Tan Chin Hock *v* Public Prosecutor
[2010] SGCA 49

Case Number	: Criminal Appeal No 18 of 2009
Decision Date	: 16 December 2010
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: James Bahadur Masih (James Masih & Co) and Ong Cheong Wei (Ong Cheong Wei & Co) for the appellant; Lee Sing Lit, Pao Pei Yu Peggy and Chan Huseh Mei Agnes (Attorney-General's Chambers) for the respondent.
Parties	: Tan Chin Hock — Public Prosecutor

Criminal Law – Statutory Offences – Misuse of Drugs Act

Evidence – Proof of Evidence – Presumptions

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2009] SGHC 189.]

16 December 2010

Chan Sek Keong CJ (delivering the grounds of decision of the court):

Introduction

1 The appellant, Tan Chin Hock, was convicted by a High Court judge ("the trial judge") of having in his possession 64.34g of diamorphine for the purposes of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") and punishable under s 33 of the MDA (see *Public Prosecutor v Tan Chin Hock* [2009] SGHC 189 ("the GD")).

2 The appellant appealed against the trial judge's decision. At the conclusion of the hearing of the appeal, we dismissed the appeal as there was, in our view, no reasonable doubt that the appellant was guilty of the offence which he was convicted of. We also said that we would give our reasons for dismissing the appeal; we now set out those reasons.

Background facts

3 The findings of fact of the trial judge are set out succinctly at [2]–[4] of the GD, which are reproduced below:

> 2 The evidence showed that the [appellant] was arrested at 9.45am on 28 March 2008 when officers of the Central Narcotics Bureau ("CNB") entered his flat and broke into his room. He was found holding a maroon coloured bag in which the CNB officers found 36 packets of white substance subsequently ascertained to be heroin. More heroin was found elsewhere in his room[,] … the aggregate of which formed the subject matter of the first charge [this was also the sole charge which the Prosecution proceeded with at the trial]. The CNB officers also found drug trafficking materials, namely, a weighing scale, a pair of scissors and some small plastic sachets. Several other persons were also arrested at about the same time. They were later ascertained not to be concerned with the charges involving the accused.

> 3 The prosecution also adduced seven statements made by the [appellant] in which he gave detailed accounts of how he came to be staying at the flat, and how he came into the business of drug trafficking. These included details of his own addiction, how he was introduced to his supplier, and also the persons to whom he delivered drugs to. He obtained his supply from a Malaysian man known to him only as "Ah Seng". He started delivering drugs for Ah Seng in February 2008. The drugs would be sent by courier to the car park near Blk 322, Ubi Avenue 1. Ah Seng would send heroin, Ecstasy tablets, Ice, and Erimin-5, all wrapped in black tape. Ah Seng would notify the [appellant] whenever anyone wanted to take delivery. The [appellant] would then follow Ah Seng's instructions to make the delivery and collect payment on his behalf. He was paid $150 for each delivery he made. He made about 7 or 8 deliveries a week. He admitted that he had just collected a batch of drugs from Ah Seng's courier on the morning of the day of his arrest. The drugs were meant to be collected from him sometime later but no instructions had been received at the time. The [appellant] merely checked the bundles and weighed them as instructed.
>
> 4 The [appellant] did not challenge any of the evidence[,] having instructed his counsel that he would plead guilty to the charge. At the close of the prosecution's case, counsel declined to make any submission. I then called upon the defence and the [appellant] elected to remain silent. His counsel again declined to make any submission. On the evidence, I was satisfied that the prosecution had proved its case beyond reasonable doubt and I thus convicted the [appellant] and sentenced him to death.

4 On appeal, the appellant did not dispute the trial judge's findings of fact and also did not dispute that he had elected to remain silent when his defence was called. Although the trial judge did not, in the GD, refer specifically to the evidence led by the Prosecution on the scientific analysis carried out on the "36 packets of white substance" (see [2] of the GD) found in the possession of the appellant at the time of his arrest ("the White Substance"), the record of proceedings showed that the Prosecution produced 22 certificates of analysis issued under s 16 of the MDA as proof of the type and the quantity of controlled drug contained in the White Substance. For convenience, we shall hereafter refer to these 22 certificates collectively as "P67–P88", and to a certificate issued under s 16 of the MDA as a "s 16 MDA certificate". A prosecution witness, Ms Lim Jong Lee Wendy ("PW5"), an analyst employed by the Health Sciences Authority ("HSA"), testified that P67–P88 were signed by her.

5 At the trial, the appellant did not challenge the validity of P67–P88. On appeal to this court, however, the appellant mounted such a challenge on the ground that PW5 had not explained precisely the steps taken to test the White Substance. It was argued that as a result of PW5's failure in this regard, the Prosecution had failed to comply with the requirements of the law (as understood by the appellant (see further [17]–[19] below)) and, consequently, the Prosecution had not proved beyond reasonable doubt the type and the quantity of controlled drug contained in the White Substance. In essence, the appellant's case before this court was that it was unsafe for the court to rely on P67–P88 as presumptive proof of the type and the quantity of controlled drug contained in the White Substance because: [note: 1]

> [T]here is no evidence whatever as to who conducted the laboratory tests on the [White Substance] or what method was used or in any event how the tests were done. We [have] not [been] made aware whether [it was] the Analyst herself, PW5, who did the tests or whether it was someone else. We do not even have any evidence on record whether PW5 supervised the testing of the [White Substance].

6 The appellant's argument as outlined above was based on certain observations made by the

judge who heard the magistrate's appeal in *Lim Boon Keong v Public Prosecutor* [2010] 4 SLR 451 ("*Lim Boon Keong*"). We rejected the argument and dismissed the appeal.

The decision in *Lim Boon Keong*

7 To better understand the appellant's case before this court, which (as just mentioned) hinged upon certain *obiter dicta* of the judge in *Lim Boon Keong* ("the MA judge"), we shall first discuss that case.

8 The accused in *Lim Boon Keong* ("Lim") was convicted in the District Court of the offence under s 8(*b*)(ii) of the MDA of unauthorised consumption of a specified drug listed in the Fourth Schedule to the MDA, namely, norketamine (see *Public Prosecutor v Lim Boon Keong* [2009] SGDC 511). The district judge who heard the trial ("the District Judge") found that the procedure set out in s 31(4)(*b*) of the MDA for testing Lim's urine sample for the presence of norketamine had been complied with, and, thus, the presumption under s 22 of the MDA ("the s 22 MDA presumption") that Lim had consumed norketamine was applicable. In convicting Lim, the District Judge admitted in evidence, *inter alia*, a s 16 MDA certificate signed by Ms Kuan Soo Yan, an analyst employed by HSA at the material time ("Ms Kuan's s 16 MDA certificate"), as *prima facie* evidence of the matters stated therein (*eg*, the type and the quantity of specified drug found in Lim's urine sample).

9 On appeal to the High Court, the Prosecution withdrew its reliance on Ms Kuan's s 16 MDA certificate and the s 22 MDA presumption, with the result that the Prosecution had no evidence against Lim on the offence charged, except for the confession given in his cautioned statement recorded on 20 March 2008 under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("the CPC"). That confession ("the s 122(6) confession") was as follows:

> I admit to my guilt and hope for a lighter sentence. I am married with 3 kids and I hope that I can be given a chance. I also have aged parents whom I visit often because my mother has difficulty walking.

10 The Prosecution argued that the s 122(6) confession by Lim and his decision to remain silent when his defence was called were, taken together, sufficient evidence to convict Lim of the offence charged. The MA judge disagreed and held that those two factors were not sufficient to prove beyond reasonable doubt that Lim *knew* that the substance consumed by him was, in fact, norketamine, given the assertion in his long statement recorded pursuant to s 121 of the CPC that he did not know he had consumed norketamine as he had only "mistakenly [taken] a few sips of water from a glass on the table in the Geylang premises where he was arrested" (see *Lim Boon Keong* at [63]).

11 The MA judge held that there was no evidence that Lim was capable of identifying norketamine as his previous convictions for the offence of unauthorised drug consumption under s 8 of the MDA ("the offence of drug consumption") related to other drugs, such as ketamine or nimetazepam, but not norketamine, and no evidence was led by the Prosecution to show that ketamine and nimetazepam were similar to norketamine. The MA judge also noted that Lim had made the s 122(6) confession to the investigating officer only when he was informed by the latter that norketamine had been found in his urine sample after tests done by HSA. The MA judge found it "curious that [Lim had] confessed his guilt in the course of being cautioned, the whole purpose of which [was] for him to state any defence he might have" (see *Lim Boon Keong* at [63]). Given those circumstances, the MA judge held that it would not be safe to draw, based on Lim's silence at the trial, any adverse inference as to Lim's knowledge of or familiarity with norketamine. He was also not prepared to hold that Lim had sufficient knowledge of and familiarity with norketamine such that the s 122(6)

confession was proof beyond reasonable doubt that Lim had in fact consumed norketamine.

12 We do not propose to comment on the merits of the actual decision in *Lim Boon Keong* as it is not relevant to the issue in this appeal. What is relevant, instead, is the appellant's reliance on the MA judge's observations on s 31(4)(*b*) of the MDA. Before we go into those observations, we set out below, for ease of reference, s 31(4)(*b*) as well as ss 16 and 22 of the MDA:

> **Certificate of analyst, etc**.
>
> **16**. A certificate purporting —
>
> (*a*) to be signed by —
>
> (i) an analyst employed by [HSA]; or
>
> (ii) such other person as the Minister may, by notification in the *Gazette*, appoint; and
>
> (*b*) to relate to a controlled drug or controlled substance,
>
> shall be admitted in evidence, in any proceedings for an offence under this Act, on its production by the [P]rosecution without proof of signature and, until the contrary is proved, shall be proof of all matters contained therein.
>
> …
>
> **Presumption relating to urine test**
>
> **22**. If any controlled drug is found in the urine of a person as a result of both urine tests conducted under section 31(4)(*b*), he shall be presumed, until the contrary is proved, to have consumed that controlled drug in contravention of section 8(*b*).
>
> …
>
> **Urine tests**
>
> **31**.—(1) Any officer of the [Central Narcotics] Bureau, immigration officer or police officer not below the rank of sergeant may, if he reasonably suspects any person to have committed an offence under section 8(*b*) [*ie*, the offence of drug consumption], require that person to provide a specimen of his urine for urine tests to be conducted under this section.
>
> …
>
> (4) A specimen of urine provided under this section shall be divided into 3 parts and dealt with, in such manner and in accordance with such procedure as may be prescribed, as follows:
>
> (*a*) a preliminary urine test shall be conducted on one part of the urine specimen; and
>
> (*b*) each of the remaining 2 parts of the urine specimen shall be marked and sealed and a urine test shall be conducted on each part by a different person, being either an analyst employed by [HSA] or any person as the Minister may, by notification in the *Gazette*, appoint for such purpose.

13 The MA judge's observations on s 31(4)(*b*) of the MDA may be summarised as follows:

(a) Both of the urine tests prescribed by s 31(4)(*b*) must be conducted by persons authorised under the MDA ("authorised persons"), *ie*, by either analysts employed by HSA or persons appointed by the Minister for Home Affairs via notification in the *Government Gazette*.

(b) Both of the urine tests must be conducted by the authorised persons who eventually certified the presence of the drug in question in the accused's urine sample. If the authorised person did not conduct the urine tests which revealed the presence of that drug, he or she could not certify its presence in the accused's urine sample.

(c) It was both "necessary and sufficient for the [authorised person] to supervise the testing process[, but,] … [i]t [was] strictly not necessary for the [authorised person] to physically conduct the actual tests" (see *Lim Boon Keong* at [39]). In this regard, the authorised person could not be said to have conducted the urine test in question if he or she had only reviewed the test results, as opposed to actually supervising the testing process.

(d) Each of the urine tests prescribed by s 31(4)(*b*) must be done independently of the other, *ie*, the authorised person testing one part of the accused's urine sample could not be involved in any way in the testing of the other part of the accused's urine sample. This requirement applied as well to the supervision and review of the urine tests.

(e) If the urine tests were not conducted in compliance with s 31(4)(*b*), the results of the tests showing the presence of the drug in question in the accused's urine sample could not trigger the operation of the s 22 MDA presumption (*ie*, the rebuttable presumption that the accused had consumed that drug).

14 For the purposes of the present discussion, we shall assume that the MA judge's observations on the effect of non-compliance with s 31(4)(*b*) are correct. (We are *not*, however, making any ruling or comments on the correctness of the MA judge's observations on s 31(4)(*b*) as that issue is currently the subject of an on-going drug consumption trial in the High Court and, further, was not argued in full before us.) Proceeding on the aforesaid assumption, what is clear to us is that, *vis-à-vis* the offence of drug consumption specifically, *if s 31(4)(*b*) has not been complied with*, the Prosecution must prove *actual* consumption of the drug in question by the accused before he can be convicted of the offence. How can the Prosecution prove this fact (*ie*, the *actus reus* of the offence of drug consumption) in such a situation? As we see it, there are only two modes of proof (assuming, as just mentioned, that the MA judge's observations on the effect of non-compliance with s 31(4)(*b*) are correct) – one way is by the accused admitting or confessing to the act of consumption, the other is by the Prosecution calling a witness who actually saw the accused consume the drug in question. In *Lim Boon Keong*, in the proceedings before the MA judge, the Prosecution relied solely on the s 122(6) confession made by Lim (reproduced at [9] above) as proof of consumption (*cf* the Prosecution's case in the proceedings before the District Judge, where Ms Kuan's s 16 MDA certificate and the s 22 MDA presumption were relied on as well (see [8] above)), but the MA judge rejected that confession on the ground of unreliability, having regard to the circumstances in which it was made.

15 Apart from commenting on the effect of non-compliance with s 31(4)(*b*) on the operation of the s 22 MDA presumption (see sub-para (e) of [13] above), the MA judge also considered the consequences which such non-compliance would have on the operation of s 16 of the MDA *vis-à-vis* the offence of drug consumption. In his view, if the tests on an accused's urine sample were not carried out in compliance with s 31(4)(*b*), then the s 16 MDA certificate setting out the results of

those tests could not be relied on as presumptive proof that the drug in question had been found in the accused's urine sample. In other words, the Judge was of the view that if the s 22 MDA presumption was inapplicable because of non-compliance with s 31(4)(*b*), then s 16 could not be invoked to circumvent such non-compliance and to, in turn, trigger the operation of the s 22 MDA presumption.

The issue on appeal

16 In the present case, the issue which the appellant's counsel ("Mr Masih") raised before us was not whether s 31(4)(*b*) of the MDA had been complied with so as to trigger the operation of the s 22 MDA presumption. Rather, it was whether the Prosecution had proved beyond reasonable doubt the ingredients of the charge against the appellant with reference to the type and the quantity of controlled drug specified in the charge. This issue was raised in the light of the MA judge's observations in *Lim Boon Keong* on the implications which non-compliance with s 31(4)(*b*) would have on a s 16 MDA certificate and the s 22 MDA presumption in relation to the offence of drug consumption.

The appellant's argument

17 Mr Masih rightly conceded at the outset that unlike the offence of drug consumption, in respect of which the procedure for testing an accused's urine sample for the presence of a controlled or specified drug was prescribed by s 31(4)(*b*) of the MDA, where the offence of drug trafficking as set out in s 5 of the MDA ("the offence of drug trafficking") was concerned, there was no statutorily prescribed procedure for analysing the substance found in the accused's possession which was alleged to contain a controlled drug. Mr Masih framed his argument in this way: Given that the law had provided such a strict regime for testing an accused's urine sample for the presence of a controlled or specified drug for the purposes of the offence of drug consumption, the same regime should apply "equally if not even more stringently" [note: 2] to the scientific analysis of the type and the quantity of controlled drug found in an accused's possession for the purposes of the offence of drug trafficking, which was a much more serious offence. Mr Masih pointed out that since a s 16 MDA certificate was issued both in a drug consumption case (where the accused's urine sample would be tested for the presence of a controlled or specified drug) and in a drug trafficking case (where the type and the quantity of controlled drug found in the accused's possession had to be ascertained), at the very least, "the same high standard of procedures laid down for … drug consumption cases should also apply for drug trafficking cases". [note: 3]

18 For this reason, Mr Masih submitted, just as the Prosecution had to prove due compliance with the requirements of s 31(4)(*b*) of the MDA for the purposes of proving the presence of a controlled or specified drug in an accused's urine sample and, in turn, consumption of that drug by the accused in a drug consumption case, in a drug trafficking case, the Prosecution must adduce evidence that the tests conducted to determine the type and the quantity of controlled drug found in the accused's possession complied with a similar, or even higher, standard of accuracy and rigour.

19 Based on the above considerations, Mr Masih argued that since, in the present case, the Prosecution had not led any evidence to show that it was indeed PW5 who had conducted or at least supervised the actual testing of the White Substance for the presence of the controlled drug in question (*viz*, diamorphine), the presumption under s 16 of the MDA could not be applied to P67–P88 and, consequently, the Defence had succeeded in casting reasonable doubt on the Prosecution's case with regard to the type and the quantity of controlled drug found in the possession of the appellant at the time of his arrest.

Our analysis of the appellant's argument

20 There is much to be said for Mr Masih's argument from an intellectual, or even commonsensical, point of view. It makes sense that if the procedure prescribed for testing an accused's urine sample for the presence of a controlled or specified drug for the purposes of the offence of drug consumption is so rigorous, the same or even a higher standard must apply to the procedure for analysing the type and the quantity of controlled drug found in an accused's possession for the purposes of the offence of drug trafficking, which is much more serious than the offence of drug consumption. The Prosecution did not deny the logical force of this argument. That, in our view, would explain why, after Mr Masih raised this ground of appeal, the Prosecution served on him the affidavit of PW5 dated 12 August 2010 ("the 12 August 2010 affidavit") setting out the scientific analysis carried out by HSA on the White Substance. It should be noted that Mr Masih had no objections to the admission of this affidavit, which we shall refer to in greater detail later (at [27]–[29] below).

21 We were unable to accept Mr Masih's argument on the facts of the present case because, at the trial, the Prosecution *did* lead evidence on the scientific analysis of the White Substance. As mentioned at [4] above, in the court below, the Prosecution tendered P67–P88 as evidence of the type and the quantity of controlled drug contained in the White Substance. Further, PW5 testified that she had been an analyst with HSA since 1997, and had been attached to the laboratories of the Drug Enforcement Agency in the United States. [note: 4] In her examination-in-chief, PW5 said that "[her] analysis would have revealed that the purity level of the diamorphine in each exhibit [referred to in P67–P88] … ranged basically from 7.6 to 7.9 per cent of the gross weight". [note: 5] For illustrative purposes, we reproduce below one of the s 16 MDA certificates comprised in P67–P88, namely, the certificate numbered "N1-2008-00434-001" ("P67"): [note: 6]

> **CERTIFICATE UNDER SECTION 16 OF THE MISUSE OF DRUGS ACT (CAP. 185)**
>
> I, [PW5], Analyst, do hereby certify that at 10:30 a.m. on the 1st day of April 2008 there was handed to me … one exhibit sealed "CENTRAL NARCOTICS BUREAU" and marked "A1A".
>
> The exhibit was found to be thirty six (36) packets and one (1) paper packet containing 267.0 grams of granular/powdery substance which was pulverised and homogenised into a powdery substance. The powdery substance was analysed and found to contain not less than 20.62 grams of diamorphine, at a confidence level of 99.9999%.
>
> Diamorphine is a Class A Controlled Drug listed in The First Schedule to The Misuse of Drugs Act (CAP. 185).
>
> After examination, the exhibit bearing Lab. No. N1-2008-00434-001 was sealed with paper seal "HEALTH SCIENCES AUTHORITY, SINGAPORE".
>
> [signed]
>
> [PW5]
>
> Narcotics I Laboratory

22 As can be seen from P67 (as reproduced above), the matters contained in that s 16 MDA certificate included:

(a) the marking of the relevant exhibit (*viz*, "A1A");

(b) the constitution of the relevant exhibit (*viz*, 36 packets and one paper packet containing "granular/powdery substance" [note: 7] (*ie*, the White Substance));

(c) the amount/weight of the substance analysed (*viz*, 267g); and

(d) the type and the quantity of controlled drug found in the substance analysed (*viz*, 20.62g of diamorphine).

It may also be noted that P67 did not state that PW5 had personally conducted the various scientific tests carried out to determine the type and the quantity of controlled drug contained in the substance in Exhibit "A1A", nor did it state that PW5 had personally pulverised and homogenised that substance. In short, P67 was silent as to *how* the substance in Exhibit "A1A" was analysed.

23 The reason for the lack of these details is that s 16 of the MDA does not require such details to be set out in a s 16 MDA certificate, nor does it prescribe who should carry out the scientific analysis of the type and the quantity of controlled drug found in an accused's possession and how such analysis should be conducted. In other words, s 16 of the MDA *assumes* that a s 16 MDA certificate, when signed by an authorised person (as defined at sub-para (a) of [13] above), complies with all the requirements of the law.

Evidential value of P67–P88

24 We mentioned earlier (at [5] above) that in the court below, the appellant declined to lead any evidence to challenge the matters presumptively proved by P67–P88, which were admitted in evidence against him. The appellant also did not enter a defence, and his then counsel did not cross-examine PW5 on the issues which were raised before this court on appeal. In the circumstances, the trial judge held that the Prosecution had proved the charge against the appellant.

25 It bears emphasis that the appellant had the opportunity, at the trial, to rebut the matters presumptively proved by P67–P88 by cross-examining PW5 on the matters set out in those certificates and also by ascertaining from her how the scientific analysis of the White Substance had been conducted. PW5, if she had been questioned, would have been able to give evidence on how the aforesaid scientific analysis was conducted, the standard applied, the person(s) involved, the kind of equipment used and all the other matters that defence counsel would have needed to know in order to assess whether the scientific analysis of the White Substance had been properly conducted. As this was not done, the trial judge was fully entitled to assume, pursuant to s 16 of the MDA, that defence counsel was satisfied that P67–P88 did indeed prove the matters set out therein.

26 In our view, the argument by Mr Masih would have been relevant, in the context of the Prosecution having to discharge the burden of proving an accused's guilt beyond reasonable doubt, if the MDA had required the Prosecution to prove the matters contained in a s 16 MDA certificate.

However, this is not the law as a s 16 MDA certificate, when admitted in evidence, is presumptive proof of the matters which it sets out *unless* the accused is able to prove the contrary of those matters. To quote the words of s 16 of the MDA, a s 16 MDA certificate signed by an authorised person "shall be admitted in evidence" in any proceedings for an offence under the MDA, and "on its production by the [P]rosecution without proof of signature and, *until the contrary is proved*, shall be proof of all matters contained therein" [emphasis added]. The effect of s 16 is that where a s 16 MDA certificate is admitted in evidence, the onus falls on the accused to prove that the matters contained in that certificate (*eg*, the type and the quantity of controlled drug in question) are, for whatever reasons, inaccurate and/or should not be relied upon. Given that a s 16 MDA certificate is presumptive proof (as opposed to conclusive proof) of all the matters stated therein, an accused who takes issue with the accuracy and/or the validity of a s 16 MDA certificate *must* cross-examine the authorised person who signed it if he (*ie*, the accused) wishes to take issue with the procedure or the circumstances surrounding the preparing, signing and issuance of the certificate.

27 Mr Masih also argued that this court should order a retrial so that the Defence could cross-examine PW5 on her testimony and P67–P88. We did not accept this argument as it was based merely on an extrapolation from the observations of the MA judge in *Lim Boon Keong* on the consequences of non-compliance with s 31(4)(*b*) of the MDA. Mr Masih was in effect trying to indirectly challenge the validity of P67–P88 by relying on the assumption that the scientific analysis of the White Substance had not been properly carried out. There was no basis for this assumption. In this regard, we found the 12 August 2010 affidavit significant.

28 In the 12 August 2010 affidavit, PW5 explained the equipment and the methodology used to analyse the type and the quantity of controlled drug found in the White Substance. The details of the tests done were set out in the 13 exhibits annexed to that affidavit. PW5 disclosed (among other things) that she had not conducted all the tests personally, and that a laboratory officer, Ms Phua Chiu Guay Nancy ("Ms Phua"), had assisted her in blending (*ie*, homogenising), using a laboratory blender, the contents of each exhibit analysed as well as in carrying out certain other tasks as described in the 12 August 2010 affidavit. From that affidavit, it can be seen that whenever Ms Phua was instructed to assist PW5 in certain aspects of the qualitative and/or quantitative tests done on the White Substance, PW5 inspected, supervised and cross-checked that Ms Phua carried out the instructions given to her in accordance with the proper procedure and protocol.

29 In view of our decision on the law (see [26] above), it is not necessary for us to comment on the statements made by PW5 in the 12 August 2010 affidavit concerning the accuracy of the various scientific tests carried out to determine the type and the quantity of controlled drug contained in the White Substance (*eg*, the preliminary colour tests, the thin layer chromatography tests, the gas chromatography/mass spectrometry tests, and so on). We have no basis and see no reason to disbelieve PW5's statements. However, in order to allay any concern that the scientific analysis of the White Substance in the present case might not have been conducted in accordance with generally accepted international standards, we should highlight the following passages in the 12 August 2010 affidavit:

> **Quality assurance systems**
>
> 51. The procedures in the Quality Manual, [the] Laboratory Manual and [the] SOP [*viz*, the Narcotics I Laboratory's Standard Operating Procedure for Instruments and Minor Equipment] are based on internationally accepted methodology and are validated in the laboratory before being adopted by the laboratory.
>
> 52. All new officers are trained in-house and have to pass competency tests before they are

allowed to carry out casework. The analysts and laboratory officers undergo annual proficiency testing (including external international proficiency tests for the analysts) in their respective job scopes.

53. The laboratory has been accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) since 1996. Each accreditation is valid for five years and the next accreditation is due in 2011. In between external accreditation inspections, the laboratory is subject to annual internal audits, the results of which are reported to the Senior Management of HSA as well as ASCLD/LAB.

54. The laboratory participates in a number of external international proficiency tests provided by the United Nations Office on Drugs and Crime (International Collaborative Exercises), National Measurement Institute of Australia (interlaboratory proficiency tests) and the Collaborative Testing Services, USA. The laboratory has passed all external international proficiency tests.

55. Following the Laboratory Manual, solvent checks are performed for each of the instruments by including a vial containing only the specific solvent used (with no sample added) in each run. This is to ensure that all solvents used in the laboratory are clean and do not contain any illicit drugs, which would be detected by the instrument when the solvent is run during the testing process. …

30 Of course, the adoption by HSA of "internationally accepted methodology" [note: 8] does not mean that, in every case, each of the tests conducted by HSA will meet the aforesaid international standards. Whether or not those international standards have been met is essentially a question of fact (see *Public Prosecutor v Ang Soon Huat* [1990] 2 SLR(R) 246 ("*Ang Soon Huat*"), where the High Court held, *vis-à-vis* the offence of drug trafficking as set out in s 5 of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed), that the tests devised and conducted in that case did not meet the requirements of the criminal standard of proof).

31 In the present case, no challenge was mounted against P67–P88 at the trial (see [5] and [24]–[25] above). In our view, having regard to the 12 August 2010 affidavit, we did not think that ordering a retrial so as to allow the Defence to cross-examine PW5 on the matters set out in that affidavit was likely to rebut the matters presumptively proved by P67–P88. There was one other material consideration in the present case which made a successful rebuttal highly improbable, namely: the appellant had confessed that he had indeed trafficked in *64.34g* of diamorphine as charged. That quantity of diamorphine exceeded by more than four times the statutory threshold set for the imposition of the death sentence *vis-à-vis* the offence of trafficking in diamorphine, namely, trafficking in any quantity of diamorphine of more than 15g (see the Second Schedule to the MDA; *cf Ang Soon Huat*, where the difference between the statutory threshold and the amount of diamorphine trafficked as alleged by the Prosecution (which amount was eventually held by the court not to have been proved beyond reasonable doubt) was only in the region of 3.61g to 3.77g).

Conclusion

32 In the light of the foregoing, we dismissed the appeal as there was nothing which suggested that the appellant's conviction was unsafe.

[note: 1] See the appellant's skeletal arguments filed on 27 July 2010 ("ASA") at para 19.

[note: 2] See ASA at para 15.

[note: 3] See ASA at para 16.

[note: 4] See pp 18–19 of the certified transcript of the notes of evidence of the hearing before the trial judge on 17 August 2009 ("the Notes of Evidence").

[note: 5] See p 20 of the Notes of Evidence.

[note: 6] See the Record of Proceedings at vol 2, p 40.

[note: 7] *Ibid*.

[note: 8] See para 51 of the 12 August 2010 affidavit.