

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

[2022] SGHC 288

Criminal Case No 33 of 2018

Between

Public Prosecutor

And

Haridass s/o Mohan

JUDGMENT

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

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Haridass s/o Mohan

[2022] SGHC 288

General Division of the High Court — Criminal Case No 33 of 2018
Chan Seng Onn SJ

24–26 April, 8–11 May 2018, 2–4 April, 3, 29–30 May, 9 September,
7 November 2019, 3, 4 March, 27 April, 31 August, 1 September, 4 October
and 6 October 2021 (Main Trial)

23–27 May, 4–8, 12, 15, 18–22 July, 6–9, 12, 13, 15 September, 27 October
2022 (Ancillary Hearing)

16 November 2022

Judgment reserved.

Chan Seng Onn SJ:

Introduction

1 Haridass s/o Mohan (the “accused”) was charged with abetting by way of conspiracy with one Babu s/o Suppiah (“Babu” or the “co-accused”) to traffic in three bundles of drugs containing not less than 38.98 grams of diamorphine (“three bundles”), and in pursuance of that conspiracy, the accused took possession of the three bundles on 11 September 2014 at Blk 106 Commonwealth Crescent, Singapore.

2 Babu was charged in turn with abetting by way of conspiracy with the accused in the offence stated above. Mr Ramesh Tiwary (“Mr Tiwary”) represented the co-accused as his lead counsel throughout the trial. Mr Satwant Singh was the assisting counsel.

3 Babu was tried jointly with the accused until he (*ie*, Babu) pleaded guilty midway during the joint trial.

4 The accused had an unusually large number of changes of assigned counsel during his trial as can be seen from the table below and at certain periods of time, he was representing himself:

S/No	Name of assigned counsel	Period of assignment	Reason for discharge
1	Mr Nandwani Manoj Prakash as main counsel (“Mr Manoj”)	14.7.2015 to 11.12.2015	Accused discharged counsel
	Mr Dhanaraj James Selvaraj as assisting counsel	11.11.2015 to 11.12.2015	Accused discharged counsel
2	Accused acting in person	12.12.2015 to 26.5.2016	NA
3	Mr Low Cheong Yeow as main counsel	27.5.2016 to 11.10.2016	Counsel discharged himself
	Mr Satwant Singh as assisting counsel	23.6.2016 to 24.6.2016	Counsel discharged himself
4	Mr Singa Retnam as main counsel	11.10.2016 to 25.10.2016	Accused discharged counsel

	Mr Sunil Sudheesan as main counsel (“Mr Sunil”)	16.11.2016 to 9.5.2017	Counsel discharged himself
	Mr Mohamed Baiross as assisting counsel	18.10.2016 to 9.5.2017	Counsel discharged himself
	Mr Krishna Sharma as junior assisting counsel	11.10.2016 to 27.3.2017	Counsel discharged himself
5	Accused acting in person	10.5.2017 to 18.5.2017	NA
6	Mr Johan Ismail as main counsel (“Mr Johan”)	19.5.2017 to 12.7.2019	Counsel discharged himself
	Mr A Revi Shanker as assisting counsel (“Mr Revi Shanker”)	26.5.2017 to 12.7.2019	Counsel discharged himself
	Mr Melvin Loh as junior assisting counsel (“Mr Melvin”)	26.5.2017 to 12.7.2019	Counsel discharged himself
7	Accused acting in person	13.7.2019 to 22.7.2019	NA
8	Mr B Rengarajoo as main counsel	23.7.2019 to 20.9.2019	Counsel discharged himself
	Mr Maheswari Rani d/o Krishna as junior assisting counsel	5.8.2019 to 20.9.2019	Counsel discharged himself

9	Accused acting in person	21.9.2019 to 29.9.2019	NA
10	Mr Hassan Esa Almenoar as main counsel (“Mr Hassan”) Ms Balakrishnan Chitra as junior assisting counsel (“Ms Chitra”)	30.9.2019 to date 30.9.2019 to date	NA

5 When the present counsel Mr Hassan and Ms Chitra (collectively also his “new counsel”) came on board to represent the accused, many allegations of inadequate legal assistance (“inadequate representation”) and complaints were raised against his previous lead counsel, Mr Johan, and assisting counsel, Mr Revi Shanker (collectively also his “previous counsel”), both of whom represented him from May 2017 to 12 July 2019. The accused alleged that his previous counsel’s failure to follow his instructions had essentially compromised his defence. Presumably on the advice of his new counsel, the accused wanted not only to recall various Prosecution witnesses for further cross-examination but also give further evidence-in-chief of certain matters not dealt with earlier.

6 It must be pointed out that when snippets of these allegations first surfaced, the accused’s cross-examination by Mr Tiwary had not been completed, his new counsel had not commenced re-examination of the accused and the case for his defence was far from being closed. As the accused’s new counsel had not completed taking full instructions from the accused and were not ready to deal with the accused’s allegations against his previous counsel, I

proceeded to finish the main hearing first and have the defence close its case before dealing separately with these allegations.

Background

7 On 12 July 2019, Mr Johan and Mr Revi Shanker discharged themselves from acting for the accused, whilst the accused was still being cross-examined by Mr Tiwary. At the discharge application, Mr Johan informed the Senior Assistant Registrar (“SAR”) of the following reasons for seeking a discharge:¹

(a) When the accused was cross-examined by Mr Tiwary, he made certain allegations as to instructions which he purportedly gave to Mr Johan’s team but Mr Johan’s position was that they never received those instructions.

(b) On 1 July 2019, Mr Revi Shanker informed Mr Johan that when he was in Changi Prison interviewing another person, Mr Revi Shanker was informed of allegations that they were sabotaging the accused’s defence in cahoots with Mr Tiwary. Mr Johan could not see the accused as he was still on the witness stand but they could not accept these allegations.

(c) Mr Johan and his team simply could not continue to act for the accused as they were of the view that the relationship between solicitor and client was broken.

After hearing the parties, the SAR granted their application for discharge.

¹ Exhibit 1T-R5 - Minutes of 12 July 2019 Pre-Trial Conference; Exhibit 1T-R1 - Mr Johan’s letter dated 2 July 2019 to the Registrar seeking a discharge.

8 The present counsel, Mr Hassan and Ms Chitra, who were appointed much later on 30 September 2019, were not allowed permission to speak with the accused and take instructions from him because the accused was still in the midst of cross-examination by Mr Tiwary. The accused informed the court that there were a lot of things that he wished to inform his new counsel of.² I told the accused that he could speak with and give instructions to his new counsel *after* his cross-examination was completed and his new counsel could then re-examine him.³ This was to ensure that the accused's cross-examination (including the cross-examination by the Deputy Public Prosecutor Mr Terence Chua Seng Leng (the "DPP")) could continue unimpeded and uninterrupted.

9 Mr Tiwary continued with his cross-examination of the accused on 3 and 4 March 2021. The trial was part heard. Before the trial resumed, Babu succeeded in his fresh representations to the Prosecution to have his drug charge reduced from trafficking in not less than 38.98 grams of diamorphine to a substantially reduced amount of not less than 9.99 grams. Babu pleaded guilty before Ang Cheng Hock J on 9 April 2021 to a substantially reduced charge of trafficking in not less than 9.99 grams of diamorphine and was sentenced to 15 years' imprisonment and 12 strokes of the cane.⁴

10 When the trial resumed on 27 April 2021, continued cross-examination of the accused by Mr Tiwary (*ie*, on the basis that Babu was entirely not involved with the offence and that the accused was lying when he implicated Babu as the person who ordered the drugs) was no longer necessary as the co-accused, Babu, had been dealt with. The DPP then commenced his cross-

² Notes of Evidence ("NE") 7 November 2019 pg 12 lines 22 to 24.

³ NE 7 November 2019 pg 12 lines 26 to 32.

⁴ NE 31 August 2021 pg 1 lines 25 to 32.

examination of the accused. At the completion of the DPP's cross-examination and before the accused's re-examination, Mr Hassan asked for an adjournment of the trial to take instructions from the accused as this would be his first opportunity to do so since his appointment as counsel in September 2019, some 19 months earlier.⁵

11 On 31 August 2021 when the trial resumed after it was again part-heard, Mr Hassan requested for all the documents (including the statement of facts) in relation to Babu's plea of guilt to the reduced charge. The DPP acceded to the request.⁶ The DPP indicated that he intended to call Babu later as a Prosecution witness.⁷ Mr Hassan then commenced his re-examination of the accused. Presumably based on instructions from the accused first received by Mr Hassan only after completion of the accused's cross-examination, an incident in the Supreme Court lock-up ("lock-up") came to light during the accused's re-examination where Mr Johan, Mr Revi Shanker, Mr Tiwary and their assisting counsel had a meeting with the accused in the lock-up. Certain disturbing evidence also surfaced. The accused testified as follows:⁸

Q Okay, so now, so that is clear now. Ramesh said that. You were now---you were talking about going down to the lock-up, right? Now, can you tell the Court what actually happened in the lock-up?

A Your Honour, why this happened was there were some things going on in this case, Your Honour. What things is prior to this incident where the lawyers came down to see me at the lock-up, when the---my former counsel Mr Revi Shanker came to interview me with regards to this trial via video link, what Revi told me is I spoke to

⁵ NE 27 April 2021 pg 45 lines 1 to 8.

⁶ NE 31 August 2021 pg 2 lines 3 to 21.

⁷ NE 31 August 2021 pg 3 lines 9 and 10.

⁸ NE 31 August 2021 pg 11 line 23 to pg 12 line 30; NE 31 August 2021 pg 13 line 4 to pg 15 line 11.

Ramesh and Ramesh told me to take the rap. If I don't, then five people will come there and they will kill me. Then I told my lawyer, "I'm sorry, I cannot do this." He has repeated the same thing about two to three times to me.

Court: Who repeated?

Witness: Mr Revi Shanker.

Court: Repeated what?

Witness: Revi told me that Ramesh told him ask Hari, Haridass, to take everything, Your Honour, that means the ownership of the drugs and everything, and to let Babu go off. And if I let--- if I were to let Babu go, then Babu will be out, and he will come back as a defence witness to speak in support of me. My former lawyers have also spoken to my family with regards to this. My family members are also aware of this matter. Just before the trial, just before the start of the trial, Mr Revi Shanker, Mr Johan Ismail, all my lawyers came to see me to interview me. That was the week of the trial. When my lawyers came to interview me in the interview room, there's a door there, Your Honour. There's a vanguard sheet, and I did see Mr Ramesh speaking to someone. And I saw ra---Mr Revi leave the room, and he was speaking to Ramesh Tiwary outside the interview room. When my lawyers were interviewing me about my case, I was telling them a lot of things about my case, but my counsel, Mr Johan Ismail, didn't like it. And Mr Revi is aware that Mr Johan Ismail and myself get into arguments quite often. The trial had started that week. The trial had already started in 2018. After my lawyer, Mr Johan Ismail, had finished his cross-examination of the IO Mr Shafiq, he told me this. The---my lawyer told me this. Mr Johan Ismail told me that Mr Revi had told him that I had opened all the doors and now Ramesh is going to close all those doors. And before Mr Ramesh Tiwary cross-examined the IO, Revi came and told me that Ramesh wanted to speak with me.

...

- Q Okay, fair enough. Now you tell the Court, please, what happened when Ramesh was in front of you? What did he say to you?
- A All of them were there, Mr Satwant Singh, Revi Shanker, Ramesh.
- Q Okay, never mind. We heard that. What did Mr Ramesh tell you?
- A Ramesh told me, "I heard you wanted to speak with me." Then I told Ramesh, "No, I didn't want to speak with you. Revi said you wanted to speak with me." I'm going to narrate what happened, what we spoke about. Ramesh Tiwary told me, "I'm Ramesh Tiwary. I know what I'm doing. You don't mention Babu. You let Babu go, don't mention his name." He---in a way, he's telling me to protect Babu. He said, "Your lawyers know about me. If you let Babu go and if you need any help, I will get help and---through your lawyers. My hair is all white, I have been a lawyer for the past 20, 30 years." Then he gestured---he put his hand into his jacket pocket and say he has got the evidence with him. Then I told him, "I'm only narrating the truth of what happened." There was a point of time I got angry because I just felt that they were scheming something, that there was something behind this. And because I got angry, I told Ramesh Tiwary to leave. Then after that, I cried and I told my lawyers, "I've been telling you all these years about my case, what are you all doing?" Then the Chinese lawyer, Melvin Low[sic] or something, ask me, "So what is your instructions now? To fight the case, right?["] Then I told him, "Yes, that's what I've been telling you all to do.["] Then my counsels told me, "Yes, then we'll carry on." After that, we left the lock-up.
- Q Okay, alright. You mentioned just now that whilst you were talking to Mr Ramesh, you got angry. Remember you mentioned just now? Why did you get angry?
- A Because many things are going on in this case.
- Q No, I---listen, mister---tell the Court please, why did you get angry when you were talking to Mr Ramesh?
- A Because I felt that Ramesh Tiwary was protecting Babu and trying to make him get away and making me take responsibility for everything.
- Q Okay. That's why you got angry. You also mentioned somewhere earlier that you were crying.

- A Yes.
- Q Can you please tell the Court, tell His Honour why were you crying?
- A No, because Babu is very involved in this case, Your Honour, but the way I've been questioned and the way the lawyer is questioning me makes it seem like he's got nothing to do with it and every responsibility is on my head, Your Honour. So I got very angry with that. I feel very stressed and frustrated when all this is happening, Your Honour. I'm not saying I didn't do this, Your Honour, but he is very much involved in this. That's my point. Because he tells me the drugs were---was not found on him per se so he don't---he tells me that he can get away with it and he won't be charged because he was not found with the drugs. Just because he was not found with the drugs, he thinks he can get away with it. Your Honour, and as my counsels, they should be fighting for me, Your Honour, and when Mr Ramesh Tiwary stands up and cross-examines me, I expect them to object and to make noise, Your Honour, but there I see them sitting down there and laughing with each other, Your Honour. I'm the one suffering, watching all this and I feel that I'm the one who is prejudiced, Your Honour.
- Q Alright. Going back to your transcript, and I will move on soon after that. You said Ramesh had told you, "You take all the things and then you let Babu go off", right?
- A Yes.
- Q And there at that point, this was an outburst or hoo-ha by you, is there anything else you want to add to this portion?
- A Your Honour, I had mentioned him to be dishonest, Your Honour. Why I said that was I know as a lawyer he's defending his client, that's his duty, but there seems to be some scheme against me, Your Honour, in the way he is defending. That's why I got angry and I---my outburst was I called him [referring to Mr Tiwary] a dishonest lawyer because I felt that the way he went about doing it seemed to be like that.
- Q Okay. You also mentioned that he---you understand that he is the lawyer for Babu and he has to do his best for his client to defend his client. So what did he do wrong?

A Your Honour, I get it that the lawyer is trying to protect him. What essentially they are saying is asking me to take responsibility for the whole thing and Babu is to go out and then he's supposed to help me. But I feel that that's not right, Your Honour. The manner in which I've gotten to know him and the way we both became friends and how close he was, he did all this, I feel that he is actually backstab me and he is just killing me, Your Honour, asking me to take the rap and he's nicely going to walk away and not be involved at all. So I feel that it is not right. that is the part that I feel is not right.

12 In the above extract, there is a reference to an outburst where the accused called Mr Tiwary a dishonest lawyer. This had happened some months earlier on 4 March 2021 during the accused's cross-examination by Mr Tiwary when the accused (who had all along been giving oral evidence in the Tamil language) suddenly shouted at Mr Tiwary in English saying: "*I am not blaming. You understand or not? ... You came down below in the lock-up. You tell me. You take all the things [meaning the drugs]. And then you let Babu go off.*"⁹ This could be heard on the audio recording of the trial proceedings on 4 March 2021 just prior to the adjournment of the court for the day. The accused said that he had gotten upset and angry as the things that Mr Tiwary was saying and putting to the accused were untrue¹⁰. I note that Babu had since pleaded guilty to drug trafficking in conjunction with the accused in this case (see [9] above). Babu was therefore involved with the accused in trafficking of the drugs just as the accused had stated. Accordingly, what had been put to him by Mr Tiwary, *ie*, that the accused was lying about Babu's involvement, was clearly untrue.

⁹ NE 4 March 2021 pg 29 line 31 to pg 30 line 4.

¹⁰ NE 27 April 2021 pg 32 line 29 to pg 33 line 4.

Events leading to the ancillary hearing

13 After Mr Hassan and Ms Chitra had finished re-examining the accused, the DPP raised the following issue before me:¹¹

The second thing is, Your Honour, that the allegations that he [ie, the accused] makes against Mr Tiwary in terms of his conduct, these are very serious allegations. So I'm wondering--I'm seeking confirmation from my learned friend whether or not he's suggesting---especially since his allegations extend to Mr Revi Shanker as well, is he suggesting that there was inadequate or---inadequate representation during the conduct of this trial?

If he's alleging that, Your Honour, there are certain consequences that can---must flow from that. Because under the Legal Profession Rules, if he puts this in writing, then the solicitor with---against whom the allegation was made against must be given a chance to respond, must be put on notice. So that leads to a whole different set of consequential events. So I just need to confirm with my learned friend whether he's making such an allegation against counsel.

14 I then checked with the DPP if he just wanted to confirm whether there was any allegation that the accused was not adequately represented by his previous counsel.¹² Mr Hassan said that since the DPP raised an allegation of misconduct by the lawyers, the lawyers should have a chance to respond but he was not sure that applied in criminal cases.¹³ In disciplinary matters, that would be applicable, but it would not follow for criminal cases. The DPP disagreed. The DPP referred me to the Court of Appeal case of *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 907 ("*Farid*") and mentioned that the Court of Appeal remitted the matter back to the trial judge to take further evidence to determine whether or not instructions

¹¹ NE 31 August 2021 pg 36 lines 1 to 16.

¹² NE 31 August 2021 pg 38 lines 15 to 19.

¹³ NE 31 August 2021 pg 38 line 30 to pg 39 line 4.

that were given to the counsel were carried out or not carried out as the case might be.¹⁴ I informed the parties that we would not want to have this become a retrial as that would be very wasteful in resources. To avoid that, we could recall the accused to ask him whether there was any issue with his representation by counsel during the conduct of the trial prior to Mr Hassan and Ms Chitra coming on board as his present counsel. If the accused confirmed that he was not making any such allegation, then it would be alright.¹⁵ However, if the accused was making such an allegation and assuming there was a problem between the accused and his previous counsel that compromised his examination-in-chief, then there would be a complication.¹⁶ I said that the remedy was to have the accused return to give any other evidence that he wished to give to remedy the possible inadequacy in his representation by his previous counsel. With Mr Hassan now as his new lead counsel, the accused could have an opportunity to give all the evidence that he wanted to give in evidence-in-chief, as opposed to being limited to a re-examination of what he had been previously cross-examined upon. Then there could be further cross-examination and we would just finish one more round of that process.¹⁷ I said that would probably be the best way forward to remedy that problem in the event that the accused said that his evidence-in-chief was compromised because of the difficulty in giving proper instructions to Mr Johan and his team before they were discharged to which both the DPP and Mr Hassan agreed.¹⁸ I further stated that as far as misconduct was concerned, that was another separate issue because evidence pertaining to such possible misconduct may be referred to later on for further

¹⁴ NE 31 August 2021 pg 39 at lines 5 to 15.

¹⁵ NE 31 August 2021 pg 39 lines 16 to 29.

¹⁶ NE 31 August 2021 pg 39 line 27 to pg 40 line 4.

¹⁷ NE 31 August 2021 pg 40 lines 6 to 13.

¹⁸ NE 31 August 2021 pg 40 lines 14 to 25.

action. If the relevant authorities deemed it fit to investigate, they could do that, and the persons concerned would have a chance to respond to whatever that was being alleged and I emphasised that I would not deal with any alleged misconduct in this trial because that was really a separate matter.¹⁹

15 I expressed my concern as follows:²⁰

Court: What I'm more concerned is had there been inadequate representation which resulted in some prejudice to his examination-in-chief. I'll rather remedy it now with Mr Hassan Almenoar being the counsel now in charge so that it won't be limited only to what has happened in the re-examination. You see, if his evidence-in-chief is compromised, then obviously his cross-examination [*ie*, his counsel's cross-examination of prosecution witnesses] which is based on that would have been affected.

Chua: Yes.

Court: And then you---then you're limited to what you can re-examine and the whole thing becomes a problem. So the only way is to give him another chance to say what he needs to say in evidence-in-chief on the assumption that between Mr Hassan Almenoar and him, there is no more prejudice in terms of representing him.

Chua: Yes, Your Honour. I've got no issues with that.

Court: Okay.

Chua: He just has to---Mr Almenoar has to---

Court: So then we need Mr Almenoar to check with him now.

Chua: Yes.

16 As Mr Hassan also agreed with that approach, I stood down for ten minutes for Mr Hassan to take instructions from the accused. Mr Hassan then raised an additional problem that the conduct of the cross-examination of the

¹⁹ NE 31 August 2021 pg 40 line 31 to pg 41 line 8.

²⁰ NE 31 August 2021 pg 41 lines 7 to 27.

Prosecution witnesses by previous counsel would be compromised as well.²¹ Then I said that such deficient representation could be remedied by recalling those Prosecution witnesses to be further cross-examined by Mr Hassan. In a sense, it would be a new retrial in a limited way in the present proceedings.²² The DPP agreed that was the most practical solution at this point to avoid a retrial.²³

17 As Mr Hassan had to take further instructions from the accused on his allegations of inadequate representation which might have prejudiced the cross-examination of the Prosecution witnesses and the accused's examination-in-chief after his defence was called, this issue had to be deferred to a later date. Meanwhile, I proceeded to hear evidence of a psychiatrist Mr Munidasa Winslow ("Mr Winslow") called by the defence. After Mr Winslow's evidence was completed, Mr Hassan said that that was the case for the defence *except* for the few other things that were *outstanding*,²⁴ namely, the issue of inadequate representation.

18 Since the DPP wanted to call Babu as a Prosecution witness to rebut specific portions of the accused's evidence under s 230 of the Criminal Procedure Code (Cap 168, 2012 Rev Ed),²⁵ particularly to rebut the accused's evidence that Babu told him there was one packet ordered and not three,²⁶ I ruled against the objection of Ms Chitra that the Prosecution was not entitled to call

²¹ NE 31 August 2021 pg 42 lines 11 to 16.

²² NE 31 August 2021 pg 42 line 17 to pg 43 line 7.

²³ NE 31 August 2021 pg 43 lines 18 to 28.

²⁴ NE 1 September 2021 pg 8 lines 3 and 4.

²⁵ NE 1 September 2021 pg 23 lines 25 to 28.

²⁶ NE 1 September 2021 pg 24 lines 7 to 11.

Babu as a rebuttal witness in the case.²⁷ I proceeded immediately to hear Babu's evidence-in-chief to avoid further delays to the trial. After Babu's evidence-in-chief in rebuttal was completed, Mr Hassan was supposed to cross-examine Babu but he was not ready to do so. Mr Hassan needed to take instructions and requested the cross-examination of Babu to be deferred to the next tranche of the trial.²⁸

19 Before the trial was adjourned to the next tranche, the DPP raised the matter of allowing the accused the opportunity to give evidence-in-chief again, out of recognition of the prejudice to his defence due to inadequate representation by his previous counsel.²⁹ The DPP resiled from his previous position (after having reviewed it) and now submitted that the accused should not be allowed to give evidence-in-chief again on the basis of the allegedly inadequate representation that had compromised his defence *unless* that inadequate representation had first been proved as a fact by the accused.³⁰ To do that, the DPP said that the accused's allegations pertaining to inadequate representation should be set out in an affidavit by the accused and his previous counsel should have the opportunity to reply. The previous counsel should also be made to give evidence to determine whether or not the previous counsel's representation was in fact inadequate, and the court would have to make a finding of fact on that *before* the accused would be allowed to have a second bite of the cherry in giving his evidence-in-chief for a second time.³¹ I agreed with the DPP that it would be very "messy" if the accused were allowed to redo

²⁷ NE 1 September 2021 pg 31 lines 9 to 20.

²⁸ NE 1 September 2021 pg 52 lines 13 to 17.

²⁹ NE 1 September 2021 pg 52 line 28 to 32.

³⁰ NE 1 September 2021 pg 53 lines 1 to 24.

³¹ NE 1 September 2021 pg 53 line 27 to pg 54 line 15.

his examination-in-chief without first having proved that his previous counsel's representation was inadequate, to which the DPP added that it was unfortunate but as a matter of principle, the court should not simply give the accused the benefit of doubt that there was inadequate representation. The DPP submitted that the court would have to determine one way or another whether the accused's allegations were correct or not before he is given a second bite.³² That would mean having to conduct a lengthy ancillary hearing on the issue of inadequate or deficient legal representation (including on whether the accused's instructions were carried out) and then making a finding after hearing submissions.³³ I was reluctant to embark on an ancillary hearing and would have preferred to allow a simple recall of the accused to testify on those matters that he said were left out because instructions to his previous counsel were not carried out by his counsel.³⁴

20 However, I decided to follow the course of action the DPP had proposed, *ie*, to hold an ancillary hearing. I asked counsel to ascertain once more whether the accused was indeed complaining about deficient representations and if so, to set the accused's complaints out in an affidavit properly and serve the affidavit on his previous counsel, who may then respond on affidavit.³⁵ Thereafter, an ancillary hearing would be held with oral evidence being given and witnesses being cross-examined accordingly.

³² NE 1 September 2021 pg 55 lines 4 to 20.

³³ NE 1 September 2021 pg 55 lines 24 to 31.

³⁴ NE 1 September 2021 pg 59 line 20 to pg 60 line 22.

³⁵ NE 1 September 2021 pg 62 lines 5 to 27.

Ancillary hearing on inadequate legal representation

21 An ancillary hearing was thus held to determine if the accused’s allegations of inadequate legal representation were borne out. The accused waived his legal privilege in relation to his instructions to his previous counsel for the purposes of the ancillary hearing.³⁶

22 The following witnesses testified at the ancillary hearing:

<u>For the Accused</u>		
1	The accused (His affidavit was affirmed on 20 January 2022.)	1T-CW1
2	Mr Bachoo Mohan Singh (“Mr Bachoo Mohan”)	1T-CW2
3	Ms Siroshini Sivaperumal (“Ms Siroshini”)	1T-CW3
4	Mr Sunil	1T-CW4
5	Ms Kavitha Gopyhadhan (“Ms Kavitha”)	1T-CW5
<u>For Mr Johan and Mr Revi Shanker</u>		
1	Mr Johan (His affidavit was affirmed on 10 April 2022.)	RW1
2	Mr Revi Shanker (His affidavit was affirmed on 11 April 2022.)	RW2

³⁶ NE 6 October 2021 pg 9 line 31 to page 12 line 18.

3	Mr Tiwary	RW3
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Complaints of the accused and his evidence

23 In the affidavit filed for the purpose of the ancillary hearing (the “accused’s affidavit”), the accused complained that his previous counsel had refused to follow his instructions on the following matters:³⁷

- (a) his defence;
- (b) the involvement of his co-accused, Babu;
- (c) cross-examination of the Prosecution witnesses;
- (d) his examination-in-chief; and
- (e) his previous counsel’s improper engagement with the co-accused counsel and his family members.

24 The accused alleged that his previous counsel failed to:³⁸

- (a) take full instructions on his defence;
- (b) render independent legal advice to him;
- (c) determine what the Prosecution’s case against him was;
- (d) provide him with the Agreed Bundle and opening address on time;

³⁷ Affidavit of Haridass s/o Mohan affirmed on 20 January 2022 (the “accused’s affidavit”) at para 6.

³⁸ The accused’s affidavit at para 53.

- (e) address his concerns; and
- (f) refrain from discussing his defence with the co-accused's counsel.

25 The accused felt that his previous counsel did not run his defence in the way he wanted it.³⁹ In the course of the accused's lengthy evidence-in-chief during the ancillary hearing, the accused's complaints were distilled to ten specific complaints as set out below.

26 Mr Johan and Mr Revi Shanker deny the allegations made by the accused in his affidavit, in particular, those set out in Appendix 1 of the accused's affidavit including the ten specific complaints that the accused alluded to in his evidence-in-chief.

Complaint No 1 – Accused's further statement dated 6 February 2015 made to the Investigating Officer not admitted into evidence as instructed

27 The accused complained that his previous counsel did not follow his instructions to lead evidence during his evidence-in-chief to highlight the fact that he had made a further voluntary statement on 6 February 2015 ("6 February Statement") to the Investigating Officer Mr Shafiq Basheer ("IO"). The accused wanted the 6 February Statement admitted into evidence so that the accused could explain in court why he had given this statement implicating Babu which was different from (a) his earlier handwritten statement where he stated to the contrary that Babu was not involved; and (b) his statement to the Senior Assistant Registrar ("PTC Judge") at the Pre-Trial Conference ("PTC") in December 2014 that Babu was not involved.

³⁹ NE 27 May 2022 pg 42 lines 4 to 9.

28 The accused wanted to have all the circumstances that eventually led him to provide the 6 February Statement to be admitted in evidence so that the court could better understand why he had changed his story in relation to Babu's involvement. He wanted to be able to testify that Babu had pressured him into making a further statement to the IO to say that he (*ie*, Babu) was not involved. That was why at the December 2014 PTC, the accused said that Babu was not involved. As a result, the PTC judge directed a further statement to be taken to confirm the accused's position. But when the further statement was eventually taken on 6 February 2015 some two months later, the accused changed his mind and did not follow through with his earlier story to the PTC judge. Instead, the accused told the truth to the IO to say that Babu was in fact involved and to state that it was fear and pressure from Babu, which caused him to say that Babu was not involved on previous occasions. More specifically, the accused wanted his further statement to the IO admitted into evidence to show that he had in fact mentioned that Babu had pressured him into making earlier statements that his co-accused was never involved. This was not done by his previous counsel.

29 After having provided his 6 February Statement, the accused maintained that Babu was involved in subsequent PTCs. He stood by that story. In other words, the only time his story was different was earlier in December 2014.

30 I asked the accused to explain what happened between December 2014 and February 2015 that caused him to change his story from not implicating the co-accused (not being the Babu whom he dealt with) to one that implicated the co-accused as the Babu whom he dealt with in the drug transaction.⁴⁰

⁴⁰ NE 24 May 2022 pg 14 line 26 to pg 21 line 6.

31 The accused explained that during that period, he was unrepresented. Other inmates had advised the accused that Babu was trying to make the accused take the rap and put the blame entirely on the accused. He had thought about it. The accused came to the realisation that Babu was using him and was trying to play him out. He then decided to come out with the truth in his 6 February Statement.⁴¹

Circumstances after the 6 February Statement leading to the appointment and subsequent discharge of Mr Manoj, and the creation of the accused's handwritten statement on 3 March 2016 that exonerated Babu

32 Although the accused did not tell Babu that he had implicated him in his 6 February Statement, the accused did inform other inmates. The accused said it was very frustrating to be inside the prison all alone. When people showed him concern and asked about him, he ended up telling them that he had implicated Babu because there was no one else to speak to.⁴²

33 The accused explained that Babu kept pressurising him and kept telling him to do various things. The accused suspected that Babu realised that the accused had incriminated him in the 6 February Statement either after Babu had obtained the bundle of documents or after his lawyer told him about it.⁴³

34 The accused said that his girlfriend Ms Kavitha used to visit him every day. Then he realised that she was seeing another inmate caught for a drug-related matter. Babu told the accused that when he had a face-to-face visit with his family, he noticed Ms Kavitha meeting another inmate for a face-to-face

⁴¹ NE 24 May 2022 pg 21 lines 7 to 28.

⁴² NE 24 May 2022 pg 25 lines 1 to 12.

⁴³ NE 24 May 2022 pg 24 lines 8 to 23.

meeting. The accused also heard from his own family that Ms Kavitha was seeing someone. Apparently, Ms Kavita was having an affair with that inmate but the accused did not know about it at that time. The accused learnt about it later in prison after he was told of it by Babu and the accused's family members. Another inmate at a video link PTC informed the accused that Babu told him that the accused's girlfriend had two-timed the accused. Upon hearing that at that point of time, the accused was so heartbroken that he in fact cried.⁴⁴ The accused became depressed over what his girlfriend had done. He was on medication for his depression.⁴⁵ The accused said:⁴⁶

---I started to listen to what Babu said. I said okay. Babu wants me to take the rap and just die, right? Take the rap and then--
-and that's when I started having suicidal thoughts, Your Honour. I told myself I'm going to die anyway. I'll just take the rap and do whatever they ask me to do, and just get on with it. And that's when I started talking a lot of nonsense, Your Honour. ...

...

And because he told me discharge your lawyer, I said I'll discharge my lawyer and just take the rap and just go to the ultimate of dying, Your Honour, for this charge.

35 Mr Manoj came to represent the accused subsequently on 14 July 2015. But he was discharged by the accused sometime in November 2015 because Babu told him to do so. The last time Mr Manoj saw the accused was on 12 November 2015. I asked the accused to explain the circumstances that led him to follow Babu's instructions to discharge Mr Manoj when the accused was not unhappy with Mr Manoj as his counsel.⁴⁷

⁴⁴ NE 24 May 2022 pg 26 line 16 to page 29 line 20.

⁴⁵ NE 24 May 2022 pg 65 lines 16 to 25.

⁴⁶ NE 24 May 2022 pg 30 lines 6 to 15.

⁴⁷ NE 24 May 2022 pg 23 line 29 to pg 24 line 4.

36 The accused said that he had suicidal thoughts. He discharged his lawyer on Babu's instructions. He also did not want to speak to the IO or any lawyer and decided that he would just take the rap and carry on with what Babu wanted him to say or do. He would speak to Babu's lawyer so that he could give him a statement to get Babu off. He would do everything that Babu wanted. That was what he told Babu when they met at one of the video link PTCs.⁴⁸

37 As the accused had said in that PTC that he wanted to see Babu's lawyer, Babu told him to write in so that his lawyer could see him. So, in that very month after the PTC, the accused filled up a lawyer interview form to request to meet Babu's counsel, Mr Tiwary. The co-accused's counsel made a booking to visit the unrepresented accused on 28 December 2015. But that was cancelled. Mr Tiwary eventually made a tele-visit to the accused in prison on 21 January 2016.⁴⁹ According to the accused, he and Mr Tiwary started off with a casual conversation. The accused said:⁵⁰

Mr Tiwary told me that he had come to take a statement from me. And before that, we just had a casual conversation. The lawyer told me, 'I know Babu is involved. But I'm his lawyer. You have said that you will make---you will be giving a statement, so let's do your statement.' Then I told the counsel, Mr Tiwary, I heard that Babu has made a statement, but I don't see his statement in the bundle [committal bundle].

The accused further said:⁵¹

I said, 'I have made all my statements and now you want Babu out. If you want Babu out, let me have a look at his statements first,' I told Mr Tiwary that. Mr Tiwary then told me, 'I can't do that, but I can pass over Babu's statements to him and how he wants to hand over to you, within the prison ward, I leave that

⁴⁸ NE 24 May 2022 pg 30 line 16 to pg 31 line 13.

⁴⁹ NE 24 May 2022 pg 34 line 12 to page 37 line 10.

⁵⁰ NE 24 May 2022 pg 37 lines 20 to 25.

⁵¹ NE 24 May 2022 pg 38 lines 1 to 6.

to you both.’ So that interview ended as that, Your Honour, and there was a subsequent interview.

38 Mr Tiwary visited the accused a second time on 25 January 2016 to interview him. It was ascertained to be another tele-visit. Mr Tiwary asked what happened on the day of the accused’s arrest. The accused narrated to him what happened. He told Mr Tiwary the truth about Babu’s involvement and that Babu was his boss (*ie*, for the drug transactions). However, the accused also said to Mr Tiwary that he had asked him for Babu’s statement and why did Mr Tiwary not give to him. Mr Tiwary replied that he could not give Babu’s statement to the accused and that the accused had to ask Babu for that. The interview ended with the accused not giving any statement to Mr Tiwary because the accused had not received Babu’s statement as he had requested.⁵² During that visit, Mr Tiwary also told the accused as follows: “You---let’s get Babu out of the picture. Once Babu is out of the picture, then I can represent you”.⁵³ The accused understood the words “out of the picture” to mean that the charge against Babu would be dropped and Babu would go out a free man.⁵⁴ Mr Tiwary also told the accused: “After you give me the statement, don’t do anything else, just remain as it is. Don’t say anything else.”⁵⁵ Mr Tiwary also said to the accused: “Look, Hari, you have given statements A, B and C. There should not be a D statement, otherwise they will say that you are inconsistent.”⁵⁶ The accused understood Mr Tiwary to be saying that he should not make any further statements to the IO after he had given his statement to Mr Tiwary.⁵⁷

⁵² NE 24 May 2022 pg 39 line 31 to pg 42 line 5.

⁵³ NE 24 May 2022 pg 42 lines 11 and 12.

⁵⁴ NE 24 May 2022 pg 42 lines 19 to 20.

⁵⁵ NE 24 May 2022 pg 43 lines 23 and 24.

⁵⁶ NE 24 May 2022 pg 42 lines 25 to 27.

⁵⁷ NE 24 May 2022 pg 47 lines 26 to 30.

39 Somehow Babu had gotten wind of the accused’s conversation with Mr Tiwary that the accused was requesting for Babu’s statement from Mr Tiwary. Babu subsequently confronted the accused and said, “Why are you asking for my statement? I already you whatever I said. You know, you agree to make a statement, just make that statement. Why are you asking for my statement?”⁵⁸ According to the accused, Babu’s motive was to get out of the charge totally and then he would use his lawyer Mr Tiwary to represent the accused.⁵⁹

40 During a face-to-face meeting with Mr Tiwary in prison on 2 April 2016, the accused handed to Mr Tiwary a handwritten statement dated 3 March 2016 (“handwritten statement”) telling him that this was the statement that his client wanted and he had written it. The accused did not tell Mr Tiwary that he had produced his handwritten statement by copying it from another document that had been handed to him by Babu.⁶⁰

41 The last visit by Mr Tiwary was 15 April 2016. At this tele-visit, the accused recalled the following:⁶¹

Mr Tiwary told me, ‘Okay, Hari, I’ve gotten your statement. For now, we will just use the statement and try to resolve the issue at hand and then later we will see.’ Then I told Mr Ramesh Tiwary, “Even if things get resolved, I don’t want you to represent me. I will get another lawyer.

42 The accused went on to say:

After that I left the room and asked Babu to go in. So it was his time to visit Mr Tiwary. But after Babu went into the cubicle, I

⁵⁸ NE 24 May 2022 pg 40 line 31 to pg 41 line 8.

⁵⁹ NE 24 May 2022 pg 42 lines 13 to 14.

⁶⁰ NE 24 May 2022 pg 48 line 23 to pg 53 line 12.

⁶¹ NE 24 May 2022 pg 63 lines 23 to 29.

didn't go back to my cell. I waited at the holding room, just outside the cubicle. Beside the door. I could clearly hear the conversation between Babu and his counsel. I heard Mr Tiwary telling Babu, 'I've gotten the statement. I've gone to see the DPP and they have agreed to charge you for possession.' When I heard this, I got very angry and I got up and it's a screen like this, Your Honour, where I can see them. So, I---I knocked on the glass and I told Babu, 'I thought you didn't have anything to do with it so now why is this possession that you are going to be charged with possession?' Then Babu told me to go away and he will talk to me later.⁶²

After he spoke to his counsel, he came out and we both were in the holding room. We were seated next to each other, side-by-side. I told him, 'You told me that you have nothing to do with this. I don't even know what is in your statements. You are going in for possession because there were five packets found in the Toa Payoh residence. And my DNA has been found on those items as well in the Toa Payoh residence. If someone were to ask you, how would you explain my DNA being in those items?' He said, 'I'm your big brother, I'm your *Anneh*. I'm definitely not going to squeak(?) on you. I will never mention your name.'⁶³

...

[Babu] told me that he is my big brother. He asked me, 'If they were to give you life imprisonment, won't you accept it?' I said, 'I won't.' He told me, 'Don't worry. Even if you were sent to the gallows, you will come out of it.' When he told me that, I got very angry. Then I asked him, 'Are you trying to fix me up here?' He told me, 'Don't worry, I know what story to tell.' Then I asked him, 'I thought you said if I help you, you will get me a lawyer.' He told me that he was arranging and preparing for the monies and told me to just hold on. And we left the holding room with that. And I subsequently got a lawyer.⁶⁴

...

[The lawyer was] Mr Bachoo Mohan Singh. And this was arranged by Babu's family. And when this counsel came to see me, he said some lady came to pay fee in his office and asked me why I had appointed him. I explained to Mr Bachoo what happened, what happened on the 11th of September, the day of arrest, and the whole story and that I had made a statement to

⁶² NE 24 May 2022 pg 63 line 30 to pg 64 line 8.

⁶³ NE 24 May 2022 pg 64 line 9 to 17.

⁶⁴ NE 24 May 2022 pg 64 line 21 to 30.

the lawyer. Then Mr Bachoo turned around and told me, 'If you want to die, then you continue doing what you have done.' Since as a senior counsel, he was advising me that, I told him I was doing all these because of the pressure I was getting from Babu. Then Mr Bachoo said, 'If you want me to help you, then you have to tell me the truth.' Then I told Mr Bachoo, 'If I were to tell the truth, my family doesn't have the means to engage you. But if I were to tell things to help him, then he will pay you your fee.' That's all I told Mr Bachoo.⁶⁵

43 The accused said that he slowly came to the realisation that Babu was “play[ing] him out” because he heard from some others that Babu had mentioned him in his statement though he never saw Babu’s statement. The accused’s family was also “sort of leaving” him. With the help of medication for depression, he saw things more clearly, and did not harbour thoughts of ending his life. He thought things through and that was when he decided that he was not going to let Babu “play [him] out”. The realisation struck him during the tele-visit of 15 April 2016 when he overheard the conversation between Babu and his lawyer, Mr Tiwary, that Babu was going to get away with possession and that “things [were] going to change”. That was when he came to the realisation that Babu had used him and was going to “fix [him] up”.⁶⁶

Complaint No 2 – Handwritten statement of the accused dated 3 March 2016 not admitted into evidence as instructed

44 The handwritten statement⁶⁷ signed by the accused was tendered in evidence at the ancillary hearing. In the statement, the accused mentioned amongst other things that:

⁶⁵ NE 24 May 2022 pg 65 lines 3 to 14.

⁶⁶ NE 24 May 2022 pg 66 lines 9 to 26.

⁶⁷ Exhibit 1T-C1.

- (a) The Central Narcotics Bureau (“CNB”) officers told him to cooperate with them and made him say that Babu was the one who gave him the drugs. Otherwise, they would send him to the gallows. He did as he was instructed as he was scared.
- (b) The statement he gave to the CNB officers was false as he was induced and threatened by the CNB officers many times.
- (c) On 2 December 2014, he told the court during his video-link hearing that Babu was not involved and he was working for a Malaysian boss by the name of “Boy” as he was in debt.
- (d) He wanted to tell the truth now and confess that Babu was innocent. Babu had nothing to do with the drug activity.

45 The accused instructed his previous counsel to adduce as evidence his handwritten statement that exonerated Babu but they did not do so during his examination-in-chief. He wanted to have the opportunity to explain the circumstances that led him to make the handwritten statement and to give that to Babu’s counsel. He wanted the court to know the full picture. He wanted to testify that he produced the handwritten statement due to the fear and the pressure that Babu was applying on him since 2014. To enable the accused to prepare the handwritten statement, Babu forwarded to the accused a folded note from which the accused was to copy the contents. The accused adhered to Babu’s instructions. The accused testified that the contents were written by him but whatever was there in the contents was what Babu wanted him to say.⁶⁸ The accused prepared the handwritten statement in his cell. He flushed the folded note down the toilet after he finished copying from it because Babu had told

⁶⁸ NE 24 May 2022 pg 49 lines 12 and 13.

him to get rid of it once the accused had finished with it. Furthermore, if he was caught with it by the prison officers doing their checks, there would be issues according to the accused.⁶⁹

46 The accused insisted that he had made clear to his previous counsel the reasons why he wanted his handwritten statement to be produced in court despite the fact that it implicated the accused and exonerated Babu. To his previous counsel, it obviously made no sense to adduce an incriminating statement as evidence. His previous counsel might not have fully grasped the underlying reason as to why the accused simply wanted to explain to the court that he had good reasons for his earlier different position exonerating Babu and his later position implicating Babu in the offence, just so that the accused could demonstrate to the court why he should not be treated or brushed aside as a witness who could not be believed due to his differing stances. The accused testified that: “If this statement did not go in, then I will make---be made to look like a liar. So I insisted that this handwritten statement has to go in.”⁷⁰ When the accused insisted on putting into evidence his handwritten statement, the accused testified that his previous counsel told him, “no, ... Mr Ramesh Tiwary was not going [to] use the statement and so it will not be admitted. ... If we admit this statement, then we have to put Mr Tiwary on the stand and question him. And how is that going to happen when Babu has paid him?”⁷¹ The accused further testified that his previous counsel had also told him: “Ramesh is not using that statement so there’s no need for it. So we’ll just leave it alone.”⁷² His previous counsel (apparently referring more specifically to Mr Johan) would say: “I am

⁶⁹ NE 24 May 2022 pg 49 lines 18 to 23; 25 May 2022 pg 6 lines 7 to 10.

⁷⁰ NE 26 May 2022 pg 17 lines 14 to 16.

⁷¹ NE 25 May 2022 pg 13 line 31 to pg 14 line 6.

⁷² NE 26 May 2022 pg 18 lines 7 to 9.

your lawyer. You have to listen to me. You don't tell me what to do. I know what to do."⁷³, "You think you're very smart? Then you defend yourself. You want to discharge me? Go ahead."⁷⁴ And "I'm your lead counsel; you listen to what I tell you."⁷⁵ Whatever the accused insisted, they would show their tantrums to him. For instance, Mr Johan would throw down his pen or raise his voice.⁷⁶ Besides Mr Johan would speak to him in a very arrogant and rude manner whenever he spoke to him.⁷⁷ He had also complained about Mr Johan's overbearing conduct in Tamil to Mr Revi Shanker, who would listen and calm the accused down.⁷⁸ In short, the accused's repeated requests to have his handwritten statement admitted were brushed aside by his previous counsel. The accused felt that his previous counsel were not really trying to help him. He felt that his previous counsel were reluctant to believe him or do as he told them to do.

47 The accused also mentioned that he had also shown his handwritten statement to Mr Sunil⁷⁹ and told him that he wanted his handwritten statement to be admitted as evidence.⁸⁰ Mr Sunil told him that if the accused wanted to use the statement, then Mr Tiwary could not act for Babu. As Mr Tiwary was his friend, he could not do this.⁸¹ When he insisted that he wanted his handwritten

⁷³ NE 25 May 2022 pg 21 lines 28 and 29.

⁷⁴ NE 25 May 2022 pg 22 lines 18 to 20.

⁷⁵ NE 25 May 2022 pg 27 lines 1 to 3.

⁷⁶ NE 25 May 2022 pg 21 line 29 to pg 22 line 22.

⁷⁷ NE 25 May 2022 pg 26 lines 14 and 15.

⁷⁸ NE 25 May 2022 pg 27 line 27 to pg 28 line 5.

⁷⁹ NE 25 May 2022 pg 15 lines 5 to 18.

⁸⁰ NE 25 May 2022 pg 15 line 19 to pg 16 line 2.

⁸¹ NE 25 May 2022 pg 15 lines 8 to 18.

statement to be in, Mr Sunil told him that as Mr Tiwary was his friend, he could not do this, and then, Mr Sunil discharged himself.⁸²

48 However, I note that part of the evidence of the accused in relation to Mr Sunil is contradicted by Mr Sunil who testified that he received no express instructions from the accused to admit the handwritten statement.⁸³

Previous counsel advising the accused to exonerate Babu in exchange for his support at the trial

49 It also appeared to the accused that something else was happening in the background as there was a point of time when Mr Revi Shanker told him: “Look here, I’ve spoken to Mr Tiwary and Mr Tiwary says we should do this”.⁸⁴ Mr Revi Shanker said that Mr Tiwary had told him to ask the accused to let Babu go, take the rap and Babu would help the accused.⁸⁵ The accused further remembered that in one tele-visit, Mr Revi Shanker told the accused not to mention Babu’s name and that Babu would help him. The accused testified that:

I told Mr Revi Shanker, ‘None of Babu’s statements are in the bundle, and it’s not admitted, and then now you’re telling me that he’s going to help me. How are you sure of this?’ Then he told me, ‘Only if you do this, it’s good for you.’ To me, it sounded---it was absurd to me, because he’s supposed to be my lawyer, and he was listening to the co-accused’s lawyer, and I felt that he was not doing me justice. I told Mr Revi Shanker to look at the statement properly, to look at Babu’s statement properly to say that Babu is not going to help me. The statement clearly shows Babu will not help me. So I told him to look at the statement properly. What Babu actually wanted was to get out scot-free, otherwise, get a minimum sentence.⁸⁶

⁸² NE 25 May 2022 pg 16 lines 9 to 12.

⁸³ NE 8 September 2022 pg 11 lines 13 to 18.

⁸⁴ NE 25 May 2022 pg 28 lines 22 and 23.

⁸⁵ NE 25 May 2022 pg 28 lines 25 to 27.

⁸⁶ NE 25 May 2022 pg 72 line 22 to pg 73 line 3.

...

He told me that in my statement, it's not clearly stated how many bundles I had expected and how many bundles I was to take. It's not clear there how many bundles I was to take and to store. So at that point of time, Babu was still denying the charge, and Babu was not opening his mouth. Essentially, what my counsel was telling me was, 'Okay. You admit to having to collect one bundle. We'll go with that one bundle. Once Babu goes out, he will come there and say that---Babu will'---once Babu goes out, he will come back as a witness to say I had actually ordered only one. Somewhere, another two extra came. He would come and testify that. But it was as if I was the one who made all the orders and did all the arrangements.⁸⁷

50 When the accused informed his previous counsel of his defence that he was not expecting to collect two extra packets but was assisting to collect only one packet, his previous counsel gave the accused one solution: "If you do like what has been told to you to do, you will get support from Babu."⁸⁸ The accused explained as follows:

In essence, Your Honour, Babu would have become my witness to say that I and Boy were involved in this and that Boy had asked for payment for one bundle and mistakenly two bundles had come. He would come to testify that in my favour. I felt that this was happening behind my back, this---this scheme was going on to get Babu out of the picture and Babu would help me in this manner. But I would be the scapegoat.⁸⁹

51 His previous counsel (and mainly Mr Revi Shanker) advised him: "It's your life. Why you put your life at stake? Or and why but must both of you all fight over it? Let one person go and somehow he will help you to escape the gallows."⁹⁰ Mr Revi Shanker told the accused: "If you do as I say, then definitely

⁸⁷ NE 25 May 2022 pg 73 lines 8 to 17.

⁸⁸ NE 25 May 2022 pg 30 lines 19 to 21.

⁸⁹ NE 25 May 2022 pg 30 lines 23 to 29.

⁹⁰ NE 25 May 2022 pg 31 lines 2 to 8.

you won't face the gallows. You'll only get punishment."⁹¹ At another part of the accused's evidence, the accused said that Mr Revi Shanker had told him: "Ramesh says don't pull Babu into this. Babu has got nothing to do with this. This is all yours. Leave him out of this. He will come out and help you."⁹² Mr Johan put to the accused in cross-examination that all of that did not happen (*ie*, Mr Revi Shanker did not say those things to the accused) to which the accused disagreed.⁹³

The accused was worried about discharging his previous counsel due to numerous changes of counsel

52 How the multiple changes of legal counsel representing the accused for the capital trial affected the accused was explored when the accused gave his evidence at the ancillary hearing.

53 Even before Mr Johan was engaged to defend the accused,⁹⁴ the accused recalled being told at a PTC by one of the PTC judges that "If you keep changing like this, we may not even end up assigning you a lawyer and you would have to do the case yourself."⁹⁵ The accused felt all this was against him. He felt there was nothing else he could do and he had no one else to turn to for advice. He was therefore afraid to discharge Mr Johan and Mr Revi Shanker and had to hang on to them because he was worried that he might end up having to defend himself after the numerous changes of counsel.⁹⁶

⁹¹ NE 25 May 2022 pg 31 lines 20 to 21.

⁹² NE 27 May 2022 pg 54 lines 16 to 18.

⁹³ NE 27 May 2022 pg 55 lines 15 to 21.

⁹⁴ NE 27 May 2022 pg 62 lines 1 and 2.

⁹⁵ NE 27 May 2022 pg 61 lines 2 to 8.

⁹⁶ NE 27 May 2022 pg 60 lines 4 to 12.

54 It was put to the accused by Mr Johan that the accused was well-advised about this handwritten letter, which bore an admission of the accused and the accused instructed his previous counsel not to admit this letter⁹⁷. The accused disagreed to having been advised against having the letter admitted because it incriminated him. The accused testified that all they told him was that Mr Tiwary was not using this statement, so he did not have to worry about it. The accused said, however, that he had told his previous counsel: “Even if Tiwary is not using it, it’s important to me. I want it admitted.”⁹⁸

55 The accused clarified that when Mr Johan told him that Mr Tiwary was not using the statement, he kept quiet because he could not talk to Mr Johan but was not happy. He never said he was agreeable to not having the statement admitted,⁹⁹ thus essentially denying the put question that he had explicitly given his instruction not to admit the handwritten statement of his. He further disagreed with the put questions that he was very happy and relieved upon hearing Mr Johan tell him that Mr Tiwary was not using the statement,¹⁰⁰ and that he was at peace and was prepared to have the statement not being used at all by counsel.¹⁰¹ At another part of the cross-examination by Mr Johan, it was further put that Mr Johan told the accused that the DPP also would not be using it. Again the accused disagreed.¹⁰²

⁹⁷ NE 27 May 2022 pg 10 lines 21 to 23.

⁹⁸ NE 27 May 2022 pg 13 lines 1 to 4.

⁹⁹ NE 27 May 2022 pg 13 lines 16 to 17.

¹⁰⁰ NE 27 May 2022 pg 19 lines 1 to 10; pg 20 lines 21 to 23.

¹⁰¹ NE 27 May 2022 pg 31 line 21 to pg 32 line 16.

¹⁰² NE 27 May 2022 pg 32 lines 17 to 22.

Complaint No 3 – Babu’s statement not admitted into evidence as instructed

56 During cross-examination by Mr Johan, the accused testified that Babu’s statements were given to him by his previous solicitor Mr Sunil, who was his solicitor prior to Mr Johan. The accused agreed that Babu’s statement incriminated him.¹⁰³ When asked if he was angry after reading Babu’s statement, the accused said he was heartbroken¹⁰⁴ and that his relationship with Babu “came to nothing” because Babu had stated in the statement that (a) he was the one who introduced Boy to the accused; (b) the accused was involved with drug activities with Boy, who was the accused’s drug supplier; and (c) the accused in turn supplied Babu with drugs for his consumption whereas he (*ie*, Babu) had nothing to do with it (*ie*, the drugs in this case).¹⁰⁵ Babu further stated in his statement that the accused mentioned Babu’s name because of threats and inducements from the CNB officers.¹⁰⁶

57 The accused complained that the accused’s previous counsel failed to follow his instructions to adduce Babu’s statement. His previous counsel could have admitted Babu’s statement during the Prosecution’s case through the IO and/or interpreter who were present at the recording of Babu’s statement.

58 The accused wanted Babu’s statement to be admitted as evidence to show that his handwritten statement closely mirrored Babu’s statement. When questioned, he could then explain how he came to write the handwritten statement and the court would then know the role that Babu played. After realising that Babu was making use of him to escape totally and let him take the

¹⁰³ NE 27 May 2022 pg 3 line 28 to pg 4 line 9.

¹⁰⁴ NE 27 May 2022 pg 33 line 25.

¹⁰⁵ NE 27 May 2022 pg 34 lines 11 to pg 35 line 20.

¹⁰⁶ NE 27 May 2022 pg 34 lines 14 to 16.

rap, he no longer wanted to allow Babu to manipulate him anymore and decided that he wanted to live.¹⁰⁷ He wanted the court to have a full picture of what happened. The accused insisted that a comparison of the two statements was needed to buttress the accused's evidence that Babu had given the accused a written document and instructed the accused to copy it to produce a statement in the accused's own handwriting. If Babu had not given those instructions, the contents of the accused's handwritten statement could not have closely tracked the contents of Babu's statement to the CNB officers. The accused had that strategy in mind. However, his previous counsel told him that Babu's statement was not in the Agreed Bundle and the Prosecution was not using Babu's statement. Accordingly, there was no need for it. Mr Johan told him that when Babu was on the stand, they would hear oral evidence from him.

59 In cross-examination, Mr Johan put to the accused that he did not tell Mr Johan to put Babu's statement into evidence in court,¹⁰⁸ or ask Mr Johan to put Babu's statement in the agreed bundle,¹⁰⁹ to which the accused disagreed.

Complaint No 4 – Accused's handwritten comments on the call logs in the Agreed Bundle not dealt with

60 The fourth complaint concerns the previous counsel's failure to follow through with the accused's instructions to admit into evidence a handwritten document wherein the accused had written down what he could remember of the various calls based on the call logs in the Agreed Bundle. The accused

¹⁰⁷ NE 25 May 2022 pg 25 lines 7 to 14.

¹⁰⁸ NE 27 May 2022 pg 48 lines 20 to 26; pg 49 lines 1 to 14; NE 27 May 2022 pg 50 lines 24 and 25.

¹⁰⁹ NE 27 May 2022 pg 50 lines 15 and 16.

wanted to show to some degree of detail the relationship between himself and Babu. According to the accused, the call logs contained the following:¹¹⁰

- (a) There was a particular message which showed that Babu was in communication with one Alan, who was a customer of Babu's, and who was coming to collect the drugs.
- (b) The messages would also show that Alan apparently went missing after collecting the drugs, but that Alan was still in communication with Babu.
- (c) One message showed that Alan said he would pay the money owing. The accused told his previous counsel to look at the sequence of the messages, and to look at them to see how much drugs that Alan had ordered and was receiving from Babu.

61 According to the accused, the call records would also show that in his first transaction, he had dealt with two bundles and that Babu had given him certain specific instructions that Babu had ordered two packets of drugs which he asked the accused to collect. The call records would also show that there were three or four drug transactions. The accused further testified that the call records would demonstrate that all the earlier transactions had always involved one or two packets, and that the "regular customer" was always Alan. For the last transaction, Alan had simply taken the drugs before going missing. The accused said he had told all of this to his previous lawyers.¹¹¹

¹¹⁰ NE 25 May 2022 pg 57 line 27 to pg 58 line 17.

¹¹¹ NE 25 May 2022 pg 58 lines 19 to 30.

62 The accused further explained as follows:¹¹²

I asked my lawyers to look into the reason why if Babu had been ordering only one or two packets, why the need to order three and why Alan being the regular customer for these drugs would take the drugs and go missing, and why would there be a need for Babu to order three packets. My defence has always been that I expected only one bundle to come, but suddenly there were three bundles and I know that Babu said he only ordered one. And how three bundles came about, I didn't know. That's always been my defence.

63 The accused testified that he had given the document he prepared in relation to the call logs to his previous counsel and asked them to admit it into evidence, but Mr Johan dismissed it as "rubbish".¹¹³ Mr Revi Shanker reassured the accused, saying: "It's okay when you go on the stand, I will have this admitted in Court."¹¹⁴ The accused complained that, however, when he went on the stand, Mr Revi Shanker never did what he had promised to do.

64 The accused described the difficult situation he faced as follows:¹¹⁵

And with---the manner in which Mr Johan Ismail conducted himself, showing his tantrum and anger to me, I didn't want to aggravate the situation and make him more angry. What if he discharged himself? Then I will not have a lawyer to represent myself.

...

So it's so difficult to approach Mr Johan. And then---

...

Mr Revi Shanker came into the picture, I told him all that I could not tell Mr Johan, I told Mr Revi Shanker.

...

¹¹² NE 25 May 2022 pg 58 line 31 to pg 59 line 6.

¹¹³ NE 25 May 2022 pg 41 lines 8 to 20; 45 lines 3 to 6.

¹¹⁴ NE 25 May 2022 pg 41 lines 22 to 24.

¹¹⁵ NE 25 May 2022 pg 43 lines 4 to 19.

And Mr Revi Shanker said ‘Don’t worry, we’ll do it, we’ll do it’ but at the end---in the end, both don’t end up doing it.

...

And Mr Revi Shanker is well-aware that every time we have an interview together, Mr Johan and I end up in an argument.

Complaint No 5 – Procuring the call logs of three telephone numbers not carried out as instructed

65 The fifth complaint is about the previous counsel’s failure to follow the accused’s instructions to obtain the call logs of: (a) two local telephone numbers 84790320 and 84322980 (one of which was the phone number of Babu’s girlfriend, Ms Siti Suriyanti binte Ali (“Ms Suriyanti”), and the other was Babu’s); and (2) one Malaysian telephone number 60149817958. Babu used to communicate with the accused using the Malaysian telephone number when he was in Malaysia and this was the same number that Babu used to communicate with Boy.¹¹⁶ The accused said that one of the telephone numbers belonging to Babu which he provided was not discovered during investigations. The accused explained that the purpose of the call logs was to evidence communication between Babu and the other person in Malaysia which would prove that Babu was “very involved”. The accused testified that Babu’s involvement in drugs began even before the accused’s own involvement, *ie*, before the “Hari Raya period at that point of time”, and that Babu’s phone records would demonstrate this.¹¹⁷

¹¹⁶ NE 25 May 2022 pg 36 line 8 to pg 40 line 5.

¹¹⁷ NE, 25 May 2022, pg 36 lines 15 to 21.

66 The previous counsel's response in their submissions was that no instructions at all were received from the accused in relation to obtaining the call logs.¹¹⁸

Complaint No 6 – Failure to extract the CCTV camera footages as instructed

67 The sixth complaint pertains to the accused's counsel's failure to obtain certain closed circuit television ("CCTV") camera footages, despite the accused's instructions to do so. As the accused found it easier to communicate with Mr Revi Shanker than with Mr Johan, he instructed Mr Revi Shanker to obtain the CCTV camera footages of the lift landing on the 11th floor of the Toa Payoh flat and the lift landings on the 7th and 8th floor of the Commonwealth flat. Mr Revi Shanker's initial response was that he would go back and look into it. But when Mr Revi Shanker came back and the accused raised the subject of the CCTV camera footages again, he told the accused all that was not necessary and said, "What you have should be enough".¹¹⁹ The accused complained that in essence, Mr Revi Shanker did not do anything about the CCTV camera footages although the accused had insisted on obtaining them. To the accused, they appeared to be telling him not to bother about the CCTV camera footages and just focus on what he already had.¹²⁰

68 The accused said he could not express his unhappiness because his greatest fear was that if he did so, his previous counsel might decide to discharge

¹¹⁸ Submissions of Johan Ismail & Revi Shanker dated 13 October 2022 ("Previous counsel's submissions") at paras 10.5.2 and 12.8; see also NE 12 September 2022 pg 69 line 26 to pg 70 line 3.

¹¹⁹ NE 25 May 2022 pg 46 line 10 to pg 47 line 12; see also NE 26 May 2022 pg 37 lines 7 to 28.

¹²⁰ NE 25 May 2022 pg 48 lines 20 to 23.

themselves, to his prejudice.¹²¹ The accused, however, did show his frustration by repeatedly asking why they could not find it or why it could not be done.¹²²

69 Mr Johan denied this and testified that no such instructions were given by the accused to obtain the CCTV footages.¹²³

Complaint No 7 – Failure to respond to the accused’s queries on Ms Suriayanti

70 The seventh complaint pertains to the accused’s previous counsel’s failure to respond to the accused’s queries about Ms Suriayanti. The accused asked his previous counsel if charges were preferred against Ms Suriayanti (also known as Farah to the accused), who was the girlfriend of Babu and whether any statement was taken from her. The accused said that he needed to see her statement. However, according to the accused, his previous counsel did not respond to the accused. Neither did they make any effort to find out if she had given any statement. Moreover, the accused said he had initially noticed that Ms Suriayanti was listed as a witness of the Prosecution, and wanted his previous counsel to find out why the Prosecution was not interviewing Ms Suriayanti; he said he wanted to find out “why was she seeing the defence counsel and also if she is a [P]rosecution witness, she would know something about the drugs”. Although the Prosecution did not call Ms Suriayanti as a witness and his previous counsel advised that it was favourable to the accused that she was not called, the accused nevertheless wanted to find out what was in her statement.¹²⁴

¹²¹ NE 25 May 2022 pg 48 lines 29 to 31.

¹²² NE 25 May 2022 pg 49 lines 1 to 10.

¹²³ Previous counsel’s submissions at para 12.7.2.

¹²⁴ NE 25 May 2022 pg 54 line 25 to page 57 line 9.

The accused could not accept his previous counsel's advice because he thought that her statement might be helpful to his defence.¹²⁵

71 The accused said that drugs were found in Ms Suriyanti's house and she was arrested for that. The accused also said that Ms Suriyanti: (a) was aware of the drug dealings between the accused and Babu; (b) knew who "the boss" was; (c) knew the role of the accused; and (d) was aware that the accused was helping Babu out. She could therefore shed light about the accused's role.¹²⁶

72 The previous counsel denied that the accused had given such instructions to obtain Ms Suriyanti's statement from the CNB.¹²⁷

Complaint No 8 – Failure to find out what transpired between Ms Suriyanti and the co-accused's counsel

73 The accused informed his previous counsel that Ms Siti Suriyanti had spoken to the co-accused's counsel, Mr Tiwary. The accused asked his previous counsel to find out what their conversation was all about or at least raise the issue that such an incident had taken place. His previous counsel did not respond to the accused on this request.

74 The previous counsel denied that the accused had given such instructions.¹²⁸

¹²⁵ NE 25 May 2022 pg 57 line 23.

¹²⁶ NE 25 May 2022 pg 51 line 30 to pg 52 line 4.

¹²⁷ Previous counsel's submissions at para 10.7.1; see also NE 12 September 2022 pg 69 lines 1 to 7.

¹²⁸ Affidavit of Johan Bin Ismail affirmed on 10 April 2022 ("Mr Johan's affidavit") at para 70; Affidavit of A Revi Shanker K Annamalai affirmed on 11 April 2022 ("Mr Revi Shanker's affidavit") at para 61; Previous counsel's submissions at para 10.8.1.

Complaint No 9 – Inaccuracies in the accused’s long statements to the CNB officers not properly dealt with

75 The accused told his previous counsel that there were certain omissions and inaccuracies in his long statements to the CNB officers. The accused said that his previous counsel did not advise him on how to deal with them, nor did they cross-examine the IO on certain inaccuracies.¹²⁹

76 When the accused was giving his evidence-in-chief, his previous counsel failed to question him on some of the inaccuracies that he had brought to their attention. The accused felt that his previous counsel did not question him properly and bring out the accused’s reasoning for the inaccuracies. The accused said that he had explained to them that things did not happen in the way that was stated in the statement, and that he had told them how it actually happened. His previous counsel seemed to disregard what he told them. He sensed that they did not really take him seriously. According to the accused, every time the accused pointed out some inaccuracies, his previous counsel would dismiss him and say: “No, no need, go to the next one. This one not necessary.” The accused found his previous counsel to be dismissive of him. Accordingly, these inaccuracies in his statement were not properly dealt with when he was on the witness stand.¹³⁰

77 One of the inaccuracies was in relation to Babu telling him what the drug shipment was going to be like, what was the amount, how much to expect and how much would be coming in. Another inaccuracy was that the statement had stated that the accused only came to realise the quantity of drugs which actually arrived after collecting the drugs. However, the accused testified that he had not

¹²⁹ NE 25 May 2022 pg 60 lines 17 to 20.

¹³⁰ NE 25 May 2022 pg 61 line 6 to pg 63 line 26.

said it like that, and that was not how the events actually happened. The accused also highlighted that there were inconsistencies in the statement in relation to Babu ordering the bundles whilst he was in Singapore.¹³¹

78 The accused said that there were also omissions from the statement. He had told the IO about the earlier drug transactions that he had done for Babu, the shipment quantity, how much Babu told him to collect and how much would come. The accused had pointed out to his previous counsel that those pieces of information were missing from his statement.¹³²

79 The accused had instructed his previous counsel that he wanted to have a chance in court to rectify the inaccuracies and omissions in his long statements to the CNB officers.

80 In the previous counsel's submissions, it was pointed out that the accused's affidavit failed to particularise which parts of his statements were inaccurate and that these allegations were not put to the previous counsel when they were cross-examined.¹³³

Complaint No 10 – The Agreed Bundle was received very late

81 The accused complained that he received the Agreed Bundle very late.¹³⁴ The Prosecution clarified that the Agreed Bundle was identical to the

¹³¹ NE 25 May 2022 pg 60 line 21 to pg 61 line 5.

¹³² NE 25 May 2022 pg 64 lines 23 to 27.

¹³³ Previous counsel's submissions at para 10.9.

¹³⁴ NE 25 May 2022 page 64 lines 5 to 8.

Preliminary Inquiry (“PI”) bundle except that the service letters from pages 1 to 58 were taken out from the PI bundle when compiling the Agreed Bundle.¹³⁵

82 The previous counsel stated in their affidavits that the Agreed Bundle was received by them on 2 April 2019. A copy was immediately handed over to the accused.¹³⁶

Previous counsel asked the accused not to implicate Babu in his defence

83 During the ancillary hearing, the accused gave extensive evidence in relation to the previous counsel’s improper conduct when they were representing him.

84 According to the accused, his previous counsel had asked him to take responsibility for all the three bundles of drugs, which were found in the accused’s possession. They told the accused that if he were to take responsibility as suggested, then the co-accused (*ie*, Babu) would give evidence to say that he had ordered only one bundle (and not three bundles) of drugs. Mr Revi Shanker also told the accused to say that the CNB officers had induced the accused to implicate the co-accused in his statements.

85 The accused did not agree with his previous counsel’s various proposals as the co-accused was involved and he did not feel it was at all fair that he should take full responsibility for the drugs when the co-accused as the mastermind would be totally exonerated. The accused did not agree to exonerate the co-accused entirely by testifying that he was liaising with a different person called Babu (who was not the co-accused) for the delivery of the drugs to him.

¹³⁵ NE 26 May 2022 page 43 lines 14 to 19.

¹³⁶ Mr Johan’s affidavit at para 73; Mr Revi Shanker’s affidavit at para 63.

86 The accused basically wanted the co-accused to support his defence that the co-accused had only ordered one bundle of drugs and had arranged for delivery of only one bundle (and not three bundles) of drugs to the accused. However, the supplier inadvertently delivered three bundles of drugs to the accused. If the accused were to help exonerate the co-accused by testifying that the co-accused was not the Babu in question, then the accused believed that the co-accused would be in no position to help him in turn by testifying that there was an order of only one bundle of drugs.

87 The accused said that the co-accused's counsel, Mr Tiwary, and his previous counsel were all trying to persuade him to take full responsibility for the three bundles of drugs to exonerate the co-accused. Mr Revi Shanker also suggested that the co-accused would say that one bundle of drugs was ordered, and that the co-accused would get other witnesses to say that the additional two bundles of drugs were like "extras" not to be trafficked in.

88 The accused testified that his previous counsel had further informed him that the co-accused's counsel had told them that if the accused did not assist the co-accused, then the co-accused would call at least five witnesses to give evidence at the trial that the accused had ordered three bundles of drugs. On this, the accused said that he felt that the threat emanated from the co-accused, who relayed the threat his own counsel, Mr Tiwary, who in turn informed the accused's previous counsel, who in turn relayed it to him.¹³⁷ However, the accused said he was not frightened by the threat because the accused said that it did not happen (*ie*, he did not order three bundles of drugs),¹³⁸ and there would

¹³⁷ NE 27 May 2022 pg 93 lines 17 and 18.

¹³⁸ NE 27 May 2022 pg 92 lines 30 and 31; pg 94 line 1.

be no witnesses to come forward to say that he did.¹³⁹ In other words, as far as the accused was concerned, he was not afraid as it amounted to an empty threat because there could not possibly be five witnesses who would come forward to testify that the accused in fact ordered three bundles of drugs.¹⁴⁰ The accused added that he felt it was not right of Mr Revi Shanker to have: (a) relayed the message that there would be five witnesses who would testify against the accused; and (b) expected the accused to be frightened by it and do what Mr Tiwary wanted the accused to do, *ie*, to exonerate the co-accused.¹⁴¹ Mr Johan in cross-examination put to the accused that Mr Revi Shanker did not convey any threat from Mr Tiwary to the accused, to which the accused denied.¹⁴²

89 The accused also claimed that the previous counsel told the accused that if the accused “killed” the co-accused, the co-accused’s counsel would “kill” him, which the accused understood to mean that if the co-accused was to be convicted on the accused’s evidence, then the co-accused’s counsel would ensure that the same would be done to the accused.

90 Mr Johan finally put to the accused that all his allegations about his previous counsel trying to change his evidence to support Babu were “all untrue, absurd, ridiculous” to which the accused disagreed.¹⁴³

¹³⁹ NE 27 May 2022 pg 94 lines 8 to 10.

¹⁴⁰ NE 27 May 2022 pg 94 lines 11 to 19.

¹⁴¹ NE 27 May 2022 pg 95 lines 3 to 14.

¹⁴² NE 27 May 2022 pg 96 line 31 to pg 97 line 9.

¹⁴³ NE 26 May 2022 pg 120 lines 22 to 25.

Mr Revi Shanker suggested to the accused to say that CNB officers induced him to implicate Babu in his statements

91 When he was being cross-examined by Mr Johan, the accused further testified that Mr Revi Shanker even suggested to him that he should say that the CNB officers induced him to implicate Babu in his CNB statements:¹⁴⁴

Q Alright. Let's go on to this paragraph 13. 'Mr A Revi Shanker even said to me that the CNB induced me to implicate the co-accused.'

A Yes.

Q Can you tell us when was this?

A Some---during our interviews as and when, Revi would ask me 'Did CNB induce you to say things? Did they induce you or not? If they induced you, you say that you were induced.' Then when I said no, I was not induced, then during the tele-visit where he tells me Ramesh Tiwary---'I've spoken to Ramesh Tiwary, 'You're supposed to do this and that', and then he will say 'Why you don't say you were induced? Just say you were induced.'

92 The accused later further elaborated that, "Mr Revi [Shanker] was trying to get me to say that CNB officers had induced me when, in fact, that didn't happen."¹⁴⁵

93 Mr Johan put to the accused that Mr Revi Shanker never said such things to the accused. The accused disagreed.¹⁴⁶ The accused firmly asserted that, "That the CNB induced me is not true."¹⁴⁷ The accused then commented that, "With Mr Revi [Shanker] telling me to do this, and with Mr Ramesh Tiwary

¹⁴⁴ NE 27 May 2022 pg 81 lines 20 to 29

¹⁴⁵ NE 27 May 2022 pg 86 lines 10 and 11; see also lines 25 to 31.

¹⁴⁶ NE 27 May 2022 pg 82 lines 16 to 21.

¹⁴⁷ NE 27 May 2022 pg 82 lines 22 to 24; lines 25 to 30.

questioning me saying that I was induced by CNB officers to implicate Babu in my statement, to me, it seems like they were all in this together.”¹⁴⁸

94 The accused later elaborated that Mr Revi Shanker had first told him that Mr Tiwary wanted him to say that the accused had implicated the co-accused due to an inducement by the CNB officers.¹⁴⁹ Later, Mr Revi Shanker himself also told him, “Why don’t you just say that you were induced and you gave that statement that way.”¹⁵⁰ The accused clarified that there were two parts to his communications with Mr Revi Shanker:¹⁵¹ At first Mr Revi Shanker simply acted as a post-box to convey the message from Mr Tiwary. Then Mr Revi Shanker himself suggested to the accused to say he was induced by the CNB officers to implicate Babu in his CNB statements.

Mr Tiwary’s direct dealings with the accused when he was unrepresented

95 The accused testified that when he was unrepresented, Mr Tiwary as the co-accused’s counsel visited him on six occasions: 28 December 2015, 21 January 2016, 25 January 2016, 2 April 2016, 15 April 2016 and 21 April 2016. The accused gave his handwritten statement dated 16 March 2016 to Mr Tiwary during one of these visits (see [40] above).

96 The accused said that the co-accused had handed a handwritten note to the accused for him to copy down and produce a fresh statement in the accused’s own handwriting (see [45] above). This is exhibited as “1T-C1”. By this means, the co-accused ensured that the accused’s fresh handwritten statement would be

¹⁴⁸ NE 27 May 2022 pg 83 lines 11 to 14.

¹⁴⁹ NE 27 May 2022 pg 87 lines 15 to 21; pg 88 lines 10 to 12 and lines 17 to 18.

¹⁵⁰ NE 27 May 2022 pg 88 lines 20 to 22; pg 87 line 12 to pg 88 line 30.

¹⁵¹ NE 27 May 2022 pg 88 lines 23 to 30

aligned with the statements of the co-accused. At this time, the accused was depressed and had given up the will to live as he had learnt that his girlfriend was seeing someone. He therefore agreed to take the blame and exonerate the co-accused (see [34]–[36] above).

Meetings leading up to the meeting in the lock-up in the Supreme Court

97 The accused gave evidence of the meetings (conveniently referred to as the 1st, 2nd and 3rd meetings) leading up to the meeting in the lock-up in the Supreme Court.

1st meeting: tele-visit meeting on 23 February 2019

98 This 1st meeting was a tele-visit involving only Mr Revi Shanker and the accused on 23 February 2019.¹⁵² It lasted for less than half an hour.¹⁵³

99 The accused testified that Mr Revi Shanker told the accused that he had spoken to Mr Tiwary over the phone. The accused was asked not to ‘bite’ Babu and not to get Babu involved in this case and when Babu goes out, Babu would help him. This was the first time that the accused heard Mr Revi Shanker telling him of it and that Babu would help the accused with his defence. That was when the accused became angry that his own lawyer was asking him to support a co-accused and was not doing anything to help him. The accused then asked Mr Revi Shanker whether he had read Babu’s statement and because Babu had said something different to the accused, and there was no way that Babu could help the accused in the manner that Mr Revi Shanker was promising him then.¹⁵⁴

¹⁵² NE 25 May 2022 pg 77 lines 13 and 14.

¹⁵³ NE 25 May 2022 pg 90 lines 18 and 19.

¹⁵⁴ NE 25 May 2022 pg 88 lines 23 to 31.

The accused told Mr Revi Shanker, “Babu was just as involved in this case as I was. Let him come and tell the truth.”¹⁵⁵ Then Mr Revi Shanker told the accused, “Hari, just relax, just listen to what I say.”¹⁵⁶ This made the accused angry. The accused knocked on the door to call the prison officer to ask if that meeting between Mr Revi Shanker and himself could be recorded. Then the prison officer told the accused, “We don’t record these interviews, only the Court will do that.” There was nothing the prison officers could do. Since the accused was angry, Mr Revi Shanker left.¹⁵⁷

100 At a later part of his evidence during cross-examination, the accused amplified his evidence by saying that Mr Revi Shanker had further told him that Babu would come to the witness stand to say that the two extra bundles were supposed to be returned to the courier by the accused,¹⁵⁸ provided that the accused did not involve Babu in the case.¹⁵⁹ Mr Revi Shanker also conveyed threats from the co-accused’s side to the accused by telling him they would bring five other witnesses and ensure that the accused would be convicted and face the gallows.¹⁶⁰ Mr Johan then put to the accused that what he attributed to Mr Revi Shanker were blatant lies, to which the accused disagreed.¹⁶¹

¹⁵⁵ NE 25 May 2022 pg 90 lines 1 and 2.

¹⁵⁶ NE 25 May 2022 pg 90 line 3.

¹⁵⁷ NE 25 May 2022 pg 90 lines 4 to 8.

¹⁵⁸ NE 27 May 2022 pg 39 lines 14 to 16.

¹⁵⁹ NE 27 May 2022 pg 40 lines 1 to 18.

¹⁶⁰ NE 27 May 2022 pg 41 lines 1 to 4.

¹⁶¹ NE 27 May 2022 pg 41 lines 14 to 21.

2nd meeting: face-to-face meeting on 23 March 2019

101 The 2nd meeting was a face-to-face meeting in prison on 23 March 2019. Present were Mr Johan, Mr Revi Shanker and two other lawyers, Mr Melvin and Mr Ruben.¹⁶² They went through the statements and discussed the accused’s case. The accused also explained to them that he was told to collect only one bundle and was expecting only one bundle, which was for a regular customer, Alan, who would only buy a small amount. So, there was no way Alan would order/buy three bundles.¹⁶³

102 At this meeting, the accused gave his previous counsel the “homework” that the accused did earlier pertaining to the telephone call logs. The accused reminded his previous counsel about going through the document that the accused had prepared on the telephone call logs.¹⁶⁴

103 The accused highlighted an event which took place during this 2nd meeting as follows:¹⁶⁵

While the lawyers and I were discussing my case, suddenly Mr Ramesh Tiwary peeped, looked into the room, to the glass panel. I saw Mr Ramesh Tiwary’s face. After a few minutes, after we saw Mr Ramesh Tiwary’s face, Mr Revi Shanker got up and left the room. I saw Mr Revi Shanker walked in the direction of where Mr Ramesh Tiwary had gone. After about 5 to 10 minutes, Mr Revi Shanker came back to the room and he spoke to me in Tamil; he asked me to think about what he spoke to me about. I didn’t bother about what he [Mr Revi] spoke to me about. We continued discussing about my case with the other lawyers.

¹⁶² NE 25 May 2022 pg 91 lines 1 to 13.

¹⁶³ NE 25 May 2022 pg 93 lines 11 to 17.

¹⁶⁴ NE 25 May 2022 pg 92 lines 23 to 27.

¹⁶⁵ NE 25 May 2022 pg 91 lines 15 to 24.

104 After the discussion, the lawyers left. The meeting lasted less than an hour.¹⁶⁶

3rd meeting: Lock-up meeting on 3 April 2019 and the discussions immediately preceding it

105 I will refer to the 3rd meeting which occurred on 3 April 2019 as the “lock-up meeting”. According to the accused, after Mr Johan had finished cross-examining the IO and just before Mr Tiwary started his cross-examination of the IO, Mr Johan approached the accused and told him: “I’ve already asked all the questions from the IO and finished him. When you come on the stand, then you sing your song.”¹⁶⁷ After that Mr Revi Shanker approached the accused, who was then still in the dock and told the accused: “Listen to me carefully ... Ramesh wants to see you. Ramesh Tiwary wants to see you.”¹⁶⁸ The accused asked Mr Revi Shanker why Mr Tiwary wanted to see him. Mr Revi Shanker then told the accused, “You have to hear it for yourself and you have to be the one to decide.”¹⁶⁹ The accused told Mr Revi Shanker: “You are my lawyer and you know that there’s a war going on between him and me. You have to ask him what is it you want--he wants and tell me.” And “You have to ask him what he wants to say to me.”¹⁷⁰ The accused testified that Mr Revi Shanker kept insisting that the accused should listen to Mr Tiwary himself and that the accused would have to be the one to speak to him. Mr Revi Shanker kept pestering the accused and the accused was wondering why he was doing that. The accused said he had no wish to speak to Mr Tiwary and he really did not

¹⁶⁶ NE 25 May 2022 pg 92 lines 10 to 13.

¹⁶⁷ NE 25 May 2022 pg 93 lines 25 to 27.

¹⁶⁸ NE 25 May 2022 pg 93 lines 28 and 30.

¹⁶⁹ NE 25 May 2022 pg 94 lines 2 and 3.

¹⁷⁰ NE 25 May 2022 pg 94 lines 9 to 13.

know what was happening. However, since Mr Revi Shanker kept insisting, the accused said, “Okay, let’s see what he has to tell me.”¹⁷¹

106 Earlier, the accused gave testimony on the same event and it was broadly consistent with his later testimony. The accused earlier testified that Mr Revi Shanker had told the accused: “Listen properly, Ramesh Tiwary wants to see you.”¹⁷² The accused said to Mr Revi Shanker: “We are both fighting against each other. Why should his lawyer come to see me?”¹⁷³ Then Mr Revi told the accused: “You have to listen to what he has to say and take the decision.”¹⁷⁴

107 The accused was thereafter brought down to the lock-up. Present were Mr Johan, Mr Revi Shanker, Mr Melvin, Mr Ruben, Mr Tiwary and Mr Satwant Singh.¹⁷⁵

108 The accused recalled the gist of the meeting as follows:¹⁷⁶

Once the door opened, all the lawyers came into the room. Tiwary was standing in front of me on the side. I was waiting for them to tell me what was happening, so I waited for one of them to talk. Then, since no one was saying anything, I asked Mr Ramesh Tiwary, ‘I heard you wanted to see me.’ Then Mr Ramesh Tiwary said, ‘Of course, Haridass. Only if you talk, then I can talk to you.’ Then I asked, ‘What’s the matter?’ Ramesh told me, ‘I’ve got nothing to do with your case. You listen to me. You say on top fellow.’

...

¹⁷¹ NE 25 May 2022 pg 94 lines 13 to 19.

¹⁷² NE 25 May 2022 pg 69 lines 4 and 5.

¹⁷³ NE 25 May 2022 pg 69 lines 5 and 6.

¹⁷⁴ NE 25 May 2022 pg 69 lines 8 and 9.

¹⁷⁵ NE 25 May 2022 pg 70 lines 1 to 5.

¹⁷⁶ NE 25 May 2022, extracts from pg 70 line 23 to pg 72 line 7.

Okay, so Ramesh told me that, 'You---I got nothing to do with your case. You say you're working for the top fellow', which is he referring to Boy.

...

Mr Tiwary said, 'You are saying you're working for the top fellow', and he's referring to Boy, Boy, Your Honour.

...

'You don't bite my client. I have nothing to do with you.' And then he said, 'I have evidence. I have evidence in my pocket.' And then he pulled out his jacket---

...

---and put in his hand and gestured to say that he had evidence with him.

...

He moved his jacket and put his hand to say he has got evidence. ...

He said, 'Did you---do you see my hair? It's all grey. I have'---he said something like he has got 20 or 30 years' experience. He said---he says---he said, 'I'm wise. Your lawyers know about me very well. If I have anything, I will tell your lawyers so that they can help you.' Basically, what he was trying to tell me is, 'Let's not get Babu involved in this.'

...

He said, 'Don't bite him. You take everything. He will come in support of your defence.' By meaning bite, he means don't implicate him.

109 I note that in substance the above evidence the accused gave on 25 May 2022 at the ancillary hearing is largely consistent with the evidence on the same matter that the accused gave some nine months earlier on 31 August 2021 during the main trial (which I have set out at [11] above).

110 In the lock-up, in the presence of previous counsel, Babu's counsel told the accused to let off Babu, by taking responsibility for all three bundles of drugs. Babu's counsel said that his client had nothing to do with the drugs. Despite knowing that Babu and his counsel had been asking the accused to let

off Babu, the accused's previous counsel permitted Babu's counsel to speak to the accused. The accused said that no one took any meeting notes of what was said.

111 Due to some confusion, the accused had to repeat his evidence at a later point in time about what happened at this lock-up meeting and he testified as follows:¹⁷⁷

When they were all seated, I looked at Ramesh Tiwary, and I told him, 'I heard you wanted to speak to me.' He said, 'Of course, Haridass. Only if you speak to me, I can speak to you.' He says, 'Can you see my hair? It's all white. I'm wise. Your lawyers know about me. I have nothing to do with you. You don't bite my client. You say you're working for the supplier above.' Then he gestured, putting his hand into his jacket, saying, 'I have evidence in my pocket. I have clients in the death row, but does not mean all clients will end up in the death row. You let him go. He will come and give evidence in your favour. Your lawyers know me. If there's anything, I'll let your lawyers know, and your lawyers will deal with it.' Once he told me that, I was very angry and didn't want to talk to him. I just told him, 'You get out from this room.' And after he left, that's when I cried and spoke to my lawyers. I told my lawyers, 'You all have been with me for more than 2 years. I have---I tried to tell you my case. I've been telling you my case from in---but when I tell you my case and you show---you show my ten---your tantrums to me, then I speak to Mr Revi, and Mr Revi says, "Be calm. I know you won't get into an argument. Just be calm." And now you all---he's doing this, and you all are my lawyers. How can you all let this happen?' That's when Melvin asked me, 'So what is your instructions?' Then I said, 'Let's go with the---my defence. Let's fight this case as we originally planned to.' Then when I---I was already very angry, very upset, so when I came up and I saw Babu, I was very angry. I scolded him and told him, 'You're coming and pretending here. You want me to take the---everything, and you're trying to escape.' I scolded him. And Revi pretended nothing happened and kept asking me, 'What happened? What happened?' I didn't say anything and kept quiet.

¹⁷⁷ NE 25 May 2022 pg 99 line 17 to pg 100 line 16.

112 This version is broadly consistent with his earlier evidence on the lock-up meeting given on two previous occasions.

Previous counsel's recollection of the lock-up meeting and the discussions immediately preceding it

113 However, a different version of the events on the day of the lock-up meeting was proffered by the previous counsel. According to the accused's previous counsel, Mr Revi Shanker informed Mr Johan that the accused wanted to see the co-accused's counsel on this occasion because the accused wanted to know what the co-accused's defence was before the accused commenced giving his evidence-in-chief. Mr Johan agreed as that was the accused's instructions. It was not the case that the co-accused's counsel wanted to speak to the accused. In the lock-up, the accused asked the co-accused's counsel whether he was going to cross-examine him. The co-accused's counsel said, "My defence is that [my] client had nothing to do with the 3 bundles". The co-accused's counsel then left. The accused then told his previous counsel to fight on. The previous counsel denied asking the accused to let off the co-accused and take responsibility for the three bundles or to say that the co-accused was not involved.

Mr Revi Shanker's written notes of the lock-up meeting

114 In his affidavit,¹⁷⁸ Mr Revi Shanker exhibited his written notes of the meeting in the lock-up. It recorded the time and date as 11.45 am on 3 April 2019. Parties present were Mr Johan, Mr Revi Shanker, Mr Melvin, Mr Tiwary, Mr Satwant Singh, and Mr Ruben. Mr Revi Shanker took notes of the meeting and recorded the following:

¹⁷⁸ Exhibit 1T-R10; Mr Revi Shanker's affidavit at pages 28–30.

Haridass want to see Ramesh to ask him about Babu's defence before he start his EIC [examination-in-chief].

Haridass ask Ramesh whether he will cross-examine him.

Ramesh told Haridass that he will cross-examine him, if Haridass implicates Babu's involvement in ordering three bundles.

Haridass asked Ramesh whether his client [*ie*, Babu] will say that he [*ie*, Babu] ordered one bundle upon his [*ie*, Babu's] instructions.

Ramesh says that his client has nothing to do with any ordering of bundles – that is his defence.

Ramesh told Hari that if Hari maintained his evidence that Babu ordered the 3 bundle and implicate Babu in any other way, he will cross examine Hari to show him Hari is a liar.

Hari says okay to Ramesh's saying. Ramesh left the room.

Hari then instructed us to proceed with his case @ EIC.

Hari told us to follow his instruction in respect of his defence.

Johan and Revi told Hari that he will be cross-examine[d] by Ramesh after his EIC complete.

He must be prepared to answer Ramesh cross.

Hari said OK. He will know what to do.

115 The accused disputed this version of events as recorded by Mr Revi Shanker. The accused denied that he asked Mr Tiwary whether his client [*ie*, Babu] would say that he [*ie*, Babu] ordered one bundle upon his [*ie*, Babu's] instructions. Neither did the accused ask about Babu's defence. The accused explained that he already knew of Babu's defence because he had been denying any involvement all along. Mr Tiwary did not say that he would cross-examine him if he implicated his client. Mr Tiwary said: "Don't bite him. If you do, then I will get four or five witnesses to make sure that they will testify against you." The accused said that his previous counsel had also already known of Babu's defence prior to the lock-up meeting. In other words, there was no need to have a meeting in the lock-up just to ask what Babu's defence was as stated in the

lock-up meeting notes of Mr Revi Shanker because it was already known to both the accused and his previous counsel. The accused said he knew about Babu's defence much earlier and that was before the committal hearing on 30 October 2015. As early as 2014, the accused had already heard that Babu's defence was that he had nothing to do with this matter, *ie*, that he was not involved at all. The accused recalled an incident in December 2014, when during a video link PTC session, he personally met Babu for the first time as they were seated next to each other at the holding room whilst waiting for their video link to start for the PTC session. At that first personal meeting, Babu told him to accept all the blame and to leave him out of it. Babu told the accused, "Okay, let's fight this case together but when you are referring to your boss, don't say that I am the boss, say it's a Malaysian boss, refer to the boss as the Malaysian boss".¹⁷⁹ At that video link session, the accused did as instructed by Babu because the accused knew that Babu wanted to get out of the charge. Accordingly, the accused mentioned at the video link session that "The Babu I had been referring to is not this Babu".¹⁸⁰ The accused therefore exonerated Babu and accepted blame. Babu later hugged the accused and thanked the accused for doing so.

116 The accused did not have any reason to believe that Babu's position in relation to his defence would change from his initial position with the passage of time. In other words, the accused disputed his previous counsel's version of events. The accused maintained that it was not true that the accused had wanted to see Mr Tiwary in the court lock-up to ask him about Babu's defence before he started his examination-in-chief because the accused already knew Babu's defence prior to the lock-up meeting, contrary to what is stated in Mr Revi

¹⁷⁹ NE 24 May 2022 pg 5 lines 4 to 7.

¹⁸⁰ NE 24 May 2022 pg 3 lines 8 and 9.

Shanker's written notes of the lock-up meeting. Furthermore, it was confirmed during the lock-up meeting that Babu's defence remained that he had nothing to do with the drugs. The accused said he was aware of Babu's defence of total non-involvement with the drugs as early as 2014 and until the date of the lock-up meeting on 3 April 2019, he knew that Babu's defence remained unchanged because of Babu's messages through other people, which were relayed to the accused. According to the accused: "Everywhere I go, for interviews or any places that I go to, people, random inmates, even special ward inmates walked up to me and tell me, 'Why are you involving him in his, why don't you take the rap and let him go?' So I get this kind of messages quite often."¹⁸¹

117 The accused said that Babu had been putting pressure on the accused since 2014 by sending people to ask him to accept all responsibility and admit to the charge. The accused testified: "...all the inmates that belong to Babu's SS [Secret Society] group would embarrass me inside ... saying that I was doing the work of a ghost and say humiliating things to embarrass me. They were pressuring---pressurising me to accept all responsibility and to make sure that I vindicate Babu from it and accept all blames for this drug case."¹⁸² The accused said that he had even fought with the inmates who shared the same cell as Babu. The accused was frustrated because he ended up fighting with these people who came and disturbed him, asking him to let Babu off and nothing was being done about it by his previous counsel. When he told Mr Revi Shanker about it, Mr Revi Shanker would tell him there was nothing he could do as it was happening in the prison and the prison had to look into it.¹⁸³

¹⁸¹ NE 26 May 2022 pg 2 lines 27 to 30.

¹⁸² NE 24 May 2022 pg 2 lines 17 to 28.

¹⁸³ NE 26 May 2022 page 3 lines 3 to 12.

Failure to cross-examine certain Prosecution witnesses

118 In para 24 of Appendix 1 of the accused’s affidavit, the accused alleged that his previous counsel failed to cross-examine other Prosecution witnesses for example:

- (a) DSP William Tan
- (b) SSI David Ng
- (c) SSS Alwin Wong Kah Hung
- (d) SSgt Sunny Chien Lik Seong
- (e) Sgt Muhammad Helmi Abdul Jalai
- (f) Sgt Dadly Bin Osman

119 The response from Mr Johan was that the accused gave instructions not to cross-examine any other Prosecution witnesses except for three Prosecution witnesses as indicated in Mr Johan’s letter dated 16 March 2018 to the accused confirming the accused’s instructions that he wished his counsel to cross-examine only three of the Prosecution witnesses namely:¹⁸⁴

- (a) Tony Ng Tze Chian (“Mr Tony Ng”)
- (b) Yogaraj s/o Rangunathan (“Mr Yogaraj”); and
- (c) Shafiq Basheer (“Mr Shafiq Basheer”).

Questions not asked of Mr Shafiq Basheer

120 In relation to Appendix 2 of the accused’s affidavit on the questions that were not asked of Mr Shafiq Basheer, Mr Johan did not think that those questions were relevant. Mr Johan testified that he had asked Mr Shafiq Basheer

¹⁸⁴ Mr Johan’s affidavit at para 90 and page 58.

all the relevant questions that were needed to be asked as he thought fit to do so.¹⁸⁵

121 Each time Mr Johan completed his cross-examination of the Prosecution witnesses, he would check with the accused whether there were any other questions that he needed Mr Johan to ask. Once there was clear indication from the accused that there were no further questions that need to be asked, Mr Johan would then inform the court that he had no further questions.¹⁸⁶

Questions not asked of Mr Tony Ng and Mr Yogaraj

122 His previous counsel did not ask Mr Tony Ng about what the accused had told Mr Tony Ng about the drugs found in the Toa Payoh Flat. The accused testified as follows:¹⁸⁷

... And in my conversation with Tony, I never said that the drugs found in Toa Payoh was placed there by me but in Tony's statement, it said so like that. So I wanted my lawyer to ask Tony about it. And in one of the photos, one of the photo exhibits, you can see a picture of Tony writing something in his little book, Your Honour, pocketbook. And I asked my counsel to question Tony about what he was writing down. Even that, he didn't do. This was just outside the Toa Payoh flat.

...

When Tony was questioning me in the room in the Commonwealth flat, I was telling Tony that I didn't know how come there were three bundles. I was told only one bundle was coming and I was supposed to deliver that one bundle and there was a mistake about the two bundles and I was waiting for the phone call to clarify about it. I was explaining all this to Tony and I told this to my lawyers. It's written in the field book that I was supposed to only collect one bundle, Your Honour, traffic one bundle. And what I told, explained to Tony was written in the field book as such, that I was only to---expecting to traffic

¹⁸⁵ NE 12 September 2022 pg 88 lines 4 to 12. Mr Johan's affidavit paras 92 to 94.

¹⁸⁶ Mr Johan's affidavit at para 97.

¹⁸⁷ NE 26 May 2022 pg 79 lines 1 to 29.

in one bundle. And Tony was aware that I informed him that I was not going to traffic the two bundles but that is not stated in the field book. So I asked my lawyers to ask question from Tony about it, how come he only wrote part of what he asked me and left out the other part. When the MDP was taken from me, I had mentioned Babu but they didn't---at that point of time when the MDP was taken from me, they didn't show Babu's photo, but Babu's photo is identification because that was the first thing they showed me when I was arrested in the room at Commonwealth---and brought to the room at Commonwealth. But in the pocket book statement that when they take from---took from me, for the last question number 5, they showed me Babu's photo again and then---and there I mentioned Babu's name. So all this I told my lawyers to question that I was only shown the photo twice.

123 His previous counsel also failed to question Mr Yogaraj on what the accused had told Mr Yogaraj when the accused was with him in the room in the Commonwealth flat for about 45 minutes. According to the accused, the following was told to Mr Revi Shanker as to what he had said to Mr Yogaraj in the Commonwealth flat:¹⁸⁸

Honestly I was only supposed to only get one bundle. I do not know how two bundles came about. If you want, I give you this number. You can call this number and find out because I myself I'm waiting for the call.

124 When Mr Yogaraj was on the witness stand, Mr Revi Shanker was not present in Court. Mr Johan was the one who questioned Mr Yogaraj. Mr Johan did not ask Mr Yogaraj about it. Implied herein by the accused is a lack of coordination between Mr Johan and Mr Revi Shanker.

Evidence of Mr Johan and Mr Revi Shanker

125 In the affidavits of Mr Johan and Mr Revi Shanker, they affirmed that they had advised the accused after going through the accused's written

¹⁸⁸ NE 26 May 2022 pg 81 lines 24 to 27.

instructions. The accused accepted their advice. The accused further told them to ignore all his written instructions and focus instead on his defence that he was supposed to, and expected to receive, one bundle of heroin, but instead three bundles were delivered, which the accused put inside a red pail of rice. This defence was led in his evidence-in-chief and was in accordance with the accused's instructions.¹⁸⁹

126 I pause to note that the accused confirmed during his cross-examination by Mr Johan that the “gist” of his defence as characterised by Mr Johan was that he expected to receive or collect one bundle but three came instead. Out of those three bundles, one was for the accused to repack and send to Toa Payoh and he was waiting for instructions in relation to the other two bundles.¹⁹⁰ However, I wonder if the identity of the person who ordered the drugs and the identity of the person who was going to give further instructions to the accused on what to do with the other two bundles should also form a part of the “gist” of the accused's defence, having regard to the fact that the accused had insisted during the ancillary hearing that Babu was that person. In any case, I note at this juncture that the accused admitted when he was cross-examined by Mr Revi Shanker that Mr Revi Shanker *did not* compromise his defence during the trial but the accused testified that Mr Revi Shanker wanted the accused to run his defence in a certain manner such as to exonerate Babu by saying that Babu was not involved. The accused said that that was not the truth, and that asking the accused to do something in favour of Babu was not Mr Revi Shanker's “work” because Mr Revi Shanker, as counsel assigned to the accused, should have acted only in the accused's interest.¹⁹¹

¹⁸⁹ Mr Johan's affidavit at para 10; Mr Revi Shanker's affidavit at para 9.

¹⁹⁰ NE 26 May 2022 pg 92 lines 6 to 18.

¹⁹¹ NE 5 July 2022 pg 58 line 22 to pg 59 line 7; 6 July 2022 pg 42 lines 3 to 8.

127 When Mr Revi Shanker was cross-examined, it was put to Mr Revi Shanker that the accused had told him to follow the accused's written instructions and that the accused never told him to ignore the accused's written instructions. This was emphatically denied by Revi Shanker.¹⁹² Both Mr Johan and Mr Revi Shanker reaffirmed in their oral evidence what they stated in their affidavits and were firm in their testimony that the accused told them to ignore all his written instructions during the lock-up meeting.¹⁹³

128 I pause to note here that according to the evidence of the accused's previous counsel, the accused's instructions to ignore *all* of the accused's written notes and focus on running his defence (*ie*, that he was supposed to receive only one bundle of drugs) were given orally to them at the lock-up meeting which took place soon after the accused was called to elect whether he wanted to give evidence in his own defence upon the close of the Prosecution's case (*ie*, the standard allocution was administered).¹⁹⁴ The accused elected to give evidence. The court then adjourned at 11.33 am on 3 April 2019 on the application of Mr Johan. The previous counsel asked for permission to see the accused which was granted.¹⁹⁵ The lock-up meeting commenced at 11.45 am on 3 April 2019 according to the notes of the meeting taken by Mr Revi Shanker (see [114] above). Crucially the alleged instructions to ignore all the accused's written notes were given towards the end of that lock-up meeting, which was *immediately preceding* the commencement of the accused's evidence-in-chief

¹⁹² NE 13 September 2022 pg 57 lines 3 to 8.

¹⁹³ NE 12 September 2022 pg 52 line 8 to 9; pg 91 lines 28 to 29 (for Mr Johan's testimony); NE 13 September 2022 pg 54 lines 22 to 28 (for Mr Revi Shanker's testimony); see also Mr Johan's affidavit at para 6 and Mr Revi Shanker's affidavit at para 5.

¹⁹⁴ NE 3 April 2019 pg 10 line 3 to pg 12 line 14.

¹⁹⁵ NE 3 April 2019 pg 12 lines 6 to 10.

at 2.30 pm on 3 April 2019.¹⁹⁶ If true, this would be impactful on how the accused's evidence-in-chief would be led.

129 Upon realising the implications of their emphatic evidence that the accused had asked them to ignore *all* his instructions just prior to giving his testimony, Mr Revi Shanker subsequently clarified that it was not that he ignored all the accused's written notes or that whatever notes the accused had given to the previous counsel were not relevant.¹⁹⁷

130 I pause again to note that the emphatic evidence of his previous counsel in their affidavits and oral testimony to ignore all the accused's written instructions is directly contradicted by the minutes taken by Mr Revi Shanker of the lock-up meeting, which recorded:

... Ramesh left the room.

Hari then instructed us to proceed with his case @ EIC.

Hari told us to follow his instruction in respect of his defence.

Johan and Revi told Hari that he will be cross-examine[d] by Ramesh after his EIC complete. ...

[Emphasis added in bold]

This is important on the issue of credibility.

131 I pause again to observe that nothing in Mr Revi Shanker's notes indicates or suggests that the accused had instructed his previous counsel to ignore all or any part of his written instructions.

¹⁹⁶ NE 13 September 2022 pg 13 lines 1 to 20.

¹⁹⁷ NE 13 September 2022 pg 58 lines 6 to 9.

132 Both of the previous counsel denied that they refused to take any of the accused instructions as alleged by the accused in his affidavit. They denied asking the accused to take responsibility for all the three bundles of drugs. They also denied having any improper engagement with Babu’s counsel or with the accused family members. They denied taking any instructions from Babu’s counsel. Mr Johan denied having communicated the accused’s defence with Mr Tiwary. Mr Revi Shanker also denied telling the accused to say that the CNB officers induced the accused to implicate the co-accused. Mr Revi Shanker denied telling the accused that Babu would say that only one bundle of drugs was ordered, and that Babu would get other witnesses to say that the additional two bundles of drugs were “extras” that were not to be trafficked in. The further allegations in paragraphs [24] and [88] above were also denied by previous counsel. The previous counsel maintained that the accused never told them that Babu’s counsel wanted to speak to the accused about assisting Babu or that Babu only wanted to be let off.

133 When asked whether he told the accused that he wanted to save Babu’s life as well, Mr Revi Shanker initially said he could not remember,¹⁹⁸ and that he might have said it.¹⁹⁹ However, Mr Revi Shanker eventually accepted, after some prevarication, that he did tell the accused that he wanted to save Babu’s life based on the audio recording and the transcript²⁰⁰ of his conversation with Ms Kavitha and Ms Siroshini.²⁰¹ Later in his evidence, Mr Revi Shanker was clear that he had previously told the accused that he wanted to save both the accused’s life and Babu’s life, and he had also told the accused again in the

¹⁹⁸ NE 13 September 2022 pg 13 lines 2 to 4.

¹⁹⁹ NE 13 September 2022 pg 13 lines 15 to 19.

²⁰⁰ Exhibit C14.

²⁰¹ NE 13 September 2022 pg 13 lines 20 to 27.

lock-up meeting that he wanted to save both the accused's life and Babu's life.²⁰² Mr Revi Shanker sought to explain that it was his strong Christian belief that no life should be taken away and he wanted to save lives. He wanted to save both lives. But it did not mean that he would sacrifice the accused or compromise the accused's defence or position to save Babu.²⁰³ Mr Revi Shanker emphasised that they did run the defence of the accused in court and the accused's defence was that he was supposed to receive only one bundle but he received three bundles. The accused did not know why there were two extra bundles and he did not know what to do with them.²⁰⁴ The accused's instructions were that it was Babu who had ordered the bundle.²⁰⁵ Mr Revi Shanker agreed that he would have to prove that part of the accused's instructions that Babu had ordered the drugs.²⁰⁶

134 On the question whether Mr Revi Shanker had told the accused how he would save both the lives of both the accused and Babu, Mr Revi Shanker was adamant that he did not tell the accused how he would do it, in spite having had several meetings with the accused. Whereas in the audio recording, Mr Revi Shanker could be heard telling Ms Kavitha and Ms Siroshini how he would save both the accused's and Babu's lives despite after only meeting them once.²⁰⁷

135 Mr Revi Shanker also accepted that Mr Tiwary had told him that he (*ie*, Mr Tiwary) wanted to bring Alan, the accused's customer, as a witness if the

²⁰² NE 13 September 2022 pg 22 lines 16 to pg 23 line 28.

²⁰³ NE 13 September 2022 pg 13 lines 5 to 14; pg 13 line 28 to pg 14 line 2; pg 22 lines 1 to 11.

²⁰⁴ NE 13 September 2022 pg 11 line 30 to pg 12 line 4.

²⁰⁵ NE 13 September 2022 pg 12 lines 11 to 13.

²⁰⁶ NE 13 September 2022 pg 12 lines 11 to 26

²⁰⁷ NE 13 September 2022 pg 23 line 26 to pg 25 line 9.

accused were to implicate Babu as the one who ordered the drugs.²⁰⁸ Whenever Mr Tiwary saw Mr Revi Shanker in court, Mr Tiwary would say: “This is what I will do. You know, I’m going to bring these people, you know”.²⁰⁹ As it was of concern to both Mr Revi Shanker and Mr Johan, Mr Revi Shanker said that he conveyed Mr Tiwary’s message to the accused,²¹⁰ and they needed basically to protect the accused’s defence.²¹¹ Mr Tiwary gave an assurance that if the accused did not pinpoint or implicate Babu, then Mr Tiwary would not go after the accused.²¹²

136 With respect to the handwritten statement of the accused, the previous counsel said that the accused wanted to know if Babu’s counsel would use the handwritten statement to cross-examine him. Mr Johan checked with Mr Tiwary. Mr Tiwary informed the previous counsel that he would not be using the handwritten statement to cross-examine the accused. Mr Johan conveyed that information to the accused. The accused was satisfied and had no complaints about it. They then checked with the accused whether Mr Tiwary could continue to act for Babu and the accused had no objections.

137 Mr Revi Shanker had asked the accused at the conclusion of the accused’s evidence-in-chief, whether he had anything to say or tell the court besides what he had testified to earlier on both days that he was giving his evidence-in-chief and the accused answered “No”.²¹³ Further, the Prosecution

²⁰⁸ NE 13 September 2022 pg 28 lines 8 to 19.

²⁰⁹ NE 13 September 2022 pg 29 lines 4 to 6; lines 8 to 12.

²¹⁰ NE 13 September 2022 pg 29 lines 11 and 12.

²¹¹ NE 13 September 2022 pg 28 lines 24 to 31.

²¹² NE 13 September 2022 pg 37 line 26 to pg 38 line 6.

²¹³ NE 4 April 2019 pg 32 lines 23 to 26.

witnesses were cross-examined by Mr Johan based on the accused's instructions. At the conclusion of the cross-examination of each of the Prosecution witnesses, the accused was asked if there were any other questions to be asked and the accused did not express any reservations or complaints at that time.

138 At this juncture, it is pertinent to refer to the accused's explanation. The accused explained in his evidence at the ancillary hearing that when he was asked if he had anything to say, he was at a loss. Many things were not asked although the accused had already brought those things to the attention of his previous counsel, but they were repeatedly dismissive of him. The accused felt so frustrated that he did not want to say anything else. So he just left it as that.

Evidence of Mr Tiwary

139 Mr Tiwary basically denied having engaged improperly with either Mr Johan or Mr Revi Shanker although he had spoken to them about the case. Mr Tiwary also asserted that Mr Revi Shanker and Mr Johan had not communicated²¹⁴ or discussed²¹⁵ the accused's defence with Mr Tiwary.

140 Mr Tiwary said that he had never given any instructions (including instructions to speak to the family members of the accused) to the accused's previous counsel. Mr Tiwary said he had not told them that his client, Babu, would give evidence to say that he ordered one bundle of drugs or that if the accused did not assist Babu, then Babu would call at least five witnesses to give evidence at the trial that the accused had ordered the three bundles of drugs. While Mr Tiwary claimed not to have told the accused's previous counsel

²¹⁴ NE 15 September 2022 pg 28 line 19.

²¹⁵ NE 15 September 2022 pg 26 line 16 to 19.

anything along those lines, he accepted that he had subpoenaed a number of witnesses (three in total) from Changi Prison for the accused to identify when the accused was being cross-examined by him. Mr Tiwary denied having asked the accused to let Babu off.

141 With regards to the meeting at the lock-up, Mr Tiwary said that Mr Revi Shanker told him that the accused wished to see him in the lock-up and Mr Tiwary said: “Okay. I will meet him in the lock-up with you and Johan privately.”²¹⁶

142 Initially, Mr Tiwary said that he did not tell Mr Revi Shanker anything else.²¹⁷ Then when I asked Mr Tiwary why he agreed so readily without even asking Mr Revi Shanker why the accused wanted to see him in the lock-up, Mr Tiwary corrected himself and said he did ask why, and Mr Revi Shanker told Mr Tiwary that the accused wanted to see him in the lock-up to find out what Babu’s defence was.²¹⁸ I was puzzled why Mr Tiwary would even want to tell the accused so readily what Babu’s defence was because Mr Tiwary should simply cross-examine the accused without telling the accused what Babu’s defence was going to be. Mr Tiwary explained that he was prepared at that stage to be upfront about his cross-examination because he knew that he was going to ask him very difficult questions, put things to him and basically do his job as best as he could. Mr Tiwary did not want to do it in a cloak and dagger manner and he did not want to hold it back and spring the accused a surprise.²¹⁹

²¹⁶ NE 15 September 2022 pg 12 lines 18 to 20.

²¹⁷ NE 15 September 2022 pg 12 line 24 to pg 13 line 1.

²¹⁸ NE 15 September 2022 pg 13 lines 2 to line 6.

²¹⁹ NE 15 September 2022 pg 13 lines 26 to 30.

143 Mr Tiwary recalled the lock-up meeting to be follows:²²⁰

So I went in and the first thing I asked Mr Haridass was whether he wanted to see me. And I think he said yes or he wanted to talk to me, Your Honour. The exact words I cannot be sure. He wanted to see me or he wanted to talk to me. He said yes. I did tell him my client's defence ...

...

I told him what my defence --- my client's defence was.

144 Mr Tiwary further told the accused that he would have to cross-examine him and prove that the accused was lying but he (*ie*, Mr Tiwary) could not go into details.²²¹ The accused did not say anything in response to Mr Tiwary. Mr Tiwary then left the lock-up meeting, telling the accused, "You speak to your lawyers about this."²²²

145 According to Mr Tiwary, his purpose was actually to tell the accused what he (*ie*, Mr Tiwary) had to do and it was not something he enjoyed doing because he was damaging another person's defence.²²³ He wanted the accused to understand that it was not personal but that he was just doing his professional duty and that the accused's lawyers could do "the similar thing" to Babu.²²⁴

²²⁰ NE 15 September 2022 pg 19 lines 20 to 29.

²²¹ NE 15 September 2022 pg 20 lines 2 to 5.

²²² NE 15 September 2022 pg 20 lines 7 and 8.

²²³ NE 15 September 2022 pg 20 lines 8 to 11.

²²⁴ NE 15 September 2022 pg 20 lines 20 to 24.

Submissions of various parties

Legal principles with respect to inadequate legal assistance

146 The DPP submits that the legal principles with respect to inadequate legal assistance from trial counsel have been set out by the Court of Appeal in *Farid*. Mr Johan and Mr Revi Shanker agree with the DPP.

147 The Court of Appeal held that a two-step approach should be adopted for assessing claims by the appellant of inadequate legal assistance raised against the appellant's previous trial counsel when seeking to overturn an appeal against conviction. The first step is to assess counsel's conduct of the case and the second step is to assess whether the conduct affected the outcome of the case, in that it resulted in a miscarriage of justice.

148 For the first step, the court held at [135] to [137] that:

135 An appellant *seeking to overturn his conviction on the basis that he did not receive adequate legal assistance* must show that the trial counsel's conduct of the case fell so clearly below an objective standard of what a reasonable counsel would have done or would not have done in the particular circumstances of the case that the conduct could be fairly described as flagrant or egregious incompetence or indifference. In other words, the incompetence must be stark and glaring. Certainly, it will not be enough to show that some other counsel, especially eminent or experienced ones, would have taken a different approach or perhaps would have been more combative towards the Prosecution's witnesses. As long as counsel, whether at trial or on appeal, are acting in accordance with their clients' instructions, and in compliance with their duty to the court and their professional obligations, they must be given the deference and latitude in deciding how to conduct the case after studying all the evidence and the applicable law. Legitimate and reasonable strategic or tactical decisions do not come within the very narrow class of cases where inadequate assistance of counsel can be said to have occurred.

136 These considerations apply equally to counsel's conduct in the entire spectrum of his professional duties to his client in a criminal case – advising a client on whether to plead guilty or

to claim trial, whether to accept an offer made as part of plea bargaining, on matters prior to and during trial and also on whether to appeal and the grounds for doing so. It must be remembered that allegations made against previous counsel could subsequently also be made against present counsel if the present counsel are not able to secure the desired outcome for the client. In this manner, such collateral attacks against court decisions could go on almost indefinitely. They are collateral attacks because they do not engage the merits of the court decisions on the evidence or the submissions made but seek to impugn the decisions indirectly by alleging that the court did not have the full evidence before it or was given wrong information because of inept counsel. The court must therefore be astute to ensure that its processes are not abused by incessant applications to retry or to re-open concluded matters by using such collateral attacks on court decisions through the device of complaints against previous counsel for alleged incompetence and/or indifference.

137 Natural justice applies to the previous counsel of course and so, like anyone else accused of some wrong, he must be given notice of the allegations made against him and must have a reasonable opportunity to respond in writing and, where necessary, to attend and make submissions at the hearing where his conduct as counsel is an issue. [I]t is incumbent on the client to particularise the alleged failure on the part of his former counsel and to persuade the court that there is a real point that warrants remittal to the trial court. If the court is satisfied that the client's allegation against his former counsel has no substance in fact or does not meet the high threshold set out at [134]–[136] above, there will be no reason at all to exercise its power under s 392 of the CPC.

[emphasis added in italics]

149 For the second step, the court held at [138]–[139] that:

138 If inadequate legal assistance from previous counsel is proved under the first step in the inquiry, the second step is to show that there is a nexus between the counsel's conduct of the case and the court's decision in the matter in order to demonstrate a case of miscarriage of justice. The suggested standard required to show miscarriage of justice included "reasonable possibility" and "real possibility". ...

...

139 ... Our present situation involves an appellant contending on appeal that his trial counsel had failed him. As set out at [134]–[136] above, an appellant making such allegations

against his former counsel has a high threshold to cross. We think therefore that we need only to adopt the standard of “real possibility” in s 394J(6)(a) for such an appellant to meet in order to satisfy the court at the second step of the inquiry. An appellant who has established a case of inadequate legal assistance from his previous counsel must therefore also show that there is a real possibility that such inadequate assistance has caused a miscarriage of justice on the particular facts of the case.

150 The DPP submits that the above legal principles, and caution, laid down in the context of an appellant seeking to overturn his conviction on appeal are similarly applicable in cases such as this case, where the accused is now trying to rely on alleged inadequate legal assistance to: (a) be allowed to recall several Prosecution witnesses; and (b) have a “do-over” at giving evidence-in-chief in the main trial.²²⁵

151 Mr Hassan and Ms Chitra in their submissions on behalf of the accused (hereafter referred to as the “accused’s submissions”) accept that the accused had to show that the conduct of Mr Johan and Mr Revi Shanker amounted to flagrant or egregious incompetence or indifference, or in other words, that their incompetence was stark and glaring. The accused submits that the evidence before the court shows that the conduct of the accused’s previous counsel had fallen below the objective standard of what a reasonable counsel would have done or would not have done within the meaning as set out in *Farid*, in the particular circumstances of the case. The accused submits that his previous counsel’s conduct can indeed be described as flagrant or egregious incompetence or indifference, and their incompetence was stark and glaring.²²⁶

²²⁵ Prosecution’s Reply Submissions (“DPP’s reply submissions”) at para 5.

²²⁶ Submissions by the accused (“Accused’s submissions”) at para 17.

152 However, the accused submits that the second step appears to be irrelevant in the ancillary hearing as the present court has not made a “decision in the matter in order to demonstrate a case of miscarriage of justice”.²²⁷

153 In the joint reply submissions of Mr Johan and Mr Revi Shanker, the previous counsel argue that if this second step is irrelevant then the accused could not say that there was inadequate legal assistance given to him. That is because a miscarriage of justice will have to be shown for the accused’s defence to have been affected. As the accused had admitted that the previous counsel did run his defence, there could not have been inadequate representation.²²⁸

154 The DPP’s response to the accused’s submissions on this point is that the attempt to circumvent the second step entirely by asserting the irrelevance of the second step is based on a reading of *Farid* that is so narrow that it raises the question of what this entire exercise of a trial-within-a trial was for in the first place.²²⁹ The DPP adds that at this stage of the trial, it is unclear what exactly the additional evidence-in-chief from the accused will be, or how it will be relevant to his defence.²³⁰ According to the DPP, the accused is essentially asserting that inadequate representation by *Farid*’s standards, even if it did not impact the conduct of the case in court such as to result in any miscarriage of justice, is enough to allow him, “in the parlance of golf, to take a mulligan.”²³¹ The DPP submits that either *Farid* is applicable in its entirety, or it is not. The second stage – an assessment of whether there was a miscarriage of justice –

²²⁷ Accused’s submissions at para 15.

²²⁸ Reply Submissions of Johan Ismail & A Revi Shanker (“Previous counsel’s reply submissions”) at para 4.

²²⁹ DPP’s reply submissions at para 6.

²³⁰ DPP’s reply submissions at para 7.

²³¹ DPP’s reply submissions at para 8.

flows naturally from the findings of the court in the first stage. If there is no need to find a miscarriage of justice, then one must ask on what basis the accused is seeking a do-over of his evidence.²³²

155 The DPP’s position is that in any trial, once the Prosecution and defence have closed their respective cases, that is usually the end of the evidence. The calling of any evidence or witnesses after the close of the case *must* be based on the interests of justice. Section 283(2) of the Criminal Procedure Code 2010 (2020 Rev Ed) (the “CPC”) clearly states that the court must summon and examine or recall and re-examine such a person if it thinks the person’s evidence is essential to making a just decision in the case. Flowing from this, inadequate legal assistance must give rise to a real possibility of a miscarriage of justice to ground such an application.²³³ Without an assessment of how alleged inadequate representation impacts the prior conduct of the case, there is no reason for the court to reset the trial to an earlier stage and go through the whole of the evidence again from that point.²³⁴ The DPP emphasises in any event that, as noted by the Court of Appeal in *Farid* at [135], legitimate and reasonable strategic or tactical decisions do not come within the very narrow class of cases where inadequate assistance of counsel can be said to have occurred.²³⁵

Accused’s failure to particularise previous counsel’s actions complained of

156 The DPP submits that the accused has failed to particularise how exactly any of the previous counsel’s actions were starkly or glaringly incompetent, or

²³² DPP’s reply submissions at para 9.

²³³ DPP’s reply submissions at para 10.

²³⁴ DPP’s reply submissions at para 11.

²³⁵ DPP’s reply submissions at para 12.

had fallen outside of legitimate and reasonable strategic or tactical decisions.²³⁶ Even if the accused's previous counsel had indeed rendered inadequate legal assistance, the accused has failed to demonstrate how this has resulted in a real possibility of miscarriage of justice to him specifically or has adversely impacted his defence.²³⁷

In this connection, the DPP submits that from the evidence in the ancillary hearing, the accused's defence is clearly that he was only supposed to collect one bundle of drugs, but three bundles arrived. The DPP submits that the accused has conceded at para 36 of his submissions that his previous counsel ran precisely this defence at trial. In the circumstances, there exists no possibility of a miscarriage of justice in relation to his defence. Any concerns he might have about showing that Babu was involved in the transaction are irrelevant to his essential defence and, in any case, were clearly canvassed prior to the close of the Defence's case.²³⁸ The DPP urges the court to reject the accused's application to recall some of the Prosecution witnesses, and to give further evidence-in-chief in the main trial.²³⁹

Ineffective communication between the accused and his previous counsel

157 The accused submits that there was ineffective communication between him and his previous counsel because of their approach and attitude,²⁴⁰ which led to deficient legal services being rendered to him.²⁴¹ The accused submits that

²³⁶ DPP's reply submissions at para 13.

²³⁷ DPP's reply submissions at para 14.

²³⁸ DPP's reply submissions at para 15.

²³⁹ DPP's reply submissions at para 16.

²⁴⁰ Accused's submissions at para 19.

²⁴¹ Accused's submissions at para 23.

when he was conveying his instructions to Mr Johan, Mr Johan would often throw tantrums and show his anger. Mr Johan would also threaten him. For example, Mr Johan threw a pen and said “[y]ou think you’re very smart? Then you defend yourself. You want to discharge me? Go ahead.”²⁴²

158 The previous counsel’s response is that these allegations were not put to Mr Johan in cross-examination.²⁴³

159 The accused submits that Mr Johan was also dismissive towards the accused. The accused wanted a document setting out the links in the call logs to be tendered into evidence. When the accused gave the document to Mr Johan, Mr Johan said that it was “rubbish”.²⁴⁴

160 The previous counsel’s submission in reply was that the document setting out the links in the call logs were given to Mr Revi Shanker and not to Mr Johan. Mr Johan denied he had told the accused that it was “rubbish”. These allegations were similarly not put to his previous counsel during their cross-examination.²⁴⁵ Further, the previous counsel submits that the accused had instructed his previous counsel at the lock-up meeting to ignore all his notes (which therefore included the document in question that he had given to them) and to fight on with his defence.²⁴⁶

²⁴² Accused’s submissions at para 20.

²⁴³ Previous counsel’s reply submissions at para 7.

²⁴⁴ Accused’s submissions at para 21.

²⁴⁵ Previous counsel’s reply submissions at paras 8 and 9.

²⁴⁶ Previous counsel’s submissions at para 10.4.3; NE 12 September 2022 pg 52 lines 7 to 20.

161 The accused submits that he felt more comfortable speaking to Mr Revi Shanker and he gave most of his instructions to him because Mr Revi Shanker could converse in Tamil and acted as the “peacemaker” between the accused and Mr Johan. Mr Revi Shanker would say, “Okay, just give me whatever you want me to do, I’ll look into it”. But when the accused subsequently asked Mr Revi Shanker about it, he would either ignore his question or state that it was not necessary without any explanation.²⁴⁷

162 In the previous counsel’s reply submissions, these allegations are denied as the accused in his own evidence had stated that he met up with Mr Johan and not Mr Revi Shanker for most of the interviews.²⁴⁸

Accused deterred from discharging his previous counsel

163 When questioned on why he did not discharge his previous counsel if he was not satisfied with the legal services they provided, the accused replied that he was warned during a Pre-Trial conference that, “If you keep changing like this, we may not even end up assigning you a lawyer and [you] would have to do the case yourself.”²⁴⁹ There were several changes of counsel (see [3] above) before Mr Johan and Mr Revi Shanker were appointed as the accused’s assigned counsel. Therefore, the accused submits that he was afraid that if he discharged his previous counsel, he would not be assigned any lawyers and he would be unrepresented in the capital case.²⁵⁰

²⁴⁷ Accused’s submissions at para 22.

²⁴⁸ Previous counsel’s reply submissions at para 10.

²⁴⁹ Accused’s submissions at para 25.

²⁵⁰ Accused’s submissions at para 26.

164 The previous counsel respond in their reply submissions that the accused's fear was totally unfounded as the accused had on his own accord discharged Mr Rengarajoo after Mr Johan and Mr Revi Shanker had discharged themselves. This was before the accused was assigned his new counsel.²⁵¹

Lack of co-ordination between his previous counsel

165 The accused submits that because his previous counsel would often not attend the interviews with the accused together, instructions conveyed by the accused to one counsel, which must be communicated to the other counsel, were often not shared with the other counsel.²⁵² The accused refers to the following cross-examination of Mr Johan:²⁵³

Cross-examination of Mr Johan

Witness: There---there---there are things---there are certain things I do not know.

Court: Okay.

Witness: Okay. There are certain things like---let's took--let's think about, for example, the audio recording. There was a meeting at Mr Revi Shanker's office. I did not know that that it transpired, there was an arrangement. I do not know. I called---

Court: So in short, some you know, some you don't.

Witness: Some, yah, correct.

166 The accused submits that this was far from satisfactory, if not unsatisfactory, and amounts to deficient legal services rendered.²⁵⁴ What made

²⁵¹ Previous counsel's reply submissions at para 12.

²⁵² Accused's submissions at paras 27 and 28.

²⁵³ NE 12 September 2022 pg 12 lines 22 to 30.

²⁵⁴ Accused's submissions at paras 27 and 29.

it worse is that the previous counsel were going in different directions in terms of the accused's defence:²⁵⁵

Cross-examination of Mr Johan

Court: Okay. So you have this accused person. Mr A comes and say this strategy; Mr B comes and say a different strategy. You get this accused dealing with two defence counsel, two different strategy. What am I going to do?

Witness: Your Honour, when---when I do my cross-examination, I have already established what I want. The---the---the framework is being---satisfied. I mean, my view, Sir. I have already laid all the foun---foundation. As far as what is recorded here, it's recorded out of Court. I do not know. I---I won't dare to comment on this but as far as I heard whatever evidence in Court led by his evidence-in-chief, it's different. It's different from what we see here, Your Honour, what we read here; it's different. Evidence-in-chief---

Court: Whose is different? You mean the Haridass evidence-in-chief is different?

Witness: Evidence---evidence-in-chief runs to---according to the instruction, it's different, yes.

Court: Yes, according to instructions because---yes.

Witness: Correct. It's in sync, Sir, if I may say.

Court: Because according to Haridass, he decided not to follow Mr Revi Shanker's alternative strategy, you see.

Witness: That's what he says.

Court: That's why it came up to your strategy. He had to choose.

Witness: Yah.

Court: One to persuade him, one counsel say strategy A, one counsel, strategy B, and his evidence is actually the facts are more in line with strategy B. So eventually he didn't want to go for strategy

²⁵⁵ Accused's submissions at para 30; NE 12 September 2022 pg 47 line 27 to pg 49 line 28.

A and that's why he came to Court and come up with B which was what he says happen---

Witness: Which is---

Court: ---which is according to what was instructions to you.

Witness: ---my strategy, Sir---my strategy, Sir, my---my cross-examination and my put.

Court: Yes.

Witness: Yes. That I cannot comment, Sir, because I do not know what transpired in this---this meeting with---you know, based on what we read, yes.

Court: But you agree that will be a problem if one counsel A says---strategy A

Witness: Correct.

Court: ---to accused person, another one goes to strategy B---

Witness: I'm finished, Sir.

Court: ---the accused eventually has to decide on one anyway.

Witness: Yes. It's even worse for my case, Sir. I mean I do not know---then my put all for doing cross-examination will be all shattered, if Mr Revi Shanker were to go on a different---then a different line, Sir. It will not be the same as---it will not be in sync, Sir. It will even be worse. It will be a disaster.

167 The accused submits that he was advised in two directions. One would obviously undermine the other. Mr Revi Shanker allegedly did not inform Mr Johan about his direction of asking the accused to exonerate Babu. The accused submits that it is plain that the legal services rendered were deficient given the completely different directions that the two previous counsel were embarking on.²⁵⁶

²⁵⁶ Accused's submissions at paras 31 and 32.

168 The previous counsel assert in their reply submissions that there were no different directions taken by them in conducting the cross-examination of the Prosecution witnesses and the evidence-in-chief of the accused. Both were conducted along the same lines, *ie*, the accused was supposed to receive one packet of drugs but three came instead.²⁵⁷ No complaints were raised during the trial proper by the accused when he was giving his evidence-in-chief or when he was being cross-examined by Mr Tiwary.²⁵⁸ No evidence was adduced in court to show that Mr Revi Shanker had asked the accused to exonerate Babu. The accused had already implicated Babu in his statements to the IO.²⁵⁹ Mr Johan's cross-examination of the Prosecution witnesses during the trial and the evidence-in-chief of the accused were synchronised.²⁶⁰ Essentially, the submissions of the previous counsel are that the accused's defence was not compromised in court because his previous counsel had run the accused's defence in court as the accused instructed (as conceded by the accused in his submissions)²⁶¹ and implicated Babu at the trial.²⁶²

Lack of interest in adducing background evidence of Babu as the mastermind

169 The accused further submits that his previous counsel were not interested in showing any background as to how and why the three bundles of drugs were found in the accused's possession, which would in turn show that

²⁵⁷ Previous counsel's reply submissions at para 16.

²⁵⁸ Previous counsel's reply submissions at para 17.

²⁵⁹ Previous counsel's reply submissions at para 18.

²⁶⁰ Previous counsel's reply submissions at para 19.

²⁶¹ Accused's submissions at para 36.

²⁶² Previous counsel's reply submissions at para 20.

the accused was merely taking instructions from the mastermind, Babu.²⁶³ The accused's handwritten statement written on the instructions of Babu had a bearing on Babu's role as the mastermind.²⁶⁴ His previous counsel also failed to tender another document prepared by the accused showing links in the call logs ("call logs document"), which would show the extent of Babu's involvement in drug trafficking activities. Not only did Mr Johan tell him that the call logs document he prepared was "rubbish"; when the accused instructed Mr Revi Shanker to tender the call logs document in evidence, Mr Revi Shanker said he would tender it during the accused's evidence-in-chief but he failed to do so.²⁶⁵ The previous counsel's response in their reply submissions is that the accused had instructed them to ignore the document.²⁶⁶

Previous counsel's verification with accused when his evidence-in-chief ended

170 In so far as Mr Revi Shanker had asked the accused in court if he had anything else he wished to say during his evidence-in-chief (to which the accused had answered there was none), the accused submits that his previous counsel did not inform him that they would be asking such a question. Being unprepared for it and with no prior explanation as to what to expect during his evidence-in-chief, the accused would not have an in-depth understanding of the question.²⁶⁷

²⁶³ Accused's submissions at paras 37 and 38.

²⁶⁴ Accused's submissions at para 39.

²⁶⁵ Accused's submissions at para 41.

²⁶⁶ Previous counsel's reply submissions at para 24.

²⁶⁷ Accused's submissions at paras 42 and 43.

Failure to cross-examine the Prosecution witnesses on the recording of the accused's statements

171 The accused in his submissions sets out at length some of Mr Tiwary's questions to show that the accused was consistently questioned on why certain matters were not mentioned in his statements. The accused said that he had informed the recording officers of those matters, but they did not record them down. He did not know why they were not recorded down or why his previous counsel did not cross-examine the recording officers accordingly. The cited portions of Mr Tiwary's cross-examination of the accused are as follows:

Cross-examination of the accused by Mr Tiwary²⁶⁸

Q Did you tell the CNB officer, 'Babu then told me to repack one of the packet'?

A I did.

Q What else did you tell the CNB at paragraph 23?

A I even told the officer that Babu told me to keep---hold on to the other two packets and he will tell me what to do.

Q Okay. Now this part that you told the CNB officer, the recording officer, that you told Babu that you had picked up three, and Babu told you to repack one and to keep two to await his instructions. All that is not in paragraph 23, do you agree with me?

A I'm aware that what I have---I had mentioned to the officer is not here in paragraph 23.

Q When did you become aware that it is not in paragraph 23?

A After I received this bundle.

Q Before the commencement of this trial.

A Yes, after the PI---when I got my PI bundle.

Q Can you explain why this part is not in the statement?

²⁶⁸ NE 3 May 2019 pg 52 line 25 to pg 53 line 15.

A I--I did tell the IO and I wasn't aware whether the IO had included it in the statement. I think the IO must be asked why he didn't include it.

Q IO must be asked. Only the IO wasn't asked why in Court, do you know that?

Interpreter: Sorry?

Q IO wasn't asked why?

A I had explained all these to my lawyers early on.

Cross-examination of the accused by Mr Tiwary²⁶⁹

Q Yes, but it says here 'from Babu.' So did you say 'for Babu' or did you say 'from Babu'?

A I told him in Tamil that I was taking all these for Babu.

Q I see.

A I don't know how he recorded it in English.

Q I see. So, actually, you told Mr Yogaraj you were taking it for Babu, but Mr Yogaraj for some reason connived to say 'from Babu'?

A Yes.

Q Yes. And you were speaking in Tamil?

A That's right.

Q When Mr Yogaraj gave evidence, there was no such evidence. He was not questioned on this at all, do you know?

A I don't know why it was not asked of him. I already explained to my lawyer, whether my lawyer asks him or not, I don't know.

Cross-examination of the accused by Mr Tiwary²⁷⁰

Q We know that and you have parroted it often enough. But let me ask you what's in the statement. Is there anywhere in this statement, 'I did not know how many I

²⁶⁹ NE 3 May 2019 pg 61 lines 7 to 20.

²⁷⁰ NE 3 May 2019 pg 74 line 8 to pg 75 line 1.

was going'---I did not know I had to collect so many', anywhere in this statement?

A Nothing like that has been recorded.

Q So the IO told you this but---you told the IO this but it's not recorded?

A Yes, I told the IO I was only expecting one.

Q Now did you tell the IO – 'he' referring to Babu – did not say about the amount of heroin---

A I---

Q ---or the number of packet of heroin he had arranged for? Did you say this to Mr Shafiq Basheer?

A I did not say this.

Q You never said this to the investigating officer at all?

A I didn't say it to mean it such.

Q Never mind what you mean it such or mean it such not. Did you say this to the investigating officer? Mr Haridass, stop prefabricating.

A I did not say this.

Q That's the truth of the matter, according to you in Court now, right?

A I didn't say this.

Q So the IO inserted this – Mr Shafiq Basheer?

A How can I answer for him? How am I to say whether he inserted it or not?

Q If you didn't say and it's there then the IO must have inserted it, it cannot appear there by magic.

A Then you must ask him that.

Q I'm sure your lawyers will do that. I don't have to do that.

Cross-examination of the accused by Mr Tiwary²⁷¹

²⁷¹ NE 29 May 2019 pg 51 line 27 to pg 52 line 10.

- Q So my question is: When you were giving this statement to the IO, did you tell the IO ‘Babu told me I would only get 5 years’ imprisonment’?
- A Yes, I did tell him.
- Q Okay, but that is not recorded in paragraph 5.
- A That’s right.
- Q Fine. Can you explain how this does not appear in paragraph 5 if you did tell the IO this?
- A Maybe the IO left it out.
- Q Right. So you don’t know why the IO left it out?
- A I---I don’t know why he did it, what was the reason.
- Q So my question to you is that when the IO was giving evidence in Court, you heard his evidence, you knew that this part was not in the statement, but the IO was never asked this question why this part was left out of paragraph 5?
- A I---I have already discussed the matters with my lawyers. I can’t recall whether they asked him this question. So I---I cannot answer that.

172 Due to his previous counsel’s failure in asking the recording officers on their omissions in putting down what the accused had told them in his statements, the accused submits that the above is clear evidence of deficient legal services²⁷² that had greatly affected the accused’s defence and credibility.²⁷³

173 In response, the previous counsel submit that the new counsel did not lead evidence at this ancillary hearing to establish what were the inaccuracies with regard to the accused’s statements. No documents were admitted to show

²⁷² Accused’s submissions at para 65.

²⁷³ Accused’s submissions at para 66.

where the previous counsel had faltered with respect to the alleged inaccuracies of the accused's statements.²⁷⁴

Meeting in the Supreme Court's lock-up on 3 April 2019

174 Relying on the accused's own version of events, the accused submits that it is completely inappropriate for his two previous counsel to have agreed to and arranged the meeting with Mr Tiwary in the lock-up at the High Court as their respective defences were "cut-throat" defences.²⁷⁵ It was a last ditch effort by the previous counsel to persuade the accused to exonerate Babu.²⁷⁶

175 The previous counsel submit, based on their version of events, that the meeting at the lock-up took place at the request of the accused and Mr Tiwary had corroborated this.²⁷⁷ The accused's instructions were that he wanted to know from Mr Tiwary what Babu was going to say. At the lock-up, the accused heard from Mr Tiwary that Babu was not going to support the accused's defence. After Mr Tiwary left the lock-up, the accused thereafter told his previous counsel to fight on with the accused's defence that he was supported to receive one bundle of drugs but instead three bundles came.²⁷⁸

176 The accused submits that the previous counsel's testimony that the lock-up meeting was arranged because the accused wanted to speak to Mr Tiwary to

²⁷⁴ Previous counsel's reply submissions at para 35.

²⁷⁵ Accused's submissions at paras 45, 46, 50 and 57.

²⁷⁶ Accused's submissions at para 49.

²⁷⁷ Previous counsel's reply submissions at para 30.

²⁷⁸ Previous counsel's reply submissions at para 29.

find out Babu's defence is illogical.²⁷⁹ There is no need for the accused to ask Mr Tiwary because the accused already knew what Babu's defence was.²⁸⁰

177 The accused's submissions set out briefly the various versions from different witnesses of what transpired at the lock-up meeting:

- (i) The accused's version – Mr Tiwary had informed the accused not to implicate Babu. ***If*** he does not implicate Babu, Babu will then come to support the accused's defence.²⁸¹
- (ii) Mr Johan's version – Mr Tiwary did all the talking, saying that ***if*** the accused implicated Babu, he would cross-examine the accused and show that the accused was a liar. Thereafter, Mr Tiwary left. The accused told Mr Johan to fight on and to ignore all of his notes.²⁸²
- (iii) Mr Revi Shanker's version – Mr Revi Shanker took attendance notes of the meeting. His attendance notes stated that the accused had asked Mr Tiwary what Babu's defence was. Mr Tiwary replied that his client had nothing to do with the drugs; and ***if*** the accused implicated his client, he would cross-examine the accused to show that he is a liar.²⁸³ In cross-examination, Mr Revi Shanker claimed that the accused told them to run his defence and that they had all his notes.²⁸⁴ Mr Revi Shanker

²⁷⁹ Accused's submissions at para 47.

²⁸⁰ Accused's submissions at para 48.

²⁸¹ Accused's submissions at para 51(i).

²⁸² Accused's submissions at para 51(ii).

²⁸³ NE 13 September 2022 pg 83 line 26 to pg 84 line 5.

²⁸⁴ Accused's submissions at para 51(iii).

testified that after Mr Tiwary left, the accused said “Run my defence. You know all my notes, carry on”.²⁸⁵

- (iv) Mr Tiwary’s version – The accused did not say anything to Mr Tiwary.²⁸⁶ He informed the accused of his client’s defence. Thereafter, he told the accused to speak to his lawyer and left.²⁸⁷

178 In analysing which version of events is to be believed, the accused submits that at some point of time prior to the lock-up meeting, there was a discussion for the accused to exonerate Babu. If it were otherwise, there would be no point in Mr Tiwary telling the accused not to implicate Babu, which was just before the start of the accused’s evidence-in-chief, when at all material times the accused was going to implicate him. .²⁸⁸ Why was there a need for Mr Tiwary to inform the accused that *if* (see [177] above) he did implicate Babu, he would cross-examine the accused to show that he is a liar? The accused submits that the word “if” suggests that there was an alternative, *ie*, for the accused to exonerate Babu.²⁸⁹

179 Mr Johan’s version of events is that the accused had told them to ignore his notes and fight on. However, the accused submits that it is illogical for the accused to tell Mr Johan to ignore his written notes (given to his previous counsel as instructions) when there was no change in his defence. His written

²⁸⁵ NE 13 September 2022 pg 84 lines 7 to 14.

²⁸⁶ NE 15 September 2022 pg 21 lines 4 and 5.

²⁸⁷ Accused’s submissions at para 51(iv); NE 15 September 2022 pg 19 line 28 to pg 20 line 14; pg 21 lines 4 to 10.

²⁸⁸ Accused’s submissions at paras 52 and 53.

²⁸⁹ Accused’s submissions at para 52.

notes would be relevant to his defence.²⁹⁰ Notably, the attendance notes recorded by Mr Revi Shanker omitted this crucial detail of an alleged instruction from the accused to ignore all of his written notes.²⁹¹

180 The accused submits that it is more than likely that the said meeting was arranged to persuade the accused not to implicate Babu.²⁹² If the versions of the previous counsel are to be believed, there is absolutely no need for the lock-up meeting as it would serve no purpose. The accused already knew what Babu's defence was.

Grave Misconduct on the part of Mr Revi Shanker as evidenced in the audio recording

181 It is not disputed that Ms Siroshini had secretly recorded on her handphone a conversation between Mr Revi Shanker, Ms Kavitha and herself that took place in the office of Mr Revi Shanker on 1 April 2019, which was *before* the lock-up meeting on 3 April 2019. Although Ms Siroshini insisted based on her memory of the events that the recording was done *after* the lock-up meeting and the reason for her secretly recording the conversation was because of what had emanated from the lock-up meeting, that turned out to be untrue.

182 With events that occurred so long ago, I am not surprised that Ms Siroshini misremembered the date of the lock-up meeting and was confused on this part of her evidence. Fortunately, Ms Kavitha was able to testify confidently based on her handphone records that the meeting with Mr Revi Shanker took

²⁹⁰ Accused's submissions at para 54.

²⁹¹ Accused's submissions at para 55.

²⁹² Accused's submissions at para 56.

place on 1 April 2019. In my view, what is most important is not the accuracy of the actual date of the audio recording, but the contents of the audio recording of that meeting, which remain undisputed. Mr Revi Shanker, after considering the matter, rightly decided not to challenge the authenticity of the audio recording of what transpired at that meeting, although he took issue with the fact that it was recorded without his knowledge.

183 At my direction, the contents of the audio recording were transcribed and interpreted (where necessary) by the Supreme Court Interpreters' Section.

184 The accused submits that the audio transcript clearly evidences grave misconduct on the part of Mr Revi Shanker (*ie*, amongst other things, in advising the accused not to implicate Babu when the accused's instructions to his counsel were that Babu was involved in the drug transaction and that Babu – not the accused – had ordered the drugs from one “Boy”) amounting to deficient legal services being rendered to the accused.²⁹³ In the transcript, the “Male Speaker” refers to Mr Revi Shanker. “Female Speaker 1” is Ms Kavitha and “Female Speaker 2” is Ms Siroshini. The parts highlighted in green refer to Mr Revi Shanker speaking on the mobile phone with Mr Johan separately, and the parts highlighted in yellow refer to the Female Speakers 1 and 2 speaking with each other while Mr Revi Shanker was still on his mobile phone talking to Mr Johan.

185 When Mr Hassan cross-examined Mr Johan, Mr Johan insisted that he was unaware of the conversation that Mr Revi Shanker had with Ms Kavitha and Ms Siroshini on 1 April 2019 before the secret audio recording surfaced and

²⁹³ Accused's submissions at para 68.

that Mr Revi Shanker never told him about it.²⁹⁴ Based on this, the accused submits that he was advised by his two previous counsel in two different directions (one of which was Mr Revi Shanker's advice to the accused not to implicate Babu in exchange for support from Babu, which Mr Johan claims he was completely ignorant of at all material times).²⁹⁵ In these circumstances and given the transcript of the audio recording and the oral evidence, the accused submits that clear evidence has been shown of deficient legal services.²⁹⁶

186 Mr Johan admitted in his testimony that the accused's instructions to him were that the accused never ordered the drugs from "Boy".²⁹⁷ Yet in the audio recording, Mr Revi Shanker could be heard telling Ms Kavitha and Ms Siroshini that: "Eventually, he (*ie*, the accused) [is] going to die. If he now gonna cooperate, saying that yes, I ordered it from Boy, then Babu can support him".²⁹⁸

Accused's handwritten statement dated 3 March 2016

187 The accused submits that as early as 16 November 2016, the accused had informed another of his previous counsel, Mr Sunil, of the existence of the accused's handwritten statement that the accused had given to Mr Tiwary. Mr Sunil testified that he had recorded in his own notes dated 16 November

²⁹⁴ NE 12 September 2022 pg 17 line 17 to pg 18 line 25.

²⁹⁵ Accused's submissions at para 72.

²⁹⁶ Accused's submissions at para 74.

²⁹⁷ NE 12 September 2022 pg 12 lines 18 to 22.

²⁹⁸ Exhibit C-14 - Audio File Reference <AUD-20201207- WA 0006> at pg 4 lines 9 to 11.

2016 following a tele-visit that the accused had a copy of the handwritten statement that he gave to Mr Tiwary.²⁹⁹

188 Mr Sunil said that the accused had not told him that he wanted this handwritten statement admitted in court as they did not get that far in the instructions.³⁰⁰ Mr Sunil also could not remember any explicit instruction from the accused to have his written statement admitted as evidence.³⁰¹

189 Upon reviewing his file and based on his notes, Mr Sunil testified that the accused was trying “to flush out Babu”.³⁰² The accused told Mr Sunil that Babu played him out, and that Babu was the controlling mind behind the handwritten statement and persuaded the accused person to write it.³⁰³ This handwritten statement basically exonerated Babu completely of the offence.

190 The accused submits that he wanted to rely on the handwritten statement to show that Babu was the mastermind; and that he was coerced by Babu into making the handwritten statement in order to exonerate him (*ie*, Babu). That was why the accused had informed Mr Sunil that he wanted to “flush out Babu”.³⁰⁴ The accused wanted the handwritten statement to be admitted as evidence.³⁰⁵

²⁹⁹ NE 8 September 2022 pg 6 lines 8 to 19.

³⁰⁰ NE 8 September 2022 pg 6 lines 20 to 25.

³⁰¹ NE 8 September 2022 pg 7 lines 12 to 15.

³⁰² NE 8 September 2022 pg 6 lines 27 to 29.

³⁰³ NE 8 September 2022 pg 6 line 29 to pg 7 line 11.

³⁰⁴ Accused’s submissions at para 77.

³⁰⁵ Accused’s submissions at para 76.

191 When asked why he had discharged himself from acting for the accused on 4 May 2017, Mr Sunil explained as follows:

On the 29th of April 2017, the accused person and I met for a Prison visit, and he told me that there will be allegations that he wanted to make against Mr Ramesh Tiwary. And he gave me the details of the meetings he had with Ramesh Tiwary. Ramesh Tiwary is a personal friend of mine, and as a result of that, given the nature of what he was disclosing on the 29th of April 2017, I told him that I would have to discharge. That's why we applied before Your Honour actually.³⁰⁶ ...

...

Mm, from what I recall, the accused person said he met Ramesh Tiwary on four occasions, and there were various discussions during those four occasions, and it would require me having to, well, put---cross-examine Mr Ramesh Tiwary about those particular meetings. I didn't want to go there.³⁰⁷ ...

192 Mr Sunil read out the following from his notes taken on 29 April 2017 and said that he would have needed to cross-examine Mr Tiwary on (a) why Mr Tiwary was seeing the accused³⁰⁸ when the accused was not represented;³⁰⁹ (b) Mr Tiwary's involvement in obtaining the handwritten statement exonerating Babu from the accused;³¹⁰ and (c) the circumstances that led to the statement being written by the accused³¹¹ on the instigation of Babu and based on information fed to the accused by Babu:³¹²

Mr Sunil reading out in court his written notes taken on 29 April 2017

³⁰⁶ NE 8 September 2022 pg 7 lines 19 to 25.

³⁰⁷ NE 8 September 2022 pg 8 lines 10 to 13.

³⁰⁸ NE 8 September 2022 pg 9 lines 28 and 29.

³⁰⁹ NE 8 September 2022 pg 25 line 30 to pg 26 line 4.

³¹⁰ NE 8 September 2022 pg 10 lines 8 and 12; pg 25 lines 15 to 25.

³¹¹ NE 8 September 2022 pg 19 line 7 to pg 20 line 4.

³¹² NE 8 September 2022 pg 25 line 15 to pg 26 line 1.

Tiwary came to see the accused person on four occasions. Mm, the point that came up was that Babu was giving the idea about the letters. Mm, the accused person told me that---that he told Ramesh Tiwary that Babu gave the idea for the statements. Ramesh Tiwary was aware that Babu told Ramesh Tiwary:

“Once Babu out of capital charge, then Ramesh Tiwary would act for the accused.”

Ramesh Tiwary told the accused that’---

I---I can’t---I can’t decipher this. I wrote here:

‘RT told A.’---full stop---‘Babu also told A.’---full stop---‘Ramesh’---‘The accused person also told me that Ramesh Tiwary said he would go to the DPP and convince the DPP to drop against Babu and help the accused person after. The accused asked:

“What fight for?”

And Ramesh Tiwary said:

“Take case, then see.”

But the intention was to save Babu by Ramesh Tiwary.”³¹³

...

‘The main thing is for Ramesh Tiwary to get the statements. Babu gave’---context of---sorry---‘Babu gave content. Babu, during video-link started brainwashing accused. Babu said “Cannot say not yours”, and asked the accused person to take the blame.’

I wrote here:

‘A pulled back in para 92.’

I can’t remember what ‘92’ means.

‘Babu said he will help the accused, but the accused heard that Babu will get help and get Ramesh Tiwary if accused person accepted drugs.’

And then after that, he said:

‘Babu, bastard me.’

That means, ‘played out’.³¹⁴

³¹³ NE 8 September 2022 pg 9 lines 12 to 27.

³¹⁴ NE 8 September 2022 pg 26 lines 9 to 22.

193 The accused refers to the following portions of the notes of evidence to submit that at the material time, he wanted his handwritten statement to be admitted into evidence given the nature of his discussions with Mr Sunil that led eventually to Mr Sunil applying to discharge himself:³¹⁵

Examination-in-Chief of Sunil³¹⁶

Court: Okay, let me ask Mr Sunil this: You see, you discharged yourself because you might have to cross-examine Mr Tiwary. Right?

Witness: I would have to.

Court: Would have to. And for that, it would all be all about the statement, right? And if the statement doesn't come into the picture, there would have been no need to cross-examine Mr Tiwary and there would have been no need for you to discharge. Correct? [S]o if I ask myself this question---I need to ask myself this question: You discharged yourself because you might have to cross-examine Mr Tiwary. And so, would the statement have to go in?

Witness: Looks like it.

Court: So therefore, from that logic, then obviously, the accused would want the statement to be in, in the sense that he would want you to cross-examine Mr Tiwary on it. So it's all linked up, right? You can't have one without the other. Right? The fact that you discharged because you had to cross Mr Tiwary is a known fact, you know. So then the fact that is floating is, whether or not the statement would have to go in. You put the two and two together, would the statement have to go in? It seems so, right?

Witness: Seems so.

Court: So therefore, the logic is that, the statement that he would have wanted you to cross Mr Tiwary on, and therefore, he would have wanted the statement to go in. From that logic, right? Try to recall, would that not be the case? Because it's

³¹⁵ Accused's submissions at para 81.

³¹⁶ NE 8 September 2022 pg 15 line 13 to pg 17 line 12.

one known fact, you see, and from one known fact, you postulate. Because the other fact is a floating one. But it's tied. It's like the hour hand and the minute hand. One has to run, and the other one has to run at the same time. I mean, you know, it's related in a certain way. So I am trying to think of it from that---through another way of analysis, to ask you the question.

Witness: But, ultimately, Your Honour, I think this statement, if it were to go in, it will be for the accused to explain why he made the statement, and whether what he stated inside the statement is true or not.

Court: Yes, yes, yes. But the statement will have to come into Court, right---

Witness: Yes.

Court: ---to explain all these things, you know, about why Mr Tiwary was---would be involved, to be cross-examined. What would Mr Tiwary be cross-examined on? On the statement that was given to him, and therefore, the statement would have to come to the Court, right? So did the accused tell you that he also wants Mr Tiwary to be cross-examined, and that's why you had to discharge?

Witness: No, he didn't. I told him that based on what he told me, I would need to cross-examine Tiwary.

Court: And for that, you told him that you would have to cross Mr Tiwary?

Witness: If I have to cross---

Court: From what he tells you?

Witness: Yah, that's right, Your Honour.

Court: So he did---did he or did he not specifically tell you he wants Mr Tiwary to be cross-examined, and all the whole---or is it your own analysis of what you might have to do?

Witness: Your Honour, this is my analysis. I mean, the case theory is that, if there is this statement that was induced from him by whatever reasons, and it is not truthful, he needs to explain it. The circumstances behind the deriving of this statement would need to be gone into. That

involves the four meetings that the accused person had with Tiwary, and therefore, I must cross Tiwary.

194 The accused submits that he had maintained the same position with his previous counsel (*ie*, Mr Johan and Mr Revi Shanker) in wanting the handwritten statement admitted into evidence, but his previous counsel failed to follow his instructions to do so.³¹⁷ The accused submits that Mr Johan's evidence that the accused did not instruct Mr Johan to admit the handwritten statement in evidence is not believable. The accused submits that he wanted the handwritten statement admitted in court to show that he had written the statement on the instructions of Babu and in that way, he sought to show that Babu was the mastermind and that he had been acting on Babu's instructions on the day of his arrest.³¹⁸

195 On the other hand, the previous counsel submit that no instructions were given by the accused to admit his handwritten statement.³¹⁹

196 Mr Johan testified that the accused just told him that he had given a statement to Mr Tiwary and that was all.³²⁰ Mr Johan said that the accused did not instruct him to admit the handwritten statement and was in fact happy that neither the Prosecution nor Mr Tiwary would be relying on it.³²¹

³¹⁷ Accused's submissions at para 82.

³¹⁸ Accused's submissions at paras 85 and 86.

³¹⁹ Previous counsel's submissions at para 13.3.1; NE 13 September 2022 pg 43 lines 1 and 2.

³²⁰ NE 12 September 2022 pg 53 lines 24 to 26.

³²¹ NE 12 September 2022 pg 64 lines 21 to 25.

197 The previous counsel submit that after Mr Johan had confirmed with the Prosecution and Mr Tiwary that they did not intend to use the handwritten statement, it became a “non-issue or non-starter”.³²²

198 According to Mr Johan, he had told the accused: “Don’t put it (*ie*, the handwritten statement) in”.³²³ However, it is unclear whether the accused had in fact first asked Mr Johan to put it in, but Mr Johan advised him against it. The previous counsel contend that the accused was advised on the implication of admitting the handwritten statement and that the accused was “happy with it” because Mr Tiwary was not using the handwritten statement.³²⁴ If the accused had insisted on using his handwritten statement, Mr Johan said he would “know what to do” (*ie*, discharge himself) but he did not tell the accused that.³²⁵ In the end, the handwritten statement was not adduced in evidence.

199 The previous counsel submit that if admitting the accused’s handwritten statement as evidence was so important to the accused, it is curious why the accused did not raise it during his evidence-in-chief. They highlight that when Mr Revi Shanker had asked the accused whether he had anything else to say at the conclusion of the accused’s examination-in-chief, the accused said no.³²⁶

³²² Previous counsel’s submissions at para 12.16.4.

³²³ NE 12 September 2022 pg 63 line 29.

³²⁴ Previous counsel’s submissions at para 12.2.1; NE 12 September 2022 pg 63 line 29 to pg 64 line 9; pg 64 lines 21 to 25.

³²⁵ NE 12 September 2022 pg 64 lines 1 to 7.

³²⁶ Previous counsel’s reply submissions at para 44.

Babu's statement

200 The previous counsel submit that the accused had not given any instructions to incorporate Babu's statement into the Agreed Bundle.³²⁷ Furthermore, the previous counsel said they did not have a say on incorporating Babu's statement into the Agreed Bundle.³²⁸ The question should be directed to the co-accused's counsel and the Prosecution.

Concluding submissions

201 The accused submits that in all the circumstances, the previous counsel had rendered deficient legal services by ignoring the accused's instructions and not rendering proper legal advice. They were simply indifferent towards the accused.³²⁹ In conclusion, the accused submits that the deficient legal services were interlinked and cover a wide range, including the lack of proper communication with the accused, a failure to take the accused's many instructions and advising the accused on running two inconsistent defences. An aggravating factor is the severity of the charge the accused was facing.³³⁰ The undisputed audio recordings and its transcript are self-explanatory and represent plain and clear evidence of deficient legal services rendered by the previous counsel.³³¹ Both previous counsel were equally responsible for the deficient legal services given their roles as lead counsel and assisting counsel then acting

³²⁷ Previous counsel's submissions at para 12.6.1; NE 12 September 2022 pg 74 lines 6 to 14.

³²⁸ Mr Johan's affidavit at para 74 and Mr Revi Shanker's affidavit at para 64.

³²⁹ Accused's submissions at para 61.

³³⁰ Accused's submissions at paras 91 and 92.

³³¹ Reply by the accused ("Accused's reply submissions") at paras 8 and 11.

for the accused.³³² They were liable jointly and severally and vicariously according to the accused.³³³

202 In response, the previous counsel both jointly submit that the allegations of the accused are baseless and were afterthoughts that arose when, amongst other things, Babu's charge was reduced to trafficking in not less than 9.99 grams of diamorphine (which Babu accepted), whereas the offer to the accused by the Prosecution was to charge the accused for trafficking in not less than 14.99 grams of diamorphine.³³⁴ The previous counsel submit that the accused was essentially unhappy that the Prosecution did not give him an offer to plead guilty to the same reduced trafficking charge as Babu.³³⁵

My decision and findings

203 After evaluating the testimonies of the various witnesses in the long ancillary hearing (which I have set out in detail in this judgment) and after considering the submissions of the various parties (which I have also set out in detail in this judgment), I now make my findings and explain my decision to allow the accused to recall certain Prosecution witnesses for further cross-examination, to give further evidence-in-chief and to call additional witnesses (if any) to testify in his defence.

³³² Accused's reply submissions at para 12.

³³³ Accused's reply submissions at para 13.

³³⁴ Previous counsel's reply submissions at para 47.

³³⁵ Previous counsel's reply submissions at para 48.

Relevant legal principles

204 I do not agree that (a) the legal principles and the legal standards as set out in *Farid* with regards to establishing inadequate legal assistance as a ground of appeal; and (b) the two-step approach for assessing claims by an appellant of inadequate legal assistance when seeking to overturn an appeal against conviction, are applicable to a situation of an on-going trial, where no decision has yet been rendered by the trial court. Understandably, there will have to be a relatively high threshold when seeking to overturn a trial court's decision as in *Farid*. But I do not think that the same high threshold should similarly be imposed on the accused. Unlike the case of *Farid*, the accused here is not seeking to overturn his conviction. He is still in the process of adducing evidence in support of his defence at the trial. His case has not closed yet.

205 At trial, the situation is frequently very fluid. Not every situation can be anticipated. There can be many genuine reasons why a party may apply to recall witnesses. I will give some examples:

- (a) Counsel may have forgotten to deal with certain evidence and later realises that he needs to recall certain witnesses to deal with them.
- (b) An accused person may not realise or appreciate the relevance of certain evidence until much later. He then discloses them to counsel after his testimony is over. His counsel may decide to recall witnesses or the accused to testify.
- (c) Upon reviewing the case afresh, new counsel appointed may decide to adopt a different defence strategy, which then requires a different set of facts to be adduced as evidence.

- (d) At trial, unexpected evidence may suddenly be uncovered. Witnesses may have to be recalled in relation to such evidence.
- (e) Despite best efforts, counsel may not have fully taken all relevant instructions. After taking further instructions, gaps in the evidence may later be discovered, requiring a recall of witnesses.
- (f) There is also the possibility of deficient or inadequate legal representation resulting in instructions not being followed and relevant evidence being omitted.
- (g) Errors in earlier evidence may later be discovered, which would require witnesses to be recalled for clarification and correction of those errors.
- (h) Witnesses may have to be recalled to elaborate on and clarify aspects of their evidence which appear to be inaccurate as a result of the testimony of other witnesses.

206 Certainly, when counsel and the accused work together to engineer a false reason grounded on false facts in order to justify a recall of a witness or witnesses, it will amount to an abuse of process and the application for recall should be disallowed. That is quite apart from other consequences that may follow. But I do not think that there should be an extensive ancillary hearing (as has happened in the present case) each and every time to ascertain the truth of those reasons just to be absolutely sure that they are genuine. I do not think it is necessary to do so. It is for the trial judge to probe and assess the situation. Unless there are good reasons to suspect that the reasons provided are untrue and therefore that the applicant may be abusing the process of the court, the trial judge may proceed to allow the application pursuant to s 283 of the CPC ***if he***

thinks that the evidence proposed to be adduced through the recalled witnesses is relevant. The principal governing question is therefore whether the evidence to be adduced through the recalled witnesses is going to be relevant. There is no necessity for the applicant to prove at this stage that the evidence will *definitely* be relevant. It is sufficient that the applicant through his counsel explains the gist of the evidence that will be led to satisfy the court that the evidence, if led by recalling the witness, has some relevance to the issues at the trial. If it actually turns out that the evidence given is not relevant, no harm is caused as the court, when finally deciding on the matter at the conclusion of the trial, can simply ignore that irrelevant evidence. It must be recognised that before the whole case is over, the court may not always be able to know for certain whether the further evidence proposed to be adduced is relevant or not. In the early stages of the trial and before the accused has given his defence, it may not always be clear what is going to be relevant. Under these circumstances, it may be better to err on the side of caution, rely on counsel's good judgment that it is relevant, and allow the further evidence to be given first since the court is unsure of its relevance. If irrelevant, the further evidence can simply be disregarded when the court is making its decision. The only downside is that some extra time would inevitably be expended for the hearing. But the risk of injustice or a mistrial will be minimised. It is preferable to adopt a flexible and pragmatic approach which best ensures a fair trial so that relevant admissible evidence is not inadvertently shut out of the trial.

207 I note in this case that the accused's complaints surfaced suddenly whilst the accused was being cross-examined by Mr Tiwary. He was unrepresented at that time. When Mr Hassan and Ms Chitra, his new counsel, were able to obtain instructions from the accused, it was after the completion of his cross-examination. His re-examination had not started. The accused's case had not

closed. Neither did Mr Hassan delay informing the court that the accused had certain complaints against his previous counsel. Mr Hassan wanted to recall certain witnesses of the Prosecution for further cross-examination and have the accused give further evidence-in-chief to admit into evidence, amongst other things, his handwritten statement. Due to the DPP's objections on the basis of *Farid*, a long ancillary hearing ensued.

208 I will now deal with the factual evidence adduced at the ancillary hearing.

Accused's handwritten statement dated 3 March 2016

209 I find it difficult to decide which of the two versions is closer to the truth: the accused's version that his previous counsel failed to follow his instructions to admit his handwritten statement or the previous counsel's version that no such instructions were given.

210 The handwritten statement given by the accused to Mr Tiwary which states that Babu was innocent, and that the accused was induced and threatened by the CNB officers to falsely implicate Babu is, in my opinion, likely to be made at the behest of Babu based on what Babu told the accused to write. I note of course that no one called Babu as a witness to give his version of the events in this ancillary hearing. However, given the available evidence before me, I believe the accused on this point.

211 What is clear to me is that the accused had a lot of discussions, and perhaps even arguments, with his previous counsel on what is to be done with the handwritten statement. Those discussions probably revolved around whether the handwritten statement should be admitted or not. I am inclined to believe that after the DPP and Mr Tiwary confirmed that they were not using

the handwritten statement, the accused was probably persuaded eventually by his previous counsel not to admit the handwritten statement, although the accused initially wanted his handwritten statement to be admitted into evidence.

212 Since then, unforeseen developments have arisen. The Prosecution called the co-accused, Babu, as a rebuttal witness in the main trial after Babu pleaded guilty mid-way through the joint trial.³³⁶ Babu testified that after he ordered three packets of drugs from Boy, Babu informed the accused of the number of packets he had ordered³³⁷ so that the accused could check the quantity when the accused collected the drugs on his behalf.³³⁸ Babu ordered three packets because he had customers (later clarified to be one Alan) waiting for three packets.³³⁹ Babu said that the accused was supposed to collect three packets.³⁴⁰ The accused subsequently called Babu to say that he had collected three packets.³⁴¹

213 Clearly, Babu’s evidence, if accepted, will completely demolish the accused’s defence that he only expected one bundle to arrive (see [62] above) (the “one bundle defence”).

214 After Babu had completed his evidence-in-chief, Mr Hassan informed me that he was not ready to cross-examine Babu and to date, Babu’s cross-examination has not begun.

³³⁶ NE 1 September 2021 pg 10 lines 11 to 15.

³³⁷ NE 1 September 2021 pg 44 lines 23 to 27; pg 47 lines 13 to 17.

³³⁸ NE 1 September 2021 pg 47 lines 15 to 20.

³³⁹ NE 1 September 2021 pg 44 lines 30 and 31.

³⁴⁰ NE 1 September 2021 pg 39 lines 27 to 30.

³⁴¹ NE 1 September 2021 pg 41 lines 26 and 27.

215 In my view, even if the accused's handwritten statement may not have been particularly relevant to the defence *prior* to Babu being called as a rebuttal witness, now that Babu has given very incriminating evidence against the accused by directly contradicting the accused's one bundle defence, I am of the view that (a) the accused's handwritten statement being penned at the behest of Babu and written in the way that Babu wanted; and (b) the evidence of various steps taken by Babu to persuade the accused to lie and exonerate him, have become crucially relevant to the accused's overall defence to show not only a lack of credibility on the part of Babu but also that Babu had even tried to suborn the accused, who is no doubt an important witness at the joint trial. Furthermore, the fact that Babu failed to stop the accused from incriminating him may lead to a line of cross-examination by the accused's new counsel on Babu's credibility, and importantly on whether Babu is now lying in his evidence to exact revenge on the accused for refusing to co-operate and exonerate him. To disallow the admission of the accused's handwritten statement as well as evidence of the circumstances leading to the creation of that handwritten statement will, in my view, prejudice the accused's defence as Mr Hassan will be impeded in his cross-examination of Babu to rebut Babu's incriminating evidence against the accused.

216 As a point of principle and in fairness, a trial court should allow all evidence which it thinks is relevant to making a just decision, especially evidence which is material in nature, to be admitted into evidence, even if this has to be done by way of a recall of witnesses (including the accused) very late during the trial stage. This is in any event allowed (and even mandated where the evidence is *essential* to making a just decision) under s 283 of the CPC, which states as follows:

Power of court to summon and examine persons

283.—(1) A court may, on its own motion or on the application of the prosecution or the defence, at the close of the case for the defence, or at the end of any proceeding under this Code, summon a person as a witness or examine a person in attendance as a witness, whether or not summoned, or recall and re-examine a person already examined.

(2) The court must summon and examine or recall and re-examine such a person if it thinks the person's evidence is essential to making a just decision in the case.

(3) The exercise by a court of its power under subsection (1) is not a ground for appeal, or for revision, unless the appellant or the applicant (as the case may be) shows that the examination has led to a failure of justice.

217 In my view, it will not be conducive to making a just decision on the unusual facts of this case to refuse Mr Hassan's application to recall the accused to give further evidence-in-chief of the events leading to the creation of the accused's handwritten statement and to admit the accused's handwritten statement for the purposes of the main trial. Further, it will also not be conducive to making a just decision to disallow the accused from giving further evidence-in-chief of all the other various measures taken by Babu (one of which I set out below at [218] to [221]) to induce and pressure the accused to exonerate him at the trial. The accused's evidence-in-chief of those measures taken by Babu will provide an evidential basis for Babu's cross-examination later on, especially on Babu's reliability as a rebuttal witness and on whether Babu is now giving false evidence to destroy the accused's one bundle defence out of vengeance because the accused had given evidence at the main trial incriminating him as the one who ordered the drugs. The above evidence proposed by Mr Hassan to be adduced through the recall of certain witnesses appear to be highly relevant to the accused's case and should be allowed into evidence as part of the main trial.

Babu arranged for Mr Bachoo Mohan Singh (“Mr Bachoo Mohan”) to interview the accused in prison

218 One of those measures taken by Babu to pressure the accused to exonerate him at the trial appears to be instructing Mr Bachoo Mohan (via intermediaries) and paying his fees for him to interview the accused with a view to representing the accused if he should agree to exonerate Babu at the trial.³⁴² The accused obviously could not afford to pay the fees. I do note that the accused had to be provided with assigned counsel all along whereas Babu could afford to have Mr Tiwary as his briefed counsel. It is clear to me who has the financial means to engage Mr Bachoo Mohan.

219 The accused first made a written request on 9 April 2015 for an interview with Mr Bachoo Mohan³⁴³ on the instructions of Babu. The accused made a second request on 16 February 2016.³⁴⁴ On 9 March 2016, Mr Bachoo Mohan wrote to the accused that his firm required a non-refundable payment of his fee before they would be able to despatch a lawyer to interview him and requested that he instruct a relative or a friend to attend at their office to make payment for their fees.³⁴⁵ An Indian lady turned up at the office without prior appointment and subsequently paid \$1000.³⁴⁶ An invoice dated 9 April 2016 which was addressed to one Mdm Theresa Ragasvari D/O Anthony (“Mdm Theresa”)³⁴⁷ was prepared for her. It stated that the agreed professional fees were \$1,000 for

³⁴² NE 24 May 2022 pg 64 line 21 to 30; pg 65 lines 3 to 14.

³⁴³ Exhibit 1T-C7.

³⁴⁴ Exhibit 1T-C4.

³⁴⁵ Exhibit 1T-C5.

³⁴⁶ NE 21 July 2022 pg 39 lines 4 to 8 and lines 20 to 21.

³⁴⁷ Exhibit 1T-C6.

the interview and taking of initial instructions. Mr Bachoo Mohan ascertained the Indian lady's identity and address from her identity card.³⁴⁸

220 However, Mr Baboo Mohan could not enlighten the court on who this Indian lady is related to. After Mr Hassan told the court that the accused knows who she is, I allowed the accused to be recalled on this. The accused testified that the Indian lady, Mdm Theresa, is known to him.³⁴⁹ She used to work at the accused's mother's place and was a casual friend of his mother. His mother and Mdm Theresa worked as cleaners. Babu knew Mdm Theresa's husband as they used to work together. Babu was familiar with her through her husband.³⁵⁰ The accused had gone previously with Babu to visit Mdm Theresa and they got to know each other well. She was very close to Babu.³⁵¹ If Babu had not brought the accused to Mdm Theresa's place, a one-bedroom rental flat, he would not have known where Mdm Theresa stayed.³⁵² According to the accused, the last time he visited Mdm Theresa was sometime in 2013.³⁵³

221 The accused had given evidence that neither he nor his relatives paid Mr Bachoo Mohan to interview him. It was Babu who arranged for Mr Bachoo Mohan to see the accused. I note again that no one called Babu or Mdm Theresa to give evidence at the ancillary hearing. But based on the available evidence before me, I find that Babu had likely arranged for Mdm Theresa to procure the services of Mr Bahoo Mohan to interview the accused with a view to act for the

³⁴⁸ NE 21 July 2022 pg 40 lines 22 to 29.

³⁴⁹ NE 7 September 2022 pg 53 lines 17 to 25.

³⁵⁰ NE 7 September 2022 pg 53 lines 27 to 32.

³⁵¹ NE 7 September 2022 pg 53 line 32 to pg 54 line 2; pg 56 lines 15 and 16.

³⁵² NE 7 September 2022 pg 54 lines 20 to 26.

³⁵³ NE 7 September 2022 pg 55 lines 4 and 5.

accused on the condition that the accused was agreeable to exonerate Babu at the joint trial.

222 This step taken of engaging Mr Bachoo Mohan to interview the accused also fits the accused’s narrative that Babu had been using all kinds of methods (and the accused had given extensive evidence of them) to induce and pressure the accused to exonerate him at the joint trial; getting briefed counsel to act for the accused is just another one of those measures.

No instructions to ignore the accused’s written instructions

223 Both Mr Johan and Mr Revi Shanker were emphatic in their evidence that the accused told them not to follow his written instructions at the end of the lock-up meeting. However, Mr Revi Shanker’s own written notes at the lock-up meeting contradict that, stating: “Hari told us to follow his instruction in respect of his defence.” (see [114] and [130] above). The accused denied that he told his previous counsel to ignore his written notes.

224 I believe the accused that he had never told his previous counsel to ignore his written notes. If indeed his previous counsel misheard the accused instructing them to ignore his written notes, then there is a real possibility of prejudice to the conduct of the accused’s defence.

Difficulty giving instructions to Mr Johan

225 There is clear evidence in support of my finding that the accused had difficulty communicating his instructions to Mr Johan, his lead counsel.

226 In the audio recording, Mr Revi Shanker could be heard telling Ms Kavitha and Ms Siroshini that the accused and Mr Johan could not get along,³⁵⁴ and that they were always fighting.³⁵⁵

227 On Mr Johan's personality, Mr Revi Shanker agreed that Mr Johan sometimes could be very vocal and would lose his temper with the accused, resulting in Mr Revi Shanker seeing the accused without Mr Johan on occasions, (which, in my view, may have led to other possible problems of a lack of co-ordination between the lead and assisting counsel):³⁵⁶

Witness (Mr Revi Shanker): With due respect to you [ie, Mr Johan], I know that I have seen Haridass---Mr Johan also, Mr Johan---the reason you know why---you know the reason why. Because you have told in Court that basically Mr Johan sometimes can be very vocal. He's trying to show his face, sometimes he throws his pen. You see, he can become angry faster but for me, different. I'm more on the---submissive. I listen to them and I'm able to talk to him in Tamil. That's the reason I have seen him; otherwise I will not because normally we go together. Sometimes lead counsel will go normally on their own, anyway we discuss is this case, defence. Sometimes he will tell me---he don't tell me everything but he tell me they discussed based on the agreed bundle.

Q Since you are on the issue of Mr Johan's personality, so he---in your presence, he did throw his pen, lose his temper or show his face, in your words, to Mr Haridass?

A That's his style. If he's---Haridass---

Q No, I'm just saying. Did he? Yes or no?

A Yah, yah, I have seen, nothing wrong with that.

³⁵⁴ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 10 lines 14 to 15.

³⁵⁵ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 10 lines 16 to 18.

³⁵⁶ NE 13 September 2022 pg 32 line 12 to pg 33 line 6.

Q Yes. I didn't ask you whether it's right or wrong but have you seen it?

A Yah, it's nothing wrong with that because when a client talking nonsense, maybe his personality is like that. My personality is different. I would be---listen. Sometimes I also scold my clients.

Q No. I'm just saying did he---

Court: Factually, have you seen---

Witness: Yah, yah, I have seen, I have seen.

228 During the ancillary hearing, the accused unsurprisingly expressed his confusion and the frustrations that he felt when giving his instructions to Mr Johan. When Mr Johan cross-examined the accused on whether he and Mr Revi Shanker were logical in their advice to him, he disagreed that they were logical and said:³⁵⁷

Because when I tell you, Mr Johan, some things, you don't seem to like it. And when I---and then you will turn around and tell me, 'I'm your lawyer. You listen to me; I don't have to listen to you.' When you tell me this, I get frighten. And within me, I have this confusion, 'He's my lawyer, he's supposed to act for me. And if he tells me such a thing, what am I supposed to do?' As far as I'm concerned, every time I open my mouth to say something, you throw your tantrums and scold me. You yourself know that.

229 I believe the accused that despite his difficulties in giving his instructions to Mr Johan, he was afraid to discharge Mr Johan and Mr Revi Shanker because he already had numerous changes of counsel. He was worried that he might end up having to represent himself in the capital trial. However, it turns out that it was Mr Johan and Mr Revi Shanker who discharged themselves from acting for the accused whilst the accused was in the midst of being cross-examined by Mr Tiwary.

³⁵⁷ NE 26 May 2022 pg 93 lines 25 to 31.

230 In my view, the accused's difficulties in communicating his instructions to Mr Johan (which he expected Mr Johan to follow), whether these difficulties were due to (a) a personality clash; (b) overbearing conduct on Mr Johan's part; (c) Mr Johan's dismissive attitude towards the accused with regard to what the accused wanted to be done; or (d) Mr Johan's insistence that the accused must always listen to him as he is the accused's lawyer, are indeed a genuine cause for concern. In light of the frequent fights and arguments between the accused and Mr Johan when the accused was giving his instructions to Mr Johan, there is a real risk of the accused being intimidated and inhibited when giving his instructions. This is another reason why I am allowing the application of Mr Hassan to recall certain Prosecution witnesses, who were earlier cross-examined by Mr Johan. Hopefully, this will be sufficient to remedy the situation and avoid the risk of injustice to the accused in this ongoing trial.

Accused's depression affecting the accused's state of mind

231 I believe the accused that he suffered from depression at the material time and was taking medication. His depression was precipitated by the news he received that his girlfriend was having an affair.

232 With the accused's depression, it is not surprising that he was not in the right frame of mind. That affected how he conducted himself, for instance: (a) in changing his position a few times on who in fact ordered the drugs, which may have an impact on his credibility generally and perhaps also on whether the court will believe his one bundle defence; and (b) in making a handwritten statement which was not true and which exonerated Babu completely based on what Babu had told him to say, and handing that handwritten statement over to Mr Tiwary.

233 Some leeway must therefore be given to the accused because the accused might not have had the opportunity to instruct his counsel properly and comprehensively at the material time, given his depression and the pressures he was labouring under.

234 Therefore, if new counsel for the accused apply for a recall of the accused and certain Prosecution witnesses to cover areas which were not previously canvassed during the main trial, I will be slow to refuse the new counsel's application. I cannot see any abuse of the court's process if the application for recall is allowed under the circumstances. Rather it would be an injustice and a prejudice occasioned to the accused at trial if the new counsel's application for recall is denied.

Audio recording and the transcript evidencing misconduct and improper legal advice

235 In the audio recording (which has been transcribed and translated as parts of the conversation were in Tamil and Malay), Mr Revi Shanker can be heard telling Ms Kavitha and Ms Siroshini that if the accused cooperates by saying that the accused ordered the drugs from "Boy", then Babu can support the accused.³⁵⁸ Further Mr Revi Shanker explains that what Mr Tiwary is trying to say is that they can "support" the accused on the accused's defence of one "batu" (*ie*, one bundle).³⁵⁹ Mr Tiwary does not want the accused to say that Babu is the one who ordered the drugs.³⁶⁰ Mr Revi Shanker says that if the accused

³⁵⁸ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 4 lines 9 to 11.

³⁵⁹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 5 lines 7 to 10; pg 6 lines 7 to 9.

³⁶⁰ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 9 lines 16 to 18.

implicates or “pinpoint[s]” Babu, Babu and Mr Tiwary are going to bring five witnesses who are both the accused’s and Babu’s friends³⁶¹ to testify against the accused and “kill” the accused, and that the accused will “die”.³⁶² Mr Revi Shanker reiterates at a later part of the conversation that Mr Tiwary is going to bring five witnesses.³⁶³ Mr Revi Shanker also states that even though Babu had links with Boy (the supplier in Malaysia), the accused also occasionally ordered from Boy directly.³⁶⁴ Mr Revi Shanker tells Ms Kavitha and Ms Siroshini: “They [presumably referring to Babu and Mr Tiwary] want to bring evidence, you know or not? Somebody will tell he (*ie*, the accused) also have ordered directly from Boy and jockey (*ie*, the courier from Malaysia to Singapore) have passed to him (*ie*, the accused).”³⁶⁵

236 Mr Revi Shanker says that unless both the accused and Babu want to help each other, both of them will “go down” (*ie*, both the accused and Babu will be convicted of the capital charge).³⁶⁶ Mr Revi Shanker then says: “So, if both of them [*ie*, the accused and Babu] want to agree on going on one [bundle of drugs] ah, [Babu] can support [the accused on this defence], and [Mr Tiwary] can bring people [*ie*, witnesses] who can support [the accused].”³⁶⁷ Mr Revi

³⁶¹ Exhibit C14 - Audio File Reference <AUD-20201207– WA 0006> at pg 6 lines 13 to 15.

³⁶² Exhibit C14 - Audio File Reference <AUD-20201207– WA 0006> at pg 6 lines 10 to 12.

³⁶³ Exhibit C14 - Audio File Reference <AUD-20201207– WA 0005> at pg 6 line 21.

³⁶⁴ Exhibit C14 - Audio File Reference <AUD-20201207– WA 0006> at pg 9 lines 20 to 22.

³⁶⁵ Exhibit C14 - Audio File Reference <AUD-20201207– WA 0006> at pg 9 lines 22 to 24.

³⁶⁶ Exhibit C14 - Audio File Reference <AUD-20201207– WA 0006> at pg 6 line 25.

³⁶⁷ Exhibit C14 – Audio File Reference <AUD-20201207– WA 0006> at pg 6 lines 28 to 30.

Shanker essentially elaborates that under this defence, of the three bundles of drugs, two bundles were supposed to be given back to the supplier and were not intended for trafficking. This will in turn mean that the offence will be one of possession, and the trafficking amount will be reduced to one bundle, with no death penalty involved.³⁶⁸ Mr Revi Shanker says that if the “one packet theory” happens to work out, the accused will escape the death penalty.³⁶⁹ Mr Revi Shanker emphasises: “We want to save both lives. I also must save---see I also must save---I also must save Babu. Both.” He goes on to state: “Two, you see, two lives to save. Not enough just to save one life, cannot just say save one life, isn’t that wrong? It’s wrong. For me, both lives must be saved.”³⁷⁰ Mr Revi Shanker then says that that is his thinking, but the problem is that the accused is not thinking in the same way because he is angry with Babu.³⁷¹

237 When Ms Siroshini protests that the accused cannot trust Babu in relation to working together on the defence that only one bundle was meant to be trafficked, since Babu has denied his involvement and is not going to “work for the one [bundle]”,³⁷² Mr Revi Shanker says:³⁷³

Yes, I know, Ramesh is basically---I---they won’t play you out. If you---life. You understand or not? He [*ie*, Mr Tiwary] already gave assurance. Definitely he would---now at least they want to

³⁶⁸ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 6 line 30 to pg 7 line 5.

³⁶⁹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 1 lines 29 to 31.

³⁷⁰ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 7 lines 5 to 12.

³⁷¹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 7 lines 12 to 14.

³⁷² Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 9 line 32 to pg 10 line 11.

³⁷³ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 10 line 12 to 23.

go. Because he know---Ramesh know if Babu---if Hari going to vomit [*ie*, implicate Babu as the one who ordered the drugs], he--his client also finished. Both will go in. So, to save both of them, go on one batu [*ie*, one bundle]. At least we support each other, if we get the two batu [*ie*, the other two bundles] out of the way, we save the life. You understand or not? Maybe 10 years, 15 years, nothing more than that. Both of them will come out. If both of them are fighting, both of them bye---bye-bye. You know, what death sentence. That's it. They're finished, you know. Appeal also---

238 Ms Siroshini then asks whether Mr Revi Shanker and Mr Tiwary are going to fight the case on the basis that only one bundle was meant to be trafficked.³⁷⁴ Mr Revi Shanker assures her: “I’m definitely---we’re fighting one book (*ie*, one bundle).”³⁷⁵ Mr Revi Shanker then goes on to say:³⁷⁶

Ramesh, once Babu put in---once Hari pinpoint Babu, Ramesh would have denied completely. Deny completely, you know. They will not fight for one batu [*ie*, one bundle]. I’m telling you now. They will not. He say no. He’s going to completely deny. He’s saying everything is---for that transaction, you know, this transaction is totally Hari’s. He [*ie*, Babu] will go and deny because statement---his [*ie*, Babu’s] statement also like that, what. Right?

239 Mr Revi Shanker also reveals that Mr Tiwary had already told him many times that Mr Tiwary would “kill” the accused if the accused implicates Babu, and would “help” the accused if the accused “support[s]” Babu:³⁷⁷

That is true, that is true---he told me many times already. ‘If Hari going to kill Babu, because I’m [*ie*, Mr Tiwary] going to kill him.’ Correct? ‘If Hari going to support him, I [*ie*, Mr Tiwary] will help him.’

³⁷⁴ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 10 line 24.

³⁷⁵ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 10 line 25.

³⁷⁶ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0006> at pg 10 line 27 to pg 11 line 2.

³⁷⁷ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0005> at pg 3 lines 28 to 31.

240 Mr Revi Shanker then follows by saying that if the accused goes into the witness box, he must testify that one bundle was ordered from Boy directly (*ie*, Babu did not do the ordering).³⁷⁸

241 Ms Kavita then informs Mr Revi Shanker that if Mr Revi Shanker really wanted, she will try to see the accused and talk things out with him, to which Mr Revi Shanker replies that Ms Kavita cannot come to court the next day if Ms Kavita is still contemplating becoming a witness for the accused.³⁷⁹ I note that Mr Revi Shanker does not dissuade Ms Kavita from talking to the accused to convince him to say that he ordered the drugs from Boy directly, without the involvement of Babu.

242 Mid-way through the conversation with Ms Kavitha and Ms Siroshini, Mr Revi Shanker takes a mobile call from Mr Johan. In that call, Mr Revi Shanker can be heard telling Mr Johan³⁸⁰:

Okay, okay. Okay, now I told Ramesh--- ... ---today, Ramesh okay lah--- ... ---I mean since he is not going to do it. Just in case--- ... ---he's [*ie*, Mr Tiwary] going to line up five---five people, okay.

243 Mr Revi Shanker then tells Mr Johan that he is presently speaking with Ms Kavitha.³⁸¹

³⁷⁸ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0005> at pg 4 lines 7 to 9.

³⁷⁹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0005> at pg 4 line 27 to pg 5 line 2.

³⁸⁰ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0005> at pg 7 lines 10 to 17.

³⁸¹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0005> at pg 7 lines 18 to 19.

244 Later, Mr Revi Shanker re-assures Ms Kavitha that Mr Tiwary had assured Mr Revi Shanker that Mr Tiwary and Babu will never ‘play out’ the accused, if the accused admits that he (and not Babu) was the one who had ordered one bundle of drugs:³⁸²

Male Speaker: You understand or not? Because otherwise he’s facing death, I’m telling you---

Female Speaker 1: But definitely if Hari is going to admit that, okay, he’s the one who ordered the one book, Babu will definitely---Ramesh sure?

Male Speaker: He [*ie*, Mr Tiwary] already assured to me and they will bring people to support him [*ie*, the accused] that he have told the---

Female Speaker 1: They [*ie*, Mr Tiwary and Babu] will never play him [*ie*, the accused] out, right?

Male Speaker: No. We’re not that kind of people. Come on. We want to save life. Ramesh also want to save. You think what? Already you---because of him [*ie*, the accused], you want to kill another person? Cannot. We’re all swear on ethics, you know. Remember or not? We want to save life. My thing is simple. I want to save Hari. I want to save Babu also, correct? Otherwise, both of them will go down. But he [*ie*, Babu] will try his---he will try their luck. If they escape, escape. But Hari will not escape. I’m telling you. Because he was caught in his---you understand or not? He’s admitted. You see, who is the hot soup now? Here hot soup is Hari, not Babu.

245 Mr Revi Shanker mentions in a later part of the conversation that the problem is what those two extra bundles were for.³⁸³ He says that some people

³⁸² Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 2 lines 5 to 21.

³⁸³ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 4 lines 14.

need to come forward to say that those extra bundles were not supposed to go to the accused.³⁸⁴ Ms Kavitha asks who is going to come forward to say that.³⁸⁵ Mr Revi Shanker, referring to Babu's "game plan", replies: "That is why. Now, it is because of that, now, there are people to tell." (likely referring to the witnesses that Mr Tiwary intended to call in support of the accused).³⁸⁶

246 Mr Revi Shanker then tells the two ladies: "oh, tell him [*ie*, the accused] to tell. Why do I have to tell? Tell him to tell. That it is he [*ie*, the accused] who placed an order for one *batu* [*ie*, one bundle]."³⁸⁷

247 Mr Revi Shanker reminds the two ladies that Babu will not be compromising his position that he is not involved in the offence and that he did not order the drugs from "Boy". Mr Revi Shanker agrees with Ms Kavitha that Babu is smart, having had a prior trafficking record, and states that Babu would therefore "play his game well".³⁸⁸ Mr Revi Shanker reiterates that:³⁸⁹

Because if you help, I will help you. I bring people to support you, you know, regarding the one *batu* theory. People will support you. You want to go against me, I come and bring people to whack you, to kill you. More. So the chances, Hari go down is 90% he's confirmed there.

³⁸⁴ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 4 lines 20 to 23.

³⁸⁵ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 4 lines 24.

³⁸⁶ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 4 lines 25 to 28.

³⁸⁷ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 4 lines 29 to 31.

³⁸⁸ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 5 lines 4 to 8.

³⁸⁹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 5 lines 8 to 13.

248 Ms Kavitha then asks whether the accused knows what is going to happen if he implicates Babu in his evidence. Mr Revi Shanker replies that he had told the accused about it:³⁹⁰

I told him, I told him when---he said, 'No, no, it's okay. We will try.' I told him, 'We'll try.' I told him, 'You will die. They will kill you', I told him. That is one. Then while on the stand, they will deal with him seriously. (indistinct) just shake, it is over. Judge not stupid. So if we put forth the one *batu* theory, support will come along eventually, work along, we can win. Not say we---I can I---we cannot say 100%. At least we got there 80% chance. That's okay. Possible to two *batu*. Okay these two to be returned. The latest case, there is one, just recently released the case. The case which I had done before with another lawyer. Court of Appeal had said, 'Since you want to give back to the same owner, you're not considered a trafficker. Possession.' Automatically will be reduced, no more death penalty already, what. Only for one *batu* you go in. The other two *batu* is for possession. Okay, what.

...

You understand, Kavitha? We're not going to --- you see, we --- all of us don't want to kill him or whatever, you know. We want to save. For me, I want to save both lives. Okay. Whatever they've done, whatever Babu done, done okay. Maybe he's a bad person. Never mind. But we don't want to kill another person. I want to save both. I even I told Hari I want to save Babu also. At the same time, your life also, what. I cannot be, oh, my client also must only my client must be alive. He can go and die. Is that how I would think? No, it's wrong.

249 Ms Shiroshini asks Mr Revi Shanker for his help to let her talk to the accused in Supreme Court 4C the next morning on 2 April 2019, which was the date scheduled for the next tranche of the hearing. Mr Revi Shanker agrees.³⁹¹ Ms Kavitha wonders whether she should come and whether the accused will listen to her. Ms Shiroshini says that Ms Kavitha can help to talk to the accused,

³⁹⁰ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 5 line 21 to pg 6 line 16.

³⁹¹ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 7 lines 19 to 20.

and he may “listen to her for the one book” (*ie*, one bundle). Ms Kavitha is unsure if there will be enough time for her to convince the accused, to which Mr Revi Shanker says that they can talk to the accused for ten minutes.³⁹²

250 Mr Revi Shanker says that when the accused comes tomorrow to court, he will talk to the accused first. He suggests that Ms Kavitha could go and apply for leave the next day to talk to the accused and “see how one more time”.³⁹³ Ms Siroshini says that she will go with Mr Revi Shanker and talk to the accused.³⁹⁴ Mr Revi Shanker says: “Talk to him, then if possible maybe come the following day, see what happens and then check with him. Until and when he don’t go to the stand, , [*sic*] think we are still okay.”³⁹⁵

251 On the question of who ordered the one bundle, Mr Revi Shanker says:³⁹⁶

Male Speaker: Who ordered the one *batu*? We do not know, until now you do not know. Maybe Hari telling lie *ah*. Maybe---

Female Speaker 1: Yes. Hari don’t have this kind of thing to--he don’t have---anybody.

Male Speaker: No. He knows Boy’s number what.

Female Speaker 1: How did he know Boy’s number?

Female Speaker 2: No, but clear cut this because---

Male Speaker: All given by Babu what.

Female Speaker 1: *Ah*

³⁹² Exhibit C14 - Audio File Reference <AUD-20201207- WA 0003> at pg 8 lines 8 to 19.

³⁹³ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 6 lines 21 to 24.

³⁹⁴ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 6 line 25.

³⁹⁵ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 6 lines 26 to 28.

³⁹⁶ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 3 lines 7 to 21.

Male Speaker: Yes, but on that one, who ordered?

Female Speaker 2: Babu ordered because you know why, when received, he called Babu and say, 'Received already but I received extra two books [*ie*, two bundles].'

Female Speaker 1: Yah, but I had not much---that not--

Male Speaker: But we don't know what, actual story.

252 Finally, Mr Revi Shanker agrees with Ms Kavitha that they should try to talk to the accused:³⁹⁷

Male Speaker: Nothing. I mean, he did something, but Ramesh trying to bring it. But I know Ramesh trying to play the game also, came in---but he---see, end of the day, he also want to save his client. He knows if Hari going to spit out things, Babu also go. What I fear is that, both of them will go. That is what I am scared. Then, we have to save both of them. The DPP will have no work.

Female Speaker 1: Will it help if I go and talk?

Male Speaker: We should try. I don't know. I actually listen to him, but I think now I think maybe don't---don't---don't trust Babu.

...

Female Speaker 2: Yah, I'll try to talk to Hari also tomorrow.

Male Speaker: See what he says.

Female Speaker 2: Can.

253 As to what will happen if they manage to persuade the accused (*ie*, to testify at the joint trial that the accused directly ordered only one bundle from

³⁹⁷ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 17 lines 4 to 12; Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 18 lines 27 to 29.

Boy but three bundles were delivered to the accused by mistake), Mr Revi Shanker says to let him talk to Mr Tiwary:³⁹⁸

Female Speaker 1: If Hari says ok after talking to him?
Male Speaker: Not---I'm not going to play him out.
Female Speaker 1: (indistinct)
Male Speaker: Ramesh Tiwary, no, no, no, I---let---let me talk to Ramesh.
Female Speaker 2: Okay, thank you.
Male Speaker: Yes, good.

254 However, at para 27 of Mr Johan's affidavit, he states: "We never asked the accused to say that the co-accused [*ie*, Babu] was not involved". At para 25 of Mr Revi Shanker's affidavit, he states that he agrees with para 27 of Mr Johan's affidavit.

255 Having regard to the portions of the transcript of the audio recording that I have set out in detail above, it is apparent that paras 25 and 27 of Mr Johan's and Mr Revi Shanker's affidavits are untrue. I believe the accused's version of events that the accused was asked not to implicate Babu.

256 I accept the submission of the accused that the undisputed audio transcripts evidence grave misconduct on the part of Mr Revi Shanker in advising the accused (quite inappropriately in my view) not to implicate Babu in order to save both the accused's and Babu's lives when the accused's clear instructions were that Babu was involved in the drug transaction and that it was Babu who ordered the drugs from "Boy". The audio transcripts essentially

³⁹⁸ Exhibit C14 - Audio File Reference <AUD-20201207- WA 0004> at pg 19 lines 8 to 13

provide strong corroboration of the accused's testimony that Mr Revi Shanker had told him not to implicate Babu.

257 I note that Mr Tiwary had arranged for some inmates from prison to be identified by the accused when he was under cross-examination by Mr Tiwary. Could these be the persons which Mr Tiwary intended to call to "support" the accused if the accused exonerated Babu or to "whack" the accused if the accused incriminated Babu, as referred to by Mr Revi Shanker in the portion of the audio transcript reproduced at [247] above?

258 As the accused stood firm on his instructions, Mr Revi Shanker failed in his attempt to persuade the accused to adopt his trial strategy to save both the accused's and Babu's lives. That strategy involved the accused completely exonerating Babu through the accused's evidence in exchange for the accused obtaining evidential support from witnesses to be called by Mr Tiwary for the accused's defence that he ordered only one bundle from Boy. Mr Revi Shanker then led evidence-in-chief from the accused at the joint trial, which was along the lines of the accused's defence, *ie*, that the accused had an expectation of receiving only one bundle of drugs, but three bundles were delivered instead, and that Babu had told the accused that he ordered "a packet of heroin" and the accused was to collect that heroin for him³⁹⁹.

259 On balance, I also believe the accused that Mr Revi Shanker had suggested to him to say that the CNB officers had induced him to implicate Babu in his statements to the CNB officers, which the accused said was untrue and was not his instructions to his previous counsel.

³⁹⁹ NE 3 April 2019 pg 18 lines 6 and 7.

260 What is more important is whether there is any adverse impact resulting from the advice and suggestions which the accused has proved on a balance of probability to have been made to him by Mr Revi Shanker, which will make it necessary for the accused, now represented by new counsel, to (a) be given an opportunity to recall certain Prosecution witnesses for further cross-examination; and (b) be allowed another opportunity to give further evidence-in-chief on matters that were not alluded to previously by him in his evidence-in-chief led by Mr Revi Shanker.

261 In my view, this has not directly impacted the accused's defence because the accused had declined to follow Mr Revi Shanker's advice and trial strategy of exonerating Babu and saving both the accused's and Babu's lives. However, I find that what Mr Revi Shanker did, not only added to those pressures exerted on the accused by Babu, but also affected the accused mentally and compounded the difficulties the accused faced in giving his instructions fully and properly to his previous counsel. It will be difficult to determine (and I do not wish to do so) what exactly was omitted in the cross-examination of the Prosecution witnesses and/or the accused's evidence-in-chief, or what was not carried out by the accused's previous counsel based on the many instructions of the accused given to his previous counsel over a long period of time.

262 It suffices to say that a practical solution to resolve any potential adverse impact arising from any failure to follow the myriad instructions of the accused to his previous counsel, and to address the many complaints of the accused, is to allow the accused's new counsel, Mr Hassan and Ms Chitra (who would presumably have properly taken a comprehensive set of instructions from the accused by now), to recall the necessary witnesses (including the accused) or call further witnesses based on those instructions when the main trial resumes.

Conclusion

263 For the reasons I have stated, I allow the accused's application to (a) recall certain Prosecution witnesses for further cross-examination; (b) give further evidence-in-chief in support of his defence; and (c) call additional witnesses (if any) to testify in his defence. The DPP is of course allowed to further re-examine those Prosecution witnesses recalled by the accused and further cross-examine the accused on his further evidence-in-chief. The additional witnesses (if any) called by the accused to testify will be subject to the usual cross-examination by the DPP and re-examination by the accused. The fresh evidence to be led must, as far as possible, not be a repeat what has been adduced as evidence earlier in the main trial. The additional evidence must of course be relevant and legally admissible.

264 I reiterate that this case is not simply one of inadequate legal representation where, amongst other things, there was much difficulty faced by the accused in giving his instructions to Mr Johan and inappropriate advice was given to the accused to exonerate Babu contrary to the instructions of the accused. It also concerns Babu's persistent and undue pressure on the accused to change his evidence to exonerate Babu. It also unfortunately involves pressure from the accused's own previous counsel, Mr Revi Shanker, to accept his legal advice and trial strategy to save both Babu and the accused's own life by testifying in court that the accused (and not Babu) had ordered the drugs. Mr Revi Shanker's trial strategy also entailed the accused, in return for exonerating Babu, receiving evidential support for the accused's own one bundle defence which would be forthcoming from Babu's side, and which Mr Revi Shanker told the accused Mr Tiwary had given an assurance on. This case also involves the Prosecution's calling of Babu as a rebuttal witness after Babu pleaded guilty. This event, which was not anticipated by the accused, now

precipitates the need, from the accused's perspective, to rebut Babu's very damaging evidence by adducing additional evidence to demonstrate Babu's lack of credibility and perhaps also to establish Babu's desire for revenge.

Chan Seng Onn
Senior Judge

Terence Chua Seng Leng, Nicholas Wuan Kin Lek and Kwang Jia
Min (Attorney-General's Chambers) for the Prosecution;
Hassan Esa Almendoar (R Ramason & Almendoar) and Balakrishnan
Chitra (Regency Legal LLP) for the accused.
