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

[2023] SGHC 165

Criminal Case No 40 of 2018

Between

Public Prosecutor

… *Plaintiffs*

And

(1) Hashim Bin Ismail
(2) Jayacelan A/L Kerusnan
(3) Azuin Bin Mohd Tap
(4) Kumaran Kesawan

… *Defendants*

GROUNDS OF DECISION

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

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v
Hashim bin Ismail and others

[2023] SGHC 165

General Division of the High Court — Criminal Case No 40 of 2018
Pang Khang Chau J
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12 June 2023

Pang Khang Chau J:

Introduction

1 This is the joint trial of four accused persons, each of whom stood trial for one charge of trafficking in five packets containing 2,298.7 g of granular/powdery substance which was analysed and found to contain not less than 97.02 g of diamorphine ("the Drugs"). The four accused persons are:

(a) Hashim bin Ismail, a Singaporean male, born in 1965 ("Hashim" or "the 1st Accused");

(b) Jayacelan a/l Kerusnan, a Malaysian male, born in 1982 ("Jayacelan" or "the 2nd Accused");

(c) Azuin bin Mohd Tap, a Singaporean male, born in 1970 ("Azuin" or "the 3rd Accused"); and

(d) Kumaran Kesawan, a Malaysian male, born in 1967 ("Kumaran" or "the 4th Accused").

Overview of the parties' cases

The Prosecution's case

2 It is the Prosecution' case that the four accused persons were involved in the delivery of the same five packets of controlled drugs in a relay, beginning with Kumaran bringing the Drugs into Singapore from Malaysia and ending with Azuin picking up the Drugs from the open-air carpark next to Sim Lim Tower ("the Carpark"). Specifically, the Prosecution alleged that:[1]

(a) Kumaran, who worked as a trailer driver delivering cement from Malaysia to Singapore, brought the Drugs into Singapore in the early hours of 9 July 2015 in a red plastic bag ("the Plastic Bag"). After arriving at his destination for delivery of cement at Tuas Megayard, Kumaran left the Plastic Bag at the passenger side of his trailer's cabin with the passenger side door unlocked, before going to the back of the cabin to rest while waiting for his turn to unload his trailer.

(b) Jayacelan then approached Kumaran's trailer, opened the passenger side door, collected the Plastic Bag, and rode in his motorcycle to the Carpark. He was captured on the Central Narcotic Bureau's ("CNB's") surveillance video footage ("the video footage"), as well as seen by CNB officers surveilling the Carpark, to have placed

[1] Prosecution's Closing Submissions at para 4.

the Plastic Bag in an open dustbin ("the Open Dustbin") before riding out of the Carpark.

(c) Hashim was standing a few metres away when Jayacelan placed the Plastic Bag in the Open Dustbin. He approached the Open Dustbin about two minutes later, took the Plastic Bag out of the Open Dustbin and then placed it on the floor next to a closed dustbin ("the Closed Dustbin") about ten metres away.

(d) A few minutes later, Azuin arrived and approached Hashim. Hashim pointed at the Plastic Bag and walked away. Azuin picked up the Plastic Bag and left the Carpark on foot, stuffing the Plastic Bag into a sling bag he was carrying.

3 Shortly thereafter, CNB officers arrested Azuin and Hashim in the vicinity of the Carpark. Jayacelan was arrested at his workplace later the same day. Kumaran was arrested at the Woodlands Checkpoint as he attempted to leave Singapore.

4 The Plastic Bag was recovered from Azuin's sling bag together with five black taped bundles, each containing a packet of granular/powdery substance. The five packets of granular/powdery substance were analysed and found to contain a total of not less than 97.02g of diamorphine.

Kumaran's case

5 Kumaran did not deny that he brought the Plastic Bag into Singapore. He also did not deny that he knew the Plastic Bag contained five black bundles. Kumaran's defence was that he did not know that the five black bundles

contained diamorphine.[2] Kumaran testified that he brought the Plastic Bag into Singapore at the request of one Raja, and that he was told by Raja that the Plastic Bag contained some high value electronic items, like electronic chips, for which tax had not been paid.

Jayacelan's case

6 Jayacelan did not deny collecting a red plastic bag from Kumaran's trailer at Tuas Megayard, and placing the plastic bag in the Open Dustbin at the Carpark. He testified that he did this at one Sutha's request, who told him that he was transporting "black money".[3]

7 Jayacelan submitted that the Prosecution had failed to prove beyond a reasonable doubt that the plastic bag he collected from Kumaran's trailer and placed in the Open Dustbin was in fact the Plastic Bag (containing the Drugs) which Hashim retrieved from the Open Dustbin and which Azuin was arrested with.[4] In the alternative, he submitted that he did not know that the Plastic Bag contained diamorphine.

Hashim's case

8 Hashim did not deny the charge against him. Instead, he sought only to establish that his involvement in the offence was restricted to the acts described in s 33B(2)(*a*) of the Misuse of Drugs Act 1973 (Cap 185, 2008 Rev Ed)

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2 Kumaran's Closing Submissions at paras 141–146, 150–153.

3 Jayacelan's Closing Submissions at paras 4(1) and 4(2).

4 Jayacelan's Closing Submissions at para 72.

("MDA").[5] (For brevity, I shall refer to these acts as acts of a "courier".) When called upon to enter his defence, Hashim elected to remain silent.

Azuin's case

9 Azuin did not deny the charge against him. His defence focused entirely on establishing that he was eligible for the alternative sentencing regime under either s 33B(1)(*a*) or s 33B(1)(*b*) of the MDA.[6]

The applicable legal principles

10 Section 5 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.

The term "traffic" is defined in s 2 of the MDA to include "give, administer, transport, send, deliver or distribute".

11 The charges against Kumaran and Hashim alleged that they had trafficked in a controlled drug by *delivering* the Drugs contrary to s 5(1)(*a*) of the MDA. The charge against Jayacelan alleged that he had trafficked in a controlled drug by *transporting* the Drugs contrary to s 5(1)(*a*) of the MDA.

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5 Hashim's Closing Submissions at paras 5–7.

6 Azuin's Closing Submissions at para 2.

The charge against Azuin alleged that he had trafficked in a controlled drug by *having the Drugs in his possession for the purposes of trafficking* contrary to s 5(1)(*a*) read with s 5(2) of the MDA.

12 The required elements to establish a charge of trafficking under s 5(1)(*a*) of the MDA are (see *Raj Kumar s/o Aiyachami v Public Prosecutor and another appeal* [2022] 2 SLR 676 at [54]):

(a) the act of trafficking, without authorisation, in a controlled drug; and

(b) knowledge of the nature of the controlled drug, which can be proved or presumed pursuant to s 18(2) of the MDA.

13 The elements to be established for a charge of possession for the purposes of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA are (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

(a) possession of a controlled drug (which may be proved or presumed under s 18(1) of the MDA, or deemed under s 18(4) of the MDA);

(b) knowledge of the nature of the drug (which may be proved or presumed under s 18(2) of the MDA); and

(c) proof that possession of the controlled drug was for the purpose of trafficking which was not authorised.

14 This distinction between the elements required to establish a charge brought under s 5(1)(*a*) of the MDA and the elements required to establish a

charge brought under s 5(1)(*a*) read with s 5(2) of the MDA had also been recognised in cases such as *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 (at [34]), *Public Prosecutor v Ramesh a/l Perumal and another* [2017] SGHC 290 (at [25]) and *Public Prosecutor v Ramdhan bin Lajis and another* [2018] SGHC 104 ("*Ramdhan*") (at [30]–[31]).

15 Given that Kumaran and Jayacelan both denied knowledge that the Plastic Bag contained diamorphine, the Prosecution invoked the presumption of knowledge of the nature of the drug under s 18(2) of the MDA against them. As the Court of Appeal explained in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") (at [36]):

> … if an accused is either (a) proved to have had the controlled drug in his possession; or (b) presumed under s 18(1) of the MDA to have had the controlled drug in his possession and the contrary is not proved, the presumption under s 18(2) that he has knowledge of the nature of the drug would be invoked. This follows because an accused person, who, it has been established, was in possession of the controlled drug should be taken to know the nature of that drug unless he can demonstrate otherwise. *To rebut the presumption in s 18(2), the accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug* (in effect, that he did not have the *mens rea* of the offence). In *Dinesh Pillai a/l K Raja Retnam v PP* [2012] 2 SLR 903 ("*Dinesh Pillai*"), this court observed (at [18]) that the accused can do so by showing that "he did not know or could not reasonably be expected to have known the nature of the controlled drug".
>
> [emphasis added]

16 Further as noted by the Court of Appeal in *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 (at [17]):

> 17 In every instance where an accused claims that he did not know that what he was carrying contained drugs, *the court will have to carefully scrutinise all the pertinent facts* – this being a highly fact-sensitive inquiry – in determining whether he has discharged the burden of rebutting the presumption of knowledge, including (*inter alia*) his background, how he

> received the drugs, how they were packed and how he handled or dealt with them. Ultimately, *what the court is concerned with is the credibility and veracity of the accused's account and how believable that account is*.
>
> [emphasis added]

An accused person who simply does not bother or does not want to know what drugs or even what goods he is going to carry will not be able to rebut the presumption of knowledge under s 18(2) of the MDA: *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 at [35]; *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi (2021)*") at [67] and [68]. In *Gobi (2021)*, the Court of Appeal affirmed that this is because of the need to give full purposive effect to the policy underlying the MDA, which is to stem the threat that drug trafficking poses (citing *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR 1 at [23]–[28]).

The case against Kumaran (the 4th Accused)

17 As noted above, Kumaran did not deny that the red plastic bag he brought into Singapore was the Plastic Bag containing the Drugs, which Azuin was arrested with. In Kumaran's initial set of written submissions, he accepted that he had been in possession of the Drugs while transporting the Plastic Bag containing the Drugs from Skudai into Singapore.[7] Although there were some passages in Kumaran's final set of written submissions which appeared to question the chain of custody, Kumaran did not actually submit that the Prosecution had failed to establish the chain of custody.[8] In any event, for the reasons given at [32]–[37] below in relation to the case against Jayacelan, I was

7 Kumaran's Closing Submissions at para 148.

8 Kumaran's Further Submissions at para 9 to 10 and 42.

satisfied beyond reasonable doubt that the red plastic bag which Kumaran brought into Singapore was the Plastic Bag containing the Drugs.

18 Consequently, I found that Kumaran was in possession of the Plastic Bag containing the Drugs, with the result that the presumption under s 18(2) of the MDA was triggered. The burden therefore fell on Kumaran to prove, on the balance of probabilities, that he did not know the Plastic Bag contained diamorphine.

Kumaran's account of events

19 In Kumaran's cautioned statement, he said that he transported the Plastic Bag because he "needed money", he did not know the bundles contained drugs, and he thought "it was some expensive things inside".[9]

20 In the statement he gave on 12 July 2015, Kumaran said that on 8 July 2015, he received a phone call from one Raja, asking him to collect five "stones" from a grass patch near a rubbish area in Skudai, Malaysia.[10] He explained that he referred to the black bundles as "stones" because that was the term Raja used. He first met Raja about two months before the date of the offence. Raja approached Kumaran in a coffee shop in Skudai and asked him if he was a lorry driver. When Kumaran replied in the affirmative, Raja asked Kumaran if he could help deliver stuff into Singapore. Kumaran was suspicious that Raja was asking him to deliver illegal items, and rejected Raja. Raja approached Kumaran at the same coffee shop again about two weeks later. This time, Kumaran gave Raja his phone number as Raja said he could help Kumaran secure a better job.[11]

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9 P125 (AB 360).

10 P121 at para 9 (AB 307).

11 P121 at para 17 (AB 309)

About three weeks later, Kumaran received a phone call from Raja asking if he wanted a job with a better pay. Raja said that he heard that Kumaran was facing financial difficulties and that he could help Kumaran financially. After Kumaran replied "yes, I needed money", Raja told him that he would be informed "if there is good news". Three days later, Raja again called Kumaran and proposed that if Kumaran could help him deliver things, Kumaran would be paid RM 300 for one "stone". When Kumaran asked what these "stones" were, Raja replied that they contained "some taxable electronic items". When Kumaran pressed further, Raja replied that "it is some cheap item, just don't open it up". Kumaran agreed to do the delivery as Raja was prepared to pay RM 300 per "stone". On the day Kumaran agreed to the delivery, Raja came to meet him and passed him a Nokia handphone and a SIM card. Raja told Kumaran that he would contact him through this phone, and instructed him not to use his own handphone to contact Raja.[12] Kumaran added that he did not know exactly what the "stones" contained because he had never opened them up. He admitted that, although he knew it was some illegal stuff, he "did not want to open up and see".[13]

21 Kumaran made three such deliveries for Raja before the delivery which constituted the offence he was charged with in the present case.[14] Kumaran said he did not know much about Raja as he had only seen Raja three times.[15]

22 In the statement he gave on 13 July 2015, Kumaran said he thought he was "just bringing in items that avoid taxation".[16] Kumaran also explained that,

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12 P121 at para 18 (AB 309); Kumaran's Closing Submissions at paras 47–48.

13 P121 at para 22 (AB 311).

14 P121 at paras 19 to 21 (AB 310–311).

15 P121 at para 23 (AB 311).

16 P122 at para 33 (AB 315).

although the "stones" contained items which felt like sand to him, he thought "duty-free electronic items may be hidden within". He still decided to deliver the "stones" because of the money.

23 At trial, Kumaran said that he got to know Raja through one Kesavan, a close friend who had worked in the same company as Kumaran and was "like a younger brother". One day, Kesavan called Kumaran and asked to meet him at a coffee shop. At this coffee shop, he then introduced Kumaran to Raja.[17] Kumaran trusted Raja because he trusted Kesavan. Kumaran added that he agreed to help Raja "not for the money". He would only keep a small part of the payment and give the rest of the money to Kesavan because he wanted to help Kesavan out.[18] As for what the "stones" contained, Kumaran said at trial that they were "chips" and that the items were "very valuable".[19]

Evaluation of Kumaran's credibility

24 Kumaran's account of what he thought the "stones" contained was not consistent. In his cautioned statement, he failed to give details about what he thought the "stones" contained other than a vague reference to "some expensive things".[20] In his statement of 12 July 2015, it became "some taxable electronic items" which Raja described as "cheap item".[21] In his statement of 13 July 2015, Kumaran admitted that the "stones" felt like granular/powdery substance, which he described as "[felt] like sand". However, he somehow chose to believe that

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17 NE (25 May 2018) 40:13–23; Kumaran's Closing Submissions at para 57(d).

18 NE (13 August 2019) 35:11–20.

19 NE (13 August 2019) 16:23–26.

20 P125 (AB at 360).

21 P121 at para 18 (AB 309).

some electronic items could be hidden within the granular/powdery substance.[22] At trial, Kumaran finally zeroed in on what sort of electronic items he thought he was transporting by using the word "chips" for the first time. He claimed that Kesavan, not Raja, had told him that the things he would be transporting were "chips" and that no tax had been paid on the items.[23]

25 Kumaran tried to smoothen out the discrepancy between his account at trial and his statements by alleging that he had said "chips" in his 12 July 2015 statement but this was wrongly recorded as "cheap".[24] However, as Kumaran gave his statement in Tamil and not English, and the statement was read back to him in Tamil, this explanation is not credible because, unlike in English, the word in Tamil for "chips" does not sound like the word in Tamil for "cheap".[25]

26 Kumaran did not mention Kesavan in the statements he gave in 2015, soon after the offence. The first time he mentioned Kesavan was in a statement he gave on 3 April 2018, almost three years after his arrest and about a month before trial was due to commence. I agreed with the Prosecution that this late introduction of Kesavan in Kumaran's story was an afterthought, aimed at plugging a gap in his story concerning why he was so trusting of Raja as to be prepared to transport what he knew to be illegal items without opening up the packages to check what they actually were. The crux of Kumaran's defence at trial was that he trusted Kesavan who told him that he would be delivering "chips" (for which tax was unpaid). At trial, Kumaran referred to the earlier statements he gave in 2015 and explained that he had mentioned Raja's name

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22 P122 at para 33 (AB 315).

23 NE (13 August 2019) 14:3–14; Kumaran's Closing Submissions at para 63.

24 NE (25 May 2018) 43:23–44:9; NE (13 August 2019) 41:20–30.

25 NE (13 August 2019) 41:31–42:5 and 60:15–61:4.

and "hidden" any information of Kesavan because he wanted to "protect" Kesavan.[26] However, during cross-examination, Kumaran admitted that he knew, at the time of giving his statements in 2015, that in order to prove his innocence, it would be important to tell the CNB officers about his complete trust and faith in Kesavan:[27]

> Q: Do you agree that in order to prove your innocence or to show that you are innocent, it was very important, in fact, central to your defence, to tell the CNB at the very start why you agreed to bring the items into Singapore? *And that is because you had complete trust and faith in Kesavan. That is the cornerstone of your defence.*
>
> A: ***Yes.***
>
> Q: Yet, we do not see that faith that you had in Kesavan in any of your CNB statements, except for this statement that was recorded almost 3 years' later. Am I right?
>
> A: No one told me that I should provide this information. In fact, I thought about it myself and I decided to tell the PTC Court in 2017 about this information.
>
> [emphasis added]

He also admitted that by the time he was arrested and charged, he had already suspected that he had been taken advantage of by persons in Malaysia, including Kesavan:[28]

> Q: Now, when you were arrested and when---after you were charged, did it cross your mind that you had been taken advantage of by certain people in Malaysia and that Kesavan could be one of them?
>
> A: Yes.

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26 NE (13 August 2019) 15:9–14.

27 NE (13 August 2019) 33:22–34:2.

28 NE (13 August 2018) 34:7–10.

> Q: Now, despite this occurring to you, why did you choose to protect Kesavan if you think you had been taken advantage of by others, including him?
>
> A: I don't know how---I do not know how to answer that.

27 Looking at the evidence in totality, I found Kumaran's account to lack credibility. I therefore held that Kumaran had failed to rebut the presumption under s 18(2) of the MDA on the balance of probabilities.

Conclusion on the case against Kumaran

28 For the reasons given above, I found that the Prosecution had proven its case against Kumaran beyond reasonable doubt, and convicted Kumaran of the charge against him.

The case against Jayacelan (the 2nd Accused)

29 As noted above, Jayacelan did not deny collecting a red plastic bag from Kumaran's trailer. In his contemporaneous statement, he identified the trailer by registration number.[29] In his long statement recorded on 13 July 2015, he identified Kumaran's trailer by photograph.[30] Jayacelan also admitted to placing this plastic bag in the Open Dustbin at the Carpark. However, he submitted that the Prosecution had not established beyond reasonable doubt that the plastic bag he placed in the open Dustbin was the Plastic Bag which Hashim picked up from the same dustbin. He also claimed that he thought the plastic bag contained "black money" and not controlled drugs.[31]

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29 P110 at Q/A5 (AB 240).

30 P120 at para 28 (AB 292).

31 Jayacelan's Closing Submissions at paras 4(1), 4(2) and 72.

Whether Jayacelan transported the Plastic Bag containing the Drugs

30 Jayacelan submitted that there was a break in the chain of custody of the Drugs. He pointed out that the Open Dustbin was in an open-air carpark to which members of the public had access. This meant that there could have been other items in the Open Dustbin before Jayacelan placed the red plastic bag in it. This also meant that the red plastic bag which Hashim took out from the Open Dustbin could have already been inside the Open Dustbin before Jayacelan placed a red plastic bag in it. In other words, Jayacelan suggested that there was a possibility that there was more than one red plastic bag involved and the red plastic bag retrieved by Hashim was not the one placed in the Open Dustbin by Jayacelan.[32] Jayacelan noted that two of the CNB officers who witnessed him placing a red plastic bag in the Open Dustbin (ie, PW11 Muhammad Faizal bin Bahrain and PW12 Chin Chee Hua) agreed that they could not say that the plastic bag taken out of the Open Dustbin by Hashim was the plastic bag which Jaycelan placed in the Open Dustbin.[33]

31 As for the testimony of Senior Station Inspector ("SSI") Tony Ng (PW 25) that he looked into the Open Dustbin after Hashim's and Azuin's arrest, and did not see any other plastic bag inside, Jayacelan submitted that this was a lie because SSI Tony Ng did not mention this in his conditioned statement.[34] As for the testimony of the investigation officer Acting Inspector Victor Yeo ("IO Yeo") that he looked into the Open Dustbin after arriving at the scene and found no "suspicious items or bundle, plastic bags inside the dust bin",[35] Jayacelan

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32 Jayacelan's Closing Submissions at paras 68–71.

33 NE (16 May 2018) 51:1–4, 68:2–19.

34 Jayacelan's Closing Submissions at paras 64–65.

35 NE (22 May 2018) 16:17–21.

submitted that IO Yeo's inability to recall with precision what the contents of the Open Dustbin was when giving evidence in court indicated that he did not really look into the dustbin.[36] He further submitted that as IO Yeo did not *empty* the entire contents of the trash bag in the Open Dustbin and take a photograph of its contents, there was a possibility that the red plastic bag placed by Jayacelan inside the Open Dustbin "may well have been lying at the bottom of the dustbin".[37] Finally, although Hashim stated in his contemporaneous statement that he did not see any other plastic bags in the Open Dustbin, Jayacelan submitted that this statement should be given no weight as Hashim did not give evidence in court and so could not be cross-examined on his statement.[38]

32 I did not accept Jaycelan's submission that the Prosecution had failed to establish beyond reasonable doubt that the plastic bag he placed in the Open Dustbin was the Plastic Bag which Hashim picked up from the same dustbin. In this regard, it is useful to recall that not all doubts about the Prosecution's case are reasonable doubts. As noted in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 ("*Jagatheesan*"), at [51], "[o]ne must distinguish between a 'real and reasonable' doubt and a 'merely fanciful' doubt". *Jagatheesan* went on, at [53], to cite with approval the *dictum* of Wood JA in *R v Brydon* (1995) 2 BCLR (3d) 243 that a reasonable doubt is "a doubt for which one can give a reason, so long as the reason given is logically connected to the evidence".

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36 Jayacelan's Closing Submissions at para 66.

37 Jayacelan's Closing Submissions at para 70.

38 Jayacelan's Closing Submissions at para 55(a).

33 In the present case, it was not in dispute that both the plastic bag transported by Jayacelan and the plastic bag retrieved by Hashim were red in colour. Nor was it disputed that both were tied at the top. Further, Kumaran testified that the plastic bag which he left on the passenger side of his trailer, to be collected by a person (subsequently established to be Jayacelan) contained five black bundles. The red plastic bag retrieved by Hashim also contained five black bundles.

34 Hashim retrieved a red plastic bag from the Open Dustbin within a couple of minutes after Jayacelan placed a red plastic bag in it. No one else approached the Open Dustbin to place or take out another red plastic bag from it during the period between Jayacelan placing a red plastic bag in the Open Dustbin and Hashim taking a red plastic bag out of it.

35 As for Jayacelan's suggestion that the red plastic bag collected by Hashim could have already been in the Open Dustbin before Jayacelan placed his red plastic bag inside, it is pertinent to note that, as captured on the video footage, even though Hashim arrived at the Carpark before Jayacelan, he waited near the Open Dustbin and watched Jayacelan place a red plastic bag in the Open Dustbin before approaching it to take out the red plastic bag.[39] Had Hashim's intention been to retrieve some other plastic bag that had been placed in the Open Dustbin before Jayacelan's arrival (as suggested by Jayacelan), Hashim would have started searching through the Open Dustbin once he arrived at the Carpark, instead of waiting for Jayacelan to arrive and place a plastic bag in the Open Dustbin.

[39] P114; NE (22 May 2018) 22:5–22.

36 The call records for Hashim's phone number showed that there were a number of calls to and from Jayacelan's phone number over the course of June and July 2015.[40] Jayacelan admitted that one of the calls made on 25 June 2015 was to coordinate delivery of "black money" on behalf of Sutha on a previous occasion.[41] Jayacelan also admitted that on the day of the offence, 9 July 2015, he called Hashim's number at 5.25am to inform that he was bringing the "black money". The records also showed Hashim making a call to Jayacelan at 5.57am that day.[42] This corresponded with the time Hashim was seen entering the Carpark.[43] Jayacelan testified that he could not remember whether he received or answered this call, much less the contents of the call.[44] What this shows is that, even though Jayacelan and Hashim may not have met or known each other personally, they were communicating with each other to coordinate delivery of some illicit item (which Jayacelan claimed he believed to be "black money" and which the Prosecution alleged were controlled drugs). This proves that Hashim was waiting for a delivery from Jayacelan, and the red plastic bag transported by Jayacelan was intended for Hashim. There were simply no other plastic bags involved.

37 The evidence recounted in the preceding three paragraphs point inevitably and inexorably to the conclusion that the plastic bag transported by Jayacelan was the same plastic bag retrieved by Hashim. Any suggestion that these were two different plastic bags does not rise above the level of casting merely a fanciful doubt. I therefore found that the Prosecution had proven

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40 Jayacelan's Closing Submission at para 26; AB 528–529.

41 NE (24 May 2018) 23:17–27.

42 AB 528

43 Conditioned Statement of Muhammad Faizal bin Bahrain at para 6 (AB 248).

44 NE (25 May 2019) 8:1–14.

beyond reasonable doubt that Jayacelan transported the Plastic Bag, containing the Drugs.

Whether Jayacelan knew the nature of the Drugs

38 As I have found that Jayacelan was transporting the Plastic Bag containing the Drugs, and therefore in possession of the Drugs, the presumption under s 18(2) of the MDA was triggered. The burden therefore fell on Jayacelan to prove, on the balance of probabilities, that he did not know the Plastic Bag contained diamorphine.

Jayacelan's account of events

39 As noted above, Jayacelan's case was that he was asked by one Sutha to collect the Plastic Bag from Kumaran's trailer and drop it into the Open Dustbin at the Carpark. According to Jayacelan, he first got to know Sutha about two months before the date of the offence at a coffee shop in Malaysia through a mutual friend, Suresh. At this very first meeting with Sutha, Suresh informed Jayacelan that Sutha was involved in money laundering. As Jayacelan ran a freelance business installing CCTVs in Malaysia, he gave his name card to both Suresh and Sutha and asked them to refer potential customers to him. About a week later, Sutha referred the first customer to Jayacelan. In all, Jayacelan received three referrals from Sutha and did not pay any commission or reward to Sutha for his referrals.[45]

40 Sometime later, Jayacelan received a call from Sutha asking whether Jayacelan was going into Singapore for work the next day. Sutha asked this because he knew that Jayacelan commuted between Malaysia and Singapore

[45] P119 at paras 11–13 (AB 288); Jayacelan's Closing Submissions at paras 7–8.

daily for work. When Jayacelan indicated that he was going into Singapore, Sutha asked Jayacelan for a favour, which was to collect a plastic bag from a Malaysian trailer in Tuas and then to place it in a specific dustbin at the Carpark. Jayacelan asked what would be in the plastic bag, to which Sutha replied that it was "undeclared money" relating to Sutha's money laundering activities. Sutha explained that he asked Jayacelan because he could not find anyone else to help. Jayacelan agreed to help because he felt indebted to Sutha for the three customers Sutha referred to him.[46] This was the delivery of "black money" on 25 June 2015 referred to at [36] above.

41 On 8 July 2015, Jayacelan received another call from Sutha asking for the same favour. Jayacelan again asked what would be in the plastic bag, and Sutha again replied that it was "undeclared money". Jayacelan agreed to help again this time, but told Sutha that this would be the last time and Jayacelan would not help Sutha with such deliveries again.[47] This was the delivery on 9 July 2015 which formed the subject matter of the charge against Jayacelan.

42 Although Jayacelan had only met Sutha once and spoken on the phone with him twice, Jayacelan testified that he trusted Sutha because Sutha had referred three customers to Jayacelan. During cross-examination, it was evident that Jayacelan simply did not bother or did not want to know the nature of the goods he was transporting. He admitted that he had not enquired further when Sutha told him that he would be delivering "black money" and simply accepted Sutha's explanation at face value, on both occasions of delivering the "black money" in Singapore. In relation to the first occasion he delivered "black

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46 P119 at paras 13–14 (AB 288–289); Jayacelan's Closing Submissions at para 9.

47 P119 at para 17 (AB 289); Jayacelan's Closing Submissions at para 10.

money" for Sutha (*ie*, on 25 June 2015), Jayacelan gave the following answers in cross-examination:[48]

> Q: Now when he told you it was black money, did you ask for any more details as to---about this black money?
>
> A: No, Your Honour.
>
> Q: Did you ask him how much black money, for instance, is involved?
>
> …
>
> A: No, Your Honour.
>
> Q: Did you ask him whose black money this is?
>
> A: No, Your Honour.
>
> Q: Did you ask him what currency it is in?
>
> A: No, Your Honour.
>
> Q: So the moment he said it was black money, you just accepted his explanation at face value?
>
> A: Yes, Your Honour.

In relation to the second occasion (*ie*, the occasion of the offence charged in the present case), Jayacelan gave the following answers in cross-examination:[49]

> Q: Now again for this second occasion, you never asked him for any details about this black money, and by that I mean you never asked him how much it contained, what currency.
>
> A: Yes, Your Honour.
>
> Q: You also never asked him what would happen if you were arrested or detained by the Singapore police or Malaysian police---sorry, Singapore police.
>
> A: No, Your Honour.

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48 NE (24 May 2018) 53:23–54:4.

49 NE (24 May 2018) 58:25–59:3.

> Q: And again for the second occasion, you had ample opportunity to open the red plastic bag and check its contents, but you did not do so.
>
> A: Yes, Your Honour.

43 Jayacelan highlighted the following matters which he believed helped demonstrate his lack of knowledge:[50]

(a) He had a drug-free background.

(b) He was aware of Singapore's tough drug laws.

(c) He was not promised or paid any money for the favour he did in transporting the plastic bags.

(d) He carried the Plastic Bag unconcealed in the basket at the front of his motorcycle.

(e) He was married with young children.

(f) He had a stable job in Singapore which he had been doing for 13 years. He also ran two businesses on the side in Johor Bahru and worked part time as a pub manager.

(g) He had a total monthly income of RM 14,000 to RM 15,000, and was not in financial difficulties.

Given these factors, Jayacelan submitted that he would not have knowingly risked destroying everything by agreeing to transport drugs for Sutha.

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[50] Jayacelan's Closing Submissions at para 51.

Evaluation of Jayacelan's credibility

44 The first point to note was that Jayacelan did not mention his "black money" or "undeclared money" defence in his contemporaneous statement. Instead, he stated in his contemporaneous statement that he did not know what the contents of the plastic bag was.[51] At trial, he gave two inconsistent explanations for this. During examination-in-chief, Jayacelan said he was "shocked" to be arrested by CNB when he was under the impression that all he did was to transport "black money", not drugs. That was why he said he did not know what was in the Plastic Bag.[52] During cross-examination, Jayacelan said that he initially told the officer taking his contemporaneous statement, Staff Sergeant Meenambikhai Arul ("SSgt Meenambikhai"), that he was transporting "black money". However, the officer did not accept his answer and insisted that he was transporting drugs. That was when he decided to simply say he did not know.[53]

45 This claim that SSgt Meenambikhai refused to record Jayacelan's answer was not put to her during her testimony. Counsel for Jayacelan's cross-examination of SSgt Meenambikhai was brief and consisted simply of clarifying SSgt Meenambikhai's handwriting in the contemporaneous statement. Further, SSgt Meenambikhai's evidence in her conditioned statement was that after the contemporaneous statement was recorded, she had read back the statement to Jayacelan in Tamil and had "invited him to make any amendment, deletion or addition", which he declined to do so.[54] Again, SSgt Meenambikhai was not

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51 P110 at Q/A6 (AB 241).

52 NE (24 May 2018) 25:22–29.

53 NE (24 May 2018) 60:18–61:24.

54 PS40 (AB 238–239)

cross-examined on this point. I therefore rejected Jayacelan's claim that he had raised the "black money" defence when giving his contemporaneous statement, but this was not recorded down.

46 I also did not find credible Jayacelan's claim that he trusted Sutha, a person whom he had known for only two months and whom he had met only once, simply because Sutha had referred three customers to Jayacelan's CCTV business.[55] In fact, Jayacelan admitted at trial that he knew nothing about Sutha except that he was involved in money laundering. Jayacelan also claimed that he did not have Sutha's phone number,[56] even though his evidence was that he had spoken to Sutha before on the phone including on the two occasions when Sutha asked him to help transport "black money". According to Jayacelan, Sutha would always be the one contacting him and would use a private number to do so. As noted above, Jayacelan claimed to have been introduced to Sutha at a coffee shop through a mutual friend, Suresh. What was even more incredible was that Jayacelan also admitted at trial that he did not know Suresh well and he did not even have Suresh's number.[57] In the light of this factual matrix, I did not find it credible for Jayacelan to have any reasonable basis to develop sufficient trust in Sutha to take the latter's word concerning "black money" or "undeclared money" at face value without checking the contents of the Plastic Bag himself.

47 As for Jayacelan's claim that he was not in financial need, although he tendered in evidence the business registration certificates of the two businesses he referred to, he has provided no evidence concerning his income to

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55 Jayacelan's Closing Submissions at paras 11–12.

56 P120 at para 26 (AB 291).

57 NE (24 May 2018) 48:1–4.

substantiate his claim that his total monthly income was in the region of RM 14,000 to RM 15,000. In any event, this claim that Jayacelan was not in financial need was neither here nor there—even assuming I accepted his assertion (which I did not) that he was earning RM 14,000 to RM 15,000 per month, this raised a question why Jayacelan would be willing to take on the risk of delivering the supposed "black money" simply because Sutha had referred three customers to Jayacelan's CCTV business. Jayacelan explained that he trusted Sutha because "he's a good man and he has helped me" and "because of that gratitude, I helped him",[58] and this gratitude was premised on Sutha referring three customers to him. However, Jayacelan testified that he would have made about RM 3,000 in total from the three referrals, over a period of approximately one and a half months. He accepted that RM 3,000 was not a very large figure given the income that he was capable of earning in a month:[59]

> Q: Compared to the income that you make a month, 15,000 Ringgit a month, would you agree that the 3,000 Ringgit that you made from Sutha's referral isn't a very large figure?
>
> A: Could be, Your Honour.
>
> Q: Could be? What do you mean by "could be"? *It is not a very large figure, is that what you mean?*
>
> A: *Yes, Your Honour.*
>
> Q: In other words, you were not really dependent on Sutha to make a livelihood, isn't it, financially?
>
> A: Yes, Your Honour.
>
> Q: *In fact, even without his referrals, you would have been doing fine.*
>
> A: *Yes, Your Honour.*
>
> [emphasis added]

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58 NE (24 May 2018) 54:23–29.

59 NE (24 May 2018) 51:10–21.

48 At the same time, Jayacelan testified that he had been working in Singapore for the past 13 years and would not have done anything that would result in being terminated from his employment here.[60] He also knew that he could be "caught" and "fined" for transporting "black money" in Singapore.[61] Counsel for Jayacelan submitted that "sense of gratitude and trust are highly subjective personal feelings" and could not be determined by the number of times two people have met, or whether they could offer certain monetary benefits to each other.[62] Be that as it may, I found that Jayacelan was unable to offer a *credible* explanation for why he would agree to take on the risk of delivering the supposed "black money" simply because Sutha, whom he was otherwise not close to, had referred three customers to him.

49 Looking at the evidence in totality, I found Jayacelan's account to lack credibility, and therefore held that he had failed to rebut the presumption under s 18(2) of the MDA on the balance of probabilities.

Conclusion on the case against Jayacelan

50 For the reasons given above, I found that the Prosecution had proven its case against Jayacelan beyond reasonable doubt, and convicted Jayacelan of the charge against him.

The case against Hashim (the 1st Accused)

51 As noted above, Hashim did not deny the charge against him, and sought only to establish in his closing submission that his role was limited to that of a

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60 NE (24 May 2018) 46:15–28.

61 NE (24 May 2018) 55:1–20.

62 Jayacelan's Closing Submission at para 12.

"courier". Having regard to the fact that Hashim's only acts were to retrieve the Plastic Bag from the Open Dustbin and place it on the floor next to the Closed Dustbin,[63] I found that Hashim's involvement in the offence was restricted to the acts of a "courier".

52 On the day scheduled for delivery of the verdict, Hashim's counsel informed the court that, while trying to take instructions from Hashim earlier that day, Hashim was unresponsive and did not appear to comprehend what was being said by counsel to him. Counsel therefore asked that Hashim be remanded for observation in a psychiatric institution pursuant to s 247 of the Criminal Procedure Code 2010 ("CPC").

53 The power under s 247 of the CPC is exercisable only when a court "is *holding* or about to hold any inquiry, *trial* or other proceeding" [emphasis added]. A question therefore arose as to whether s 247 of the CPC was still applicable since the defence had already closed its case and made its closing submission. Having regard to s 230 of the CPC, which describes the procedure to be followed at trial, I took the view that a trial is not over until either the accused is found not guilty and acquitted or the accused is found guilty and sentenced. Since neither of these events had occurred, the power under s 247 of the CPC remained available to the court notwithstanding that the defence had already closed its case and made its closing submission. I therefore remanded Hashim for observation in a psychiatric institution pursuant to s 247(4) of the CPC.

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63 Prosecution's Closing Submissions at paras 71–72; Hashim's Closing Submissions at paras 3–4, 7–9.

54 The report submitted pursuant to s 247(6) of the CPC indicated that Hashim did not appear to possess the capacity to follow court proceedings and it was doubtful whether he could communicate with or instruct his counsel. I therefore found that Hashim was of unsound mind and incapable of making his defence. Consequently, I stayed the proceedings against Hashim pursuant to s 248(2) of the CPC and reported the case to the Minister for Law pursuant to s 249 of the CPC. The Minister subsequently ordered that Hashim be confined in the Institute of Mental Health ("IMH") until further notice.

The case against Azuin (the 3rd Accused)

55 Azuin was arrested with the Plastic Bag, containing the Drugs, in his possession. He was observed on the video footage and seen by CNB officers to have picked up the Plastic Bag from where Hashim left them, next to the Closed Dustbin. At trial, Azuin admitted that he was in possession of the Drugs, he knew he was collecting heroin when he collected the Plastic Bag, and that he was going to deliver the Drugs to a third party.[64]

56 As noted above, Azuin did not dispute the charge against him. The conduct of his defence focused on establishing that he was eligible for the alternative sentencing regime under either s 33B(1)(*a*) or s 33B(1)(*b*) of the MDA.[65]

The alternative sentencing regime under s 33B(1)(a) of the MDA

57 Section 33B(1)(*a*) of the MDA provides that the court may, instead of imposing the death penalty, sentence an offender to imprisonment for life and

64 NE (14 Aug 2019), 19:11–22, 35:2–4.

65 Azuin's Closing Submissions at para 2.

caning of not less than 15 strokes if he satisfies the requirements of s 33B(2). The requirements of s 33B(2) are that the offender's involvement in the offence was restricted to the acts of a "courier" and that the Public Prosecutor had issued a certificate of substantive assistance in respect of the offender. It was not disputed that Azuin's involvement in the offence was restricted to the acts of a "courier". However, the Public Prosecutor has not issued a certificate of substantive assistance in respect of Azuin. As such, Azuin was not eligible for the alternative sentencing regime under s 33B(1)(*a*) of the MDA.

*The alternative sentencing regime under s 33B(1)(**b**) of the MDA*

58 Section 33B(1)(*b*) of the MDA provides that a person convicted of an offence under s 5(1) shall be sentenced to life imprisonment instead of death if the requirements of s 33B(3) are satisfied. Section 33B(3) of the MDA reads:

> (3) The requirements referred to in subsection (1)(*b*) are that the person convicted proves, on a balance of probabilities, that —
>
> > (*a*) his or her 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 or her transporting, sending or delivering a controlled drug; or
> > >
> > > (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
> >
> > (*b*) he or she was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his or her mental responsibility for his or her acts and

> omissions in relation to the offence under section 5(1) or 7.

59 It was not disputed that Azuin satisfied the requirements of s 33B(3)(*a*). As for the requirements of s 33B(3)(*b*), Azuin submitted that he was suffering from persistent depressive disorder, opioid use disorder and stimulant use disorder at the material time, which substantially impaired his mental responsibility for the offence.[66] In response, the Prosecution disputed that Azuin was suffering from persistent depressive disorder. Alternatively, the Prosecution submitted that there was no evidence that any purported mental disorder which Azuin was suffering from had substantially impaired his mental responsibility for the offence.[67]

*The applicable legal principles on s 33B(3)(*b*) of the MDA*

60 The Court of Appeal in *Nagaenthran a/l K Dharmalingam v Public Prosecutor and another appeal* [2019] 2 SLR 216 ("*Nagaenthran*") held (at [21]) that an offender relying on s 33B(3)(*b*) of the MDA needs to establish the following cumulative requirements on the balance of probabilities:

> (a) first, he had to show that he was suffering from an abnormality of mind ("the first limb");
>
> (b) second, that the abnormality of mind: (i) arose from a condition of arrested or retarded development of mind; (ii) arose from any inherent causes; or (iii) was induced by disease or injury ("the second limb"); and

66 Azuin's Closing Submissions at paras 81 and 84.

67 Prosecution's Closing Submissions at para 79.

(c) third, the abnormality of mind substantially impaired his mental responsibility for his acts and omissions in relation to his offence ("the third limb").

While the second limb (*ie*, the aetiology or root cause of the abnormality) is a matter largely to be determined based on expert evidence, this is not the case with the first and third limbs, which are to be determined by the trial judge as the finder of fact: *Nagaenthran* at [22].

61 In relation to the first limb, the Court of Appeal in *Nagaenthran* reaffirmed (at [23]) the following definition from *Regina v Byrne* [1960] 2 QB 396 (at 403):

> 'Abnormality of mind,' … means a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act is right or wrong, but also the ability to exercise the will power to control physical acts in accordance with that rational judgment.

Whether there is an abnormality of mind is a fact-sensitive inquiry predicated on what the reasonable man would term as abnormal in all the circumstances. This is typically analysed in terms of three aspects of the mind's activities: the capacity to understand events, judge the rightness or wrongness of one's actions, and exercise self-control, as they will inevitably be quite accurate proxies of the extent of an offender's ability to exercise his will power to control his physical acts: *Nagaenthran* at [24]–[26].

62 In respect of the second limb, the words "(whether arising from a condition of arrested or retarded development of mind or any inherent causes or

induced by disease or injury)" ought to be read restrictively: *Nagaenthran* at [30].

63 The third limb is concerned with the connection between the offender's abnormality of mind and his mental responsibility for his acts or omissions in relation to the offence. The requirement of *substantial* impairment means that there must be a real and material (as opposed to trivial or minimal) impairment of the accused's mental state although it need not rise to the level of amounting to an unsoundness of mind contemplated under s 84 of the Penal Code. While medical evidence would be important in determining the presence and/or extent of impairment, whether an offender's mental responsibility was *substantially* impaired is ultimately a question of fact to be decided by the court based on all the evidence before it. The requirement of substantial impairment does not entail that the offender's abnormality of mind must be the *cause* of his offending, but merely that it had an *influence* on the offender's actions: *Nagaenthran* at [33].

Whether Azuin suffered from an abnormality of mind

64 Azuin relied on a report dated 23 July 2018 prepared by his expert witness, Dr Julie Lam, a consultant forensic psychologist at Forensic Psych Services. The report concluded that:[68]

> … Azuin was suffering from **Persistent Depressive Disorder (Moderate)** (300.4; DSM-5; APA, 2013), **Opioid Use Disorder (Severe)** (304.00; DSM-5; APA,2013) and **Stimulant Use Disorder – Amphetamine-type substance (Severe)** (304.40; DSM-5; APA, 2013) at and around the material time. The reading of Amphetamine and Opiate in his CNB urine test were **Over-range** after his arrest on 9 July 2015, which suggested he might have an acute intoxication of Amphetamine and Opiate

[68] 3D1 at para 29.

> at the time of arrest. He reportedly was also high on Alcohol that he could not remember what happened that day.

65 Dr Lam's report was prepared based on interviews conducted with Azuin and two members of his family from May to July 2018, about three years after the offence. The information provided by Azuin and his family to Dr Lam on which she based her diagnosis was summarised in the following passages in her report:

> 12 In his mental health, he reported chronic depression as a result of his adverse life circumstances. His elder sister and brother-in-law witnessed Azuin's low mood when he stayed with their family from 2011 to 2015. The death of his mother was a great blow to him as he was very close to her. The failed marriage and his wife taking his son from him worsened his mood. After his mother died, he was chased out from his step-father's flat and became homeless if not his sister offered him accommodation. He reported no history of self-harm behaviour. He was involved in fights when he was younger.
>
> …
>
> 21 A closer look at the antecedents before his arrest on 9 July 2015 suggested Azuin was very sad and emotionally charged. After his mother died he felt very lost and numbed himself emotionally with work. He relapsed into substance use in mid-2014 and stopped working in late 2014. He sold contraband cigarettes and also worked as a pimp to support himself. A month before his arrest (June 2015), he moved out from his sister's place as he did not want to give them trouble. His sister informed Azuin always looked "very down, cried, kept to self, and was very depressed." His brother-in-law thought Azuin was feeling desperate as he could not find a proper job.
>
> …
>
> 30 His mood was worsened by (a) his failed marriage – his wife and son left him for Indonesia in 2009; (b) the death of his mother in 2011 and he lost his emotional pillar; (c) his being chased out of the flat by his step-father after his mother's death and became homeless; (d) his loss of a stable job as a deliver man due to geographical distance of this workplace after moving to his sister's place; (d) [*sic*] his inability to find suitable employment to feel useful; and (e) his relapse into substance use to cope with his negative emotions and escape from his problems. He was very depressed and upset, and felt like a total

> failure. He also found life meaningless, and indulged in poly-drug use and alcohol to cope.

66 The Prosecution called Dr Kenneth Koh, a senior consultant forensic psychiatrist at IMH, as expert witness. Dr Koh examined Azuin on 24 July 2015, 30 July 2015 and 3 August 2015 for the purpose of assessing, among other things, Azuin's fitness to plead. That assessment was set out in a report dated 4 August 2015, in which Dr Koh also gave the opinion that, apart from polysubstance misuse, Azuin had "no other major mental disorder" ("First Report").[69] Dr Koh's First Report also specifically noted that there were "no features of major mood disorders or psychosis".[70] After Dr Lam produced her report, the Prosecution sought Dr Koh's comment on it. Dr Koh gave his comments in a report dated 18 February 2019 ("Second Report"). In that report, Dr Koh agreed with Dr Lam that Azuin had opioid use disorder and stimulant use disorder at the time of the offence. However, he did not agree that Azuin had persistent depressive disorder at the time of the offence. Dr Koh noted that the accounts given by Azuin and his sister to Dr Koh were in sharp contrast to what they told Dr Lam, and that the difference of opinion between Dr Lam and Dr Koh appeared to have been the result of "opposing statements" given by Azuin to Dr Lam and Dr Koh.[71]

67 I pause here to note that although both Dr Lam and Dr Koh agreed that Azuin was suffering from opioid use disorder and stimulant use disorder at the material time, it was not suggested by Dr Lam or Azuin's counsel that these two disorders by themselves would have, independently of the alleged persistent depressive disorder, resulted in substantial impairment of Azuin's mental

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69 P207 at p 3.

70 P207 at p 2.

71 P208 at paras 4 and 5.

responsibility. Therefore, the focus of the inquiry at this stage would be on whether Azuin was suffering from persistent depressive disorder.

68 Dr Koh explained at trial that, during the interviews conducted for the purpose of the First Report, he had actually assessed Azuin for depressive disorder or any other mood disorders and found none to be present. Referring to his clinical notes of the interviews conducted in 2015,[72] Dr Koh testified that Azuin had reported that his mood had been normal in the preceding three months, his sleep and appetite were alright and, in Azuin's own words: "everything ok". Azuin also told Dr Koh that he had experienced no passive or active suicidal thoughts, no diminution in concentration and no loss of interest in life activities.[73] In addition, Dr Koh observed that Azuin was able to talk freely with him and did not appear to be hiding anything from him:

> Q: What about his attitude to you acting as his psychiatric assessor? Was there any---how did you describe your lev---his level of comfort with you?
>
> A: He did not seem uncomfortable with me at all. He was able to talk freely with me. He was able to carry on a normal to and fro conversation. He did not appear to be guarded or to be hiding anything from me.

69 At trial, the only explanation which Azuin provided for not telling Dr Koh in 2015 the things which he eventually told Dr Lam three years later was that his "mental state wasn't that stable" at the time as he had just recovered from drug withdrawal:[74]

> Q: And these were quite detailed interviews that Dr Koh conducted? Dr Koh will be coming to give evidence, so think carefully before you answer.

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72 P210.

73 NE (20 Aug 2019) 5:15–6:2.

74 NE (14 August 2019) 29:24–30:27.

A: Yes, he---he---he did---he did ask me many questions, but I was quite indifferent towards his questions. At---when---when I was interviewed by him, *I just recovered from my withdrawal, and at that time, my thoughts were not stable yet.*

Q: … So from the evidence that you have given in your evidence- in-chief, you are trying to paint the picture that you were very depressed during the time of arrest. Is that---for want of a better word, "depressed", would I be right to describe that?

A: Yes, you can say that.

Q: You were in low spirits?

A: Yes.

Q: You felt useless and hopeless?

A: Yes.

Q: And that contributed to you committing this crime. That's what you're telling us?

A: Yes, Your Honour.

Q: You also---correct me from what---this is what I thought I heard, you felt like ending your life?

A: Yes, at that time.

Q: Now, none of these has been brought to Dr Kenneth's attention when he conducted the various interviews with you. *Can you explain why you didn't tell him all these things when he interviewed you? Because we're hearing it for the first time.*

A: *At that time, Your Honour, I was---my body has---had not fully recovered. And my mental state wasn't that stable.*

Q: In fact, I have it in the notes put up by Dr Koh that you did not have any suicidal thoughts. It's in his notes.

…

Q: That information can---could only have come from you. You must have told him you don't have any suicidal thoughts.

A: Yes, I might have told him that thing. *But at that time, my mental state wasn't that stable.*

[emphasis added]

70 I found this explanation lacking in credibility. Azuin was arrested on 9 July 2015, and was kept under observation in the Changi Prison's Medical Complex ("the CMC") for withdrawal symptoms from 11 to 13 July 2015. By the time Dr Koh first saw Azuin on 24 July 2015, it was already 15 days since Azuin's last drug use and 11 days since Azuin was discharged from the CMC. By the time Dr Koh was asking Azuin questions about mood symptoms during the second interview on 30 July 2015,[75] three weeks had passed since Azuin's last drug use. Dr Koh's observation of Azuin during the interviews was that Azuin was no longer affected by any withdrawal symptoms and was able to converse properly.[76]

71 Dr Koh also interviewed Azuin's sister over the phone on 31 July 2015, about three weeks after the offence. She reported that Azuin's mood appeared normal, he was eating and sleeping well and his behaviour was "essentially normal". She also reported that Azuin enjoyed playing with her granddaughter and he could "laugh, laugh, make a joke".[77]

72 Given the stark and irreconcilable differences between the account given by Azuin and his sister to Dr Koh and the account they gave to Dr Lam, I agreed with Dr Koh that the two factual accounts could not both be true.

73 At trial, Dr Lam agreed that her diagnosis was based largely on Azuin's self-reporting of symptoms and corroboration from family members.[78] When asked whether, in a case whether the subject chose to lie and the corroborative

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75 NE (20Aug 2019) 5:26–27.

76 NE (20 Aug 2019) 7:12–23; 31:17–32:25.

77 NE (20 Aug 2019) 18:9–12.

78 NE (16 Aug 2019) 24:17–21.

witnesses also chose to lie, it would impair her findings, Dr Lam agreed that it was possible.[79] When asked whether Azuin knew the purpose of Dr Lam's interviews with him, Dr Lam answered that Azuin knew the purpose would be for assessment to understand how he was functioning before his arrest.[80] Dr Lam also accepted that, at the time she interviewed Azuin, he might have been aware that, if he was diagnosed with depression, he may not face the death penalty.[81] When asked whether someone in Azuin's position would have an incentive to lie or embellish the accounts to he gave to her, Dr Lam agreed that it was possible.[82] In fact, Azuin confirmed during his cross-examination that, by the time of his interviews with Dr Lam, he was aware that he was facing the death penalty and that he could escape the death penalty by establishing diminished responsibility.[83]

74 I also had two observations concerning Azuin's sister. First, she visited Azuin about once a month since his arrest. This meant that there would have been opportunities for Azuin to prime his sister on what to say to Dr Lam, if Azuin had wanted to. Second, she appeared evasive and inconsistent when asked during cross-examination about her telephone interview with Dr Koh back in 2015. She initially agreed that she did not mention to Dr Koh that Azuin was depressed during the interview, but immediately gave the excuse that she "was not well" at that time.[84] When pressed further, she changed her testimony

79 NE (16 Aug 2019) 27:25–28.

80 NE (16 Aug 2019) 12:16–26.

81 NE (16 Aug 2019) 25:29–26:13.

82 NE (16 Aug 2019) 26:26–31.

83 NE (14 Aug 2019) 34:5–12.

84 NE (15 Aug 2019) 18:8–18.

and claimed repeatedly that she could not remember what she told Dr Koh.[85] In a later part of her cross-examination, she spoke about Azuin facing "pressure in his life". When confronted with the fact that she did not mention this to Dr Koh during the telephone interview, she responded that it was because she "was not well" and so "couldn't talk much" at that time.[86]

75 Having observed both Azuin and his sister in the witness box, and having regard to the matters discussed above, I was convinced that both Azuin and his sister were lying to Dr Lam when they made claims about Azuin's mental condition and symptoms which were diametrically opposed to what they told Dr Koh. For this reason, I found Dr Lam's report unreliable and placed no weight on it. My conclusion in this regard was buttressed by the fact that Azuin had stated, in his long statement dated 16 July 2015, that he started smoking heroin and "Ice" again about six months prior to his arrest "for fun" and that "[t]ill now, I am still smoking 'Ice' for fun".[87] Nowhere in his statements did he mention, contrary to what he told Dr Lam, that he had relapsed into substance misuse after his mother died or because he wanted to escape from his problems. As to Azuin's explanation at trial that he took heroin and "Ice" both for fun, *as well as* to escape from his problems,[88] I found this to be a convenient afterthought.

76 It remains for me to deal with three criticisms levelled against Dr Koh by counsel for Azuin. The first criticism was that, in comparison to Dr Lam who spent a total of seven hours interviewing Azuin, Dr Koh only spent a total of

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85 NE (15 Aug 2019) 18:19–26.

86 NE (15 Aug 2019) 19:11–16.

87 P129 (AB 387)

88 NE (14 August 2019) 28:23–29:4.

105 minutes doing so, of which merely 30 minutes were devoted specifically to assessing Azuin for mood symptoms. Counsel submitted that Dr Koh could not have possibly been able to fully assess Azuin and arrive at an accurate diagnosis within such a short timeframe.[89] In my view, for the court to decide whether to give weight to Dr Koh's assessment, the relevant question is not whether Dr Koh had spent more or less time with Azuin than Dr Lam. Instead, the question is whether Dr Koh had spent an adequate amount of time and made an adequate level of inquiry to arrive at his assessment. In this regard, I note that Azuin had not adduced evidence to demonstrate that the amount of time which Dr Koh spent with Azuin was insufficient for an accurate assessment to be made. In any event, having regard to the matters narrated at [67]–[69] above, I was satisfied that Dr Koh had gone into a significant level of detail during his interview with Azuin concerning the presence of mood symptoms. I therefore did not find merit in this first criticism.

77 The second criticism was Dr Koh's decision not to interview Azuin again after receiving Dr Lam's and before issuing his Second Report.[90] In this regard, I accepted Dr Koh's explanation that there was very little utility in interviewing Azuin again given that Azuin had so dramatically changed his account between the time Dr Koh first interviewed him and the time Dr Lam interviewed him.[91]

78 The third criticism was that Dr Koh conducted his telephone interview with the person whom he believed was Azuin's sister without verifying the

89 Azuin's Closing Submissions at paras 39–41.

90 Azuin's Closing Submissions at para 35.

91 NE (20 Aug 2019) 29:26–30:6.

identity of the person he was speaking to.[92] I failed to see how this criticism was in any way relevant, since Azuin's sister had confirmed in court that she was interviewed by a doctor over the telephone at the material time. There could therefore be no reasonable doubt that Dr Koh was indeed speaking to Azuin's sister during the telephone interview which Dr Koh referred to.

79 For the reasons given above, I found that Azuin had failed to establish that he was suffering from persistent depressive disorder at the material time, with the result that Azuin had also failed to establish that he was suffering from an abnormality of mind.

Whether Azuin's mental responsibility was substantially impaired

80 Given my finding that there was no abnormality of mind, it is strictly not necessary for me to consider the second and third limbs outlined at [60] above. Nevertheless, out of deference to the extensive submissions by parties on the third limb, I will provide some observations on that limb.

81 Azuin relied on the following passage in Dr Lam's report:

> 31 We are of an opinion while he was not of unsound mind at and around the material time, his acute substances and alcohol intoxication, Persistent Depressive Disorder and Substance Use Disorder (Opiate and Amphetamine) would have substantially impaired his judgment and decision-making in agreeing to help collect a package. …

At trial, Dr Lam said during examination-in-chief that the depressive disorder would have substantially impaired Azuin's thinking, such that he did not think about the consequences of his behaviour.[93] During cross-examination, Dr Lam

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92 Azuin's Closing Submissions at para 62(ii).

93 NE (16 Aug 2019) 19:15–16.

explained that the persistent depressive disorder would have impaired Azuin's judgement, decision-making and impulse control. When asked what she meant by "judgement", Dr Lam explained that she was referring to whether Azuin should have gone to collect the Plastic Bag.[94]

82 I did not accept that Azuin's mental responsibility had been impaired in any real or material way. There was no evidence linking the alleged moderate persistent depressive disorder to Azuin's decision to accept the assignment to collect and deliver drugs on the day of the offence. First, Dr Lam's suggestion that Azuin was operating on "auto-pilot" mode was not borne out by the evidence. The evidence demonstrated that Azuin was able to decide to accept the assignment, take a taxi to a bus interchange near the Carpark before making his way to the Carpark on foot, recognise the person whom he was supposed to meet and then pick up the Plastic Bag after the person pointed it out. Second, Azuin gave evidence that he was involved in drug trafficking because it was lucrative, and that he would not take part in drug trafficking if the amount of money involved was small.[95] This demonstrated that Azuin could decide whether to accept or reject a drug delivery assignment and he had the capacity to evaluate whether the remuneration to be earned was worth his while to accept the assignment. Taken together, these showed that Azuin's mental responsibility was not substantially impaired.

Conclusion on the case against Azuin

83 For the reasons given above, I convicted Azuin of the charge against him. In addition, I found that he has failed to establish his eligibility for the

94 NE (16 Aug 2019) 50:1–5.

95 NE (14 Aug 2019) 22:15–23:11.

alternative sentencing regimes under either s 33B(1)(*a*) or s 33B(1)(*b*) of the MDA. In respect of s 33B(1)(*a*), Azuin did not satisfy the requirement of s 33B(2)(*b*) for a certificate of substantive assistance from the Public Prosecutor. In respect of s 33B(1)(*b*), Azuin has failed to establish the requirements of s 33B(3)(*b*) of the MDA on a balance of probabilities.

Sentence

84 Having convicted Kumaran, Jayacelan and Azuin, I turned to consider the sentences to be imposed. As more than 15g of diamorphine was involved, the prescribed sentence was death.

85 In respect of Kumaran and Jayacelan, I found that their involvement were restricted to the acts of a "courier". The Public Prosecutor had also issued certificates of substantive assistance pursuant to s 33B(2)(*b*) of the MDA. I therefore exercised my discretion pursuant to s 33B(1)(*a*) of the MDA and sentenced each of them to imprisonment for life. In addition, I sentenced Jayacelan to 15 strokes of the cane. Kumaran may not be punished with caning as he had exceeded 50 years of age. Pursuant to s 318 of the CPC, I directed that their sentences of imprisonment take effect from 9 July 2015, the date of their arrest.

86 In respect of Azuin, although I found that his involvement in the offence was restricted to the acts of a "courier", the Public Prosecutor had not issued a certificate of substantive assistance pursuant to s 33B(2)(*b*) of the MDA and I had not accepted he was suffering from such abnormality of mind as substantially impaired his mental responsibility for his acts and omissions in relation to the offence pursuant to s 33B(3)(*b*) of the MDA. Azuin therefore did

not qualify to be considered for the alternative sentencing regimes under s 33B of the MDA. In the result, I sentenced Azuin to death.

Pang Khang Chau
Judge of the High Court

Anandan Bala, Samuel Yap and Theong Li Han (Attorney-General's Chambers) for the prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary) and Wee Heng Yi Adrian (Characterist LLC) for the first accused;
Ram Goswami (Ram Goswami) and Dhanaraj James Selvaraj (James Selvaraj) for the second accused;
Aw Wee Chong Nicholas (Clifford Law LLP) and Wong Li-Yen Dew (Dew Chambers) for the third accused;
Allagarsamy s/o Palaniyappan (Allagarsamy & Co) and Krishna Ramakrishna Sharma (Fleet Street Law LLC) for the fourth accused.