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

[2022] SGHC 96

Criminal Case No 60 of 2019

Between

Public Prosecutor

And

Sri Tharean Muthalagan

JUDGMENT

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

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Public Prosecutor
v
Sri Tharean Muthalagan

[2022] SGHC 96

General Division of the High Court — Criminal Case No 60 of 2019
Ang Cheng Hock J
6–9, 13–15 October 2020, 31 August, 1, 2, 7, 8, 10 September 2021, 31 January 2022

29 April 2022 Judgment reserved.

Ang Cheng Hock J:

1 The accused in this case is one Sri Tharean Muthalagan, a 27-year-old male Malaysian. In the afternoon of 16 April 2018, the accused was stopped and arrested by officers from the Central Narcotics Bureau ("CNB") while he was riding his Malaysia-registered motorcycle along the junction of Jalan Eunos and Changi Road in Singapore. A search of the motorcycle by the CNB officers uncovered, amongst other things, five packets of crystalline substance, which were subsequently analysed and found to be methamphetamine.

2 The accused was charged with and claimed trial to one charge of possessing five packets containing not less than 421.06g of methamphetamine for the purpose of trafficking ("the Charge"), which is an offence under s 5(1)(*a*) read with s 5(2) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA").

The Prosecution's case

3 On 15 April 2018, at about 11.00pm, the accused received a call from one "Dinesh".[1] The accused, who lived in Johor Bahru, Malaysia, was at home at that time.[2] Dinesh told the accused to remove the box that was attached to the rear of the accused's motorcycle and leave it outside his house.[3] The accused agreed to do this.

4 Early the next morning, on 16 April 2018, at about 3.00am, the accused opened the motorcycle box and found a raincoat and many bundles inside.[4] Dinesh called the accused and instructed him to bring the bundles to Singapore. The accused agreed.

5 The accused entered Singapore on his motorcycle via the Tuas Checkpoint at about 5.30am.[5] Later that day, at about 3.00pm, he was instructed by Dinesh to collect a bag containing cash hanging at the back of a toilet cubicle door at the premises of a company located in Jurong East, which was referred to by the Prosecution in its opening address as "LW Company".[6] Thereafter, Dinesh told the accused to proceed to Eunos MRT station.[7] The accused arrived at a carpark in front of Eunos MRT station.[8] Dinesh then instructed the accused to deliver one of the bundles (the contents of which were marked as exhibit

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1 Prosecution's Opening Address dated 2 September 2021 ("POA") at para 6.

2 Transcript, 7 Sep 2021, p 2 lines 27–28.

3 POA at para 6.

4 POA at para 7.

5 POA at para 8.

6 POA at para 9, Transcript, 31 Jan 2022, p 35 lines 2–8.

7 POA at para 9.

8 POA at para 10.

SAN-A1) to a man, later identified to be one Seet Ah San ("Seet").[9] In return, Seet passed a white envelope containing $2,500 in cash to the accused[10].

6 Dinesh then told the accused to head towards Eunos Crescent. There, on the instructions of Dinesh, the accused delivered several of the bundles placed in his motorcycle box by Dinesh to a man who was driving a car.[11] These included a white bundle (marked as exhibit D1) and two black bundles (marked as exhibits E1A and E1B respectively).[12] That man was later identified to be one Tomoki Okubo ("Okubo").[13] In return, Okubo passed the accused a sum of cash amounting to $7,300.[14]

7 At around 4.35pm, the accused was arrested at the junction of Eunos Road and Changi Road.[15] When his motorcycle was searched, six bundles (one black bundle, which was marked as exhibit A1 and five blue bundles, which were marked as exhibits A2–A6 respectively) were recovered from the motorcycle box. The five blue bundles were of roughly similar weight and shape, and each bundle was wrapped with blue tape.[16] These five blue bundles ("the Bundles") were the ones which each contained a packet of methamphetamine, and which formed the subject of the Charge that was tried before me. The Prosecution's case is that the accused knew that the Bundles contained methamphetamine, or that he was wilfully blind as to their contents.

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9 POA at paras 10 and 17–18.

10 POA at para 10; Prosecution's Closing Submissions ("PCS") at para 25.

11 POA at para 11.

12 POA at paras 15–16.

13 POA at para 11.

14 POA at para 11; PCS at para 26.

15 POA at para 12.

16 POA at para 13.

8 For completeness, I should add that both Seet and Okubo were also arrested, and later convicted and sentenced for drug-related offences. They are presently imprisoned. Seet and Okubo were called as Prosecution witnesses at the trial of the accused. The substance of their evidence will be dealt with later in the course of this judgment.

The Defence's case

9 The accused does not dispute that he was in possession of the Bundles at the time of his arrest. He accepts that he had brought them into Singapore on the instructions of Dinesh. He also accepts that, at the time of the arrest, he was waiting for instructions from Dinesh as to where and to whom he should deliver the remaining bundles in his motorcycle box (which included the Bundles), or whether he should bring these bundles back to Malaysia to be returned to Dinesh.[17] It is common ground that the contact details of Dinesh were recorded in the accused's mobile phone as "Dishini Anna".[18]

10 The accused also does not dispute or contest the chain of custody in relation to the Bundles, or the analysis which showed that together, they contain not less than 421.06g of methamphetamine. Instead, the accused's case is that he did not know the nature of what was contained in the Bundles. He believed that he was bringing "shisha" into Singapore on the instructions of Dinesh. When he used the term "shisha", the accused was not referring to the smoking implement itself, but the sweetened tobacco that is placed in the smoking implement.[19] Both the Prosecution and the Defence are in agreement that the accused meant to refer to the sweetened tobacco when he referred to "shisha"

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17 Transcript, 7 Sep 2021, p 57 lines 28–29.

18 Transcript, 7 Sep 2021, p 44 lines 19–22, p 45 lines 3–5.

19 Transcript, 7 Sep 2021, p 7 lines 21–26.

or "shisha flavour" in his evidence and his cautioned statement in respect of the Charge.[20]

11 The accused described how he came to know Dinesh in his testimony in court. He had first met Dinesh in end-February 2018 whilst drinking at a liquor shop in Johor Bahru.[21] Dinesh had approached him and struck up a conversation.[22] This was about one to two months before his arrest. At that time, the accused was jobless and was facing some financial difficulty.[23]

12 Not long after, Dinesh offered the accused a job of delivering "fruits" to persons in Singapore.[24] At the time when Dinesh made this offer, the accused thought that it involved the delivery of actual fruits.[25] However, the accused turned down Dinesh's job offer because there were some problems with his motorcycle.[26] According to the accused, at the time when he declined the delivery job, he still thought that Dinesh was referring to the delivery of actual fruits.[27] The accused says that it was only sometime in March 2018, after he grew closer to Dinesh, that he understood that Dinesh was referring to fruit-flavoured "shisha", and not actual fruits.[28]

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20 Transcript, 31 Jan 2022, p 3 lines 20–31, p 4 lines 1–31.

21 Transcript, 8 Sep 2021, p 20 lines 22–32, p 21 lines 8–9.

22 Transcript, 8 Sep 2021, p 21 lines 1–3.

23 Transcript, 8 Sep 2021, p 21 lines 15–18.

24 Transcript, 8 Sep 2021, p 22 lines 17–24.

25 Transcript, 8 Sep 2021, p 29 lines 1–3.

26 Transcript, 8 Sep 2021, p 50 lines 19–22, p 52 lines 2–6.

27 Transcript, 8 Sep 2021, p 29 lines 9–12, p 31 lines 1–11.

28 Transcript, 8 Sep 2021, p 30 lines 9–12 and 20–22, p 32 lines 1–4.

13 Later, the accused managed to borrow a motorcycle from his housemate, one "Everaj".[29] He used the motorcycle to travel to Singapore on several occasions in April 2018 to look for a job there.[30] It was at around the same time that the accused informed Dinesh that he was prepared to do the job of delivering "shisha" in Singapore. In his testimony, the accused was unable to recall precisely whether that happened as a result of *him* informing Dinesh that he had a motorcycle available for use immediately after he procured the use of Everaj's motorcycle, or only because Dinesh subsequently learnt that the accused now had a motorcycle for use after he (Dinesh) contacted the accused.[31] What is not in dispute, however, is that by the time the accused agreed to take on the delivery job, he *knew* that he was to deliver "shisha" and not actual fruits.[32] Dinesh also told the accused that, as part of the job, he had to collect money from persons in Singapore.[33] This was because Dinesh, as he told the accused, was also a loan shark and the money to be collected was repayment due to Dinesh as a loan shark.[34] The accused also says that Dinesh never told him that the money collected was payment for the "shisha" that he was to deliver; the accused therefore thought that those moneys to be collected had nothing to do with the "shisha".[35]

14 Subsequently, on one of the accused's trips to Singapore on 13 April 2018 to look for employment, he was offered a job by a stall owner at a food

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29 Transcript, 8 Sep 2021, p 51 lines 26–28.

30 Transcript, 8 Sep 2021, p 56 lines 24–32.

31 Transcript, 8 Sep 2021, p 55 lines 24–32, p 56 lines 1–23.

32 Transcript, 8 Sep 2021, p 55 lines 22–23.

33 Transcript, 8 Sep 2021, p 32 lines 5–7.

34 Transcript, 8 Sep 2021, p 32 lines 18–32, p 33 lines 1–7.

35 Transcript, 8 Sep 2021, p 32 lines 11–13 and 22–23.

court in Tuas. He was hired to be a cook for about $60 to $70 a day.[36] While he was in Singapore that day, Dinesh called the accused.[37] He told the accused to go the premises of a company, "LW Techno" in Jurong East, to familiarise himself with the place.[38] This is because Dinesh told the accused that he would be sent there to collect money from someone on some later date.[39] I should add that it is not in dispute, and it is also apparent from the accused's account in his long statements, that "LW Techno" and "LW Company" (see [5] above) were used interchangeably by him and referred to the same place.[40]

15 On 15 April 2018, Dinesh called the accused at night at about 11.00pm. Dinesh asked the accused if he was working the next day, to which the accused replied that he was. Dinesh told the accused he would be passing him a raincoat for his use. He told the accused to leave his motorcycle box outside the accused's house, and he would come by and place the raincoat in the box. The accused did as Dinesh instructed.[41]

16 Early the next morning, Dinesh called the accused and told him that he had left the raincoat in his motorcycle box.[42] When he opened the box, the accused found not only a raincoat but also several bundles, which were wrapped in tape of different colours.[43] According to the accused, these bundles included

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36 Transcript, 8 Sep 2021, p 63 lines 28–31, p 68 lines 24–29; Agreed Bundle ("AB") at p 165.

37 Transcript, 8 Sep 2021, p 64 lines 2–4.

38 AB at pp 158–159 and 165; Transcript, 8 Sep 2021, p 64 lines 7–12, lines 27–28.

39 Transcript, 8 Sep 2021, p 65 lines 15–18.

40 Transcript, 8 Sep 2021, p 64 lines 16–19.

41 Transcript, 7 Sep 2021, p 3 lines 15–27; p 4 line 6.

42 Transcript, 7 Sep 2021, p 5 lines 8–10.

43 Transcript, 7 Sep 2021, p 5 lines 12–13.

the Bundles and the one black bundle (exhibit A1) that had been found in his motorcycle box on his arrest (see [7] above and [25] below).[44] They also included the one black bundle that had been passed to Seet (containing what was later marked as exhibit SAN-A1) (see [5] above),[45] and the white bundle and two black bundles that had been passed to Okubo (exhibits D1, E1A and E1B) (see [6] above).[46] By the exhibit markings, it would appear that Dinesh had placed a total of four black bundles, five blue bundles and one white bundle in the accused's motorcycle box. In his evidence, the accused explained that there were three black bundles in total,[47] but he subsequently clarified that was because he regarded the two black bundles passed to Okubo (exhibits E1A and E1B) as a single black bundle because those two black bundles had been stuck together.[48] The accused also testified that the black bundle passed to Seet was in a shape and form resembling that of exhibit A1 before it was handed over to Seet.[49] For ease of reference, I adopt the accused's evidence about exhibits E1A and E1B having been stuck together and I will refer to the two black bundles handed over by the accused to Okubo as a single black bundle.

17 The accused called Dinesh to ask him about these bundles.[50] Dinesh said that these bundles were "shisha", and that he needed the accused's help to bring these bundles into Singapore.[51] The accused was also instructed "to collect

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44 Transcript, 7 Sep 2021, p 40 lines 7–10.

45 Transcript, 7 Sep 2021, p 21 lines 14–21.

46 Transcript, 7 Sep 2021, p 32 lines 8–12 and 30–32, p 33 lines 1–4.

47 Transcript, 7 Sep 2021, p 29 lines 28–31, p 39 lines 25–27.

48 Transcript, 7 Sep 2021, p 32 lines 18–32, p 33 lines 1–4, p 39 lines 17–18 and 31–32.

49 Transcript, 7 Sep 2021, p 40 line 27, p 41, lines 28–32, p 42 lines 1–7.

50 Transcript, 7 Sep 2021, p 7 lines 14–19.

51 Transcript, 7 Sep 2021, p 7 lines 22–25, p 8 line 7.

money from some people" and hand over the bundles "to some of those people" whom he collected money from.[52] The collection of moneys was connected to Dinesh being a loan shark.[53]

18 The accused gave evidence that he was initially "scared", but Dinesh told him it was "nothing".[54] The accused then agreed to do it.[55] He also gave evidence that, when he opened the motorcycle box, there was a smell.[56] He then picked up one of the blue bundles (*ie*, the Bundles) and sniffed it, and it smelt like a fruit.[57]

19 The accused then rode into Singapore on his motorcycle for work. He had to report to the food court by 6.30am.[58] After he had entered Singapore, and en route to his workplace, Dinesh called the accused.[59] Dinesh told the accused to place the white bundle (exhibit D1) and any one of the black bundles, that had been placed in his motorcycle box, into his haversack.[60] The accused followed the instructions. The black bundle which the accused picked was the one he later handed over to Seet, *ie*, the one containing exhibit SAN-A1 (see [21] below). The rest of the bundles remained in the motorcycle box.[61]

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52 Transcript, 7 Sep 2021, p 8 lines 9–10.

53 Transcript, 7 Sep 2021, p 18 lines 25–32, p 19 lines 1–8.

54 Transcript, 7 Sep 2021, p 13 lines 2–3.

55 Transcript, 7 Sep 2021, p 13 lines 3–4.

56 Transcript, 8 Sep 2021, p 8 lines 20–21, p 9 lines 15–17.

57 Transcript, 7 Sep 2021, p 9 lines 25–32, p 10 lines 1–5.

58 Transcript, 7 Sep 2021, p 12 lines 26–27.

59 Transcript, 7 Sep 2021, p 12 lines 18–19.

60 Transcript, 7 Sep 2021, p 12 lines 20–21, p 13 lines 16–18 and 22–27.

61 Transcript, 7 Sep 2021, p 13 lines 28–29.

20 Dinesh called him sometime after 12.00pm later that day.[62] Dinesh instructed the accused to go to a food court at the premises of LW Techno to collect money from someone there at around 2.00pm during the accused's lunch break from work.[63] Once he arrived, Dinesh gave him instructions to pick up a bag which was hanging in one of the restroom cubicles.[64] The bag contained money, which the accused then placed in his waist pouch.[65]

21 Dinesh then instructed the accused to travel to Eunos MRT station.[66] Once there, the accused waited at a car park for further instructions.[67] Seet approached the accused and handed him some money in an envelope. Acting on Dinesh's instructions, the accused then opened his haversack and left it to Seet to pick out the black bundle that the accused had earlier placed in his haversack (see [19] above). Seet then left.[68] The accused claims that he did not count the moneys handed to him by Seet.[69]

22 Dinesh informed the accused that another person would come and hand him some money.[70] An elderly man, who the accused described looked like a Malay man, showed up and passed him some money.[71] The cash was tied up

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62 Transcript, 7 Sep 2021, p 14 lines 28–29.

63 Transcript, 7 Sep 2021, p 15 lines 8–10.

64 Transcript, 7 Sep 2021, p 16 lines 27–32, p 17 lines 1–4.

65 Transcript, 7 Sep 2021, p 16 lines 7–13, p 17 lines 4–5.

66 Transcript, 7 Sep 2021, p 18 line 20.

67 Transcript, 7 Sep 2021, p 19 line 15.

68 Transcript, 7 Sep 2021, p 19 lines 16–19.

69 Transcript, 7 Sep 2021, p 20 lines 27–28.

70 Transcript, 7 Sep 2021, p 22 lines 17–21.

71 Transcript, 7 Sep 2021, p 22 lines 23–26, p 23 lines 8–11.

with rubber bands.[72] The accused claimed that he was not told how much money there was, and he did not count the money as Dinesh had not instructed him to do so.[73]

23 The accused was then told by Dinesh to go to the rear side of Eunos MRT station where someone in a red car would be waiting for him.[74] The accused rode his motorcycle to the location as instructed.[75] The accused saw a red car at that location.[76] He was then asked by Dinesh to confirm if the headlights of that red car were flashing.[77] Upon the accused's confirmation, Dinesh told the accused to approach the car and get into it.[78] The accused got into the back seat of the car.[79] Okubo and a woman were in the driver and front passenger seat respectively.[80] The accused was asked by Dinesh to confirm if Okubo was speaking on the phone, which he was.[81] Okubo then handed the accused some monies but took it back shortly after.[82] Next, Okubo placed a money counting machine on the back seat next to where the accused was sitting.[83] Okubo then placed the monies in the machine and switched it on.[84]

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72 Transcript, 7 Sep 2021, p 22 lines 17 and 28–30.

73 Transcript, 7 Sep 2021, p 23 lines 31–32, p 24 lines 1–3.

74 Transcript, 7 Sep 2021, p 25 lines 1–2.

75 Transcript, 7 Sep 2021, p 25 lines 3–4.

76 Transcript, 7 Sep 2021, p 25 lines 6–7.

77 Transcript, 7 Sep 2021, p 25 lines 24–26.

78 Transcript, 7 Sep 2021, p 25 lines 28–31.

79 Transcript, 7 Sep 2021, p 26 lines 13–15.

80 AB at p 160.

81 Transcript, 7 Sep 2021, p 26 lines 17–19.

82 Transcript, 7 Sep 2021, p 26 lines 20–21.

83 Transcript, 7 Sep 2021, p 26 lines 19–23.

84 Transcript, 7 Sep 2021, p 26 lines 23–26.

The accused was asked by Dinesh if the monies were in $50 or $100 notes; the accused confirmed that it was the former.[85] The accused claims he did not know how many much money there was,[86] save that the machine had counted more than 100 pieces of $50 notes, although he also could not remember precisely the number of $50 notes that had been counted by the machine.[87] Okubo then tied up the monies with a rubber band and handed it to the accused.[88]

24 The accused placed the monies from Okubo into his haversack.[89] Dinesh then asked the accused if he had collected the monies from Okubo.[90] Upon the accused's confirmation, Dinesh told him to pass to Okubo one white bundle and one black bundle.[91] He then took out the white bundle that he had earlier placed in his haversack (exhibit D1) (see [19] above) and passed it to Okubo.[92] The accused then got out of the car and went back to where his motorcycle was parked. He further retrieved another black bundle (which was the composite black bundle comprising the two black bundles marked as exhibits E1A and E1B respectively (see [16] above)) from the motorcycle box, rode the motorcycle over to where Okubo's car was parked, and tossed it into the car.[93] All this was done on the instructions of Dinesh. Okubo then drove off in his car.[94]

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85 Transcript, 7 Sep 2021, p 26 lines 24–25.

86 Transcript, 7 Sep 2021, p 28 lines 28–29.

87 Transcript, 7 Sep 2021, p 27 lines 5–19.

88 Transcript, 7 Sep 2021, p 27 lines 25 and 29–32.

89 Transcript, 7 Sep 2021, p 28 lines 30–31.

90 Transcript, 7 Sep 2021, p 29 line 5.

91 Transcript, 7 Sep 2021, p 29 lines 6–7.

92 Transcript, 7 Sep 2021, p 29 lines 13–14.

93 Transcript, 7 Sep 2021, p 32 lines 18–24.

94 Transcript, 7 Sep 2021, p 33 line 16, AB p 161.

25 Dinesh then told the accused to go back to the location where he had met with Seet.[95] While on the way there, the accused was arrested by CNB officers.[96] The CNB officers found five blue bundles (the Bundles) and one remaining black bundle (exhibit A1) in the motorcycle box (see [16] above).[97]

26 The accused's case is that he had acted on the instructions of Dinesh to deliver the relevant bundles to Seet and Okubo. He was waiting for instructions from Dinesh as to where and to whom he should deliver the remaining bundles in his motorcycle box (which included the Bundles). It may be the case that he had to bring those bundles back to Malaysia to be returned to Dinesh. It all depended on what Dinesh's instructions were. The accused also claims that he did not know that the Bundles contained methamphetamine. He was told by Dinesh that they were "shisha" (as were the rest of the bundles) and he believed that to be true.

The issues

27 In order to make out the charge of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA, it is well-established law that the Prosecution must prove that the accused (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

> (a) was in possession of a controlled drug, which may be proved or presumed pursuant to ss 18(1) or 18(4) of the MDA;

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95 Transcript, 7 Sep 2021, p 34 lines 3 and 9–10.

96 Transcript, 7 Sep 2021, p 34 lines 15–17.

97 Transcript, 7 Sep 2021, p 37 lines 25–28.

(b) had knowledge of the nature of the controlled drug, which may be proved or presumed pursuant to s 18(2) of the MDA; and

(c) possessed the controlled drug for the purpose of trafficking which was not authorised, which may either be proved or presumed pursuant to s 17 of the MDA.

28 From the Prosecution's and the Defence's cases, it is common ground that element of the charge set out at [27(a)] above is not in dispute. The accused accepts that he was in possession of the Bundles, which were in his motorcycle box, at the time of his arrest. The accused also does not challenge the fact that he had "knowing possession" (see *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [31]–[34]) of the Bundles, in that he knew that the Bundles were placed in his motorcycle box by Dinesh, who had asked him to take them into Singapore for delivery to persons there.

29 It is clear to me that the central issue in dispute between the parties is in relation to the element of the charge set out at [27(b)] above. That issue is whether the accused knew that the Bundles in his possession contained methamphetamine. In this regard, the Prosecution's case is that (a) the accused had actual knowledge that the Bundles contained methamphetamine; or, alternatively, (b) he has failed to rebut the presumption of knowledge in s 18(2) of the MDA; or, in the further alternative, (c) he was wilfully blind to the nature of what was contained in the Bundles.[98]

30 A person "knows" a certain fact if he is aware that it exists or is almost certain that it exists or will exist or occur; actual knowledge therefore entails a

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98 POA at para 22.

high degree of certainty (*Public Prosecutor v Koo Pui Fong* [1996] 1 SLR(R) 734 at [14]). However, short of a clear admission of knowledge on the part of the accused person (which will, in the nature of things, be extremely rare), inferences drawn from the precise facts and circumstances of the case are the only material available to the court to ascertain whether or not actual knowledge exists (*Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [104]).

31 Given the limited material on which the court can make a finding of actual knowledge, as well as the fact that accused persons are hardly likely to admit to knowledge or can easily disavow such knowledge even if it existed, the Prosecution would often face practical difficulties in discharging its burden of proof on actual knowledge (see *Tan Kiam Peng* at [104]). The presumption of knowledge in s 18(2) of the MDA therefore works to mitigate these difficulties (see *Tan Kiam Peng* at [54]). Pursuant to s 18(2) of the MDA, which applies in this case because it is accepted that the accused has been "prove[n] … to have had a controlled drug in his possession" (see [28] above), the accused is presumed to have known the nature of that controlled drug found in his possession. As mentioned earlier, the Prosecution relies on this presumption in the alternative to establish that the accused knew that the Bundles contained methamphetamine. As such, one of the key questions before the court is whether the accused has rebutted that presumption of knowledge as to the nature of the contents of the Bundles. To rebut the presumption of knowledge, the burden is on the accused to establish on a balance of probabilities that he did *not* know the nature of the drugs in his possession (see *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") at [57] and [65]).

32 As for the term "wilful blindness", it is important to bear in mind that it can be used in two distinct senses (see *Adili* ([28] above) at [44]). The first may

be described as the "evidential sense" of the term, that is, where the accused person's suspicion and deliberate refusal to inquire are treated as evidence which, together with all the other relevant evidence, might sustain a factual finding or inference that the accused person had *actual knowledge* of the fact in question (see *Adili* at [45]). In other words, when wilful blindness is referred to in this sense, it is nothing more than a convenient shorthand for an inference that the accused actually did know the truth (see *Adili* at [45]–[46]). However, there is also an "extended conception" of wilful blindness, which describes a mental state that *falls short of actual knowledge* but nevertheless is held to satisfy the *mens rea* of knowledge because it is the *legal equivalent* of actual knowledge (see *Adili* at [47]; *Gobi* at [54]). It describes the state of mind of an accused person who does *not* in fact know the true position but sufficiently suspects what it is and deliberately refuses to investigate in order to avoid confirmation of his suspicions, and so he is treated as though he *did* know what the true position was (see *Adili* at [47] and [48]).

33 I now turn to consider the Prosecution's case on knowledge to identify the issues which are thrown up for this court's determination. I start with its second alternative case that the accused was wilfully blind as to the nature of the contents of the Bundles. In that regard, the Prosecution relies on the extended conception of wilful blindness. This may be gleaned from the following questions which the Prosecution put to the accused (in respect of its alternative case on wilful blindness) towards to the conclusion of its cross-examination:[99]

> DPP: Now, I put to you that even if you *did not know* that [the Bundles] contained drugs, you had a clear suspicion that [the Bundles] contained drugs.

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99 Transcript, 10 Sep 2021, p 94 lines 31–32, p 95 lines 14–20.

> …
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> DPP: … even if you *did not know* that [the Bundles] contained drugs, you had reasonable means of finding out what was in [the Bundles].
>
> …
>
> DPP: … even if you *did not know* that [the Bundles] contained drugs, you deliberately refused to find out what was in [the Bundles] for fear of confirming your suspicion so that you may avoid getting into legal trouble.
>
> [emphasis added]

34 In attempting to prove that the accused was wilfully blind to the nature of what was contained in the Bundles, the Prosecution cannot invoke the presumption in s 18(2) of the MDA to presume that the accused was wilfully blind to the nature of the drugs in his possession. This is because, as explained by the Court of Appeal in *Gobi*, knowledge that is presumed under s 18(2) of the MDA is confined to *actual knowledge* of the nature of the drugs in the accused person's possession and does not encompass knowledge of matters to which the accused is said to be wilfully blind, which is a state of mind falling short of, but is nevertheless treated as the legal equivalent of, actual knowledge (at [56]).

35 In *Gobi* ([31] above), the Court of Appeal, without expressing a conclusive view, stated that it may be possible in principle for the Prosecution to run *alternative* cases of actual knowledge and wilful blindness, subject to there being no prejudice to the accused person (at [55]). One instance of prejudice contemplated by the Court of Appeal in *Gobi* is where the accused person is placed in the position of having to run a potentially inconsistent defence in an attempt to address allegations of both actual knowledge and wilful blindness (at [55]). Given the Court of Appeal's observations in *Gobi*, I say no more about whether it had been permissible for the Prosecution to run the case

which they had advanced, and it suffices to say that I was satisfied that there had been no prejudice to the accused in this case. The accused's defence is that he had been told by Dinesh that the bundles placed in his motorcycle box (which included the Bundles) were "shisha" and he believed that to be true (see [26] above). In other words, his defence is based on what he thought the Bundles were. This state of knowledge or belief which the accused asserts is consistent with him claiming to have no actual knowledge that the Bundles contained methamphetamine, and also consistent with his claim that he believed that the Bundles contained "shisha" and so he could not have had any grounds to think that they contained anything else. There was therefore no prejudice occasioned to the accused as he can attempt to refute the Prosecution's cases on actual knowledge and wilful blindness on a single and consistent defence.

36 Returning to the Prosecution's case on actual knowledge, it contends that the evidence demonstrated the following, which it says supports its case that the accused knew that the Bundles contained methamphetamine:[100]

(a) the accused's claim that he believed that he was carrying "shisha" was a blatant lie;

(b) the accused knew that the Bundles were of substantial value and thus could not be "shisha";

(c) the accused had delivered drugs for Dinesh on five occasions prior to his arrest on 16 April 2018 for substantial monetary reward; and

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100 PCS at para 46.

(d) the surreptitious circumstances under which the accused delivered the bundles were such that he must have known the nature of what was contained in the Bundles.

37 In *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95, the Court of Appeal emphasised that the Prosecution cannot rely on the Defence's failure to prove an accused person's ignorance of a relevant fact (namely, that he *did not know* that the items found in his possession were drugs of a specific nature) to contend that the Prosecution has discharged its burden to prove the accused's person knowledge of that fact (namely, that the accused *knew* that the items found in his possession were drugs of that specific nature) because that would have the impermissible effect of shifting the burden of proof (at [29]). In other words, the Prosecution should not rely on contentions which more properly go towards establishing the accused's failure to rebut the presumption of knowledge in s 18(2) of the MDA to make out a case based on the accused's actual knowledge.

38 In this case, the Prosecution's submissions on actual knowledge appear to be more of a contention that the accused's claim that he believed the Bundles (or bundles) to be "shisha" should not be believed. That is self-evident with respect to the arguments at [36(a)] and [36(b)]. With respect to the argument at [36(c)], the import of the Prosecution's contention is that, because the accused had delivered *drugs* (of a non-specific nature) on previous occasions for Dinesh and in exchange for which the accused had received substantial monetary reward, his claim that Dinesh asked him to deliver "shisha" (instead of drugs) on 16 April 2018 should be disbelieved. Finally, for the argument at [36(d)], the Prosecution's contention appears to be that those surreptitious circumstances would have alerted the accused that he was involved in gravely unlawful transactions on 16 April 2018, and so he would have known that the

bundles contained something other than "shisha". In this regard, I add that the Prosecution cannot seriously contend that the accused would have known from those circumstances *alone* that the Bundles contained methamphetamine; the bundles that had been placed into the accused's motorcycle box by Dinesh on 16 April 2018 (which the accused claims were "shisha" and of which the Bundles were part) comprised cannabis and diamorphine as well (they were found in the bundles which the accused delivered to Seet and/or Okubo). At best, the surreptitious circumstances can only suggest that the accused *knew* that the bundles contained controlled drugs, and that was a state of knowledge inconsistent with his asserted belief at the material time that the bundles were merely "shisha". I thus find that the Prosecution's submissions are directed at establishing deficiencies in the accused's claim that he believed the bundles to be "shisha". In my judgment, these submissions are more properly analysed in considering if the accused has rebutted the presumption of knowledge under s 18(2) of the MDA, and I therefore proceed on this basis. I should add that this course occasions no prejudice to the Prosecution because its case also enlists the assistance of the presumption of knowledge in s 18(2) of the MDA.[101]

39 As for the element of the charge set out at [27(c)] above, s 2(1) of the MDA defines "traffic" as meaning to sell, transport or deliver. It is for the Prosecution to prove that the accused possessed the Bundles for one or more of these acts which constitute trafficking under the MDA. In most cases, short of an admission from the accused, the Prosecution will have to prove that an accused person possessed the drugs for the purpose of trafficking from all the circumstances of the case. For instance, it can invite the court to draw such an inference based on the quantity of controlled drugs in the possession of the

[101] Transcript, 31 Jan 2022, p 19 lines 6–14.

accused (see *Mohammad Rizwan bin Akbar Husain v Public Prosecutor and another appeal and other matters* [2020] SGCA 45 ("*Rizwan*") at [80]–[81]). In *Rizwan*, the Court of Appeal considered such an inference justified based on the sheer quantity of the drugs, which weighed more than 25 pounds and contained 301.6g of diamorphine, more than 20 times the quantity of 15g that would attract the death penalty under the MDA (at [80]).

40 To prove that the accused possessed the controlled drug for the purpose of trafficking in this case, the Prosecution in this case cannot rely on s 17(*h*) of the MDA, which provides that a person "who is proved to have had in his … possession more than 25 grammes of methamphetamine ... shall be presumed to have had that drug in possession for the purpose of trafficking". This is because the Prosecution is already relying on the presumption in s 18(2) of the MDA in this case to establish that the accused had actual knowledge that the Bundles contained methamphetamine. As the Court of Appeal explained in *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Zainal*"), the presumption in s 17 of the MDA may only be invoked where the fact of *possession*, as well as the fact of *knowledge* of the nature of the item that is in the possession of an accused person, are *proven* by the Prosecution (at [38] and [47]). Although the wording of s 17 states that the presumption of trafficking therein can be invoked where the fact of possession is proved, a person cannot be found to be trafficking without knowledge of the nature of the drugs in question. Yet, s 17 does not contemplate the proof of the latter element before it may be invoked. A purposive interpretation of s 17 therefore means that the premise upon which the s 17 presumption may be invoked must extend to *both* the fact of physical possession and the element of knowledge (see *Zainal* at [46]–[50]). It follows that the presumption in s 17 of the MDA cannot be invoked alongside the presumptions in s 18 of the MDA (including the

presumption of knowledge in s 18(2) of the MDA); where it is necessary for the Prosecution to rely on either or both of the presumptions in s 18 of the MDA, it must follow that the fact of possession and/or knowledge has not been *proven* and the premise for invoking s 17 of the MDA has not been satisfied (see *Zainal* at [49]; *Rizwan* at [81]; *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*") at [58]).

41 In any event, the Prosecution does not seek to rely on the presumption in s 17(*h*) of the MDA to prove that the accused was in possession of the Bundles for the purpose of trafficking.[102] The Prosecution's case is that the accused had admitted in his statements that he had brought in the Bundles into Singapore to be delivered to persons in Singapore, on the instructions of Dinesh. In fact, the Prosecution says that the accused had admitted that he was waiting for the instructions of Dinesh as to where and to whom he should deliver the Bundles at the time when he was arrested. This is not accepted by the Defence, who takes the position that the accused might well have been asked by Dinesh to bring the Bundles back to Malaysia to be returned to Dinesh himself, and hence there is a reasonable doubt that the accused was in possession of the Bundles for the purposes of trafficking.

42 For completeness, I should add that there is no question that methamphetamine is a controlled drug under the MDA, and also that the accused was not authorised under the MDA to have in his possession the methamphetamine that was contained in the Bundles.

43 Give the abovementioned positions taken by the Prosecution and the Defence, the issues that I have to decide are therefore:

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102 Transcript, 31 Jan 2022, p 22 lines 12–13.

(a) whether the accused has rebutted the presumption in s 18(2) of the MDA that he had actual knowledge that the Bundles contained methamphetamine;

(b) if the answer to (a) is "no", whether the accused was wilfully blind to the contents of the Bundles; and

(c) if the answer to *either* (a) or (b) is "yes", whether the accused was in possession of the Bundles for the purpose of trafficking.

It is to these issues that I now turn.

Whether the accused has rebutted the presumption of knowledge in s 18(2) of the MDA

44 To rebut the presumption of knowledge, the burden is on the accused to show on a balance of probabilities that he did not know the nature of what was contained in the Bundles (see [31] above). The applicable principles were distilled by the Court of Appeal in *Gobi* ([31] above) as follows (at [57]–[61] and [64]–[65]):

(a) The starting point is for the accused person to give an account of what he thought or believed the thing in his possession was. Whether the presumption of knowledge has been rebutted involves a subjective inquiry into the accused person's state of mind or knowledge. The court will assess the veracity of the accused person's assertion as to his subjective state of mind against the objective facts and examine his actions and conduct relating to the item in question in coming to a conclusion on the credibility of his assertion.

(b) It is incumbent on the accused person to adduce sufficient evidence disclosing the basis upon which he claims to have arrived at that subjective state of mind. It is however not necessary for the accused person to establish that he held a firm belief as to, or actually knew, what the thing in his possession specifically was; the inquiry is whether the accused person did *not* in fact know that the thing in question was the specific drug in his possession.

(c) The presumption of knowledge will be rebutted where the court accepts that the accused person formed a *positive* belief that was incompatible with the knowledge that the thing which he was carrying was the specific drug in his possession. However, the accused person need not establish a positive state of knowledge as to the contents of the items found in his possession. Instead, he is only required to establish a *negative*, namely, that he did not believe that the items in his possession were drugs of the particular nature.

(d) It will not suffice for the accused person to simply claim that he did not know what he was carrying, or if he had been "indifferent" about what the thing in his possession was (namely, where he was in a position to verify or ascertain the nature of what he was carrying but chose not to do so). In those circumstances, the accused person cannot rebut the presumption of knowledge because he cannot be said to have formed *any* view as to what the thing in his possession is or is not.

45 As I have stated earlier, I found the submissions relied on by the Prosecution for its case on actual knowledge to be aimed at establishing deficiencies in the accused's claim that he believed the Bundles to be "shisha" and hence I consider them to be more relevant to the issue of whether the

accused has rebutted the presumption of knowledge (see [38] above). These submissions throw up the following issues for consideration:

(a) whether it is credible that the accused believed that he was carrying "shisha";

(b) whether the accused knew that the Bundles were of substantial value and thus could not be "shisha";

(c) whether the accused had delivered drugs for Dinesh on other occasions prior to his arrest on 16 April 2018; and

(d) whether the surreptitious circumstances under which the accused delivered the bundles were such that he must have known that the Bundles contained drugs and not "shisha".

I will deal with these issues in turn.

The evidence

The accused's belief that he was carrying "shisha"

46 The Defence submits that the accused honestly held the belief that all the bundles (of which the Bundles were part) that had been placed by Dinesh in his motorcycle box contained "shisha". This is premised on what the accused says he was told when he phoned Dinesh after finding the bundles in this motorcycle box in the early hours of 16 April 2018 (see [17] above). The accused felt assured when Dinesh told him that at most, if he was caught with the bundles, he would just get a fine for illegally bringing "shisha" into

Singapore.[103] Dinesh also told the accused that he (Dinesh) would pay the fine, and that the accused did not have to be worried.[104]

47 The accused also said that, when he opened the motorcycle box, there was a pleasant smell that reminded him of fruits. He also said that he sniffed one of the Bundles and they smelt pleasant. So, all this was consistent with what Dinesh was telling him over the phone. That the accused believed what Dinesh said, the Defence argues, can be seen by the fact that he made no attempt to conceal the bundles that were in the motorcycle box.[105] They were just placed below the raincoat that Dinesh had also passed him. If there was a check, the bundles would be discovered by just opening the motorcycle box and lifting up the raincoat.

48 I find that the accused's claim that he believed that the bundles in his possession contained "shisha" somewhat difficult to accept. If that is what he truly believed, it is not clear to me why the accused did not say this in his contemporaneous statement which was recorded shortly after he was arrested, at around 6.30pm on 16 April 2018. In that statement, which was recorded by Staff Sergeant Muhammad Fardlie Bin Ramlie ("SSgt Fardlie"), the accused said "I do not know" when SSgt Fardlie pointed to the Bundles and asked him "[w]hat is this?".[106] Further, the contemporaneous statement was recorded shortly after the accused had been served with the mandatory death penalty notification by SSgt Fardlie (at about 5.18pm).[107] The accused would have

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103 Transcript, 8 Sep 2021, p 57 lines 16–29.

104 Transcript, 8 Sep 2021, p 61 lines 7–18.

105 Transcript, 31 Jan 2022, p 23 lines 16–18.

106 AB at p 94.

107 AB at p 87.

appreciated the seriousness of the situation he was in by the time the contemporaneous statement came to be recorded. It would therefore have been the most natural thing for the accused to have answered SSgt Fardlie's question by saying that he was told that the Bundles were "shisha", if that was indeed what he had been told by Dinesh. After all, in that same statement, the accused had identified Dinesh (which had been spelt as "Dinish" by SSgt Fardlie) as the person who was giving him instructions as to where he should deliver those bundles that were found in his motorcycle box at the time of his arrest.[108] It follows from this that one would expect that the accused would also tell SSgt Fardlie that Dinesh told him that the bundles contained "shisha" if that was indeed what Dinesh had told him.

49 Even if the accused did not appreciate the gravity of the situation at the time of the recording of the contemporaneous statement, that surely cannot be said of when the first of the accused's two long statements was recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") on 20 April 2018 at around 2.55pm.[109] By that time, the accused would have known, contrary to Dinesh's assurance, that the Bundles did not contain "shisha" and that he was possibly facing a serious charge as a result of being in possession of the Bundles at the time of his arrest. However, in the first long statement recorded on 20 April 2018, the accused also made no mention that he believed that the Bundles contained "shisha".

50 In that statement, the accused described his discussion with Dinesh in some detail after he had discovered that many bundles had been placed by

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108 AB at p 94.

109 AB at pp 156–162.

Dinesh in the motorcycle box.[110] There are two points in particular to note here. First, the accused stated that he "did not take up the bundles to see or check because it did not occur to [him] to check".[111] That contradicts the accused's evidence in court that he sniffed one of the Bundles (see [18] above), which is a point that I will come to later in this judgment (see [57] below). Second, the accused stated that he had called Dinesh immediately to ask him about the bundles. Specifically, he stated that he had asked Dinesh "if the things will cause me to be arrested".[112] Dinesh's reply, as recorded in the first long statement, is that the bundles were not "illegal", and that the accused would not be arrested. Dinesh also told the accused that "he would not give [him] the things to deliver so openly if they were illegal".[113] Similarly, as in the case of the contemporaneous statement, there was also no mention in the first long statement of the fact that Dinesh had told the accused that the bundles were "shisha". The accused's account in his first long statement is also somewhat inconsistent with his evidence in court, which is that Dinesh had told him that the bundles were contraband items, and which would attract a fine if he were caught in Singapore with them (see [46] above).[114]

51 I find it quite inexplicable that the accused would not have mentioned that Dinesh had told him that the bundles were "shisha" in the first long statement, if it was indeed true that Dinesh had told him that. After all, he was explaining to the Investigation Officer, Inspector Yeo Wee Beng ("IO Yeo") what precisely he had been told by Dinesh about the bundles. If Dinesh had

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110 AB at p 158.

111 AB at pp 157–158.

112 AB at p 158.

113 AB at p 158.

114 Transcript, 8 Sep 2021, p 57 lines 16–29.

indeed told the accused that the bundles were "shisha", then having been told that they were *not*, and coupled with the severity of the penalty that he might face as a result of being in possession of those bundles, the most natural thing would have been for the accused to give an account of what he had been informed by Dinesh about the bundles. Quite the contrary, the accused's explanation in that statement was that he did not know what was inside the bundles because Dinesh never told him about their contents, save that they were not "illegal" and would not get him arrested.

52 IO Yeo recorded another long statement from the accused on 21 April 2018 at about 3.40pm. Again, in this second long statement, the accused made no mention that Dinesh had told him that the bundles contained "shisha", or that Dinesh had asked him to deliver "shisha" to persons in Singapore. Instead, the accused stated that he did not know what was contained in the bundles.[115] He repeated what he had said in his first long statement, namely, that all the bundles were placed in the motorcycle box by Dinesh, and that he did not check the bundles because he trusted Dinesh.[116]

53 The accused did not challenge the admissibility of his long statements under s 258(1) of the CPC. He accepted that they were voluntarily given.[117] While he did challenge his contemporaneous statement as being involuntary because of an alleged threat, I had found, after an ancillary hearing, that there was no basis for his allegation of a threat, and that his contemporaneous statement was voluntarily given (see [99]–[105] below).

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115 AB at p 171.

116 AB at p 171.

117 Statement of Agreed Facts at para 18.

54 I find that the accused's evidence in court that he believed that the bundles (which included the Bundles) contained "shisha" is not credible because, if it were indeed true that this is what Dinesh had told him, it would have been mentioned in his contemporaneous statement, or at the latest, in the second of his two long statements. I find that the accused's claim that Dinesh told him that the bundles contained "shisha flavour" was an afterthought that first emerged in the accused's cautioned statement of 12 November 2018 in relation to the Charge, which was recorded under s 23 of the CPC almost six months after his arrest.[118] In my view, this claim that Dinesh had told him that the bundles were "shisha" was then embellished upon in the accused's evidence in court.

55 A court is not always entitled to draw an adverse inference against an accused person for his failure to disclose a material fact in his long statements because an accused person is allowed by s 22(2) of the CPC to withhold mentioning any fact or circumstance which, if disclosed, may incriminate him (see *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [57]). However, if the fact or circumstance that is withheld will exculpate the accused person from an offence, a court may justifiably infer that it is an afterthought and untrue, unless the court is persuaded that there are good reasons for his omission to mention it earlier (see *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 at [152]). An exculpatory fact or circumstance also has more credibility if it was disclosed to an investigating officer at the earliest opportunity after arrest (*Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 at [19]).

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118 Exhibit P79.

56 In this case, by the time the contemporaneous statement and the long statements came to be recorded, the accused knew that he was facing a serious charge of trafficking that carries the death penalty as a result of his possession of the Bundles at the time of his arrest. The accused's account about having been told by Dinesh that the bundles (which included the Bundles) were merely "shisha" was a fact that stood to exculpate him from that serious charge. Yet, the accused omitted to mention it either in the contemporaneous statement or in his long statements. Further, the account which the accused provided in his long statements, namely, that Dinesh never told him, and so he did not know, what the Bundles contained, was *inconsistent* with this exculpatory fact. The Defence was not able to point to any sensible explanation in the evidence for the accused's failure to mention this exculpatory fact in his statements and why the account which the accused did provide in those statements contradicted the exculpatory fact that he now seeks to rely on. Given the circumstances, the accused's evidence about being told by Dinesh that the bundles were "shisha" must be rejected.

57 I must add that the same difficulty afflicts the accused's evidence in court that there had been a pleasant smell when he opened the motorcycle box in the early hours of 16 April 2018 after Dinesh had placed the raincoat and the bundles in his motorcycle box, and that one of the Bundles smelt like "fruit" when he picked it up and sniffed it (see [18] above). In my view, the accused came up with the story that the bundles gave off a pleasant smell when he checked them so as to make his account that Dinesh had told him that the bundles contained "shisha" appear more believable. This crucial detail was similarly an exculpatory fact because it would suggest that the accused thought or believed the Bundles to be something other than methamphetamine, and lend weight to his claim that they were "shisha". Yet, it was not mentioned at all in

his contemporaneous statement and long statements. The accused only mentioned this for the first time in his cautioned statement of 12 November 2018, where he stated that he sniffed one of the Bundles, and they had a pleasant smell. Again, the Defence was not able to offer any credible explanation for why the accused had not mentioned this exculpatory fact earlier. Further, this detail was also contradicted by the account which the accused gave in his long statements, namely, that he did not handle or check the bundles at all because it never occurred to him to do so (see [50] above). As such, I did not accept the accused's evidence that he smelt the Bundles. On the contrary, I find that the account put forth by the accused in the accused's first long statement of 20 April 2018 is more likely to be the truth (namely, that he did not handle or check the bundles at all).[119] The accused repeated this in his second long statement of 21 April 2018 where he stated quite unequivocally that he "did not check" the bundles because he trusted Dinesh.[120]

58 I should add that there is another aspect of the accused's evidence about believing the bundles were "shisha" which does not withstand scrutiny. His evidence in court was that he was "scared" when Dinesh had told him that the bundles left in the motorcycle box and which he was to deliver to persons in Singapore contained "shisha" (see [18] above). However, the accused said he felt assured when Dinesh told him that, even if he was caught with the bundles of "shisha", all he would face is a fine, and that Dinesh would pay the fine for him (see [46] above). In other words, his evidence is that he believed Dinesh that the bundles were only "shisha". If all this were true, the accused would have perceived the bundles as being relatively innocuous, and would not have had any reason for withholding his account about the bundles being "shisha"

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119 AB at p 158.

120 AB at p 171.

from the recorders of his contemporaneous statement and long statements. As such, on the accused's own evidence, there can be no credible explanation for his failure to mention the bundles being "shisha" at the earliest instance possible. Further, if it indeed had been the accused's belief and understanding that he would merely get a fine for carrying the bundles, he would have been in a state of grave alarm when he was informed of potentially facing the death penalty for being found in possession of those bundles recovered from his motorcycle box on his arrest. That makes his failure to mention the bundles being "shisha" as Dinesh had told him all the more incomprehensible. The only logical inference that the court can draw is that the accused's evidence about being told that the bundles (which included the Bundles) were "shisha" was an afterthought concocted as a defence to the Charge.

The accused's knowledge that the Bundles were of substantial value

59 The accused's evidence in court is that he had been instructed by Dinesh to deliver these bundles of "shisha" to various persons in Singapore (see [17] above). In addition to that, Dinesh had also instructed him to collect moneys from various persons in Singapore because Dinesh was a loan shark, and presumably these persons owed moneys to Dinesh (see [17] above). In the case of Okubo and Seet, the accused's evidence is that he did not count the moneys that were handed over by them (see [21] and [23] above). The Defence argues that the accused thus did not know that this was a transaction for the sale of the bundles, *ie*, he did not know that the moneys he received from Okubo and Seet were in exchange for the bundles. All the accused thought was that he was collecting moneys that were owed to Dinesh, while at the same time, delivering certain bundles to Okubo and Seet, as instructed by Dinesh.

60 I find the accused's evidence in this regard to be rather tenuous. This is for several reasons. First, there is an inherent implausibility that the accused would not have made a connection between the bundles he was handing over and the moneys he was receiving, and thus realise that he was delivering the bundles *in exchange* for the moneys he was receiving from Okubo and Seet. That, in my view, would have been obvious to any person in the position of the accused. It was especially so in the case of the delivery to Okubo, where Dinesh had instructed the accused to hand over the bundles to Okubo only after the accused's confirmation that he had collected the moneys from Okubo (see [23]–[24] above).

61 Second, the accused's evidence that Dinesh had also given him the task of collecting moneys from persons in Singapore on 16 April 2018 because of his loan shark business was never mentioned at all in the accused's two long statements (see [49] and [52] above) when he described his dealings with Okubo and Seet on 16 April 2018. There was no mention by the accused that he thought that the moneys he collected from Okubo or Seet were moneys owed by them to Dinesh, which he had been asked to collect on behalf of Dinesh. In fact, in his first long statement, the accused recounted in some detail his encounters with both Seet and Okubo, but he did not say that he was collecting moneys from them for Dinesh's loan shark business. Instead, he describes how in each case, moneys were handed over to him before he parted with possession of the bundles.[121]

62 Third, the accused's evidence, namely, that he did not perceive the moneys which Okubo and Seet passed to him as being given in exchange for the bundles delivered to them, is contradicted by the evidence from Okubo and

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121 AB at pp 159–160.

Seet. In their investigation statements recorded under s 22 of the CPC, both Okubo and Seet stated that the accused had counted the moneys that they handed over, before he handed over the bundles to them. Okubo stated that, after the accused got into the rear passenger seat in this car, he handed over a sum of money to the accused, who counted it.[122] It is not in dispute that this was the sum of $7,300 cash found on the accused on his arrest (exhibit B1A) and which the accused identified in his second long statement as having been handed over to him by Okubo.[123] According to Okubo, after this was done, the accused took out a bundle and placed it in the rear passenger seat. The accused then exited the car, returned to his motorcycle and parked behind the car. The accused signalled for Okubo to move the car forward (so that he could ride his motorcycle into the area between the car and the kerb) and to lower the rear passenger window, before he threw some bundles into the car.[124] The accused himself also gave evidence that he passed two bundles to Okubo, first by leaving one white bundle in the car, and then later tossing into Okubo's car the composite black bundle through the rear passenger seat window (see [16] and [24] above). Seet stated that, when he met with the accused, he had handed over about $2,500 to the accused.[125] Thereafter, the accused counted the money, while Seet waited.[126] Once this was done, the accused handed over to Seet a black bundle.

63 The Prosecution relies on Okubo's and Seet's statements to argue that the accused knew very well that the bundles were being given in exchange for

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122 Exhibit P89.

123 AB at p 167.

124 Exhibit P89.

125 Exhibit P92.

126 Exhibit P91.

the moneys. Thus, the Prosecution submits that the accused knew that this was a transaction involving the sale of the bundles, and the accused knew that the bundles were of "high value".[127] After all, the accused counted the moneys before handing over the respective bundles to Seet and Okubo.[128]

64 The Defence attacks the Prosecution's reliance on the statements of Okubo and Seet. They argue that both Okubo and Seet had been called as Prosecution witnesses and both of them had given unreliable evidence. Okubo had given testimony to the effect that he could not remember many details of the events on the day of his arrest, given that his arrest was two-and-a-half years ago (see [69] below). Seet's evidence in court was that he could not remember anything about the events on the day of his arrest because he is now under medication (see [70] below). Some preliminary issues which I had to deal with in connection with this point is whether Okubo's and Seet's credit ought to be impeached by virtue of their former inconsistent statements, and whether those statements were to be admitted as their evidence in court, and if so, the weight to be attached those statements. It is to these issues that I first turn.

(1) The impeachment of Okubo's and Seet's credit by their former inconsistent statements

65 Section 157(*c*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") provides that the credit of a witness may be impeached by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted. The "credit" of a witness refers to his character and moral reliability, as distinguished from his "credibility", which in turn refers to his mental capacity and power to be a witness of veracity (see *Kwang Boon Keong*

127 PCS at para 55.

128 PCS at para 55.

Peter v Public Prosecutor [1998] 2 SLR(R) 211 ("*Kwang Boon Keong*") at [18]). The credit or discredit of a witness relates to his credibility, and so to impeach a witness's credit is to disparage or undermine his character and moral reliability and worth, in order to undermine his *credibility* by showing that his testimony in court should not be believed because he is of such a character and moral make-up that he is one who is incapable of speaking the whole truth under oath and should not be relied on (*Kwang Boon Keong* at [19]).

66 The procedure for the proof of the former inconsistent statement by which the witness's credit is to be impeached pursuant to s 157(*c*) of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") is found in s 147 of the EA. The relevant provisions in s 147 of the EA reads:

> 147.—(1) A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question in in the suit or proceeding in which he is cross-examined; but if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.
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> (2) If a witness, upon cross-examination as to a previous oral statement made by him relevant to matters in question in the suit or proceeding in which he is cross-examined and inconsistent with his present testimony, does not distinctly admit that he made such statement, proof may be given that he did in fact make it; but before such proof can be given, the circumstances of the supposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he made such statement.
>
> (3) Where in any proceedings a previous inconsistent or contradictory statement made by a person called as a witness in those proceedings is proved by virtue of this section, that statement shall by virtue of this subsection be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible.

67 Section 147(1) of the EA provides for a witness to be cross-examined as to his previous statements in writing for the purposes of impeaching his credit. It is invoked where the court is of the opinion that the difference in the witness's former statement and his testimony is so serious or material as probably to amount to a discrepancy affecting his credit (*Kwang Boon Keong* at [21]). The witness is then asked whether he made the alleged statement. If the witness denies having made it, then the statement must be proved pursuant to s 147(2) of the EA. After the witness is proved to have made the statement (or if he admits to making it), the two conflicting versions must be carefully explained to him, and the witness must have a fair and full opportunity to explain the difference. If the witness's explanation is satisfactory, then his credit is saved, though there may be some doubt as to the accuracy of his memory. If the witness is unable to provide a satisfactory explanation, then he will be impeached (see *Kwang Boon Keong* at [21]). By virtue of s 147(3) of the EA, in addition to the impeachment of the witness's credit, the witness's former inconsistent statement shall also be admissible as evidence of any fact stated therein (see *Kwang Boon Keong* at [22]).

68 The Defence argues that the Prosecution has not established that Okubo and Seet had deliberately lied when they testified in court that they could not remember the events on the day of their arrest (16 April 2018), and hence the court should not allow their previous statements to be admitted in order to impeach their credit.[129] Further, the Defence argues that statements of Okubo and Seet are not reliable and accurate because there is no evidence to show the circumstances under which Okubo and Seet gave their statements.[130] Following

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129 Defence's Closing Submissions ("DCS") at para 33.

130 DCS at paras 26 and 28.

from this, the Defence argues that the court also cannot be certain whether Okubo and Seet gave their statements voluntarily.

69 From my review of the evidence of both Okubo and Seet, and more significantly, how they gave their oral testimony in court, there is no doubt in my mind that both these witnesses had come to court with the intent of trying to feign ignorance or loss of memory as to the events on the day of their arrest. Both of them have been imprisoned for drug offences relating to the bundles which they took delivery from the accused, and they showed obvious discomfort at being called as Prosecution witnesses in the trial of a capital offence against the accused. In the case of Okubo, he started off with his evidence by declaring that he did not want to testify, and he does not recall the incident with the accused that took place on the day of his arrest.[131]

> Q: Yes, Mr [Okubo], I'm going to ask you a series of questions.
>
> A: I---I don't wish to testify.
>
> Q: Yes. But---well, I'll just ask you a series of questions then you can give me your answer. Okay?
>
> A: I don't wish to---Sir, I don't want to testify.
>
> Q: And can I know why you do not want to testify?
>
> A: I don't really recall the incident.
>
> Q: Yes. You mean the incident on the 16th of April 2018?
>
> A: Yes.
>
> Q: Yes. Those were the so---the events which led up to your arrest?
>
> A: Yes. Yes.
>
> Q: Yes. As---when you say you don't really recall, what do you mean? What do you mean you don't really recall?

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131 Transcript, 15 Oct 2020, p 2 lines 17–33, p 3 lines 1–4.

A: No, I just don't really remember. It's been 2 years and a half. I---it's quite a blur.

Q: Yes. Now, the---you have given the police your statements.

A: Yes.

Q: Yes. Do you want to take a look at them and refresh your memory and see whether or not you recall what you told to the police in relation to the events on the 16th of April 2018?

A: I---even though if I read my statement, I still don't want to testify.

70 In the case of Seet, his constant refrain to almost all of the questions posed to him was either that he does not know, or that he cannot remember. While he admitted that he had heroin in his possession at the time of his arrest, he claimed that he could not remember how he got the heroin. In other examples, Seet claimed that he could not remember why he was arrested and said that he did not know why he was in prison, if he had a sister by the name of "Lily", his own identity card number, his age, his date of birth, or what his own signature looked like.[132]

Q: Now, Mr Seet, you were arrested by the police on 16th April 2018. What were the circumstances leading to your arrest?

A: Yes, I was arrested.

Q: Yes. What were the circumstances leading to your arrest?

A: I can't remember. I can't remember a thing. I'm under medication. I knew nothing. I do not know him.

Q: Now, Mr Seet, one thing at a time. So my question is this now: What was found in your possession when you were arrested by the police on 16th April 2018?

A: Heroin, that's all.

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132 Transcript, 31 Aug 2021, p 73 lines 19–29, p 75 lines 2–13, p 77 line 32, p 78 lines 1–2 and 6–10, p 79 lines 10–22 and 24, p 80 lines 1–4, 7–10, 13–16 and 20–21.

Q: Who did you meet prior to your arrest by the police?

A: I do not know. I can't remember a thing.

…

Q: Now, Mr Seet, earlier in your evidence, you had informed us that on the day of your arrest on 16th April 2018, heroin was found in your possession. So my question is this: How did you come to collect---or how did you come to receive this heroin?

A: I do not know. I can't remember. I can't remember. It has been a long time ago. I'm having a headache.

Q: Who passed you the heroin?

A: Do not know. I do not know the person. I can't remember at all.

Q: When were you passed the heroin?

A: I do not know where and how. I do not know anything.

Q: Did you have to pay for the heroin?

A: I do not know. I can't remember now.

…

Q: Mr Seet, your NRIC number is this: [SXXXXXXX], correct?

A: I do not know. I can't remember a thing. It's been a long time ago. I don't have my IC number on my wristband.

…

Q: Now, Mr Seet, if you are to look at the very bottom of this page, at the left-hand side, there is a signature, and then beside the signature, there are some numbers … Do you see that?

A: I do not know whether it was my signature or not. I am---I do not know whether it is my signature or not. It has been a long time ago.

…

Q: Now, there is an address stated in this statement … Mr Seet, was that your address?

A: No, not my house. I can't remember. Not my house.

Q: Mr Seet, were you staying in that place?

A: I'm now---I'm now in prison. I'm now staying at Prison.

Q: Mr Seet, my question is this: Were you staying at that place at any point in time before you were in Prison?

A: I can't remember.

Q: Now, Mr Seet, you see that the date of birth is reflected here as [X]? That would be your birth---your date of birth, correct?

A: I do not know.

…

A: I do not know how old I am now.

…

Q: Now, Mr Seet, we see on the third row that the place of birth as reflected in this statement is 'Singapore'. You were born in Singapore, correct?

A: I do not know. When I was young, I do not know whether I was born in Singapore or not.

…

Q: Mr Seet, one final question in relation to this particular statement at this juncture. We see that the 'Race' here is reflected as 'Chinese'. You will agree with me that that is your race as well?

A: How would I know? I wouldn't know whether I'm a Chinese or not.

…

Q: Okay, Mr Seet, there is also another particular information on this statement. … The 'Name of Sister' here is reflected as 'Seet Lily'. That is information that you gave to the police, correct?

…

Q: Is that your sister?

A: I do not know, I can't remember.

71 In my judgment, both Okubo and Seet were being deliberately obstructive witnesses, who did not want to tell the truth. I find that, for many of the questions posed to them, Okubo, and more particularly Seet, chose not to

answer the questions truthfully, but instead claimed that they could not remember anything at all. But, even if the court is to accept that Okubo and Seet had suffered major memory lapses, I do not think that this assists the Defence's submission that I should accord no weight to their investigation statements.

72 Formal investigation statements are taken by the police under a set of strict procedures, which are to be strictly observed by an officer well-trained in investigative techniques, and such statements come with it an aura of reliability that result in them often being given more weight by finders of fact as compared to most other kinds of evidence (see *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 at [58]). Properly recorded investigation statements also have evidential value because they accurately record in writing what accused persons and potential witnesses can remember about the incident at a time when their memory is still fresh. Even if the witness subsequently becomes unable to remember the details of the incident, that in no way undermines the reliability of that statement; it is precisely the function of statement recording to preserve the witness's account while his memory is still fresh and avoid the inaccuracies which can arise if the court is limited to relying on his witness testimony, which may be given, in some cases, only years later.

73 That is the situation which we are met with in this case. I find that Okubo's and Seet's account of their interactions with the accused has been captured in the investigation statements that had been recorded from them at a time not long after their arrest. That was when their memory was fresh, and the accounts in the statements would necessarily be more accurate than any oral testimony given in court more than two-and-a-half years later. In fact, Okubo himself accepted in his testimony that his memory of the material events that

took place on 16 April 2018 would have been fresher at the time he gave his three investigation statements, which were all within two weeks of his arrest.[133]

74 At the trial, after Okubo and Seet testified that they could not remember what had happened on 16 April 2018, the Prosecution applied to refresh their memory using their investigation statements under s 161 of the EA. However, Okubo and Seet maintained their evidence.

75 In determining if a witness's statements are inconsistent so as to give rise to a material discrepancy, the court does not insist on absolute oppositeness; a previous statement will be inconsistent if a witness has provided a detailed account of events in that statement but claims that he is unable to remember the events stated in his previous statement even after it has been shown to him to refresh his memory (see *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745 at [30] and [32]). Accordingly, I found that Okubo's and Seet's inability to give any evidence on their interactions with the accused on 16 April 2018, despite having their memory refreshed, constituted material discrepancies with those portions of their investigation statements in which they provided a detailed account of how they handed over the monies to the accused in exchange for the bundles (see [62] above).

76 Okubo and Seet could muster no explanation for the inconsistency in their testimony and investigation statements, save for maintaining their inability to recall the events that happened at the material time. As explained earlier, I do not accept their explanation and I find them to be deliberately obstructive witnesses who wanted to avoid giving any evidence at all in these proceedings (see [69] above). I therefore accepted that their credit should be impeached and

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133 Transcript, 15 Oct 2020, p 34 lines 18–24.

those portions in their statements should be admitted into evidence in place of their court testimony pursuant to s 147(3) of the EA. When the applications were made during the course of the trial by the Prosecution for Okubo's and Seet's investigation statements to be admitted for the purposes of impeaching their credit and also in substitution of their evidence in court, the Defence did not take the position that Okubo's and Seet's credit was not to be impeached, or that their investigation statements should not be admitted pursuant to s 147(3) of the EA. But, in their closing submissions, the Defence urges me to reject those previous statements of Okubo and Seet as carrying no weight. It is to this issue that I next turn.

(2) The weight to be attached to Okubo's and Seet's former inconsistent statements

77 The weight to be attached to a statement that has been rendered admissible by s 147(3) of the EA is determined by the factors stipulated in s 147(6) of the EA:

> In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.

78 In *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619, the Court of Appeal provided guidance on the factors to be considered in determining the weight to be accorded to a statement admissible in evidence by virtue of s 147(3) of the EA (at [71]):

> First, the contemporaneity of a statement with the occurrence or existence of the facts stated is important for it guards against inaccuracy, though the degree of contemporaneity required will

> vary with the facts in question. … Second, there can be little guidance on the possibility of misrepresentation by the maker of the statement but the court must be astute in spotting such instances. Third … the weight to be accorded to a prior inconsistent statement will be affected materially by an explanation of the inconsistency and why that statement is an inaccurate representation of the facts. Fourth, regard should be had to the context of the statement. [Section 147(6)] does not restrict consideration to only the making of the statement but requires consideration of all the circumstances affecting its accuracy. Thus the court must consider the context of the inconsistent portions, which requires that the whole of the statement be examined. … Finally, the cogency and coherence of the facts relied upon has to be noted. An ambivalent statement does not attract much weight.

(A) THE VOLUNTARINESS OF THE STATEMENTS

79 As already mentioned, the Defence argues that the statements are not reliable because they may not have been made voluntarily. However, the evidence before the court does not support such a submission. In the case of Okubo, he testified in examination-in-chief that his contemporaneous statement of 16 April 2018 and his three investigation statements of 27, 28 and 30 April 2018, which the Prosecution seeks to rely on, were all voluntarily made by him.[134] When cross-examined by the Defence, Okubo also testified that his investigation statements of 28 and 30 April 2018 were given voluntarily and without any threat, inducement or promise.[135] The Defence did not cross-examine Okubo on the voluntariness of his remaining two statements. Having failed to cross-examine Okubo on the basis that his two remaining statements were not given voluntarily, the Defence had impliedly accepted Okubo's evidence that they were given voluntarily. This was the effect of the rule in *Browne v Dunn* (1893) 6 R 67, which requires that contradictory facts be put to

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134 Exhibits P86, P87, P88 and P89; Transcript, 15 Oct 2020, p 23 lines 28–30, p 32 lines 21–23, p 40 lines 28–29, p 58 lines 22–24.

135 Transcript, 15 Oct 2020, p 80 lines 20–26, p 83 lines 2–5.

a witness during cross-examination to give him an opportunity to respond, and any testimony left unchallenged may be treated by the court as undisputed and therefore accepted by the opposing party (see *Yeo Kwan Wee Kenneth v Public Prosecutor* [2004] 2 SLR(R) 45 at [34]–[36]). In the circumstances, I find that Okubo did give his contemporaneous statement and his three investigation statements voluntarily.

80 In the case of Seet, he claimed not to remember any of his previous statements that were shown to him in court.[136] As such, the Prosecution called the relevant CNB officers who recorded Seet's statements as witnesses. Station Inspector Daniel Quek Wee Liang ("SI Quek") gave evidence as to his recording of a contemporaneous statement from Seet on 16 April 2018.[137] SI Quek testified that Seet had not raised any complaints to him during the recording of the contemporaneous statement and his demeanour was normal.[138] Under cross-examination, SI Quek gave evidence that Seet was communicating normally during the recording of the contemporaneous statement.[139] The Defence did not suggest to SI Quek that the contemporaneous statement was not given by Seet voluntarily or was given as a result of any threat, inducement or promise.

81 IO Yeo was recalled to testify as to the two investigation statements that he recorded from Seet.[140] IO Yeo testified that he had recorded both statements from Seet in Hokkien via a Hokkien interpreter, although he himself was

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136 Transcript, 31 Aug 2021, p 75 lines 25–28, p 41 line 22, p 44 lines 30–31, p 45 line 1.

137 Exhibit P90.

138 Transcript, 1 Sep 2021, p 6 lines 11–15.

139 Transcript, 1 Sep 2021, p 15 lines 16–18.

140 Exhibits P91 and P92.

proficient in Hokkien and so could understand what Seet was saying in Hokkien.[141] IO Yeo also testified that on both occasions when he recorded Seet's statements (23 and 24 April 2018), Seet was able to understand his questions and answer normally.[142] Seet did not raise any complaints during the recording process,[143] and IO Yeo was of the view that Seet gave his statements voluntarily.[144] Of all the questions asked by the Defence in cross-examination, only one dealt with the state which Seet was in when the investigation statements were recorded. In answering that question, IO Yeo confirmed that Seet had no difficulties conversing with him when the investigation statements were recorded.[145] The Defence also did not suggest to IO Yeo that there had been any threat, inducement or promise in relation to either of these two statements.

82 As already mentioned, Seet's evidence, as a whole, was that he had no memory of the statements he gave, or of the events described in his statements. I have already explained that, in my judgment, Seet was presenting a completely false picture as to the state of his own memory when he was giving evidence in court, so as to not be perceived as someone who would assist the Prosecution in the trial of the accused (see [69] above). From my assessment of the evidence before the court, I find that Seet had given his contemporaneous statement and his two investigation statements voluntarily. The Defence's failure to suggest to the recorders of Seet's statements that those statements were not given voluntarily or were given as a result of some threat, inducement or promise

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141 Transcript, 1 Sep 2021, p 28 lines 29–33, p 29 lines 1–4.

142 Transcript, 1 Sep 2021, p 29 lines 5–11.

143 Transcript, 1 Sep 2021, p 29 lines 5–6, p 32 lines 8–9.

144 Transcript, 1 Sep 2021, p 29 lines 27–28, p 32 lines 31–32.

145 Transcript, 1 Sep 2021, p 37 lines 21–24.

would also have amounted to an implied acceptance of the contrary by virtue of the rule in *Browne v Dunn*. I thus rejected the Defence's submission that no weight should be given Seet's previous statements because they might not have been given voluntarily.

(B) THE ACCURACY OF THE STATEMENTS

83 The Defence also attacks the weight that should be given to Okubo's and Seet's previous statements on the grounds that they might not accurately set out their interactions with the accused. In the case of Okubo, the Defence relies on his evidence that he had consumed methamphetamine on the day of his arrest (16 April 2018)[146] and as such, his judgment or memory might be affected when his statements were being recorded on 16, 27, 28 and/or 30 April 2018. In this regard, the Defence relies on the evidence of Dr Sahaya Nathan ("Dr Nathan"), a medical officer at Changi Prison Complex Medical Centre. Dr Nathan had testified as a Prosecution witness as to his observations of Okubo when Okubo was examined at the Changi Complex Medical Centre on 20 and 21 April 2018.[147] Dr Nathan's evidence was that Okubo did not suffer any drug withdrawal symptoms, and nothing unusual was observed in his physical condition.[148] When Dr Nathan was cross-examined by the Defence, he accepted that there was a possibility that Okubo's ability to give a statement might have been affected on 16 April 2018 because Okubo had consumed methamphetamine that day.[149] Dr Nathan also testified that he had seen cases where drug withdrawal symptoms for methamphetamine manifest themselves a

146 Transcript, 15 Oct 2020, p 78 lines 22–28.

147 Exhibit P94.

148 Exhibit P94; Transcript, 2 Sep 2021, p 47 lines 30–32, p 48 lines 1–17.

149 Transcript, 2 Sep 2021, p 57 lines 5–13.

week to ten days after the last drug consumption.[150] The Defence submits that this meant that the accuracy of Okubo's contemporaneous statement of 16 April 2018 might have been affected by his consumption of methamphetamine on the day of his arrest, and his three investigation statements of 27, 28 and 30 April 2018 might have been affected by drug withdrawal symptoms that manifested themselves only during that period of time, which was 11 to 14 days after his arrest.[151]

84 I have some difficulty with the Defence's submissions about the accuracy of Okubo's statements being possibly affected by his consumption of methamphetamine. This is for two main reasons.

85 First, in my view, it is not sufficient to rely on Dr Nathan's evidence that Okubo's ability to give a statement on 16 April 2018 might possibly be affected because he had consumed methamphetamine that day. This is too general a statement. There are no specifics as to how Okubo's ability to give a statement might be impacted. For example, it is not clear to me whether Okubo's memory might be affected that day, or whether he might not be able to concentrate or focus on the questions he was asked during the recording of his contemporaneous statement. In short, I am left wondering how Okubo's ability to give a statement might possibly be affected. While it is true that Okubo did say that he was not in the right state of mind when he gave his contemporaneous statement,[152] there were no details as to what he meant by that. Under cross-examination by the Defence, Okubo said that he could not remember *now* whether *he did give the answers recorded in the contemporaneous statement*

150 Transcript, 2 Sep 2021, p 57 lines 16–30.

151 DCS at para 26.

152 Transcript, 15 Oct 2020, p 62 lines 10–12.

because he was then under the influence of drugs.[153] However, this is quite different from saying that, on 16 April 2018, he could not remember his interactions with the accused on that day and from the past because he was under the influence of drugs, so that the account which he did provide in his contemporaneous statement was possibly inaccurate. All of that takes on more significance when seen in the light of my earlier finding about Okubo's testimony having little credibility given that it was evident that he was feigning ignorance and memory loss to avoid testifying against the accused (see [69] above). In short, I find that the Defence has not been able to provide sufficient evidence for me to conclude that Okubo's cognitive abilities were impaired on the day of his arrest because of his consumption of methamphetamine that day, and that as such, he could not give an accurate account of events in his contemporaneous statement recorded that day.

86 Second, I find that the submission that Okubo might have been suffering from drug withdrawal when he gave his three investigation statements on 27, 28 and 30 April 2018 to be pure conjecture. Dr Nathan had only said that he had seen cases where the drug withdrawal symptoms appear a week to ten days after the last consumption of methamphetamine. But, for Okubo, he displayed no such symptoms on 20 and 21 April 2018, which was the fourth and fifth day after his arrest, and there are no records from Changi Prison Complex Medical Centre that Okubo subsequently developed drug withdrawal symptoms and had to be examined by doctors there. In his evidence, Okubo himself did not testify to having suffered from any drug withdrawal at the time of the recording of his investigation statements. When cross-examined by the Defence, Okubo was also not asked any question about whether he was suffering from drug

153 Transcript, 15 Oct 2020, p 79 lines 4–29.

withdrawal from 27 to 30 April 2018. In fact, those two dates fell within the 11th- to 14th-day period after his arrest, and would in any event fall outside the ten-day period described by Dr Nathan as to when drug withdrawal symptoms in relation to methamphetamine might possibly manifest themselves. I thus find that the Defence has not been able to show that Okubo suffered from drug withdrawal symptoms from 27 to 30 April 2018, and that the accuracy of Okubo's investigation statements recorded during this period should be called into question.

87 As for the case of Seet, the Defence argues that the accuracy of his statements must be affected too as he was suffering from drug withdrawal symptoms. I find that there was no real evidential basis for the Defence to make this contention in their closing submissions.

88 Given the way that Seet had given his evidence in court (see [70] above), there was initially some concern as to whether he was simply pretending to have memory loss, or whether he was suffering from some mental condition that genuinely affected his ability to recall facts. As a consequence, the Prosecution called one Dr Jerome Goh Hern Yee ("Dr Goh") to give evidence. He had previously been the Senior Consultant and Chief of the Department of General and Forensic Psychiatry at the Institute of Mental Health and, in that role, he had examined Seet on three occasions in May 2018. Dr Goh prepared a medical report dated 22 May 2018 in relation to Seet.[154] In his report, Dr Goh opined that Seet did not have any mental illness at the time he was arrested, although he had a history of substance use disorder.[155] Dr Goh also opined that

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154 Exhibit P93.

155 Transcript, 2 Sep 2021, p 69, p 70 lines 1–16.

Seet was not of unsound mind[156] and that there was no indication that Seet had any memory issues as Seet had been able to provide specific details in response to his questions, which were consistent across the three sessions when Seet was examined, or which subsequently could be verified to be true.[157] An assessment of Seet's intellectual functioning was also carried out and it was found to be normal.[158]

89 In their closing submissions, the Defence argued that Dr Goh was "not competent to give evidence on [d]rug withdrawal rate".[159] They also pointed out that Dr Goh had not dealt with Seet's drug withdrawal in his medical report or how he might have affected him in the giving of his statements.[160] These were points which the Defence did not raise in their cross-examination of Dr Goh.

90 I was surprised that this submission was even made by the Defence. When the recorders of Seet's statements, SI Quek and IO Yeo, were called, the Defence did not suggest to them that Seet appeared to be experiencing any discomfort and was suffering at that time from the effects of drug withdrawal. SI Quek recorded Seet's contemporaneous statement on the day of his arrest, 16 April 2018, and his evidence was that Seet had behaved and communicated normally (see [80] above). SI Quek's evidence in this regard was not challenged. IO Yeo recorded investigation statements from Seet on 23 and 24

156 Transcript, 2 Sep 2021, p 74, lines 5–14.

157 Transcript, 2 Sep 2021, p 68 lines 6–15.

158 Transcript, 2 Sep 2021, p 74 lines 22–32, p 75 lines 1–3.

159 DCS at para 37.

160 DCS at para 37.

April 2018, and his evidence was that Seet had no difficulties communicating with him (see [81] above).

91 The Defence did not even suggest to the statement recorders that Seet appeared to be suffering from the effects of drug withdrawal when his statements were recorded. Given SI Quek's and IO Yeo's testimony that Seet's demeanour during the statement recording was normal and was able to understand and answer questions normally (see [80]–[81] above), the Defence's failure to suggest the contrary to them during cross-examination would have amounted to an implied acceptance of their evidence by virtue of the rule in *Browne v Dunn* ([79] above). I am therefore of the view that there is no basis for the Defence's submission that the accuracy of the statements are affected by any alleged drug withdrawal symptoms that Seet was suffering from on 16, 23 or 24 April 2018.

92 It is true that Dr Nathan's evidence was that he had examined Seet at the Changi Prison Complex Medical Centre on 20 and 21 April 2018, and that Seet was suffering from drug withdrawal on both dates.[161] More specifically, Dr Nathan testified that, on the Clinical Opioid Withdrawal Scale, which is relevant because Seet had tested positive for opiates from the consumption of heroin, Seet had scored five on 20 April 2018 and six on 21 April 2018.[162] Dr Nathan's evidence was that Seet had mild symptoms of withdrawal on those two days, and with such symptoms, Seet should still be able to answer questions.[163] Dr Nathan himself had found Seet to be coherent and able to answer questions on

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161 Exhibit P95.

162 Exhibit P95; Transcript, 2 Sep 2021, p 50 lines 1–4, p 52 lines 1–3.

163 Transcript, 2 Sep 2021, p 51 lines 19–31, p 52 lines 1–10.

those two dates, and there was no indication that Seet had any altered mental state.

93 In my judgment, the evidence of Dr Nathan does not provide any support that Seet was suffering from drug withdrawal symptoms on 16 April 2018, when his contemporaneous statement was recorded. That is because the evidence shows that Seet had consumed heroin on that day itself. The clinical notes recorded by Dr Henry Chua ("Dr Chua"), who examined Seet on 19 April 2018, state that Seet had informed Dr Chua that he last consumed heroin on 16 April 2018.[164] Seet's first investigation statement recorded by IO Yeo on 23 April 2018 also record him as having consumed heroin on 16 April 2018.[165] Dr Nathan's evidence also does not provide any basis for a submission that Seet was affected by drug withdrawal symptoms on 23 and 24 April 2018, when his investigation statements were recorded by IO Yeo. If Seet's drug withdrawal symptoms were mild and did not affect his cognitive abilities in the initial period of observation on 20 April and 21 April 2018 (see [92] above), then it is likely that the case would remain the same in the period thereafter. In the first place, it was not even suggested by the Defence to Dr Nathan that Seet's drug withdrawal symptoms would likely become worse on 23 and 24 April 2018, which was two to three days after Seet was last examined by Dr Nathan on 21 April 2018, or how, if it indeed became worse, those symptoms could affect Seet's ability to give an accurate account of the facts in his statements.

94 Weighing all the evidence as a whole, I find the Defence has failed to show that Seet's statements to the CNB officers should not be relied upon

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164 Exhibit P96.

165 Exhibit P91.

because they were likely to lack accuracy due to Seet's alleged drug withdrawal symptoms when the statements were recorded.

(3) Significance of the accused's knowledge that the Bundles were of substantial value

95 On the evidence before the court, I find that the accused had counted the moneys before he passed over the bundles to Seet and Okubo (see [62] above). He must have known that the moneys he received was in exchange for the bundles he was handing over. Even if it is true that Dinesh had told the accused that he also had to collect moneys from persons in Singapore because of Dinesh's loan shark activities, which might explain the collection of moneys by the accused from LW Techno (see [20] above) and also from an elderly Malay-looking man on the day of his arrest (see [22] above), given the near-simultaneous exchange of cash and bundles between Seet and Okubo on the one hand and the accused on the other on 16 April 2018, it cannot be seriously argued that the bundles handed over to Seet and Okubo were not in return for the cash he received from the two of them.

96 If the accused knew to count the monies that he had received in exchange for the bundles, then he must have anticipated or expected the amount of money that he was to receive in exchange for the bundles handed over. Even if the accused had acted on the instructions of Dinesh in counting the monies, it defies logic that Dinesh would not have informed him beforehand as to how much money could be expected from the counterparty that was to take delivery of the bundles. The accused would likely have been briefed in detail as to what he was to expect to ensure that the clandestine operation went as smoothly as possible. As such, the accused knew that the one black bundle he handed over to Seet was worth about $2,500, and the three bundles he handed over to Okubo

were worth $7,300. In the accused's evidence, he drew no distinction between the bundles handed over to Seet and Okubo and those which were found remaining in his motorcycle box on his arrest. Also, the import of the accused's evidence (namely, that *all* the bundles were "shisha") was that he did not consider any of the bundles which Dinesh had placed in his motorcycle box as different from the others. In these circumstances, any knowledge which the accused had about the value of the bundles handed over to Seet and Okubo can therefore be extended to *all* of the bundles. That being so, I accept the Prosecution's submission that the accused knew that the bundles (of which the Bundles were part) that he was to deliver on behalf of Dinesh on 16 April 2018 were items of substantial value.

97 The fact that the accused knew the Bundles to be of substantial value undermines the credibility of his asserted belief that they were merely "shisha". The accused did not testify on what he thought the value of "shisha" was, but on his own evidence, it surely would not have been as substantial in value as the bundles which he delivered on 16 April 2018. According to the accused, he was informed by Dinesh that the "shisha" bundles were contraband items which would only have attracted a fine in the event that he was caught in Singapore with them (see [46] above). The accused's characterisation of "shisha", as he understood the same from Dinesh, was therefore of it being a relatively trivial (albeit still illegal) item, given that it only attracted a monetary penalty at worst. However, if that were indeed the case, it was not consistent with the substantial value which the bundles had. To put things in context from the accused's perspective, the value of the bundles far exceeded the daily wages of $60–$70 which the accused was to receive for his employment as a cook at the food court in Tuas (see [14] above). As such, given the accused's knowledge of the value of the bundles, coupled with what he understood "shisha" was, even if Dinesh

had assured him that those bundles were "shisha", I find that the accused could not have believed that to be true.

The accused's delivery of bundles in Singapore on occasions prior to his arrest

98 In his evidence in court, the accused denied that he had delivered any "shisha" or bundles for Dinesh to persons in Singapore on any other occasion other than the day of his arrest (16 April 2018). I did not accept this evidence as I found it to be contrary to what the accused had informed the recording officer when his contemporaneous statement was recorded, shortly after his arrest. In that statement, the accused stated that he had been working for Dinesh for about two weeks, "but only five times".[166] He also stated that he was paid about RM 1,000 or RM 2,000 each time.[167] This was a clear admission by the accused that he had made other deliveries for Dinesh prior to the day of his arrest, and that he was paid on each occasion he made such deliveries.

(1) The admissibility of the accused's contemporaneous statement

99 As already mentioned, the accused challenged the admissibility of his contemporaneous statement under s 258(1) of the CPC. The Defence objected to its admission into evidence on the basis that the recorder of the statement, SSgt Fardlie, had made a threat of physical harm to the accused *before* the statement was taken. The threat was to the effect that, if the accused did not tell the truth, one Sergeant Yogaraj s/o Ragunathan Pillay ("Sgt Yogaraj") would "beat" him.[168] At that time, Sgt Yogaraj was walking towards the car, in which

166 AB at p 97.

167 AB at p 97.

168 Transcript, 7 Oct 2020, p 7 lines 28–32.

SSgt Fardlie and the accused were sitting for the recording of the contemporaneous statement. The accused also claimed that there was a second threat of physical harm made to him. That was when Sgt Yogaraj approached the car, opened the door, looked inside and told the accused "you better tell the truth, don't play play".[169] The Defence also raised the point that the accused was not offered a chance to speak in Tamil, with which he was more fluent.[170] Instead, the statement was recorded by SSgt Fardlie in Malay.

100 I heard the evidence of six witnesses during the ancillary hearing to determine the admissibility of the contemporaneous statement. These included SSgt Fardlie, Sgt Yogaraj and of course, the accused. The two CNB officers denied that there were any threats made to the accused. However, what was determinative of the issue, in my view, was the accused's own evidence. There are four aspects of his evidence that I will refer to.

101 First, the accused testified that he was speaking with SSgt Fardlie in Malay and he understood what was being asked of him, and he could reply accordingly.[171] He gave no evidence that he had any difficulty at all communicating with the SSgt Fardlie in Malay. The accused agreed that there were no issues of communication when he was speaking to SSgt Fardlie during the process of recording his contemporaneous statement.[172]

102 Second, the accused gave unequivocal evidence that he wanted to help as much as possible by telling SSgt Fardlie the truth. He testified that he

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169 Transcript, 7 Oct 2020, p 8 lines 4–15.

170 Transcript, 7 Oct 2020, p 9 lines 23–32, p 10 lines 1–7.

171 Transcript, 8 Oct 2020, p 19 lines 30–31, p 20 lines 1–7, p 30 lines 19–29, p 31 line 1.

172 Transcript, 8 Oct 2020, p 30 lines 26–29.

answered the questions honestly because he wanted to help the CNB.[173] He agreed that SSgt Fardlie never forced him to answer any of the questions asked of him.[174] He also said that, from the moment he was arrested, he wanted to tell the CNB officers everything he knew.[175] The accused testified that, during the process of recording of his contemporaneous statement, SSgt Fardlie did not threaten him in any way.[176] I should add that, on his own account of what transpired from the time of his arrest to when the threats were allegedly made to him by the two CNB officers and when the recording of the contemporaneous statement took place, it appears that the alleged threats were made more than an hour before SSgt Fardlie recorded the contemporaneous statement from him.[177] Nonetheless, the accused did also say that he was still feeling the effects of the alleged earlier threats by SSgt Fardlie and Sgt Yogaraj by the time the contemporaneous statement came to be recorded.[178]

103 Third, the accused's evidence was that, when the contemporaneous statement was being recorded from him, he felt a sense of fear because he had been told that he might be facing the death penalty.[179] As a result of this fear, the accused said that he wanted to answer all the questions posed to him by SSgt Fardlie as honestly as possible in the hope that it would help in his own case.[180]

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173 Transcript, 8 Oct 2020, p 20 lines 30–31, p 21 lines 1–6.

174 Transcript, 8 Oct 2020, p 24 lines 1–26.

175 Transcript, 8 Oct 2020, p 25 lines 20–24.

176 Transcript, 8 Oct 2020, p 27 line 13, p 28 lines 3–10.

177 Transcript, 8 Oct 2020, p 26 lines 3–5.

178 Transcript, 8 Oct 2020, p 29 lines 9–17.

179 Transcript, 8 Oct 2020, p 8 lines 10–15.

180 Transcript, 8 Oct 2020, p 23 lines 28–31, p 26 lines 30–31, p 27 lines 1–4.

104 Fourth, the accused never raised any complaints about any threats in relation to the taking of his contemporaneous statement until the trial. In fact, when IO Yeo recorded his first long statement on 20 April 2018, specific reference was made by the accused to the recording of his contemporaneous statement after his arrest on 16 April 2018.[181] However, the accused did not mention to IO Yeo that there had been any threats made to him in relation to the making of the contemporaneous statement.

105 Given the state of the evidence, particularly that from the accused, I did not accept that the contemporaneous statement was not made voluntarily. I accepted the evidence of SSgt Fardlie and Sgt Yogaraj, which was clear and consistent, that there were no threats made to the accused. I also found it quite apparent, from the evidence of the accused, that even if I was to accept that one or both of the CNB officers had made the alleged threats, they would not have operated on the mind of the accused when the contemporaneous statement was recorded from him (see s 258(4) of the CPC). The accused wanted to give information and answers to the questions posed to him by SSgt Fardlie because he wanted to assist the CNB. Any fear that he felt was from the fact that he was told that he might face the death penalty rather than from any threats of bodily harm.

106 For these reasons, I decided that the contemporaneous statement should be admitted into evidence.

107 As for questions of the language used to converse with the accused during the statement recording, it was also clear to me that the fact that the statement was not recorded in Tamil did not necessarily impact the accuracy of

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[181] AB at p 161.

the contents of the statement. The accused's evidence showed that he had no difficulty communicating with SSgt Fardlie in Malay. He confirmed that he could understand what SSgt Fardlie was speaking to him in Malay.[182] He also confirmed that he responded in Malay to SSgt Fardlie's questions and SSgt Fardlie could understand his answers.[183] Significantly, after the accused was arrested and prior to the recording of the contemporaneous statement, there were several phone calls exchanged on the accused's mobile phone between himself and Dinesh.[184] That was done under the supervision of SSgt Fardlie. During those calls, the accused conversed with Dinesh in Tamil.[185] Thereafter, the accused was able to inform SSgt Fardlie in Malay about what he had spoken with Dinesh in Tamil.[186]

108 I also accepted SSgt's Fardlie's evidence that he found the accused to be fluent in Malay. In fact, prior to the contemporaneous statement being recorded, SSgt Fardlie had been conversing with the accused in Malay.[187] He had also read the mandatory death penalty notification in Malay to the accused before the recording of the contemporaneous statement.[188] He had asked the accused what language he wanted to the notice to be read to him, and the accused had said Malay.[189] After the recording of the contemporaneous

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182 Transcript, 8 Oct 2020, p 20 lines 5–7, p 30 lines 10–12.

183 Transcript, 8 Oct 2020, p 30 lines 22–25.

184 Transcript, 8 Oct 2020, p 16 lines 21–30, p 17 lines 1–7; 13 Oct 2020, p 6 lines 10–20, p 18 lines 16–26, p 28 lines 18–32, p 29, p 30, p 31, p 32, p 33, p 34, p 35, p 36 lines 1–21.

185 Transcript, 8 Oct 2020, p 18 lines 19–20.

186 Transcript, 8 Oct 2020, p 18 lines 14–23, p 20 lines 2–4; 13 Oct 2020, p 36 lines 22–24.

187 Transcript, 7 Oct 2020, p 20 lines 25–29.

188 Exhibit P84; Transcript, 7 Oct 2020, p 20 lines 7–18.

189 Transcript, 7 Oct 2020, p 20 lines 14–18.

statement, SSgt Fardlie had also read back the contents to the accused in Malay.[190]

(2) The evidence that the accused had performed prior deliveries of similar bundles into Singapore

109 Given that the accused's answers in his contemporaneous statement that he had been working for Dinesh for about two weeks, and that he had made deliveries for Dinesh on five occasions, I find that the delivery of bundles the accused made on 16 April 2018 was not the first time that he was helping Dinesh with similar deliveries.

110 There is also other evidence that supports such a conclusion. First, Okubo and Seet had also stated in their investigation statements that they had collected drugs from the accused previously. Okubo stated that he had collected "drug bundles" from the accused on "three occasions".[191] In his contemporaneous statement, Seet said that he had collected heroin from the accused on two occasions – the first time was a week ago, and the second time was on the day he was arrested.[192]

111 Second, the Immigration and Checkpoints Authority movement records of the accused shows that he had entered Singapore on five previous occasions (namely, 2, 6, 11, 12 and 13 April 2018) in the two weeks prior to his arrest on 16 April 2018.[193] This is consistent with the accused's contemporaneous

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190 Transcript, 7 Oct 2020, p 33 lines 29–30, p 34 lines 1–8.

191 Exhibit P87.

192 Exhibit P90.

193 Exhibit P102; PCS at para 61.

statement where he said that he had made deliveries for Dinesh on five previous occasions.

112 Third, the phone records of the accused show that there was a flurry of calls between Dinesh and the accused on those days when the accused entered Singapore.[194] These calls were made from and/or received on the mobile phone found on the accused when he was arrested.[195] Around 40 odd calls were exchanged between Dinesh and the accused on each of 11, 12 and 13 April 2018 (on which he had entered and left Singapore within the day). The number of calls between the parties, as well as the duration of the calls intensified during the time when the accused was present in Singapore. The pattern of calls on each of those days mirrored that on 16 April 2018, the day when the accused made deliveries of the bundles which led to his arrest. In contrast, on 14 and 15 April 2018 when the accused did not enter Singapore, only eight and four calls were exchanged respectively on those days.[196] During cross-examination, the accused was also not able to provide any credible and coherent explanation as to the volume of calls made by Dinesh to him on 11, 12 and 13 April 2018.[197]

(3) Significance of the accused's prior deliveries of similar bundles in Singapore

113 Given the state of the evidence, I am driven to the conclusion that the accused had made previous deliveries of bundles similar to those which he delivered on 16 April 2018 for Dinesh to persons in Singapore. The deliveries

194 Exhibit D1.

195 Exhibit P71.

196 Exhibit D1.

197 Exhibit D1.

on 16 April 2018 were therefore not the first time that the accused delivered bundles into Singapore on the instructions of Dinesh.

114 The accused's prior deliveries of bundles in Singapore is significant in that it undermines the accused's entire account as to how he came to be assured by Dinesh on 16 April 2018 that the bundles were "shisha". On the Defence's case, 16 April 2018 was the first time that Dinesh had asked the accused to deliver bundles of any nature into Singapore. That was why the accused had been clueless as to what the bundles were when he discovered them in his motorcycle box in the early hours of 16 April 2018, and so called up Dinesh to clarify, who then informed him that they were "shisha". However, if the accused had already performed deliveries of similar bundles prior to 16 April 2018, then it stood to reason that the accused would not have been surprised by those bundles being in the motorcycle box that morning, and he would not have rung Dinesh up to clarify what those bundles were. Put simply, none of those steps which purportedly led to Dinesh's assurance would have taken place if the delivery on 16 April 2018 was not the first time that the accused was delivering bundles on Dinesh's instructions in Singapore.

The accused's receipt and delivery of the bundles in highly surreptitious circumstances

115 On this issue, I find that the circumstances under which the accused received the bundles from Dinesh in the early hours of 16 April 2018 are entirely consistent with the fact that these were bundles of controlled drugs. Dinesh placed these bundles in the accused's motorcycle box in the early hours of 16 April 2018. This was without first telling the accused, if his evidence is to be believed, that such bundles would be put into the box together with the raincoat. As for the intended recipients of the bundles in Singapore, the accused was not

told who they were until just before they were to collect the bundles from him. He was only told by Dinesh to go to specific locations at specific times and to wait for these persons to show up.

116 In his evidence, the accused could not give any convincing explanation as to why he believed all these precautions were needed by Dinesh, save that he believed that he was delivering "shisha",[198] and that he knew that it was illegal to do so in Singapore. Given that I have already rejected the accused's evidence that he was told that the bundles contained "shisha" (see [56]–[58] above), I have to conclude that the accused has not given any satisfactory evidence to explain the need for all the subterfuge in relation to the receipt and delivery of the bundles.

117 In any case, given these surreptitious circumstances, even if Dinesh did assure the accused that the bundles contained "shisha", the accused could not have believed him. As mentioned earlier, the accused's own characterisation of "shisha" (which he understood from Dinesh) was that it was a contraband item that would at most land him with a fine if he were caught with it in Singapore (see [97] above). However, that appears to very much inconsistent with the clandestine operations that had been undertaken to facilitate the accused's receipt and delivery of the bundles. The circumstances in which the accused came to receive the bundles, and in which he was instructed to deliver the bundles, would have led him to disbelieve any assurance that Dinesh had provided him.

198 Transcript, 10 Sep 2021, p 77 line 11.

The accused has failed to rebut the presumption of knowledge in s 18(2) of the MDA

118 Applying the principles as set out at [44] above to the evidence before the court, I find that the accused has failed to rebut the presumption in s 18(2) of the MDA that he knew that the Bundles contained methamphetamine. In this regard, I have taken into account the accused's contradictory positions in his testimony and recorded statements as to whether he was told that the bundles contained "shisha". I have also considered the entirety of the evidence including the surreptitious circumstances surrounding the receipt and delivery of the bundles, and the accused's lack of coherent explanation as to why he thought such conduct was necessary. Significantly, I have also considered the accused's own admission in his contemporaneous statement that he had made deliveries of similar bundles for Dinesh on prior occasions and was paid RM 1,000 to RM 2,000 for each time he did so. The evidence of Okubo and Seet that the accused had counted the moneys that they handed over, before handing over the bundles, and the amounts of money involved, also showed the accused knew that the bundles placed by Dinesh in his motorcycle box (which included the Bundles) were of substantial value, and not "shisha".

119 In my judgment, there are two reasons for the accused's failure to rebut the presumption. First, the contention on which he relies to rebut the presumption is not even borne out by the evidence. The accused seeks to rebut the presumption of knowledge on the basis of his belief that the Bundles were "shisha" because Dinesh had told him so. However, as I have found earlier, his account that Dinesh had told him that the bundles were "shisha" is a mere afterthought that was subsequently concocted as a defence to the Charge (see [56]–[58] above). Further, given that the delivery on 16 April 2018 was not the first time he delivered bundles on behalf of Dinesh, the circumstances in which

the accused claimed he came to be assured by Dinesh that the bundles were "shisha" would not have even taken place at all (see [114] above).

120 Second, the accused's asserted belief about the bundles being "shisha" is not credible in the light of the objective facts. Even if the accused's account about Dinesh telling him that the bundles were "shisha" is to be believed, the circumstances were such that the accused could not have believed Dinesh. Given the accused's knowledge that the bundles were of substantial value and his understanding of what "shisha" was, he could not have believed that the bundles were simply "shisha" (see [97] above). The clandestine manner in which the accused received and delivered the bundles were also suggestive that they were other illegal substances of greater enormity than "shisha" (in the sense which the accused understood what that was) and the accused could not have believed Dinesh's assurance (see [117] above).

121 Taking into account all the evidence, I cannot accept the Defence's submission that the accused has rebutted the presumption under s 18(2) of the MDA on a balance of probabilities.

Whether the accused had been wilfully blind as to the contents of the Bundles

122 The Prosecution's alternative case is that, even if the accused did not have actual knowledge of the nature of what was contained in the Bundles, he was wilfully blind as to the truth. Given my finding that the accused has failed to rebut the presumption under s 18(2) of the MDA, the legal conclusion must be that the accused had actual knowledge of what was contained in the Bundles. As such, strictly speaking, it is not necessary for me to determine whether the accused would be regarded in law as wilfully blind as to the nature of what was contained in the Bundles, which is an inquiry that is only relevant if he is

assumed to have no actual knowledge of the nature of those drugs found in his possession. Nonetheless, let me briefly set out my analysis on this question.

123 In order to establish that the accused was wilfully blind to the nature of what was contained in the Bundles, the Prosecution must prove beyond a reasonable doubt that (see *Gobi* ([31] above) at [79]):

(a) the accused had a clear, grounded and targeted suspicion that what he was told or led to believe about the nature of what was contained in the Bundles was untrue;

(b) there were reasonable means of inquiry available to the accused which, if taken, would have led him to discover the truth, namely, that his suspicion that he was carrying something other than what he was told the Bundles were or believed the Bundles to be, was well-founded; and

(c) the accused deliberately refused to pursue the reasonable means of inquiry available to him to establish the truth as to what he was carrying because he wanted to avoid any adverse consequences of being affixed with knowledge of that truth.

124 Even if the court were to accept the accused's account that Dinesh had assured him, in the early hours of 16 April 2018, that the bundles placed in his motorcycle box were merely "shisha" that would at most have landed him with a fine if he were caught with them in Singapore, I find that the accused would nevertheless have harboured a suspicion that he had not been told the truth. The surreptitious circumstances in which the accused received and delivered the bundles, coupled with what he knew about the value of the bundles, would have provided the accused with good reason to believe that the bundles were not as innocuous as Dinesh made them sound to be (see also [97] and [117] above). In

other words, the accused would have developed a clear, grounded and targeted suspicion that those bundles were not "shisha".

125 It also cannot be seriously disputed that there were reasonable means of inquiry available to the accused which, if taken, would have led him to discover that those bundles were not "shisha". The accused claimed that he knew what "shisha" was – it was "like a cigarette" that is to be "put in a bottle" or some other equipment that is used to smoke the "shisha".[199] A simple visual inspection of what was inside the bundles would therefore have allowed him to confirm that the bundles did not contain what he believed they did as a result of Dinesh's assurance.

126 The accused also had ample opportunities to inspect the contents of the bundles. The accused had discovered the bundles in his motorcycle box in the early hours of 16 April 2018. On the accused's own evidence, after inspecting the contents of the motorcycle box and talking to Dinesh on the phone (during which he was assured that the bundles were "shisha"), he had time to take a shower before starting his journey to Singapore to report for work at a food court in Tuas.[200] He therefore had some time between when he discovered the bundles and when he had to leave his home in Johor Bahru for his journey to Singapore. Within that period of time, he could have easily inspected the contents of the bundles, for example, by bringing the motorcycle box to his bedroom and inspecting the bundles in a private space.

127 Further, on the basis of the accused's evidence, he would have known that Dinesh was involved in criminal activity in Malaysia (the accused says he

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199 Transcript, 7 Sep 2021, p 7 lines 25–26.

200 Transcript, 7 Sep 2021, p 10 lines 25–32.

had been told to collect moneys on behalf of Dinesh from persons in Singapore as part of Dinesh's illegal moneylending business). In those circumstances, the more strongly he would have suspected that the bundles were not simply "shisha", and the more he would be expected to inquire into the truth of what he suspects (see *Gobi* ([31] above) at [92]). Hence, all the more would one expect the accused to have taken up the opportunity to inspect the bundles in greater detail before leaving for Singapore, instead of merely sniffing them as he claimed he did. In these circumstances, the accused's failure to perform a more than cursory examination of the bundles, which would have led him to discover that they were not "shisha", in spite of the ease with which a more thorough examination of the bundles could have been performed, leads to the irresistible inference that he deliberately refused to pursue those means of inquiry because he wanted to avoid the adverse consequences of being affixed with the knowledge of the truth of what he was carrying.

128 As such, I find that, even if the accused was told by Dinesh that the bundles were only "shisha", the circumstances were such that he ought to have suspected that they were *not*, and he also had reasonable means of inquiry by which he could have discovered that truth. The only inference that can be drawn from the accused's failure to examine the contents of the bundles was that he had deliberately refused to pursue a means of inquiry which would have led him to discover what the bundles (and in turn, the Bundles) actually contained. The accused should therefore be affixed with the very knowledge which he seeks to avoid, and I find that he is wilfully blind to the fact that the Bundles contained methamphetamine.

Whether the accused was in possession of the Bundles for the purpose of trafficking

129 The Prosecution relies on the accused's own evidence and his statements that he was awaiting instructions from Dinesh, at the time he was arrested, as to where and to whom he should deliver the remaining bundles in his motorcycle box (which included the Bundles). The Defence argues that the accused might well have been asked by Dinesh to bring the Bundles back to Johor Bahru to be returned to Dinesh.

130 Section 2(1) of the MDA defines "traffic" to include transport or send. What constitutes "trafficking" is the *act* of transporting or sending; it is immaterial that the *purpose* of that act was for the return of the drugs to the original sender or for anything else. It also suffices that the accused had received instructions for transporting or sending the drugs, and carried out those acts of transportation or sending, while he was in Singapore. As such, even if the accused had been instructed to bring the remaining bundles in his motorcycle box at the time of arrest (which included the Bundles) back to Dinesh in Johor Bahru after he had completed the deliveries to Okubo and Seet on 16 April 2018, it would still constitute the transportation or sending of the drugs to someone in Malaysia, and amount to an act of trafficking for the purposes of the MDA. As such, I do not believe it can be seriously disputed that the accused was in possession of the Bundles for the purpose of trafficking.

131 For completeness, I would add that the fact that the accused was instructed to bring the remaining bundles back to Johor Bahru does not make him a "bailee" of those bundles, namely, a person who takes custody of drugs with no intention of parting them other than to return them to the person who originally deposited those drugs with him (see *Ramesh* ([40] above) at [110];

Roshdi bin Abdullah Altway v Public Prosecutor and another matter [2021] SGCA 103 at [106]). This is because it had been common ground that the accused had received the bundles (including the Bundles) with the intention of delivering them to persons in Singapore on Dinesh's instructions (and not for returning them to Dinesh); the accused would only return those Bundles *if and when* Dinesh instructed him to do so.

Conclusion

132 Given that all the elements of the offence under s 5(1)(*a*) of the MDA have been shown to be established, I convict the accused of the Charge.

133 I will hear the parties now on the question of sentencing.

Ang Cheng Hock
Judge of the High Court

Nicholas Lai Yi Shin, Sheryl Yeo Su Hui and Colin Ng Guan Wen (Attorney-General's Chambers) for the prosecution;
A Revi Shanker s/o K Annamalai (ARShanker Law Chambers) and Elengovan s/o V Krishnan (Elengovan Chambers) for the accused.