpark, the Car was searched in the presence of Farid and Hamzah.⁴

12 The CNB officers took a number of items from the Car as exhibits. The following are the significant exhibits:⁵

(a) A white plastic bag (bearing the logo "Giant") containing a sheet of newspaper, one larger plastic packet of brown granular powdery substance ("A1A1") and one small plastic packet of brown granular powdery substance ("A1A2"). The contents within the two packets formed the subject matter of the charges;

(b) A white plastic bag containing both a packet of empty white plastic bags of the same type and three packets of empty zip lock bags.

(c) A stack of Singapore dollar bills tied with a red rubber band, amounting to \$1,800;

² PP's Closing Submissions at para 9.

³ PP's Closing Submissions at para 10.

⁴ PP's Closing Submissions at para 11.

⁵ PP's Closing Submissions at para 12 (Exhibits can be found as attachment to P99).

- (d) A white plastic bag (bearing the logo “FairPrice”) containing a stack of Singapore dollar bills tied with two red rubber bands, amounting to \$4,510;
- (e) A sling bag containing a packet wrapped and taped with brown paper. The packet contained a plastic packet which itself contained 10 packets of granular/powdery substance. There was another white plastic bag, tied with a red rubber band, containing brown granular/powdery substance;
- (f) A “Davidoff” perfume box containing a plastic packet containing one packet of crystalline substance, two packets of brown granular/powdery substance and one packet of empty zip lock bags;
- (g) An improvised utensil; and
- (h) A digital weighing scale.

13 Also, certain personal possessions of Farid and Hamzah were seized, including Farid’s mobile phone (marked as “MF-HP”), and Hamzah’s two mobile phones (marked as “H-HP1” and “H-HP2”).

14 On 8 September 2014 at about 3.35pm, Tika was stopped at Woodlands Checkpoint when she attempted to enter Singapore as she had been placed on the “wanted persons” list. There were three other people in the car with her, K Saravanan A/L Kuppusamy (“Saravanan”), her husband Ahmad Hanafi bin Sudi and her son Muhammad Firdaus bin Ahmad Hanafi.⁶

⁶ PP’s Closing Submissions at para 23.

Analysis of exhibits by the Health Sciences Authority

15 On 24 December 2013, A1A1 and A1A2 were submitted by the CNB to the Health Sciences Authority (“HSA”) for analysis.⁷

16 Exhibit A1A1 was analysed and found to contain not less than 18.28 g of diamorphine, which is a Class A controlled drug under the first Schedule to the MDA.⁸ Exhibit A1A2 was analysed and found to contain not less than 8.01 g of diamorphine.⁹ In total, exhibits A1A1 and A1A2 were found to contain not less than 26.29g of diamorphine, and formed the subject matter of the charges.

17 HSA’s analysis also revealed that Farid’s DNA was found on¹⁰ the “Giant” plastic bag, the exterior of A1A2, the sling bag, some of the packets of brown granular/powdery substance inside the sling bag, the packet of crystalline substance inside the perfume box, the packets of brown granular/powder substance inside the perfume box, and the digital weighing scale. Hamzah’s DNA was found on the exterior surface of the digital weighing scale.¹¹

Statements of the accused persons

18 Pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”), the Prosecution tendered certain statements recorded from the accused persons in the course of investigations as part of its case. There were no objections from the accused persons as to their admissibility, although at [26]–[27] below, I set out how Hamzah vacillated on the admissibility of his

⁷ PP’s Closing Submissions at para 17.

⁸ Agreed Bundle of Documents (“ABD”) p 253.

⁹ ABD p 255.

¹⁰ PP’s Closing Submissions at para 21.

¹¹ PP’s Closing Submissions at para 22.

statements. Also, I pause to add that while Farid and Hamzah did not dispute the contents of their statements (which implicated all three accused persons), Tika alleged that Farid and Hamzah had falsely implicated her in drug dealings. The significance of this allegation will be dealt with from [58] onwards.

Statements made by Farid

19 Eight statements were recorded from Farid, and all of them were admitted into evidence. These were:

(a) The contemporaneous statement recorded under s 22 of the CPC recorded on 20 December 2013 at 3.07pm by Staff Sergeant Norizan binte Merabzul;¹²

(b) The cautioned statement recorded under s 23 of the CPC on 21 December 2013 by Station Inspector Muhammed Nizammudin (“SI Nizamuddin”)¹³;

(c) Five long statements recorded by SI Nizamuddin under s 22 of the CPC on 22 December 2013, 23 December 2013, 24 December 2013, 14 July 2014 and 27 August 2014. These were marked as “P98”, “P99”, “P100”, “P101” and “P102”; and

(d) A long statement recorded on 9 September 2014 under s 22 of the CPC by Station Inspector Fathli bin Mohd Yusof (“SI Fathli”).¹⁴

¹² ABD p 336–341; pp 393–394.

¹³ ABD pp 515–517.

¹⁴ ABD pp 545–560.

20 In his contemporaneous statement, Farid said that the plastic bags and money found in the Car belonged to Hamzah. He said that the other plastic bags which contained “chocolate powder” had been taken in the morning at Woodlands from an “Indian person from Malaysia”.¹⁵ He described himself as a “drug sender” who would need to wait for a call to be told where to send the drugs.

21 In his cautioned statement, Farid said that he was “not willing to take the responsibility as the drugs [were] not [his]”¹⁶. He added that “[t]hey just told me to send the drugs to the people who will call me”, although he did not identify who “they” referred to.

22 Of the five long statements, P98, P99, and P100 were significant in that they contained an extensive account of Farid’s involvement in the transaction for which he was arrested and similar previous transactions. According to these statements:

(a) Farid was also known as “Boy”. He had come to know of a person named “Nana” when a friend of his, “Farid Botak” had called her using his mobile phone. That was also how Nana got his mobile number. Nana called him in August or September 2013 saying she was looking for Farid Botak who, according to her, had run away with “drug” money. Farid said he was looking for Farid Botak too. Nana gave him directions to Farid Botak’s house.¹⁷

¹⁵ ABD p 393.

¹⁶ ABD p 517.

¹⁷ P98 at paras 5–12.

(b) A few weeks later, Nana contacted him again. She offered him a job of picking parcels up in Singapore from Malaysians and sending them to people in Singapore.¹⁸ He agreed. He did not ask what the parcels contained.

(c) He first did a delivery for Nana in October 2013 using a car he had rented.¹⁹ On this occasion, he collected a parcel from a Malaysian Indian man in Tuas. Nana called him to check that he had received the parcel. Someone then called him and asked him to send the parcel to Bukit Panjang.²⁰ That person turned out to be Hamzah, who was the recipient of Farid's first delivery. Hamzah gave him a stack of cash and asked him to pass it to Nana, although Hamzah referred to her as "Ika".²¹ Farid then went back to the Tuas area and passed the money to a different male Malaysian.

(d) Farid did three similar deliveries for Nana after that first time. The second delivery took place one week after the first job. The third delivery was in November. Farid claimed that he only knew that the parcels that he delivered for Nana contained drugs on this third time.²² The fourth delivery was on 18 December 2013.

(e) On the last two of these three later deliveries, Nana offered to pay for him to rent a car to do the delivery. The delivery on 18 December

¹⁸ P98 at para 13.

¹⁹ P98 at para 13.

²⁰ P98 at para 14.

²¹ P98 at para 15.

²² P99 at para 20.

2013 was done using a car he had rented. This was the Car that he was arrested in.

(f) The fifth delivery was what formed the basis of the charge against him. Nana called him at about 11pm on 19 December 2013 and told him about a pick up at Woodlands at 5am the next day. At 1am on 20 December, an Indian male he referred to as “Macha”, who identified himself as Nana’s friend, called him from a Malaysian mobile number and said that he would go with him to Woodlands “to wait for the pick-up of the drugs”.²³ When Farid reached Woodlands, another male Malaysian gave him a sling bag and a plastic bag that had a brown packet.

(g) Farid then called Nana to inform her he had “collected the drugs”. He then went to the void deck at Kang Ching Road. He called Nana and told her that the “drugs that were inside [his] bag were very messy” and he wanted to ask her which packets were meant for whom.²⁴ He then packed the drugs according to her instructions. In particular, he wrapped two packets of “*panas*” in newspaper and put it in the “Giant” plastic bag – these were A1A1 and A1A2. Nana told him that these two packets were for Hamzah.²⁵

(h) On the day he was arrested, that is, 20 December 2013, he received a call at 11am from Nana telling him to go to meet Hamzah. Later, Hamzah called him and asked to meet at the multi-storey carpark at Senja Road. When he entered the Car, Hamzah was carrying the white

²³ P99 at para 37.

²⁴ P99 at para 39; P100 at para 49.

²⁵ P99 at para 41.

plastic bag (containing empty white plastic bags of the same type and three packets of empty zip lock bags) referred to at [12(b)] above. Hamzah took out the “Fairprice” plastic bag containing money (see [12(d)]) and placed it in the front compartment of the Car. Hamzah also took out a stack of dollar bills from his pocket (see [12(c)]) and asked Farid to count if there was \$1,800 or \$1,900.²⁶

(i) Hamzah asked him to drive out of the multi-storey carpark. As they made their way towards Dairy Farm Road, Hamzah took out A1A1 and A1A2 in the plastic bag and felt them in his hands.²⁷

(j) They reached Dairy Farm Road at close to 2pm. Hamzah asked him to stop the car, whereupon he alighted and, according to Farid, was “looking for a place to pack the *panas* that he [had] just collected...into smaller packets”. Hamzah asked Farid to wait for him.²⁸ At that point, Hamzah was arrested.

23 P101 recorded Farid’s query about the weight of the drugs in the charge he was facing, and his wish to be given a chance because he had cooperated with CNB in its investigations.

24 P102 recorded that Farid had been shown a photograph board of 12 female Malay subjects and he identified one of these females as the “Nana” or “Kakak” that he had referred to in the previous statements.²⁹ The person he identified was Tika.

²⁶ P100, at para 42.

²⁷ P100 at para 52.

²⁸ P100 at para 54.

²⁹ P102 at para 73.

25 In the last statement on 9 September 2014, it was stated that Farid had been shown photographs of 12 male Indians and that he identified one of them as the “Macha” he had referred to in the previous statements. “Macha” was Saravanan.³⁰ Farid recalled that sometime in September to October 2013, at Tuas, “Macha” had passed him a package kept in a plastic bag which Farid then “delivered to people”.³¹

Statements made by Hamzah

26 In total, seven statements were recorded from Hamzah. On 25 January 2017, being the second day of the trial, the Prosecution admitted six of these statements into evidence. At that point, counsel for Hamzah, Mr Luke Lee (“Mr Lee”) indicated that there was no challenge by Hamzah as to their admissibility.³² However, on 9 February 2017, being the sixth day of the trial, Mr Lee informed the court that based on fresh instructions,³³ Hamzah wished to dispute the voluntariness of the statements. To that end, Mr Lee applied to recall certain Prosecution witnesses pursuant to s 283(1) of the CPC. The Prosecution objected to the application, submitting that the power to recall a witness pursuant to s 283(1) of the CPC should only be exercised at the close of the case for the defence. As the Prosecution had yet to close its case, the application was premature. Instead, it was open to Hamzah, in his defence, to raise his objections, and then, if necessary thereafter, to apply to court to recall the relevant witnesses.

³⁰ ABD pp 545, 549 and 560

³¹ ABD pp 545.

³² Transcript (25 January 2017) at p 39, lines 29–30.

³³ Transcript (9 February 2017) at p 1, line 8; p 8, line 14.

27 Section 283(1) of the CPC provides that a court may, “on the application of the prosecution or the defence, at the close of the case for the defence... recall and re-examine a person already examined.” I agreed with the Prosecution that the application was premature and that it was not the appropriate stage of the proceedings to apply to recall the Prosecution witnesses. I note that subsequently, when Hamzah gave evidence in his defence, Hamzah confirmed that he would not be challenging the admissibility of the statements. In fact, his evidence closely followed the contents of the statements.

28 I now turn to the six statements admitted into evidence which were:

(a) A cautioned statement recorded under s 23 of the CPC on 21 December 2013 by SI Nizamuddin;³⁴

(b) Four long statements recorded by SI Nizamuddin under s 22 of the CPC on 25 December 2013, 26 December 2013, 14 July 2014 and 27 August 2014. These were marked as “P92”, “P93”, “P94” and “P95”; and

(c) A long statement recorded on 9 September 2014 by SI Fathli (“P96”).

29 In his cautioned statement, Hamzah claimed that he did not know what was inside the Car, and that he only asked Farid to send him to Dairy Farm Crescent so he could apply for a job. He claimed he would have brought the drugs along with him if he had intended to traffic them.³⁵

³⁴ ABD pp 512–514.

³⁵ ABD p 514.

30 The gist of P92 to P93 was as follows:

(a) Hamzah had been selling heroin for “Farid Botak”. He would pay Farid Botak for a packet of heroin and repack them into straws which he would sell individually.³⁶ After some time he started to sell heroin by the packet.³⁷ Farid Botak also asked him to “*jalan*” his “*barang*” for him – this meant “sell” his “heroin”. He was to take heroin from Farid Botak, deliver it to people who ordered from Farid Botak, and then collect the money from them so as to pass it to Farid Botak. He knew that Farid Botak got his heroin from a woman named “Ika”.³⁸ He had seen Farid Botak with Ika in a car once before.

(b) Hamzah referred to Farid as “Boy”.³⁹ At some point, Ika called him to ask if he would *jalan* heroin for her. He agreed. She said she would give him “*setengah bola*” (which was about 200g of heroin worth \$2,400) on credit, and he could pay her back after he had sold it. Ika told him to collect the heroin from Boy. Hamzah collected the heroin from Boy, repacked it and resold it. He managed to sell that heroin in three days.⁴⁰

(c) After the first sale, Ika had confidence in him and started contacting him every few days to ask if he would take heroin from her. He would usually collect the heroin from Boy. He would usually ask Boy to drive to different places (usually in the Bukit Timah or Bukit

³⁶ P92 at para 4.

³⁷ P92 at para 5.

³⁸ P92 at para 6.

³⁹ P92 at para 6.

⁴⁰ P92 at para 9.

Panjang area near his residence) where he could collect the heroin. He would usually pay Boy for “*satu bola*”, and sometimes he would take an additional *setengah bola* on credit.⁴¹

(d) On 18 December 2013, Ika called him at night and asked if he wanted to “take heroin from her”.⁴² He agreed. On the morning of 19 December 2013, he called Boy at 9am and asked him to come to the multi-storey car park at Bukit Panjang.⁴³ He paid Boy for *satu bola* of heroin. Boy then drove him to Punggol Place. He then repacked the heroin in a vacant house that he had the keys to. Boy went up to the house but just sat at a corner while he repacked the *satu bola* into smaller packets of heroin. He managed to sell off all those packets within that day – 19 December 2013.⁴⁴

(e) That night, at about 7 pm, Ika called him to ask if he wanted to take heroin the next day.⁴⁵ He agreed and ordered *satu bola* of heroin from her. On 20 December 2013, he called Boy at about 8am to check if the *satu bola* of heroin was ready for collection.⁴⁶ It was ready. He thus asked Boy to go to the multi-storey carpark at Senja Road. He brought small plastic packets which he placed at the dustbin area while he waited for Boy to call him. Boy arrived and he went to meet Boy at the fifth storey of the multi-storey carpark, bringing with him the small plastic packets he had earlier left at the dustbin area. He got into the Car.

⁴¹ P92 at paras 10–12.

⁴² P93 at para 18.

⁴³ P93 at para 19.

⁴⁴ P93 at paras 20–27.

⁴⁵ P93 at para 29.

⁴⁶ P93 at para 30.

Boy said he had “*satu setengah bola*” and asked if he wanted all of it. He said he wanted all of that heroin. However, he had only \$4,500 even though *satu bola* cost \$4,750. He said he would pay Boy the remaining \$250 for the *satu bola* and take the remaining *setengah bola* on credit.⁴⁷ This was not the first time had had been given more heroin than he had asked for from Ika, nor the first time he had taken the extra heroin on credit.⁴⁸

(f) When Boy and he reached Dairy Farm Road, he got off the Car and left the *satu setengah bola* of heroin near the handbrake of the Car. He also left the empty plastic packets (see [12(b)]) on the front passenger seat floor.⁴⁹

(g) He also said that the digital weighing scale (see [12(h)]) was what he had used to repack the heroin on 19 December 2013 at the house at Punggol Place. The weighing scale belonged to Boy and he had only wanted to borrow it from him.⁵⁰

31 P94 recorded Hamzah as saying that he would be able to identify Ika if he was shown her photo⁵¹. Then, P95 recorded that Hamzah identified “Ika” from photographs shown to him.⁵² That person was Tika.

⁴⁷ P93 at para 31.

⁴⁸ P93 at para 32.

⁴⁹ P93 at para 33.

⁵⁰ P93 at para 34.

⁵¹ P94 at para 37.

⁵² P95 at para 38.

Statements made by Tika

32 Seven statements were recorded from Tika. The Prosecution tendered only one statement, being the cautioned statement recorded under s 23 of the CPC on 10 September 2014 by SI Nizamuddin.⁵³ In it, Tika stated that she had nothing to say in response to the charge.

Close of the Prosecution's case

33 At the close of the Prosecution's case, I found that there was sufficient evidence against each of the accused persons and called upon them to give evidence in their own defence. Farid and Hamzah each gave evidence in their own defence and did not call any witnesses. Besides giving evidence in her own defence, Tika called Saravanan as a witness.

The first accused's defence

34 Farid did not dispute the Prosecution's case against him. His case was that in August or September 2013, he became acquainted with Tika. Sometime in October 2013, he was recruited by Tika to deliver drugs for her. In gist, Farid emphasised that he was but a courier who collected and delivered drugs on the instructions of Tika. In respect of the transaction which formed the subject matter of the charge against him, Farid gave an account of the events of 19 and 20 December 2013 which was consistent with the contents of the statements (see [22] above).

⁵³ ABD pp 518–520.

The second accused's defence

35 Like Farid, Hamzah offered no substantive defence. Consistent with the contents of his statements as set out at [30] above, he recounted the events on 19 and 20 December 2013. He admitted to making arrangements with Tika to purchase *satu bola* of heroin. When he collected the same from Farid, he agreed to purchase an additional *setengah bola* on credit from Tika. He took delivery of the drugs from Farid while in the Car, during the drive from Senja Road to the junction of Dairy Farm Crescent and Dairy Farm Road. He knew that “A1A1” and “A1A2” contained heroin. At this juncture, I should add that it was not disputed by the parties that, in the Malay language, “*satu bola*”, “*setengah bola*” and “*satu setengah bola*” mean “one ball”, “half a ball” and “one-and-a-half balls” respectively.

The third accused's defence

36 As for Tika, she denied any involvement in the transaction. Specifically, she denied having made any arrangements with Farid to deliver the drugs to Hamzah, or having made any arrangements to sell drugs to Hamzah. She claimed to have been “played out” by Saravanan, who was selling drugs, possibly to Farid. At the material time, she was in a relationship with Saravanan, and was staying in his house. Her explanation for the calls made by Farid to her mobile phone was that Saravanan would have had access to her mobile phone and might have used it to contact Farid. Also, it was her position that Farid and Hamzah had falsely implicated her.

The law

37 Section 5(1)(a) of the MDA provides:

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.

By s 2 of the MDA, “traffic” is defined to include “sell”, “send”, “transport” and “deliver”.

38 Farid and Tika were charged with trafficking by delivering to Hamzah 26.29g of diamorphine pursuant to a common intention, an offence under s 5(1)(a) of the MDA read with s 34 of the Penal Code. Section 34 of the Penal Code provides:

Each of several persons liable for an act done by all, in like manner as if done by him alone

34. When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

39 It is instructive to refer to the Court of Appeal’s decision in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Ridzuan*”). That was a case which also involved two persons charged jointly for trafficking in diamorphine in furtherance of a common intention, an offence under s 5(1)(a) read with s 5(2) of the MDA as well as s 34 of the Penal Code. The Court of Appeal explained how s 5(1)(a) of the MDA interacts with s 34 of the Penal Code.

(a) The purpose of s 34 is to impose constructive liability on a secondary offender in relation to an offence arising from a criminal act committed by the actual doer in furtherance of the common intention

shared by both of them (at [27]). The actual doer in that case was convicted of trafficking in a controlled drug pursuant to s 5(1)(a) read with s 5(2) of the MDA (at [28]).

(b) Where the elements of s 34 are satisfied, constructive liability for the criminal act which constitutes an offence is imputed to the secondary offender. There is no need for the elements of that offence to be made out additionally against the secondary offender (at [29]). Hence, in that case, there was strictly speaking no need for the elements of s 5(1)(a) read with s 5(2) to be made out against the secondary offender.

(c) To impute liability to a secondary offender under s 34, three elements must be shown: the criminal act, the common intention and participation (at [34]).

(d) The criminal act encompasses the aggregate of diverse acts done by the actual doer and secondary offender which collectively give rise to the offence that they have been charged with (at [35]). In that case, the criminal act encompassed the secondary offender's arrangements to take delivery of the bundles of drugs and the actual doer's collection of the drugs.

(e) The common intention can form before or during the commission of an offence (at [41]). The existence of the common intention must frequently be inferred from the offenders' conduct and all other relevant circumstances (at [42]). The common intention must include the intention to commit the very criminal act done by the actual doer; only then will the criminal act done by the actual doer be considered to have been done in furtherance of the common intention of

the actual doer and the secondary offender (at [43]). In that case, the common intention of both the actual doer and secondary offender was to collect any number of bundles of heroin. This thus encompassed the very criminal act for which the actual doer was charged – possession of seven bundles of heroin for the purpose of trafficking (at [56]). In this regard, the Court also found that the secondary offender knew that the drugs being collected were heroin (at [52]).

(f) The element of participation requires that the secondary offender participates in any of the diverse acts which altogether forms the unity of criminal behaviour resulting in the offence for which they are charged (at [36]). In that case, the element of participation was made out based on the secondary offender's arranging for the collection of the bundles and relaying instructions to the actual doer to collect the bundles.

40 Here, Farid is the actual doer and Tika the secondary offender. Applying the propositions above, the Prosecution bore the burden of proving the following.

(a) First, that Farid committed an offence under s 5(1)(a) of the MDA. To make out this offence against Farid the Prosecution must prove the *actus reus* and *mens rea*: (a) trafficking, without authorisation, in a controlled drug, and (b) knowledge of the nature of the controlled drug. Knowledge of a controlled drug may either be proved or presumed by invoking the presumptions in s 18 of the MDA (which I will refer to below).

(b) Next, to impute liability to Tika under s 34 of the Penal Code for the offence which arose from the criminal act committed by Farid, the Prosecution had to show three things.

(c) First, that there was a criminal act committed by Farid and Tika. The “criminal act” here refers to the aggregate of diverse acts committed by Farid and Tika which collectively give rise to the offence they have been charged with. It would encompass the arrangements Farid and Tika made for Farid to collect the controlled drug and deliver it to Hamzah, and his actual act of delivery.

(d) Second, that there was a common intention between Farid and Tika to commit the very criminal act done by Farid, namely trafficking in a controlled drug by delivering it to Hamzah, and that the criminal act committed by Farid was in furtherance of the common intention shared by him and Tika.

(e) Third, that Tika participated in any of the diverse acts which constituted the act of trafficking for which she and Farid were charged. The Prosecution’s case, as particularised in the charge against her, is that she participated in the arrangements for the delivery. This was by (i) calling Farid to ask him to collect and deliver controlled drugs, (ii) receiving calls from him in which he confirmed he had received drugs, and in which she instructed him on packing the drugs, and (iii) calling him to tell him to meet Hamzah and pass the latter the controlled drugs.

41 Hamzah was charged with having in his possession, for the purpose of trafficking, 26.29g of diamorphine. This is an offence under s 5(1)(a) of the MDA when read with s 5(2). The elements for a charge of trafficking under s 5(1)(a) read with s 5(2) of the MDA are: (a) possession of a controlled drug, which may be proved or presumed pursuant to s 18(1) or s 18(4) of the MDA; (b) knowledge of the nature of the drug, which may be proved or presumed

pursuant to s 18(2) of the MDA; and (c) proof that possession of the drug was for the purpose of trafficking which was not authorised (*Ridzuan* at [59]).

42 In relation to possession and knowledge generally, there are rebuttable presumptions in s 18 of the MDA:

Presumption of possession and knowledge of controlled drugs

18.—(1) Any person who is proved to have had in his possession or custody or under his control —

(a) anything containing a controlled drug;

...

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

(3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.

(4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

Decision on conviction

43 I will first explain my decision to convict Farid and Tika before turning to my decision to convict Hamzah. In relation to Farid and Tika, there is a considerable overlap in evidence. It is convenient to start by considering the criminal act done by Farid and Tika and the common intention between them to do that act. I will then consider whether the elements of s 5(1)(a) of the MDA are made out against Farid, before considering whether liability could attach to Tika by s 34 of the Penal Code based on the three elements mentioned above (at [40(b)] to [40(e)] in light of her defence.

Farid

44 The criminal act by Farid and Tika encompassed the arrangements Farid made with Tika to deliver the heroin to Hamzah. During the trial, Farid testified that at the material time, he was using his mobile phone “MF-HP”, and that he had saved Tika’s numbers as “Jackie” and “Jackie 2.0” in his contact list in his mobile phone.⁵⁴ Although he would refer to Tika as “Nana” or “Kakak”, he had other friends called “Nana” and “Kakak”. Thus, he did not save Tika’s numbers under those names as he would be confused. He had no other friend named “Jackie”. Using “MF-HP”, Farid made the following arrangements with Tika:

- (a) On 19 December 2013, while in Singapore, he received a call from Tika during which Tika asked him to collect and deliver the drugs. He testified, specifically, that he received a telephone call at 11pm on 19 December 2013 to “do a job for the next day”.⁵⁵ The job was to “pick up and send *barang*”⁵⁶ and, in his understanding, the word “*barang*” was used here to refer to drugs.⁵⁷ When shown the record of his calls on his mobile phone “MF-HP” which had been extracted by the Forensic Response Team (“FORT”), Farid pointed to six calls he received from a number saved in his phone under the name “Jackie” as being calls from Tika telling him to do that job.⁵⁸ The timing of these calls, as listed in the FORT records, were 8.38pm, 8.43pm, 9.01pm, 9.32 pm, 10.02pm and 10.12 pm.⁵⁹ I noted that this was inconsistent with his recollection

⁵⁴ Transcript (9 February 2017) at p 59, lines 28–29.

⁵⁵ Transcript (9 February 2017) p 48, line 19.

⁵⁶ Transcript (9 February 2017) p 48, line 22.

⁵⁷ Transcript (10 February 2017) p 50 lines 2–5.

⁵⁸ Transcript (10 February 2017) p 49, lines 16–22.

⁵⁹ P86 at ABD p 105.

of having received a call at 11pm. However, I was of the view that this is not material. Minor differences in timing should not be held against any witness, as human fallibility in retention and recollection is understandable. In any case, Farid confirmed at trial that one of those calls from Tika on the evening of 19 December 2013 was the one telling him to do the “job”.

(b) On 20 December 2013, after collecting the drugs from an Indian Malaysian at 6am, Farid called Tika to tell her he had collected the drugs.⁶⁰ The FORT report corroborates this, as it lists three calls made to “Jackie” at 6am and one call made at 6.06am⁶¹

(c) Farid called Tika again and she gave him instructions on how to pack the drugs.⁶² She called him back to give him with packing instructions. Farid identified, from the FORT records, the calls from “Jackie” at 6.39am and 6.43am as the calls in which she had given him these instructions.⁶³

(d) Farid later received a call from Tika who informed him to meet Hamzah to pass him the drugs. He testified that after giving him instructions to pack the drugs, Tika called him again on 20 December 2013 to tell him to meet Hamzah to pass him the two packets, A1A1 and A1A2.⁶⁴ Based on the entries in the FORT records that Farid identified,

⁶⁰ Transcript (10 February 2017) at p 50, lines 27–28.

⁶¹ P86 at ABD p 112.

⁶² Transcript (10 February 2017) at p 51, line 31 to p 52, line 1.

⁶³ Transcript (10 February 2017) at p 51, lines 26–31; ABD p 106.

⁶⁴ Transcript (10 February 2017) at p 53, lines 5–11.

this call would have been one of four calls from “Jackie” to him between 9.27am to 12.56am.⁶⁵

45 Apart from being supported by the entries in the FORT report, Farid’s testimony was consistent with the contents of his statements set out at [22] above, and remained unshaken under cross-examination by counsel for Tika. Further, Hamzah’s testimony (which I discuss below) corroborated Farid’s account regarding the transaction. I accepted Farid’s cogent evidence of the arrangements made between Farid and Tika. In contrast, I found Tika’s denial of any involvement to be vague, unsatisfactory and unbelievable. My detailed reasons for rejecting Tika’s defence are explained from [53] below.

Whether Farid delivered the drugs

46 It was clear that subsequently, Farid had delivered the drugs to Hamzah. On 20 December 2013, he called Hamzah at 1.53pm. This was supported by an entry in the FORT report of a call made to a number saved as “Unknown” which Farid testified to be Hamzah’s number (and which was the number of the SIM card used in Hamzah’s mobile phone “H-HP2”).⁶⁶ Shortly after that, Hamzah came to the carpark and boarded the Car. When Hamzah got into the Car, Farid, “as instructed by Tika”, passed him the bag containing the two bundles.⁶⁷ Hamzah looked at the two packets within the bag, and felt them in his hands and thereafter passed him \$4,510.⁶⁸ From these admissions, it was evident that Farid delivered the drugs to Hamzah, and further, that this was pursuant to the common intention he shared with Tika. Again, this was entirely consistent with

⁶⁵ Transcript (10 February 2017) at p 53, line 21–28.

⁶⁶ P86 at ABD p 106.

⁶⁷ Transcript (10 February 2017) at p 54, line 23 to p 55, line 5.

⁶⁸ Transcript (10 February 2017) at p 55, lines 11-17; p 56 lines 12-18.

the account of the transaction he had given in his statements (see [22(h)] and [22(i)] above).

Whether Farid knew the nature of the drugs

47 In my view, from the contents of his statements and the course of dealings, Farid knew that the drugs were heroin. I based this on the following evidence.

48 First, Farid testified that at 6am on 20 December 2013, he collected a plastic bag and a sling bag from an Indian Malaysian man. When he collected the plastic bag and sling bag, he knew he was “collecting drugs”.⁶⁹ I note however that as to the nature of the drugs, he said on the stand that, although he knew he was collecting “*panas*” and “Ice”, he only suspected that the “*panas*” was heroin.⁷⁰ He repeated this assertion a few times in the course of cross-examination.⁷¹ Similarly, in P99, Farid said that he thought “*panas*” was heroin although he added that he was not sure.⁷² However, in P100, he used ‘*panas*’ synonymously with ‘heroin’. He said that after collecting the drugs, and calling Nana, “I then packed the *heroin* and the one packet of Ice as I stated yesterday in my statement. I put the ‘*Panas*’ and Ice that I had separately nicely into my sling bag...”⁷³ It was thus apparent that Farid knew that he was collecting heroin.

⁶⁹ Transcript (10 February 2017) p 50, lines 6 – 15.

⁷⁰ Transcript (10 February 2017) at p 51, line 14.

⁷¹ Transcript (10 February 2017) at p 59, line 5; p 69, line 12.

⁷² P99 (Bundle of Statements, Tab 7) at para 25.

⁷³ P100 at para 49.

49 Second, Farid’s knowledge that the drugs were heroin was corroborated by one of Hamzah’s statements. Hamzah stated in P92 that Farid called him on 20 December 2013 and said that “he had the heroin with him”.⁷⁴

50 In any event, there is a presumption, under s 18(2) of the MDA, that a person who is proved or presumed to possess a controlled drug knows the nature that controlled drug. It was not in dispute that Farid was in possession of heroin and to rebut the presumption in s 18(2) he had to show, on a balance of probabilities, that he had no knowledge of the nature of the drug (*Nagaenthran A/L K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [24]). He did not lead any evidence to rebut the presumption.

51 As a matter of fact, to reiterate, Farid did not dispute the Prosecution’s case against him. He only maintained that he was a courier, and therefore that the court had a discretion not to impose the death penalty on him. However, it was important to bear in mind that the findings against Farid would be relevant to Tika’s case. In light of the foregoing, I found that:

(a) The Prosecution had proved Farid’s and Tika’s criminal act which involved the arrangements with Tika and Farid’s delivery to Hamzah. The Prosecution had also proved that Farid’s delivery to Hamzah was in furtherance of the common intention with Tika to traffic in a controlled drug.

(b) The Prosecution had also made out the elements of s 5(1)(a) MDA against Farid. The Prosecution had proved that (a) Farid trafficked in a controlled drug, namely diamorphine; and that (b) Farid knew the nature of the drug.

⁷⁴ P92 at para 14.

Accordingly, as the elements of the charge against Farid had been proved beyond a reasonable doubt, I convicted him of the charge.

Tika

52 As mentioned, what had to be proved against Tika was the criminal act done by Farid and her, the common intention between Farid and her to traffic in a controlled drug by delivering it to Hamzah, and that she participated in any of the diverse acts which constituted the offence of trafficking for which she and Farid were charged. In convicting Farid, I have already stated that I found the criminal act of the parties to be the arrangements made for Farid to deliver the drugs to Hamzah, and that the common intention between Farid and Tika was for Farid to carry out the delivery. From these findings, it should be clear that it was also my view that Tika participated in the diverse acts, by making the arrangements for Farid to collect and deliver the drugs to Hamzah. I will now discuss in detail why I rejected Tika's defence.

Whether Tika was involved in the transaction

53 Indeed, this was the most contentious aspect of the trial because Tika denied playing any part in the transaction, choosing instead to pin the blame on Saravanan. It was not in dispute that she and Saravanan were in an intimate relationship at the time, and that on 19 and 20 December 2013, she and Saravanan were in Johor Bahru together. It was also not in dispute that after Saravanan's arrest at the immigration checkpoint on 8 September 2014, he was subsequently charged and convicted of abetting another person (a male Malaysian) to import diamorphine into Singapore, an offence under s 7 read with s 13(aa) of the MDA (see *K Saravanan Kuppusamy v Public Prosecutor* [2016] 5 SLR 88). In essence, Tika's case was that Saravanan was the mastermind who was involved in the transaction, and that she had no knowledge

of Saravanan’s involvement with drugs. However, I found that all the specific claims she made to support this defence were unsustainable.

54 First, Tika claimed that she had not known that Saravanan was involved in drug trafficking until they were arrested at the immigration checkpoint, whereupon Saravanan said that the arrest was because of Farid and that he would “take responsibility”.⁷⁵ Tika claimed that Saravanan gave her this assurance twice – the second time was when they were about to be brought to prison. Tika admitted that she had never mentioned in her statements that Saravanan said he would be responsible.⁷⁶ In my view, this allegation was clearly an afterthought.

55 Second, although Tika did not deny having used the numbers “Jackie” and “Jackie 2.0” to contact Farid, she claimed that these were also the numbers used by Saravanan to contact Farid. To explain further, Tika said that she had a mobile phone which allowed for dual SIM cards to be stored and used, and that the SIM cards for the numbers “Jackie” and “Jackie 2.0” were stored and used in that mobile phone. This mobile phone was not seized by the CNB. As she was often together with Saravanan, he would use the mobile phone whenever he wanted. This account was unbelievable, being at odds both with the FORT records, and with the testimonies of Farid and Saravanan as follows:

- (a) Farid testified that Saravanan had never used the number “Jackie”. Although he had received a call from Saravanan at around 1am on 20 December 2013, upon reviewing the FORT records, Farid said

⁷⁵ Transcript (16 February 2017) at p 36, lines 13–21.

⁷⁶ Transcript (16 February 2017) at p 40, lines 28–31.

that this was from the number saved as “Mach”, and not from the number saved as “Jackie”.⁷⁷

(b) The text messages sent between Farid and “Jackie” and “Jackie 2.0” on previous occasions also support the inference that “Jackie” was Tika and not Saravanan, and that it was Tika who used the number “Jackie”. For example, in a message sent from “Jackie 2.0” to Farid on 18 December, “Jackie 2.0” said: “ok, *kakak* waiting for *maca* to come”.⁷⁸ As mentioned, “*kakak*” was a term Farid used to refer to Tika, whereas “*Maca*” was what he used to refer to Saravanan. Furthermore, “*kakak*” is a Malay word that means “elder sister” and can also be used as a form of address for an elder woman.⁷⁹ There were other text messages where Farid and “Jackie” both refer to the latter as “*kak*”, which is a short form of “*kakak*”. In contrast, there was no text message to suggest any use by Saravanan of these numbers. Taken together, the observations suggest that Saravanan did not use the number “Jackie”.

(c) Furthermore, Tika’s story was premised on there being a practice between her and Saravanan to share the use of a mobile phone. However, Saravanan testified that he had never shared a mobile phone with Tika.⁸⁰ Saravanan also testified that he did not recognise the numbers saved as “Jackie” or “Jackie 2.0”.⁸¹ Thus, it was unlikely that he had used the numbers to contact Farid.

⁷⁷ Transcript (10 February 2017) at p 48, lines 6—16, p 58, lines 16—19.

⁷⁸ ABD at p 394G.

⁷⁹ ABD at p 394L (Translator’s Note).

⁸⁰ Transcript (21 February 2017) at p 37, lines 23–25.

⁸¹ Transcript (21 February 2017) at p 34, line 29.

(d) In fact, Tika never mentioned Saravanan’s supposed use of her mobile phone in any of her statements to the CNB and I accepted the Prosecution’s submission that I should draw an adverse inference against her for having failed to do so.⁸²

56 Third, as Tika was with Saravanan throughout 19 December 2013, Tika testified that Saravanan had not spoken to Farid on 19 December 2013, but that they might have spoken on 20 December 2013.⁸³ However, there were 15 calls from “Jackie” to Farid,⁸⁴ and 22 calls from Farid to “Jackie” on 19 December 2013.⁸⁵ Tika claimed that when they communicated, she and Farid would engage in friendly conversation.⁸⁶ It was highly unlikely that Farid and Tika would call each other so many times in a day for casual friendly conversations. The sheer number of calls between the parties supported Farid’s account that there were arrangements made with respect to the drug transaction.

57 Fourth, Tika claimed that it was possible that Saravanan had arranged for a female person whose voice was similar to Tika to take possession of her phone and answer Farid’s call on her behalf on 19 December 2013.⁸⁷ I rejected this argument for the following reasons.

(a) For one, Tika admitted she was with Saravanan on 19 December 2013,⁸⁸ so it was difficult to imagine how he could have found such a

⁸² PP’s Closing Submissions at para 128.

⁸³ Transcript (15 February 2017) at p 54, lines 12—15 and lines 28—30.

⁸⁴ ABD pp 104—105.

⁸⁵ ABD pp 110—111.

⁸⁶ D3’s Closing Submissions at paras 135–137.

⁸⁷ D3’s Closing Submissions at para 132.

⁸⁸ D3’s Closing submissions at para 126.

person to impersonate her without her knowledge. Saravanan himself disavowed the suggestion that he had arranged for another woman to call Farid.⁸⁹

(b) Further, Farid was certain that he recognised Tika’s voice when he called her on 19 and 20 December 2013. Since he had “worked with her” on previous occasions, he could recognise her voice. Also, her accent was different⁹⁰ (presumably because she was Indonesian rather than Malaysian). There was no reason to think that Farid had mistaken another woman’s voice for Tika’s.

58 At this juncture, I turn to Tika’s allegation that Farid and Hamzah had colluded to falsely implicate her. According to Farid, after their arrests, there were four instances when Hamzah had asked to Farid to take full responsibility for the case.⁹¹ The first instance was when Hamzah made a gesture to Farid during the photography of the exhibits telling him to take responsibility; the second was when, also during the photography of exhibits, he whispered words to Farid to the same effect; the third was when he asked another prisoner to pass such a message to Farid when they were charged in court; and the fourth was during a conversation in a prison van when they were on the way to attend a court hearing. The contents of the communications disclosed by Farid show only that Hamzah had asked Farid to exculpate Hamzah. In none of these instances did either of them mention Tika, much less discuss pushing the blame to her.

⁸⁹ Transcript (22 February 2017) at p 50, lines 22–27.

⁹⁰ Transcript (9 February 2017) at p 64, lines 5–10.

⁹¹ PP’s Submissions at paras 139–141

59 Indeed, in their statements, Farid and Hamzah had separately named “Kakak” or “Nana” or “Ika” as the person they dealt with, and then separately identified Tika, from photo boards, as the person they dealt with. Farid also pointed out that Hamzah referred to Tika as “Ika”. I should add that it was Tika’s evidence that she enjoyed a close relationship with Farid, who had even brought his mother and family to meet Tika in Johor Bahru for a shopping trip.⁹² There was really no reason for Farid to frame Tika, and certainly no merit in the allegation of collusion by Farid and Hamzah to do so.

60 At the end of the day, Tika’s defence was contradicted not only by Farid, but also by Hamzah. To reiterate, Farid’s statements and testimony set out Tika’s role as the person instructing him on the delivery of the drugs to Hamzah (see [44] above). There was no reason to doubt his identification of Tika. As for Hamzah, his testimony was clear, and was consistent with his statements which set out Tika’s role as his contact for the supply of the drugs. He identified Tika in court as the person known as “Ika” (whom he had referred to in his statements)⁹³ and proceeded to recount how he had, on 19 December 2013, ordered heroin from her over the mobile phone, this being the heroin he collected from Farid on 20 December 2013 when he was arrested.⁹⁴

61 Further, Saravanan’s evidence also undermined Tika’s defence. Saravanan claimed that he did not know that Tika had anything to do with drugs. This indicated that Saravanan was not out to incriminate her. Even then,

⁹² Transcript (15 February 2017) at p 25, lines 29–30 and p 26, lines 1–7.

⁹³ Transcript (14 February 2017) at p 4, line 27 to p 5, line 2.

⁹⁴ Transcript (14 February 2017) at p 5, lines 8–12.

⁹⁵ Transcript (21 February 2017) at p 37, lines 16–25.

⁹⁶ Transcript (21 February 2017) at p 34, lines 28–29 and p 35 lines 2–3.

Saravanan firmly denied sharing a mobile phone with Tika,⁹⁵ and said he did not recognise the number saved as “Jackie.”⁹⁶ I accepted his evidence on these aspects.

62 In light of the above, I found that it had been clearly established that Tika was the person communicating with Farid over the mobile phone and giving him instructions both to pack the drugs and to deliver them. The totality of the evidence, being Farid’s, Hamzah’s and Saravanan’s testimonies, the objective evidence in the form of Farid’s phone records, and the implausibility of Tika’s account of events (especially her attempt to pin blame on Saravanan), led me to conclude that she had participated in the criminal act which gave rise to the offence for which she and Farid were charged. I found that the charge against her had been proved beyond reasonable doubt.

Extraterritoriality

63 Tika also asserted in the last paragraph of her closing submissions, without citing any legal authority, that s 34 of the Penal Code did not apply to her because the alleged acts specified in the charge against her took place while she was in Malaysia.⁹⁷ Tika was in Malaysia from 14 December 2013 to 21 January 2014 and was staying with Saravanan in Johor Bahru.⁹⁸ She was thus not in Singapore when Farid delivered the drugs to Hamzah.

64 This appeared to be an attempt to invoke the presumption that a statute has no extraterritorial application in the absence of express words to the contrary (*Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489 at [66]–[68]). The presumption means that acts committed outside the territorial jurisdiction of

⁹⁷ D3’s Closing Submissions at para 190.

⁹⁸ D3’s Closing Submissions at para 163.

Singapore are not offences under Singapore law unless expressly stated otherwise.

65 In my view, that presumption could not be invoked here because Tika's acts were committed in Singapore. I reached this conclusion by analogy with the result in *Wong Yuh Lan v Public Prosecutor* [2012] 4 SLR 845. In that case on extradition, the question before the High Court was whether, pursuant to the rule of double criminality (which requires that the conduct forming the basis of the charge be punishable in both the extraditing state and the requesting state), an act of conspiracy would constitute an offence in Singapore. Choo Han Teck J held that an act of abetment that consisted in sending email correspondence which was received by a person in Singapore could be construed as having been committed within the territorial jurisdiction of Singapore (at [28]). Choo J further held that it would be artificial to regard an act of abetment as having been committed in Singapore only if the communications had taken place during a physical meeting in Singapore, as opposed to a phone call, email or letter from an abettor overseas to a person in Singapore. In criminal motions which arose from the case, the Court of Appeal observed that Choo J did not apply the statutory provision in question extra-territorially; he had found that the act had taken place in Singapore "because *the recipient of the communication was in Singapore*" [emphasis in original] (*Hia Soo Gan Benson v Public Prosecutor* [2013] 4 SLR 57 at [67]).

66 Here, it was undisputed that Farid was in Singapore on 19 and 20 December 2013 when he communicated with Tika over his mobile phone and received instructions from Tika relating to the delivery of the drugs. The communications between Tika and Farid listed in the charge against her were received by Farid in Singapore. Hence, Tika's participation in the criminal act took place within the territorial jurisdiction of Singapore.

Hamzah

67 In his closing submissions, Hamzah did not raise any substantive defence to the charge against him. In any event, I found that the three elements of the charge, as mentioned at [41], were made out.

Whether Hamzah was in possession of a controlled drug

68 Hamzah was in possession of the bundles containing diamorphine. At trial, Hamzah admitted that he made arrangements with Tika to purchase the drugs. Then, he took delivery of the drugs from Farid. He testified that he met with Boy on 20 December 2013 so that the latter could “pass [him] the one *bola*” that he had ordered.⁹⁹ It was not in dispute that “Boy” was Farid – Hamzah was asked to identify who “Boy” was and pointed to Farid in the courtroom.¹⁰⁰ Hamzah then recounted, as he did in his statements, how he had also accepted the remaining *setengah bola* on credit. He said: “Farid asked me to take it and I accept it but on credit”.¹⁰¹ It was implicit from this testimony that Hamzah took possession of the *satu bola* of heroin that he had ordered and the additional *setengah bola* that Farid had with him. This was consistent with what he had said in his statements (see [30(e)] above). It was evident that he had taken physical possession of the bundles from Farid. In fact, as Farid recounted, Hamzah even physically inspected the bundles by feeling them in his hands (see [22(h)] above).

69 Since Hamzah stepped out of the Car and left the bundles inside, where Farid remained waiting for Hamzah’s return, it might have been argued that, at

⁹⁹ Transcript (14 February 2017) at p 6, line 16.

¹⁰⁰ Transcript (14 February 2017) at p 5, lines 25–30.

¹⁰¹ Transcript (14 February 2017) at p 7, lines 5–6.

the time Hamzah was arrested, physical possession of the bundles was with Farid, not Hamzah. Even so, based on s 18(4) of the MDA, Hamzah would be presumed to have been in possession of the bundles containing diamorphine.

70 The Prosecution submitted that the presumption would have been triggered because Farid, “with the knowledge and consent” of Hamzah, had the two bundles in his possession; s 18(4) would therefore have operated to deem the bundles to be in the possession of Hamzah as well.¹⁰²

71 I accepted the Prosecution’s submission. Consent requires some measure of control by the person over the subject matter being deemed to be in his or her possession (*Ridzuan* at [63]). Dealings between the parties in relation to a drug would constitute evidence of consent (*Ridzuan* at [64]). Here, Hamzah had already paid Farid for the *satu bola* and obtained his agreement that he could take the remaining *setengah bola* on credit. He had dealt with Farid in relation to the bundles. Having paid for the bundles, he could take them with him at any time. This is reinforced by the fact that he inspected the bundles using his hands while Farid was driving them to Dairy Farm Road. He thus had control over them. Hence, even though Hamzah left the drugs in the car in Farid’s possession, this was with Hamzah’s “knowledge and consent”. Hamzah would have been deemed to be in possession of the drugs pursuant to s 18(4) of the MDA.

Whether Hamzah knew the drugs were heroin

72 Hamzah knew the nature of the controlled drug. This is nowhere clearer than from the following exchange in cross-examination:¹⁰³

¹⁰² PP’s Closing Submissions at para 96.

¹⁰³ Transcript (14 February 2017) at p 7, line 30 to p 8, line 4.

Q: ...When you decided to purchase a *bola* from Ika, did you know that you were purchasing heroin from Ika?

A: Yes I know.

Q: Right, But... this heroin that you received from Boy had not been tested yet by HSA, how did you know it was heroin?

A: All along I take from them, it's heroin.

73 Further, Hamzah admitted in P92 that he knew he was purchasing heroin on 20 December 2013 from Farid (*ie*, “Boy”):¹⁰⁴

When I left my house, I brought along with me the money for the heroin...I brought along with me the empty plastic packets so that I can pack the heroin that I was going to collect and sell it to my customers... The moment I went into the car ‘Boy’ told me that there is ‘Satu Setengah Bola’ of heroin and I then told him that I only had \$4,500 which was the money for ‘Satu Bola’ of heroin. ‘Boy’ then asked me to take the additional ‘Setengah Bola’ of heroin. I then told ‘Boy’ that I will take the ‘Setengah Bola’ of heroin on credit and ‘Boy’ said ok.

74 In any event, the presumption of knowledge under s 18(2) of the MDA would also have operated against him. Since Hamzah had been in possession of the bundles, he would have been presumed to know the nature of the drugs. Hamzah did not lead any evidence that would have allowed him to rebut the presumption. There could therefore be no doubt that Hamzah knew that the two bundles he had received from Farid on 20 December 2013 contained heroin.

Whether Hamzah’s possession of the drugs was for the purpose of selling them

75 Nor was it in doubt that Hamzah’s possession of the drugs was for the purpose of sale. As the extract from P92 (reproduced at [73]) made clear, Hamzah brought empty plastic packets to meet Farid so that he could repack the heroin and “sell it to [his] customers”. Consistent with his statements to the CNB, Hamzah admitted in cross-examination by the Prosecution that his

¹⁰⁴ P 92 at para 15.

purpose was to *sell* the drugs – this is an act of trafficking as defined in s 2 of the MDA.¹⁰⁵

Q: And...the heroin that you had taken from Farid, A1A1 and A1A2, you were going to use this weighing scale to first weigh these bundles.

A: Yes.

Q: And after that, you were going to repack the heroin into the empty plastic packets that you had brought along.

A: Yes.

Q: *And your plan after repacking the heroin is to sell these packets of heroin to your regular customers.*

A: Yes.

[emphasis added]

76 It is immaterial that Hamzah was arrested before having delivered the drugs to his customers. By s 5(2) of the MDA, a person commits the offence of trafficking once it is shown that he had the drugs in his possession for the purpose of trafficking (in this case, by sale), and there is no need to show the overt act of trafficking which he had intended to do (*Lee Yuan Kwang and another v Public Prosecutor* [1995] 1 SLR(R) 778 at [57]).

77 Therefore, I found that the Prosecution had proved beyond a reasonable doubt all three elements of the charge. As stated above at [58]–[62], the evidence given by Hamzah also supported the Prosecution’s case against Tika. In this regard, one of Tika’s contention was that there was an absence of any record of calls between Tika and Hamzah in the FORT report of Hamzah’s mobile phone “H-HP2”. Hamzah’s evidence was that he had used “H-HP2” to call and receive calls from Farid and Tika. Although his calls with Farid were recorded in the FORT report in relation to Farid’s mobile phone “MF-HP”, there

¹⁰⁵ Transcript (14 February 2017) at p 57, lines 1–10.

were no records of calls to and from Farid in the FORT report for “H-HP2”. In the Prosecution’s submission, the explanation for this was that the date and time of “H-HP2” had not been set to actual date and time.¹⁰⁶ On 20 December 2013, “H-HP2” had been set to the date of 21 January 2010, and accounted for the lack of records of calls for 19 and 20 December 2013 with Farid and Tika. I accepted this explanation, and found that the lack of call records did not detract from the cogency of Hamzah’s evidence against Tika.

Hamzah’s letter to court after the trial

78 I should add that after the trial, in a letter to the court dated 22 March 2017, Hamzah claimed that there were other “pointers” he wished to be put before the court. In his letter he claimed he had noted down these “pointers” from having read his statements to CNB as well as those of Farid. He alleged that he had given these “pointers” to his counsel, but they did not present them at trial. The letter made no mention of what these “pointers” were.

79 I thus asked for a hearing to be fixed on 15 May 2017 with counsel for all parties to address the matters raised in his letter. Yet, when asked what “pointers” he wished to raise, Hamzah was still unable to articulate these “pointers”, or any clear defence to the charge against him for that matter. In fact, he still admitted to the contents of his statements to the CNB, but seemed to take issue with Farid’s statements to the CNB. Even at that stage, Hamzah did not raise any relevant or material points to constitute a defence. I should also note that Mr Lee and Mr Sukdave Singh confirmed that they had presented his defence in accordance with his instructions.

¹⁰⁶ PP’s Closing Submissions at para 116

Decision on sentence

80 I now turn to my decision on sentence. The prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. But there is an alternative sentencing regime in s 33B of the MDA allowing the court the discretion to impose a mandatory term of imprisonment for life and 15 strokes of the cane.

81 The relevant provisions read:

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 ...

(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.

82 For a court to have the discretion to impose the alternative sentence, an offender must show that his acts fell within s 33B(2)(a)(i)–(iv) of the MDA and must also receive a certificate of substantive assistance from the PP. The decision to give or withhold such a certificate is at the sole discretion of the PP: s 18(4) of the MDA.

Farid

83 Having heard the parties’ submissions, I found on a balance of probabilities that Farid’s involvement in the offence was restricted to delivering the drugs to Hamzah. I accepted the submission of both the Prosecution and counsel for Farid that his packing of the drugs in a plastic bag pursuant to Tika’s instructions was incidental to the act of delivery.

84 The drugs in A1A1 and A1A2 had already been packed in that form when Farid collected them. He simply wrapped both these bundles in newspaper and put them in a plastic bag. I was conscious that the Court of Appeal had said, in *Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 (at [68]) that:

Acts necessary for transporting, sending or delivering the drugs cannot include packing, for instance, as packing is not a necessary element of moving an object from one point to another. Simply put, a courier is someone who receives the drugs and transmits them in exactly the same form in which they were received without any alteration or adulteration.

85 However, the kind of packing contemplated by the Court of Appeal was someone who packs by “ensuring that the right type and quantity of drugs go into the right packaging” *Public Prosecutor v Yogaras Poongavanam* [2015] SGHC 193 (“*Yogaras*”) at [28]; it is the kind of packing that facilitates further distribution or sale. Hence, segregating the drugs into smaller packets is not the

kind of “packing” that is incidental to delivery (see, eg, *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 at [63]–[64] and *Public Prosecutor v Zainudin bin Mohamed and another* [2017] 3 SLR 317 at [57] and [99]), whereas the wrapping or camouflaging of bundles containing drugs is (*Yogaras*).

86 In this case, wrapping the two bundles A1A1 and A1A2 in newspaper was purely for the purpose of identifying that these were the bundles to be delivered to Hamzah. It was an act incidental to delivery.

87 The PP issued Farid with a certificate of substantive assistance. Accordingly, I imposed the mandatory alternative sentence of life imprisonment and the minimum 15 strokes of the cane on him.

Hamzah

88 The Prosecution submitted that Hamzah was not a courier because he received the drugs with the intention to repack them into smaller packets and sell them to his customers.¹⁰⁷ Mr Lee, in written closing submissions, argued that Hamzah’s role was limited to that of a courier¹⁰⁸ but conceded in oral submissions that such a submission would, in light of all the evidence, be unsustainable.¹⁰⁹

89 It was evident that Hamzah’s purpose after taking delivery of the drugs was to sell the drugs. He had brought along smaller empty plastic packets for the purpose of repacking the drugs and then selling them subsequently. His role

¹⁰⁷ Transcript (15 June 2017) at p 7, lines 18–20.

¹⁰⁸ D2’s Closing Submissions at para 8.

¹⁰⁹ Transcript (15 June 2017) at p 10, line 11.

therefore went beyond that of a courier. Hence, although the PP issued a certificate of substantive assistance, the alternative sentencing regime was not available. Thus, I passed the mandatory sentence of death on Hamzah.

Tika

90 As for Tika, the Prosecution submitted that she was not a courier because she had directed the entire transaction and had gotten Farid to deliver drugs on her behalf to her customer Hamzah. She had instructed Farid on how to sort the drugs and to whom they were to be delivered.¹¹⁰ Counsel for Tika did not submit that her role was that of a courier.

91 It was clear that Tika could not in any way be described as a “courier”. She had coordinated the supply of the drugs to Hamzah to Farid through the Malaysian from whom Farid had collected the drugs at Woodlands. Moreover, the PP did not issue Tika with a certificate of substantive assistance.¹¹¹ Accordingly, I imposed the mandatory sentence of death on her.

Hoo Sheau Peng
Judicial Commissioner

¹¹⁰ Transcript (15 June 2017) at p 7, lines 20–25.

¹¹¹ Transcript (15 June 2017) at p 12, lines 17–23.

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