

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 121

Criminal Case No 1 of 2020

Between

Public Prosecutor

And

Sritharan K Raja Rajan

GROUND OF DECISION

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

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Public Prosecutor
v
Sritharan K Raja Rajan

[2020] SGHC 121

High Court — Criminal Case No 1 of 2020
Kannan Ramesh J
14, 15, 21–23 January, 30 March, 8 June 2020

11 June 2020

Kannan Ramesh J:

1 The accused, Sritharan K Raja Rajan, claimed trial to a charge of importing into Singapore not less than 21.16g of diamorphine under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), punishable under ss 33(1) or 33B of the same Act.

2 The Prosecution relied on the presumptions of possession and knowledge under ss 18(1) and 18(2) of the MDA respectively. The Defence did not dispute the applicability of the MDA presumptions or that the accused knew that he had brought drugs into Singapore. Their sole argument was that the accused had been unaware of the nature and weight of drugs that he had brought into Singapore. The parties were accordingly in agreement that the sole issue I had to determine was whether the accused knew of the *nature and quantity* of drugs that were found in his possession.

3 Having considered the evidence and the submissions of the parties, I found that the accused failed to rebut the applicable MDA presumptions. I therefore convicted the accused of the charge under s 7 of the MDA. On sentence, I found that the accused was a courier within the meaning of s 33B(2)(a) of the MDA; in addition, the Public Prosecutor had issued a certificate of substantive assistance to the accused under s 33B(2)(b) of the MDA. The alternative sentencing regime under s 33B(1)(a) of the MDA was thus available to the accused. Accordingly, I exercised my discretion and sentenced him to life imprisonment (backdated to the date of the accused's arrest on 25 October 2017) and caning of 15 strokes. Having provided brief oral grounds then, I now set out the full reasons for my decision.

The facts

4 On 25 October 2017, at about 6.32am, the accused entered Singapore via Woodlands Checkpoint (the "Checkpoint") on a motorcycle bearing registration number JPH8350 (the "Motorcycle"). The Motorcycle was registered under the accused's wife's name. The accused was stopped at the Checkpoint by an Immigration and Checkpoints Authority ("ICA") officer, one Staff Sergeant Zainul Arifin bin Abdul Hamed.

5 At about 6.45am, the accused was escorted, along with the Motorcycle, to the motorcycle parking area nearby. There, at around 7.05am, the Motorcycle was searched by Staff Sergeant Hamdan Shah bin Abu Baker ("SSgt Hamdan") in the presence of the accused. SSgt Hamdan unlocked the seat of the Motorcycle using a key provided by the accused, and opened the covered compartment underneath (the "Motorcycle Compartment"). He discovered a red plastic bag (marked "A1", henceforth "the red plastic bag") under a raincoat in the Motorcycle Compartment. The red plastic bag contained an orange plastic

bag (marked “A1A”), which in turn contained two separate bundles that had been secured with black tape (marked “A1A1” and “A1A2” respectively). SSgt Hamdan placed these items back into the Motorcycle Compartment, which he then closed, and locked the seat. The accused was then formally placed under arrest, and officers from the Central Narcotics Bureau (“CNB”) were informed thereafter.

6 At about 7.15am, officers from the CNB arrived at the scene. SSgt Hamdan assisted to open the Motorcycle Compartment, and CNB Sergeant Muhammad Zuhairi bin Zainuri (“Sgt Zuhairi”) removed the red plastic bag from within. Sgt Zuhairi then passed the red plastic bag, with its contents as described earlier (see [5] above) intact, to CNB Staff Sergeant Razif bin Rahim (“SSgt Razif”). In the accused’s presence, SSgt Razif cut open the bundle A1A1. This revealed a clear plastic wrapper (marked “A1A1A”) within which was a clear plastic packet of granular substance (marked “A1A1A1”).

7 The CNB officers present proceeded to seize all the drug exhibits, as well as the accused’s personal belongings which included a black “ZTE” handphone (marked “SRR-HP1”, and henceforth referred to as the “Handphone”). Along with the Handphone, three SIM cards were seized from the accused: two Malaysian SIM cards – a “Digi” SIM card (the “Digi SIM card”) and a “U Mobile” SIM card – and a Singapore “StarHub” SIM card (the “StarHub SIM card”).

8 Following this, a total of eight statements were recorded from the accused between the day of his arrest on 25 October 2017 and 16 March 2018 (collectively, the “recorded statements”). These recorded statements were taken on the following occasions:

(a) On the day of his arrest (25 October 2017), at about 8.25am, Woman Staff Sergeant Rajendran Janani (“W/SSgt Janani”) recorded a contemporaneous statement from the accused (the “contemporaneous statement”).

(b) On the same day, at about 6.21pm, Investigation Officer Station Inspector Tan Lye Cheng, Michelle (“IO Michelle”) recorded the cautioned statement from the accused (the “cautioned statement”) pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). Mdm Susila Vengadasalem (“Mdm Susila”) served as interpreter for the accused who chose to speak in Tamil.

(c) On subsequent occasions, IO Michelle recorded six long statements from the accused under s 22 of the CPC, with Mdm Susila serving as interpreter on each occasion, as follows:

- (i) a statement recorded on 30 October 2017 at about 9.45am (the “30 October statement”);
- (ii) a statement recorded on 31 October 2017 at about 9.50am;
- (iii) a statement recorded on 31 October 2017 at about 2.46pm;
- (iv) a statement recorded on 1 November 2017 at about 9.54am (the “1 November 9.54am statement”);
- (v) a statement recorded on 1 November 2017 at about 3.00pm; and
- (vi) a statement recorded on 16 March 2018 at about 10.34am.

9 On 26 October 2017, at around 9.33am, IO Michelle submitted the seized drug exhibits to the Health Sciences Authority (“HSA”) for analysis. The chain of custody was not disputed at trial. Upon analysis, the seized drug exhibits were found to contain not less than 21.16g of diamorphine (the “Drugs”):

(a) A1A1A1, as described earlier (see [6] above), was found to contain not less than 451.9g of granular/powdery substance comprising not less than 10.8g of diamorphine.

(b) A1A2 had been cut open and was found to contain a clear plastic packet of granular substance (marked “A1A2A1”) wrapped within another clear plastic wrapper (marked “A1A2A”). A1A2A1 was found to contain not less than 451.9g of granular/powdery substance comprising not less than 10.36g of diamorphine.

10 Neither the Prosecution nor the Defence disputed the analysis of the seized drug exhibits and the results of the analysis thereof at trial. The accused’s DNA was not on any of the exhibits submitted for analysis. Instead, an unknown male was found to be a major contributor of the DNA sample that was found on the exterior surface of the clear plastic wrapper A1A1A.

The parties’ cases

The Prosecution’s case

11 As noted earlier, the Prosecution relied on the presumptions under ss 18(1) and 18(2) of the MDA. As the Drugs were found in the Motorcycle Compartment, and the accused had ridden the Motorcycle into Singapore, it was presumed under s 18(1) of the MDA that the Drugs were in his possession. Under s 18(2) of the MDA, it was further presumed that the accused knew of

the nature of the Drugs. The onus was thus on the accused to rebut the relevant MDA presumptions.

12 The Prosecution made two main arguments in support of their position that the accused ought to be found guilty for importing a controlled drug into Singapore under s 7 of the MDA.

13 First, the Prosecution argued that the accused's version of events regarding one Fei Poh, a central figure in his defence, ought not to be accepted. According to the accused, Fei Poh was his drug supplier, and he had obtained the Drugs from her. They were allegedly in a relationship. The Prosecution contended that the accused's version of events relating to Fei Poh was unsupported by evidence; in fact, the documentary evidence suggested that the accused's evidence was untrue. They also argued that the surrounding circumstances and the accused's behaviour at trial, taken together, demonstrated his lack of credibility. The Prosecution thus submitted that Fei Poh was not the accused's drug supplier, and that his evidence in this regard was an afterthought that ought to be rejected. In this regard, I observed that the Prosecution was prepared to accept that the accused might have been in a relationship with Fei Poh.

14 Specifically, the Prosecution placed great emphasis on the accused's failure to raise material aspects of his defence in several of the recorded statements. They reiterated that during the recording of the cautioned statement, he failed to mention the key aspects of his defence, namely, that (a) Fei Poh was his drug supplier and the source of the Drugs; (b) he thought he had brought in 25g of methamphetamine; and (c) he believed this to be the case because of representations to this effect by Fei Poh, which he accepted because of their relationship and an earlier drug delivery of 25g of methamphetamine he had

done for her on 9 October 2017. In particular, the Prosecution highlighted that the accused only mentioned Fei Poh for the first time during the recording of the 30 October statement; this was five days after the accused's arrest and after the accused had already given two prior statements *viz* the contemporaneous statement and the cautioned statement. The Prosecution argued that the accused's failure to raise such fundamental aspects of his defence contemporaneously was "especially telling", and ought to be construed against him.

15 The Prosecuted submitted instead that the accused had been dealing with one Raja. Raja, by the accused's admission, was his acquaintance who was also involved in drug-related and other illegal activities. On the day of his arrest, as well as on other occasions when he had entered Singapore, the accused had been in constant contact with Raja. This was evinced by:

- (a) the forensic reports on the Digi SIM card and StarHub SIM card (the "Digi SIM card FORT report" and "StarHub SIM card FORT report" respectively; collectively, the "SIM card records");
- (b) the call log on the internal memory of the Handphone (the "phone record"); and
- (c) the toll records pertaining to the StarHub SIM card (the "toll records").

These collectively demonstrated that the accused had been constantly dealing with Raja and not Fei Poh. Accordingly, the Prosecution submitted that the accused's testimony that Fei Poh was the drug supplier was false and ought to be rejected.

16 Second, the Prosecution argued that even if the accused's version of events was accepted, his account was nevertheless insufficient to rebut the applicable MDA presumptions. In essence, they contended that any reasonable person in the accused's shoes would not have believed that the red plastic bag contained only 25g of methamphetamine given the prevailing circumstances. The Prosecution further argued that far from having unquestioning trust in Fei Poh, the facts demonstrated that the accused in fact distrusted Fei Poh. Accordingly, even if the court accepted that Fei Poh was the accused's drug supplier, the accused had nonetheless failed to demonstrate that he did not know of the nature and quantity of the Drugs when they had been handed to him by Fei Poh.

The Defence's case

17 The Defence accepted that the presumptions in ss 18(1) and 18(2) of the MDA applied. They nonetheless contended that the accused did not know of the nature and quantity of the Drugs. It was accordingly the "central plank" of the Defence's case that the presumption under s 18(2) of the MDA had been rebutted on a balance of probabilities. Specifically, the Defence reinforced in their written submissions that while the accused knew that he had brought the red plastic bag containing the Drugs into Singapore, he had been under the genuine, albeit mistaken impression that he was importing only 25g of "ice" – it was undisputed that "ice" is a street name for methamphetamine. The accused did not know that he was in fact bringing into Singapore at least 21.16g of diamorphine.

18 The Defence rightly accepted that the burden was on the accused to prove that he did not know of the nature and quantity of the Drugs. By and large, the Defence's submissions on the relevant legal test and applicable case law

were also accurate, uncontroversial. Therefore, I will make references to these at appropriate junctures only where necessary.

19 The crux of the accused's defence was that he had "reasonable and credible" grounds for believing that what he had been asked to bring into Singapore was only 25g of methamphetamine. His defence centred on the events that purportedly took place between 22 and 25 October 2017 – these will be canvassed in greater detail later in this judgment (see [35] below). In brief, according to the accused, Fei Poh had handed him the Drugs on 24 October 2017, one day before his arrest, by placing the red plastic bag in the Motorcycle Compartment in his presence. When this handover occurred, he did not know that the red plastic bag contained diamorphine. He had expected it to contain only 25g of methamphetamine.

20 The accused justified his expectation (that had been handed only 25g of methamphetamine by Fei Poh) on three cumulative bases. First, he had on an earlier occasion – 9 October 2017 – received a separate drug consignment from Fei Poh containing 25g of methamphetamine, which he had brought into Singapore (the "9 October drug consignment"). He was told then that he was transporting 25g of methamphetamine. It should be noted that the Prosecution did not accept that the 9 October drug consignment contained 25g of methamphetamine, although they did not take a position on the specific nature and quantity of drugs that were transported. Second, during the handover of the Drugs on 24 October 2017, Fei Poh had told the accused that he would be transporting 25g of methamphetamine, as before, *ie*, as he did previously for the 9 October drug consignment. Third, he had an intimate and sexual relationship with Fei Poh which led him to place a high degree of trust in her. The accused accordingly argued that when Fei Poh had placed the red plastic bag in the

Motorcycle Compartment, he expected that it would contain 25g of methamphetamine.

21 The Defence further contended that the accused's account of how Fei Poh had handed him the Drugs was consistent and credible. They argued that the accused's failure to mention Fei Poh in the cautioned statement ought not to be construed against him, and was explicable on the basis of what IO Michelle had conveyed to him when the cautioned statement was being recorded. The Defence also asserted that the facts connecting the accused to Raja were *not* inconsistent with the accused's testimony in relation to Fei Poh, and thus did not undermine the accused's case. In this regard, the accused testified that Fei Poh and Raja shared phone numbers and had been working together on drug-related activities. Thus, the fact that the accused had contact with both of them was normal and explicable.

22 Finally, the Defence submitted that the court could not rule out the possibility that one Navin, who was the accused's housemate at the material time, had tampered with the contents of the red plastic bag. Navin had been tasked by Fei Poh to be the accused's lookout on 25 October 2017, *ie*, he was to "check the situation of the customs" that day. The accused testified that Navin had access to the Motorcycle for about an hour when he had borrowed it from the accused in the early hours of 25 October 2017. The Defence accordingly argued that Navin would have had ample opportunity to tamper with the contents of the red plastic bag. Implicit in this submission was the suggestion that Navin, acting on Fei Poh's instructions, had switched the drugs that Fei Poh had placed in the Motorcycle Compartment with the Drugs. The Defence confirmed in oral closings that this was indeed their position. The Defence thus invited the court not to rule out the possibility that the Drugs had been placed in the Motorcycle Compartment by Navin, unbeknownst to the accused.

The admissibility of the ICA Records

23 I first address an evidential issue that arose in the course of trial. On the second day, the Prosecution attempted to adduce certain ICA records (the “ICA Records”) in support of their case. The ICA Records evidenced the dates and times of the accused’s movements in and out of Singapore on certain dates in October 2017 preceding his arrest. The Prosecution sought to use the ICA Records to demonstrate that the accused had been in Singapore on several key occasions prior to his arrest.

24 The Defence objected to the introduction of the ICA Records on the basis that they constituted similar fact evidence that was prejudicial to the accused. In response, the Prosecution argued that the ICA Records did not constitute similar fact evidence due to the *purpose* for which the records were adduced. The purpose of adducing the ICA Records, the Prosecution submitted, was to reveal the accused’s location at the time certain phone calls were made by the accused in October 2017. These calls were recorded in the toll records.

25 The law on similar fact evidence has been comprehensively considered in recent decisions. In evaluating the admissibility of similar fact evidence, a balance must be struck between its probative value and its prejudicial effect. In this inquiry, the cogency, strength of inference the evidence provides and relevance of the evidence should be considered: see *Ng Beng Siang and others v Public Prosecutor* [2003] SGCA 17 at [40]–[42]; *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 at [17]–[19]. Where no discernible connection exists as between the past transaction and the transaction which forms the subject matter of the charge, it is unlikely that the three aforementioned touchstones of cogency, strength of inference and relevance

will be satisfied. To admit such evidence would lead to reasoning by propensity, which has always been eschewed under Singapore's evidential rules.

26 I held that the ICA Records were admissible, and that the issue of similar fact evidence did not arise. The ICA Records showed that the accused entered Singapore on several occasions in the month of October preceding his arrest on 25 October 2017. The Prosecution made it clear that they were not reasoning by propensity: they did not rely on the ICA Records to show that the accused was involved in drug-related activities on 25 October 2017 *because* he had possibly been engaged in drug-related activities on each occasion in the past when he had entered Singapore. Such past entries included the accused's involvement in activities on 9 October 2017 (the 9 October drug consignment), which the accused accepted was drug-related. Rather, the Prosecution stated that the ICA Records were relevant as they showed that "while the accused was in Singapore, he was in communication with a number linked to Raja Anne Jb [*sic*]", *ie*, that he was in communication with Raja. Further, the ICA Records showed that the accused had been in Singapore on certain critical dates, such as 9 October 2017, when he had allegedly been involved in the 9 October drug consignment for Fei Poh, and 23 October 2017 when he had purportedly been involved in preparatory work for the delivery of the Drugs (see [37]–[39] below). The ICA Records read with the toll records (which showed the phone numbers he had called on various dates) and the SIM card records (which evidenced to whom those phone numbers belonged) were clearly relevant to the question of whether the accused's prior drug dealings had in fact been with Fei Poh, which was a fundamental aspect of his defence (see [20] above), or some other person, *ie*, Raja. In other words, the ICA Records furnished the proper context in which the toll records and SIM card records could be correctly analysed.

27 For these reasons, and as there was no question as to the cogency of the ICA Records, I allowed them to be admitted into evidence. I found nothing objectionable with admitting such evidence.

My decision on the accused's guilt

The applicable principles

28 The three elements of the offence of importation of a controlled drug under s 7 of the MDA are uncontroversial and were recently restated in the Court of Appeal's decision in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 (at [27]) as follows:

- (a) the accused was in possession of the drugs;
- (b) the accused had knowledge of the nature of the drugs; and
- (c) the drugs were intentionally brought into Singapore without prior authorisation.

29 The presumptions under ss 18(1) and 18(2) of the MDA, which the Prosecution relied upon, went towards establishing the first and second elements respectively. The third element was not disputed at trial. I note that s 21 of the MDA which deals with presumptions relating to *vehicles* would be the more specific provision rather than s 18(1) of the MDA which the Prosecution relied upon. Nothing, however, turns on this. As stated earlier, it was common ground that the sole issue at trial was whether the accused had successfully rebutted the s 18(2) MDA presumption by proving on a balance of probabilities that he did not know of the nature and quantity of the Drugs.

Whether the accused had rebutted the presumption under s 18(2)
MDA

30 The critical factual question was whether Fei Poh was the accused's drug supplier for the 9 October drug consignment *and* the Job. In order to explain and justify the reasonableness of his belief that the Job involved the transportation of 25g of methamphetamine, the accused linked the 9 October drug consignment with the Job. He sought to establish this link by asserting that Fei Poh was the drug supplier for *both* transactions – as she was the drug supplier for both transactions, the accused had good reason to believe her representation that the Job, as was the case for the 9 October drug consignment, involved the transportation of 25g of methamphetamine. I will elaborate on the nexus between the two transactions, and the significance of this nexus to the accused's case, later in these grounds (see [45] below).

31 Accordingly, if I found that Fei Poh was *not* the accused's drug supplier for the 9 October drug consignment, the link between that transaction and the Job would be severed. Establishing Fei Poh's involvement in the 9 October drug consignment was therefore critical to the accused's defence. This is because Fei Poh's involvement provided the foundation for his evidence that (a) she supplied the Drugs; and (b) he had a reasonable basis to trust her representations on 24 October 2017 that the red plastic bag contained 25g of methamphetamine when it in fact contained the Drugs. If I accepted the accused's version of events, it would follow that he did not know of the nature and quantity of the Drugs. He would accordingly have rebutted the presumption under s 18(2) of the MDA.

32 Having considered the evidence of the accused and other witnesses, as well as the recorded statements, the phone record, the toll records, the SIM card records and the ICA Records, I did not accept that Fei Poh was the accused's drug supplier for the 9 October drug consignment and the Drugs. Instead, I

found that the accused's drug supplier was Raja. In arriving at my conclusions, I was conscious of the Court of Appeal's statement in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 ("*Gopu*") at [25], which the Defence relied upon, that the evidence must be evaluated neutrally in determining whether the relevant statutory presumption had been rebutted, with no predilection for either conclusion.

33 The reasons for my decision, and the sequence I will adopt in my analysis, are as follows:

(a) First, I will explain that I did not accept the accused's evidence that Fei Poh had asked him to deliver the 9 October drug consignment. His evidence was contradicted by the evidence, specifically the toll records and the SIM card records. The toll records showed *inter alia* that the accused had predominantly exchanged calls with a particular phone number on 9 October 2017 when he had been in Singapore; the SIM card records evidenced that this phone number belonged to Raja and not Fei Poh.

(b) Second, I will address the accused's recorded statements. These statements further diminished the veracity of his account, and made it clear that it was Raja that the accused had dealings with as regards the Drugs. It was significant that the accused omitted critical aspects of his defence, including the fact that Fei Poh was the drug supplier and that he was in a relationship with her, in the contemporaneous statement and the cautioned statement. Instead, he pointed to Raja as the supplier of the Drugs.

(c) Third, I address the explanations the accused provided for his aforementioned omissions in the contemporaneous and cautioned

statements. In this respect, I will first discuss the accused's allegations against IO Michelle, which I did not accept. Second, I will address the difficulties with the other explanations the accused provided to justify the aforementioned omissions.

(d) Fourth, I will address the inherent tensions present in the accused's account of events. Significant portions of his testimony did not cohere, and his account suffered from a lack of internal consistency and thus made little sense.

(e) Lastly, I address the residual points raised by both sides. The remaining argument mounted by the Defence regarding Navin did not help to advance the accused's case. On the Prosecution's part, I did not accept their second argument (see [16] above), but this was irrelevant given that I agreed with their primary case and disbelieved the accused's evidence.

34 I will begin by canvassing the accused's version of events in detail, before proceeding with the substantive analysis.

The accused's version of events

35 The accused alleged for the first time during the trial that Fei Poh was his "scandal", and clarified that this meant that he was engaged in an extra-marital relationship with her. They had been acquainted since the accused was 14 years old – at that time, Fei Poh was 12. They were from the same home town – Ipoh – and were school friends. Subsequently, they entered into a relationship. This ended when the accused got married. However, when the accused moved to Johor Bahru in May 2017 for work reasons, their relationship

resumed. The accused's family remained in his home town and did not move with him.

36 In Johor Bahru, the accused stayed with four of his friends in a rented house near the Tun Aminah Shopping Complex. On 17 October 2017, the accused returned to his home town but went back to Johor Bahru on 22 October 2017 to collect his personal items from the rented house. The accused stated that he had bumped into Fei Poh on 22 October 2017 at a bus terminal near Tun Aminah Shopping Complex. The accused told Fei Poh that he had been jobless. Fei Poh then informed him that she would contact him the next day, and that she had a job for him. Based on the accused's testimony, it was unclear whether this was a serendipitous meeting. This, as will be observed later, had implications on his credibility:

Court:	Sorry, the meeting on the 22nd which you describe as a meeting by chance, it was a meeting by chance, is it? You just happened to bumped into Fei Poh on the 22nd of October?
Witness:	Yes, Your Honour.
Court:	And you didn't reach out to her beforehand?
Witness:	Before that meaning, Your Honour?
Court:	Before the 22nd of October.
Witness:	We have spoken over the phone prior to that, Your Honour.
Court:	And was she aware that you were coming to Johor Bahru on the 22nd of October?
Witness:	Do not know [sic].

37 According to the accused, Fei Poh called him the next day, 23 October 2017, at around 10.00am and asked to meet. They met later that day at a Kentucky Fried Chicken restaurant ("KFC") outlet at the Tun Aminah Shopping Complex. At the KFC outlet, the accused and Fei Poh discussed a "job", namely,

for the accused to bring 25g of methamphetamine into Singapore on the morning of 25 October 2017 (“the Job”). According to the accused, Fei Poh had explicitly mentioned that he was to transport 25g of methamphetamine. Fei Poh also told him that this was a “job that [he had] done before”. The accused explained that Fei Poh had been referring to the 9 October drug consignment when she referred to a “job” that he had “done before”.

38 As mentioned (see [20] above), the 9 October drug consignment, according to the accused, involved the accused bringing into Singapore 25g of methamphetamine on 9 October 2017. Fei Poh had paid the accused RM700 for the transaction. The accused testified that he had packed this consignment himself, and while doing so had taken a small quantity of methamphetamine for his own consumption without Fei Poh’s permission. He also said Fei Poh had subsequently discovered this but did not raise it with him.

39 The accused stated that Fei Poh had offered to pay him RM1,000 for the Job, which he accepted. Later that day, at about 10.45pm, the accused received another call from Fei Poh asking to meet at the same place the next evening.

40 The next day (24 October 2017), at about 11.00pm, the accused met Fei Poh at the same KFC outlet. According to the accused, Fei Poh placed the red plastic bag, which had been tied tightly, in the Motorcycle Compartment in his presence. Unknown to the accused, the Drugs were in the red plastic bag. Unlike the 9 October drug consignment, this time, Fei Poh had done the packing herself.

41 The accused accepted that the red plastic bag “looked big”. The accused said that by “big”, he had meant that the red plastic bag was, comparatively, larger in size than the bag that was used for the 9 October drug consignment.

He thus asked Fei Poh “why is the bag so big”. Fei Poh’s response was that the 25g of methamphetamine that the accused was purportedly transporting had been packed “for [the accused’s] safety”, and the large packaging ensured that “[w]hen [the accused] hand[ed] it over at [the designated] place, the public would not have any suspicion[s]”. The accused stated that he then asked Fei Poh for more money, and did so because “the bag looked big”, and “the big bag meant that [his] workload was higher”. Yet, the accused did not attempt to check the contents of the red plastic bag as he trusted Fei Poh because of their relationship and his previous delivery of the 9 October drug consignment.

42 The meeting between the accused and Fei Poh concluded with Fei Poh handing the accused RM50 and about 0.2–0.3g of methamphetamine for his own consumption. The accused then bought a beer and returned to his room. According to the accused, Fei Poh had called him at about midnight and asked for the whereabouts of Navin, who, as mentioned (see [22] above), was the accused’s housemate. The accused testified that Navin had also performed drug-related jobs for Fei Poh. His role with respect to the Job was to update the accused on the conditions at the Checkpoint but he did not do so for reasons unknown to the accused. When the accused informed Fei Poh that Navin was not at home, Fei Poh told him to ask Navin to return her call once he came back.

43 When Navin returned home shortly after, the accused relayed Fei Poh’s message to him. Navin then spoke on the phone with Fei Poh for a while, before asking the accused for the keys to the Motorcycle so that he could ride it to a shop to buy food. Navin had been aware of the presence of controlled drugs in the Motorcycle Compartment at that time. He left with the Motorcycle and returned after about an hour. Later that morning, at about 6.32am, the accused left home for the Checkpoint on the Motorcycle, where he was eventually arrested.

44 I now turn to why I did not accept the accused's evidence. I begin by explaining the significance of his testimony on the 9 October drug consignment.

The 9 October drug consignment

45 As stated earlier (see [30] above), Fei Poh's involvement in the 9 October drug consignment is critical to my assessment of the accused's defence because of the link that the accused had drawn between that transaction and the Job. Central to the accused's defence was his contention that he had believed the red plastic bag contained 25g of methamphetamine. The accused offered three main reasons for why he had held that belief and why it was reasonable (see [20] above), all of which were linked by Fei Poh. The first and second reasons were linked by Fei Poh's role as the drug supplier for the both the 9 October drug consignment and the Job. The accused's evidence was that the 9 October drug consignment and the Job were for the same drug supplier – Fei Poh. The accused believed Fei Poh's representation that the Job involved the transportation of 25g of methamphetamine because he had transported the same type and quantity of drugs for her in the 9 October drug consignment. In essence, the argument was that he had reason to believe the representations that the two transactions involved the same type and quantity of drugs because both were for the same drug supplier. The third reason – his extra-marital relationship with Fei Poh – only served to fortify his trust in Fei Poh's representations.

46 Thus, the accused needed to convince me that Fei Poh was the drug supplier for the 9 October drug consignment. If she was not so, that would undermine the heart of the accused's defence that he harboured a genuine belief that the Drugs were 25g of methamphetamine. Analysed this way, the third reason – the relationship the accused had with Fei Poh – was irrelevant. That reason would only be relevant if Fei Poh could first be placed as the drug

supplier for the 9 October drug consignment *and* the Job. If that was the case, the relationship might then lend credence to why the accused had believed Fei Poh's representations that the two transactions involved the same type and quantity of drugs.

47 In oral closings, the Defence conceded that accepting the accused's evidence of Fei Poh's involvement in the 9 October drug consignment was critical to the accused's defence. They stated that "[the accused's] belief that it would be the same arrangement [of 25g of methamphetamine] *is reliant on the fact that he had done the earlier drug run*" [emphasis added]. This was also broadly the Prosecution's position in oral closings. It is hence apposite for me to begin my analysis by explaining why I rejected this part of the accused's testimony.

(1) The accused's inconsistent testimony

48 The accused's account of the 9 October drug consignment changed constantly. His initial account in the recorded statements and during examination-in-chief was that *only* Fei Poh had been involved in the 9 October drug consignment. He testified as follows:

- (a) The accused agreed to deliver the 9 October drug consignment because he needed money for his son's birthday on 18 October 2017.
- (b) When he had asked Fei Poh "for help", she asked him how much money he needed. He replied "700". Fei Poh then told him "[o]kay. There is [*sic*] 25 grams of Ice to be brought into Singapore".
- (c) He remembered what the 9 October drug consignment had looked like when it had been handed to him, and that he had personally

packed the drugs using the “two black tapes [*sic*]” that Fei Poh had also handed to him.

(d) On Fei Poh’s instructions, he deposited the drugs in a public dustbin in a park behind Blk 640, Hougang Avenue 6. He then observed an unknown Indian man picking it up about ten minutes later. Thereafter, he went looking for jobs in Singapore before returning to Johor Bahru at noon.

(e) That evening, he was paid RM700 by Fei Poh.

(f) This was his first drug transaction.

49 Crucially, there was no mention of Raja in this account. It was clear that on this account, the drug supplier was Fei Poh. However, the veracity of the accused’s account of events was brought into question when viewed against the ICA Records, the toll records and the SIM card records. The ICA Records placed the accused in Singapore between 6.35am and 11.39am on 9 October 2017. During cross-examination, the accused was confronted with the toll records and the Digi SIM card FORT report. The toll records revealed that on that day, in the lead up to the delivery of the 9 October drug consignment and shortly thereafter, the accused had exchanged multiple phone calls with the number “601128165549”. The Digi SIM card FORT report showed that this number had been saved as a contact named “Raja Anne Jb” on the Digi SIM card. No less than 23 calls had been exchanged between 6.48am and 10.02am that day. It should be noted that according to the accused, the drug delivery was completed at 10.00am. The only call that was made to a number that was attributable to Fei Poh was at 10.03am that morning (see [52] below).

50 The accused accepted during cross-examination that the number saved under “Raja Anne Jb” belonged to Raja. It therefore was apparent that the accused had been in constant contact with Raja between 6.48am and 10.02am on 9 October 2017, while he was in Singapore. This obviously undermined his narrative that the 9 October drug consignment was for Fei Poh given the multitude of calls made *during* the delivery of the consignment. The toll records read with the Digi SIM card FORT report indicated that the accused had been dealing with Raja, not Fei Poh. Yet, as noted above (see [49] above), Raja was not mentioned at all in the accused’s first account of the 9 October drug consignment, *ie*, in the 1 November 9.54am statement.

51 This inconsistency was pointed out to the accused during cross-examination. He however insisted that there was a valid explanation: both Fei Poh and Raja had used the number saved under “Raja Anne Jb”. He claimed that this arrangement was necessary because “one would not use their own number when their [*sic*] dealing with such matters”. I could not accept this explanation for two reasons.

52 First, as the Prosecution rightly pointed out, the accused’s explanation was illogical given that at 10.03am, the accused had made a call using the StarHub SIM card to Fei Poh on *Fei Poh’s own number*. This was the number “0165924562”, which had been saved as the contact “O” on the Digi SIM card. The accused confirmed that this was Fei Poh’s number. The 10.03am call to Fei Poh was made less than a minute after the previous call with “Raja Anne Jb” had concluded. It was difficult to comprehend why the accused would have had to call Fei Poh twice within the same minute, and much less on different phone numbers. This simply made no sense. If the accused had indeed been talking to Fei Poh on the “Raja Anne Jb” number at 10.02am, he could have just continued

the conversation instead of hanging up and dialling a different number one minute later.

53 Second, the accused’s claim that “one would not use their own number” when dealing in drug-related matters was inconsistent with his conduct. This was obviously a reference to the accused wanting to conceal the identity of his contacts in order to avoid implicating them if he were arrested. If this were true, he would surely not have called Raja on a number saved as “Raja Anne Jb” in the Digi SIM card in the very first place. That would have invariably implicated Raja. Further, as noted earlier, on 9 October 2017, he had called Fei Poh on *her number* at 10.03am. While the accused attempted to justify this on the basis that he had by then delivered the 9 October drug consignment, this was contrived. Even if this were so, the proximity in time of that call to the delivery of the drugs at 10.00am and the calls with Raja would surely have increased the risk of implicating her. If he truly wished to reduce the likelihood of implicating Fei Poh, he would have simply not called her at all or called her on the “Raja Anne Jb” number. I had raised this with the accused at trial, and his attempted explanations were plainly unsatisfactory:

Witness: If one were to get caught, Your Honour, the person’s phone numbers would be traced. In order not to be traced, we have such a practice.

Court: But you did call her on the 9th at 10.05 on personal number at 10.05.

...

Witness: Yes, Your Honour.

Court: So that did not seem to be a problem. So my question is, why do you not then call her on the number---personal number previously?

Witness: As I was about to make the drug delivery, I did not wish to contact her via her personal number, Your Honour.

Court: Sorry, how does it make a difference? I'm trying to understand.

Witness: I had the Ice with me, Your Honour, at that point, the 25 grams of Ice and I was about to make the delivery. If I were to have been caught at that point in time, they would have traced my numbers whom I had communicated with Singapore. If that happened, Fei Poh's number would have been caught...

...

Court: If your concern was about ... involving Fei Poh in the activities on the 9th of October, would it not have been better simply not to have called her on her personal number?

Witness: My work was done, Your Honour, therefore I had called the number---her personal number.

Court: So why would not [sic] inform her using the Raja Anneh JB number?

Witness: Fei Poh had told me to inform her once the job was over via a phone call.

54 The accused attempted a further explanation, which I also disbelieved. He asserted that he had called "Raja Anne Jb" and not Fei Poh's number because at that point he had been using the "Singapore card", *ie*, the StarHub SIM card, and he "had already contacted this number". This made no sense upon an analysis of the SIM card records. The "Raja Anne Jb" contact was saved in the Digi SIM card, and *not in the StarHub SIM card*. On the other hand, Fei Poh's number, saved under "O" in the Digi SIM card, had also been saved in the StarHub SIM card under "fabpo". The StarHub SIM card FORT report showed that the number saved under "fabpo" was prefixed by the numbers "0186" – these numbers represented the relevant Malaysian country and area codes – but

was otherwise *identical* to the number saved under “O”. Thus, if the accused had been using the StarHub SIM card at that time (which he accepted he was), it would have been far more convenient for him to have called Fei Poh on the number which had been saved on that SIM card as “fabpo” rather than dial the “Raja Anne Jb” number.

55 I add a final related point – in the 30 October statement, the accused asserted that as things stood on 22 October 2017, he “did not have [Fei Poh’s] handphone number”, and that he “did not save her handphone number”. This was obviously a lie. It is clear from the matters canvassed above that he had saved Fei Poh’s number in both the Digi SIM card and the StarHub SIM card (as “O” and “fabpo” respectively), and had called her at 10.03am on 9 October 2017 by dialling the “O” number on the StarHub SIM card.

56 Viewed holistically, the accused was untruthful in his narrative that the 9 October drug consignment was for Fei Poh. I was persuaded that it was in fact for Raja. This undermined his defence that Fei Poh had been involved in the Job, and that he had grounds for the beliefs he held in relation to the Drugs.

(2) The prevalence of Raja and the absence of Fei Poh in the evidence

57 The portions of the phone record, the toll records and the ICA Records relating to the other occasions in October 2017 when the accused entered Singapore further reinforced my belief that the accused’s dealings had all along been with Raja, not Fei Poh. The ICA Records showed that apart from 9 October 2017, the accused had also entered Singapore on 14, 23 and 25 October 2017. On all of these occasions, the toll records and phone record showed that calls were made to or received from an unidentified number (which I will explain was Raja’s) or the “Raja Anne Jb” number, and not numbers associated with

Fei Poh. This suggested to me that the accused had substantial contact and dealt with Raja, and not Fei Poh.

58 The relevant portions of the phone record, the toll records and the ICA Records are as follows:

(a) On 14 October 2017, the accused was in Singapore from 6.04am to 8.24am. The toll records revealed that seven calls were exchanged between the accused and the “Raja Anne Jb” number between 6.09am and 6.37am.

(b) On 23 October 2017, the accused was in Singapore from 6.05am to 9.16am. The toll records revealed that 14 calls were exchanged between the accused and a number ending with “3731” (the “unidentified number”) between 6.21am and 8.18am.

(c) On 25 October 2017, the day of the accused’s arrest, he had been stopped at the Checkpoint at around 6.32am. The phone record revealed that at about 1.07am that morning, he received 15 calls from the “Raja Anne Jb” number. Then, at 5.13am that morning, he received 15 calls from the unidentified number. From 6.45am onwards, while the accused was being investigated by the officers present, he received six missed calls from this same number.

59 I was of the view that the unidentified number belonged to Raja. The evidence pointed me to this conclusion, and the accused did not challenge it seriously. The accused had, at the time of his arrest and during trial, behaved in a manner that suggested that the number belonged to Raja, and Raja only. He testified in court that the missed calls he had received from the unidentified number on 25 October 2017 at 6.45am, shortly before his arrest, were calls from

Raja. Following his arrest, under the supervision of W/SSgt Janani, the accused had dialled the unidentified number at 8.20am with the intention of speaking to Raja, not Fei Poh. The accused accepted this during cross-examination. During that call, the accused had spoken with Raja and told him that he was “near Kranji”, and “if you tell your younger brother to come now, I’ll go there”. This was also consistent with the assertion he made in the cautioned statement, *ie*, that he had transported the Drugs for his elder brother, Raja – I will elaborate on the accused’s recorded statements later in these grounds.

60 Notwithstanding the above, the accused asserted during cross-examination that it was Fei Poh who had made the call using the unidentified number at 5.13am on 25 October 2017. In re-examination, he explained that it was plausible for both Raja and Fei Poh to have used the same phone that morning, because “Fei Poh would have been with [Raja]”. That was the first time the accused had expressly raised this, and he did so without producing any evidence to support this assertion. I was minded to regard it as a mere afterthought. It was not logical for Fei Poh to have called the accused using Raja’s number when she could have called using her number. Notably, when the accused had been recounting the events leading up to his arrest in the 30 October statement, he made no mention of a call from Fei Poh on *any* number at 5.13am on 25 October 2017. Further, if it was accepted that the missed calls, of which there were six, that were received at 6.45am from the unidentified number were from Raja, it made little sense for Fei Poh to have been calling the accused from the same number at 5.13am. It should also be noted that, as mentioned (see [58(c)] above), there were 15 calls that were received at 1.07am on 25 October 2017 from the “Raja Anne Jb” number, which again fortified the conclusion that the accused had been in contact with Raja in the lead up to his departure for the Checkpoint.

61 The accused made similar assertions in relation to the 14 calls exchanged with the unidentified number on 23 October 2017. He accepted that multiple calls were exchanged that morning. When questioned on who he had been speaking to, the accused was less than forthcoming:

Q: Okay. And then we have an exchange of phone calls all the way until 8.18am where you called the number ending with 3731. Okay? And for contacts that's stated in P234, on the 23rd of October 2017, you entered at 6.05am and you left Singapore at 9.16am. Could you tell us who you were talking to for this phone records [sic] on the 23rd of October 2017?

A: They would call and different people would be speaking over the phone.

Q: Were one of these people Fei Poh?

A: *Fei Poh would call and speak*, and there would be others who would speak.

Q: And *were the others who spoke include Raja?*

A: *Maybe*, I've heard his voice.

[emphasis added]

62 When questioned subsequently on the sheer number of calls exchanged with the unidentified number, the accused's responses were even more disjointed and difficult to accept:

A: They would call and different people would be speaking over the phone.

...

Q: Okay. And did these phone calls have anything to do with you coming to Singapore?

A: No, no. These calls were just about asking "Where are you", "What are you doing", "Do you have a job"...

...

A: I would make a phone call, I'd be speaking and there would be network problems. I would call again. The phone call would be halted halfway while I'm speaking, I would then call again, they would call me back.

- Q: But there would be no need for so many phone calls just for them to ascertain where you were and whether you have found a job, correct?
- A: To me, they had called casually as per normal to converse with me.
- Q: Okay. It is also illogical because none of these phone records appear to be with any other number, for instance, the friend which you are going to take money from.
- ...
- Q: Yes, the number doesn't appear on the 23rd of October 2017.
- A: This is because I'm aware where he's wo---they work.

63 It was obvious from these responses that the accused was prevaricating. He was being deliberately vague and non-committal as to the purpose of the calls. He never explained why “casual” calls were necessary in the first place. Also, he was cagey as to whether Raja had been one of the persons he had spoken to. He never identified who the “different people” that spoke to him were. Two further aspects of his visit to Singapore on 23 October 2017 were of note: first, the accused had in fact not mentioned this visit to Singapore until he was cross-examined. This was despite it being in such close temporal proximity to the events surrounding Fei Poh and the Job, and his eventual arrest. Second, it was difficult to understand why the accused would have needed to visit Singapore on 23 October 2017 when his return to Johor Bahru on 22 October 2017 was purportedly for the purpose of retrieving his belongings from his room. The true purpose of this visit was therefore not readily discernible, and instead of assisting the court in clarifying the state of affairs, the accused simply further obfuscated.

64 Accordingly, I was persuaded that the unidentified number was Raja's. It was clear to me that the unidentified number pointed only to Raja; there was

nothing demonstrating any link between the unidentified number and Fei Poh. The accused was unable to produce any evidence that the unidentified number belonged to Fei Poh or to “different people” as he had claimed with respect to the visit on 23 October 2017. This was a bare assertion. On the evidence, the only person that the unidentified number was connected to was Raja. Having concluded that the unidentified number belonged to Raja, it was apparent that the accused had been in close contact with him on *every* occasion that he had entered Singapore in October. In contrast, save for the single call at 10.03am (see [52] above), the accused did not contact Fei Poh on 9 October 2017. There was no contact between them on 14 and 23 October 2017 when the accused had been in Singapore. On 25 October 2017, the accused did not make any calls to Fei Poh in the lead up to his arrest. The accused asserted that he had called Fei Poh, and that these calls had not been recorded in the Handphone or in any of the seized SIM cards. In the absence of any evidence demonstrating that this was a feasible occurrence, I could not accept his testimony in this regard.

65 Thus, all the available evidence, particularly the phone record, the toll records, the SIM card records and the ICA Records, pointed to Raja. On the other hand, the connection between the accused and Fei Poh was based entirely on the accused’s assertions. This was conceded by the Defence in oral closings. I was therefore persuaded that the accused had actually been dealing with Raja and not Fei Poh throughout October, *including on 9 October 2017*. The picture became even clearer once I considered the recorded statements.

The accused’s contemporaneous and cautioned statements

66 The contemporaneous and cautioned statements reinforced my view that the accused had dealt only with Raja. Two aspects of the statements were critical. First, he had omitted to mention the crux of his defence – that he had

thought he had been carrying 25g of methamphetamine because Fei Poh was involved in both the Job and the 9 October drug consignment, and she had told him that the Job, like the 9 October drug consignment, involved the transportation of 25g of methamphetamine. There was also noticeably no mention of his relationship with Fei Poh. Second, in both statements, he specifically identified only Raja as the drug supplier for the Job. Viewed together, these buttressed my belief that it was Raja and not Fei Poh who had been involved in the accused's drug-related activities.

67 The accused's omissions are inexplicable. The defence that the accused ran at trial involving Fei Poh was *clearly* exculpatory. If the court accepted the accused's testimony on Fei Poh's role as the drug supplier for the 9 October drug consignment and the Job, and that she had made the representations asserted, there would be a credible basis to conclude that the accused reasonably believed that he was carrying only 25g of methamphetamine for the Job. This would clearly have assisted him in rebutting the presumptions under ss 18(1) and 18(2) of the MDA. The accused's failure to mention Fei Poh's involvement in the Job and the 9 October drug consignment was therefore difficult to understand.

68 Even if the omission in the contemporaneous statement was explicable on the basis that the accused had been in shock upon being arrested (which I note was not an argument raised by the Defence), the omission in the cautioned statement could not be explained away on the same basis. The cautioned statement was recorded between 6.21pm and 7.05pm on 25 October 2017, more than 11 hours after the accused had been arrested. The accused had ample time to compose himself and think. The accused testified that at that point, he was angry with Fei Poh for having lied to him. He also testified that he had been thinking about his wife and son, and the death penalty prior to the recording of

the cautioned statement; he wanted to come clean and tell the truth. According to Mdm Susila, he was in tears. There was no dispute that he had been administered the notice under s 23 of the CPC before the cautioned statement was recorded. There was therefore every reason, incentive and opportunity to fully explain Fei Poh's role in his drug-related activities and why that led him to believe that the Drugs comprised of 25g of methamphetamine. However, he did not do so.

69 At the very least, I would have expected the accused to have asserted in those statements that he thought he was carrying 25g of methamphetamine, even if he did not go so far as to describe Fei Poh's role. However, he likewise did not do so. In the contemporaneous statement, when asked what the two bundles A1A1 and A1A2 were, the accused stated "I do not know". In the cautioned statement, the type and weight of the Drugs were simply not mentioned.

70 Instead of coming clean at the outset, the accused revealed information in a piecemeal fashion. The first mention of Fei Poh's involvement in the Job and the accused's belief that he had been carrying 25g of methamphetamine was in the 30 October statement. Even then, the accused made no mention of Fei Poh's role in the 9 October drug consignment. In fact, there was no mention of that transaction at all. The 9 October drug consignment and Fei Poh's role as the drug supplier for that consignment only surfaced in the 1 November 9.54am statement. As for his intimate relationship with Fei Poh, this was omitted from *all* the recorded statements. It was during examination-in-chief on 21 January 2020 that the accused first mentioned his relationship with Fei Poh. All of these were key facets of the accused's defence which, if true, would have supported his defence. That these facts were only gradually revealed suggested that the accused was drip-feeding evidence.

71 The above difficulties were compounded by the fact that the accused had gone a step further in both the contemporaneous statement and the cautioned statement by identifying Raja as the person who was responsible for the Job. This suggested that the accused conscientiously made the decision to inculcate Raja, sieving out Fei Poh in the process. The decision to sieve out Fei Poh was difficult to explain if it were indeed true that Fei Poh was the one dealing with the accused. As mentioned, by the time the contemporaneous and cautioned statements were recorded, the accused had realised that he had been betrayed. By his own account, he was angry, and wanted to come clean (see [68] above). He would surely have identified Fei Poh's role. Yet, he inexplicably made no mention of her. Instead, he implicated Raja. In the contemporaneous statement, the accused recounted with some detail that Raja owned the Motorcycle and had sent him to Singapore:

...

- Q3) Who does the bike JPH8350 belong to?
- A3) My friend Raja bought the bike but he registered the bike under my wife's name.
- Q4) Who has access to the bike?
- A4) Raja always holds on to the key and the bike. But sometimes I will borrow the bike from Raja.
- Q5) Today 25/10/2017 [sic], why was the bike with you?
- A5) Raja asked me to go for an interview at "Yeos" company in Singapore. He told me that he will pass the bike and the bike key to my landlord Navin so that I can ride it into Singapore for my interview.

72 In the cautioned statement, while the accused's story changed slightly, he again mentioned only Raja. He noted that a person he called "elder brother" had asked him to bring the Drugs into Singapore. The accused clarified during cross-examination that this had been a reference to Raja. If it is to be believed that the accused wanted to come clean when this statement was recorded, it

would follow that the allegation that Raja was the drug supplier for the Job was true.

73 Accordingly, in the absence of a cogent and credible explanation, the accused's decision to implicate Raja rather than Fei Poh leads to two conjoined conclusions. First, that it was Raja and not Fei Poh who had been involved in the accused's drug-related activities including the Job and the 9 October drug consignment. Second, the identification of Fei Poh as the drug supplier for the Job some five days later in the 30 October statement was an afterthought. As noted earlier, there was also no mention then of the 9 October drug consignment and Fei Poh's role as the drug supplier in this regard. That surfaced only in the 1 November 9.54am statement (see [66] and [70] above), suggesting further drip-feeding. These conclusions are consistent with my earlier analysis and conclusion that the accused dealt only with Raja during the 9 October drug consignment and on 14, 23 and 25 October 2017.

74 Did the accused offer a cogent and credible explanation for the omissions in the recorded statements? He attempted to explain by *inter alia* making several allegations against IO Michelle in relation to the recording of the cautioned statement. Nothing was offered as regards the contemporaneous statement, and the accused accepted that it had been accurately recorded. I now turn to why I could not accept his allegations against IO Michelle.

The accused's explanations

(1) Allegations against IO Michelle

75 During oral closings, the Defence rightly accepted that the accused's allegations against IO Michelle were a critical aspect of his defence. If I rejected

his allegations, there would not be any explanation for the shortcomings in the contemporaneous and cautioned statements.

76 The accused asserted that IO Michelle had told him that he did not need to mention the details of his defence during the recording of the cautioned statement. Specifically, the accused claimed that IO Michelle had told him “not to reveal important information”, and that “[he] was told not to say too much”. During re-examination, the accused explained what he had understood from this:

Q: Okay. Did you know what she meant by “don’t reveal important information”?

A: Don’t have to say much over here, *important details can be said later* on in the long statement.

Q: Okay. So follow from that, why did you decide to mention that you brought in the drugs for an elder brother instead?

A: I decided, yes, I’ll just inform about Raja as “Anneh”, elder brother first---temporarily. Therefore, I mentioned this here first and then I went into details in the long statement.

Q: Yes. So my question to you is, why did you decide to mention it there and not Fei Poh? This is still a question mark for us, yes.

A: It came out at that point in time.

[emphasis added]

77 To begin with, I did not accept that IO Michelle had informed the accused as asserted. The accused’s allegation was unsupported by the evidence. It was also difficult to believe given the gravity of the allegation. If IO Michelle had instructed the accused to defer stating *important* information relating to his defence as alleged, she would have in substance told the accused the opposite of what she was required by law to tell him when administering the caution under s 23 of the CPC. In other words, the accused was alleging that IO Michelle

was guilty of serious misconduct in the discharge of her duties as the Investigation Officer. No reason was offered by the Defence for why IO Michelle would have represented as such. In this regard, I note the observations of V K Rajah JA in *Thong Sing Hock v Public Prosecutor* [2009] 3 SLR(R) 47 concerning the evidence of public servants such as investigation officers:

35 ... [i]n *Registrar of Vehicles v Komoco Motors Pte Ltd* [2008] 3 SLR(R) 340 (“*Komoco*”), the Court of Appeal observed at [38] that:

In the absence of cross-examination, the only justification for not believing a sworn statement, especially one from a state official... is ***if documentary or other oral evidence is adduced to disprove it***.

Although *Komoco* was concerned with a state official performing an administrative function, I was of the view that the reasoning in *Komoco* should generally ***apply to a sworn statement by a police officer*** as well...

[emphasis added in bold italics]

78 IO Michelle was subsequently recalled for the purpose of addressing the accused’s allegation against her. She unequivocally rejected the allegation. It should be noted that apart from putting their case to her, the Defence did not explore the accused’s allegation in cross-examination at all. This was surprising given the importance of this facet of the accused’s defence. As recently reinforced by the Court of Appeal in *Chan Lie Sian v Public Prosecutor* [2019] 2 SLR 439 at [65], the failure of a cross-examining party to challenge a witness’s testimony may commonly be taken to be acceptance of it. With the aforementioned authorities in mind, and given that IO Michelle’s testimony was consistent and credible, I accepted her evidence.

79 I recognised that Mdm Susila testified that when the cautioned statement was recorded, IO Michelle had informed the accused that he could give further details in subsequent statements. Even if I accepted Mdm Susila’s evidence,

what IO Michelle might have said was clearly not tantamount to her telling the accused to leave out *important* facets of his defence. It did not explain the accused's failure to state, at the very least, that he thought he was carrying 25g of methamphetamine because Fei Poh told him so. This was hardly a "further detail": it was the pith of his defence to a potential death penalty charge. Hence, Mdm Susila's evidence did not aid the accused.

80 In any event, I preferred IO Michelle's evidence. Mdm Susila's evidence was inconsistent, and she vacillated on several occasions:

Q: Okay. And do you recall IO Michelle Tan---

A: Mm.

Q: ---saying something similar such as: "Do not say so much to the accused" [*sic*] during the recording of the cautioned statement?

A: No, I can't. I can't remember that---

Q: Okay.

...

A: What I remember is that she did mention that he can say whatever detail he want [*sic*] in the later statement recording. Now he just has to give his defence to the charge.

Q: Okay. And did IO Michelle specifically 1 say: "Do not reveal important information"?

A: I can't remember that, whether or not she said that. I can't recall.

Q: Okay. And my last question is that: Did IO Michelle at any point in time... did she tell... the accused that if he co-operates... he would get a lighter sentence?

A: No. I don't think so because I have not had this experience with any IO. So but in this particular case, of course---of course, I can't remember but no IO has said that, you see, to the accused, that if he co-operates, he will get a lighter sentence. They just tell him to co-operate and tell the truth.

81 From the above exchange, it is clear that Mdm Susila wavered while giving evidence. She persistently cited an inability to recall what had occurred during the recording of the cautioned statement. I accordingly preferred IO Michelle's evidence, which was clear and consistent.

82 Ultimately, it was telling that the accused had specifically applied his mind to the questions of who the Drugs belonged to and for whom they were being transported when the cautioned statement was being recorded. If he had been told by IO Michelle as alleged, he would not have said anything about Raja at all. He stated in the cautioned statement that "I told them that the drugs were not mine" and added the words "which is the truth" to the end of that sentence by subsequently amending the statement. It was in that context that he confirmed that he had transported the Drugs for Raja, and that he knew he had made a mistake. If IO Michelle had in fact told the accused to keep important information till later, the accused would simply not have said anything. Instead, he made specific and targeted allegations against Raja, disavowing ownership of the Drugs in the process. Clearly, the accused did not feel constrained in setting out the facts that he believed possessed exculpatory value. This suggested to me that his allegations against IO Michelle were untrue.

83 There is another critical point. The accused, as emphasised at [76] above, understood IO Michelle's alleged words to mean that he could dispense with "important *details*". Even if this were true, it did not explain why he chose to implicate Raja and not Fei Poh. He clearly understood the caution that was administered under s 23 of the CPC, *ie*, that he needed to state the substance of his defence. He would have implicated Fei Poh. Fei Poh was *the only person of significance to his defence*. In fact, she was his defence *in toto*. Fei Poh was hardly a peripheral detail. Raja, on the other hand, could be more properly regarded as a mere detail if the accused's evidence were to be believed. Yet, the

accused only implicated Raja. Accordingly, even if IO Michelle had represented as alleged, the fact that the accused pointed the finger at Raja and not Fei Poh suggested two things. First, the accused did not feel any constraint in identifying the person who had tasked him to transport the Drugs. Second, that person was Raja.

84 As regards the contemporaneous statement, there was simply no explanation offered by the accused. As noted earlier, the accused did not make similar allegations against W/SSgt Janani who recorded the contemporaneous statement (see [8(a)] above). The contemporaneous statement appeared to have been recorded verbatim and in a question-and-answer format. No explanation was offered as to why the accused failed to mention Fei Poh in that statement.

85 I was thus not persuaded by the accused's explanation for the shortcomings in the contemporaneous and cautioned statements. The inference that followed was that the evidence concerning Fei Poh was a mere afterthought.

86 At trial, the accused had also made several other allegations against IO Michelle, which may be dealt with summarily. The accused asserted several times that IO Michelle had failed to include in his long statements certain information that he had conveyed to her. These were *inter alia* (a) the fact that Fei Poh did not let him pack the Drugs on 24 October 2017; (b) the explanations given by Fei Poh on why the red plastic bag looked bigger than the package he had received for the 9 October drug consignment; and (c) the fact that Fei Poh had passed him a small quantity of methamphetamine on 24 October 2017 for his personal consumption.

87 These allegations were unfounded. IO Michelle denied the allegations and her evidence in this regard was supported by Mdm Susila's evidence. I

believed that the accused made these allegations as part of an attempt to undermine the credibility of IO Michelle and the statement taking process. This was important to justify his failure to include aspects of his defence in the contemporaneous and cautioned statements.

88 In concluding this point, I note also that the Defence did not make any argument to the effect that any threat, inducement or promise had been made by IO Michelle to procure an involuntary statement from the accused. Accordingly, the shortcomings in the contemporaneous and cautioned statements remained inexplicable.

(2) The improbability of the accused's other explanations

89 Apart from his allegations against IO Michelle, the accused had another explanation for omitting to mention Fei Poh in the contemporaneous and cautioned statements. He was allegedly afraid of his wife finding out about Fei Poh and their extra-marital relationship. There were four difficulties with this explanation.

90 First, there was tension between this explanation and the allegations the accused had made against IO Michelle. If the accused had truly been concerned about mentioning Fei Poh because he had been afraid of his wife finding out, then what IO Michelle had purportedly conveyed to him would have been irrelevant. The accused would have kept silent regardless of whether IO Michelle had told him to withhold important information during the recording of the cautioned statement.

91 Second, it was difficult to believe that concerns over his wife finding out about Fei Poh would have been a relevant consideration when the statements were recorded. As noted, the accused had been crying during the recording of

the cautioned statement. He had been betrayed by Fei Poh. He was worried about what would happen to his wife and son if he had to face the death penalty. I could not therefore accept that the fear of incurring his wife's wrath would have been a relevant consideration given the accused's own testimony that he was overwhelmed by the potential consequences should he be found guilty.

92 Third, the nub of the accused's concern must have been disclosing the *relationship* he had with Fei Poh, not the fact that Fei Poh was his drug supplier. As noted, he had disclosed her role in the long statements. He could have just as easily done that in the contemporaneous statement and particularly the cautioned statement, without disclosing their relationship.

93 Fourth, if the accused was concerned about his wife finding out about his relationship with Fei Poh, why would he have then disclosed the intimate nature of their relationship on 21 January 2020 in the midst of trial? No explanation was offered. I could not understand why the accused decided to do this if he genuinely wished to conceal the nature of his relationship with Fei Poh from his wife.

94 I accordingly could not accept this explanation as well.

Intrinsic problems with the accused's testimony

95 Two other aspects of the accused's testimony were internally inconsistent. These went towards my general assessment of his credibility.

96 First, the accused insinuated in the 30 October statement that the meeting with Fei Poh was unplanned and serendipitous. To be precise, the accused stated:

I *happened to meet* a female childhood hometown friend known as 'Fei Poh' *by chance*... [s]he asked me why I was doing there [sic] and I told her that I returned to collect my things and was supposed to return to Selangor after that...

[emphasis added]

97 Yet, the accused testified, as reproduced earlier (see [36] above), that he had spoken to Fei Poh over the phone prior to their meeting on 22 October 2017, the implication being that their meeting was not entirely by chance. This inconsistency with the 30 October statement was never adequately explained by the accused.

98 Second, as mentioned (see [39] above), the accused was offered RM1,000 for delivering the Drugs, which was RM300 higher than the amount he had received for the 9 October drug consignment. The accused was cross-examined on the difference between the two amounts, and was asked why Fei Poh would have offered him more money to deliver an identical quantity of methamphetamine:

Q: Okay, so this was 300 Ringgit more than the first job, correct?

A: Yes.

Q: And you are saying that even with the increase of 300 Ringgit in the asking price, okay, Fei Poh told you that you were only to bring in 25 grams of methamphetamine.

A: Yes.

...

A: She asked me how much money I needed. So I said I need a thousand. She said okay. *Nothing crossed my mind when she asked me how much I needed. I said I needed a thousand. So she said okay.* Moreover, she is my scandal. She knows about my situation. So maybe she could have given 300 more. According to me, 300 is not of much value to them.

[emphasis added]

99 Thus, by the accused's own admission, his request for an additional RM300 was made for no obvious reason. However, in a separate part of his testimony, the accused offered a reason. He testified that he had asked Fei Poh for more money on 23 October 2017 as he wanted to redeem his wife's *thali* (a pendant which was the symbol of their marriage) which he had pawned, and Fei Poh somehow agreed to his request.

100 I had difficulty accepting the reason associated with the redemption of the *thali*. As pointed out by the Prosecution during cross-examination, there was no urgency for him to do so – the two pawn shop tickets indicated that the dates of redemption were 28 February 2018 and 3 March 2018 respectively. There was plenty of time for the *thali* to be redeemed. Further, if the accused did indeed want to redeem the *thali* at the soonest, he would surely have reached out to Fei Poh prior to returning to Johor Bahru on 22 October 2017 to ask that he be assigned another drug delivery job. The accused had Fei Poh's contact number (albeit he denied this; see [55] above), and importing methamphetamine into Singapore, by the accused's own account, was clearly a risk he was willing to take. He had only recently transported the 9 October drug consignment. He did not have to wait for Fei Poh to make him the offer for the Job on 23 October 2017. Accordingly, the attempt to justify the request for an additional RM300 was not credible, and raised questions as to why the accused would change his evidence. Based on the evidence adduced, the true reason for the request was not clear. I need say no more in this regard.

Conclusion: the accused's evidence was not credible

101 In light of the above, I did not accept that Fei Poh was the accused's drug supplier. Contrary to what the Defence had argued, the accused's account

was not credible, unsupported, contradicted by the documentary evidence and internally inconsistent. I thus rejected it.

102 To be clear, I was prepared to accept that Fei Poh existed. In so far as there was *some* evidence demonstrating her existence, such as the phone number saved under “fabpo” which the accused had been in contact with, there was some reason to believe that Fei Poh was a real person. I also accepted that there might have been, in the words of the accused, a “scandal[ous]” relationship between the two. The Prosecution was prepared to concede these as well. However, a clear line must be drawn between accepting that Fei Poh existed and accepting that she was the accused’s drug supplier. It plainly does not follow that the existence of the former establishes the latter.

103 Accordingly, I concluded that the accused failed to displace the presumptions under ss 18(1) and 18(2) of the MDA. There was thus no need for me to consider the Prosecution’s alternative argument (see [16] above).

The Defence’s argument on Navin

104 Finally, the Defence argued that the court could not exclude the possibility that Navin had tampered with the contents of the Motorcycle Compartment. The Defence argued that Navin had sufficient opportunity to have placed the Drugs in the Motorcycle Compartment. Navin and the accused were housemates and Navin had access to the Motorcycle for at least an hour in the early hours of the morning of 25 October 2017. This was essentially an argument that Navin had, on Fei Poh’s instructions, replaced the drugs that she had originally placed in the Motorcycle Compartment with the Drugs.

105 I saw no merit to the argument. It was a bare allegation that did not withstand scrutiny. Logically, if Fei Poh had wanted to deceive the accused into

carrying the Drugs, her false assurances to him on 23 and 24 October 2017 would have sufficed. Given the accused's trust in her as a result of their relationship and the prevailing backdrop of the 9 October drug consignment, she could simply have packed the Drugs at the outset and lied that it was 25g of methamphetamine. The accused would have believed her. There was no need for her to devise a convoluted plan involving another variable, *ie*, Navin. Further, if Fei Poh had in fact planned with Navin to switch the drugs, this must have been pre-arranged. Such an arrangement would have been carefully planned and not left to chance given the stakes involved. Yet, Navin borrowing the Motorcycle was a matter of chance. The accused had informed Navin, after the latter had reached home, that Fei Poh had called and wanted to speak to him. Navin had, after calling her back, asked to borrow the Motorcycle so that he could get food. Fei Poh had no visibility as to the accused's movements after she had placed the drugs in the Motorcycle Compartment on the night of 24 October 2017.

106 If there truly existed a plan between Navin and Fei Poh to switch the drugs in the Motorcycle Compartment, Fei Poh would have called Navin directly rather than employ the intermediary of the accused. Fei Poh and Navin knew each other and the accused suggested that Navin had transported drugs for Fei Poh in the past. Navin was in fact supposed to serve as a lookout for the accused as regards the situation at the Checkpoint. As the drug delivery was for Fei Poh, she surely would have had Navin's contact number – the accused accepted this. She would thus not have called the accused to ask him where Navin was, and to request that he relay the message that she wanted to speak to Navin. All of this suggested that there was no plan to switch the drugs.

107 In short, the Defence's argument in this regard was not credible. It was telling that the Defence could not point to any motive on Navin's part. The

accused in fact accepted during cross-examination that Navin had no reason to frame him. This argument could thus rightly be described as a vain attempt to raise reasonable doubt, and had to be rejected.

Conclusion on the accused's guilt

108 For the reasons above, I found that the accused failed to prove, on a balance of probabilities, that he did not know of the nature and quantity of the Drugs. I accordingly convicted him of the charge under s 7 of the MDA.

My decision on sentence

109 Having been convicted of the present charge, the accused was liable to be punished under s 33(1) of the MDA. The punishment prescribed under s 33(1) read with the Second Schedule of the MDA is death. Nevertheless, the court retained the discretion under s 33B(1)(a) read with s 33B(2) of the MDA to instead sentence the offender to life imprisonment and a minimum of 15 strokes of the cane, subject to the requirements in those provisions being met. Section 33B(1)(a) of the MDA provides that if the two cumulative requirements set out in ss 33B(2)(a) and (b) are satisfied, the court has the discretion not to impose the death penalty. The first requirement in s 33B(2)(a) is that the acts of the accused were restricted to those listed in s 33B(2)(a)(i)–(iv) of the MDA, which have been referred to as those of a courier. The second requirement in s 33B(2)(b) is that the Public Prosecutor certifies that the accused has substantially assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

110 Having heard the parties' submissions, I accepted the submission of the Defence that the accused was a courier within the meaning of s 33B(2)(a) of the MDA in the sense that his role was limited to transportation of the Drugs into

Singapore. There is no evidence before me to suggest that his role was anything more than that. I noted that the Prosecution did not dispute that the accused satisfied the conditions in s 33B(2)(a) and could show on a balance of probabilities that he was a courier.

111 Further, the Prosecution informed the court that the Public Prosecutor had issued a certificate of substantive assistance under s 33B(2)(b) of the MDA in this case. Accordingly, the alternative sentencing regime was available to the accused.

112 Having considered the submissions, I exercised my discretion and sentenced the accused to life imprisonment and also caning of 15 strokes, *ie*, the statutory minimum. Having considered similar precedents, there was no reason for me to impose anything above the minimum sentence – there were no egregious circumstances in the present case warranting greater punishment for the accused. The sentence of life imprisonment was backdated to 25 October 2017, the date of the accused’s arrest.

Kannan Ramesh

Judge

Claire Poh, Anandan s/o Bala and Jotham Tay (Attorney-General’s
Chambers) for the Prosecution;
A.P.M Ferlin Jayatissa, Lum Guo Rong (Lexcompass LLC) and
Prasad s/o Karunakarn (K Prasad & Co) for the accused.
