

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE**

[2021] SGHC 185

Criminal Case No 66 of 2017

Between

Public Prosecutor

And

S K Murugan Subrawmanian

FOUNDATIONS OF DECISION

[Criminal Procedure and Sentencing] — [Statements] — [Admissibility]
[Criminal Procedure and Sentencing] — [Statements] — [Voluntariness]
[Criminal Procedure and Sentencing] — [Voiur dire]
[Evidence] — [Witnesses] — [Expert evidence]

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Public Prosecutor
v
S K Murugan Subrawmanian

[2021] SGHC 185

General Division of the High Court — Criminal Case No 66 of 2017
Chan Seng Onn J
28–31 January, 4–5, 25–28 February, 3–5 March, 25–27 August, 1–4
September 2020, 16–19, 22–26 February, 19–23 April, 4–5 May, 5 July 2021

30 July 2021

Chan Seng Onn J:

1 These grounds of decision concern the voluntariness of seven statements sought to be admitted by the Prosecution that were the subject of a *voir dire* held within a retrial involving the accused, S K Murugan Subrawmanian (“Murugan”), a 50-year old Malaysian. Murugan claimed trial to a charge of trafficking in not less than 66.27g of diamorphine (the “Charge”) under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). In the first trial, the High Court found Murugan guilty and convicted him on the Charge (see *Public Prosecutor v S K Murugan Subrawmanian* [2018] SGHC 71 (the “First Trial”). He was sentenced to death. On appeal, the Court of Appeal remitted the matter back to the High Court for a retrial.

2 In the present *voir dire*, Murugan challenged the admissibility of seven long statements (collectively referred to as “the Statements”). Murugan’s case was that the Statements were not voluntarily made because he had been induced by Station Inspector Shafiq Basheer (“SI Shafiq”), who was the investigating officer of the case, to make the Statements so that SI Shafiq would bring one Mohamed Hisham bin Mohamed Hariffin (“Hisham”) to him (the “Inducement”).¹

Factual background

3 On 6 January 2015, Murugan and Hisham met at Greenwich Drive in Singapore. Hisham left that meeting carrying a blue plastic bag, which contained five bundles of a powdery substance, later found to have contained no less than 66.27g of diamorphine in total (the “Five Bundles”). Shortly after, Hisham was arrested by Central Narcotic Bureau (“CNB”) officers; however, he almost immediately displayed signs of discomfort and shortness of breath and passed away within the hour. Murugan was separately arrested later that day as well.²

4 At the time of his arrest, Murugan gave a contemporaneous statement at about 2.25pm (the “Contemporaneous Statement”). He later gave a cautioned statement on 7 January 2015 at about 5.11am (the “Cautioned Statement”). In the Contemporaneous Statement and the Cautioned Statement, Murugan denied committing the offence. In the Contemporaneous Statement, he said that he did not give any items to Hisham and merely collected \$13,000 from Hisham.³ In

¹ Defence’s written submissions dated 4 June 2021 (“DWS1”) at para 23; Transcript (27 February 2020) at p 112 (lines 8 to 15) and p 120 (line 27).

² Statement of Agreed Facts dated 21 January 2020 at paras 11 to 19.

³ Agreed Bundle at p 277.

the Cautioned Statement, he reiterated that he met Hisham only to collect money and not to give any items. Since Hisham’s plastic bag was torn, Hisham asked Murugan for a plastic bag. Murugan acceded to that request. Hisham gave him the money. However, upon seeing the items Hisham had with him, Murugan asked him to alight from the container truck and leave with the items. Murugan said he had nothing to do with the items and that the items did not belong to him.⁴

5 After Murugan had been arrested, SI Shafiq recorded the Statements from Murugan with the assistance of a certified Tamil interpreter, Mr V I Ramanathan (“Mr Ramanathan”), on the following occasions:⁵

- (a) 9 January 2015 at about 7.15pm at Cantonment Lock-up Interview Room 3 (marked as “P78I”);
- (b) 10 January 2015 at about 7.42pm at Cantonment Lock-up Interview Room 3 (marked as “P79I”);
- (c) 11 January 2015 at about 2.47pm at Cantonment Lock-up Interview Room 3 (marked as “P80I”);
- (d) 11 January 2015 at about 8.40pm at Cantonment Lock-up Interview Room 3 (marked as “P81I”);
- (e) 12 January 2015 at about 2.20pm at Cantonment Lock-up Interview Room 3 (marked as “P82I”);
- (f) 13 January 2015 at about 1.52pm at Cantonment Lock-up Interview Room 5 (marked as “P83I”); and

⁴ Agreed Bundle at p 73.

⁵ Agreed Bundle at pp 75 to 115.

(g) 14 January 2015 at about 7.00pm at Cantonment Lock-up Interview Room 5 (marked as “P84I”).

6 The Statements painted a radically different picture. Murugan admitted to the offence. He said that he was in financial difficulties and agreed to one Kumar’s request to bring “ice, ganja and porul” into Singapore.⁶ He gave a detailed account of the events that occurred at Greenwich Drive on 6 January 2015.⁷ In Johor, Kumar placed a black plastic bag with the Five Bundles on the floor board of the front passenger seat of Murugan’s cargo trailer and pushed it under the seat.⁸ Murugan then brought the Five Bundles into Singapore and delivered it to Hisham at Greenwich Drive.⁹ When Murugan met Hisham, Hisham entered Murugan’s cargo trailer and passed him several bundles of cash. Hisham then retrieved the Five Bundles from under the seat. Upon seeing that the black plastic bag was torn slightly, Murugan gave Hisham a blue plastic bag in which to place the Five Bundles. Hisham then left the cargo trailer.¹⁰

The parties’ cases

7 The Defence submitted that the Prosecution failed to prove beyond a reasonable doubt that there was no inducement operating on Murugan when he gave the Statements. SI Shafiq induced Murugan to give the Statements by promising to bring Hisham to him if Murugan would give the Statements first or admit to the offence.¹¹ It was not surprising that Murugan would think that

⁶ Agreed Bundle at pp 76 to 78.

⁷ Agreed Bundle at pp 80 to 86.

⁸ Agreed Bundle at p 81.

⁹ Agreed Bundle at p 79.

¹⁰ Agreed Bundle at pp 85 to 86.

¹¹ DWS1 at paras 23 to 25.

Hisham would come and confirm that Murugan met Hisham only to collect money.¹² Since Murugan denied committing the offence in the Contemporaneous Statement and the Cautioned Statement, there was no reason why Murugan should change his position and admit to a death penalty offence.¹³ While SI Shafiq and Mr Ramanathan denied the existence of the Inducement, their evidence was questionable.¹⁴ Since SI Shafiq and Mr Ramanathan did not keep any independent record of the questions and answers asked during the taking of the Statements, there was no objective corroborative evidence to support their evidence.¹⁵ Given the state of the evidence at that point, the Defence submitted that SI Shafiq would have been under “extreme pressure to record a positive statement” to cement the case against Murugan.¹⁶ Finally, Murugan had been consistent regarding his request to see Hisham. Murugan even told Dr Jaydip Sarkar (“Dr Sarkar”), one of the Prosecution’s expert witnesses, that he would like to see Hisham even though he did not have access to legal counsel at that point.¹⁷

8 In the alternative, the Defence submitted that the court should exercise its exclusionary discretion, as set out in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205, to exclude the Statements on the basis that the prejudicial effect of the Statements outweighed their probative value. This was in consideration of the lack of independent record of the questions and

¹² Defence’s reply submissions dated 14 June 2021 (“DWS2”) at para 16.

¹³ DWS1 at paras 9(a) and 108 to 109.

¹⁴ DWS1 at paras 27 and 110.

¹⁵ DWS1 at para 111.

¹⁶ DWS1 at paras 89 to 90.

¹⁷ DWS1 at paras 27(c) and 113; Agreed Bundle at p 305; DWS2 at paras 10 to 11.

answers during the recording of the Statements by Mr Ramanathan, as well as Murugan’s mild intellectual disability and impaired communication skills.¹⁸

9 The Prosecution submitted that the Statements were voluntarily given by Murugan and contained true confessions regarding Murugan’s role in respect of the offence.¹⁹ SI Shafiq and Mr Ramanathan were clear and consistent in their account of the recording of the Statements and there were no threat, inducement or promise offered. There was no reason to doubt their credibility and the court should accept their account over that of Murugan’s.²⁰ Murugan’s case rested solely upon his own “embellished and uncorroborated testimony” of what transpired during the statement-recording process. His evidence was either riddled with inconsistencies, plainly incredible or illogical. Ultimately, his account of any inducement was a fabrication and an afterthought.²¹

10 Even assuming that the Inducement existed, the Inducement was not such that it would be reasonable for Murugan to think that he would gain some advantage or avoid any evil of a temporal nature.²² According to Murugan, SI Shafiq had also informed him that Hisham had confessed that Murugan had given him drugs on three occasions. It was intrinsically illogical for Murugan to have believed then that Hisham would exonerate him. Instead, it must have been

¹⁸ DWS1 at paras to 117 to 126.

¹⁹ Prosecution’s written submissions dated 4 June 2021 (“PWS1”) at para 7.

²⁰ PWS1 at para 24.

²¹ PWS1 at para 25.

²² PWS1 at paras 53 to 58.

foremost in Murugan's mind that there was a high possibility of Hisham implicating him as the drug courier.²³

11 Finally, the Prosecution submitted that there was no reason that warranted the court's exercise of its exclusionary discretion.²⁴ The Statements contained true confessions which Murugan voluntarily gave. He did not suffer from any intellectual disability which affected his ability to give a voluntary statement that was coherent and reliable. The expert evidence relied upon by the Defence did not stand up to scrutiny. There was no question of any prejudicial effect outweighing the probative value of the Statements. The court should allow the Statements into evidence.²⁵

The law

12 I took guidance from the approach to disputes over admissibility of statements set out by the Court of Appeal in *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 ("*Sulaiman bin Jumari*") (at [54]) as follows:

(a) First, was the statement given voluntarily based on the requirements set out in s 258(3) of the CPC?

(i) If the statement was involuntary due to an inducement, threat or promise within the meaning of s 258(3) of the CPC, then it shall be excluded and that is the end of the admissibility inquiry.

(ii) If the statement was voluntary, the enquiry proceeds to the second step.

(b) Second, even if the statement was voluntary, would the prejudicial effect of the statement outweigh its probative value? This is a discretionary exercise and the court's foremost

²³ PWS1 at para 55.

²⁴ PWS1 at paras 59 to 61.

²⁵ PWS1 at para 61.

concern is in evaluating the reliability of the statement in the light of the specific circumstances in which it was recorded.

13 Section 258(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) states as follows:

(3) The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would *gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.*

[emphasis added]

14 The Prosecution bears the legal burden of proof to show beyond reasonable doubt that the statement was given voluntarily (see *Sulaiman bin Jumari* at [36]). The test of voluntariness is partly objective and partly subjective, as explained by the Court of Appeal in *Chia Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 (at [53]):

... The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise *operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge ...*

[emphasis added]

15 As stated in *Sulaiman bin Jumari* (at [39]–[40]), the first stage of the inquiry considers objectively whether any inducement, threat or promise was made. This entails a consideration of what might be gained or lost as well as the degree of assurance. This is necessarily a fact-intensive inquiry. If the alleged threat, inducement or promise is so vague or trivial in the circumstances, it is

unlikely to get past the objective standard at the first stage. The second stage, which is the subjective limb, considers the effect of the inducement, threat or promise on the mind of the accused person. The court will consider all the circumstances, including the personality and experience of the accused person, when it decides whether and how any inducement, threat or promise has affected the accused person in the statement-taking process.

Issues to be determined

16 The main issue that arose for my determination was whether the Statements were made voluntarily. In making this decision, the following subsidiary issues will be dealt with:

- (a) whether the Inducement was objectively made;
- (b) if it was, what was the effect of the Inducement on Murugan’s mind in the light of his intellectual and adaptive functioning; and
- (c) whether the court should exercise its discretion to exclude the Statements.

Whether the Inducement was objectively made

17 I turn first to whether the Inducement was objectively made. Murugan testified that the first time he asked SI Shafiq to bring Hisham before him was before the cautioned statement was given.²⁶ SI Shafiq replied to him in Malay, “Yes, I will bring him. You give the statement first.”²⁷ Murugan said that he asked for Hisham to be brought before him before making the first of the

²⁶ Transcript (27 February 2020) at pp 116 (lines 21 to 30) and 117 (lines 1 to 3).

²⁷ Transcript (27 February 2020) at p 117 (lines 4 to 30).

Statements.²⁸ SI Shafiq then said, “I would bring him. You give this statement and say as I instruct”.²⁹ During the recording of the statement, SI Shafiq told Murugan that Hisham had claimed that Murugan had passed Hisham the Five Bundles.³⁰ Murugan then told SI Shafiq to “[c]all [Hisham] up front and ask him. You ask him and then you would know who [the Five Bundles] belongs to. The truth would come out. Don’t say that I had handed it over to him. Call him here and ask him”.³¹ Murugan said that SI Shafiq “gave his word” and told him to admit to the Five Bundles before SI Shafiq would bring Hisham to him.³² Therefore, Murugan admitted it.³³

18 For the other six of the Statements, Murugan also requested that Hisham be brought to him.³⁴ Despite SI Shafiq having broken his promises to bring Hisham, Murugan said that he still believed him and continued to give the rest of the Statements because SI Shafiq constantly told him that he would bring Hisham after the Statements were given.³⁵ After the Statements had been given, SI Shafiq told him that he would bring Hisham once Murugan was brought to

²⁸ Transcript (27 February 2020) at pp 98 (lines 2 to 31), 118 (lines 22 to 26).

²⁹ Transcript (27 February 2020) at p 118 (lines 27 to 31).

³⁰ Transcript (28 February 2020) at p 37 (lines 15 to 26); Transcript (3 March 2020) at p 85 (lines 6 to 14); Transcript (1 September 2020) at pp 37 (lines 6 to 30), 38 (lines 1 to 4).

³¹ Transcript (28 February 2020) at p 37 (lines 15 to 26).

³² Transcript (27 February 2020) at p 119 (lines 4 to 10).

³³ Transcript (27 February 2020) at p 119 (lines 11 to 21).

³⁴ Transcript (27 February 2020) at pp 99 (lines 19 to 30), 100 (lines 1 to 8), 119 (lines 11 to 21).

³⁵ Transcript (27 February 2020) at pp 123 (lines 12 to 31).

cluster B2 of the prison.³⁶ Murugan only knew a year later that Hisham had passed away.³⁷

19 However, SI Shafiq and Mr Ramanathan testified that Murugan did not make any request for Hisham to be brought to him and there was no Inducement given.³⁸ They maintained that no threat, inducement or promise was made during the recording of the Statements.³⁹ SI Shafiq said that if Murugan had asked for Hisham to be produced, he would have recorded the request in the Statements.⁴⁰ He said that it did not matter to him whether Murugan gave a positive or negative statement and his role was simply to establish what had happened.⁴¹ Similarly, Mr Ramanathan testified that his role as a freelance interpreter was to act in Murugan's interest and ensure that all that Murugan had told him was recorded in the Statements.⁴²

20 After carefully considering the evidence before me, I was of the view that the Defence had raised a reasonable doubt in the Prosecution's case that no such Inducement was made. First, it was significant that Murugan's version of events was corroborated by his reporting to Dr Sarkar at Changi Medical Complex four months after the recording of the Statements. This was his earliest opportunity to speak to someone who could, in his view, help him. Murugan

³⁶ Transcript (27 February 2020) at p 100 (lines 21 to 27).

³⁷ Transcript (27 February 2020) at pp 121 (lines 21 to 31).

³⁸ Transcript (4 February 2020) at pp 103 (lines 26 to 30), 104 (lines 1 to 6); Transcript (21 April 2021) at pp 12 (lines 1 to 30), 13 (lines 23 to 31), 14 (lines 1 to 7).

³⁹ Transcript (4 February 2020) at pp 8 (lines 11 to 13), 11 (lines 2 to 4), 13 (lines 27 to 29), 17 (lines 9 to 11), 19 (lines 21 to 23), 22 (lines 1 to 3), 25 (lines 6 to 8); Transcript (5 February 2020) at pp 7 (lines 21 to 23), 9 to 11.

⁴⁰ Transcript (21 April 2021) at p 86 (lines 26 to 31).

⁴¹ Transcript (21 April 2021) at pp 89 (lines 23 to 31), 90 (lines 4 to 6).

⁴² Transcript (21 April 2021) at p 21 (lines 1 to 29).

said that since Hisham was not brought to cluster B2 of the prison as SI Shafiq said he would be, he asked for Dr Sarkar's help to bring Hisham to him.⁴³ He told Dr Sarkar that he had been charged with the Five Bundles which actually belonged to Hisham and that if Hisham were to be called and questioned in Murugan's presence, everyone would know who the Five Bundles belonged to.⁴⁴

21 This was confirmed by Dr Sarkar's report dated 27 April 2015 ("Dr Sarkar's Report") where he stated:⁴⁵

Mental State Examination:

...

He said he feels like crying all the time but denied offers of medications to help with mood and sleep problems. He denied any involvement in the drug trafficking charges and said that he would like to be brought face to face with [Hisham] who put drugs in my lorry and ask him "Please tell them that this belongs to you, not me".

[emphasis in original omitted]

As recorded in Dr Sarkar's medical notes dated 13 April 2015, Murugan reported that SI Shafiq told him that there was sufficient evidence against him. SI Shafiq reportedly said that Murugan was lying when being interrogated. Murugan denied all knowledge of the bundles. Murugan also stated that he wanted to meet Hisham and ask him who the Five Bundles belonged to. He said that Hisham had gotten him into trouble.⁴⁶ I noted that at the material time,

⁴³ Transcript (27 February 2020) at pp 100 (lines 22 to 31) and 101 (lines 1 to 20); DWS1 at para 26.

⁴⁴ Transcript (27 February 2020) at pp 101 (lines 29 to 31) and 102 (lines 1 to 23).

⁴⁵ Agreed Bundle at p 305.

⁴⁶ Jaydip Sarkar handwritten notes on S K Murugan dated 13 April 2015 ("1T-P31A") at pp 6 to 7.

Murugan did not have legal advice and was only assigned a lawyer under the Legal Assistance Scheme for Capital Offences on or around 21 September 2015.⁴⁷

22 As can be seen from Murugan’s interview with Dr Sarkar, Murugan was still preoccupied with the idea that Hisham could be the key to exonerating him even after four months and without legal advice. While I accepted the Prosecution’s point that Murugan did not explicitly tell Dr Sarkar that he had requested that SI Shafiq bring Hisham to him or that SI Shafiq had reneged upon his promise to bring Hisham to him,⁴⁸ this was still significant objective corroboration that Murugan was truly preoccupied with the idea that Hisham would exonerate him. Between the contrasting versions in which Murugan repeatedly asked for Hisham to be brought to him or that he never asked for Hisham at all, Dr Sarkar’s records indicated that it was more likely that the former was true.

23 I noted that Murugan was consistent about his belief that Hisham would exonerate him. In Murugan’s interviews with the Defence’s medical experts three years later, he repeated that he had requested that Hisham be brought to him so that the truth could be revealed. In Dr Jacob Rajesh’s (“Dr Rajesh”) report dated 27 January 2018 (“Dr Rajesh’s First Report”), it was noted that:⁴⁹

... He asked the officers why they handcuffed him and he was told that he had given some stuff (marundu/porul) to somebody. He then told the CNB officers that he was innocent and that it was [Hisham] who had given him the stuff and he had only collected money. [Murugan] asked the CNB officers to bring the Malay guy to the lock up and check with him the truth

⁴⁷ Transcript (23 February 2021) at p 1 (lines 22 to 32).

⁴⁸ PWS1 at paras 34 to 35.

⁴⁹ 1TD1 at p 7.

so that he could be proved innocent. Subsequently, Murugan came to know that Hisham had passed away on the same day of the alleged offence after he was arrested and was very upset that Hisham would not be able to testify anymore and prove his innocence.

[emphasis in original omitted]

24 In Dr Rajesh’s report dated 9 December 2018 (“Dr Rajesh’s Second Report”), it was noted that:⁵⁰

Mr Murugan also reported that he had told the investigating officer taking his statements to bring [Hisham] to him and check with him about the truth of what happened so that [Murugan’s] innocence could be proved. Mr Murugan reported that *the IO had told him to admit first and he would bring [Hisham] after that*. Mr Murugan was not aware at that time that [Hisham] had died in Changi General Hospital the same day of his arrest (6th January 2015) and only came to know of his death when his defence counsel from Trident had told him about his death.

[emphasis in original]

While I considered the possibility that the self-reporting to Dr Rajesh might have been strategic, given that it was made three years after Murugan’s arrest and following legal advice, I was of the view that, in the light of his earlier statement to Dr Sarkar, the self-reporting instead supported the consistency of Murugan’s case that he did make repeated requests to SI Shafiq to have Hisham brought to him.

25 I rejected the Prosecution’s submission that Murugan’s evidence could not be believed because his evidence was contradictory.⁵¹ The Prosecution argued that Murugan had said in the First Trial that the request for Hisham to be brought forward was only made once, while in the present *voir dire* Murugan

⁵⁰ 1TD1 at pp 49 to 50.

⁵¹ PWS1 at paras 42 to 52.

embellished his earlier account by stating that the request was made repeatedly.⁵² However, the Defence pointed out that Murugan had not been specifically asked whether he had repeatedly made the request to see Hisham.⁵³ It had also not been specifically put to SI Shafiq that Murugan's request for Hisham to be brought to him was only made once.⁵⁴ Further, even assuming that there was an inconsistency between Murugan's evidence in the First Trial and in the present *voir dire* regarding the number of times he made the request to see Hisham,⁵⁵ this did not mean that Murugan had fabricated the request for Hisham to be brought to him *ex post facto*.

26 The Prosecution also argued that Murugan's present account of when SI Shafiq told him about Hisham's alleged confession in Malay differed from his account in the First Trial.⁵⁶ While Murugan said in the First Trial that SI Shafiq had told him before the recording of the first of the Statements, he said in the present trial that this was during the middle of the recording of the first and the last of the Statements.⁵⁷ When cross-examined on this point, Murugan candidly stated that "I had mentioned this many times. However, I cannot remember when I had mentioned this".⁵⁸ I accepted Murugan's explanation. Given the length of time between the taking of the Statements and the trial, Murugan's inconsistency with regard to the exact timing at which SI Shafiq had told him about Hisham's alleged confession did not undermine his credibility. As with

⁵² PWS1 at para 45.

⁵³ DWS2 at para 13(a).

⁵⁴ DWS2 at para 13(a).

⁵⁵ PWS1 at paras 45 and 48.

⁵⁶ PWS1 at para 47.

⁵⁷ Agreed Bundle at p 639; Transcript (3 March 2020) at p 85 (lines 6 to 14); Transcript (1 September 2020) at pp 37 (lines 6 to 30), 38 (lines 1 to 4).

⁵⁸ Transcript (3 March 2020) at pp 85 (lines 15 to 31), 86 (Lines 1 to 6).

many cases, the lapse of time may cause memories to blur and fade which may result in discrepancies in evidence. However, the courts must not lose sight of the wood for the trees but focus on the essentials of the case (see *Public Prosecutor v Gan Lim Soon* [1993] 2 SLR(R) 67 at [7]).

27 Finally, the Prosecution also submitted that Murugan was inconsistent with regard to the language used during the statement-taking process.⁵⁹ In the First Trial, Murugan did not dispute the fact that SI Shafiq’s questions were asked in English and were then interpreted in Tamil by Mr Ramanathan for Murugan, and Murugan’s replies were in Tamil and were then interpreted in English for SI Shafiq.⁶⁰ However, in the present trial, Murugan said that he spoke in Malay directly to SI Shafiq during most of the recording of the Statements. It was only when SI Shafiq failed to understand his response in Malay that SI Shafiq would ask Mr Ramanathan to clarify with Murugan in Tamil.⁶¹ In contrast, SI Shafiq said that there was no conversation in Malay.⁶² The Defence submitted that SI Shafiq’s evidence in the First Trial was that he “can’t recall” whether he spoke to Murugan in Malay before or after the recording of the Cautioned Statement, and that his evidence was therefore dubious.⁶³ Mr Ramanathan testified that throughout the recording of the Statements, there was no conversation between Murugan and SI Shafiq in Malay. He claimed that if SI Shafiq and Murugan were conversing in Malay, he would not have been required and he would have left the room.⁶⁴ The Defence

⁵⁹ PWS1 at para 50.

⁶⁰ PWS1 at para 50.

⁶¹ Transcript (3 March 2020) at pp 4 (lines 4 to 31), 5 (lines 8 to 22), 8 (lines 14 to 31), 9 (lines 1 to 27), 10 (lines 25 to 30), 11 (lines 1 to 17), 12 (lines 1 to 24).

⁶² Transcript (4 February 2020) at p 70 (lines 18 to 29).

⁶³ DWS1 at para 110.

⁶⁴ Transcript (21 April 2021) at pp 2 (lines 26 to 32), 3 (lines 1 to 21).

submitted that Mr Ramanathan did not appear to have an independent recollection of the questions and answers given in the recording of the Disputed Statements because his evidence was simply guided by the evidence given in the previous trial.⁶⁵

28 I noted that this discrepancy as to if and the extent to which Malay was used in the statement-recording process was not directly relevant to whether the Inducement was objectively made. At most, there was an implication on Murugan's credibility. I did not believe that the statement-recording process was largely undertaken in Malay such that Mr Ramanathan hardly participated in the process of interpretation from English to Tamil and *vice versa*. However, I also had regard to the fact that Murugan chose to give his Contemporaneous Statement exclusively in Malay and that there were some Malay words used in the Statements themselves.⁶⁶ Further, Ms Sumathii d/o Regunathan ("Ms Sumathii") and Ms Nithya Devi ("Ms Nithya"), who were Murugan's interpreters for the First Trial and Dr Rebecca Giess' ("Dr Giess") medical examination respectively, gave evidence that Murugan used Malay interspersed with Tamil in his answers during the medical interviews.⁶⁷ Mr Raman Narayanan ("Mr Narayanan"), the interpreter for the Prosecution's medical experts, testified that Murugan "may have" used Malay words on and off during the interview. Based on his experience, Malaysian Indians normally speak in a mixture of Malay and Tamil words.⁶⁸ As such, I found it not improbable that Murugan did give the Statements in a mix of Malay and Tamil. While his

⁶⁵ DWS1 at para 110; Transcript (21 April 2021) at p 39 (lines 16 to 26).

⁶⁶ Transcript (6 February 2020) at p 81 (lines 12 to 19); Agreed Bundle at pp 85 to 86.

⁶⁷ Transcript (21 April 2021) at p 54 (lines 4 to 13); Transcript (4 May 2021) at p 13 (lines 6 to 30).

⁶⁸ Transcript (4 May 2021) at p 42 (lines 14 to 19).

evidence that he spoke mostly in Malay during the recording of the Statements might not have been entirely accurate, I did not find this to be damaging to his credibility.

29 I did not consider Mr Ramanathan's testimony to be of much support to the Prosecution's version of events. Mr Ramanathan testified to the effect that he was guided by the evidence he had given in the First Trial.⁶⁹ From his testimony, it was also clear that he had little recollection of the peculiarities of the actual statement-taking process for the Statements in question and his answers were largely based on his previous evidence and what appears on the face of the Statements. It seemed that he assumed that nothing occurred simply because there was no record of it.⁷⁰ Additionally, there was no objective evidence to support his testimony since he did not make any notes. In *Azman bin Mohamed Sanwan v Public Prosecutor* [2012] 2 SLR 733 (at [25]), the Court of Appeal noted that "[a]ll interpreters should independently keep meticulous notes of what transpires in the course of their duties. This is a common-sense practice that ought to be observed by all interpreters". It was undisputed that Mr Ramanathan did not keep any independent notes.⁷¹ I accepted the Prosecution's argument that this was a best practice and did not involve writing out a transcript.⁷² Rather, it was only expected that interpreters take general notes regarding any deviations from the expected course of the statement-taking process and, in particular, whether any requests were made by the accused person. However, this created a reasonable doubt because Mr

⁶⁹ Transcript (5 February 2020) at pp 21 (lines 1 to 31), 22, (1 to 5), 23 (lines 2 to 19).

⁷⁰ Transcript (5 February 2020) at pp 17 (lines 21 to 26), 21 (lines 1 to 23), 22 (lines 1 to 31), 31 (lines 25 to 30), 32 (lines 1 to 14).

⁷¹ PWS2 at para 36.

⁷² PWS2 at paras 32 and 35.

Ramanathan might simply not have remembered Murugan's requests for Hisham to be brought to him.

30 Finally, it was crucial to note that Murugan denied committing the offences in the Contemporaneous Statement and the Cautioned Statement. The first of the Statements was taken only two days after those denials. Murugan suddenly changed his tune and confessed with vivid detail the commission of the offence. This was quite inexplicable, especially when Murugan was not arrested with any drugs found on him or in the container truck that he was driving. I found it difficult to believe the version of events given by SI Shafiq and Mr Ramanathan in which Murugan never even raised a request to see Hisham at all. SI Shafiq and Mr Ramanathan's steadfast insistence that Murugan did not even once ask for Hisham to be brought did not sit easily with this sudden change of tune. In my view, the existence of the Inducement was a plausible explanation of why Murugan would give the Statements which implicated himself. The details and coherence of the Statements, as contrasted with the Contemporaneous Statement and Cautioned Statement, also made it doubtful that they were Murugan's own words. As such, it was not implausible that SI Shafiq made repeated assurances that Hisham would be brought to Murugan and this induced him to give the Statements. I did not regard the Inducement to have been trivial or vague in the circumstances. Thus, I found that the Defence had raised a reasonable doubt in the Prosecution's case that no Inducement whatsoever had been objectively made. I go further to state that I accepted the Defence's contention that Murugan had made requests for Hisham to be brought to him and SI Shafiq had basically told Murugan to give the Statements first before he would bring Hisham.

The effect of the Inducement on Murugan’s mind in the light of his intellectual and adaptive functioning

31 Having found that the first stage of the inquiry had been satisfied, I turn to the second stage of the subjective effect of the Inducement on Murugan’s mind in the light of his intellectual and adaptive functioning.

32 Much of the ancillary hearing was taken up by protracted cross-examination of the various expert witnesses on the issue of whether Murugan had an intellectual disability. While the Defence experts contended that Murugan had mild intellectual disability, the Prosecution experts contended that he had no intellectual disability.

33 Before turning to the analysis of the expert evidence, I noted the principles relating to conflicting expert evidence. Where there is conflicting expert evidence, it will not be the sheer number of experts articulating a particular opinion or view that matters, but rather the consistency and logic of the preferred evidence that is paramount. The court must sift, weigh and evaluate the evidence in the context of the factual matrix and, in particular, the objective facts. Content credibility, evidence of partiality, coherence and a need to analyse the evidence in the context of established facts remain vital considerations (see *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 (“*Sakthivel Punithavathi*”) at [75]–[76]).

34 In criminal cases, the legal or persuasive burden rests on and remains with the Prosecution throughout the proceedings. The High Court, in *Sakthivel Punithavathi* (at [77]) made the following astute observations:

If, in the final analysis, the court is unable to settle on a preferred view the matter must be determined on the basis of the burden of proof; has a reasonable doubt been raised? It would, however, be a legal heresy to suggest that a reasonable

doubt is inexorably raised in all cases where experts differ. What nevertheless may plausibly be suggested is that genuine and irreconcilable differences between experts of comparable standing and credibility can create a reasonable doubt.

I agree with these observations. In difficult cases of conflicting expert evidence, the matter must be determined by asking whether a reasonable doubt has been raised. Where there are genuine and irreconcilable differences between experts of comparable standing and credibility, this may create a reasonable doubt.

The parties' expert evidence

35 Under the Diagnostic and Statistical Manual of Mental Disorders ("DSM-5"), intellectual disability is a disorder with onset during the development period that includes both intellectual and adaptive functioning deficits in conceptual, social and practical domains. The following three criteria must be met in order for a person to be diagnosed as being intellectually disabled:⁷³

(a) Criterion A (Intellectual Functioning) – Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualised, standardised intelligence testing.

(b) Criterion B (Adaptive Functioning) – Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social

⁷³ Agreed Bundle at p 305H25; Transcript (28 January 2020) at p 66 (lines 29 to 30).

participation, and independent living, across multiple environments, such as home, school, work, and community.

(c) Criterion C – Onset of intellectual and adaptive deficits during the development period.

36 The diagnosis of intellectual disability is based on both clinical assessment and standardised testing of intellectual and adaptive functions.⁷⁴ Standardised testing include the Wechsler Adult Intelligence Scale-IV (“WAIS-IV”) and the Adaptive Behaviour Assessment System – Second Edition/Third Edition (“ABAS-II” or “ABAS-III”) to determine an individual’s general cognitive abilities and assess his adaptive functioning. Broadly, the WAIS-IV is utilised for the assessment of Criterion A and the ABAS-II or ABAS-III is utilised for the assessment of Criterion B.

37 The Prosecution’s expert witnesses included two clinical psychologists, Dr Patricia Yap (“Dr Yap”) and Dr Giess, and a psychiatrist, Dr Sarkar. In Dr Sarkar’s Report, Dr Sarkar opined that Murugan did not suffer any intellectual disability at the time of the offence.⁷⁵ He relied on Dr Yap’s psychology report dated 28 April 2015 (“Dr Yap’s Report”) amongst others.⁷⁶ After administering the WAIS-IV and the ABAS-II, Dr Yap noted that Murugan’s cognitive functioning had not been significantly compromised. Murugan did not have significant memory deficits and did not fulfil the criteria for intellectual disability.⁷⁷

⁷⁴ Agreed Bundle at p 305H29.

⁷⁵ Agreed Bundle at p 305.

⁷⁶ Agreed Bundle at pp 303 and 305A1 to 305A9.

⁷⁷ Agreed Bundle at pp 305A4 to 305A9.

38 The Defence’s expert witnesses included a psychiatrist, Dr Rajesh, and a clinical psychologist, Mr S C Anbarasu (“Mr Anbarasu”). Dr Rajesh prepared Dr Rajesh’s First Report for the First Trial.⁷⁸ In diagnosing Murugan with mild intellectual disability at the time of the offence, Dr Rajesh relied on, amongst other things, the results of Dr Giess’ report dated 21 January 2018 (“Dr Giess’ Report”), which indicated significant impairments in Murugan’s intellectual and adaptive functioning.⁷⁹ For the present retrial, Dr Rajesh’s Second Report was prepared in which Dr Rajesh opined that Murugan fulfilled the criteria for mild intellectual disability.⁸⁰ He relied on Mr Anbarasu’s report dated 4 November 2019 (“Mr Anbarasu’s Report”).⁸¹ Mr Anbarasu also administered the WAIS-IV and ABAS-III.⁸² He noted that the poor results of Murugan’s cognitive and adaptive functioning assessments suggested the presence of intellectual disability since his developmental periods. Murugan fulfilled the criteria for intellectual disability.⁸³

Analysis

39 At the outset, I found that the expert witnesses offered by both the Prosecution and the Defence had relevant credentials and comparable experience. There was no suggestion by either party that there was a discernible gap in credentials or experience such that more weight should be accorded to a particular expert.

⁷⁸ Defence’s medical experts’ reports marked 1TD1 (“1TD1”) at pp 1 to 11.

⁷⁹ 1TD1 at pp 3, 9 to 10.

⁸⁰ 1TD1 at pp 42 to 54.

⁸¹ 1TD1 at p 44.

⁸² 1TD1 at p 35.

⁸³ 1TD1 at p 37.

40 In these grounds of decision, it was not necessary for me to make a definitive ruling on whether Murugan was mildly intellectually disabled to conclude on the voluntariness of the Statements. While the parties submitted extensively on that question, what was crucial to this *voir dire* was to examine the effect of the Inducement on Murugan’s subjective mind in the light of his intellectual and adaptive functioning. After careful consideration of the expert evidence offered by both the Prosecution and the Defence, I was satisfied that the genuine differences between the experts raised a reasonable doubt as to the proposition that Murugan had no deficits in intellectual and adaptive functioning. On the contrary, I found that the evidence showed that Murugan had some deficits in his intellectual and adaptive functioning.

Criterion A

41 Preliminarily, there was a dispute over whether a person must score in the “extremely low” range for all three indices of the WAIS-IV for which Murugan was tested – *ie* the perceptual reasoning index (“PRI”), processing speed index (“PSI”) and working memory index (“WMI”)⁸⁴ – in order to satisfy Criterion A. I noted that there was another index, the verbal comprehension index (“VCI”), the test which was not conducted by the psychologists (save for Dr Giess) because of Murugan’s lack of English knowledge and poor vocabulary.⁸⁵ Therefore, a Full Scale Intelligent Quotient score, an overall measure of intelligence, was not successfully obtained.⁸⁶

42 Mr Anbarasu gave evidence that even if the scores for two out of three indices were in the “extremely low” range and the score for another test, the

⁸⁴ Agreed Bundle at p 305A4.

⁸⁵ Transcript (19 February 2021) at p 83 (lines 4 to 10).

⁸⁶ Agreed Bundle at p 305A4.

Standard Progressive Matrices test (“SPM”), was minimally in the fourth percentile, Criterion A was satisfied.⁸⁷ The Prosecution submitted that Dr Yap’s view was that scoring in the “extremely low” range for the three WAIS-IV indices was a requirement to satisfy Criterion A.⁸⁸ During the hearing, the Prosecution stated that their understanding of Dr Yap’s evidence was that one would need to score in the “extremely low range” for each index for one *to be sure* that Criterion A was satisfied.⁸⁹ It is true that Dr Yap testified that Murugan did not satisfy Criterion A because his highest score was in the low average.⁹⁰ However, Dr Yap did not explicitly state that the scoring of “extremely low” range in all three indices was a strict requirement. While the Prosecution submitted that no authority or literature was adduced by Mr Anbarasu to support his position,⁹¹ there was also no authority or literature produced to support their view that it was a strict requirement as well. Thus, I preferred Mr Anbarasu’s position which I considered to be a more flexible approach.

43 The results of the WAIS-IV as administered by Dr Giess, Dr Yap and Mr Anbarasu were as follows:

⁸⁷ Transcript (16 February 2021) at p 57 (lines 2 to 8).

⁸⁸ PWS1 at paras 116 and 132; Prosecution’s reply submissions dated 14 June 2021 (“PWS2”) at para 64.

⁸⁹ Transcript (19 February 2021) at pp 86 (lines 25 to 31) and 87 (line 1).

⁹⁰ Transcript (28 February 2020) at p 67 (lines 10 to 23).

⁹¹ DWS1 at para 133.

WAIS-IV Constituents	Dr Giess’ Report⁹²	Dr Yap’s Report⁹³	Mr Anbarasu’s Report⁹⁴
PRI	Fourth percentile (Borderline)	Index score of 81 (Low average)	Index score of 73 (Borderline)
PSI	Fourth percentile (Borderline)	Index score of 68 (Extremely low)	Index score of 62 (Extremely low)
WMI	First percentile (Extremely low)	Index score of 71 (Borderline)	Index score of 66 (Extremely low)

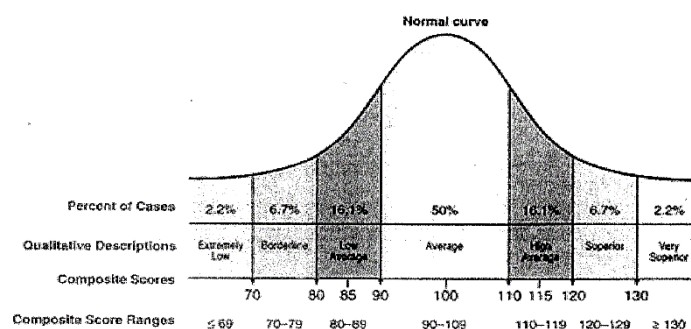
44 I set out a graph showing the relationship between the index scores and the qualitative descriptions (*ie*, extremely low, borderline, low average, average, high average, superior, very superior) for the WAIS-IV indices as agreed between the parties below:⁹⁵

⁹² Dr Rebecca Giess’ report dated 21 January 2018 (“1TP2”) at p 4.

⁹³ Agreed Bundle at p 305A4.

⁹⁴ 1TD1 at p 38.

⁹⁵ Agreed Bundle at p 305E.



45 After carefully considering the evidence offered by both parties, I found that Murugan’s intellectual functioning had deficits. From the psychometric test results, I observed that there were consistently low findings obtained for Murugan’s PSI and WMI. For WMI, Dr Giess and Mr Anbarasu both obtained a result in the extremely low range. Dr Yap obtained an index score of 71 which was in the borderline range. Dr Rajesh opined that apart from the index score obtained, it was also necessary to consider the 95% confidence interval. For Dr Yap’s index score of 71, the confidence interval range straddled between 66 and 80.⁹⁶ This meant that there was a 95% probability that the true score lay between 66 and 80.⁹⁷ Hence, Dr Rajesh commented that he considered Dr Yap’s score of 71 to straddle “extremely low” and “borderline”.⁹⁸ In Dr Yap’s view, the most accurate score within the confidence interval was actually the obtained score.⁹⁹ While it was logical that the obtained score is often the most accurate score, the fact that the tests provided for a confidence interval showed that it was *possible*

⁹⁶ Agreed Bundle at p 305A4.

⁹⁷ Transcript (19 February 2021) at pp 83 (lines 11 to 31), 84 (lines 1 to 6 and 23 to 31) and 85 (lines 1 to 11).

⁹⁸ Transcript (19 February 2021) at p 86 (lines 11 to 20).

⁹⁹ Transcript (20 April 2021) at p 3 (lines 15 to 26).

for the true score to range slightly higher or slightly lower. Even Dr Yap accepted that with a WMI of 71, Murugan scored within the range which qualified Murugan to be considered intellectually disabled.¹⁰⁰ Looking at Dr Yap's result in the context of Mr Anbarasu and Dr Giess' results, I accepted that it was fair to consider Murugan's WMI to be in the extremely low range, which showed substantial deficit in his working memory.

46 For the PSI, Dr Yap and Mr Ambarasu both obtained results in the extremely low range. Dr Giess obtained a result that placed Murugan in the borderline range. However, given that Dr Giess did not record an index score, I took this to be neutral because the borderline range could span from a score of 70 to 80. Since Mr Ambarasu's score of 62 and Dr Yap's score of 68 were both comfortably within the extremely low range, I found that Murugan's PSI could fairly be said to be in the extremely low range as well and showed substantial deficit in his processing speed.

47 For the PRI, Dr Giess and Mr Ambarasu both placed Murugan in the borderline category. Dr Yap placed Murugan in the low average category with an index score of 81. Mr Ambarasu gave Murugan an index score of 73. Given the above, I found that Murugan was not in the extremely low category. Any deficit in his perceptual reasoning was not as substantial as his deficits in working memory and processing speed.

48 Aside from the WAIS-IV, I found that the results of additional tests conducted corroborated the fact that Murugan's intellectual functioning had substantial deficits. Given that the WAIS-IV was not a full assessment as it was conducted without the VCI, Mr Anbarasu also administered the SPM which

¹⁰⁰ Transcript (31 January 2020) at pp 170 (lines 29 to 31), 171 (lines 1 to 6).

assessed intelligence through abstract reasoning tests. He found that Murugan performed at the intellectually impaired level, with scores below the fourth percentile of his age group.¹⁰¹ Dr Giess had also conducted two additional tests, the similarities (verbal reasoning) component under the VCI and the Raven Progressive Matrices (“RPM”), a non-verbal measure of intellectual functioning.¹⁰² While Dr Giess also acknowledged that the VCI could not be administered due to language limitations, she administered the similarities (verbal reasoning) test through Ms Nithya’s Tamil interpretation for qualitative purposes only and noted that Murugan demonstrated an inability to learn basic categorisation in teaching items. For the RPM, Murugan scored extremely low, getting only 37% of the answers correct, which was similar to the normal performance of children aged between seven and a half to nine.¹⁰³ This was below the third percentile and was consistent with at least a mild intellectual disability.¹⁰⁴

49 Turning to the clinical assessment, Dr Sarkar took the view that Criterion A was not satisfied based on Dr Yap’s scores and his assessment of the kind of life Murugan was living.¹⁰⁵ While he was illiterate, he lived a reasonably normal life. He had an extensive circle of friends and a marriage of over 20 years. He had not been fired for incompetence. He was reliable in picking up large bundles of money and giving it to the right person. He was trusted not to steal the money even though he was in somewhat an impecunious

¹⁰¹ Transcript (3 September 2020) at pp 12 (lines 27 to 31) to 13 (lines 1 to 16); 1TD1 at p 35.

¹⁰² 1TP2 at pp 5 to 6.

¹⁰³ 1TP2 at pp 5 to 6.

¹⁰⁴ 1TO2 at p 7.

¹⁰⁵ DWS1 at para 116; Transcript (22 April 2020) at pp 78 (lines 27 to 30) and 79 (lines 1 to 8).

condition. His ability to move from one country to another and find routes despite not being able to read anything demonstrated his cognition and ability to plan.¹⁰⁶ However, in Dr Sarkar’s Report, it was observed that “[h]e seemed to struggle to comprehend questions and took a long time in providing answers although his speech was relevant, even though a little bit disjointed”.¹⁰⁷

50 In contrast, Dr Rajesh took the view that Criterion A was satisfied based on Mr Anbarasu’s scores and his assessment of Murugan’s “very simple” answering as shown by the limited vocabulary, type of words used and lack of complexity of the sentences.¹⁰⁸ He also considered that Murugan had deficits in judgment, learning from experience, reasoning, abstract thinking and problem solving.¹⁰⁹ In Dr Rajesh’s First Report, Dr Rajesh observed that Murugan’s reaction time to questions was prolonged, and that Murugan had difficulty comprehending questions even though the questions asked were in Tamil. While his speech was relevant for most parts, it would be disjointed occasionally. He had difficulties remembering dates, impairment in short term memory and an inability to recall significant events such as the dates of his previous imprisonments.¹¹⁰ In Dr Rajesh’s Second Report, when commenting on Murugan’s fitness to stand trial, Dr Rajesh noted that questions asked of Murugan should be put to him in a slow and simple manner, framed in simple language while avoiding technical terms and giving enough time to answer.¹¹¹

¹⁰⁶ Transcript (30 January 2020) at pp 98 (lines 2 to 31) and 99 (lines 1 to 19).

¹⁰⁷ Agreed Bundle at p 305.

¹⁰⁸ Transcript (19 February 2021) at pp 56 (lines 19 to 29), 58 (lines 8 to 27) and 76 (lines 12 to 23).

¹⁰⁹ Transcript (19 February 2021) at p 58 (lines 1 to 7); 1TD10.

¹¹⁰ 1TD1 at p 8.

¹¹¹ 1TD1 at p 54.

Since some of the answers given by Murugan were irrelevant at times, Dr Rajesh had to ask questions in different ways without prompting.¹¹²

51 In the round, I was of the view that the clinical assessments of Murugan did not detract from my finding that Murugan had substantial intellectual deficits. While he was able to have a job and a family, this did not mean that he did not have intellectual deficits or did not face difficulties in his job or life. To the contrary, the evidence detailed above showed that there were substantial deficits in Murugan's intellectual functioning, at least with respect to his processing speed and working memory.

Criterion B

52 Criterion B, adaptive functioning, involves adaptive reasoning in three domains:¹¹³

- (a) Conceptual domain: competence in memory, language, reading, writing, math reasoning, acquisition of practical knowledge, problem solving, and judgment in novel situations amongst others.
- (b) Social domain: awareness of others' thoughts, feelings and experiences, empathy, interpersonal communication skills, friendship abilities, and social judgment amongst others.
- (c) Practical domain: learning and self-management across life settings, including personal care, job responsibilities, money management, recreation, self-management of behaviour, and school and work task organisation among others.

¹¹² Transcript (19 February 2021) at p 77 (lines 1 to 19).

¹¹³ Agreed Bundle at p 305H29.

53 According to Dr Rajesh, Criterion B was met when at least one of the three domains of adaptive functioning was sufficiently impaired that ongoing support was needed in order for the person to perform adequately in one or more life settings at school, at work, at home or in the community.¹¹⁴ Similar to Criterion A on intellectual functioning, Dr Rajesh said that Criterion B was determined from the ABAS-II and ABAS-III scores as well as clinical assessment.¹¹⁵ The Defence submitted that while Murugan was impaired in all the domains, the main impairment lay in the conceptual domain.¹¹⁶ The Prosecution submitted that Criterion B was not met because Murugan's ABAS-II scores ranged from above average to extremely low, and he was able to get married, have five children, a circle of friends and gainful employment.¹¹⁷

54 The results of the ABAS-II/ABAS-III tests as administered by Dr Giess, Dr Yap and Mr Anbarasu were as follows:

¹¹⁴ Transcript (22 February 2021) at p 68 (lines 26 to 29); Agreed Bundle at p 305H30.

¹¹⁵ Transcript (22 February 2021) at p 62 (lines 5 to 12).

¹¹⁶ Transcript (22 February 2021) at p 68 (lines 15 to 20); Transcript (16 February 2021) at p 193 (lines 6 to 28).

¹¹⁷ DWS1 at para 116.

ABAS-II/ ABAS-III Constituents		Dr Giess' Report ¹¹⁸	Dr Yap's Report ¹¹⁹	Mr Anbarasu's Report ¹²⁰
		Rated by wife	Self- reported	Self-reported
Conceptual domain	Self-direction	Second percentile (Extremely low)	13 (Above average)	2 (Extremely low)
	Communication	0.1 percentile (Extremely low)	7 (Below average)	1 (Extremely low)
	Functional academics	0.1 percentile (Extremely low)	2 (Extremely low)	1 (Extremely low)
Social domain	Leisure	0.1 percentile (Extremely low)	6 (Below average)	2 (Extremely low)
	Social	0.1 percentile (Extremely low)	13 (Above average)	2 (Extremely low)
Practical domain	Community use	First percentile (Extremely low)	9 (Average)	4 (Low)

¹¹⁸ 1TP2 at p 6.

¹¹⁹ Agreed Bundle at pp 305A4 to 305A5.

¹²⁰ 1TD1 at pp 35 to 36 and 38 to 39.

	Home living	0.1 percentile (Extremely low)	4 (Borderline)	1 (Extremely low)
	Health and safety	0.1 percentile (Extremely low)	8 (Average)	2 (Extremely low)
	Self-care	0.1 percentile (Extremely low)	12 (Average)	3 (Extremely low)
	Work	First percentile (Extremely low)	9 (Average)	NA

55 The conceptual domain was the main impairment relied upon by the Defence. I would now examine this. For the functional academics component, all the experts agreed that Murugan scored in the “extremely low” range. I noted that this was consistent with the academic difficulties that Murugan faced during his school days.¹²¹

56 For the self-direction component, Dr Giess and Mr Anbarasu scored Murugan in the “extremely low” range but Dr Yap scored Murugan in the “above average” range. While I accepted that the evidence showed Murugan had some degree of self-direction, since he could find and change jobs and withdraw from people that engaged in politics in prison, Murugan did rely on support from external parties as well.¹²²

¹²¹ Transcript (22 February 2021) at p 71 (lines 1 to 16).

¹²² Transcript (24 February 2021) at pp 94 (lines 18 to 3), 95 (lines 1 to 7); Transcript (22 February 2021) at p 35 (lines 1 to 20); Transcript (25 February 2021) at pp 88 (lines 11 to 31), 89 (lines 1 to 15).

57 For the communication component, Dr Giess and Mr Anbarasu scored Murugan in the “extremely low” range but Dr Yap scored Murugan in the “below average” range. I noted that there was a plethora of objective evidence corroborating that Murugan had significant impairment in his communication skills. As mentioned above at [49]–[50], both Dr Sarkar and Dr Rajesh noted that Murugan’s speech would be disjointed occasionally and that he had difficulties comprehending questions.¹²³ Disjointed speech, in psychiatric terms, means that the words can be made out but are not relevant to the question asked.¹²⁴ In Dr Giess’ Report, she observed that Murugan “took considerable time to grasp basic concepts and follow simple instructions, requiring additional time, or often running out of time on time-limited tasks, and needed repetition throughout testing”. She noted that he exhibited slower processing and significant difficulty with verbal fluency and following the rules.¹²⁵

58 Dr Yap noted that Murugan’s receptive and expressive language skills were good and that he was able to understand test instructions without needing extra explanation. Sometimes, he could even understand what was needed of him even before the instructions were completed.¹²⁶ However, she also noted that he was unable to communicate in a complex manner.¹²⁷ The interpreter for Dr Yap’s medical interview, Mr Narayanan, testified that Murugan might have asked certain questions for clarifications during the interviews.¹²⁸

¹²³ 1TD1 at p 8.

¹²⁴ Transcript (19 February 2021) at pp 76 (lines 26 to 31) to 77 (lines 1 to 9).

¹²⁵ 1TP2 at pp 6 to 7.

¹²⁶ Agreed Bundle at p 305A3.

¹²⁷ Agreed Bundle at p 305A5.

¹²⁸ Transcript (4 May 2021) at p 41 (lines 3 to 14).

59 The testimony of the court interpreter, Mdm Santha Devi (“Mdm Santha”), who did the interpretation for Murugan in the present trial also corroborated the majority of the evidence that Murugan had impairment in his communication skills. She testified that she had to pause a lot so that Murugan could understand what was being asked. The way in which she interpreted for Murugan was quite different from how she would interpret for other accused persons. She said that given her 25 years of experience, she was quite sensitive to when people did not understand the questions posed and she would have to wait an appropriate time before following up. On occasion, Murugan’s responses were not connected to the questions asked. She also would have to simplify the translation for Murugan which was quite taxing for her.¹²⁹

60 Similarly, Ms Sumathii testified that it took “a little bit more effort to explain even simple terms to the said accused” and that she would try her best to simplify what had been stated in the questions in English when she interpreted for Murugan in court. She was asked to repeat the questions a number of times. However, she did mention that this was rather common with other accused persons as well.¹³⁰ Ms Nithya, who had previously acted as an interpreter for Murugan also gave evidence that Murugan required more repetition and that she would have to repeat certain instructions a number of times or say them in a different way for Murugan to understand.¹³¹

61 In contrast, Mr Ramanathan gave evidence that he had no difficulties understanding Murugan and that Murugan understood all the questions and

¹²⁹ Transcript (24 February 2021) at pp 103 (lines 28 to 33), 104 (lines 1 to 32), 106 (lines 24 to 32), 108, 109 (lines 1 to 8).

¹³⁰ Transcript (21 April 2021) at pp 53 (lines 15 to 32) and 54 (lines 1 to 13).

¹³¹ Transcript (4 May 2021) at pp 8 (lines 22 to 30) and 9 (lines 1 to 13).

replied accordingly.¹³² This stood in isolation as compared to the rest of the evidence given by the other interpreters. On the totality of the evidence of the medical experts and interpreters, it seemed necessary that Murugan needed additional support in terms of communication at least.

62 I also noted that Mr Anbarasu and Dr Giess did other tests which showed deficits in Murugan’s executive functioning. In the D-KEFS Trail Making Test administered by Mr Anbarasu, which consisted of a visual cancellation task and a series of connect-the-circle tasks, Murugan performed poorly in all of them. This indicated that he had difficulties in thinking, visual scanning and motor speed. In the D-KEFS Verbal Fluency Test, Category Fluency and Category Switching, which measured his ability to generate words from overlearned concepts and simultaneously switch between overlearned concepts, Murugan scored in the borderline range. Mr Anbarasu noted that this showed challenges in the flexibility of his thinking.¹³³ Dr Giess also administered the D-KEFS Planning, Self-Monitoring and Problem Solving (Tower Test), in which Murugan scored in the “extremely low” range; it was noted that he had “significant difficulty following rules appropriately”. For the D-KEFS Verbal Fluency Test, Category Fluency and Category Switching administered by Dr Giess, Murugan scored in the “borderline” and “extremely low” categories.¹³⁴

63 Dr Yap did not administer the D-KEFS tests but conducted other tests to measure Murugan’s executive functioning. She administered tests such as the Wisconsin Card Sorting Test (“WCST”) and WAIS-IV Block Design subtest, which were to assess Murugan’s problem solving abilities, and the Colour Trails

¹³² Transcript (21 April 2021) at p 18 (lines 1 to 13).

¹³³ 1TD1 at p 37.

¹³⁴ 1TP2 at pp 5 and 6.

Tests (“CTT”), which was to assess his ability to set-shift and divide attention. For Part 1 of the CTT, Murugan performed within the moderately impaired range of function, which showed his slow processing speed and lack of impulsivity. For Part 2 of the CTT, Murugan’s scores were within the average range. For the WCST, Murugan’s problem-solving abilities were within the impaired range. However, his performance with the WAIS-IV Block Design subtest placed him within the low average range. Dr Yap opined that this could be due to the clarity of the instructions for both tests. She also administered the Animal Fluency test to evaluate Murugan’s spontaneous production of words of a given class and noted no impairment in his performance. As such, she concluded that evidence of impairment in his executive functioning was weak.¹³⁵

64 Considering the totality of the evidence above, I found that Murugan did have significant impairments in the conceptual domain of adaptive functioning and specifically had difficulties in communication skills. Since Criterion B did not require more than one of the three domains to be significantly impaired, I did not find it necessary to go further to determine Murugan’s performance in the social and practical domains.

Criterion C

65 Criterion C, onset during the development period, refers to recognition that intellectual and adaptive deficits were present during childhood or adolescence.¹³⁶ The Prosecution submitted that Criterion C was not met because there were no evidence of any developmental delays when Murugan was young and Murugan reported that his mother never told him that he had any

¹³⁵ Agreed Bundle at pp 305A3, 305A7 to 305A8.

¹³⁶ Agreed Bundle at p 305H30.

developmental delay. There was no evidence from Murugan's family members noticing that Murugan was slow to walk or talk or that he required more assistance and care from an early age.¹³⁷

66 The Defence submitted that while Dr Yap and Dr Sarkar had not considered the satisfaction of Criterion C, Dr Giess, Dr Rajesh and Mr Anbarasu all opined that Murugan satisfied Criterion C.¹³⁸ In Dr Giess' Report, she observed that Murugan's cognitive difficulties were evident in his developmental period, consistent with his self-reported education and work history.¹³⁹ She testified that she came to this assessment based on Murugan's Grade 6 level education, the fact that he was second last in class and his illiteracy.¹⁴⁰ In Dr Giess' report, she noted that Murugan also had long-standing difficulties with his memory and conversing with people since his younger years.¹⁴¹

67 Mr Anbarasu also noted that the poor results of Murugan's cognitive assessments and his adaptive functioning suggested the presence of intellectual disability since his developmental periods.¹⁴² Dr Rajesh gave evidence that persons with mild intellectual disability would usually exhibit normal developmental milestones. However, Murugan's academic difficulties from Grade 1 to Grade 6 in Malaysia, his failures in all his classes, the final dropping

¹³⁷ DWS1 at para 116.

¹³⁸ DWS2 at paras 42(c) and 80.

¹³⁹ 1TP2 at p 7.

¹⁴⁰ Transcript (28 January 2020) at pp 102 (lines 1 to 27) and 103 (lines 14 to 17).

¹⁴¹ 1TP2 at p 2.

¹⁴² 1TD1 at p 37.

out and his persistent difficulties with calculations and memories suggested that onset for him was in the developmental period.¹⁴³

68 I noted that the reasons that the Defence’s medical experts cited for Murugan’s satisfaction of Criterion C seemed to be predicated upon his academic difficulties and they seemed to rely on limited information in coming to their assessment. However, I considered that it was possible that the onset of his intellectual and adaptive deficits was from his developmental years. In any case, given that there was little utility in deciding on whether Criterion C was satisfied since it was not necessary for me to make a definitive ruling on whether Murugan has mild intellectual disability, nothing more needed to be said on this.

69 In sum, after considering the expert evidence proffered by the parties, I was satisfied that Murugan had some deficits in his intellectual and adaptive functioning.

The effect of the Inducement on Murugan’s mind

70 I turn now to address the effect of the Inducement on Murugan’s mind. The Prosecution submitted that, even if SI Shafiq offered the Inducement to Murugan, it was insufficient to give Murugan any reasonable grounds for supposing that Murugan would gain any advantage or avoid any evil of a temporal nature by giving the Statements. The Prosecution further argued that Murugan’s case that he wanted Hisham to be produced before him so that he could be exonerated from the Charge was intrinsically illogical. There was no basis for Murugan to believe that Hisham would exonerate him when SI Shafiq allegedly informed Murugan that Hisham had confessed to Murugan giving

¹⁴³ Transcript (22 February 2021) at p 71 (lines 1 to 16).

Hisham drugs on three occasions. At that point, it must have been foremost in Murugan's mind that there was a high possibility of Hisham implicating him as the drug courier. In any event, it did not follow that SI Shafiq would have released Murugan even if Hisham was brought and said that the Five Bundles belonged to Hisham. On Murugan's own case, Hisham had already incriminated Murugan. Therefore, Murugan could not have perceived any advantage to be gained from having Hisham brought to him.¹⁴⁴

71 The Defence submitted that Murugan believed that if Hisham was brought to him, Hisham would say that Murugan did not hand the Five Bundles to him. In Murugan's mind, his operative belief was that if Hisham came and said that, Murugan would be exonerated of the Charge. This belief was not devoid of reason since all Murugan thought was that Hisham would admit that the Five Bundles were his and that Murugan did not hand the bundles over to Hisham.¹⁴⁵ Murugan's thought that Hisham would tell the alleged truth when he was brought face to face with Murugan was not ludicrous. In the Contemporaneous Statement, Murugan said that he only collected \$13,000 from Hisham and did not pass Hisham anything. It was not ridiculous for Murugan to believe that the Hisham would come and confirm his version of events.¹⁴⁶

72 After considering the submissions made by the parties, I found that the Inducement gave Murugan reasonable grounds to suppose that by making the Statements, he would gain an advantage in reference to the proceedings against him.

¹⁴⁴ PWS1 at paras 53 to 58.

¹⁴⁵ DWS1 at paras 114 to 116.

¹⁴⁶ DWS2 at paras 14 to 16.

73 Most crucially, Murugan was not found with the Five Bundles. As the Defence pointed out, his request to see Hisham in order for Hisham to clarify that the Five Bundles belonged to him (*ie* Hisham) was consistent with Murugan's version of events in the Contemporaneous Statement and Cautioned Statement. While Murugan said that he was told that Hisham had allegedly told SI Shafiq that Murugan had given Hisham drugs on three occasions,¹⁴⁷ it was clear that Murugan disbelieved that version of events and wanted to confront Hisham in person. It was not unreasonable for Murugan to have subjectively believed that Hisham would corroborate Murugan's version of events upon direct confrontation. Murugan's operative belief was that if Hisham testified that Murugan had only passed \$13,000 to him and not passed him the Five Bundles, the evidential basis of the Charge would be undermined. Since the test was a subjective one, it was irrelevant whether this would objectively be a likely result. While the Prosecution contended that there was a high probability that Hisham would implicate Murugan instead, I did not accept that this had any bearing on his subjective state of mind. Given Murugan's substantial deficits in intellectual functioning, I found it difficult to reject outright the plausibility of Murugan harbouring a subjective belief that Hisham would corroborate his defence and that this would be an advantage to his defence.

74 I also considered the fact that Murugan told Dr Sarkar that SI Shafiq reportedly said that Murugan was lying (at [21] above). This provided objective corroboration that Murugan was of the belief that SI Shafiq would not believe Murugan's denials no matter what he said. As such, he could well have thought that his best chance of exonerating himself was to give SI Shafiq what he wanted so that Hisham could be brought to him. If Hisham had told SI Shafiq that the

¹⁴⁷ Transcript (3 March 2020) at p 92 (lines 13 to 30).

Five Bundles belonged to him and/or that Murugan had not passed him the Five Bundles, Murugan's defence would be likely to succeed. Since the Inducement was SI Shafiq's promise to bring Hisham to him, Murugan agreed to go along with SI Shafiq and make the confessions in the Statements. To his mind, this was the best chance of exonerating himself. While one could argue that this was objectively not a wise or logical decision, the inquiry must be conducted in the light of Murugan's specific intellectual functioning. Murugan's substantial deficits in working memory and processing speed also explained why little weight should be given to his affirmation as to the accuracy of the Statements after Mr Ramanathan had read the Statements to him.

75 As such, I accepted that in all the circumstances of the case, including the presence of certain intellectual deficits, the Inducement gave Murugan reasonable grounds in his mind to suppose that there would be an advantage to him with respect to the Charge which induced him to make the Statements. I found that the Prosecution failed to prove beyond a reasonable doubt that the Statements were made voluntarily.

Whether the court should exercise its exclusionary discretion to exclude the Statements

76 In the light of my findings above, the issue as to whether the court should exercise its exclusionary discretion to exclude the Statements is moot. I say no more on this.

Conclusion

77 In the circumstances, I held that the Statements were made involuntarily and should not be admitted into evidence.

Chan Seng Onn
Judge of the High Court

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