IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 23

Criminal Appeal No 9 of 2019

Between

Mohamed Shalleh bin Abdul Latiff

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

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

Mohamed Shalleh bin Abdul Latiff
v
Public Prosecutor

[2022] SGCA 23

Court of Appeal — Criminal Appeal No 9 of 2019
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Judith Prakash JCA
28 February 2022

14 March 2022

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 This appeal was against the conviction of the appellant, Mohamed Shalleh bin Abdul Latiff, and the sentence that was meted out in relation to an offence of possession of a controlled drug for the purpose of trafficking under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The appellant was sentenced to death. The sole issue in dispute, both at trial and on appeal, was whether or not the presumption of knowledge under s 18(2) of the MDA had been rebutted. The judge in the General Division of the High Court ("the Judge") resolved this against the appellant: see *Public Prosecutor v Mohamed Shalleh bin Abdul Latiff* [2019] SGHC 93 ("the GD"). When the matter first came before us, the appellant, having engaged his present counsel, Mr Ramesh Tiwary ("Mr Tiwary"), applied for the matter to be remitted to the Judge to enable some further evidence to be taken. We allowed the application and the

matter was remitted. After hearing the further evidence, the Judge issued her findings on remittal, and, in essence, she stood by her earlier decision: see *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2020] SGHC 283 ("the Remittal GD").

2 Having considered the matter including the further submissions made by Mr Tiwary, we were satisfied that the Judge was correct in the conclusions she had reached, and dismissed the appeal with brief grounds. In these grounds of decision, we explain our reasons for coming to this view. As the case raised some issues on the relevance of such matters as trust or suspicion in the context of assessing whether the s 18(2) presumption has been rebutted (as opposed to determining whether an accused person has been wilfully blind), we also take this opportunity to set out some observations in this regard. This may be helpful to ensure that the parties situate these issues correctly when considering the presumption, which, as we have explained in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") and *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*"), is concerned with *actual* knowledge, and that they do not confuse the analysis with how these factors might be relevant to or might impact the evaluation of the question of wilful blindness, which, as we also explained in those cases, is concerned with a state of knowledge *falling short* of actual knowledge.

Background facts

3 The appellant was a 38-year-old Singaporean male who faced one charge of possession of not less than 54.04g of diamorphine for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the MDA. Prior to his arrest, he was working as a freelance delivery man and earning about $2,800 per month. He also worked as an illegal debt collector for a friend and earned

between $3,600 and $4,000 per month from this. According to the appellant's psychiatric assessment, he had a history of substance abuse starting from when he was 14 years old, and he suffered from opioid and methamphetamine use disorder. However, he had no intellectual disability.

4 On 11 August 2016, at about 2.40pm, the appellant drove a rental car to Boon Teck Road, to meet a person who was later identified as Khairul Nizam bin Ramthan ("Khairul"). Khairul entered the appellant's car and placed the following items on the floorboard of the car's front passenger area:

(a) One orange plastic bag (subsequently marked as "B1" by Senior Staff Sergeant Tay Keng Chye ("SSSgt Tay")), containing one "Lexus" box ("B1A") which contained two packets of crystalline substances ("B1A1"); and

(b) Three "ziplock" bags ("B2") containing one bundle each wrapped in brown paper ("the three bundles").

We note that there was some dispute between the parties as to whether the three bundles were *inside* the orange plastic bag at the time of the appellant's arrest. Further, as we explain below, when Khairul testified at the remittal hearing, he claimed that he did not deliver the three bundles and that these were already in the car when he got in. The Judge did not accept this, and we agreed with her for reasons set out below. Aside from this, other items recovered from the appellant's car included a sling-bag with various ziplock bags containing granular and crystalline substances, pieces of stained aluminum foil, smoking apparatus, and empty sachets, and a digital weighing scale.

5 The appellant also handed Khairul an envelope containing $7,000 which had been left in the appellant's letter box the day before. Khairul then left the

appellant's car a short while later and drove off in a Malaysian-registered car. The appellant made his way to Mei Ling Street, where he was to wait for a call with further instructions as to whom he should deliver the three bundles. He was arrested there at about 3.30pm by several officers from the Central Narcotics Bureau ("CNB"). Khairul was later arrested at Woodlands Checkpoint at about 3.40pm, along with Khairul's wife and two children. An envelope containing $7,000 was recovered from the handbag of Khairul's wife.

6 On analysis by the Health Sciences Authority, the three bundles were found to contain not less than 1,360.9g of granular/powdery substance, which in turn was found to contain not less than 54.04g of diamorphine. This formed the substance of the charge on which the appellant was convicted. The crystalline substance in the two packets was found to contain methamphetamine.

Procedural history

7 The present appeal was first fixed for hearing on 18 September 2019. It was adjourned on that occasion as the appellant wished to change his counsel on the day of hearing and, as we have alluded to, there followed an application to adduce further evidence. As sought in CA/CM 18/2020 ("CM 18"), we remitted the matter to the Judge to take further evidence pursuant to s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). This culminated in the issuance of the Remittal GD.

Arguments and decision below

8 The appellant did not at any stage dispute that the three bundles were in his possession at the material time or that he intended to deliver the three bundles to a third party at Mei Ling Street. His sole defence was that he did not

know that the three bundles contained diamorphine. He claimed that he agreed to undertake a delivery for one "Bai", who told him that the package was of two and a half cartons of uncustomed cigarettes and pursuant to that, he was just following the instructions of Bai.

9 According to the appellant, he had known Bai since 2008 while they were in prison together, and they interacted in the prison yard a couple of times a week, for about four months, before they lost contact with each other for some time. Subsequently, between April or May 2014 and August 2014, the appellant used to go to the Kranji Turf Club ("the turf club") to place bets with Bai, who was working as an illegal bookmaker. On one occasion, the appellant's cousin was also there. The appellant claimed that his cousin had known Bai much longer, in fact, since the early 1990s, and told the appellant that Bai could be trusted. As a result of placing bets with Bai, the appellant accumulated an indebtedness to Bai of around $7,000 or $8,000. The appellant then lost contact with Bai again when he was admitted to the Drug Rehabilitation Centre. Subsequently, in January 2016, they met at a mutual friend's wedding. Sometime in or around June 2016, Bai contacted the appellant to ask about the debt and the appellant promised to repay Bai in instalments (see the GD at [14(a)]). This eventually led to the appellant taking on delivery jobs for Bai.

10 The delivery which led to his arrest was supposedly the second occasion on which Bai had engaged him for this purpose, with the expectation that the fee for this would be offset against his indebtedness. On the appellant's evidence, the first occasion had taken place around five days earlier, and was done as a favour for Bai. On that occasion, the appellant similarly met a Malaysian man (who was later identified as Khairul) at Boon Teck Road and collected a plastic bag from him, which was placed on the floorboard of the appellant's car. The appellant then drove to Mei Ling Street, where another man

got into his car, asked if the plastic bag contained the cigarettes which Bai had asked him to deliver; and, on the appellant's confirmation, paid the appellant $200 as "coffee money" (see the GD at [14(c)]).

11 On the second occasion, which was the delivery that gave rise to these proceedings, Bai had specifically told the appellant that, to compensate him for carrying out the delivery, Bai would reduce his outstanding debt by an unspecified amount. The appellant claimed that he believed that the delivery would be of two and a half cartons of uncustomed cigarettes, because Bai had told him so. Because he trusted Bai, he took what he was told at face value and so when he received the orange plastic bag, he assumed that it contained uncustomed cigarettes and had "no reason to check the plastic bag". Furthermore, the appellant claimed that since Khairul had delivered the three bundles to him in the orange plastic bag, the handles of which had been tied, he could not even see its contents, even if he had been minded to check it. According to the appellant, he first became aware of the three bundles when his car was searched by CNB officers (see the GD at [14(d)] and [14(g)]; the Remittal GD at [8]).

12 As the appellant's possession of the three bundles was undisputed, the Prosecution was able to rely on the presumption of knowledge as to the nature of the drug under s 18(2) of the MDA. The Judge found that the appellant had failed to rebut the s 18(2) presumption for three broad reasons:

> (a) The appellant did not have a particularly close relationship with Bai. The circumstances surrounding the entire episode were suspicious and given the real nature of the appellant's relationship with Bai, it was difficult to accept the high level of trust he allegedly placed in Bai (see the GD at [23]–[27] and [39]; the Remittal GD at [10(a)]).

(b) The appellant had omitted to mention important aspects of his defence in the statements he gave in the course of investigations. These included the alleged confirmation by the recipient of the plastic bag on the first occasion that the bag contained cigarettes, and the appellant's cousin allegedly having known Bai since the 1990s, as well as the cousin's alleged assurance that Bai could be trusted. If these facts were true, it would have been expected that the appellant would have mentioned these points, since they could have gone towards explaining his ostensible belief that the delivery involved cigarettes, and that he in fact trusted Bai to the point of taking what he said at face value (see the GD at [28]–[34]; the Remittal GD at [10(b)]).

(c) The appellant's account was contradicted by the evidence of SSSgt Tay, who testified that following the arrest, he found the orange plastic bag *beside* the three bundles on the floorboard of the car's front passenger seat (see the GD at [9]; the Remittal GD at [9]). The Judge saw no reason to disbelieve SSSgt Tay's evidence, and accepted that the three bundles were in fact located *outside* the orange plastic bag. As the three bundles were left exposed, the appellant would have caught sight of their appearance; given their round and irregular shape he could not have thought they were cartons of cigarettes (see the GD at [36]–[37] and [39]; the Remittal GD at [10(c)]).

13 The Judge accordingly convicted the appellant of the charge. The Judge found that the appellant was a courier, but as the Public Prosecutor did not issue a certificate of substantive assistance, the Judge imposed the mandatory death penalty.

The remittal hearing

14 After the trial, our decision in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") was issued. The Prosecution considered that Khairul could be considered a 'material witness' within the meaning of that term in *Nabill*, since he was in a position to testify as to whether the three bundles were inside or outside the orange plastic bag. The appellant's position had been that the three bundles were inside the bag, while SSSgt Tay's evidence was to the contrary. Since Khairul had placed the bag in the car, it was thought he might be a material witness. The Prosecution therefore disclosed to the Defence the statements that Khairul had made to the CNB.

15 Subsequently, in CM 18, Mr Tiwary applied for the matter to be remitted to enable Khairul to give evidence on the following issues:

(a) whether he had placed the orange plastic bag on the floorboard of the car that was driven by the appellant; and

(b) if so, whether the three bundles were inside or outside the orange plastic bag when he did so.

16 We allowed CM 18, and the matter was remitted to the Judge. It should be noted that Khairul's position at the remittal hearing was an awkward one to say the least. He had been convicted for his role in delivering the crystalline substances (B1A1) which were established to be methamphetamine and was serving a sentence of 15 years' imprisonment for that. He had also been charged with trafficking in the bundles of diamorphine (the three bundles), but the Prosecution later agreed to his being given a discharge not amounting to an acquittal on that charge. The latter being a capital charge, Khairul could be expected not to want to be associated with the bundles in question. When he

took the stand at the remittal hearing, he testified that he had entered the appellant's car, and placed the orange plastic bag on the floorboard of the car, as instructed by the appellant. It was perhaps unsurprising that Khairul claimed that the orange plastic bag only contained the methamphetamine and nothing else; in essence, he denied that he had delivered the three bundles, or that the three bundles were inside the orange plastic bag (see the Remittal GD at [16]).

17 Upon examination by the Prosecution, Khairul claimed that the three bundles were already on the front passenger seat when he opened the car door. As he wanted to occupy that seat, he pushed the three bundles onto the floorboard. Thereafter, he showed the appellant the orange plastic bag, and then placed it on the left of the three bundles on the floorboard. He could not remember whether the handles of the orange plastic bag were tied up (see the Remittal GD at [17]).

18 The Defence sought to impeach Khairul's credit pursuant to s 157(*c*) of the Evidence Act (Cap 97, 1997 Rev Ed). It relied on six of Khairul's statements provided to the CNB, in which he had made several contradictory assertions (see the Remittal GD at [20]). In the final analysis, both the Defence and the Prosecution agreed that Khairul was not a reliable witness (see the Remittal GD at [21]–[22]), and the Judge agreed with this. She found that his credit was impeached, and also noted that Khairul had a strong incentive to disassociate himself from the three bundles, since he had only been granted a discharge not amounting to an acquittal, and any admission from him could implicate him in the commission of a capital offence (see the Remittal GD at [23]).

19 In relation to the two specific issues being remitted (as above at [15]), the Judge found as follows (see the Remittal GD at [24]–[25]):

> … Contrary to the parties' common position, Mr Khairul denied that he had delivered the [three b]undles to the accused. To do so, it is unsurprising that Mr Khairul said that when he entered the accused's car, the [three b]undles were already on the front passenger seat which Mr Khairul then pushed to the floorboard of the car. While the latter aspect lent some support to SSSgt Tay's observation on the location of the [three b]undles, I do not consider Mr Khairul's evidence reliable. Proceeding on the basis that Mr Khairul had delivered the [three b]undles to the accused, the [three b]undles could well have been inside or outside the orange plastic bag when placed in the car. At the end of the day, there is nothing to contradict SSSgt Tay's evidence that he found the [three b]undles beside the orange plastic bag on the floorboard of the car. There is also nothing to support the accused's assertion that the [three b]undles were inside the orange plastic bag all the while.
>
> … Mr Khairul's evidence has no bearing on my finding within the third broad area that the [three b]undles were located outside the orange plastic bag. It has no bearing on my observation that 'the round and irregular shape should have aroused suspicion that they contained something else besides cartons of cigarettes': see [36] of the GD.

20 In short, the Judge found Khairul's evidence to be worthless, and it therefore had no bearing on the verdict she had earlier pronounced.

Issues to be determined on appeal

21 The following elements must be proved by the Prosecution to make out the offence of possession of a controlled drug for the purpose of trafficking under s 5(1) read with s 5(2) of the MDA: (a) possession of the controlled drug; (b) knowledge of the nature of the drug; and (c) proof that possession of the drug was for the purpose of trafficking (see *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 ("*Masoud*") at [28]). As the appellant did not dispute that the three bundles were in his possession and that he intended to deliver them to a third party, and as the Prosecution was relying on the statutory presumption in s 18(2) to establish the element of knowledge, the sole issue in dispute at first instance and on appeal, was whether

or not the presumption of knowledge had been rebutted (as noted at [8] and [12] above). In this regard, the appellant bore the burden of proving that he did not know the nature of the drugs in his possession, and it was incumbent on him to adduce sufficient evidence establishing that subjective state of mind (see *Gobi* ([2] above) at [57]–[58]). Whether or not his defence would be accepted naturally depended on the strength of that evidence (see *Gobi* at [64]).

22 In challenging the Judge's finding that he was not able to rebut the presumption, the appellant argued that: (a) his account of what he knew of Bai had been consistent, and the Judge had erred in finding that the appellant had no basis to trust Bai; (b) it was entirely conceivable that a lay person such as himself could fail to list each and every aspect of his defence when questioned by the CNB; and (c) it was entirely possible that the three bundles were outside the orange plastic bag by the time they were found by SSSgt Tay, even if they might have been inside the plastic bag as claimed by the appellant when the bag was delivered to him.

23 We note as well that the appellant's former counsel, Mr Jason Chan SC ("Mr Chan"), had argued in his written submissions that the appellant had rebutted the presumption under s 18(2) of the MDA and had adduced evidence to demonstrate that he did not in fact know the precise nature of the drugs; *and further,* that it had not been established that the appellant had been wilfully blind to the nature of the contents of the three bundles. Drawing on the definitions we set out in *Adili* ([2] above) in relation to the doctrine of wilful blindness, Mr Chan argued that in so far as the Judge had relied on certain factors which would have aroused suspicion on the part of the appellant, these were not sufficient to establish wilful blindness, and the appellant could not be found to have failed to rebut the s 18(2) presumption on that basis. We address this argument below at [42]–[53], but note at present that those submissions were made prior to this

court's decision in *Gobi*, which affirmed the applicability of the principles in *Adili* on the doctrine of wilful blindness to an accused person's knowledge of the nature of the drugs.

24 The following were the issues that arose for our consideration and that we deal with in these grounds:

(a) first, whether the Judge was correct to find that the three bundles were located out of the orange plastic bag and hence would have been seen by the appellant;

(b) second, whether the Judge was correct to disbelieve the appellant's claim that he trusted Bai and in fact took what he said at face value; and

(c) finally, whether it is relevant to have regard to suspicious circumstances or whether the accused person had a basis to trust what he is told about the contents of a package, when assessing an accused person's actual knowledge of the nature of the drugs and whether the statutory presumption in s 18(2) of the MDA has been rebutted.

25 It bears reiterating that, given the reliance by the Prosecution on the s 18(2) presumption to establish the element of knowledge, the onus was on the appellant to make good his contention and to rebut or displace the presumption.

Were the three bundles within the orange plastic bag at all times?

26 In our judgment, the Judge had ample basis to find that the three bundles were not inside the orange plastic bag by the time of the arrest. The evidence of SSSgt Tay, which the appellant did not accept, was that the three bundles were

outside the plastic bag on the floorboard of the car. The matter was remitted on the application of the appellant who might have hoped that Khairul might corroborate his case. Khairul's evidence, however, was even more damning for the appellant, because he claimed that the three bundles were in the appellant's car to begin with. As it turned out, Khairul's evidence was discredited by the Prosecution and the Defence, and rejected by the Judge (as noted at [16]–[19] above). Khairul therefore had nothing of value to say on this matter.

27 The Defence contended on appeal that the three bundles *could* have been delivered in the orange plastic bag and *could* then have escaped from the bag in the course of the arrest. However, this was somewhat contrary to the case the appellant ran at trial, which was that the three bundles were inside the bag, the bag handles were tied together such that he could not see what the bag contained, and that he only discovered that the three bundles were inside the orange plastic bag when the CNB officers searched his car (see the GD at [35]). Aside from that, it was also unclear how only the three bundles could have come out of the bag, leaving the crystalline substances inside.

28 Indeed, before us, Mr Tiwary candidly acknowledged that in order to accept this contention, we would have to make a number of "conjectures" in favour of the appellant. For one thing, we would have to assume that the handles of the bag were loosely tied. This was improbable to begin with, given that the appellant had said that the handles of the bag were tied in the context of trying to support his contention that he truly did not know what was in the bag and could not see inside it. Further, we would have to accept that somehow the handles then came loose and the three bundles came out of the bag, although the "Lexus" box which contained the methamphetamine remained inside. We would also have to accept that somehow the appellant did not see or could not

thereafter have seen the three bundles lying on the floorboard next to the bag. In truth, these were not conjectures but were simply speculative.

29 Furthermore, as against the appellant's account, SSSgt Tay had testified that the orange plastic bag contained the methamphetamine while the three bundles were beside the bag, which was why he marked the orange plastic bag as "B1" and the three bundles as "B2". The "Lexus" box which contained the methamphetamine had been marked as "B1A", being the first item he had taken out of the orange plastic bag. On the other hand, the marking "B2" indicated that the three bundles were not inside the orange plastic bag.

30 In our judgment, the Judge was correct to find on the evidence that the three bundles were left exposed on the floorboard (see the GD at [36]). That made it unviable for the appellant to maintain his primary contention, which was that he believed at all times that the bag contained cigarette cartons and not the bundles of diamorphine, unless we were willing to speculate as to the possible ways in which the bundles could have come to be exposed at the time of the appellant's arrest without his being aware of this. There was no real basis for us to speculate as we were invited to (at [28] above), but beyond this, the acceptance of the appellant's account was made even more difficult in the light of the incredible nature of the other parts of the appellant's story, to which we now turn.

Did the appellant have any basis to trust Bai and accept what he said?

31 In our judgment, the Judge was correct to find that the appellant's claim that he believed what Bai allegedly told him because he trusted Bai, was untenable. This went to the core of his defence, which was that he did not know the three bundles contained diamorphine. The appellant's case was *not* that he did not know what diamorphine was or that he would not have recognised it if

he had seen it. His only case was that he never saw what was in the bag and did not check because Bai had told him that the package to be delivered contained cigarettes, and he believed Bai because he trusted him. This was essentially the sole basis on which he sought to rebut the presumption and in our judgment, he failed to do so.

32 We came to this conclusion for several reasons. It would rarely, if ever, be sufficient for an accused person to rebut the s 18(2) presumption by stating simply that he believed whatever he was told in relation to what was in his possession. Where such a claim is made, the court will, of course, have to consider whether it believes that bare claim and in that regard, it will be necessary to consider the entire factual matrix and context, including the relationship between the parties and all the surrounding circumstances. When we summarised the applicable principles in *Gobi* ([2] above), in the context of the s 18(2) presumption, we highlighted the point that the court will assess the veracity of an accused person's assertion as to his subjective state of mind against the objective facts, and examine his actions and conduct relating to the item in question in that light (see *Gobi* at [57(c)]; see also *Masoud* ([21] above) at [56]; and *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [40]).

33 The Judge dealt in considerable detail with why the appellant's claim that he trusted and would believe whatever he was told by Bai was not tenable. The appellant's claim was that he trusted Bai because: (a) Bai had previously informed him that he dealt with uncustomed cigarettes; (b) Bai did not pressure the appellant to repay the debts that were due to him; and (c) Bai was a friend of the appellant and his cousin, and his cousin had said that Bai could be trusted. However, the Judge weighed this against the fact that the appellant had admitted in cross-examination that he knew only the barest details about Bai. He did not know Bai's full name or his address, apart from allegedly knowing that he lived

somewhere in Bedok. The appellant had also agreed that he was not close friends with Bai throughout the various periods when they interacted with one another, whether while in prison (in 2008), at the turf club (from April or May 2014 to August 2014), or between January and June 2016 (see the GD at [23]–[25]).

34 The Judge concluded that in sum, these interactions amounted to "little more than what was borne out of circumstance, unlawful transactions and chance", and she was dubious that the appellant trusted Bai to the extent claimed by him (see the GD at [25]). The Judge also considered what the appellant *did* know about Bai. This included the fact that Bai had been involved in various illegal activities, including money-laundering, illegal bookmaking and smuggling of uncustomed cigarettes (see the GD at [26]). This knowledge would itself have caused the appellant to proceed with caution in his dealings with Bai, rather than to believe whatever Bai had said. The Judge also considered that any forbearance extended by Bai in not insisting on prompt repayment of the debt by the appellant could have resulted in some gratitude on the appellant's part, but it said nothing about why he would therefore have been inclined to believe whatever Bai told him. As for the supposed assurance from the appellant's cousin that Bai could be trusted, this was self-evidently vague to the point of being meaningless, and nothing was ever advanced to explain how such a broad conclusion was reached by his cousin or could be relied on by him (see the GD at [27]).

35 We agreed with the Judge that any relationship between the appellant and Bai was essentially transactional and superficial in nature. This undermined the appellant's ability to rebut the presumption because with such a superficial relationship, it was simply implausible that he believed whatever Bai had told him, especially given what he did know about Bai, and that was even more so

given the circumstances surrounding the transaction, which we turn to consider next.

36 First, once it was accepted that the three bundles were exposed on the floorboard at the material time, the appearance of the bundles became highly relevant. These were roughly palm-sized, rounded packages which could not possibly have been mistaken for or been thought to contain two and a half cartons of cigarettes. As a smoker himself, the appellant knew that this was the equivalent of at least 25 packets of cigarettes. As the Judge found, the appearance of the three bundles must have caused the appellant to know that they contained something else (see the GD at [36]). Whatever Bai had told him was therefore manifestly unreliable.

37 Second, given all the surrounding circumstances, it was inconceivable that all that was involved was a small quantity of uncustomed cigarettes. Among other things:

(a) The envelope containing $7,000 was deposited with the appellant in unusual circumstances. Bai had called the appellant the day before his arrest, asking him where he was headed. When the appellant told Bai he was going to his flat to collect some letters, Bai asked him for his unit number and instructed him to call Bai 15 minutes before reaching the unit. The appellant did so, and Bai merely replied "OK". The appellant then found the envelope containing $7,000 in his letter box. When he called Bai to ask about the money, he was told to keep it and await further instructions that would be given the next day.

(b) The manner and circumstances in which the appellant collected the purported cigarettes could only be described as sinister. Khairul, who at the time was unknown to the appellant, entered his vehicle, left some

items on the floorboard, was handed the money and then left the vehicle. The interaction between the appellant and Khairul lasted five minutes or less.

(c) It was bizarre that the appellant was engaged to act, in effect, as a middle-man between Khairul and Bai for the delivery of the money; and then between Bai and an unknown recipient in Mei Ling Street for the intended delivery.

No explanation was ever advanced for why such an elaborate plan was needed if the entire transaction only concerned a relatively small quantity of uncustomed cigarettes. The Defence obviously did not call Bai as a witness.

38 Third, all of this became yet more bizarre and incredible having regard to what was at the core of the appellant's defence, namely his claim that he thought it was a small amount of uncustomed cigarettes. The appellant, who himself consumed uncustomed cigarettes, testified that a carton of cigarettes would have cost about $130, with the uncustomed variety costing about half that amount. Two and a half cartons of uncustomed cigarettes would therefore have cost about $165. It beggared belief or explanation that this whole elaborate scheme was devised to arrange the delivery of a package worth less than $165.

39 Then, there was the fact that on the day of his arrest, the appellant handed Khairul the envelope containing $7,000. On the face of it, as far as the appellant was concerned, this must have been for the package he had just received from Khairul. The appellant knew the amount involved and that this could, in and of itself, have destroyed his story that he thought that the package contained cigarettes. He claimed, perhaps seeing this difficulty and in an effort to distance the money from the cigarettes, that Bai had allegedly told him that

the $7,000 was a gambling debt owed to Bai. But this too was nonsensical, because if that was so, why was the appellant to pass the money to Khairul? Indeed, the appellant himself recognised the difficulty with this in one of his statements.

40 Mr Tiwary also submitted that the Judge accepted that Bai was a real person. We did not agree. Bai was never produced as a witness and the Judge was doing nothing more than assessing the appellant's story at face value.

41 In sum, we considered that the Judge was wholly justified in rejecting the appellant's defence that he thought the three bundles contained cigarettes. This was sufficient to dispose of the appeal, but we briefly touch on an issue raised by the appellant's previous counsel at an earlier stage of the proceedings.

How might it be relevant to consider suspicious circumstances when assessing the accused person's knowledge of the nature of the drugs and in considering whether the statutory presumption has been rebutted?

42 We turn finally to a point that was not pressed by Mr Tiwary but which had been argued by the appellant's former counsel, Mr Chan, this being that although the Judge did not expressly use the term "wilful blindness" in the GD, she effectively analysed the case as one involving wilful blindness when assessing whether the s 18(2) presumption had been rebutted. By way of example, she had observed that "there were grounds for the accused to proceed with caution" in dealing with Bai, given his knowledge of Bai's involvement in criminal activities. She also observed that since the appellant must have seen the three bundles, she "did not believe that the accused would have still have proceeded to blindly accept receipt of the items while simultaneously relinquishing the $7,000 contained in the envelope to the Malaysian man" (see the GD at [26] and [36]–[37]).

43 It was submitted on this basis that the Judge had improperly conflated the concepts of actual knowledge and wilful blindness. According to Mr Chan, such evidence of suspicious circumstances would only be sufficient to prevent an accused person from rebutting the s 18(2) presumption if they amounted to wilful blindness in the *evidential* sense but not in the *extended* sense: the former being, as we held in *Adili* ([2] above), a situation where an accused person's suspicion and deliberate refusal to inquire are treated as evidence sustaining an inference and finding that the accused person had actual knowledge of the fact in question; and the latter properly describing a mental state falling short of actual knowledge (see *Adili* at [45]–[50]). Mr Chan submitted on this basis that the Judge had erred in impermissibly conflating the issues, because the circumstances, even if suspicious, could not sustain a finding that the appellant actually knew the nature of the drugs.

44 However, that submission, with respect, entailed constructing an argument and line of reasoning that had never been advanced by the Judge and then contending that the Judge had erred in basing her decision on this, when she had not done so at all. In short, it was a straw man. The short answer was that the Judge never applied the argument or the reasoning that Mr Chan found fault with.

45 The *only* issue in this case was whether the s 18(2) presumption had been rebutted. In considering that question, as we have restated the point at [32] above, the ultimate question the court is concerned with would be: does it believe the accused person's story? The more one's suspicions are raised, the more bizarre and unreal the circumstances, and the more untenable the story, the less likely it is that the court will find it possible to believe what an accused person is saying. To put it more starkly, even if somewhat tautologously, the more incredible the story, the less likely it is that it will be believed. This in

essence was what the Judge was saying and what we have said at [31]–[41] above. So, in the context of an inquiry into whether the presumption has been rebutted, if a court says, for instance, that the accused person's claim, that he believed what he was told because he trusted the person who told him what the package was, is untenable because there were so many suspicious circumstances, that does not mean the court is analysing the case as one of wilful blindness. Rather, as in this case, it is saying simply that it finds the accused person's story to be incredible.

46 As we have observed above (at [31]), a large part of the Defence's case was built around the notion that the appellant trusted Bai. This went to his primary case that he did not know the three bundles were diamorphine, and that he believed that it was what Bai had allegedly told him, namely, uncustomed cigarettes. It was in the context of *assessing whether the appellant in fact believed this, that the Judge had to assess his claim that he trusted Bai*. Although the use of words like "trust" and "suspicion" might overlap with the language often used to establish wilful blindness in the extended sense, the latter presents quite different circumstances, as we have explained in *Adili* and in *Gobi* ([2] above).

47 In line with this, in the Judge's findings on remittal, she observed that:

> [7] In his defence, the accused disputed having knowledge of the nature of the drugs, alleging that he believed that the delivery involved contraband cigarettes. The key reason why the accused had allegedly formed this belief was because Bai had told him that the delivery job involved contraband cigarettes, and the accused trusted Bai's word: see [14] of the GD.
>
> …
>
> [10] … Having reviewed the evidence, I found that the accused had failed to rebut [the s 18(2)] presumption for reasons which fell into three broad areas:

> (a) The evidence showed that the accused did not have a close relationship with Bai, and there was no reason for the high level of trust he allegedly placed in Bai given the suspicious circumstances of the transaction: see [23]–[27] and [39] of the GD.

48 The Judge concluded, in short, that she did not accept the appellant's story that he believed he was carrying cigarettes. The appellant sought to persuade the Judge that he had come to this conclusion because he trusted Bai and this was what Bai had allegedly told him. As to this, the Judge did not believe the appellant trusted Bai as he claimed because there was no basis for him to do so.

49 Questions of trust can also arise in the context of considering whether an accused person was wilfully blind (see for example, *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*") at [25] and *Gobi* at [124]). In that context, the inquiry is directed at whether the accused person had a targeted suspicion that the truth was something other than what he was supposedly being told, and whether as a result, his supposed ignorance of the truth was the result of a conscious decision to shut his eyes to the truth. In *Khor Soon Lee*, we found for the accused person and held he had no reason to strongly suspect that a package he was transporting contained diamorphine. This was because he had only ever transported certain drugs other than diamorphine on a significant number of occasions, and had sought assurances from the person from whom he received the drugs that he would not be involved in deliveries involving diamorphine. The Prosecution did not challenge the accused person's evidence that he had been given such an assurance (see *Khor Soon Lee* at [23]). We also accepted that the accused person shared a friendly relationship with that person, which could form the basis for his assertion that he trusted him (see *Khor Soon Lee* at [25]). On the evidence, we found that the accused could not be said to have been wilfully blind in not checking the package, because there was no

strong or targeted suspicion of the truth to which he had turned a blind eye (see *Khor Soon Lee* at [28]).

50 Similarly, in *Gobi*, we found that the Prosecution's case was not directed at what the accused person *in fact* believed. This was something the trial judge had identified and sought to clarify in the proceedings below (see *Gobi* at [107]–[109]). The Prosecution in that case had never put it to the accused person that he did not in fact believe what he had been told (see *Gobi* at [105(b)]). Hence, we were satisfied that the Prosecution's case at trial was not one of actual knowledge but of wilful blindness. In that context, we found that the first element of wilful blindness was not met. The accused person had inspected the drugs and observed that they looked like they had been mixed with chocolate. As the Prosecution did not establish or even suggest that the accused person in fact disbelieved what he was told about the nature of the drugs or suspected that what he had been told was untrue, his failure to have made further inquiries amounted at its highest to negligence or recklessness (*Gobi* at [124]).

51 The present case was quite different: as noted above (at [46]–[48]), the discussion by the Judge on trust and suspicion was not concerned with wilful blindness at all, but with assessing the credibility of the appellant's claim that he had been told the three bundles contained cigarettes, and that he believed this. This was entirely different from an inquiry into wilful blindness. In the former, it is for the accused person to establish what he *in fact believed* he was carrying (which would be incompatible with his having knowledge of the drug), in order to rebut the s 18(2) presumption; in the latter, it is for the Prosecution to establish beyond reasonable doubt that the accused person had a clear, grounded and targeted suspicion that what he was told or led to believe about the nature of the thing he was carrying was untrue. Clearly, these thresholds are different. The Judge did not conflate them, and it was unhelpful for the

appellant's former counsel to have done so. The case run by the Prosecution here was on the basis of the s 18(2) presumption, meaning it was a case of presumed actual knowledge, and there was no basis to analyse the case on any other footing, when that was never run.

52 Assertions of trusting someone or having suspicions about something may be relevant where one is considering whether the accused person had a targeted suspicion about something that he then deliberately turned a blind eye to. But they may also be relevant simply as part of an inquiry into whether an accused person is speaking the truth when he explains the basis for his belief as to what the drugs were (see, for example, *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 at [17], [22] and [46]; *Public Prosecutor v Khor Chong Seng and another* [2018] SGHC 219 [48]–[55]). In the latter context, the inquiry is ultimately directed at the overall credibility of the narrative presented to the court.

53 In the present case, the nub of the inquiry was directed at the credibility of the appellant's contention that he did not know what was in the orange plastic bag, because he believed what Bai had allegedly told him. This was a straightforward inquiry as to credibility in which certain aspects of what was claimed – including that he trusted Bai – had to be probed and analysed, but this had nothing to do with wilful blindness. We were therefore satisfied that the Judge did not err in this regard.

Conclusion

54 For these reasons, we dismissed the appeal in its entirety and upheld the mandatory sentence of death passed by the Judge, in accordance with s 33(1) read with the Second Schedule of the MDA.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Ramesh Chandr Tiwary (Ramesh Tiwary) and Ranadhir Gupta (A Zamzam & Co) for the appellant;
Anandan Bala, Theong Li Han and Claire Poh (Attorney-General's Chambers) for the respondent.