

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

[2021] SGHC 103

Criminal Case No 49 of 2017

Between

Public Prosecutor

And

Mangalagiri Dhruva Kumar

JUDGMENT

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

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Public Prosecutor
v
Mangalagiri Dhruva Kumar

[2021] SGHC 103

General Division of the High Court — Criminal Case No 49 of 2017
Valerie Thean J
24–27 November, 1–3 December 2020, 28 January, 26 March 2021

19 May 2021

Judgment reserved

Valerie Thean J:

Introduction

1 Mangalagiri Dhruva Kumar (“the accused”) is charged as follows:

That you, **Mangalagiri Dhruva Kumar**, on 16 May 2014, at the vicinity of the carpark located outside Sheng Siong Supermarket at Woodlands Centre Road, Singapore, did traffic in a “Class A” controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”), *to wit*, by giving two packets of granular/powdery substance and some loose granular/powdery substance weighing not less than 897.08 grams which was analysed and found to contain not less than 22.73 grams of diamorphine to one Shanti Krishnan (NRIC No XXXXXXXXXX) without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) of the MDA and punishable under section 33(1) of the said Act

2 At the material time, the accused was a bus driver for a Malaysian registered company, M/s Presto Jaya Travel & Tours Sdn Bhd (“Presto”). In the course of his work at Presto from February to October 2014, he drove

passengers between Malaysia and Singapore. The Prosecution's case is that on 16 May 2014, after the accused drove into Singapore from Malaysia, he handed a bag containing diamorphine ("the Drugs") to one Shanti Krishnan ("Shanti"), who then handed the Drugs to one Zainudin bin Mohamed ("Zainudin").

Background

Shanti and Zainudin's arrest and convictions

3 On 16 May 2014, Central Narcotics Bureau ("CNB") officers, acting on intelligence, set up surveillance around Block 631 in the Ang Mo Kio area ("Block 631"), where Zainudin lived. At 5.57pm, Shanti was seen alighting from a taxi along Ang Mo Kio Street 61. She walked to Block 631 carrying a blue bag in her hand and a black bag over her shoulder. On the same day, at about 6.00pm, Zainudin was seen leaving his flat and going down a flight of stairs to the second floor of the block.¹

4 Shanti was arrested around 6.07pm along Ang Mo Kio Street 61 by CNB officers. A bundle of cash amounting to \$8,200 was seized from her.² Around the same time, CNB officers made a forced entry into Zainudin's flat, where Zainudin was arrested. CNB officers saw a trail of brown cubes and granular substances around the rubbish chute in Zainudin's flat. Downstairs at the rubbish collection point, they recovered similar substances found either individually, or in plastic bags.³ These substances were later photographed, weighed and sent to the Health Sciences Authority ("HSA") for analysis.⁴ Upon

¹ Statement Of Agreed Facts ("SOAF") dated 1 December 2020 at paras 13–15.

² SOAF at para 24.

³ SOAF at paras 16–22.

⁴ SOAF at para 25.

analysis, the substances were found to contain not less than 22.73g of diamorphine, at a confidence level of 99.9999%. Diamorphine is a controlled drug listed in Class A of the First Schedule to the MDA.⁵

5 Shanti and Zainudin were tried together in a joint trial:⁶

(a) Shanti was convicted on 30 September 2016 for one charge of trafficking in not less than 22.73g of diamorphine under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). She was sentenced to life imprisonment. Her appeal was dismissed on 11 May 2017.

(b) Zainudin was also convicted on 30 September 2016 for possession of not less than 22.73g of diamorphine for the purposes of trafficking under s 5(1) read with s 5(2) of the MDA. He was sentenced to death. His appeal was dismissed on 12 February 2018 and he has been executed.

Arrest of the accused

6 In her statement dated 24 May 2014, Shanti identified the person from whom she collected the Drugs as the driver of a green and white bus, bearing a stated car plate number.⁷ Arising from the information she furnished, investigations were conducted and on 21 September 2015, she was shown a collection of 17 photographs. Shanti identified the accused as the driver of the bus whom she collected the Drugs from. On 23 September 2015, the accused

⁵ SOAF at paras 26–28.

⁶ SOAF at para 3.

⁷ Exhibit D1 at p 650, para 35 and p 654, para 33.

was arrested at Woodlands Checkpoint.⁸ At the time of his arrest, he was working as a bus driver for another Malaysian registered company, M/s R3J Travel and Tours Sdn Bhd. He gave various statements dated 23 September 2015 to 2 February 2016. The voluntariness of these statements were not challenged at trial. Because these statements mentioned Tahmilselvan, one of the accused's superiors at Presto, Shanti was shown a collection of the same photographs with the addition of Tahmilselvan's photograph on 2 February 2016. She identified the accused again in this exercise.⁹

ICA records

7 Immigration and Checkpoints Authority ("ICA") records show that there were periods of time on 30 April 2014, 13 May, 14 May 2014 and 16 May 2014 when both Shanti and the accused were concurrently in Singapore.¹⁰ On 16 May 2014 in particular, the accused drove into Singapore on or about 5.02pm in JJA5556 through the Woodlands Checkpoint.¹¹ The ICA records also show that at around 4.57pm, Shanti entered Singapore via the Woodlands Checkpoint.¹²

Issues

8 To prove the charge, the elements of trafficking are that the accused must have (a) been in possession of a controlled drug; (b) with knowledge of the nature of the drug; and (c) possession of the drug for the purpose of

⁸ SOAF at para 30.

⁹ Exhibit D1 at p 698.

¹⁰ SOAF at para 8.

¹¹ SOAF at para 9.

¹² SOAF at para 10.

trafficking: *Public Prosecutor v Muhammad Abdul Hadi bin Haron and another* [2020] 5 SLR 710 at [52], cited with approval by the Court of Appeal in *Muhammad Abdul Hadi bin Haron and another v Public Prosecutor and another appeal* [2021] 1 SLR 537 at [12].

9 The Prosecution's case is that 16 May 2014 was the last of four occasions that the accused had trafficked diamorphine to Shanti. On each occasion, the drugs were packaged in the form of a newspaper wrapped bundle in a plastic bag. In order to prove the elements of possession and trafficking, reliance is placed on Shanti's evidence and other surrounding circumstances to prove that the accused gave Shanti the Drugs on 16 May 2014 at the vicinity of the carpark located outside the Sheng Siong Supermarket at Woodlands Centre Road. To prove the second element, the Prosecution relies on the presumption of knowledge under s 18(2) of the MDA.

10 The accused's case is that he did not know Shanti and had not passed diamorphine to her on any occasion. For this reason, he gave no evidence and made no submissions to rebut the presumption under s 18(2) of the MDA. The case therefore centres on two issues:

- (a) First, was the chain of custody of the Drugs from Shanti to the point of analysis by the HSA broken? The Defence rests on the Prosecution's duty to prove this beyond reasonable doubt.
- (b) Second, was it the accused who supplied Shanti the Drugs on 16 May 2014? This is the pivotal issue in the present case.

Issue 1 – Chain of Custody of the Drugs

Evidence of previous convictions

11 The Prosecution relies on evidence of Shanti’s and Zainudin’s convictions to prove that the chain of custody of the Drugs has not been broken, by use of the following:

- (a) The High Court judgment of *Public Prosecutor v Zainudin bin Mohamed and another* [2017] 3 SLR 317;
- (b) The Court of Appeal judgment of *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449; and
- (c) The Certificates of Result of Shanti’s appeal (Criminal Appeal No 30 of 2016) and Zainudin’s appeal (Criminal Appeal No 29 of 2016).

12 They seek to use s 45A of the Evidence Act (Cap 97, 1997 Rev Ed) (“the EA”) for this purpose. The relevant part of s 45A provides as follows:

Relevance of convictions and acquittals

45A.—(1) Without prejudice to sections 42, 43, 44 and 45, the fact that a person has been convicted or acquitted of an offence by or before any court in Singapore shall be admissible in evidence for the purpose of proving, where relevant to any issue in the proceedings, that he committed (or, as the case may be, did not commit) that offence, whether or not he is a party to the proceedings; and where he was convicted, whether he was so convicted upon a plea of guilty or otherwise.

(2) A conviction referred to in subsection (1) is relevant and admissible unless —

- (a) it is subject to review or appeal that has not yet been determined;
- (b) it has been quashed or set aside; or
- (c) a pardon has been given in respect of it.

(3) *A person proved to have been convicted of an offence under this section shall, unless the contrary is proved, be taken to have committed the acts and to have possessed the state of mind (if any) which at law constitute that offence.*

(4) Any conviction or acquittal admissible under this section may be proved by a certificate of conviction or acquittal, signed by the Registrar of the Supreme Court, the registrar of the State Courts or the registrar of the Family Justice Courts, as the case may be, giving the substance and effect of the charge and of the conviction or acquittal.

(5) Where relevant, any document containing details of the information, complaint, charge, agreed statement of facts or record of proceedings on which the person in question is convicted shall be admissible in evidence.

(6) The method of proving a conviction or acquittal under this section shall be in addition to any other authorised manner of proving a conviction or acquittal.

... [Emphasis added]

13 In *Chua Boon Chye v Public Prosecutor* [2015] 4 SLR 922 (“*Chua Boon Chye*”), the Court of Appeal at [71] made clear that the section may be used in both civil as well as criminal proceedings, and that third-party convictions are admissible for proving predicate offences. For cases outside of proving predicate offences, the court at [72] set out the following guidance:

(a) the conviction must be clearly relevant to an issue in the case;
and

(b) the court should consider whether the probative value of the conviction outweighs the prejudicial value.

14 In the present case, subsection (3) is relevant, as it states that unless the contrary is proven, the person convicted of the offence would be taken to have committed the *actus reus* and *mens rea* of the offence. In Shanti and Zainudin’s case, their act of trafficking would have rested on the premise of an unbroken chain of custody of the Drugs from Shanti onwards. The finding was *a*

necessary step in the court's conclusion that Shanti and Zainudin had committed the *actus reus* of their offences. Therefore, because subsection (3) provides that the *actus reus* for either's acts of trafficking be taken to be proved, the chain of custody must as a matter of logic also be taken to be proved, unless the contrary is proved. In the present case, the contrary has not been proved. Further, applying the criteria in *Chua Boon Chye*, the convictions are relevant to this case, as they necessarily concern the same issue of the chain of custody. Moreover their probative value outweighs any prejudicial value. This is sufficient for me to find that there is no unbroken chain of custody in the Drugs from Shanti to the point of HSA analysis.

Other supporting evidence

15 In addition, there were several sources of primary evidence adduced by the Prosecution:

- (a) seven statements given by Zainudin to CNB during investigations (collectively "Zainudin's statements") – the Prosecution sought to admit these statements under s 32(1)(j)(i) of the EA;
- (b) evidence led during trial, and statements from the CNB officers who were involved in the recovery of the heroin; and
- (c) evidence from an analyst with the HSA.

16 These sources give a thorough account of the custody of the Drugs from the time they were in Shanti's possession, up to the point of the HSA analysis.

Zainudin's statements on receiving, unpacking and disposing of the Drugs

17 The admissibility of Zainudin's statements was not challenged by the Defence. Zainudin explained there his source for the Drugs and how they were later seized by the police:

(a) First, Shanti passed the Drugs to Zainudin. Zainudin stated that he met a woman he referred to as "Sis" or "Kakak" at the second floor of his block to collect the Drugs.¹³ He later identified this woman as Shanti.¹⁴ In return for the Drugs, he gave her \$8,200.¹⁵ Shanti's testimony at trial was to the same effect.¹⁶

(b) Second, after he exchanged the Drugs for the money, he returned to his flat and contacted his handler, "Boy Ahmad", who then instructed him to repack the heroin.¹⁷

(c) Third, following the instructions from "Boy Ahmad", Zainudin unwrapped the Drugs and found two packets of heroin in transparent packets. The heroin was in the form of hard cubes. He then began to repack the heroin.¹⁸

(d) Fourth, before he could finish his task, he heard the sound of metal being cut, and realized that CNB officers were attempting to enter his flat. He then grabbed the two packets of heroin and the empty zip

¹³ Prosecution's Bundle ("PB") filed on 23 November 2020 at pp 149, Q8 and p 169, para 19.

¹⁴ PB at p 149, Q8.

¹⁵ PB at p 169, para 19.

¹⁶ Notes of Evidence ("NEs") 24 November 2020 at p 47, lines 15–22.

¹⁷ PB at pp 169–170, para 20.

¹⁸ PB at p 170, para 21.

lock bags he was packing them into and went into the kitchen where he proceeded to throw the items down the rubbish chute. However, he had left a trail of heroin leading to the rubbish chute on the kitchen floor.¹⁹

18 At his trial, Zainudin did not challenge the accuracy of these statements.²⁰ His defence related to the amount of diamorphine in his possession, which the first instance court rejected. He did not raise the point on appeal.

CNB evidence on recovery and seizure of the Drugs

19 CNB officers involved in the arrest of Zainudin furnished the sequence of events is as follows:

(a) First, after entering Zainudin’s flat and arresting Zainudin, Senior Staff Sergeant Eng Chien Loong (“SSSgt Eng”) noticed some granular substances on the flat’s kitchen floor near the rubbish chute.²¹ These substances were then seized by Staff Sergeant Goh Jun Xian (“SSgt Goh”) and marked as “E1”, “F1” and “H1”.²²

(b) Second, around 6.30pm, SSSgt Eng proceeded to the rubbish collection point at the ground floor of Block 631. He opened the rubbish chute and saw some brown granular substance and plastic bags inside the bin.²³ He then reported this over the radio at around 6.48pm.²⁴

¹⁹ PB at pp 170–171, para 21.

²⁰ PB at pp 195, 203.

²¹ NEs 27 November 2020 at p 50, lines 24–26.

²² NEs 27 November 2020 at p 38, line 5–p 39, line 25.

²³ AB at p 451, para 8.

²⁴ AB at p 447, para 8.

(c) Third, at about 6.55pm, Zainudin was escorted by SSgt Goh, Senior Staff Sergeant Chew Thye Kwang (“SSSgt Chew”) along with several other CNB officers to the rubbish collection point.²⁵ At about 7.10pm, SSSgt Eng and two other CNB officers escorted Zainudin back to the flat, whilst SSSgt Chew remained at the rubbish collection point to secure the area.²⁶

(d) Fourth, at around 10.45pm, Zainudin was escorted back to the rubbish collection point.²⁷ Then at around 11.08pm, in Zainudin’s presence, SSSgt Chew retrieved several items from the rubbish chute area and the rubbish bin at the rubbish collection point, including:²⁸

(i) one big clear plastic bag containing brown granular substance, marked as “L1”;

(ii) one opened clear plastic bag containing several substances, marked as “L2”;

(iii) loose brown granular substance scattered inside the bin, marked as “L3”; and

(iv) one piece of brown granular substance, marked as “K1”.

(e) Fifth, after the processing of the scene ended at around 11.19pm, SSSgt Chew handed the exhibits he had seized to SSgt Goh, which

²⁵ AB at p 447, para 9; AB at p 451, para 8.

²⁶ AB at p 447, para 10; AB at p 451, para 9.

²⁷ AB at p 447, para 12; AB at p 83, para 14.

²⁸ AB at pp 447–448, para 13; NEs 1 December 2020 at pp 2–5.

exhibits include “L1”, “L2”, “L3” and “K1”.²⁹ SSgt Goh was also already in possession of exhibits “E1”, “F1” and “H1”.

(f) Sixth, SSgt Goh then handed all seven of these exhibits to Woman Staff Sergeant Tan We Mei Bessy (“WSSgt Bessy”) at around 4.10am on 17 May 2014 for the purposes of photo taking and DNA swabbing. WSSgt Bessy swabbed two exhibits before Station Inspector Shafiq Basheer (“SI Shafiq”) took over.³⁰ Another officer photographed the exhibits.³¹ The process of photographing and swabbing ended around 5.33am.³²

(g) Seventh, at about 5.39am, the process of weighing the exhibits was commenced by SI Shafiq.³³ After it concluded, SI Shafiq then locked the seized exhibits in his cabinet at around 5.51am.³⁴

At trial, whilst there was some cross-examination, this chain of evidence was not disputed in any meaningful way and the issue was not mentioned in the Defence’s closing written submissions.

HSA analysis of the drugs

20 On 19 May 2014, at about 4.47pm, SI Shafiq sent the exhibits to HSA for analysis in tamper-proof bags. These were received by Ms Yu Li Jie, an

²⁹ NEs 27 November 2020 at p 40, line 6–p 41, line 9.

³⁰ AB at p 583, para 14.

³¹ AB at p 583, para 13.

³² AB at p 585, para 15.

³³ AB at pp 585–586, para 16.

³⁴ AB at p 586, para 17.

analyst with the HSA.³⁵ Analysis of the exhibits showed that they contained not less than 22.73g of diamorphine, at a confidence level of 99.9999%.³⁶ The validity and accuracy of the HSA analysis was not challenged by the Defence in their written submissions.

Conclusion on the first issue

21 In the circumstances, I conclude the first issue in the affirmative.

Issue 2 – The accused as the source of Shanti’s supply

22 The more crucial question was the provenance of Shanti’s supply. On this issue, the Prosecution’s case rested entirely on Shanti’s testimony that the accused was the person who handed her the Drugs on 16 May 2014. In *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [44]–[45], V K Rajah J (as he then was) reminded that whilst there is no prohibition in convicting an accused on the evidence of a single witness, the court must be mindful of the inherent dangers of such a conviction and subject the evidence at hand to close scrutiny. The testimony must be sufficiently compelling to justify a conviction founded entirely and exclusively on it. With this precaution in mind, I turn to Shanti’s evidence.

Shanti’s evidence

23 ICA records show that Shanti entered Singapore on 16 May 2014 through the Woodlands Checkpoint at around 4.57pm. The accused entered Singapore at around 5.02pm, just five minutes later. Shanti testified that after she arrived, she took about 15 to 20 minutes to walk from the checkpoint to the

³⁵ AB at p 589, para 34; AB at p 373, para 2.

³⁶ AB at pp 378–384.

Sheng Siong Supermarket at Woodlands Centre Road. Thus, the Prosecution's case is that at around 5.12pm to 5.17pm, Shanti had arrived at the Sheng Siong Supermarket. Based on calls that Shanti made, in the Prosecution's narrative, the accused arrived just before 5.19pm at the Sheng Siong Supermarket at Woodlands Centre Road.³⁷ The accused handed her the Drugs, and asked her where she was going. She replied that she was going to Jurong, and the accused had offered to drive her there. She told the accused she had to go to Ang Mo Kio first, and thus to contact him, she gave him her number. She then walked off to take a taxi.³⁸

24 While she was walking to take the taxi, and waiting for the taxi, she had called "Boy" to inform him that she had picked up the Drugs, however he did not pick up. This was corroborated by forensic records and took place around 5.19pm.³⁹ Afterwards, "Boy" then called her around 5.20pm.⁴⁰ She then called "Abang", who instructed her "to go to Ang Mo Kio, Block 163 [*sic*]"'.⁴¹ A short time later, Shanti boarded the taxi.

25 Whilst onboard the taxi, the accused called to confirm his number with Shanti.⁴² This call lasted around nine seconds and took place around 5.36pm.⁴³ Shanti testified that after this call, she saved the accused's phone number as

³⁷ NEs 24 November 2020 at p 44, line 28 to p 45, line 7.

³⁸ NEs 24 November 2020 at p 43, lines 23–31.

³⁹ AB at p 111.

⁴⁰ NEs 24 November 2020 at p 45, line 3; AB at p 538.

⁴¹ NEs 24 November 2020 at p 45, lines 6–13; AB at p 538.

⁴² NEs 24 November 2020 at p 44, lines 1–2.

⁴³ AB at p 538.

“Bus”.⁴⁴ This accounted for the number as recorded by the forensic reports.⁴⁵ A short while after this, Shanti had called “Boy” again but he did not pick up. According to Shanti, “Boy” called her back around 5.38pm, but she could not remember what the call was about.⁴⁶ Later at 5.41pm, “Abang” had called Shanti, and according to her, this would likely have been about where to go to make the delivery.⁴⁷ At around 5.57pm, Shanti alighted from the taxi along Ang Mo Kio Street 61.⁴⁸ Around 6.00pm, Zainudin left his apartment and went to the second floor, where Shanti was. They met at the lift lobby of the second floor, and Shanti passed him the Drugs in exchange for \$8,200. Afterwards, they parted ways. Shanti then called the accused to ask him to drive her to Jurong.⁴⁹ This call, as corroborated by the telecommunication records, was at 6.07pm and lasted around 24 seconds. After she hung up, while waiting for the money to be collected, she was arrested by CNB officers around 6.07pm.⁵⁰

Reliability of the identification

26 Shanti’s evidence was that, aside from 16 May, she had met the accused three other times in 2014: 30 April,⁵¹ 13 May,⁵² and 14 May⁵³ (“the first transaction”, “the second transaction”, and “the third transaction” respectively;

⁴⁴ NEs 24 November 2020 at p 44, lines 5–14.

⁴⁵ AB at p 110.

⁴⁶ NEs 24 November 2020 at p 45, lines 21–23; AB at p 538.

⁴⁷ NEs 24 November 2020 at p 45, lines 26–29; AB at p 538.

⁴⁸ AB at p 76.

⁴⁹ NEs 24 November 2020 at p 44, lines 15–18 and p 46, lines 3–10.

⁵⁰ NEs 24 November 2020 at p 44, lines 21–27.

⁵¹ NEs 24 November 2020 at p 34, line 22–29.

⁵² NEs 24 November 2020 at p 40, line 10 to p 41 line 2.

⁵³ NEs 24 November 2020 at p 41, lines 24.

“the first three transactions” collectively). These four dates are corroborated by ICA records. Shanti testified that the first and third transactions, like the final transaction on 16 May, had taken place in Woodlands. The second transaction had allegedly taken place at Joo Koon MRT.⁵⁴

27 After her arrest, Shanti identified the accused twice. In her statements, she stated that she met the same person each of the four times,⁵⁵ and said that the bus driven by the accused was a green and white one, with the number plate being similar to JJW556.⁵⁶ Pursuant to the ensuing investigation, she was shown a photograph board of 17 accused persons, from which she identified the accused.⁵⁷ After the accused was arrested, he alluded to one Tahmilselvan, his superior at Presto, during investigations. Shanti was shown the selection of suspects, with the inclusion of Tahmilselvan. She again chose the accused.⁵⁸

28 In the light of the repeated meetings and instances of identification, the possibility that Shanti could have been mistaken in her identification is very low, and defence counsel also conceded in oral submission that it was “[l]ess likely” that she had been mistaken.⁵⁹ The primary issue was Shanti’s *veracity* as a witness: whether she was telling the truth in pointing to the accused as her source of supply of the Drugs on 16 May 2014.

⁵⁴ NEs 24 November 2020 at p 37, lines 7–18.

⁵⁵ Exhibit D1 at p 683.

⁵⁶ Exhibit D1 at pp 697–698.

⁵⁷ Exhibit D1 at p 672.

⁵⁸ Exhibit D1 at p 698.

⁵⁹ NEs 28 January 2021, p 16, lines 1–8.

Veracity of Shanti's evidence

29 The Defence sought to show that Shanti's evidence was unreliable through the following broad assertions:

- (a) Shanti's evidence is inconsistent with the telecommunication records;
- (b) Shanti's evidence regarding the characteristics of the bus is unreliable;
- (c) Shanti's statements regarding the first three transactions are inconsistent with her testimony; and
- (d) Shanti appeared to have no independent recollection of events.

30 The third and fourth points, for reasons explained below, raise reasonable doubt about the accused's guilt on the charge. I consider the first point in the context of those objections. The second point lacks merit and I deal with this limb first.

Shanti's statements regarding the characteristics of the bus

31 In her statements to the police, Shanti identified the bus as green and white in colour, with its license plate as being "something like JJW556".⁶⁰ In court, she added that the bus had purple curtains.⁶¹

⁶⁰ Exhibit D1 at pp 697–698.

⁶¹ NEs 24 November 2020 at p 37, lines 28–30.

32 The Defence took issue on two points. First, whilst the accused agreed that the bus he was driving at the material time was green and white in colour,⁶² he explained in his cross-examination that all tour buses in Malaysia are green and white in colour.⁶³ He disagreed that the curtains were purple, instead stating that they were blue.⁶⁴ Second, while Shanti had identified the license plate as JJW556, the correct license plate number of the bus was JJA5556 (“the Bus”). Defence counsel in closing written submissions further argued that Shanti was inconsistent in her certainty regarding the license plate number,⁶⁵ first saying in her statement that she saw that the license plate number “was JJW556”,⁶⁶ and then in Court being more uncertain, saying instead that the number was “something like [JJW556]”.⁶⁷ The difference here, it is argued, should affect Shanti’s credibility in the eyes of the court.

33 The variances are rather slight. First, while the Prosecution did not lead evidence on the correct colour of the bus curtains, blue and purple are similar in colour. JJW556 and JJA5556 are apart by one letter and one number and could be explained by eyesight or memory fallibility. Contary to defence counsel’s submission, Shanti stated in her statement that the number “may not be really correct as it has been a long time”.⁶⁸ The Prosecution led evidence from Khu Nguan Hin (“Mr Khu”), a Senior Executive with the Operations Development Branch of the ICA to ascertain whether there were any other vehicles with the

⁶² NEs 2 December 2020 at p 69, line 4.

⁶³ NEs 2 December 2020 at p 68, line 30.

⁶⁴ NEs 2 December 2020 at p 69, line 11.

⁶⁵ Defence’s Written Submissions (“DWS1”) filed on 15 January 2021 at paras 78–83.

⁶⁶ Exhibit D1 at p 650, para 35.

⁶⁷ NEs 25 November 2020 at p 45, lines 7–11.

⁶⁸ Exhibit D1 at p 697 para 62.

license plate number JJW556. Mr Khu stated that whilst they had records of vehicles with license plate number JJW556 entering Singapore, they were not green and white buses, rather they were motorcycles and cars.⁶⁹ Further, there was no record of any of them entering Singapore in 2014.⁷⁰ Thus, the conclusion must be that Shanti misread or erroneously remembered JJA5556 as JJW556.

34 Nevertheless, this piece of correct identification merely reflects that Shanti knew that the accused was the driver of the Bus, and had seen the accused driving the Bus. It obviates any issue of mistaken identity, but does not link the Drugs to the accused as the source. It was only her testimony, and prior to that, her statements, that named the accused as her source of the Drugs.

Shanti's statements are inconsistent with her testimony

35 I turn then to the Defence's contentions as to the inconsistencies between Shanti's statements regarding the first three transactions and her testimony.

36 The procedural background of this point is important in order to fully understand its significance. A key part of the evidence before the court was a collection of statements made by Shanti in May 2014. The Prosecution sought to show that these statements were consistent with her testimony at trial, and that she had consistently identified the accused since an early stage in the investigation. After judgment was reserved, the Prosecution discovered that a page had been inadvertently left out of Shanti's statements when they were admitted at trial. This was disclosed, and further written submissions were thereafter tendered by both sides. This page, as I explain below, is crucial.

⁶⁹ NEs 27 November 2020 at p 7, lines 1–9.

⁷⁰ NEs 27 November 2020 at p 8, line 3–p 10, line 4.

(1) The case before the disclosure of the missing page

37 Shanti’s account of the first three transactions was recorded in her statement dated 24 May 2014 at about 3.17pm.⁷¹ The sequence in which she described the transactions in her statement are as such:

(a) “On the first day” that she had collected and delivered drugs, she had collected them from a person at the “Sheng Siong supermarket area”. Afterwards she asked for instructions from “Abang” and was directed to go to Block 631. She then took a taxi there and called “Abang” again, who told her to go and wait at a floor of Block 631. She then met “a male Malay in his thirties”. She then exchanged the drugs for money, called “Boy” and told him that she had finished the transaction. She was told by him to pass the money to a person whose number she saved as “Money” (“Money”) at the roadside at Ang Mo Kio (the “first mentioned transaction”).⁷²

(b) In the paragraph immediately after this, she then states, that “[i]n that same week of May 2014”, she was told by “Boy” to meet the “same person at Woodlands Centre and collect [drugs] from him”. She entered Singapore and walked to the Sheng Siong supermarket, and soon, a “male Indian” approached her. It was the same person who had given her the drugs on the previous occasion. He passed her the drugs and after she took it, he left immediately. She then called “Boy” who told her to call “Abang”, who told her to go to Block 631. She then took a taxi. When she arrived, she called “Abang” again. He told her to go to a particular floor, and there, the same person who had collected the drugs

⁷¹ Exhibit D1 at pp 646–652.

⁷² Exhibit D1 at p 647, para 31.

from her previously came to meet her. This person took the drugs and gave her a bag of money. She then called “Boy” to tell him she had completed the work. She then went to the main road and passed the money to “Money” (the “second mentioned transaction”).⁷³

(c) After this, “[o]n the second week of May 2014, “Boy” called [her] again and said that there was work to be done” and that she was to collect the drugs from Joo Koon MRT this time.⁷⁴ After her work ended in the morning, she went to Joo Koon MRT station by taxi and waited. While she waited, she saw a white and green Malaysian registered bus, with registration number JJW556. She saw the same “male Indian” who had passed her the drugs previously exit the stairs of the bus and pass a plastic bag to a person wearing a black coloured helmet. The “male Indian” then left the bus and walked towards her holding a plastic bag. He recognised her from past meetings, and passed her a plastic bag.⁷⁵ She then called “Boy” and told him she had the packet. He asked her to call “Abang”, and she did so. “Abang” told her to go to Block 631. She took a taxi there and when she arrived, she called “Abang”. A while later, “Abang” called her back and told her to go to the second floor of the block.⁷⁶ There, she saw a male Malay who was new to her and she had never seen him before. He passed her a plastic bag containing money and she passed him the drugs. She then called “Boy” and told him that she had finished the transaction. She went to the main road and passed

⁷³ Exhibit D1 at pp 648–649, para 32.

⁷⁴ Exhibit D1 at p 650, para 33.

⁷⁵ Exhibit D1 at p 650, para 35.

⁷⁶ Exhibit D1 at p 651, para 35.

the plastic bag containing money to “Money” (the “third mentioned transaction”).⁷⁷

38 The statements are inconsistent with Shanti’s testimony in several aspects. Shanti had testified that the second transaction was at Joo Koon MRT.⁷⁸ In her statements, Joo Koon MRT only appears during the third mentioned transaction. In addition, Shanti had testified that for the transaction at Joo Koon MRT, she had seen the accused “pass something through the window to a motorcyclist”.⁷⁹ In her statements, the passing of the plastic bag was after the accused exited the stairs of the bus.

39 More importantly, read as a whole, it seems as though Shanti had given the *wrong dates* for the first three transactions. If one refers to the paragraphs concerning the first three transactions and reads them together, it seems as though the first two transactions took place in the *first week of May*.

(a) First, it must be assumed that Shanti was describing the transactions chronologically. Prior to being asked about the first three transactions, Shanti had been describing the background events and her prior interactions with “Boy” chronologically. There seems to be no good reason for her to suddenly depart from this pattern. In fact, it stands to reason that she would be more likely to maintain a chronological flow with regards to events that occurred closer to the time of making the statement.

⁷⁷ Exhibit D1 at pp 651–652, para 36.

⁷⁸ NEs 24 November 2020 at p 37, lines 7–13.

⁷⁹ NEs 25 November 2020 at p 43, lines 9–11.

(b) Second, in her statement, she says that the third mentioned transaction had taken place in the second week of May 2014. Thus logically, it makes sense that the first two mentioned transactions did not, otherwise she would have said as much.

(c) Third, the first and second mentioned transactions took place in the same week of May. She stated that the second mentioned transaction took place in the “same week of May 2014”.⁸⁰ The question then is: in the same week of May as what? Logically speaking, it would have to be the first transaction. She would have only used the word “same” to refer to something that she had already mentioned. That would be the first mentioned transaction.

(d) Fourth, if the first two transactions were in the same week, and the third transaction was in the second week of May, and assuming that she has been giving her statement chronologically, it would mean that the first and second transactions were in the *first week of May*.

40 In contrast, the Prosecution’s case, and Shanti’s testimony in court, was that the four transactions took place on 30 April, 13 May, 14 May and 16 May.⁸¹ The statements cast doubt on whether the first transaction was on 30 April and whether the second transaction was on 13 May. Shanti was clear on the stand that the second transaction was 13 May because that date was Vesak Day, a public holiday,⁸² but the fact that the second transaction took place on Vesak Day or a public holiday was not mentioned in her statements.

⁸⁰ Exhibit D1 at p 648, para 32.

⁸¹ NEs 2 December 2020 at p 61, lines 13–17.

⁸² NEs, 24 November 2020, p 37 line 8.

41 Evidence was given by SI Shafiq Basheer who took her statement on 24 May 2014, that he had given Shanti the freedom to describe what she could recall and that he did not question her about any specific dates. Instead, he testified that he was trying to understand her general modus operandi when collecting and delivering drugs.⁸³ This raised the possibility that Shanti may have given the details of the transactions out of chronological order. The subsequent discovery of the missing page from a statement dated 20 May 2014 at about 9.40pm, however, obviated any need to speculate.

(2) After the disclosure of the missing page

42 The additional page, crucially, comes before and gives further context to the description of the first mentioned transaction. With the addition of the missing page, the statements of 20 May and 24 May now read:

(a) First, Shanti had come under financial pressure and then decided to do a different type of work for “Boy”. Rather than being involved solely in the collection of money, Shanti would now be involved in the receipt of a packet of *jamah*, delivering it, and being paid RM200.⁸⁴

(b) Second, “on the *first week* of May 2014” (emphasis added), “Boy” had called her and told her there was work for her and gave her instructions. As instructed by “Boy”, she went to Singapore by bus, and walked to the Sheng Siong supermarket area near Woodlands Centre Road. A “male Indian” approached her and they exchanged a code to

⁸³ PWS1 at para 77; NEs 1 December 2020 at p 22, lines 23–30.

⁸⁴ Exhibit D1 at pp 644–644A.

recognise each other, as instructed by “Boy”. The Indian male passed her a bag containing a bundle of *jamah*.⁸⁵

Therefore, the missing page strengthened the Defence’s suggestion that the first transaction could have taken place in the first week of May, not 30 April.

43 To be clear, “the first week of May” was not defined by Shanti at any time in her statements or evidence in court. The phrase is amenable to one of three interpretations: (1) the calendar week starting 27 April and ending 3 May because May started on a Thursday; (2) the first seven days of May being 1–7 May; or (3) the calendar week starting 4 May and ending 10 May. The third alternative was not in consideration on the evidence at all. It appeared both Prosecution and Defence assumed the second alternative. On the first alternative, it could be said that 30 April was in the correct calendar week, but this was not Shanti’s evidence. In any event, on the Prosecution’s case, the second transaction did not take place in the same week of May as the first transaction, whereas Shanti’s statements assumed that the first two transactions were in the same “week”, inconsistent with the 13 May date in her testimony.

44 The Prosecution argue that a lack of reliability in one part of Shanti’s testimony should not negate the reliability of Shanti’s evidence in its entirety,⁸⁶ and that the inconsistencies raised are minor and unrelated to the 16 May transaction. Nevertheless, the dates are critical for two reasons. First, the dates are linked to the corroborating ICA evidence, as those are the specific dates where both Shanti and the accused were in Singapore at the same time. These inconsistencies raise the distinct possibility that the accused was *not* the person

⁸⁵ Exhibit D1 at p 644A.

⁸⁶ Prosecution’s Written Submissions (“PWS2”) filed on 12 March 2021 at para 12.

who handed Shanti the drugs during the first, and even the second transaction. If either of the first two transactions took place between 1 to 7 May 2014 (the dates assumed by Defence and Prosecution as “the first week of May”), they could not have involved the accused as it was not disputed that Shanti and the accused were not present in Singapore at the same time between 1–7 May 2014.⁸⁷ Second, Shanti’s evidence on the first three transactions forms a key plank of the Prosecution’s case: that there were four occasions where Shanti was involved in the receipt and delivery of drugs, and that *on all four occasions*, the accused was the one who provided her with the drugs.⁸⁸ This was used to explain the reliability of her identification of the accused. Once there is reasonable doubt as to the accused being her source of supply on the previous occasions, it weakens the credibility of Shanti’s assertion that the accused was the provider of the drugs for the 16 May 2014 transaction.

Shanti’s testimony was not her independent recall

45 In this context, I consider the Defence’s assertion, on the other hand, that Shanti’s testimony did not arise from her own independent recall. Rather, she had been moulding her testimony to match the documentary evidence placed before her. The evidence surrounding the missing page supports the Defence’s assertion. This was not the only instance. A concerning feature of Shanti’s testimony was that she could only testify when reminded from ICA or telephone records. For example, the Prosecution put phone records in front of her regarding a phone call to “Abang”. When asked about the contents of the conversation with “Abang”, she stated that she “*must have* asked him where

⁸⁷ SOAF at para 8.

⁸⁸ PWS1 at para 46.

[she] was supposed to go” [emphasis added].⁸⁹ She appeared to have been making an assumption from the phone record rather than readily recalling.

46 The Court of Appeal has observed, in the context of witness preparation, that “[t]he line that *must not be crossed* is this: the witness’s evidence *must remain his own*” [emphasis in original]: *Ernest Ferdinand Perez De La Sala v Compania De Navegacion Palomar, SA and others and other appeals* [2018] 1 SLR 894 at [136]. During the trial, Shanti was more reliant on the records than her own recollection. This occurred several times and was on occasion pre-empted by defence counsel during Shanti’s examination in chief:⁹⁰

Tiwary: See, that’s the problem, Your Honour, how --- she never gave evidence that that’s the old number of Boy. This is where the problem starts to happen. She never said that’s the old number for Boy. That’s in the aide-memoire and then my learned friend relies on the aide-memoire to ask her a question, and then it goes down as the evidence. And that’s what I was afraid of.

47 Her weak recall was particularly concerning when she was cross-examined on her statements on the first three occasions:⁹¹

Q: ... You agree that this paragraph 32 describes the second occasion, Shanti? Do you agree with me?

A: *I do not agree. I can’t remember.*

Q: What can’t you remember?

A: *I don’t know whether I was referring to the second occasion or the third occasion* because I may also have said --- I may also have given my version differently.

[Emphasis added]

⁸⁹ NEs 24 November 2020 at p 40, lines 22–29.

⁹⁰ NEs 24 November 2020 at p 28, line 28–p 29, line 1.

⁹¹ NEs 25 November 2020 at p 19, line 31–p 20, line 5.

48 A little later, she changed this evidence to, “[t]his must have been the third time.”⁹² Finally, after an exchange between the Prosecution and defence counsel, she said she was “referring to the third occasion.”⁹³

49 After this, when questioned again on the same paragraph:⁹⁴

Q: ... let’s first deal with this paragraph. You accept that your description at paragraph 32 describes the second incident? Do you accept that first?

A: Are you forcing me?

Q: I’m asking you.

A: *If you’re asking me, I have to say that I can’t remember.*

Q: You can’t remember which incident you’re describing to the recording officer, is that your evidence?

A: Yes.

[Emphasis added]

50 In the context of the second mentioned transaction which Shanti stated occurred “[i]n that same week of May 2014,” when asked what she meant by the phrase she was completely unable to give an explanation:⁹⁵

Q: Alright. Now this is how you described the third occasion, “In that same week of May 2014”, okay, let’s concentrate on those words, “In that same week of May 2014”, okay? This is your description you say of the third incident, okay? “Same week” as what? When you say, “In that same week of May 2014”, “same week” as what other incident? Tell us.

A: *I can’t remember.*

⁹² NEs 25 November 2020 at p 21, lines 16–18.

⁹³ NEs 25 November 2020 at p 22, line 12.

⁹⁴ NEs 25 November 2020 at p 23, lines 3–11.

⁹⁵ NEs 25 November 2020 at p 22, lines 13–23.

Q: You can't remember or are you purposely forgetting? In the same week of 2014, witness, must mean in the same week that you make the first delivery, what else can it refer to, witness? What else can it refer to, witness? You've no answer, isn't it?

A: *I have no answer.*

[Emphasis added]

51 It therefore appears that in cross-examination, she first prevaricated from saying she was describing the third occasion, to concluding that she must have been describing the third occasion, to saying that she could not remember.⁹⁶ She concluded with an admission of her inability to recall:⁹⁷

A: Like I said yesterday, I don't know much about the second and third incidents. I remember the 16th of May because that is when I got arrested. I don't have much --- I can't recall much about the first incident either.

52 On its own, Shanti's testimony was not, therefore, compelling. The Prosecution submit that she has no reason to lie:⁹⁸ in my judgment, in transactions such as the present where the stakes are high and the incentives opaque, such an assumption may not be made.

Independent evidence equivocal

53 It is this context in which I examine the ICA and telephone records. The ICA records, as explained above, are only useful insofar as Shanti's evidence on the four specific dates and transactions is reliable. Their purpose is to corroborate her testimony regarding the four transactions. Absent this object, the ICA records were not in any way probative. Because of the accused's and

⁹⁶ NEs 25 November 2020 at p 24, lines 31–32.

⁹⁷ NEs 25 November 2020 at p 26, lines 19–21.

⁹⁸ PWS1 at para 74.

Shanti's employment, they were both constantly in and out of Singapore. Their presence in Singapore at the same time would not be unusual. The ICA records showed, for example, that in the month of March 2014, before Shanti decided to transport drugs for Boy, there were 6 occasions where Shanti and the accused were concurrently in Singapore at the same time.⁹⁹

54 The second category are telecommunication records, and in particular, forensic analysis of Shanti's phone. These record many calls between Shanti and "Boy" but only six between Shanti and the accused, three on 16 May 2014 (one of which is a missed call) and three on 19 April 2014. A key plank of the Defence's submissions was that Shanti's explanations as to the telephone calls between the accused and her did not support her narrative.

55 On 16 May 2014, there was:¹⁰⁰

- (a) a missed call from the accused to Shanti at 4.56pm;
- (b) a call from the accused to Shanti at 5.36pm that lasted 8 to 9 seconds; and
- (c) a call from Shanti to the accused at 6.07pm that lasted 24 seconds.

56 On Shanti's evidence, she was unaware of the first call from the accused. She stated in her examination in chief that her "phone records did not show such a missed call" and that she "[did not] know about this record".¹⁰¹ The call had

⁹⁹ SOAF at para 8.

¹⁰⁰ SOAF at para 34.

¹⁰¹ NEs 24 November 2020 at p 46, lines 22–23.

been found in the forensic analysis of the records.¹⁰² The Prosecution sought to explain the missed call on 16 May as an attempt by the accused to liaise with Shanti prior to the meeting.¹⁰³ The second call was after Shanti collected the Drugs, and the accused had allegedly offered her a lift. He therefore gave her a call to give her his number. She then recorded that number as “Bus”.¹⁰⁴ The last call was when Shanti had purportedly called the accused to find out whether she could get a lift from him to Jurong, but as he was already at Jurong, she ended the call.¹⁰⁵

57 Pertinently, while her evidence was that she first recorded the accused’s number on her telephone after the 16 May, 5.36pm call, the records show that there were three calls between Shanti and the accused on 19 April 2014:¹⁰⁶

- (a) a call from the accused to Shanti at 12.58am that lasted 68 seconds;
- (b) a call from Shanti to the accused at 1.32am that lasted 40 seconds; and
- (c) a call from the accused to Shanti at 2.07am that lasted 14 seconds.

58 In court, Shanti explained that “Boy” had called her on 19 April and asked her to call a person for him to contact “Boy”. He had also told her that

¹⁰² AB at p 112.

¹⁰³ NEs 2 December 2020 at p 81, lines 1–3.

¹⁰⁴ NEs 24 November 2020 at p 43, line 24–p 44, line 6.

¹⁰⁵ NEs 24 November 2020 at p 46, lines 1–3.

¹⁰⁶ SOAF at para 34.

this was the “bus driver’s contact number”. She then wrote the number down on a piece of paper and tried calling it. On her first try, there was no answer. However, a person called her back using that number. She then told the person on the other end of the line to call “Boy” as “Boy” was looking for him.¹⁰⁷ She then destroyed the piece of paper she had written the number on.¹⁰⁸ *This did not explain the series of three calls*, which started with a call from the accused. Her narrative also did not explain why on the one hand, she did not at that point record the number as she understood it to be the bus driver’s number; or, on the other hand, if she did not think it significant enough to record the number, why she could remember the request from “Boy” when she ran many errands for him.

59 I deal briefly with the accused’s cross-examination on this issue before I conclude the point. When asked about the calls on 16 May 2014, the accused stated he could not remember making the calls and had no explanation for the calls.¹⁰⁹ When asked about the calls on 19 April 2014, the accused similarly stated he was unable to remember what the calls were about.¹¹⁰ When asked about how he came into possession of Shanti’s number, the accused stated that the number was provided to him by Presto and he did not know it belonged to her.¹¹¹ However, in his statement dated 30 September 2015, the accused had told the interviewing officer that the calls on 19 April 2014 were from a tour group leader regarding passengers leaving behind property on the bus.¹¹² These

¹⁰⁷ NEs 24 November 2020 at p 46, line 29–p 47, line 4.

¹⁰⁸ NEs 26 November 2020 at p 20, lines 26–27.

¹⁰⁹ NEs 2 December 2020 at p 56, lines 6–12.

¹¹⁰ NEs 2 December 2020 at p 29, lines 1–6.

¹¹¹ NEs 2 December 2020 at p 55, lines 14–21.

¹¹² AB at pp 767–769.

explanations hold very little weight. It is accepted that Shanti was working as a security officer, not as a tour group leader. When asked about his statement, he told the court that he had given the answer based on his daily routine as he did not know who the number belonged to.¹¹³

60 Notwithstanding, as pointed out by defence counsel, Shanti's explanations do not lend confidence to her testimony. At the highest, the calls show that Shanti and the accused knew each other, despite the accused's protestations. While the accused's cross-examination casts doubt on his credibility, it could not, on the other hand, prove the Prosecution's case. More importantly, these calls on 16 May were not for the purpose of the delivery of drugs. There was no modus operandi of calls between the accused and Shanti as established by the three prior occasions and consistent with the fourth. Shanti operated by contacting "Boy", who gave her the necessary instructions and details in each case. The fact that the accused called Shanti or Shanti called the accused is not in any way conclusive of the accused being the person who had handed the Drugs to Shanti. The Prosecution argued in their written submissions that an "analysis of all of Shanti's phone records after she arrived in Singapore on 16 May 2014 confirms that [the accused] was the *most likely* person who passed her the drugs" [emphasis added].¹¹⁴ This is not sufficient to fulfil the criminal standard of proof.

61 The Prosecution also attempted to rely on phone calls between Shanti, "Abang" and "Boy" on 30 April, 13 May and 14 May to show that these were the correct dates of the first three transactions. The Defence submitted that this

¹¹³ NEs 2 December 2020 at p 55, lines 1–2.

¹¹⁴ PWS2 at para 17.

reliance was misplaced. Shanti admitted she was not sure what the content of the calls on 30 April were:¹¹⁵

- Q: Has Boy ever called you to ask you to call Abang to call him back?
- A: I would like some time to think about it, Your Honour.
- Q: Please do.
- A: It's possible that it could have happened because if he cannot get through to the Singapore number, he will call me and ask me to do that.
- Q: On 30th April, could that have happened?
- A: (No audible answer)
- Q: Or you can't remember?
- A: I can't remember.

62 Further, Shanti admitted to speaking to “Boy” and “Abang” on other occasions where there were no deliveries.¹¹⁶ Defence counsel engaged in extensive cross-examination of Shanti in respect of how there were other dates during the material period with numerous calls between Shanti, “Boy” and “Abang”, outside of the purported dates of the four transactions.¹¹⁷ Shanti’s explanation of those calls ranged from having to relay or check something with Boy,¹¹⁸ to collecting money but not delivering anything.¹¹⁹ On cross-examination, Shanti even admitted that she was not certain whether she made a delivery on some of those *other* dates, such as 1 May.¹²⁰ This concession is particularly important because of her evidence that she was clear her second

¹¹⁵ NEs, 25 November 2020 at p 12.

¹¹⁶ Defence Written Submissions filed on 26 March 2021 at para 61.

¹¹⁷ NEs 26 Nov 2020 at pp 10–16.

¹¹⁸ NEs 26 November 2020 at p 11 lines 1–5.

¹¹⁹ NE 26 Nov 2020 at p 14, lines 9–13

¹²⁰ NE 26 Nov 2020 at p 11, lines 27–28

delivery was on Vesak Day, which was a public holiday. 1 May was also a public holiday. In re-examination, she seemed to be absolutely clear that on those other dates there were no deliveries, stating that “[t]here were no other deliveries, but [she] *must have* gone to collect money” [emphasis added].¹²¹ Nevertheless, even this last response reflected an assumption rather than an independent recollection. Thus, I did not find that the phone records showing calls with “Boy” and “Abang” on 30 April, 13 May and 14 May, supported the Prosecution’s case. There were too many other calls outside of those dates, and at the same time, there was no independent evidence to verify the content of the calls on the various dates.

63 Viewed in context, therefore, the ICA and telephone records are equivocal.

Remaining Prosecution arguments

64 I deal with the remaining Prosecution arguments, which rely upon the following:

- (a) that a large volume of phone calls between the accused and an unknown Malaysian number on 16 May 2014;
 - (b) that the ICA records reflect JJX1568 as the license plate number when JJA5556 departed from Singapore;
 - (c) the accused’s change in movement patterns after 16 May 2014;
- and

¹²¹ NE 26 Nov 2020 at p 30, lines 5–14

- (d) the accused's attempts at distancing himself from the 16 May transaction during investigations.

I deal with these in turn.

Large volume of phone calls from the accused to an unknown number

65 The Prosecution has alleged that the large volume of phone calls between the accused and the number +60 167759861 is suspicious. After Shanti was arrested, there were 13 calls and two messages between the accused and this number in the span of two hours. From this, the Prosecution draws the inference that this number belonged to someone who was involved in drugs and was the accused's handler. Whilst the accused claimed he did not know who the number belonged to and that he could not remember the contents of any of the calls, the Prosecution argues that this is difficult to believe considering the large volume of calls. Thus, their submission is that the proper inference to draw is that the calls were related to the drug transaction on 16 May 2014.¹²² I do not agree with this argument because there is no evidence for its premise. The owner of that telephone number is unknown.¹²³

Record of different licence plate on departure

66 The ICA records showed that when the accused exited Singapore, ICA recorded the vehicle's license plate number as JJX1568, however the LTA system reflected that the vehicle number was JJA5556.¹²⁴ Mr Khu's evidence was that JJX1568 was the registration number of a car, and the vehicle was

¹²² PWS1 at paras 86–88.

¹²³ NEs 28 January 2021 at p 35, lines 27–32.

¹²⁴ NEs 27 November 2020 at p 24, lines 20–27.

cleared through a bus lane.¹²⁵ He also stated that it was possible that the JJX1568 number had been manually keyed in incorrectly.¹²⁶ The Prosecution suggested to the accused that he had tried avoiding detection on his way out of Singapore on 16 May 2014 by tampering with his number plate or declaring a different bus number to the ICA officer.¹²⁷ There was no evidence of tampering however and the suggestion was not pursued in closing Prosecution submissions.

Accused's change in movement patterns after 16 May 2014

67 After 16 May 2014, the accused used a different bus to enter Singapore for roughly a month before resuming use of JJA5556 on 20 June 2014. There was also a sudden drop in the frequency of the accused's trips to Singapore after 16 May 2014. Read together, the Prosecution suggests that this shows that the accused was trying to avoid detection after Shanti's arrest on 16 May 2014.¹²⁸

68 Whilst this is possible, there are other entirely innocent and reasonable explanations for this behaviour. First, the accused was an employee, and there was no evidence to suggest that he was able to make the decisions on his driving schedule. The frequency with which he drove into Singapore could have been the decision of his superiors. As the Prosecution conceded, they did not have any evidence from Malaysia to support it.¹²⁹ No representatives from Presto were called to testify as to why this sudden change occurred, and as such, this sudden change, without more, is not probative.

¹²⁵ NEs 27 November 2020 at p 28, lines 8–11.

¹²⁶ NEs 27 November 2020 at p 26, lines 8–11.

¹²⁷ NEs 2 December 2020 at p 84, lines 14–19.

¹²⁸ PWS1 at paras 89–90.

¹²⁹ NEs 28 January 2021 at p 38, lines 18–19.

Accused's attempts at distancing himself from the transactions

69 Finally, the Prosecution rely on attempts by the accused to distance himself from the 16 May transaction during investigations.

(1) Deflecting to Tahmilselvan

70 First, in a statement to the police on 25 September 2015, the accused mentioned that his boss, Tahmilselvan, would accompany the accused “*each time* [the accused] enter[ed] Singapore (emphasis added).”¹³⁰ In a further statement on 27 September 2015, the accused then changed his story slightly saying that he only drove the bus alone to Singapore about 30% of the time.¹³¹ Both of these estimates were contradicted by ICA records which indicate that between the period of 1 January 2014 to 30 June 2014, out of the 69 times that the accused entered Singapore, there were only 24 times that Tahmilselvan also entered Singapore at roughly the same time. As a percentage, this would be about 30% of the time where the accused was *with* Tahmilselvan when he entered Singapore, not 30% where he was alone *ie*, the accused drove into Singapore alone roughly 70% of the time, the exact inverse of what he had alleged in his statements. When questioned on these discrepancies, the accused admitted that the figures and claims in his statements were untrue and “merely just a guess”.¹³²

71 The Prosecution argued that this was not just an innocent mistake, rather it was the accused suggesting that Tahmilselvan was the person who had

¹³⁰ AB at p 748, para 6.

¹³¹ AB at p 750, para 12.

¹³² NEs 2 December 2020 at p 17, lines 9–20.

brought in the drugs to Singapore,¹³³ as the difference between the numbers was too large a discrepancy to be a simple oversight. In particular, the Prosecution pointed to the fact that for the period of 5 April 2014 to 5 June 2014, Tahmilselvan did not enter Singapore,¹³⁴ while the accused entered Singapore 23 times during the same period.¹³⁵ Furthermore, the absence of Tahmilselvan during the said period as evidenced by the ICA records meant that this alleged attempt at implicating Tahmilselvan was futile. In other words, not only was Tahmilselvan not in Singapore on 16 May 2014, he had not been in Singapore during any of the four transactions mentioned by Shanti.

72 Notwithstanding, it was not clear what effect the Prosecution intended by these submissions. It was clarified in the course of the oral response that the Prosecution were not contending that these lies were *Lucas* lies, corroborative of the accused's guilt (see *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [60] which sets out the requirements for a *Lucas* lie to amount to corroboration of evidence of guilt): in their view, the accused referred to Tahmilselvan only obliquely. This category of evidence therefore did not assist their case in any tangible way.

(2) Singapore mobile telephone number

73 Second, the Prosecution argue that the accused tried to dissociate himself from the handphone number 84576028 by stating that it was his company that would top up the money in the SIM card, and that he left the phone in the bus after he left Presto in October 2014. The Prosecution noted that the accused under cross-examination did admit that he would top up the SIM card

¹³³ PWS1 at para 91.

¹³⁴ PB at p 130.

¹³⁵ AB at pp 821–823.

as well. Further, the Prosecution argues that the accused's claim of leaving a phone with a SIM card registered to his name specifically is far-fetched.¹³⁶ On one hand, the explanation does smack of a too-convenient excuse. It is not natural for a person to simply leave behind a mobile telephone with a number registered to their name. On the other hand, the low value of the phone and use of a prepaid card meant that this explanation was not implausible. In any event, even if suspicious, this point was not, in itself, of high probative value.

Conclusion on circumstantial evidence and the accused's case

74 These arguments adduced by the Prosecution show that the accused is untrustworthy as a witness. Nevertheless, they do not assist the Prosecution in proving beyond a reasonable doubt that it was the accused who passed the drugs to Shanti on 16 May 2014, nor do they corroborate the accused's guilt. While the Prosecution has raised various reasons for suspicion, there was not sufficient material to meet the burden of proof.

75 It is plain that the accused's case was tenuous; further the width of the accused's inability to recall in answer to questions in court and at the point of arrest to the police showed an inclination to be less than forthcoming. An example was his inability to explain why his telephone listed Shanti's telephone number despite his inability to recollect who she was. The Prosecution characterised his defence as a bare denial.¹³⁷ Nevertheless, the Prosecution's burden of proof remained theirs to fulfil on the specific charge particularised for 16 May 2014. As the Court of Appeal noted in *Public Prosecutor v GCK and another matter* [2020] 1 SLR 486 at [149](f), "[o]nce the court has identified

¹³⁶ PWS1 at para 95.

¹³⁷ PWS1 at para 52.

the flaw internal to the Prosecution's case, weaknesses in the Defence's case cannot ordinarily shore up what is lacking in the Prosecution's case to begin with, because the Prosecution has simply not been able to discharge its overall legal burden". Thus, "it [is] not at all sufficient for the Prosecution to merely point to the inadequacies of the [accused's] testimony": *Sahadevan s/o Gundan v Public Prosecutor* [2003] 1 SLR(R) 145 at [35].

Conclusion

76 In the present case, the only evidence that the accused supplied the Drugs to Shanti on 16 May 2014 was Shanti's testimony. Shanti was not able, however, to recall the various events of the transactions well. Her testimony in court also deviated from her statements of 20 May and 24 May, which were taken four and eight days after the offence respectively. This deviation is material because ICA evidence supported the dates she referred to in court and not those referred to in her statements. The available telephone records are equivocal and the surrounding circumstances do not, on the facts of the case, provide independent corroboration of her evidence. In my judgment, the accused's guilt on the charge framed has not been proven beyond a reasonable doubt.

77 I therefore acquit the accused on the charge brought against him.

Valerie Thean
Judge of the High Court

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Jing (Attorney-General's Chambers) for the Prosecution;
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Sarban Singh (Satwant & Associates) for the accused.