Public Prosecutor
v
Rahmat bin Karimon and another

[2018] SGHC 01

High Court — Criminal Case No 35 of 2017
Aedit Abdullah J
2–5, 9, 11 May 2017; 14 August 2017, 11 September 2017

Criminal law — Statutory offences — Misuse of Drugs Act

Statutory interpretation — Construction of statute

02 January 2018

Aedit Abdullah J:

Introduction

1 Following a joint trial, I convicted both accused persons ("the Defendants") on one charge of trafficking in a Class A controlled drug under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"), which is punishable under s 33(1) of the MDA. No certificate of substantive assistance was provided. I therefore imposed the mandatory minimum sentence of death on both of them.

Background

Charges

2 The first defendant, Rahmat bin Karimon ("Rahmat"), a 28 year-old Malaysian national, was charged as follows:[1]

> … on 27 May 2015, between 8.20pm and 9.20pm, at Staircase No. 11 located at the second floor of IKEA, 60 Tampines North Drive 2, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.), *to wit*, by delivering three packets containing not less than 1381.7g of granular/powdery substance, which was subsequently analysed and found to contain not less than 53.64g of diamorphine, to one Zainal Bin Hamad …, without authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) and punishable under section 33(1) of the said Act.

3 The second defendant, Zainal Bin Hamad ("Zainal"), a 40 year-old Singaporean, faced a total of three charges. Two of these charges were stood down at trial and the Prosecution proceeded on the following charge:[2]

> … on 27 May 2015, at about 9.25pm, at IKEA, located at 60 Tampines North Drive 2, Singapore, did traffic in a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.), *to wit*, by having in your possession for the purpose of trafficking three packets containing not less than 1381.7g of granular/powdery substance, which was subsequently analysed and found to contain not less than 53.64g of diamorphine, without authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(l)(a) read with section 5(2) of the said Act, and punishable under section 33(1) of the said Act.

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1 Charge Sheet dated 24 April 2017, p 1.

2 Charge Sheet dated 24 April 2017, p 2; NE 02/05/17, Day 1, p 2.

Undisputed facts

4 An agreed statement of facts ("ASOF") was tendered under s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"). The agreed and undisputed facts were as follows.

5 At the material time, Rahmat was employed as a runner for one "Kanna Gila" ("Kanna") who was in the "shady business of money-lending".[3] Rahmat had known Kanna for a period of less than two months prior to his arrest.[4]

6 On 27 May 2015, sometime before 6.51pm, Rahmat entered Singapore from Malaysia *via* Woodlands Checkpoint in a car bearing Malaysian registration number BEU 8204 ("the Car"). He was with his wife and their three children.[5] Pursuant to Kanna's earlier instructions, after entering Singapore, Rahmat drove to Rochor Road where he met up with a male subject known as "Bai" (who is still at large).[6] Bai instructed Rahmat to meet Zainal at the IKEA store located at 60 Tampines North Drive 2, Singapore ("IKEA"). Rahmat then left his family in the Car at Rochor Road before taking a taxi by himself to IKEA. By this time, Rahmat was in possession of a green bag ("the Bag").[7]

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3 NE 05/05/17, Day 4, p 54.

4 NE 05/05/17, Day 4, pp 54–55.

5 ASOF at para 2.

6 NE 05/05/17, Day 4, p 18.

7 ASOF at para 3; NE 05/05/17, Day 4, p 6; NE 09/05/17, Day 5, p 17.

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7 At the material time, Rahmat was known to Zainal as "Abang"[8] and Zainal was known to Rahmat as "26".[9] When Rahmat arrived at IKEA, Zainal was already there. This was because Zainal was working there as a warehouse assistant.[10]

8 When Rahmat reached the taxi stand outside IKEA at about 8.10pm on the same day, he called Zainal using his mobile phone.[11] As there was no response, Rahmat entered IKEA where he found a public telephone on the fourth floor and called Zainal again. Rahmat informed Zainal that he had reached IKEA and that he was near the toilet on the fourth floor. He also informed Zainal that he was wearing a grey t-shirt.[12] About 10 to 15 minutes later, Zainal proceeded to Rahmat's location on the fourth floor. Rahmat and Zainal then made their way to the staircase on the second level of IKEA.[13] At this time, Rahmat was still carrying the Bag.[14] Zainal did not ask Rahmat about the Bag or its contents until they were just about to leave the fourth level of IKEA.[15]

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8 ASOF at para 4.

9 ASOF at para 3.

10 ASOF at para 5.

11 ASOF at para 3.

12 ASOF at para 4.

13 ASOF at para 5.

14 ASOF at para 5.

15 NE 11/05/17, Day 6, p 48.

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9 At about 8.35pm, Zainal passed S$8,000 to Rahmat. After which, Rahmat placed the Bag at the staircase landing on the second floor of IKEA in front of Zainal before heading back down to the taxi stand on the ground floor.[16]

10 After leaving IKEA by a taxi, Rahmat met up with his wife and children along Queen Street. He then drove the Car with his family to Woodlands Checkpoint. At the checkpoint, Rahmat and his wife were arrested by officers with the Central Narcotics Bureau ("CNB"). Rahmat's wife was searched, and S$8,000 was found hidden in her bra. Rahmat had given his wife the S$8,000 he received from Zainal and told her to hide it in her bra whilst they were *en route* to Woodlands Checkpoint.[17]

11 After Rahmat had placed the Bag in front of Zainal, Zainal did not immediately pick it up.[18] Instead, Zainal walked around IKEA and was observed entering and exiting the side door multiple times.[19] During this time, no one else came into contact with the Bag. At around 9.23pm, Zainal went back to the staircase landing and picked up the Bag. Zainal then proceeded into a warehouse located at the second floor of IKEA where he placed the Bag behind a stack of pallets containing goods from IKEA.[20] Around this time, Zainal asked his

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16 ASOF at para 5.

17 ASOF at para 6.

18 ASOF at para 8.

19 Agreed Bundle, p 407 (CH-PS24 at para 6).

20 ASOF at para 8; NE 09/05/17, Day 5, p 20.

(*cont'd on next page*)

colleague, Mohamed Shahreel bin Mohamed Hassan ("Shahreel"), whether the latter could cover Zainal's work for the day if he went off early.[21]

12 At about 9.25pm, CNB officers entered the warehouse and arrested Zainal.[22] Thereafter, Zainal led the officers to where he had placed the Bag in the warehouse. The Bag was opened in Zainal's presence and it was found to contain one brown towel ("the Towel") and one red coloured plastic bag containing three plastic packets of 1381.7g of granular/powdery substance ("the Drugs").[23] The Drugs were subsequently found to contain not less than 53.64g of diamorphine (more popularly referred to by its street name, "heroin").[24]

13 Neither Rahmat nor Zainal were authorised under the MDA or the Regulations made thereunder to traffic or be in the possession of a controlled drug.[25]

Procedural matters

14 No objection was taken by the Defendants or the Prosecution to the trial being heard jointly. I was in any event satisfied that the requirements for a joint trial were met given that the offences concerning the Defendants were part of "the same transaction" (see s 143 of the CPC) or arose from the "same series of acts" (see s 144 of the CPC). In any event, there was consent expressed through

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21 NE 11/05/17, Day 6, pp 68–70.

22 ASOF at para 8.

23 ASOF at para 9.

24 ASOF at para 14.

25 ASOF at para 26.

the defence counsel as well as the Prosecution for the trials to proceed jointly: see s 145(1)(*b*) of the CPC.

The Prosecution's case

15 The Prosecution's primary case was that the respective presumptions of possession and knowledge of the nature of the Drugs under ss 18(1) and 18(2) of the MDA applied and was unrebutted for both Defendants (applying *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [39]–[40]).[26] Rahmat's case that he thought he was bringing in food or medicinal products cannot rebut the presumption of knowledge under s 18(2) of the MDA because it was simply unbelievable given the surrounding circumstances.[27] Similarly, Zainal failed to rebut the presumption because he had not articulated what he had believed to be the contents of the Bag other than disclaiming any knowledge of its contents.[28]

16 The Prosecution also argued in the alternative that the Defendants were either wilfully blind or had actual knowledge of the nature of the Drugs. For Rahmat, given the unusually suspicious circumstances surrounding the transaction, the lack of sufficient basis for trusting Kanna, and the ease with which he could have checked the Bag's contents, he was wilfully blind to the possibility that the Bag contained the Drugs.[29] Alternatively, Rahmat's actual

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26 Prosecution's Closing Submissions at paras 33 and 72.

27 Prosecution's Closing Submissions at paras 33–36.

28 Prosecution's Closing Submissions at paras 72–73.

29 Prosecution's Closing Submissions at paras 37–50.

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knowledge can be inferred from his multiple lies in his statements given to the CNB that were corroborative of his guilt, as well as Zainal's evidence (corroborated by objective phone and immigration records) that Rahmat had delivered a prior shipment of heroin at IKEA sometime in early May 2015.[30] For Zainal, his wilful blindness can be discerned from his suspicious behaviour upon meeting Rahmat and from the fact he hid the Bag immediately after picking it up.[31] Alternatively, Zainal had actual knowledge of the nature of the Drugs because his contention that he was ordering contraband cigarettes instead of heroin was inconsistent with the objective evidence, Rahmat's evidence, as well as his own evidence.[32]

17 Lastly, the Prosecution argued that Zainal had possessed the Drugs for the purpose of trafficking because given the large quantity of diamorphine involved, there were only two possible explanations, both of which would constitute trafficking.[33] One explanation was Zainal's admission that he had "intended to give the [Bag] to [Rahmat]" when Rahmat returned with his alleged shipment of contraband cigarettes. The other explanation was that Zainal intended to sell the Drugs to his various customers.

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30 Prosecution's Closing Submissions at paras 51–69.

31 Prosecution's Closing Submissions at paras 74–88.

32 Prosecution's Closing Submissions at paras 89–111.

33 Prosecution's Closing Submissions at paras 112–114.

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The Defence's case

Rahmat's case

18 Rahmat's primary defence was that he did not know that he was transporting controlled drugs – he thought he was transporting medicinal products.[34]

19 It was argued that the presumption under s 18(2) of the MDA was rebutted. Rahmat did not believe he was carrying anything illegal because he was told by Kanna that it was a medicinal product, and he had also checked the items he was carrying.[35] Rahmat had trusted Kanna, who had passed him the items. It was also argued that Rahmat was entitled to trust Kanna in the circumstances. He had known Kanna for about two months, in comparison to the three weeks found sufficient in *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 ("*Harven*") to constitute a relationship of trust.[36] Rahmat had become involved in the incident because he had sought a loan from Kanna of RM30,000 in order to start a goat rearing business.[37] The money given by Kanna to bring the items into Singapore was part of the loan that was promised.[38]

20 It was also argued that Rahmat was not wilfully blind as he did check the contents of the Bag and was under the honest impression that he was

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34 Rahmat's Closing Submissions at paras 3–4 and 14.

35 Rahmat's Closing Submissions at paras 14–17.

36 Rahmat's Closing Submissions at para 64.

37 Rahmat's Closing Submissions at paras 38–42.

38 Rahmat's Closing Submissions at para 49.

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carrying medicinal products. Thus, Rahmat cannot be said to have deliberately refused to inquire into facts.[39] His lack of education, financial difficulties, and minor role played in the transaction were also highlighted.[40]

21 Nothing in Rahmat's behaviour showed that he knew what he was carrying were controlled drugs. At the checkpoint, just before he was apprehended, Rahmat was concerned that there was a police operation for drugs and stolen cars; he had thus asked his wife to hide the money he had with him to avoid being questioned and being delayed on the whereabouts of the S$8,000.[41]

22 Rahmat sought to discredit his statements given to CNB on the basis that he was not in a proper state of mind to provide these statements.[42] In a related vein, Rahmat argued that the lies in his statements were not corroborative of his guilt because they were uttered not due to a realisation of guilt but because he was in a state of shock.[43] Rahmat also sought to rely on the evidence of Dr Derrick Yeo Chen Kuan ("Dr Yeo"), Rahmat's examining psychiatrist, who supported Rahmat's version of events that he thought he was carrying medicine and not drugs, and that he had checked the Bag.[44]

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39 Rahmat's Closing Submissions at paras 44–47.

40 Rahmat's Closing Submissions at paras 18–25.

41 Rahmat's Closing Submissions at para 50.

42 Rahmat's Closing Submissions at paras 31–33 and 76.

43 Rahmat's Closing Submissions at paras 127–131.

44 Rahmat's Closing Submissions at paras 34 and 107–116.

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23 Rahmat argued that the other Prosecution witnesses' evidence could not be believed. Their conditioned statements were essentially a "cut and paste" job.[45] No rest was given to Rahmat when recording his statements,[46] and there were several mistakes in the statements that were recorded.[47] Zainal's evidence against Rahmat, namely that they had met before in connection with drug deliveries, also could not be believed.[48]

Zainal's case

24 Zainal's primary stance was that he did not know that the Bag contained controlled drugs. Zainal submitted that he rebutted both the presumptions under ss 18(1) and 18(2) of the MDA.[49] Zainal's evidence was consistent and clear throughout that he thought he was getting contraband cigarettes.[50] Zainal only ordered 200 cartons of contraband cigarettes from Samba for S$8,000. Samba told him that Rahmat would deliver 20 cartons first and the remainder would be delivered at another time. After Zainal had passed Rahmat S$8,000, Rahmat had just replied "kejap" or "wait for a while" and then left, leaving the Bag at the staircase in IKEA. Zainal first left the Bag there, thinking that Rahmat would return to claim the Bag but when Rahmat did not do so after some time of waiting, Zainal then picked it up and placed it in IKEA's warehouse.

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45 Rahmat's Closing Submissions at para 79.

46 Rahmat's Closing Submissions at paras 93–94.

47 Rahmat's Closing Submissions at paras 82–90 and 95–106.

48 Rahmat's Closing Submissions at paras 117–121.

49 Zainal's Closing Submissions at paras 69 and 117.

50 Zainal's Closing Submissions at paras 13–19.

25 The presumption under s 18(1) of the MDA was rebutted because Zainal did not know that the Bag contained the Drugs. There was no evidence that Zainal knew anyone named Kanna or Bai, and these names were not saved in Zainal's handphone, as per the handphone records. Zainal's version was supported by the fact that his records did show that he had tried to call a man known as "Samba", from whom he had ordered the contraband cigarettes. Rahmat himself admitted that he did not mention Bai to Zainal. Rahmat had also admitted that he had never said to Zainal what was in the Bag, nor that Bai had told him to deliver the Bag to Zainal. There was no reason why Zainal, if he had known that the Bag contained items meant for him, would not have taken it from Rahmat despite having the opportunity to do so on a number of occasions. Zainal's putting of the Bag behind the pallets showed that he did not know it contained drugs. Had he actually known, he would have hidden it in the locker where it would be safer. One of these lockers was completely empty. Zainal was also in possession of the Bag for just a few moments such that he could not have known that the Bag concealed drugs underneath the Towel.[51]

26 With respect to knowledge of the nature of the Drugs, Zainal argued that he did not have actual knowledge or was wilfully blind that the Bag contained heroin. There was no evidence that when Zainal met Rahmat, Zainal knew that the Bag contained three packets of heroin. In fact, Rahmat admitted to having never said to Zainal that he had three packets of "barang" or heroin to hand to Zainal. Rahmat's testimony thus did not implicate Zainal with regard to the latter's knowledge of the Bag.[52] There was also no reason for Zainal to check

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51 Zainal's Closing Submissions at paras 69–89.

52 Zainal's Closing Submissions at paras 55–61.

the Bag because Zainal knew that the Bag could not contain the 20 cartons of cigarettes and that the Bag belonged to Rahmat, which would have contained Rahmat's personal items. Moreover, the Drugs could not be seen as there was a dark cloth in the Bag concealing the items below. Zainal would have taken the Bag immediately if he had known that it contained heroin as opposed to leaving it on the staircase for almost an hour before placing it behind the pallets.[53] Shahreel's evidence also supports Zainal's version that Zainal did not try to hide the Bag behind the pallets.[54] Zainal had also rebutted the presumption under s 18(2) of the MDA. For similar reasons, there was no reason for Zainal to suspect that the Bag had contained the Drugs.[55]

27 Zainal argued that the Prosecution's evidence about the prices of heroin (to demonstrate that Zainal knew that the three packets was heroin) was speculative.[56] It was also argued that Zainal's version at trial was consistent with the statements recorded by the Investigation Officer, Station Inspector Shafiq Basheer ("IO Shafiq").[57] It was also said that Rahmat's evidence given in court could not be accepted. His credibility was affected by the fact that he admitted at trial that parts of his statements were incorrect. His evidence was accordingly to be treated with caution.[58]

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53 Zainal's Closing Submissions at paras 96–113.

54 Zainal's Reply Submissions at para 18.

55 Zainal's Closing Submissions at paras 117–120.

56 Zainal's Reply Submissions at paras 19–23.

57 Zainal's Closing Submissions at paras 40–54.

58 Zainal's Reply Submissions at paras 25–27.

Statutory provisions

28 The material parts of s 5 of the MDA are as follows:

> **Trafficking in controlled drugs**
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> **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.

29 Under s 2 of the MDA, "traffic" is defined as:

> **Interpretation**
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> …
>
> (*a*) to sell, give, administer, transport, send, deliver or distribute; or
>
> (*b*) to offer to do anything mentioned in paragraph (*a*),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning[.]

30 Section 18 of the MDA contains presumptions regarding the possession and knowledge of controlled drugs. The relevant sub-sections of s 18 read:

> **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.

31 Section 17 of the MDA contains presumptions concerning trafficking when an accused has in his possession more than a certain specified quantity of a controlled drug. The relevant parts read as follows:

> **Presumption concerning trafficking**
>
> **17.** Any person who is proved to have had in his possession more than —
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> …
>
> (*c*) 2 grammes of diamorphine;
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> …
>
> whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

Analysis

32 Following the Court of Appeal's decision in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 ("*Muhammad Ridzuan*"), the elements of a charge for trafficking in a controlled drug under s 5(1)(*a*) of the MDA are (at [59]):

> (a) possession of a controlled drug, which may be proved or presumed pursuant to s 18(1) of the MDA, or deemed pursuant to s 18(4) of the MDA;
>
> (b) knowledge of the nature of the drug, which may be proved or presumed pursuant to s 18(2) of the MDA; and

(c) proof that the drug had been possessed for the purpose of trafficking which was not authorised – the purpose of trafficking may either be proved or presumed pursuant to s 17 of the MDA.

33 Since there cannot be a reliance on the presumptions found in both ss 17 and 18 of the MDA (see *Tang Hai Liang v Public Prosecutor* [2011] SGCA 38 at [18]–[19], citing the Court of Appeal's earlier decision in *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 at [8] and [10]), element (c) must be independently showed when either of the presumptions in s 18 are relied upon. In this regard, there are a number of ways to prove the act of trafficking: see s 2 of the MDA ([29] above).

34 In the present case, both the Defendants did not dispute the identity of the Drugs found in the Bundles – the drug analysis, chain of custody, and integrity of the process were all not challenged. As for Rahmat, since he admitted to driving the Car into Singapore with the Bag, possession of the Drugs by him was not in issue by virtue of s 18(1) of the MDA. As for Zainal, he disputed possession of the Drugs.

35 Both Defendants primarily disputed that they had knowledge that the Bag contained diamorphine. The Prosecution invoked s 18(2) of the MDA, *ie*, an accused is presumed to have known the nature of the drugs he possessed. As a result, the burden lay on the Defendants to show, on a balance of probabilities, that they did not in fact have knowledge of the nature of the Drugs.

36 I will now turn to consider the case against each of the Defendants, separately.

Case against Rahmat

37 Physical possession of the Drugs was made out against Rahmat, and was not in issue. In any event, the presumption of possession under s 18(1) of the MDA would have applied. The Bag was in his possession, and continued to be so, with the Drugs inside the Bag, until he left it on the staircase at IKEA. There was nothing to show any break in his physical possession of the Drugs, and no such argument was put forward.

38 As noted above, the primary defence in Rahmat's case was not that he did not know that the Drugs were there. He had checked the Bag he was carrying, and simply did not know that the items he saw were controlled drugs.

39 After considering the evidence and the parties' submission, I found that Rahmat had actual knowledge that the Bag contained diamorphine. The Prosecution invoked the presumption of knowledge under s 18(2) of the MDA. I found that the evidence proved actual knowledge, including wilful blindness. In any event, the evidence also led to the conclusion that the s 18(2) presumption was not rebutted. I will consider first the presumption under s 18(2) of the MDA as my findings of actual knowledge and wilful blindness are buttressed by my findings on the presumption.

Section 18(2) presumption

40 As referenced above, s 18(2) of the MDA provides for a presumption of knowledge of the nature of the drug:

> 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.

41 Where the presumption under s 18(2) applies, this has to be rebutted by the accused on the balance of probabilities: see *Muhammad Ridzuan* at [75] and *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 ("*Ilechukwu*") at [30].

42 A rebuttal may be established if the accused shows that "he did not know or could not reasonably be expected to have known the nature of the controlled drug": see *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [18]. As explained by the Court of Appeal in *Obeng Comfort*, referring to *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257:

> 37 …. The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, *the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. …*
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> …
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> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. *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. …
>
> [emphasis added]

43 Here, Rahmat claimed that he thought the Bag contained something else, *ie*, medicinal products. However, the guidance from the Court of Appeal in *Obeng Comfort* goes further (at [40]):

> Where the accused has stated what he thought he was carrying ("the purported item"), *the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item.* This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country of receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. Ultimately, *what the court is concerned with is the credibility and veracity of the accused's account (ie, whether his assertion that he did not know the nature of the drugs is true).* This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.
>
> [emphasis added]

44 Thus, the version proffered by Rahmat must be tested against the probabilities of the situation and the objective evidence. In this regard, Rahmat relied on his relationship with the person who passed him the Bag, namely Kanna, whom he had known for about two months, and from whom he was trying to get a loan to start a goat rearing business.

(1) The relationship with Kanna

45 I did not accept Rahmat's reliance on his relationship with Kanna to show that his version should be accepted. Rahmat maintained that he was entitled to rely on what Kanna had told him because of their relationship. He had trusted Kanna, who told him that what he was given to carry into Singapore was medicine.

46 The threshold drawn in local cases was recently clarified by me in *Public Prosecutor v Saravanan Chandaram* [2017] SGHC 262 at [47]:

> … [T]he relationship of trust must be one that is credible on the facts as alleged; where the description of the alleged relationship contains incongruities, the likely result will be that the version proffered by the accused will be rejected and the presumption will remain unrebutted. But where the description of the relationship is coherent, credible and there is nothing to cast doubt on what is testified, the court will conclude that there is sufficient support for the accused's version and that the presumption has been rebutted on the balance of probabilities.

47 In the present case, there was insufficient basis for Rahmat to trust Kanna because of the brevity of the relationship between them. The limited nature of the relationship is also of note. Rahmat had only come to know Kanna at a massage parlour, where sexual services were provided.[59] There was nothing adduced to show that their relationship became particularly close during this time. Rahmat had only known Kanna for about two months before he embarked on the delivery that led to his arrest.[60] Certainly, a person could decide to run an errand for even a mere acquaintance for reward; but doing so without carrying

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59 NE 05/05/17, Day 4, p 30.

60 NE 05/05/17, Day 4, pp 54–55.

out checks, especially where the goods are transported across borders, is extremely unlikely.

48 Rahmat's version of what led him to make the delivery was also not capable of belief upon scrutiny. Rahmat testified that he had considered going into the business of goat rearing, and needed a RM30,000 loan from Kanna. This delivery of the Bag was intended to be the basis for the loan. It was hard to believe that any delivery of medicine on such a small scale, as Rahmat contended (which would have been a legitimate and lawful delivery) could be part of a process that would lead one to obtain such a substantial loan. This went to the strength of the veracity of Rahmat's version, and would have to be weighed with all the other evidence against that version.

49 I do accept though that a brief relationship does not invariably mean that an accused person would have no reasonable basis to trust another. In *Harven*, an explanation by the accused there of the circumstances leading to the finding of drugs on him was founded on a short relationship with a colleague that lasted three weeks. However, in that case, what was asked for in the relationship was an "innocuous 'favour'" from a colleague at work to help him pass something to his friend in Singapore for no reward (*Harven* at [64]). Further, as submitted by the Prosecution here[61] and as highlighted by the Court of Appeal in *Harven* at [46], the situation is different when a request comes from someone with a criminal background, or "a reputation for dealing in illegal substances". Here, Rahmat admitted to being aware of Kanna's "shady business of

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[61] Prosecution's Reply Submissions at paras 16–18.

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moneylending"[62] and of working as a runner for him to collect monies from people in Singapore.[63] There was also the promised loan of RM30,000 from Kanna such that it was not merely an "innocuous favour" for a friend. The circumstances of the loan noted above casted further doubt on Rahmat's explanation.

(2) Differing versions in Rahmat's statements

50 Rahmat's statements to the CNB differed significantly from the testimony that he gave in court. He effectively disowned his statements, but did so without challenging his voluntariness in making them.

51 For example, in his statements, Rahmat had stated that he thought that the Bag contained "crackers", which he understood to be "food items which are fried and eaten as snacks".[64] This was different from his version at trial that the Bag contained "medicine for the skin".[65] In a similar vein, he stated in his statements that he had told the CNB officers that he did not check the Bag's contents. At trial, however, he averred that he had checked the Bag, and that he thought he was carrying medicinal products. He also claimed to have told this to the CNB officer.[66] As noted by the Prosecution, this was however flatly

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62 NE 05/05/17, Day 4, p 55.

63 NE 05/05/17, Day 4, pp 31–32.

64 Agreed Bundle, p 663 (CH-P193 at para 21).

65 NE 05/05/17, Day 4, p 7.

66 NE 04/05/17, Day 3, p 30; NE 05/05/17, Day 4, p 7.

(*cont'd on next page*)

denied by IO Shafiq, who recorded the statements, and it was also not put to the interpreter, Shaffiq bin Selamat ("PW9").[67]

52 Similarly, in his statements, Rahmat had also initially denied that he had received anything for the delivery.[68] This is of course far from the truth, given that he received S$8,000 from Zainal. At trial, Rahmat claimed that he had done so as he did not know "how to give the right answer".[69]

53 Further, as the Prosecution highlighted,[70] the questioning of IO Shafiq focused on inaccuracies in Rahmat's statements owing to fatigue from "lengthy questioning".[71] But Rahmat only testified that there were inaccuracies in his statements because he was in a state of shock. These were significant discrepancies that militated against the acceptance of Rahmat's assertion that the recorded statements were inaccurate.

54 Additionally, Rahmat pointed to errors in the conditioned statements of PW9 and IO Shafiq. As the Prosecution argued,[72] however, these errors did not go to show that his statements to the CNB, as opposed to the conditioned statements by the Prosecution's witnesses, could not be relied upon. As a matter

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67 Prosecution's Reply Submissions at paras 4–5.

68 Agreed Bundle, p 385 (Q8).

69 NE 05/05/17, Day 4, p 41.

70 Prosecution's Reply Submissions at para 5.

71 Rahmat's Closing Submissions at para 93.

72 Prosecution's Reply Submissions at para 6.

(*cont'd on next page*)

of logic, errors in the preparation of a Prosecution's witness' conditioned statement has no bearing on the accuracy of an accused person's statement.

55 Rahmat also claimed that he was anxious at the time that his statements were recorded. He was concerned about his family, who were with him at the time of his arrest. Rahmat relied instead on what he had told Dr Yeo, which was that he had checked the Bag and thought it was medicine. He claimed that he was more coherent at the time he gave that version to Dr Yeo.[73] Presumably, this meant that he was more composed.

56 I could not accept Rahmat's explanation for the discrepancies between his version at trial and his statements. It defied belief that Rahmat experienced such shock stemming from his concern for his family that he could not give an accurate statement. While it would be understandable for Rahmat to be tired or concerned about his family, neither reason could account for the different explanations he gave. Certainly, although errors or omissions about minute details are to be expected, one could reasonably expect him to accurately convey what he had thought was in the Bag and whether he had checked its contents. The importance of these matters would have been apparent to anyone. Furthermore, there is a vast difference between medicine and food crackers; it takes only a cursory glance to tell the two apart. In the circumstances, I could not accept that he was under such shock that he could not give an accurate statement and against that context, the version subsequently given by him to Dr Yeo could not be accepted as the truth.

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[73] Rahmat's Closing Submissions at paras 34 and 114.

57 Rahmat's counsel argued that any finding of shock would be dependent on medical evidence. But this was beside the point. The question was, what was Rahmat's state of mind at the material time? And as the presumption operated, it was for Rahmat to adduce sufficient evidence to establish his lack of knowledge on the balance of probabilities. On this issue, for the reasons canvassed above, I found that Rahmat failed to rebut the presumption.

58 In any event, even if the statements were to be disregarded, his testimony in court could not lead to the rebuttal of the presumption. On a balance of probabilities, they could not outweigh the issues raised by the complete absence of a reason to trust Kanna in the short space of time that they had known each other (see [45]–[49] above).

59 At this juncture, I ought to point out that the Prosecution relied on several lies by Rahmat in his statements as corroborating his guilt.[74] I did not find that any false evidence given by Rahmat met the requirements for corroborating his guilt. The requirements for such a finding were recently reiterated in *Ilechukwu* at [60]. First, the lies must be deliberate. Second, they must relate to a material issue. Third, they were made out of a realisation of guilt and fear of the truth. Fourth, the statement must be shown to be a lie by independent evidence. All the lies relied upon by the Prosecution failed one or more of these requirements. In particular, there was little by way of independent evidence, as the findings were primarily on credibility and consistency.

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[74] Prosecution's Closing Submissions at paras 52–65.

(3) Conclusion on the rebuttal of the presumption

60 For these reasons, I found that Rahmat failed to rebut the presumption of knowledge of the nature of the Drugs under s 18(2) of the MDA.

Actual knowledge

61 The above reasons for finding that Rahmat failed to rebut the s 18(2) presumption also independently gave rise to the conclusion that actual knowledge was made out. In other words, the deficiencies in Rahmat's evidence above also meant that even apart from the statutory presumption of knowledge, Rahmat was not able to raise a reasonable doubt as to his knowledge of the nature of the Drugs.

62 Given the improbabilities of Rahmat's case, the only logical conclusion was that Rahmat knew that he was delivering three packets of heroin to Singapore. Nothing else was at all plausible on the facts such as to have raised a reasonable doubt.

Wilful blindness

63 Wilful blindness is a form of actual knowledge: see *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [133]–[134] and *Obeng Comfort* at [41]. The discussion above also pointed to wilful blindness being made out. Rahmat's decision not to inquire further, or to check, the contents of the Bag was indicative of a desire not to uncover what he must have already known – he was therefore wilfully blind.

64 Rahmat had the opportunity to inspect the Bag once he had collected it from Kanna, and to examine what it contained more closely. At trial, Rahmat

claimed that he had seen the Bag and felt the contents. Even if that were the case, he ought to have checked the Bag further given the surrounding circumstances (*eg*, his shallow relationship with Kanna and the amount of money he was given). His suspicions must have been raised when Kanna, who was not in the business of selling medicine, asked him to make a delivery of the same.[75] It is important to point out that Rahmat simply took Kanna's word at face value notwithstanding that he knew full well of the nature of Kanna's illegal business. The ludicrousness of this is evident in the following portions of Rahmat's cross-examination:[76]

> Q: Earlier you stated that you know "Kanna" was in a shady business of money lending. Yes?
>
> A: Yes.
>
> Q: I also asked you whether you knew if "Kanna" was involved in the business of selling medicine. And your answer is "No". I also asked if you knew he was involved. If you knew he was---if you knew that "Kanna" was involved in the business of transporting medicine. Your answer is "No." Sorry, your answer is, you didn't know.
>
> A: That's right.
>
> Q: So once again, why would you believe him at his word?
>
> A: At that time I was in a state of---okay, I was in a state of hurry. I need to go fast and come back fast.
>
> Q: Why were you in a state of hurry?
>
> A: Okay. On the 27th of May, it was the third day my grandmother just passed away. So I have---I had to return to kampung.
>
> Q: Did you ask "Kanna" if the medicine was actually drugs?
>
> A: No, I didn't.

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75 NE 05/05/17, Day 4, p 53.

76 NE 05/05/17, Day 4, p 54.

Q: So you just trusted him.

A: Yes.

65 Moreover, his version that he had checked the Bag was not in his statements, for which he had not given an adequate explanation (see [51] above). For the reasons given above, I preferred the version in his statements to that of his oral evidence. This would *a fortiori* strengthen the finding of wilful blindness.

Problems in investigations

66 Rahmat attacked the propriety of the investigations for having a number of lapses, particularly in the conditioned statements of the Prosecution's witnesses as well as in the process of recording Rahmat's statements.

67 Rahmat first pointed to issues in the recording of his contemporaneous statement, arguing that he was not in a proper state of mind to record the statement. To this end, he disagreed with SSgt Muhammad Helmi bin Abdul Jalal's ("PW5") evidence that Rahmat was fit to have a statement recorded. He argued that since PW5 was unable to recall his state of mind at the time that the statement was taken, PW5 could not have been sure that he was fit to have a statement recorded. Therefore, his contemporaneous statement must be greeted with caution.[77] This was an exercise in splitting hairs. PW5 was clear in his testimony that Rahmat was not in any state of shock at the time the statement was taken.[78] His prior evidence that he could not recall Rahmat's exact

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[77] Rahmat's Closing Submissions at paras 72–76.

[78] NE 02/05/17, Day 1, p 74.

(*cont'd on next page*)

behaviour and state of mind[79] must be understood in that context – if Rahmat had truly been in a state of shock, that would have left an impression on PW5.

68 Rahmat also attacked the conditioned statement of SSgt Tay Keng Chye ("PW4") because PW4 could not explain why he had thought that Rahmat looked "suspicious" in his conditioned statement.[80] It was pointed out that the reference to "looking suspicious" appeared in all the statements of the arresting officers.[81] This argument does not take Rahmat's case very far. As pointed out by the Prosecution,[82] the specific reference to PW4's conditioned statement pertained specifically to SSgt Eric Goh Jun Xian ("SSgt Goh") reporting over the communications channel that "B2 (Rahmat) was seen carrying a green recycled bag looking suspicious at the taxi stand".[83] Reading PW4's conditioned statement as a whole, it was clear that PW4 was not personally stationed at the taxi stand at the time and would therefore have been in no position to answer the question of what "looking suspicious" meant. Given that these were not the words of PW4, Rahmat's counsel erred in getting PW4 to explain what he meant by those words. It was unsurprising that PW4 could not explain what it meant. Regarding the similarities in the words used in the conditioned statement, this was again unsurprising given that these arresting officers were merely stating what they had heard from SSgt Goh through the communications channel.

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79 NE 02/05/17, Day 1, p 73.

80 NE 02/05/17, Day 1, p 59.

81 Rahmat's Closing Submissions at para 79.

82 Prosecution's Reply Submissions at para 13.

83 Agreed Bundle, p 412 (para 4).

(*cont'd on next page*)

69 Rahmat also took issue with the interpreter, PW9, and pointed out a list of mistakes in PW9's conditioned statements. For one, PW9 used the word "granular" to refer to the Drugs, when Rahmat had never done so.[84] PW9 also failed to state that one of Rahmat's defence counsel was present at the recording of a statement. Rahmat argued that these errors showed that insufficient thought was given to the preparation of the conditioned statements.[85]

70 In my view, with respect to the word choice of "granular", Rahmat's counsel was simply at grasping at straws. This is evident from the following exchange during PW9's cross-examination:[86]

> A: Okay, er, first, you mentioned the word "*pasir*". Did he use right?
>
> Q: Yes.
>
> A: So, I believe the translation that is written in the statement as "granular substance" is actually referring to that *pasir*.
>
> Q: Yes.
>
> A: So, *pasir* is made of grains and granular is the word for it.
>
> Q: Okay.
>
> A: Or it can be use the word "grainy substance" also, but in this case, I use the word "granular".

Respectfully, I was unable to see what significant difference it would have made to its meaning if the word "grainy substance" as opposed to "granular" had been used. With respect to the other mistakes in the conditioned statement, these are

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84 NE 03/05/17, Day 2, p 54.

85 Rahmat's Closing Submissions at paras 83–89.

86 NE 03/05/17, Day 2, p 54.

not to be condoned and greater care should have been taken care to ensure that the statement was as accurate as possible. Having said that, almost all of the mistakes Rahmat highlighted were insignificant and did not relate to any material elements of the offences. Thus, it did not weigh in my mind to discredit this evidence.

71 Lastly, Rahmat argued that the recording of his statements by IO Shafiq was problematic as these statements were recorded without giving him any rest.[87] Additionally, he argued that there were several errors in IO Shafiq's conditioned statements, which IO Shafiq had brushed off as typographical errors. It was also contended that standard templates were reused, and that these errors in the conditioned statements raised the possibility of there being errors in Rahmat's statements as well.[88] On Rahmat's first point of lengthy questioning, this would have been a point with respect to the voluntariness of the statement, *ie*, that the statement was made under oppressive circumstances: see Explanation 1 to s 258 of the CPC. Since Rahmat did not challenge the voluntariness of his statements in a *voir dire*, I was unable to make any findings on this issue. With respect to the latter point, this was an entirely speculative submission – just because there were errors in the conditioned statements did not mean that there would have been errors in Rahmat's statements as well.

72 Overall, whilst I found that the investigations were not perfect and there were some lapses that cannot be condoned, these lapses were not of such nature

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87 Rahmat's Closing Submissions at paras 93–94.

88 Rahmat's Closing Submissions at paras 95–106.

as to cast any doubt on the accuracy of Rahmat's statements or the narration of material events in the conditioned statements.

Zainal's evidence against Rahmat

73 Zainal gave evidence that he had previously bought drugs through Rahmat.[89] Rahmat argued that Zainal's evidence should not be believed. I accepted that Zainal had met Rahmat previously. There was no reason for Zainal to implicate Rahmat. In addition, as the Prosecution highlighted,[90] there were phone and immigration records, which showed that Rahmat and Zainal were in contact on at least three prior occasions before 27 May 2015. Coincidentally, there were also corresponding immigration records showing that Rahmat had entered Singapore on those exact same dates.

74 The fact that there were past transactions would have pointed against Rahmat's supposed lack of knowledge about the Drugs, and contradicted his version that he had only met Zainal on the day the transaction in question took place. However, while I found against Rahmat on this point, this could be considered as similar fact evidence that is prejudicial to Rahmat, although this was not argued as such). I thus did not consider this in weighing either the rebuttal of the presumption, or the existence of actual knowledge or wilful blindness. There was other evidence, sufficiently pointing against either a rebuttal of the presumption or that clearly pointed towards actual knowledge and wilful blindness.

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89 NE 11/05/17, Day 6, p 30.

90 Prosecution's Closing Submissions at para 68.

Trafficking of the Drugs

75 Rahmat left the Bag with the Drugs on the staircase at IKEA, intending for the Bag to be taken by Zainal. That meant that there was transfer of possession, by way of giving, and thus trafficking for under s 2 of the MDA.

Conclusion as to Rahmat's culpability

76 For the above reasons, I was satisfied that the offence of trafficking in controlled drugs under s 5(1)(*a*) of the MDA was made out as against Rahmat.

Case against Zainal

77 I was satisfied that the case against Zainal was made out as he had physical possession of the Drugs. He was also either presumed to know the nature of the Drugs, or actually knew, or was wilfully blind that what he had was heroin. It was also proven that he had the Drugs in his possession for the purpose of trafficking because of the large quantity involved. Alternatively, the presumption of possession for the purpose of trafficking under s 17(*c*) of the MDA operated against him. That presumption was not rebutted.

Possession

78 I was satisfied that actual possession was established as Zainal was in control of the Bag containing the Drugs. It was immaterial that the Drugs were not on his person at the time of his arrest. In my judgment, as long as a controlled drug is within a person's control, he is in possession of it even if it is not on his person. On the facts, Zainal had hidden the Bag near his work area at IKEA. The act of hiding indicates control over the Drugs, and such control is what matters for the element of possession to be made out.

79 The requirement of physical control was noted by the Court of Appeal in *Sim Teck Ho v Public Prosecutor* [2000] 2 SLR(R) 959, which bears quoting in some length due to the parallels to the present facts of hiding the Drugs:

> 11 The key issue in this appeal was whether the trial judge was right in finding that the appellant was in possession of the diamorphine contained in the bag. Numerous cases have established that possession encompasses the element of physical control as well as an element of knowledge. For example, in *Fun Seong Cheng v PP* [1997] 2 SLR(R) 796, it was said (at [53]–[54]) by M Karthigesu JA, in delivering the judgment of the Court of Appeal:
>
> > … Clearly in order to prove that the appellant was in possession, he must have physical control over the drugs. It is a matter of fact whether someone has physical control over an item. …
> >
> > Physical control is not enough for the purpose of proving possession. There needs to be *mens rea* on the part of the accused. …
>
> 12 Karthigesu JA went on [to] cite a portion of Lord Pearce's judgment in Warner *v Metropolitan Police Commissioner* [1969] 2 AC 256, a decision of the House of Lords which involved the meaning of "possession" for the purpose of s 1 of the Drugs (Prevention of Misuse) Act 1964. Lord Pearce's *dicta* had been cited *in extenso* with approval by the Court of Appeal in *Tan Ah Tee v PP* [1979–1980] SLR(R) 311. Wee Chong Jin CJ in delivering the judgment of the court, said that the word "possession" for the purpose of the Act should be construed as Lord Pearce had construed it. His Lordship had said in Warner:
>
> > One may, therefore, exclude from the "possession" intended by the Act the physical control of articles which have been "planted" on him without his knowledge. But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that "possession" implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse.

13 Therefore, in order to prove possession, the Prosecution must prove that there is first, physical control over the controlled drug, and second, knowledge of the existence of the thing itself, that is the existence of the controlled drug, but not the name nor nature of the drug.

Physical control

14 The appeal contested the trial judge's finding that these two elements of possession were satisfied. In respect of physical control, the appellant argued that the trial judge erred in failing to give due weight to the fact that the appellant did not have exclusive possession of the flat and that there were visitors who went to play mahjong at the flat who could have entered the storeroom. We had several difficulties with this argument.

15 First, based on the evidence of the appellant, from the time he kept the bag in the storeroom at about 11.00pm to 12.00pm on 9 November 1999 till the time of the raid at about 1.00pm on 11 November 1999, the only period in which the appellant was out of the house was on 10 November from about 4.00pm when he went to work at the hawker stall till 11.00pm of the same day when he returned home. There was however no evidence of a mahjong session during this period of time. Mdm Tan in her testimony said that she would invite her neighbours to her house once or twice a week to play mahjong. The appellant's brother, Hai Huat, in his testimony, said that his mother's friends would come once or twice a week, on Sunday, and at times also on weekdays. He was unable to remember if he had seen his mother's mahjong friends, and neither did he ask nor was told if her friends had come to the flat on the crucial Wednesday afternoon of 10 November 1999 to play mahjong. There was, in short, merely speculation that there might have been visitors, but no evidence of it.

16 Second, Mdm Tan's mahjong friends were lady neighbours in their 60s or 70s who resided in the same block. Even if there was a mahjong session on the afternoon of 10 November 1999, no reason was suggested as to why these ladies would want to plant drugs in their neighbour's storeroom.

17 Third, even if someone did plant drugs in the storeroom, it would have been extremely coincidental that the drugs were planted in the Watson's plastic bag that the appellant's former prison inmate had passed to him for safekeeping.

18 *The only persons who clearly had access to the storeroom were the family members of the appellant. The appellant had*

> *however, chosen the storeroom precisely because in his view, none of the other family members went there. Moreover, it was not the appellant's case that the drugs were planted by a family member. In view of all these circumstances, the trial judge was justified in finding that no one, other than the appellant, entered the storeroom between 9 November 1999 and 11 November 1999, that the bag and its contents remained intact from the time it was placed in the storeroom by the appellant until the time of its discovery by the CNB officers, and that the appellant had physical control over the bag and its contents.*
>
> [emphasis added]

80 The same focus on control is apparent in the English decision of *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*"), a decision of the House of Lords. Although *Warner* was concerned with the meaning of "possession" in the context of s 1 of the Drugs (Prevention of Misuse) Act 1964 (c 64) (UK), which has a different statutory regime, it has been locally endorsed by the Court of Appeal for its observations on the general concept of possession (see the Court of Appeal decisions in *Tan Kiam Peng* at [53] and *Pham Duyen Quyen v Public Prosecutor* [2017] SGCA 39 at [31], noting the effect of its earlier decision in *Tan Ah Tee and another v Public Prosecutor* [1979–1980] SLR(R) 311).

81 In particular, Lord Wilberforce in *Warner* stated at 309F:

> … Ideally a possessor of a thing has *complete physical control* over it; he has knowledge of its existence, its ***situation*** and its qualities: he has received it from a person who intends to confer possession of it and he has himself the intention to possess it exclusively of others. …
>
> [emphasis added in italics and bold italics]

82 Lord Guest also pointed to the definition in a legal dictionary as follows (*Warner* at 299E):

> …[T]he visible possibility of exercising physical control over a thing, coupled with the intention of doing so, either against all the world, or against all the world except certain persons. There are therefore three requisites of possession. First, there must be actual or ***potential physical control***… accompanied by intention… [T]he possibility and intention must be visible or evidenced by external signs, for *if the thing shows no signs of being under the control of anyone, it is not possessed*…
>
> [emphasis added in italics and bold italics]

83 From these cases, it becomes clear that where a person hides an item, he still retains control over it. He retains "potential physical control" because he knows where the item is and can look for it when he wants to. In other words, using the words of Lord Wilberforce, he knows of its "existence" as well as its "situation" (*ie*, location). Anomalous results would follow if hiding an item removes it from one's possession.

84 It could be argued that hiding an item results in the loss of possession, because if possession were maintained in such a situation, there would be no need for the presumptions under the MDA, such as s 18(1). However, those are situations where the presumptions are needed to resolve any ambiguities about the extent of an accused person's control. But here, Zainal himself testified that he had put the Bag behind a stack of pallets containing goods from IKEA. There was no ambiguity and therefore no need to resort to the presumption.

85 On the facts, Zainal manifested an intention to control the Bag. He had not put it out in the open in a public place, but behind some pallets in an office area. There was no intention to abandon by, for example, throwing it away in a

bin. The clear inference was that Zainal intended to return to the Bag at some point. In the meantime, it was not put in anyone else's control either.

86 In any event, even if I were wrong in finding actual physical possession, s 18(1) of the MDA would apply against him. This provision reads 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.

87 The Bag was in Zainal's possession, and that possession was not relinquished. By way of the presumption, Zainal was also in possession of the contents of the Bag, namely the Drugs. There was nothing on the facts to rebut such physical possession.

Knowledge of the nature of the Drugs

88 As to Zainal's knowledge of the nature of the Drugs, knowledge was established on the basis of either s 18(2) of the MDA, actual knowledge, or wilful blindness.

(1) Section 18(2) presumption

89 I found that the presumption under s 18(2) of the MDA operated, and was not rebutted on the facts.

90 The Prosecution argued that as Zainal did not give evidence of what he had thought the package given to him contained, he did not rebut the presumption under s 18(2), citing the following passage from *Obeng Comfort*:[91]

> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. 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. Similarly, he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of, and to rebut this, he must give an account of what he thought it was.

I accept that *Obeng Comfort* requires a person found with drugs to proffer some explanation, indicating what he had thought he had with him. Zainal said he saw the Towel in the Bag, but did not explain further what he thought was in the Bag. He did not even say that he thought it contained nothing but only a cloth.

91 Zainal's defence that he was expecting a delivery of 20 cartons of cigarettes meant that he was not expecting anything that could have fit into the Bag, as he himself acknowledged.[92] He was supposedly concerned with trying to figure out whether and when the cigarettes would eventually be delivered.

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91 Prosecution's Closing Submissions at para 72.

92 NE 11/05/17, Day 6, p 47.

His position was effectively a denial that he had anything to do with the Bag. But because he had the Bag in his possession, the presumption under s 18(2) of the MDA applied. It was thus incumbent upon him to put forward some explanation to show on the balance of probabilities that he did not know the nature of the Drugs.

92 The difficulty for Zainal was that, on his case, this had to flow from his explanation that he was expecting cigarettes, and that he essentially did not have anything to do with the Bag at all. However, once he had taken the Bag into his physical possession, he should have examined the contents. His failure to do so, taken together with his own professed history of dealing in drugs – and hence knowledge about drugs – cast significant doubt on his version of events. His alleged transaction was not a legal one: he was supposedly trying to deal with contraband cigarettes. Some suspicion and caution would have been expected if that were the case. But he did not check and ascertain the Bag's contents, and that lack of precaution undermined his case.

93 Moreover, given that Zainal testified that he could tell from the moment he met Rahmat that Rahmat did not carry with him the 20 cartons of cigarettes,[93] Zainal's subsequent actions were incongruous with the actions of a person who genuinely believed he was purchasing cigarettes. Inexplicably, Zainal did not ask Rahmat where the cigarettes were or what the Bag contained when they first met.[94] That would have been the natural and expected reaction of someone who

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93 NE 11/05/17, Day 6, p 47.

94 NE 11/05/17, Day 6, pp 48 and 57.

(*cont'd on next page*)

was expecting cigarettes, and several cartons at that. According to Zainal, he led Rahmat away from the public areas at the IKEA store, to the staircase to ask him about the cigarettes. Zainal was however unable to explain why he had to wait until he arrived at the staircase to ask Rahmat about the cigarettes.[95] Zainal maintained that he had asked Rahmat about the cigarettes, but it beggared belief that he acted the way he did. One would have expected Zainal to have protested and agitated strenuously for the delivery of the cigarettes if that was really what he was expecting to receive. Yet, ultimately, according to his own version, he let Rahmat go off.

94 And if indeed Zainal was expecting cigarettes, there was no reason for him to have taken the Bag and keep it away. Zainal testified that he thought to keep it safe. But as the Prosecution pointed out,[96] Zainal chose to leave the Bag out on the staircase for an hour. This pointed, as did Zainal's suspicions about law enforcement officers being present in IKEA,[97] to Zainal being concerned about being caught – and his actions *vis-à-vis* the Bag indicated that his concerns were not about cigarettes but something else. That something else would have been the Drugs in the Bag.

95 Zainal also did not look into the Bag beyond seeing the cloth on top. This is odd given the non-delivery of cigarettes. Given that Rahmat had left without the matter having been resolved (see [26] above), it would have been natural to examine the Bag. To my mind, that he did not do so was incredible.

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95 NE 11/05/17, Day 6, p 59.

96 Prosecution's Closing Submissions at para 86.

97 Agreed Bundle, p 537 (para 34).

(*cont'd on next page*)

Zainal claimed that he had to rush back to work,[98] but simply checking the Bag's contents would not have taken much effort or time. Furthermore, Zainal's co-worker, Shahreel, gave evidence that he had been asked by Zainal to cover his duties for the day so that he could leave early.[99] This pointed against Zainal's evidence that he had to rush back to work.

96 In his defence, Zainal also noted that he did not promptly take the Bag after Rahmat left. According to him, he would have done so had he been knowingly involved in a drug transaction. Zainal argued that he had waited for Rahmat to return, and left the Bag alone during that time. This however did not take Zainal's case anywhere – there were other possible explanations for this such as his suspicion that there were law enforcement officers in the vicinity at that time. He had thus waited for the coast to clear as it were before he thought it was safe to take possession of the Bag.

97 I also accepted the argument of the Prosecution that there was insufficient space to accommodate the 200 cartons of cigarettes that Zainal had supposedly ordered.[100] The other locker that Zainal had (see [25] above) was not large enough to accomplish this. The practical difficulties of seeing the supposed purchase of the cigarettes through significantly undermined the credibility of Zainal's story.

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98 Agreed Bundle, p 544 (para 43).

99 Agreed Bundle, p 447.

100 Prosecution's Closing Submissions at para 102.

(*cont'd on next page*)

98 Zainal's counsel pointed to Shahreel seeing Zainal put the Bag behind pallets, and that the Bag was therefore not hidden.[101] That did not indicate anything. Whether or not a person had successfully hidden something is immaterial. There was also no evidence that Zainal knew that he was being observed or that he had been seen whilst attempting to hide the Bag.

99 Zainal's reliance on the calls he had made to Samba also could not take him very far. As noted by the Prosecution,[102] Zainal's claim that he had ordered contraband cigarettes from Samba was uncorroborated. Just because there was evidence of a call being made did not mean that the contents of the call were also proved. Given that Zainal has expressly admitted to purchasing heroin from Samba in the past,[103] the more plausible explanation was that these calls all pertained to the successful delivery of heroin by Rahmat (who was acting on the instructions of Kanna). It followed that the calls made to Samba did not support Zainal's version of events. They could not therefore assist him at all in rebutting the presumption.

100 Zainal also argued that there was no evidence that he had Kanna's phone number and that while there was a contact named "Bai" on his phone, this was not the same number as that of Bai.[104] However, as the Prosecution argued, this fact was "inconsequential and immaterial".[105] A person in the drug trade need

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101 Zainal's Reply Submissions at para 18.

102 Prosecution's Reply Submissions at para 22.

103 NE 09/05/17, Day 5, p 8.

104 Zainal's Closing Submissions at para 71.

105 Prosecution's Reply Submissions at para 24.

(*cont'd on next page*)

not have the contact number of every other person involved in the chain of delivery. As noted above, Zainal had testified that he had made a call to Samba for a shipment of heroin that was delivered by Rahmat on a previous occasion in early May 2015.[106] It was also not the Prosecution's case that Zainal had interacted with Kanna or Bai in the previous or current drug transactions. The more plausible version was that Zainal's orders through Samba were fulfilled by Kanna and Bai through Rahmat. There was thus no need for Zainal to have known who Kanna and Bai were.

101 For the above reasons, the presumption under s 18(2) of the MDA was not rebutted.

(2) Actual knowledge

102 The matters considered above (which militated against the rebutting of the presumption) also led to the conclusion that there was actual knowledge. Zainal had experience in dealing with heroin previously – he admitted that he had sold heroin previously,[107] even as recently as just two days before his arrest.[108]

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106 NE 09/05/17, Day 5, p 8.

107 NE 11/05/17, Day 6, p 15.

108 NE 11/05/17, Day 6, pp 43 and 46.

(*cont'd on next page*)

103 When asked who did the Bag belong to, Zainal had initially confessed that the Bag belonged to him in his contemporaneous statement:[109]

> It belongs to me but I do not know it is heroin inside. I only know…it is heroin when the officer took it out.

Zainal's explanation at trial was that he had said this because he was the one who had placed it behind the pallets and he could not say that the Bag belonged to Rahmat since Rahmat was not present.[110] His explanation could not be believed. If the Bag was truly not his, he could have simply just said so.

104 Zainal's version was also at odds with Rahmat's own testimony. Rahmat categorically denied that Zainal had ever asked about cigarettes.[111] As submitted by the Prosecution,[112] there was no reason for Rahmat to have given false evidence in this regard. There was nothing to be gained by Rahmat. And the evidence given was not susceptible to any inaccuracy or incompleteness. It was simply a question of whether Zainal had asked Rahmat about cigarettes or not.

105 Rahmat had mentioned in his statements that Zainal had asked him to lie that the delivery concerned 20 cartons of cigarettes whilst the duo were placed in the same van *en route* to court.[113] Rahmat maintained this in court, and there was again no reason for him to lie. Rahmat had nothing to gain from this.

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109 Agreed Bundle, p 374.

110 NE 09/05/17, Day 5, p 21.

111 NE 05/05/17, Day 4, p 24.

112 Prosecution's Closing Submissions at para 107.

113 Agreed Bundle, p 688 (para 99).

(*cont'd on next page*)

106 The Prosecution also argued that Zainal probably ordered heroin on the transaction in question based on a comparison of the monies he passed to Rahmat with the sale price of heroin based on Zainal's evidence; some effort was expended by the Prosecution to buttress this.[114] But I found the comparison on prices entirely speculative and there was insufficient evidence to back up such a finding.

(3) Wilful blindness

107 The above factors also pointed to Zainal being wilfully blind as to the nature of the Drugs.

Possession for the purposes of trafficking

108 Possession for the purposes of trafficking was made out in view of the large quantity of diamorphine found in the Drugs. There was some 53.64g in Zainal's possession, more than triple that of the quantity that attracted the capital punishment. Given the quantities involved and in the absence of any credible explanation from Zainal, the only conclusion that could be drawn was that the Drugs were to be transferred to someone else.

109 The Prosecution raised Zainal's own explanation that he had intended to transfer the Bag to Rahmat, as showing as well as that there was intention to transfer possession of the Drugs.[115] I did not give any weight to this however, as it was clear to me that this explanation was proffered on the basis that Zainal

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114 Prosecution's Closing Submissions at paras 95–101.

115 Prosecution's Closing Submissions at para 113.

did not know the contents of the Bag. Against that backdrop, it would not be proper to take his explanation out of that context.

110 In addition, s 17(1) of the MDA would have been applicable in view of my findings on possession and knowledge above (which can be met without reliance on the presumptions in s 18 of the MDA). The presumption would not be rebutted for the reasons stated above: the quantities involved indicated that possession was not to end with Zainal; there was no evidence led that he was going to consume the Drugs wholly by himself.

Conclusion

111 For the foregoing reasons, the Defendants were convicted of the respective charges as framed. No certificate of co-operation was granted by CNB in respect of either Defendants. Accordingly, the mandatory minimum sentence of death was passed in respect of Zainal and Rahmat.

Aedit Abdullah
Judge

Muhamad Imaduddien and Kenneth Kee (Attorney-General's Chambers) for the Public Prosecutor;
Aw Wee Chong Nicholas (Clifford Law LLP) and Prasad s/o Karunakarn (K Prasad & Co) for the first defendant (Rahmat);
Peter Keith Fernando (Leo Fernando) and Jeeva Arul Joethy (Hilborne Law LLC) for the second defendant (Zainal).