

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 168

Criminal Case No 39 of 2017

Between

Public Prosecutor

And

Hari Krishnan Selvan

FOUNDATIONS OF DECISION

[Criminal law] — [Statutory offences] — [Misuse of Drugs Act] —
[Drug trafficking] — [Guilty plea]

[Criminal Procedure and Sentencing] — [Sentencing] —
[Benchmark sentences]

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Public Prosecutor
v
Hari Krishnan Selvan

[2017] SGHC 168

High Court — Criminal Case No 39 of 2017
Foo Chee Hock JC
19 June 2017

21 July 2017

Foo Chee Hock JC:

1 On 19 June 2017, the accused, Hari Krishnan Selvan, a 33-year-old Malaysian male, pleaded guilty to one count of trafficking with common intention in “a total of not less than 14.99 grams of diamorphine” under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed). The charge against the accused read as follows:

That you, **HARI KRISHNAN SELVAN**,

on 13 August 2015 at about 6.35am, inside a lorry bearing Malaysia registration number JQH5478, along Ang Mo Kio Street 53, Singapore, together with

one Mohd Nor Kamarrudin Bin Kamari, Malaysia Passport No.: [xxx], in furtherance of your common intention, did jointly traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“**MDA**”), to wit, by delivering eight packets containing not less than a total of 3655.4 grams of granular/powdery substance which was analysed and found to contain a total of not less than 14.99 grams of diamorphine, to one Jumaat Bin Mohamed Sayed, NRIC No.: [xxx], at the aforesaid place without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under Section 5(1)(a) of the MDA read with Section 34 of the Penal Code (Cap 224, Rev Ed 2008), and punishable under Section 33(1) of the MDA.

2 After convicting the accused on the charge, I sentenced him to 26 years’ imprisonment with 15 strokes of the cane. The accused has appealed against the sentence on the ground that it was “excessive”.¹ I now set out the reasons for my decision.

3 At the material time, the accused was employed by CCL IMPEX (S) Private Limited (“CCL”) as a lorry driver to deliver vegetables from Malaysia to Singapore. He was scheduled to deliver vegetables with Mohd Nor Kamarrudin Bin Kamari (“Nor”) in a lorry bearing registration number JQH5478 (“Lorry”) on 12 August 2015.²

¹ Notice of Appeal dated 22 June 2017.

² SOF at paras 1, 3 and 5.

4 On or before 11 August 2015, a person identified as “Kumar” asked the accused to deliver eight cabbages containing heroin (a street name for diamorphine) (“Cabbages”) to Singapore during the scheduled delivery.³ Kumar told the accused to deliver the Cabbages to Jumaat Bin Mohamed Sayed (“Jumaat”) at “Aik Leong Eating House” located at Block 505, Ang Mo Kio Avenue 8.⁴ Kumar promised to pay the accused after the Cabbages had been delivered.⁵

5 The accused informed Nor that he had extra “*barang*” (which Nor understood to mean illicit drugs) to deliver, and promised to pay Nor RM700 for his assistance.⁶ The accused also asked Vikineswaran A/L Kalidas (“Vikineswaran”), an ex-employee of CCL, to help the accused to deliver the Cabbages in exchange for money.⁷

6 On the night of 12 August 2015, the accused and Nor loaded vegetables onto the Lorry and drove to the accused’s house located at Bukit Kempas, Johor Bahru, where they met up with Vikineswaran.⁸ The accused then retrieved four plastic bags from

³ SOF at para 4.

⁴ SOF at para 4.

⁵ SOF at para 4.

⁶ SOF at para 5.

⁷ SOF at para 5.

⁸ SOF at paras 6–7.

his house, each of which containing two cabbages with heroin that Kumar had earlier passed to him, *ie*, the Cabbages.⁹ The accused instructed Vikineswaran to place two of the plastic bags at the bottom left basket of the Lorry, and the remaining two plastic bags at the bottom right basket.¹⁰ On the accused's instructions, Nor placed additional baskets containing vegetables on top of the baskets containing the Cabbages.¹¹

7 Thereafter, the accused, Nor, and Vikineswaran drove the Lorry to Singapore and delivered the vegetables to their respective locations.¹² After the last delivery at Pasir Panjang, the accused instructed Vikineswaran to transfer all the plastic bags containing the Cabbages from the back of the Lorry to the passenger seat area. They then drove towards "Aik Leong Eating House".¹³

8 On 13 August 2015, at about 6.35am, the accused stopped the Lorry along Ang Mo Kio Street 53, which was the road beside "Aik Leong Eating House".¹⁴ Jumaat approached the Lorry, and the accused told Nor to pass the four plastic bags containing the

⁹ SOF at para 7.

¹⁰ SOF at para 7.

¹¹ SOF at para 7.

¹² SOF at para 8.

¹³ SOF at para 8.

¹⁴ SOF at para 9.

Cabbages to Jumaat.¹⁵ Upon receiving the Cabbages, Jumaat dropped a blue plastic bag containing S\$18,500 through the passenger seat window, which was picked up by Vikineswaran who placed it at the back of the driver seat.¹⁶

9 The accused, Nor, and Vikineswaran were arrested subsequently at the Woodlands Checkpoint.¹⁷ Jumaat was also arrested at his food stall located at “Aik Leong Eating House”.¹⁸ The Cabbages were found in Jumaat’s food stall, and each contained one packet of granular/powdery substances.¹⁹

10 Collectively, the eight packets of granular/powdery substances weighed not less than 3655.4g, and were analysed and found to contain not less than 147.98g of diamorphine.²⁰ The charge proceeded with was only in respect of 14.99g of diamorphine. At all material times, the accused was not authorised under the MDA or the regulations made thereunder to traffic in diamorphine, a Class A controlled drug listed in the First Schedule to the MDA.²¹

¹⁵ SOF at para 9.

¹⁶ SOF at paras 9–10.

¹⁷ SOF at para 10.

¹⁸ SOF at para 11.

¹⁹ SOF at para 11.

²⁰ SOF at para 15.

²¹ SOF at paras 19, and 16.

11 For sentencing, the Prosecution relied principally on the recent Court of Appeal case of *Suventher Shanmugam v Public Prosecutor* [2017] SGCA 25 (“*Suventher*”) and submitted that the appropriate sentence should be at least 26 years’ imprisonment and 15 strokes of the cane.²² The Prosecution highlighted two aggravating factors. First, the accused recruited and paid Nor and Vikineswaran to assist him in trafficking in the diamorphine.²³ Second, the diamorphine was hidden in the Cabbages to avoid detection, and the accused had further concealed the Cabbages by placing baskets of vegetables on top of them.²⁴

12 In mitigation, the Defence pleaded for leniency and urged me to “impose a minimum sentence”.²⁵ To this end, it was highlighted that the accused had pleaded guilty at the earliest instance and had cooperated with the Central Narcotics Bureau in its investigations.²⁶

13 On the facts, the accused was charged for trafficking in 14.99g of diamorphine. This was a hair’s breadth away from the weight that would have attracted the mandatory death sentence. Under s 33(1)

²² Prosecution’s Skeletal Sentencing Submissions at para 2.

²³ Prosecution’s Skeletal Sentencing Submissions at para 10(a).

²⁴ Prosecution’s Skeletal Sentencing Submissions at para 10(b).

²⁵ Plea-in-mitigation at para 13.

²⁶ Plea-in-mitigation at paras 3–4, and 11.

read with the Second Schedule of the MDA, the accused faced the punishment that ranged between the minimum of 20 years' to the maximum of 30 years' imprisonment or imprisonment for life, together with the mandatory 15 strokes of the cane.

14 In this regard, *Suventher* proved instructive. The following sentencing guidelines for unauthorised import or trafficking of *cannabis* were pronounced by the Court of Appeal (at [29]):

Quantity	Sentencing range
330g to 380g	20 to 22 years' imprisonment
381g to 430g	23 to 25 years' imprisonment
431g to 500g	26 to 29 years' imprisonment

15 The Court of Appeal in *Suventher* emphasised at [28] that the **quantity of drugs** that the accused was charged with should be the pointer for determining the severity of the punishment to be imposed on the offender. Further, the full range of possible sentences must be considered, although the “indicative starting point” for the “highest weight range” should be lower than the maximum sentence so that there was still some discretion for an upward adjustment where appropriate (see *Suventher* at [26] and [29]). The Court of Appeal added that these starting points were not immutable – they

“may be adjusted upward or downward to take into account the offender’s culpability and the presence of aggravating or mitigating factors” (at [30]). Such adjustment may lead to the conceivable possibility of the eventual sentence being outside the indicative range (at [30]).

16 Applying the principles set out in *Suventher*, and bearing in mind that 14.99g of diamorphine would fall within the highest weight range for offences involving the trafficking of diamorphine (see also [31]), I found that the “indicative starting point” for the present offence committed by the accused was 26 to 29 years’ imprisonment.

17 The Defence accepted that *Suventher* applied,²⁷ and that the range of 26 to 29 years’ imprisonment should be the starting point.²⁸ However, the Defence pointed out that the Court of Appeal in *Suventher* did not disturb the lower court’s sentence of 23 years’ imprisonment even though *Suventher* had imported 499.9g of cannabis.²⁹ It also sought to argue that an imprisonment term of less than 26 years was warranted on the instant facts in the light of the mitigating factors.³⁰ Finally, reliance was placed on the unreported

²⁷ Defendant’s Submission on Sentencing at para 2.

²⁸ Transcript dated 19 June 2017, p 17, lines 15–17.

²⁹ Defendant’s Submission on Sentencing at para 7.

case of *Public Prosecutor v Jothiswaran A/L Arumugam* (CC 34 of 2017) (“*Jothiswaran*”), where the accused received 25 years’ imprisonment (with 15 strokes of the cane) for importing into Singapore (with common intention) 14.99g of diamorphine (with another charge taken into consideration). The Defence submitted that *Jothiswaran* showed that there were decisions “not within the benchmark that was cited in *Suventher*”.³¹

18 In my view, the Defence’s arguments did not bring it very far. In relation to *Suventher*, the Prosecution pointed out that it was an appeal from the offender against his sentence, and there was no cross-appeal from the prosecution. In this regard, the tenour and reasoning of the Court of Appeal ([38]–[40]) were to show that *Suventher*’s sentence “could hardly be said to be manifestly excessive” (at [40]). While the Court of Appeal did not enhance *Suventher*’s sentence in accordance with the new guidelines that were pronounced, it emphasised at [41] that “as the charge was for a quantity of drugs that was at the very top of the weight range, the sentence *could in fact have been much more severe*” [emphasis added].

19 In assessing the appropriate sentence, I considered the

³⁰ Defendant’s Submission on Sentencing at para 8.

³¹ Transcript dated 19 June 2017, p 16, lines 18–30; Defendant’s Submission on Sentencing at para 6.

mitigating factors submitted by the Defence: see [12] above. The accused's plea and cooperation saved the court and law enforcement agencies considerable time and resources and indicated a measure of remorse. I accorded due weight to these factors, but in my view, a downward adjustment from the starting point of 26 to 29 years' imprisonment could not be justified after I also took into consideration the factors raised by the Prosecution in [11] above, which I agreed were aggravating circumstances. The accused was the recipient of instructions to deliver the drugs for reward. He had chosen to involve two other people in his criminal enterprise and manifested premeditation, especially in the steps taken to avoid detection of the drugs.

20 With respect to the case of *Jothiswaran*, I agreed with the Prosecution's submission that each case must turn on its own facts.³² One key fact that justified the particular sentence for Jothiswaran was his lower level of involvement in the transaction to bring drugs into Singapore. Instead, it was one Tamil Alagan A/L Gunasekaran ("Tamil"), who had planned and orchestrated the relevant transaction, with Jothiswaran merely acting "according to Tamil's instructions".³³ To be sure, Tamil was sentenced to a longer term of

³² Transcript dated 19 June 2017, p 20, lines 9–10.

³³ Prosecution's Skeletal Sentencing Submissions at Tab B (Tamil's SOF in CC 38 of 2017 at paras 14–16).

27 years' imprisonment (with the mandatory caning) for the offence of trafficking (with common intention) in 14.99g of diamorphine (with another charge taken into consideration).³⁴

21 The tough stance that the law held in regard to such offences was already incorporated in the sentences prescribed in the MDA (see [13] above). Looking at all the circumstances of the present case in the round, I was of the view that 26 years' imprisonment was appropriate for this case. In the premises, I sentenced the accused to 26 years' imprisonment and 15 strokes of the cane. In exercise of my discretion under s 318 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), I ordered that the imprisonment shall take effect from the date of remand (*ie*, 13 August 2015).

Foo Chee Hock

Judicial Commissioner

Ong Luan Tze and Zhuo Wenzhao (Attorney-General's Chambers)
for the Public Prosecutor;
Allagarsamy s/o Palaniyappan (Allagarsamy & Co) for the accused.

³⁴ Prosecution's Skeletal Sentencing Submissions at para 8 and Tab B (Form 57).

