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Public Prosecutor
v
Ramesh a/l Perumal and another

[2017] SGHC 290

High Court — Criminal Case No 33 of 2017
Chan Seng Onn J
25–27 April; 3–5 May; 3 July 2017

Criminal Law — Statutory offences — Misuse of Drugs Act

Criminal Procedure and Sentencing — Joint trial — Taking into consideration admission of co-accused

Evidence — Proof of evidence — Confessions

14 November 2017

Judgment reserved.

Chan Seng Onn J:

Introduction

1 This is a joint trial of two accused persons who have been accused of bringing a total of nine bundles of diamorphine into Singapore from Malaysia in a lorry driven by the second accused person, Chander Kumar a/l Jayagaran (“Chander”). The first accused person, Ramesh a/l Perumal (“Ramesh”), was a passenger in the said lorry. When in Singapore, the accused persons parted ways. Ramesh was arrested shortly after with four of the bundles in his possession; Chander was arrested with two of the bundles in his possession,

after having delivered three of the bundles to one Harun bin Idris (“Harun”).

2 Ramesh faces a single charge under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) for having in his possession not less than 29.96g of diamorphine for the purpose of trafficking without any authorisation under the MDA. Chander faces the following three charges:

- (a) one charge under s 5(1)(a) read with s 5(2) of the MDA for having in his possession not less than 14.79g of diamorphine for the purpose of trafficking without any authorisation under the MDA;
- (b) one charge under s 5(1)(a) of the MDA for trafficking in not less than 19.27g of diamorphine by delivering three bundles of diamorphine to Harun without any authorisation under the MDA; and
- (c) one charge under s 5(1)(a) of the MDA for trafficking in not less than 29.96g of diamorphine by delivering four bundles of diamorphine to Ramesh without any authorisation under the MDA.

3 Both accused persons claimed trial to their charges. Ramesh contests his charge by essentially arguing that he did not know that the bag that Chander had passed to him contained the four bundles of diamorphine that he is being charged for; instead, he thought that the bag contained office documents. As for Chander, he argues that he did not know that the nine bundles of diamorphine that are the subject of his charges contained diamorphine; rather, he thought that the bundles contained betel nuts.

4 At the end of the joint trial, I reserved judgment. I now set out my decision and the accompanying reasons.

The undisputed facts

5 Ramesh, a 39-year-old Malaysian national, and Chander, a 40-year-old Malaysian national, both work as drivers for Millennium Transport Agency, a transport company based in Johor Bahru, Malaysia, which handles deliveries in Singapore.¹

6 On 26 June 2013, at or about 7.40am, Chander and Ramesh arrived together at Woodlands Checkpoint, Singapore, from Malaysia in a delivery lorry bearing registration number JNS 2583 (“the first lorry”), which was driven by Chander. After entering Singapore, Chander drove to a location along Woodlands Road, Singapore, where another delivery lorry bearing registration number JMG 7398 (“the second lorry”) was parked. Ramesh alighted from the first lorry and boarded the second lorry. Both accused persons then drove off separately.²

7 At or about 8.30am on the same day, officers from the Central Narcotics Bureau (“CNB”) spotted Chander stopping the first lorry close to the food centre at 20 Marsiling Lane, where Harun and one Tang Chee Sun (“Tang”) were waiting. Harun approached the first lorry and opened the door of the front passenger side of the lorry. Chander informed Harun that his items were on the passenger’s side of the lorry. Harun then retrieved a white plastic bag (“E1”), which contained three bundles wrapped in black tape (“E1A”, “E1B” and “E1C”; collectively, “the E bundles”), from the floor of the passenger’s side of the first lorry, placed an envelope and a stack of cash on the passenger seat, and left. Chander then drove off from the location.³

¹ Statement of Agreed Facts (“SOAF”) dated 19 April 2017, para 1.

² SOAF, para 2.

³ SOAF, para 3.

8 At about 8.45am, Chander arrived just outside the premises of Sankyu (Singapore) Pte Ltd (“Sankyu”) at 11 Clementi Loop, where he was arrested by CNB officers shortly after at about 8.55am.⁴ The officers searched the first lorry and seized the following items:⁵

- (a) one bundle wrapped in black tape, recovered from the area between the driver and passenger seats (“A1”);
- (b) one bundle wrapped in black tape, recovered from a compartment under the radio (“B1”); and
- (c) cash amounting to S\$6,950 (“C1”) and one Nokia 110 mobile phone (“CKJ-HP1”), both recovered from the compartment above the driver’s seat.

A1 and B1 shall be collectively referred to as “the AB bundles”. The officers also searched Chander and seized another Nokia 110 mobile phone (“CKJ-HP2”), recovered from the right pocket of his pants.⁶

9 Shortly after, at or about 9.00am, Ramesh stopped the second lorry at the same location at 11 Clementi Loop. He was arrested by CNB officers while walking towards the premises of Sankyu after alighting from the second lorry.⁷ The officers proceeded to search the second lorry, and seized a blue bag (“D1”) from the area between the driver and passenger seats. Within the bag, there was

⁴ SOAF, para 4.

⁵ SOAF, paras 5 and 7.

⁶ SOAF, para 6.

⁷ SOAF, para 8.

a white plastic bag (“D1A”), which contained four bundles wrapped in black tape (“D1A1”, “D1A2”, “D1A3” and “D1A4”; collectively, “the D bundles”).⁸

10 All the seized bundles were submitted to the Health Sciences Authority (“HSA”) for analysis. In summary, the following findings were made:⁹

(a) The AB bundles, which together contained not less than 460.3g of granular/powdery substance, were found to contain not less than 14.79g of diamorphine.

(b) The D bundles, which together contained not less than 923g of granular/powdery substance, were found to contain not less than 29.96g of diamorphine.

(c) The E bundles, which together contained not less than 688.5g of granular/powdery substance, were found to contain not less than 19.27g of diamorphine.

Diamorphine is a Class A controlled drug listed under the First Schedule to the MDA.

11 Tests run by the HSA on the blood samples obtained from both accused persons further revealed that Ramesh’s deoxyribonucleic acid (“DNA”) was found on the adhesive sides of the tape used to wrap exhibit D1A2.¹⁰

⁸ SOAF, para 9.

⁹ SOAF, paras 15–16.

¹⁰ SOAF, paras 17–20.

Statements recorded from the accused persons

12 In the course of investigations, the CNB officers recorded six statements from Ramesh, which comprised:

- (a) one contemporaneous statement recorded pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“the CPC”) on 26 June 2013 at 9.40am;¹¹
- (b) one cautioned statement recorded pursuant to s 23 of the CPC on 26 June 2013, 11.06pm to 11.20pm;¹² and
- (c) four long statements recorded pursuant to s 22 of the CPC on 30 June 2013 (“P98”), 2 July 2013 (“P100”), 3 July 2013 (“P102”) and 24 April 2014 (“P104”) respectively.¹³

13 As for Chander, the CNB officers recorded ten statements, which comprised:

- (a) two contemporaneous statements recorded pursuant to s 22 of the CPC on 26 June 2013 at 9.42am and 11.37am respectively;¹⁴
- (b) three cautioned statements recorded pursuant to s 23 of the CPC on: (i) 27 June 2013, 12.25am to 12.35am (“P94”); (ii) 27 June 2013,

¹¹ Agreed Bundle (“AB”), pp 307–311.

¹² AB, pp 351–355.

¹³ AB, pp 381–389, 396–398, 402–408 and 426–427

¹⁴ AB, pp 276–283 and 313.

1.06am to 1.12am (“P95”); and (iii) 27 June 2013, 1.40am to 2.05am (“P96”) respectively;¹⁵ and

(c) five long statements recorded pursuant to s 22 of the CPC on 29 June 2013 (“P97”), 1 July 2013 (“P99”), 2 July 2013 (“P101”), 3 July 2013 (“P103”) and 30 April 2014 (“P105”) respectively.¹⁶

14 Neither of the accused persons disputes the voluntariness of any of the statements.

Ramesh

15 In his contemporaneous statement recorded on the day he was arrested, Ramesh said that Chander had passed him D1 “at about 7 plus” on 26 June 2013, asked him to hold on to D1, and instructed Ramesh to pass D1 back to him after 1pm on the same day. He also claimed that this was the first time that Chander had ever told him to hold onto a bag. Crucially, Ramesh further stated that he had asked Chander what was in the bag, to which Chander replied that “there is company item inside” that “he wants to bring back to Malaysia”. However, Ramesh claimed that he did not open D1 to check its contents, and that he had never seen the D bundles before.¹⁷

16 In his cautioned statement recorded on the same day, Ramesh stated that Chander gave him a bag, *ie*, D1, and asked him to keep it in the second lorry. What was noteworthy was that Ramesh stated that he received a call at 8.30am from someone asking him “where is the bag”, to which Ramesh replied that he

¹⁵ AB, pp 356–370.

¹⁶ AB, pp 371–380, 390–395, 399–401, 409–425 and 428–439.

¹⁷ AB, pp 310–311.

did not know. Ramesh also received another call at about 8.40am from a Malaysian number asking him in Tamil “work finish?”, to which he replied “what work”. The Malaysian caller then hung up.¹⁸

17 In P98, Ramesh gave an extensive account of the events leading up to his arrest. The following portions are worth highlighting:

(a) He was instructed by his employer on the night of 25 June 2013 to hitch a ride from Chander the next day into Singapore and use the second lorry parked in Woodlands to collect some documents from Sankyu at 11 Clementi Loop and other items from various other locations.¹⁹ On 26 June 2013, at about 5.30am, he hitched a motorcycle ride from his friend, one Murugan, who was an old friend from another transport company that he used to work for, to his office. According to Ramesh, although he usually does not hitch a ride from Murugan, he decided to do so on that day as he “was afraid [that Chander] might be late for work”. However, in the same breath, Ramesh also said that “[Chander] is habitually late for work”. Ramesh reached his office at 5.40am, while Chander arrived ten minutes after. They set off for Woodlands Checkpoint at about 6.15am, and arrived at about 7.20am.²⁰

(b) They arrived at the location where the second lorry was parked at about 7.40am. While Ramesh was alighting from the first lorry, he claimed that Chander gave him a blue bag, *ie*, D1, and “told [him] to keep the bag till [they] were done with [their] collection at Keppel Distripark”. Ramesh claimed that he was confused as he “did not know

¹⁸ AB, pp 354–355.

¹⁹ P98, para 7.

²⁰ P98, paras 9–10.

why he would want to give [him] his bag”. According to Ramesh, he only saw D1 when Chander wanted to pass it to him. Ramesh asked Chander why he gave him D1. In response, Chander told him “to help him keep the bag as it contained some office documents”. Ramesh felt that D1 was heavy and hence again asked Chander what was in D1. Chander again replied that it contained office documents. After Chander drove off in the first lorry, Ramesh opened the door of the second lorry and “threw the bag onto the space beside the driver seat”. Ramesh then drove off at about 8am.²¹

(c) While Ramesh was driving the second lorry, he claimed to have received a phone call from a Malaysian number, during which the male caller asked him in Tamil “if the work has been completed”. Ramesh asked in return “what work he was referring to and who he was”. The caller then hung up abruptly. About ten minutes later, at about 8.40am, Ramesh then received a call from a Singapore number, during which the male caller told him in English that “I am at Cheng Meng”. Ramesh claimed that he “was not really sure what he meant by this”, and hence asked the caller what he meant. The caller once again hung up abruptly.²²

(d) Subsequently, after Ramesh arrived at Sankyu at 11 Clementi Loop, he was arrested by CNB officers while walking towards the Sankyu premises after alighting from the second lorry. Ramesh was brought to the lorry and asked what he had inside. Ramesh responded by informing the officers that he had “some company documents and a bag”. The officers then opened the door of the second lorry, retrieved

²¹ P98, para 12.

²² P98, paras 13–14.

D1, and asked Ramesh what was inside the bag. Ramesh answered that he “did not know what was inside”. When the officers emptied the contents of D1 to reveal the D bundles and informed Ramesh that they could be drugs, Ramesh claimed to feel “shocked”.²³

18 In P100, Ramesh reiterated that he received two calls in the morning of 26 June 2013 – one from a Malaysian number and one from a Singapore number. However, Ramesh also stated that after he had received those two calls, he also received a call from Chander, who called to check on his delivery status. After this call from Chander, Ramesh then claimed to receive another call from the same Malaysian number that he had earlier received the first call from. The caller remained silent throughout the call this time. Ramesh hung up after the caller failed to respond.²⁴

19 Finally, in P104, Ramesh stated – after being shown the HSA test results revealing that Ramesh’s DNA was found on the adhesive sides of the tape used to wrap exhibit D1A2 – that during the journey on the first lorry, he recalled using his hand to reach down and push aside an object that “came out from the dashboard compartment beside [his] leg”.²⁵ Specifically, he had felt uncomfortable as the object was hitting his leg during the journey, and hence he “grasped [the object] in [his] hand using [his] fingers and moved it aside”.²⁶ However, he “could not clearly see what [he had] pushed aside” as it was dark. After pushing aside the object, he went back to sleep.²⁷

²³ P98, para 15.

²⁴ P100, paras 17–18.

²⁵ P104, para 40.

²⁶ P104, para 37.

²⁷ P104, para 38.

Chander

20 In his two contemporaneous statements recorded on 26 June 2013, Chander stated that A1 was passed to him from “[s]omeone on top in Malaysia” for him to “give [to] one Malay person” who would contact him later, and that B1 was also passed to him from “[t]he person on top” for him deliver to “the person that wants to take the thing”, who would also contact him later. Chander also stated that he had passed “[f]our bundles” to Ramesh, while he had passed “[t]hree” bundles to Harun in exchange for “7 thousand [dollars]”. When asked how many times he had previously “done this kind of work sending things”, Chander stated that he had done this “[o]nly three times in a period of two months.”²⁸

21 In his three cautioned statements, *ie*, P94, P95 and P96, Chander purported to admit to all three charges that were served on him. As the statements are extremely material to my decision, it is useful for me to set them out in full. First, P94, which was recorded in relation to the charge under s 5(1)(a) read with s 5(2) of the MDA for having in his possession the AB bundles of diamorphine for the purpose of trafficking, reads as follows:²⁹

I admit to the charge. I need to support my aged parents my wife and 6 children. My eldest daughter is 15 years and my youngest child is 4 months old. I’m the sole breadwinner of the family. I will give my full cooperation to CNB in order to arrest the supplier. Even after my sentence, after I go back to Malaysia I shall still render my assistance to CNB to catch the culprits who do this. I plead for leniency and a very light sentence. This is my first offence and I will never do it again. I did it because I have heavy debts to pay. My father is a heart patient and my mother suffers from diabetes.

[emphasis added]

²⁸ AB, p 313.

²⁹ AB, p 359.

Next, P95, which was recorded in relation to the charge under s 5(1)(a) for trafficking in diamorphine by delivering the E bundles of diamorphine to Harun, reads as follows:³⁰

I admit to the charge. I will never do it again. I plead for mercy and light sentence. I need to support my aged parents who are also sick, my wife and my 6 children who are very young. They all depend on me. I am remorseful for what I have done. Please give me a chance. I will give my full cooperation to CNB authorities.

[emphasis added]

Finally, P96, which was recorded in relation to the charge under s 5(1)(a) for trafficking in diamorphine by delivering the D bundles of diamorphine to Ramesh, reads as follows:³¹

I admit to the charge, however I wish to state that I gave the 4 bundles to him after he asked for his share of 4 bundles which was given to him by the Malaysian supplier. The Malaysian supplier gave the 4 bundles because he wanted to do the job. However since Ramesh lorry was parked in Singapore, he came with me in the same lorry from Johor Bahru. That was the reason why his share of the drugs was also in my lorry, which I subsequently handed over to him. Please try to help me reunite with my family. I will never do this mistake again. I am remorseful for what I did. I plead for mercy. I am the sole breadwinner of my family.

[emphasis added]

22 In P97, P99, P101 and P103, Chander gave a detailed account of the events leading up to his arrest. The material portions are summarised as follows:

(a) About four months before his arrest, Chander was first approached by one Roy, a Malaysian Indian man living in his estate, to deliver undeclared betel nuts (also known as “pakku” in Tamil and

³⁰ AB, p 364.

³¹ AB, p 369.

“pinang” in Malay). Chander agreed to do so and hence in May 2013, he helped to deliver one bundle of betel nuts to Harun. Harun passed Chander an envelope containing money in exchange, which Chander in turn passed to Roy at a coffee shop near his office. Roy counted the money in the envelope in front of Chander. Chander was paid RM250 for the delivery.³²

(b) On the night of 25 June 2013, Roy approached Chander and requested him to help make another delivery of betel nuts. Roy stated that Chander was to deliver “3 small bundles to one person, 4 small bundles to another person, and 2 small bundles to another person”. Specifically, the first three bundles were meant for delivery at Woodlands, the next four bundles were meant for delivery at Bedok, and he would be told where to deliver the last two bundles subsequently. Chander was initially reluctant, but eventually agreed. Chander enlisted Ramesh to help with the delivery of the set of four bundles. Likewise, Ramesh was initially reluctant, but eventually agreed. Chander assumed that Roy agreed to place the bundles in the basket of Chander’s motorcycle.³³

(c) On 26 June 2013, Chander met Ramesh, who stayed in the same estate as Chander, at about 5.45am at his motorcycle. At that time, Chander observed that the nine bundles had already been neatly separated into three separate plastic bags of four bundles, three bundles and two bundles respectively, and stacked in the motorcycle basket. Chander gave Ramesh a lift to their office on his motorcycle. While

³² P97, paras 8–9; P99, para 21.

³³ P97, paras 10–11; P99, para 26; P101, paras 44–47, 49.

Ramesh helped to park Chander's motorcycle, Chander pulled open the cover of the dashboard at the front of the first lorry and placed the plastic bags containing all nine bundles inside the compartment. At that time, Ramesh did not see where Chander had kept the bundles. However, Chandra told Ramesh where the bundles were kept while they were on the causeway, having passed the Malaysia customs.³⁴

(d) After they cleared the immigration checkpoint at about 7.30am, Chander drove them to the location where the second lorry was parked. There, Chander "told Ramesh to open the dashboard and take the 4 bundles that were meant for him". Ramesh asked Chander how he should keep the four bundles. Hence, Chander instructed him to take his "blue SG brand bag", *ie*, D1, and place the plastic bag, *ie*, D1A, containing the four bundles, *ie*, the D bundles, into D1.³⁵ Ramesh then asked Chander "what to do with the rest of the bundles". In response, Chander told Ramesh to take out the set of three bundles and place the bundles on the floor of the cabin, and leave the remaining two bundles inside the dashboard. After Ramesh left the first lorry, Chander drove off and stopped at a heavy vehicle car park at Admiralty Road West to await further instructions.³⁶

(e) Subsequently, at about 8.05am, Chander received a call from a Malaysian number. The caller, who spoke in Tamil, introduced himself as Roy's friend and instructed Chander to deliver four, instead of three, bundles to the next recipient. Chander thus took out one bundle from the dashboard compartment and placed it together with the three bundles

³⁴ P97, para 12; P99, para 24; P103, para 59.

³⁵ P97, para 13; P99, para 35.

³⁶ P97, para 14; P99, para 36; P103, paras 60–61.

that had earlier been placed on the floor by Ramesh. A few minutes later, Chander received a call from a Singaporean number. The caller, who spoke in Malay, arranged to meet Chander at the market at 20 Marsiling Lane. Then, Roy's friend contacted Chander again, informing him that the next recipient would be giving him some money.³⁷

(f) As Chander was driving towards 20 Marsiling Lane, the Singaporean caller again contacted Chander, informing Chander that he was once again to deliver only three bundles to the next recipient. Chander thus removed one bundle, *ie*, A1, from the existing pile and placed it in the area between the driver's seat and the passenger's seat.³⁸

(g) Chander reached 20 Marsiling Lane at about 8.20am. There, Harun, who was waiting alongside Tang, opened the passenger door of the lorry, collected the E bundles from the floor of the passenger's side of the lorry, placed an envelope containing a stack of cash and a separate bundle of notes tied with a rubber band on the passenger seat, and left. Chander then drove off from the location. While driving, he received a call from Roy's friend, who asked if he had taken the money and instructed him to count the money. Chander then counted the money while he was driving, and realised that it came up to S\$7,000. Chander wondered to himself "how can 'pinang' cost so much", and also expressed this concern to Roy's friend, who had called again. Roy's friend claimed that the money was debt for a previous shipment. After counting the money, Chander tied all the notes up with the same rubber band and placed them, *ie*, C1, in the compartment above the driver's

³⁷ P97, para 15; P99, para 36.

³⁸ P97, para 16; P103, para 63.

seat. Roy's friend also informed Chander that the remaining two bundles, *ie*, the AB bundles, were to be delivered to someone riding a black motorcycle and wearing a red shirt. Chander arranged to meet the recipient at 11 Clementi Loop.³⁹

(h) While driving towards 11 Clementi Loop, Chander placed C1 at the compartment above the driver's seat. Chander then received an SMS from Roy's friend with the contact number of a Chinese man, who was supposed to be the last recipient. Shortly after Chander arrived in front of Sankyu at 11 Clementi Loop, he was arrested by CNB officers.⁴⁰

The applicable legal principles

23 Before turning to consider the submissions advanced by the parties and the evidence adduced during trial, I first set out the applicable legal principles that govern the charges faced by the accused persons.

24 Section 5(1)(a) read with s 5(2) of the MDA provide as follows:

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.

³⁹ P97, para 17; P99, paras 37–38; P101, para 51; P103, paras 63–64.

⁴⁰ P97, para 18; P99, para 38; P103, para 66.

Under s 2 of the MDA, “traffic” is defined to mean “to sell, *give*, administer, transport, send, *deliver* or distribute” [emphasis added], or “to offer to do” any of those actions.

25 In order to make out an offence of trafficking in a controlled drug under s 5(1)(a) of the MDA, the Prosecution must prove: (a) trafficking, without authorisation, in a controlled drug; and (b) knowledge of the nature of the controlled drug, which may be proved or presumed pursuant to s 18(2). If an accused person is merely found to be in possession of the controlled drug, but a trafficking charge is brought under s 5(1)(a) read with s 5(2) of the MDA, the elements that must be established are: (a) possession of a controlled drug, which may be proved or presumed pursuant to s 18(1); (b) knowledge of the nature of the drug, which may be proved or presumed pursuant to s 18(2); and (c) that possession of the drug was for the purpose of trafficking which was not authorised.

26 Given that the Prosecution invokes the presumptions of possession and knowledge under ss 18(1)(a) and 18(2) of the MDA respectively, I set out the sub-provisions as follows:

Presumption of possession and knowledge of controlled drugs

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

(a) anything containing a controlled drug;

...

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

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

27 Under s 18(1)(a) of the MDA, the accused is presumed to possess the drugs that are contained in a particular thing as long as the Prosecution is able to prove that the thing in issue exists and that the accused has possession, control or custody of the thing in issue. This presumption is rebutted if the accused is able to prove, on a balance of probabilities, that he did not have the drugs in his possession. The clearest way in which the accused can accomplish this is by establishing that he did not know that the thing in issue contained the drug in question (*eg*, the drug was slipped into his bag without his knowledge). If the presumption under s 18(1)(a) has been successfully rebutted by the accused, the Prosecution would have failed to prove that the accused was in possession of the drug. See *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 (“*Obeng Comfort*”) at [34]–[36].

28 The presumption under s 18(2) that the accused has knowledge of the nature of the drug would be invoked 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 this presumption is not rebutted. This presumption is rebutted if the accused is able to prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug, which refers to the specific controlled drug found in his possession. 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. Practically speaking, this entails the accused explaining what he thought or believed he was carrying, which could either be something innocuous or a controlled drug other than the one found on him. The court will assess the credibility and veracity of the accused’s account against the objective facts, in the light of the item that the accused thought he was carrying. It would not be possible for the accused to rebut the presumption where the Prosecution is able to prove that the accused was acting with actual knowledge or wilful blindness

(ie, where the accused had the appropriate level of suspicion but deliberately refused to inquire into the facts to investigate further). See *Obeng Comfort* ([27] *supra*) at [35]–[40], *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [55] and *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [75]–[76].

29 I now turn to apply these principles to the facts of this case.

My decision

30 Having carefully considered all the material before me, I find that the Prosecution has proven the elements of all the charges against both Ramesh and Chander beyond reasonable doubt. I shall now proceed to furnish my detailed reasons for their convictions.

Ramesh

31 Ramesh faces a single charge under s 5(1)(a) read with s 5(2) of the MDA for having the diamorphine in the D bundles in his possession for the purpose of trafficking.

32 The Prosecution’s case against Ramesh may be summarised thus:⁴¹

(a) First, possession is made out. Chander’s evidence – that Ramesh had placed the D bundles into D1 and left the first lorry with D1 – directly proves Ramesh’s possession of the D bundles. Alternatively, the Prosecution relies on the presumption of possession under s 18(1)(a) of the MDA, which arises by virtue of Ramesh’s own admission that Chander had passed D1 to him and that D1 was in his possession.

⁴¹ Prosecution’s Closing Submissions dated 19 June 2017, para 10.

(b) Second, knowledge of the nature of the drugs is satisfied. In this respect, the Prosecution relies on the presumption of knowledge under s 18(2) of the MDA and argues that given that Ramesh has been proven or presumed to have had in his possession the D bundles, Ramesh is presumed to have known that the D bundles contained diamorphine.

(c) Third, the requirement for the possession of the drugs to be “for the purpose of trafficking” is made out by Chander’s evidence that Ramesh was supposed to deliver the D bundles to a recipient in Bedok. Alternatively, Ramesh’s own admission that he was going to return D1 and its contents to Chander would also satisfy the definition of “traffic” under s 2 of the MDA.

33 In response, Ramesh essentially asserts that although Chander had indeed passed D1 to him, he did not know that there were controlled drugs found inside D1. He had asked Chander what was inside D1, and Chander replied by stating that D1 merely contained office documents. This directly contradicts Chander’s evidence that Chander had told him to put the D bundles into D1.⁴²

34 Ramesh submits in closing that the evidence adduced in this regard goes towards rebutting the presumption of knowledge under s 18(2) of the MDA.⁴³ With respect, I find this submission to be misguided. I think the evidence adduced by Ramesh goes towards showing that possession under s 5(2) of the MDA is not made out, by introducing a reasonable doubt as to his possession of diamorphine, and also by rebutting the s 18(1)(a) presumption of possession. If Ramesh succeeds in that regard, then the knowledge element would also not be

⁴² Ramesh’s Closing Submissions dated 19 June 2017, paras 10–11.

⁴³ Ramesh’s Closing Submissions, paras 22 and 30.

satisfied because if possession can be neither proved nor presumed, the Prosecution may not invoke the presumption of knowledge under s 18(2).

35 In my view, the Prosecution has managed to establish beyond reasonable doubt all three elements of the single charge against Ramesh.

Whether Ramesh was in possession of the D bundles

36 It is evident from Ramesh's case that whether Ramesh was in possession of the D bundles is the main issue in contention (see [33] above). I accept the Prosecution's submission that Ramesh was in possession of the D bundles.

(1) Positive proof of possession

37 While there was no doubt that Ramesh was physically in possession of D1, and accordingly, the D bundles, Ramesh submitted that he did not know that the D bundles were in D1. In my view, the Prosecution is able to positively prove beyond reasonable doubt that Ramesh was in possession of the D bundles because the evidence given by Chander shows that Ramesh knew that the D bundles were in D1.

38 At trial, Chander testified that he had specifically told Ramesh how he had kept all nine bundles, which had been neatly packed into three separate plastic bags, in the dashboard compartment at the front of the first lorry. Chander also gave evidence that after they had arrived at the location where the second lorry was parked, Chander had instructed Ramesh to open the dashboard and retrieve the four bundles that were meant for him to deliver, *ie*, the D bundles. When Ramesh asked Chander how he should keep the four bundles,

Chander further instructed Ramesh to place the D bundles into D1. During examination-in-chief by his counsel, Chander testified as follows:⁴⁴

Q All right. And then---so after you cleared Malaysian Customs, what happened next?

A And after the Malaysian Customs at the Causeway, **I told Ramesh that I placed the *jaman* here.**

Q When you say you placed the *jaman* here, where are you referring to?

A At---**in the dashboard** labelled B.

...

Q All right. And what happened next?

A After clearing the Customs, we entered into Singapore. No checking was done. I have been driving lorry for a very long time but on that day the Customs was very unusual. It was unusually quiet. Someone whom I do not know, he was standing at the boot and he was looking at my lorry. And I did not bother about it and I continued in my journey. **At Kranji Road, I made a U-turn at Turf Club and that was when I told Ramesh to open up the dashboard and to take out four bundles. He took it and he asked me where to put it and I told him---and I told him to put it inside my bag. And he asked me about the rest of the bundles and I told him to take three bundles and to place it on the floor.** After that, I dropped him and he went off with the bag.

[emphasis in original in italics; emphasis added in bold]

Chander's evidence remained largely consistent during cross-examination by counsel for Ramesh. The relevant portion of Chander's testimony is reproduced as follows:⁴⁵

Q So when you arrived at Woodlands, when Ramesh was about to alight from the lorry, what did you tell Ramesh?

A I told Ramesh to check his lorry.

⁴⁴ NE, 4 May 2017, 53:15–32.

⁴⁵ NE, 4 May 2017, 74:28–75:20.

- Q What about the bundles?
- A He---he has---he took it and has gotten down.
- Q **Did you tell him to take the bundles?**
- A Yes, I told him to take.
- Q So you told him to take? How did---
- A **Yes, I told him that they were---**
- Q What did you---
- A ---**inside---**
- Q ---tell him?
- A ---**the dashboard and I told him to---and I told him to take his four bundles.**
- Q How would he know which are his four bundles? You---sorry.
- A Roy told me that he had separated the bundles---he had separated the bundles into four, three and two.
- Q **So how did Ramesh go about taking out these bundles?**
- A **He opened the dashboard and took out the bag. He took four bundles and he asked me about the rest of the bundles. And I told him to place three bundles on the floor. And he asked me how to bring these four bundles and I told him to put it inside my bag.**
- Q This is your personal bag?
- A Yes.
- Q **So you are saying that Ramesh took a plastic bag which contained four bundles?**
- A **Yes.**
- [emphasis added in bold]

39 On the whole, I find the account provided by Chander in this regard to be reliable because his evidence is both internally and externally consistent. That Chander's evidence is internally consistent is evident from how the specific account of events provided at trial is consistent with the evidence that

Chander provided during investigations in both P97 and P99 (see [22(c)]–[22(d)] above).⁴⁶

40 Chander’s evidence is also externally consistent, given that his account implicating Ramesh is corroborated by other pieces of evidence adduced at trial. First, it was undisputed that HSA tests showed that Ramesh’s DNA was found on the adhesive sides of the tape used to wrap D1A2 (see [11] above).⁴⁷ This supports Chander’s description of how it was Ramesh who had placed the D bundles into D1. The logical inference to draw from this is that Ramesh’s DNA could have accidentally been transferred onto the adhesive sides of the tape wrapping D1A2 when Ramesh was checking to see which of the three plastic bags hidden in the dashboard compartment was the plastic bag containing the D bundles.

41 I accept the Prosecution’s submission that Ramesh’s DNA could not have been transferred onto D1A2 due to events occurring *after* Ramesh’s arrest. After Ramesh was arrested, a grip restraint and a face mask were both placed on him while a search of the second lorry by the CNB officers was conducted in the presence of Ramesh.⁴⁸ D1 was only retrieved from the lorry during the search. I thus found it extremely unlikely that Ramesh’s DNA was transferred to D1A2 after his arrest.

42 I reject Ramesh’s attempts to discredit the corroborative DNA evidence for the following reasons:

⁴⁶ P97, para 13; P99, para 35.

⁴⁷ SOAF, paras 17–20.

⁴⁸ PS31, para 10; PS34A, para 8; PS35A, para 8.

(a) First, Ramesh's explanation that his DNA was transferred when he was brushing the bundles away from his leg while he was in the first lorry driven by Chander should be dismissed as a mere afterthought. Ramesh offered this explanation only when recording P104, which was a long statement recorded on 24 April 2014, after he had been confronted with the HSA test results (see [19] above). I also found Ramesh's explanation to be inherently incredible. In this regard, I accepted the evidence of the HSA analyst Tang Sheau Wei June, who testified that if a person had merely touched the outside of a plastic bag, it would theoretically not be possible for his DNA to be found on the adhesive side of the bundles *inside* that plastic bag.⁴⁹

(b) Next, Ramesh's suggestion that his DNA could have been transferred to D1A2 due to contamination during the handling of the exhibits is fanciful at best. D1A2 could not have been contaminated at the place of arrest because Ramesh's belongings had been seized and placed in tamper-proof bags even before D1 was found.⁵⁰ D1A2 also could not have been contaminated when it was being sent to the HSA for testing because the HSA analyst only received drug exhibits that were individually sealed in tamper-proof bags.⁵¹ It is thus evidently impossible for the handling of the exhibits at any stage to have resulted in Ramesh's DNA being transferred to D1A2.

43 Second, another piece of corroborative evidence is Ramesh's own actions when he was questioned by Senior Station Inspector David Ng

⁴⁹ NE, 26 April 2017, 22:16–21.

⁵⁰ PS33A, para 7.

⁵¹ PS8, para 2.

(“PW45”) immediately after his arrest. PW45 testified in his written statement that when he first took over custody of Ramesh from another CNB officer, he “asked [Ramesh] if he had anything illegal inside the [second lorry]. Ramesh replied ‘one bag’ in English”.⁵² PW45 also stated that when the second lorry was being searched in Ramesh’s presence, he “asked Ramesh in English ‘where is the illegal thing?’ and [Ramesh] replied ‘middle’ in English, while using his head to point to the area between the driver and the passenger seat”.⁵³ It is undisputed that the item identified by Ramesh at that instant was D1. This evidence was consistent with PW45’s evidence during his examination-in-chief,⁵⁴ and remained unshaken during cross-examination by counsel for Ramesh.⁵⁵ To my mind, the fact that Ramesh associated D1 with something “illegal” is highly indicative of his actual knowledge that D1 contained the D bundles.

44 Finally, I also find it telling that Ramesh himself acted furtively in attempting to conceal D1 before leaving the second lorry. PW45 stated in his written statement that when the CNB officers were searching the second lorry in the presence of Ramesh, he “saw a bag partially hidden behind a pillow which was placed between the driver and passenger seat”.⁵⁶ This was confirmed by PW45 on the stand during examination-in-chief, when he clarified that D1 was “partially hidden” between the driver seat and the passenger seat behind the pillow, which was “leaning backwards”.⁵⁷ During cross-examination by counsel

⁵² PS31, para 7.

⁵³ PS31, para 9.

⁵⁴ NE, 3 May 2017, 19:30–20:7, 20:22–27.

⁵⁵ NE, 3 May 2017, 26:14–31, 30:14–18.

⁵⁶ PS31, para 9.

⁵⁷ NE, 3 May 2017, 21:1–22:32.

for Ramesh, PW45's evidence was unshaken – he maintained that when searching the second lorry, he “saw a bag partially hidden behind a pillow”.⁵⁸ Given that Ramesh's evidence is that after receiving D1 from Chander, he just “threw the bag onto the space beside the driver seat”,⁵⁹ the logical inference that should be drawn from the position in which PW45 saw D1 is that Ramesh attempted to hide D1 by covering it with the pillow before leaving the second lorry. When Ramesh was cross-examined by the Deputy Public Prosecutor (“DPP”) at trial on this point, he initially denied covering D1 with a pillow.⁶⁰ It was only after questioning by the court that Ramesh relented and conceded that the person placing D1 behind the pillow “could have been” him, and that he “[did] not know clearly” whether it was him.⁶¹ I agree with the Prosecution that there would have been no reason for Ramesh to have attempted to conceal D1 in this manner – behind a pillow between the driver's seat and the passenger's seat of the second lorry – if he did not in fact know that D1 contained the D bundles.

45 I pause at this juncture to briefly address the Prosecution's submission regarding the admissibility of P96, which is Chander's third cautioned statement. The Prosecution argues that the court should take P96 into consideration as against Ramesh pursuant to s 258(5) of the CPC.⁶² In P96, Chander stated that he had passed Ramesh the D bundles after Ramesh specifically asked for his share of the drugs which had been given to him by the Malaysian supplier, and that the Malaysian supplier had passed Ramesh the D

⁵⁸ NE, 3 May 2017, 30:15–18.

⁵⁹ P98, para 12.

⁶⁰ NE, 4 May 2017, 30:15–22.

⁶¹ NE, 4 May 2017, 33:1–34:27.

⁶² Prosecution's Closing Submissions, para 16.

bundles because this was a job that he wanted to do. Chander also explained that Ramesh’s share of the drugs was in Chander’s lorry, and was only subsequently handed over by Chander to Ramesh, because Chander was giving Ramesh a lift from Johor Bahru to his lorry parked in Singapore (see [21] above).⁶³ It is evident that P96 contains admissions by Chander that affect both himself and Ramesh and that, if found to be capable of being taken into consideration as against Ramesh, would be gravely detrimental, even fatal, to his defence.

46 I reject the Prosecution’s attempt to use P96 against Ramesh pursuant to s 258(5) of the CPC, and find its submissions in this regard to be misconceived in law. Section 258(5) states thus:

(5) When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.

Explanation — “Offence” as used in this section includes the abetment of or attempt to commit the offence.

Illustrations

(a) *A* and *B* are jointly tried for the murder of *C*. It is proved that *A* said “*B* and I murdered *C*”. The court may consider the effect of this confession as against *B*.

...

Leaving aside the analysis of whether P96 fulfils the s 258(7) definition of a “confession” in the first place (which will, in any case, be addressed below at [69]–[73]), the Prosecution cannot rely on s 258(5) to submit that P96 should be taken into consideration against Ramesh. P96 is a cautioned statement recorded in respect of the charge against Chander under s 5(1)(a) of the MDA

⁶³ AB, p 370.

for trafficking diamorphine by *giving the D bundles to Ramesh*. On the other hand, Ramesh faces one charge under s 5(1)(a) read with s 5(2) for *being in possession of the D bundles for the purpose of trafficking*. In my view, although Chander and Ramesh were jointly tried for trafficking the exact same bundles of diamorphine, *ie*, the D bundles, they were not being tried jointly “for the same offence”.

47 This is evident from a plain and literal reading of the language of s 258(5) of the CPC as well as the accompanying Explanation and Illustrations. First, assuming that there are two co-accused persons, I take the view that the Explanation to s 258(5) suggests that s 258(5) should only apply if: (a) both co-accused persons face the exact same charges for identical crimes, or (b) one of the co-accused persons is charged with (i) abetting the other in the commission of the offence with which the other is charged, or (ii) attempting to commit the exact same offence as the other. None of these scenarios presents itself in the present case. Second, Illustration (a) to s 258(5) also shows that Ramesh and Chander cannot be considered to be tried jointly for the same offence. Illustration (a) provides that where A and B are jointly tried for the murder of C, A’s confession that both B and he murdered C can be taken into consideration against B. While A and B are being tried jointly for the *same incident* in the Illustration (*ie*, the murder of C), Ramesh and Chander were tried jointly for *different drug trafficking incidents*.

48 This reading of s 258(5) of the CPC also finds support in existing case law. In *Lee Yuan Kwang and others v Public Prosecutor* [1995] 1 SLR(R) 778 (“*Lee Yuan Kwang*”), there were four appellants who were jointly tried for drug trafficking. The two key parties for our purposes are the third appellant, Choo, and the fourth appellant, Yakoob. Choo faced two charges of trafficking, one of which was for trafficking in 166.3g of diamorphine contained in two packets by

delivering the two packets to Yakoob. Yakoob faced one charge of trafficking in 166.3g of diamorphine contained in the exact same two packets by virtue of his possession of those two packets for the purpose of trafficking. Those two packets of diamorphine were the very ones which Choo was accused of having delivered to Yakoob. During investigations, the CNB officers had recorded an oral statement from Choo, which contained a confession from Choo that implicated both himself and Yakoob. The trial judge held that the oral statement from Choo could be used as “independent evidence” to sustain the conviction of Yakoob: see *Lee Yuan Kwang* at [52]. When the matter came on appeal before the Court of Appeal, Yong Pung How CJ (delivering the judgment of the court) disagreed. In interpreting s 30 of the Evidence Act (Cap 97, 1990 Rev Ed), which was *in pari materia* with the present s 258(5) of the CPC, Yong CJ stated thus (at [53]):

... The trial judge’s comments suggested that he did not see a distinction between those cases which interpret s 30 of the Evidence Act and the present case. The crucial distinction is that s 30 of the Evidence Act covers co-accused who are “being tried jointly for the same offence”. We would therefore agree with counsel that *the situation at present, as far as Yakoob was concerned, did not fall within the s 30 scenario*. While the judge had ruled that all the offences were “committed in the same transaction” as to come within s 176 of the [Criminal Procedure Code (Cap 68, 1985 Rev Ed)], *the charges before him (at least in respect of Choo and Yakoob) clearly did not constitute “the same offence”*. Rather, *Yakoob faced an independent charge which was quite unconnected with the two charges against Choo*. ...

[emphasis added]

As is evident from the foregoing discussion, *Lee Yuan Kwang* is a decision that features facts that are strikingly similar to those of the present case. Ramesh, like Yakoob in *Lee Yuan Kwang*, faces “an independent charge which [is] quite unconnected with the ... charges against” his co-accused, *ie*, Chander. In other words, they have been tried for distinct and independent offences such that they cannot be considered to be tried jointly “for the same offence”. It is thus clear

that s 258(5) of the CPC may not apply in the present context to assist the Prosecution in the manner that they have sought.

49 Having said that, even without relying on Chander's evidence in P96, I am still satisfied that the evidence provided by Chander at trial as well as the other corroborative evidence discussed above, is sufficient for the Prosecution to prove beyond reasonable doubt that Ramesh was in possession of the D bundles.

(2) Presumption of possession under s 18(1)(a) of the MDA

50 Even if the evidence highlighted by the Prosecution is considered insufficient to positively prove that Ramesh was in possession of the D bundles, I find that the Prosecution is able to invoke the presumption under s 18(1)(a) of the MDA that Ramesh was in possession of the D bundles. I also find that Ramesh is unable to rebut this presumption on the balance of probabilities.

51 The Prosecution is clearly able to rely on the s 18(1)(a) presumption of possession because there is no dispute that Ramesh had possession of D1. Indeed, Ramesh admits in all his statements that Chander passed D1 to him and that D1 was in his possession (see [15]–[17] above).

52 The central question then is whether Ramesh is able to rebut the presumption of possession on the balance of probabilities. In my judgment, Ramesh is unable to do so. Although Ramesh claims that he did not check D1's contents because he honestly believed that D1 merely contained office documents, I am not persuaded that Ramesh did not know that D1 contained the D bundles.

53 First, I do not accept Ramesh’s explanation that Chander had told him that D1 contained office documents and had instructed him to help safekeep D1 until they were done with their deliveries at about 1pm for the following two reasons:

(a) Earlier, I have already explained why I considered Chander’s evidence that he had instructed Ramesh to put the D bundles into D1 to be convincing and reliable (see [38]–[44] above). This naturally directly contradicts Ramesh’s account that he was told that D1 contained office documents.

(b) Next, putting aside Chander’s account of the events, I also do not think that Ramesh’s account is supported by the evidence. Ramesh stated both in P98⁶⁴ and at trial⁶⁵ that he had informed the CNB officers, when asked what was inside the second lorry, that he had some company documents and a bag in the second lorry. However, it has earlier been established this is contradicted by the evidence of the CNB officers. In particular, PW45 never asked Ramesh what he had inside the lorry. Rather, he had “asked [Ramesh] if he had anything illegal inside the [second lorry]. Ramesh replied ‘one bag’ in English”.⁶⁶ He also “asked Ramesh in English ‘where is the illegal thing?’ and [Ramesh] replied ‘middle’ in English, while using his head to point to the area between the driver and the passenger seat”⁶⁷ (see [43] above). PW45’s account is

⁶⁴ P98, para 15.

⁶⁵ NE, 4 May 2017, 38:16–23.

⁶⁶ PS31, para 7.

⁶⁷ PS31, para 9.

in turn corroborated by the evidence of other CNB officers who had helped to administer the search of the second lorry.⁶⁸

54 Second, even assuming *arguendo* that Chander had indeed told Ramesh that D1 contained office documents, I still find Ramesh’s explanation to be inherently illogical for the following reasons:

(a) First, I find it difficult to believe that Ramesh would have accepted D1 simply because Chander instructed him to help keep it and return it to him later. If D1 indeed contained office documents, there was no reason for Chander to make this request, given that Chander could very well have just kept D1 with him. Ramesh surely ought to have checked D1’s contents given that this was, on Ramesh’s own account, the first time Chander had asked him to safekeep office documents on his behalf.⁶⁹

(b) Next, I also reject Ramesh’s explanation that he refrained from checking D1’s contents because Chander was the “senior driver” while Ramesh was just “new to this job”, and so Ramesh was just following Chander’s instructions.⁷⁰ I dismiss this explanation as a mere afterthought as it was only conjured up by Ramesh at trial, and was never recorded in any of his statements.

(c) Finally, I take the view that it is extremely unlikely for Ramesh to not have checked the contents of D1 just because Chander told him that D1 contained office documents, because Ramesh himself had

⁶⁸ PS32, para 8; PS33, para 8.

⁶⁹ AB, p 310, A7.

⁷⁰ NE, 3 May 2017, 68:12–18, 85:10–22.

admitted that D1 “felt heavy” when he was first passed the bag (see [17(b)] above).⁷¹ Given that the D bundles together weighed a total of nearly 1kg, Ramesh surely ought to have known that D1 was too heavy for a bag containing mere office documents.

55 Third, I find it troubling that Ramesh failed to check D1 even though it is plain that he had every opportunity to do so. It is undisputed, on Ramesh’s own account of the facts, that from the moment he received D1 from Chander just before he left the first lorry, till the moment he was arrested, Ramesh was the only one who had both physical control of D1 and access to the second lorry. I thus find it extremely unlikely that Ramesh indeed did not know that D1 contained the D bundles.

56 Finally, I do not think that Ramesh is a credible witness, given his inconsistent or inherently unbelievable evidence provided in the course of the trial. This in turn significantly hampers Ramesh’s ability to rebut the presumption of possession. I highlight the following to illustrate this point:

(a) First, the evidence shows that Ramesh has been untruthful about the phone calls that he received on his mobile phone on 26 June 2013. Whereas Ramesh claimed both in his statements⁷² and at trial⁷³ that he only received two calls, the evidence shows that he in fact received five calls.⁷⁴ Further, although Ramesh claimed that he did not know Roy or Roy’s friend (who was in fact the person contacting him on 26 June

⁷¹ P98, para 12.

⁷² AB, pp 354–355; P98, paras 13–14.

⁷³ NE, 3 May 2017, 69:16–30.

⁷⁴ AB, p 96; NE 4 May 2017, 16:5–29.

2013), the evidence shows that Roy’s friend was the one who had made the five calls to him on 26 June 2013 between the time when he received D1 from Chander and the time of his arrest, and that these calls lasted for some time.⁷⁵ Finally, even Ramesh’s evidence about the content of his two calls was inconsistent. At trial, Ramesh testified that the first caller asked him in Tamil “if the job is completed”, while the second caller told him “I am Cheng Meng” before hanging up.⁷⁶ I note that this description is broadly similar to the content of the two calls as described in P98 (see [17(c)] above). However, these accounts vary considerably from that provided in Ramesh’s cautioned statement, in which he stated that the first caller had asked him “where is the bag”, to which Ramesh replied that he did not know, while the second caller asked him in Tamil “work finish?”, to which he replied “what work” (see [16] above).⁷⁷

(b) Second, Ramesh strangely insisted during cross-examination by the DPP that he did not witness the search of the second lorry immediately after he was arrested, as he was looking down at the road and not the lorry when it was being searched. This was despite the fact that the court had sought clarification in this regard numerous times, thereby giving Ramesh ample opportunity to correct his testimony.⁷⁸ Ramesh’s evidence in this regard is clearly unbelievable, in the light of overwhelming evidence from the CNB officers that Ramesh did observe the search of the second lorry.⁷⁹

⁷⁵ AB, p 96.

⁷⁶ NE, 3 May 2017, 69:16–30.

⁷⁷ AB, pp 354–355.

⁷⁸ NE, 4 May 2017, 31:14–32:31.

⁷⁹ PS32, para 8; PS33A, para 8.

57 For all of the above reasons, I find that Ramesh is unable to rebut, on the balance of probabilities, the presumption invoked by the Prosecution under s 18(1)(a) of the MDA that Ramesh was in possession of the D bundles.

Whether Ramesh knew that the D bundles contained diamorphine

58 Given my finding that Ramesh was in possession of the D bundles, the Prosecution is accordingly able to invoke the presumption of knowledge under s 18(2).

59 I find that Ramesh is unable to rebut this presumption on the balance of probabilities. In my view, Ramesh has not adduced any evidence to show that he did not know or could not reasonably be expected to have known the nature of the controlled drugs in the D bundles, *ie*, that the D bundles contained diamorphine. As the Court of Appeal emphatically observed in *Obeng Comfort* ([27] *supra*) at [39], in order for an accused to rebut the s 18(2) presumption:

It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite.

Given the evidence before me, Ramesh's bare assertion that he thought that D1 contained company documents is woefully insufficient to pry open the jaws of the s 18(2) presumption of knowledge, which I find to remain firmly clenched.

60 Accordingly, I find that the Prosecution has successfully invoked the presumption of knowledge of the nature of the controlled drug under s 18(2) of the MDA, and that Ramesh is unable to rebut this presumption on the balance of probabilities. Ramesh is thus presumed to have known that the D bundles contained diamorphine.

Whether the D bundles were in Ramesh's possession for the purpose of trafficking

61 Finally, I find that the D bundles were in Ramesh's possession for the purpose of trafficking. This issue was not contested, given that Ramesh failed to make specific submissions in this regard. Regardless, I agree with the Prosecution's submission that Ramesh possessed the D bundles for the purpose of trafficking.

62 Chander's evidence was that Ramesh was supposed to deliver the D bundles to a recipient in Bedok (see [22(b)] above).⁸⁰ In any case, Ramesh averred in his own statements that he was supposed to return D1 to Chander either at 1pm or when they had completed their respective deliveries (see [15] and [17(b)] above).⁸¹ Given that "traffic" is defined under s 2 of the MDA to include the acts of giving and delivering, as well as offering to do either, I find that the Prosecution has managed to show that the D bundles were in Ramesh's possession for the purpose of trafficking.

63 For the reasons stated above, I am thus of the view that the Prosecution has established beyond reasonable doubt all three elements in respect of the single charge against Ramesh.

Chander

64 I turn now to deal with the three charges that Chander faces, which are set out once again as follows:

⁸⁰ P101, para 47.

⁸¹ AB, p 310, A4; P98, para 12.

- (a) one charge under s 5(1)(a) read with s 5(2) of the MDA for having in his possession the AB bundles, containing not less than 14.79g of diamorphine, for the purpose of trafficking without any authorisation under the MDA;
- (b) one charge under s 5(1)(a) of the MDA for trafficking in not less than 19.27g of diamorphine by delivering the E bundles to Harun without any authorisation under the MDA; and
- (c) one charge under s 5(1)(a) of the MDA for trafficking in not less than 29.96g of diamorphine by delivering the D bundles to Ramesh without any authorisation under the MDA.

65 The Prosecution's case against Chander may be summarised thus:⁸²

- (a) First, the element of trafficking for Chander's two charges under s 5(1)(a) of the MDA is satisfied due to Chander's own admission in his long statements that he gave the D bundles in D1 to Ramesh and delivered the E bundles in E1 to Harun.
- (b) Second, the element of possession for the purpose of trafficking for Chander's one charge under s 5(1)(a) read with s 5(2) of the MDA is made out due to Chander's admission in his long statements that he was going to deliver the AB bundles to a recipient he was intending to meet.
- (c) Third, the element of knowledge of the nature of the controlled drug for all three charges is met due to Chander's own confessions in his cautioned statements that he knew that all of the nine bundles

⁸² Prosecution's Closing Submissions, para 11.

contained diamorphine. Alternatively, the Prosecution also relies on the presumption of knowledge of the nature of the drug under s 18(2) of the MDA to show that Chander should be presumed to have known that all nine bundles contained diamorphine.

66 In response, Chander only contests the element of knowledge of the nature of the drugs in his possession, arguing that he did not know that the nine bundles originally in his possession contained diamorphine. To that end, Chander claims that he believed that the bundles all contained betel nuts, and that he did not have any reason to suspect otherwise.⁸³

67 In the light of the arguments raised by the parties, I shall evaluate Chander's guilt for all three charges by answering the following two questions:

- (a) First, are Chander's confessions in P94, P95 and P96 alone sufficient to convict him?
- (b) Second, even if Chander's confessions in P94, P95 and P96 are disregarded, is there sufficient evidence to convict him?

68 In my judgment, both questions should be answered in the positive. I thus find that the Prosecution has managed to establish Chander's guilt in respect of all three charges beyond reasonable doubt.

Whether Chander may be convicted solely on the basis of his confessions in P94, P95 and P96

69 In my view, Chander's three cautioned statements, *ie*, P94, P95 and P96, satisfy the legal definition of a "confession" under the CPC. I also find that they

⁸³ Chander's Closing Submissions dated 19 June 2017, para 12.

are admissible and are sufficient to prove Chander’s guilt for all three charges beyond reasonable doubt.

70 A “confession” is defined under s 258(7) of the CPC as “any statement made at any time by [the accused] stating or suggesting the inference that he committed the offence”. In determining whether a statement is a confession, the test enunciated in the decision of the Judicial Committee of the Privy Council in *Jayalal Anandagoda v The Queen* [1962] 1 WLR 817 (“*Anandagoda*”) is instructive. Lord Guest, delivering the judgment of the court, held as follows (at 823–824):

The test whether a statement is a confession is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts. ... It is not permissible in judging whether the statement is a confession to look at other facts which may not be known at the time or which may emerge in evidence at the trial. But equally it is irrelevant to consider whether the accused intended to make a confession. If the facts in the statement added together suggest the inference that the accused is guilty of the offence then it is nonetheless a confession even although the accused at the same time protests his innocence. ... The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt?

This test has been repeatedly endorsed by the Court of Appeal: see *eg, Nguyen Tuong Van v Public Prosecutor* [2005] 1 SLR(R) 103 at [21]. It bears emphasis that the Court of Appeal has notably also held that “for a statement to amount to a confession, it need not be of a plenary or unqualified nature; it can also be of a non-plenary nature so long as the statement connected the accused in some way with the offence”: *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3

SLR(R) 619 at [48], citing *Tong Chee Kong and another v Public Prosecutor* [1998] 1 SLR(R) 591 at [18].

71 In my view, Chander’s three cautioned statements all qualify as confessions. Looking at P94, P95 and P96 objectively, I find that they indisputably amount to statements that Chander had committed the offences he has been charged with. This is abundantly clear from the fact that Chander begins each cautioned statement with the same explicit recital: “I admit to the charge” (see [21] above). These unqualified statements amounted to express admissions of guilt without requiring any inference on my part. It is also clear to me that the cautioned statements all unequivocally connected Chander to each of the three offences that he has been charged with. This is because all three cautioned statements were only recorded after the charges were explained and interpreted to Chander, who confirmed that he understood the relevant charges and notices of warning administered.⁸⁴ In this regard, Chander’s pleas for leniency and mercy and expressions of remorse were surely made in reference to the particulars of the offences set out in the charges served on him by the CNB officers and explained to him by the assigned interpreter, V I Ramanathan (“PW41”).

72 At trial, Chander suggested in his examination-in-chief that he made the confessions given that he “was very scared and very confused [because he] was informed that it was drugs and it’s capital punishment, death penalty for it”.⁸⁵ In the first place, I do not accept Chander’s claim that he was indeed very scared and confused when giving his statements. His explanations were flatly

⁸⁴ AB, pp 314–323.

⁸⁵ NE, 4 May 2017, 57:18–23.

contradicted by the testimony of PW41, who testified that Chander in fact looked “very normal” and “very calm” when giving his cautioned statements.⁸⁶ In any case, even assuming that Chander indeed felt anxious, I do not think that this detracts from my finding that the cautioned statements unequivocally connect Chander to the drug trafficking charges that he is facing. First, if Chander were indeed anxious about the fact that he was being charged with offences that carry the death penalty, it would have been more logical for Chander to *deny* his guilt, rather than confess to the charges immediately. Moreover, it has been noted above that “it is irrelevant to consider whether the accused *intended* to make a confession” [emphasis added]: *Anandagoda* at 823. Hence, insofar as Chander’s explanations in court suggest that he had accidentally admitted to the charges when his cautioned statements were being recorded, they are of no account.

73 Chander also submits that P96 in particular should not amount to a confession because PW41 mistranslated his oral statement given in Tamil. According to him, he had used the word “jamma”, which means “thing” in Tamil, and did not use the words “bothai porul”, which mean “drugs” in Tamil.⁸⁷ I reject this argument and find this to be a mere disingenuous attempt to retract his confession. I accept PW41’s evidence that Chander could not have used the word “jamma” when giving his statement for P96 because if he had done so, PW41 would then have, in accordance with his job as a translator, mentioned it to the CNB officer conducting the interview and then interpreted it.⁸⁸ In my view, given PW41’s experience in performing interpretations for similar CNB

⁸⁶ NE, 27 April 2017, 16:9–17:5.

⁸⁷ NE, 4 May 2017, 57:28–58:10; NE, 27 April 2017, 19:24–31, 20:18–22.

⁸⁸ NE, 27 April 2017, 20:12–17.

interviews,⁸⁹ it was unlikely that he had made a mistake in translating “jamma”. It was also equally, if not more, unlikely for PW41 to deliberately misinterpret “jamma” as “drugs”, given that there was clearly no reason for him to do so. In the circumstances, I maintain my view that P96 was indeed a confession. Although Chander subsequently denied knowledge of the drugs, it is settled law that an accused person who retracts during his trial a confession he made earlier on can still be convicted on the basis of the confession as long as the court is satisfied that the confession was made voluntarily and that it is true and reliable: *Lim Thian Lai v Public Prosecutor* [2006] 1 SLR(R) 319 at [43]; *Syed Abdul Mutalip bin Syed Sidek and another v Public Prosecutor* [2002] 1 SLR(R) 1166 at [21].

74 Since I have established that P94, P95 and P96 are all confessions within the meaning of s 258(7) of the CPC, they are accordingly all admissible unless the statements appear not to have been voluntarily made pursuant to s 258(3) of the CPC. However, I note that Chander did not, at any point in time during the trial, challenge the voluntariness of any of his statements recorded (see [14] above). There was no suggestion that any of Chander’s statements had been obtained by any inducement, threat or promise from any person in authority, or that such inducement, threat or promise, if made, had operated on Chander’s mind.

75 In the light of my finding that all of Chander’s cautioned statements amount to admissible confessions that should not be excluded for lack of voluntariness, it necessarily follows that there is sufficient basis for me to convict Chander on all three of his drug trafficking charges. Having said that, out of an abundance of caution, I shall proceed to consider whether there is

⁸⁹ NE, 27 April 2017, 19:21–23.

sufficient evidence to make out the individual elements of Chander's three charges, even without Chander's confessions in P94, P95 and P96.

Whether Chander's offences may be proved without his confessions in P94, P95 and P96

76 In my view, even if Chander's confessions are disregarded, there is still sufficient evidence for the Prosecution to establish Chander's guilt for all three charges beyond reasonable doubt.

(1) Acts of trafficking

77 Although Chander does not dispute the fact that he had in his possession the AB bundles with the intention to deliver them to another recipient, or that he had given the D bundles to Ramesh and delivered the E bundles to Harun, I will nevertheless briefly address whether the elements of these charges have been made out by the Prosecution.

78 In respect of the two charges for trafficking under s 5(1)(a) of the MDA by giving the D bundles to Ramesh and delivering the E bundles to Harun, I find that Chander admitted in his contemporaneous statements and long statements that he gave the D bundles in D1 to Ramesh and delivered the E bundles in E1 to Harun (see [20], [22(d)] and [22(g)] above). It was thus incontrovertible that Chander had committed the acts of trafficking for these two charges.

79 As for the single charge for being in possession of the AB bundles for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA, I find that Chander had admitted in his contemporaneous statements and long statements that the AB bundles were meant to be delivered to a recipient he was supposed to meet before he got arrested (see [20], [22(b)], [22(g)]–[22(h)]

above). It was therefore clear that Chander was in possession of the AB bundles for the purpose of trafficking.

(2) Presumption of knowledge under s 18(2) of the MDA

80 Regarding the requirement that Chander must have had knowledge of the nature of the controlled drug that he is being charged for trafficking, the key question is whether Chander is able to rebut the presumption of knowledge of the nature of the drug under s 18(2) of the MDA. The Prosecution is able to invoke this presumption by dint of the fact that Chander has been proven to have had the bundles in his possession (see [28] above).

81 Chander argues that he did not know that all the bundles contained diamorphine because he believed that the bundles all contained betel nuts and had no reason to suspect otherwise (“betel nut defence”). In my judgment, Chander is unable to rebut the s 18(2) presumption that he knew that all nine bundles contained diamorphine. I briefly set out three reasons for this finding as follows.

82 First, I do not find the betel nut defence to be a credible account of the events. Chander failed to mention the betel nut defence in his contemporaneous statements recorded shortly after his arrest, as well as in his cautioned statements, which were recorded just after midnight of the day after his arrest. When those statements were being recorded, Chander clearly had ample opportunity to explain what he thought he was transporting on behalf of Roy, but failed to do so. From the fact that Chander only mentioned the betel nut defence for the first time on 29 June 2013 when his first long statement was being recorded, which was some two days after his arrest, I draw the irresistible inference that the betel nut defence is a mere afterthought that should be dismissed.

83 Second, assuming *arguendo* that Chander was indeed told by Roy that he was helping to deliver betel nuts, I find that Chander was wilfully blind to the fact that the bundles did not contain betel nuts. Chander claimed to have previously delivered one bundle supposedly containing betel nuts to Harun on behalf of Roy in May 2013. This was not supported by Harun’s evidence, which was that the bundle in May 2013 contained diamorphine, and not betel nuts.⁹⁰ During that delivery, Harun had passed Chander an envelope containing money in exchange. Chander then handed the envelope over to Roy at a coffee shop back in Malaysia. Roy then counted the money in the envelope in front of Chander. In return, Roy paid Chander RM250 for the delivery (see [22(a)] above).⁹¹ Harun’s evidence is that he had passed Roy S\$2,300 for the delivery of the single bundle in May 2013.⁹² Chander said in his long statement that he was “not sure how much the total amount was”.⁹³ Be that as it may, Chander admitted during cross-examination at trial that he saw Roy counting a lot of money in front of him.⁹⁴ In my view, Chander thus would have become suspicious, from the large sums of money involved in the prior delivery, that he was not in fact delivering betel nuts for Roy. The fact that he refused to act upon his suspicions by inquiring into the contents of the bundles that Roy had passed to him for delivery for the present charges shows that he was wilfully blind to the contents of the bundles.

84 Third, I find Chander to be a witness unworthy of credit. This was evident from Chander’s evasiveness when answering questions that could

⁹⁰ AB 447.

⁹¹ P97, paras 8–9; P99, para 21.

⁹² AB, p 447, para 2.

⁹³ P99, para 21.

⁹⁴ NE, 5 May 2017, 16:2–9, 17:27–18:22.

potentially imperil his defence. I cite just one example to illustrate this point. At trial, when Chander was being cross-examined by the DPP on the frequency of his interactions with Harun, Chander adamantly insisted that prior to delivering to Harun the E bundles, he had only spoken to Harun once, which was during his first delivery in May 2013.⁹⁵ However, call records adduced by the Prosecution flatly contradicted Chander's evidence: they showed that Chander had in fact contacted Harun on 19 June 2013 and 25 June 2013.⁹⁶ The objective evidence thus showed that Chander lied about not having contacted Harun prior to the delivery that is the subject of the present charges.

85 Therefore, I find that Chander is unable to rebut the s 18(2) presumption that he knew that all nine bundles contained diamorphine. I thus also find that the Prosecution is able to prove the elements of all three charges against Chander beyond reasonable doubt, even without relying on the confessions made in P94, P95 and P96.

Conclusion

86 For all the above reasons, I am satisfied that the Prosecution has proven the elements of all the charges brought against both Ramesh and Chander beyond reasonable doubt. I thus find both Ramesh and Chander guilty of the charges that they respectively face, and convict them accordingly.

⁹⁵ NE, 5 May 2017, 23:15–23, 24: 13–18.

⁹⁶ AB, pp 105, 125, 140, 143.

87 I shall hear submissions on sentence from the parties on a date to be fixed.

Chan Seng Onn
Judge

Francis Ng Yong Kiat, SC, Yang Yong Kenny, Selene Yap Wan Ting and Joey Lim Zuo Yi (Attorney-General's Chambers) for the Public Prosecutor;
Allagarsamy s/o Palaniyappan (Allagarsamy & Co) and A Revi Shanker s/o K Annamalai (ARShanker Law Chambers) for the first accused;
Kishan Pratap (Ho Wong Law Practice LLC) and Skandarajah s/o Selvarajah (S Skandarajah & Co) for the second accused.
