

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 245

Criminal Case No 37 of 2016

Between

Public Prosecutor

And

- (1) Zainudin bin Mohamed
- (2) Shanti Krishnan

GROUND'S OF DECISION

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

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Public Prosecutor
v
Zainudin bin Mohamed and another

[2016] SGHC 245

High Court — Criminal Case No 37 of 2016
See Kee Oon JC
1 – 3 August, 22, 30 September 2016

2 November 2016

See Kee Oon JC:

Introduction

1 The first accused, Zainudin bin Mohamed (“Zainudin”), and the second accused, Shanti Krishnan (“Shanti”), claimed trial to charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) of possession for the purpose of drug trafficking and drug trafficking respectively. The drugs in question were not less than 22.73g of diamorphine (“the diamorphine” or “the heroin”). They were both arrested by officers from the Central Narcotics Bureau (“CNB”) on 16 May 2014 at or about 6.10pm, shortly after Shanti had delivered a bundle to Zainudin at Block 631 Ang Mo Kio Avenue 4, Singapore (“Block 631”) where the latter resides.

2 Zainudin and Shanti had no objections to being jointly tried. The evidence pertaining to the CNB surveillance operation, the arrest of Zainudin

and Shanti and the recovery of the diamorphine, the phone records of both Zainudin and Shanti as well as the Health Sciences Authority (“HSA”) analyses of the drug exhibits was largely uncontroversial. Their respective statements were admitted in evidence as the defence accepted that they were made voluntarily and did not challenge their admissibility. Shanti did, however, dispute the accuracy of certain portions in her statements.

3 When called upon to enter his defence, Zainudin chose to remain silent and did not call any witness to testify on his behalf. Shanti was the only one who testified in her defence. At the conclusion of the trial and having considered the submissions, I was satisfied that the Prosecution had proved the respective charges against them beyond a reasonable doubt and accordingly, I found them guilty. They were convicted and sentenced on 30 September 2016. I had delivered brief grounds for my decision then, and I now set out my grounds in full.

The events surrounding the arrest

4 The Prosecution adduced the evidence of 14 officers from the CNB who were involved in the surveillance and arrest operation in the evening of 16 May 2014. Staff Sergeant Goh Jun Xian Eric (PW10) (“SSgt Eric Goh”) was stationed on the ninth floor of Block 644 Ang Mo Kio Avenue 4, which faces Block 631. Various other CNB officers had positioned themselves around the vicinity of Block 631. Senior Station Inspector David Ng (PW9) (“SSI David Ng”) witnessed Shanti alighting from a taxi along Ang Mo Kio Street 61 at about 5.57pm. She was carrying a blue bag in her hand and a black bag over her shoulder. She was seen crossing the road and eventually walking to Block 631.

5 At about 6.00pm, SSgt Eric Goh observed Zainudin leaving his flat at unit number 03-924 of Block 631 (“the Flat”) and proceeding to the second floor of the block using the stairs. Zainudin was not holding or carrying anything at that time. SSgt Eric Goh saw him meeting Shanti at the lift lobby area of the second floor of Block 631.¹ SSgt Eric Goh witnessed Zainudin walking back to the Flat with a plastic bag in his hand. Shanti left Block 631 and was thereafter arrested at about 6.10pm along Ang Mo Kio Street 61. She was escorted to a CNB operational vehicle bearing the registration number “SJG 9851X” (“the CNB vehicle”) where she was placed in the custody of two CNB officers, Staff Sergeant Sanusir bin Othman and Woman Sergeant Meenambikhai Arul Molzi Thevar (PW12) (“W/Sgt Meena”).

6 At about the same time, a team of CNB officers led by Senior Station Inspector Ng Tze Chiang Tony (PW14) (“SSI Tony Ng”) proceeded to the Flat and forced their way in. Upon gaining entry, they found Zainudin seated on the floor of the master bedroom. No one else was in the Flat. Zainudin was then arrested.

7 At about 6.13pm, a search was conducted on Shanti in the CNB vehicle. Her personal properties and a bundle of Singapore currency amounting to \$8,200 were seized from her.

8 At about 6.18pm, a search was conducted on the Flat by the CNB officers, and the following items were seized:

(a) two black plastic bags and one orange plastic bag (marked as “C1”);

(b) three paper rolls and one piece of foil (marked as “C2”);

¹ See exhibit P6 – location marked “X” by SSgt Eric Goh.

- (c) one empty packet and one empty straw (marked as “C3”);
- (d) one roll of foil (marked as “A1”);
- (e) torn newspaper pasted with green masking tape (marked as “B1”);
- (f) two empty packets (marked as “B2”); and
- (g) a weighing scale (marked as “D1”).

9 Another CNB officer, Senior Staff Sergeant Eng Chien Loong Eugene (PW16) (“SSSgt Eugene Eng”), noticed a trail of brown cubes on the Flat’s kitchen floor. The trail led to the rubbish chute. Those cubes were seized by SSgt Eric Goh in Zainudin’s presence. There were four cubes altogether, and these were marked as “E1”, “F1” (the collective marking for the two cubes that were found inside the kitchen cabinet) and “H1”.

10 Sometime before 6.48pm, SSSgt Eugene Eng proceeded to the rubbish collection point bearing numbers 924 and 926 on the ground level of Block 631. He found brown granular or powdery substance inside a black rubbish bin in that rubbish collection point. He also noticed some brown granular or powdery substance scattered on the floor of the rubbish chute. Thereafter, Zainudin was escorted to the rubbish collection point by a team of CNB officers including SSgt Eric Goh.

11 At about 6.55pm, Zainudin was questioned by SSI Tony Ng. Zainudin admitted that the brown granular or powdery substance inside the bin was heroin and belonged to him. He admitted that he had thrown two packets of heroin down the rubbish chute earlier and that the two packets of heroin were meant to be distributed to “clients”.² CNB officers proceeded to photograph

the scene. One piece of brown granular or powdery substance was retrieved from the rubbish chute area, and was labelled and marked as “K1”. The various items found in the rubbish bin were also retrieved, labelled and marked as follows:

- (a) one big clear plastic bag containing granular substance (marked as “L1”);
- (b) one opened clear plastic bag containing several substances (marked as “L2”);
- (c) loose brown granular substance scattered inside the bin (marked as “L3”); and
- (d) numerous empty packets containing “snap-lock” packets (marked as “L4” to “L7”).

12 All the seized drug exhibits were photographed and weighed in the presence of Shanti and Zainudin at about 5.39am the next morning (17 May 2014). The exhibits were sent to the Health Sciences Authority (“the HSA”) by the investigating officer, Station Inspector Shafiq Basheer (PW17) (“SI Shafiq”), on 19 May 2014 for analysis. Ms Yu Li Jie (“Ms Yu”), an analyst with the HSA’s Illicit Drugs Laboratory, analysed the seized drug exhibits and found them to contain a total of 897.08g of granular or powdery substance, containing not less than 22.73g of diamorphine. The weighing scale (“D1”) was also found by Ms Yu to be stained with diamorphine.

13 Four mobile phones were seized from Zainudin and Shanti (two from each of them) and analysed by the CNB’s Forensic Response Team. A report

² P136; AB440

of the phone records was produced for each of the phones. The relevant extracts showed that various calls were made between Zainudin, Shanti, one Mangalagiri Dhuvra Kumar (“Mangalagiri”) and one Yeepen Anek on 16 May 2014 between 4.56pm and 6.07pm, before Zainudin and Shanti were arrested.

The Prosecution’s case: Zainudin

14 The Prosecution’s case was that Zainudin was in possession of the two packets of heroin with the intention of distributing them, and had therefore committed the offence of having the heroin in his possession for the purpose of trafficking. It submitted that Zainudin had actual knowledge that the substance was heroin, and that in any event, even if there was insufficient evidence to show such knowledge, Zainudin failed to rebut the presumption of knowledge in s 18(2) of the MDA that had been triggered against him.

15 The Prosecution submitted that Zainudin had received the bundle from Shanti on 16 May 2014 at about 6.00pm when they met at the second level lift lobby area of Block 631, and had handed her \$8,200 in exchange for it. He then returned to the Flat and began to repack the heroin for subsequent delivery to third parties, acting on the instructions of one “Boy Ahmad”. The Prosecution relied on the six statements recorded from Zainudin to prove the charge against him. The statements were admitted in evidence at the trial. These were namely, a contemporaneous statement, a cautioned statement recorded under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“the CPC”) and four long statements recorded under s 22 of the CPC.

16 In the contemporaneous statement which he gave shortly after he was arrested, Zainudin admitted that the brown granular or powdery substance retrieved from the rubbish collection point was heroin and that it belonged to

him.³ He further admitted that he had thrown two packets of heroin down the rubbish chute, and that the two packets of heroin were meant to be distributed to his clients.

17 Zainudin’s cautioned statement⁴ and four long statements⁵ contained further confessions which detailed how he came to be involved with drug trafficking and specifically, his role in dealing with the heroin which Shanti had delivered to him. In his cautioned statement which was recorded on 17 May 2014 after the charge had been read out to him, Zainudin did not seek to contest the charge and stated as follows:⁶

I would like to ask for a lighter sentence. I plead guilty. I regret what I have done. I will not repeat my offence.

18 In his first long statement recorded on 21 May 2014,⁷ Zainudin explained how he came to be involved with drugs. He was in financial difficulty and needed “fast money”. His friend, “Boy Ahmad”, suggested that he could deal heroin. Zainudin agreed.

19 In his second long statement recorded on 22 May 2014,⁸ Zainudin stated that “Boy Ahmad” had passed him a digital weighing scale and he had purchased some small zip-lock bags for the job. He said that his first such involvement was on 12 May 2014. On the instruction of “Boy Ahmad”, he collected two “batu” from Shanti at Block 631 and passed her the sum of \$8,200 which had earlier been given to him by “Boy Ahmad”. Zainudin then

³ P136; AB440.

⁴ P161; AB703.

⁵ P162–165; AB709–736).

⁶ AB708.

⁷ P162; AB709.

⁸ P163; AB713.

repacked the drugs as instructed. He was asked to repack one “batu” into two packets of 226g each. He used the weighing scale to ensure that each packet weighed about 226g. He then delivered the drugs to various customers as directed by “Boy Ahmad”.

20 In his third long statement recorded on 26 May 2014,⁹ Zainudin recounted the events leading to his arrest. On 13 May 2014, “Boy Ahmad” met him and handed him the sum of \$8,200 for the heroin which was to be delivered to him in the next few days. “Boy Ahmad” also paid him \$300 for his efforts. Zainudin tied the cash of \$8,200 into two bundles and placed them into a red plastic bag.

21 Zainudin said in this statement that at about 9.00am on 16 May 2014, he received a call from “Boy Ahmad” who told him that there would be a delivery of heroin at about 6.00pm that evening. “Boy Ahmad” called him again at about 6.00pm and said that the person delivering the heroin had arrived. Zainudin asked to meet the person at the second floor of Block 631. He took the plastic bag containing the cash of \$8,200 and left the Flat. He proceeded to the second floor lift lobby and saw Shanti, who was waiting there. Shanti took out a plastic bag from a blue bag that she was carrying and passed it to him. Zainudin then passed her the plastic bag containing the \$8,200 in cash. Thereafter, they parted ways.

22 Zainudin then brought the plastic bag given to him by Shanti back to the Flat. From inside the plastic bag, he retrieved a bundle wrapped in newspaper and bound with green masking tape. He tore open the newspaper wrapping and saw that the bundle contained two packets of heroin in the shape of hard cubes. He used a pair of scissors to cut one of the packets in order to

⁹ P164; AB718.

repack them as instructed. While cutting the packet, Zainudin heard the CNB officers trying to enter the Flat. He then grabbed the two packets of heroin and threw them down the rubbish chute in the kitchen. In his rush, he did not notice that some of the granular substance had scattered on his kitchen floor near the rubbish chute (later marked as “E1”, “F1” and “H1”). He was subsequently arrested by the CNB officers. He admitted that he lied initially to the CNB officers when he told them that he had flushed the heroin down the toilet.

23 The fourth long statement was recorded on 27 May 2014.¹⁰ In this statement, Zainudin was shown the photographs taken of the scene and the exhibits. He confirmed that all the drug exhibits seized from the rubbish collection point and the Flat were given to him by Shanti. He stated that he did not consume any of the heroin obtained from Shanti, and that he would usually buy heroin in straws for his own consumption. Zainudin also correctly identified Shanti in photographs as the person who had delivered the drugs to him.

The Prosecution’s case: Shanti

24 The Prosecution’s case against Shanti was that she had committed the offence of drug trafficking by handing over the bundle containing the two packets of diamorphine to Zainudin. Its case was that sometime on 16 May 2014 at about 5.20pm, Shanti had collected the bundle from a male Indian, whom she later identified as Mangalagiri, near the Sheng Siong Supermarket located at Woodlands Centre, Singapore. She then delivered it to Zainudin the same day at about 6.00pm as instructed. The Prosecution submitted that as

¹⁰ P165; AB727.

Shanti was in possession of the bundle, she was presumed to have known the nature of the drug contained therein under s 18(2) of the MDA.

25 The Prosecution tendered Shanti's contemporaneous statement,¹¹ cautioned statement¹² and her long statements¹³ in evidence.

26 Shanti's contemporaneous statement was recorded in the CNB vehicle at 7.35pm, shortly after her arrest. At Shanti's request, the statement was recorded in both Tamil and English because she was comfortable with the Tamil language and could read and write it well. Shanti said in this statement that she had earlier passed "jama" to a male Malay, and that she did not know what "jama" meant. She also said that she had passed "jama" to this same person before. W/Sgt Meena, who recorded the statement, testified that she had recorded the term "jama" in inverted commas as this was a term used by Shanti herself. W/Sgt Meena also testified that she understood "jama" to be the street lingo for drugs, based on her 13 years' experience as a CNB officer.¹⁴

27 Apart from her cautioned statement which was recorded the morning after her arrest, Shanti gave 10 long statements. These were recorded by SI Shafiq with the aid of a Tamil interpreter, Mr Manickam s/o Periasamy ("Mr Manickam"), for the first to eighth statements and another Tamil interpreter, Mr V I Ramanathan, for the ninth and tenth statements.

28 In her first long statement,¹⁵ Shanti said that she worked as a security guard in Singapore and commuted to and from her home in Johor Bahru,

¹¹ P132; AB420.

¹² P148; AB612.

¹³ P149–160; AB618–702.

¹⁴ Notes of Evidence, Day 2 at pp 63–64.

Malaysia every day. In January 2014, she had encountered serious financial difficulties. Sometime in March 2014, a male Indian introduced himself to her as “Boy” while she was waiting at the bus stop near her home and told her that he was looking for someone to do a job. The job entailed bringing “jamah” to Singapore to deliver to someone and then collecting money which was to be handed to him. As Shanti was in financial difficulties, she agreed to carry out various tasks for “Boy” for which she would receive payment. Subsequently, “Boy” asked for more details about her family and background. He told her that if she ran away with the money, he would abduct her children. Shanti was then staying in her residence in Johor Bahru with her two youngest daughters.

29 In her second long statement,¹⁶ Shanti recounted some of the tasks that she had done for “Boy”. The first task took place sometime in March 2014. This involved collecting money from one “Chris” at Sim Lim Square after handing him a small black bundle that had been given to her earlier by a male Indian at Queen Street, Singapore. She checked what “Chris” gave her and found that it contained \$700. She then gave the \$700 to “Boy” in Malaysia on his instructions. For her second task, she collected a white bundle from “Chris” again at Queen Street. When she opened the bundle, she found that it only contained blank paper. “Boy” later told her that there was supposed to be RM20,000 in the bundle and that it was her fault that that sum was missing. He then told her that she had to continue working for him since she had lost the sum.

30 In her third long statement,¹⁷ Shanti said that Boy instructed her to take a taxi to Block 826 Jurong West Street 81, Singapore sometime in April 2014.

¹⁵ P169; AB618.

¹⁶ P150; AB631.

¹⁷ P151; AB640.

There, she collected a transparent packet containing money which had been placed on the floor by the lift on the fourth floor of that block. After doing so, she went to the main road and within five minutes, a male Indian came on a motorcycle to collect the money. Shanti then went off to work. There were two other occasions when she helped “Boy” collect money in a similar manner. Shanti said that she asked “Boy” about the money she was collecting, but he told her not to ask and to just do as she was told. She said that she felt “on many occasions that something was wrong” but continued to work for “Boy” due to her financial difficulties.

31 She also said in this statement that sometime in May 2014, “Boy” told her that the work would be a bit different. She would have to collect something and deliver it. When Shanti asked “Boy” what she would have to collect, he told her it was “jamah” and it was “safe”. Shanti asked if there would be any problems with sending and collecting the “jamah” but “Boy” told her that he would take care of her safety. Sometime in the first week of May 2014, Shanti went to Woodlands Centre as instructed and met a male Indian. They identified each other with the agreed form of code, which was to say “A” to each other. The male Indian passed her a plastic bag containing one bundle of “jamah”. Shanti said that she did not check the contents of the bundle and she “did not want to know what was inside”. She “only wanted the RM200” which “Boy” would pay her for her efforts. She said that she knew that “Boy” had asked her to do something illegal, and that she knew the bundle did not contain cigarettes due to its shape.¹⁸

32 In her fourth long statement,¹⁹ Shanti continued from where she left off in her previous statement and stated that after collecting the “jamah” on that

¹⁸ P152; AB645.

¹⁹ P153; AB646.

first occasion in early May 2014, she was directed by one “Abang” to go to Block 631. Upon reaching the block, she was directed to go to a certain floor of the block. There, she met a male Malay who passed her a plastic bag containing cash. Shanti then passed him the plastic bag containing the “jamah”. After they parted ways, Shanti called “Boy” who directed her to the main road where a male Indian came on a motorcycle to collect the money. Shanti did the same on two other occasions before she was arrested on 16 May 2014. She identified Zainudin as the person who had collected the “jamah” from her on the third occasion.

33 In her fifth long statement,²⁰ Shanti recounted the events on the day of her arrest. It was the fourth occasion that she was delivering “jamah”. She said that before she left for Singapore, she asked “Boy” again about the type of “jamah” which she collected each time. He replied that it was “nothing”. Shanti asked if he was sure, and also informed him that she was not going to do the job anymore after that occasion. She left for Singapore and collected the bundle of “jamah” placed in a plastic bag from a male Indian at Woodlands Centre. She said that she did not bother to check the contents of the plastic bag because “Boy” had told her she should not worry about the contents. The bundle was wrapped in newspaper and secured with green masking tape. She placed the plastic bag containing the bundle into her blue bag. She then called “Abang” who told her to go to Block 631 again.

34 Shanti said that she took a taxi to Block 631, and called “Abang” when she arrived. She proceeded to the second floor lift lobby as directed and saw Zainudin there. She passed him the plastic bag containing the bundle, and in turn he handed her a red plastic bag containing cash. After parting ways, she

²⁰ P153; AB653.

went to the main road to wait for the male Indian to come and collect the money from her, but she was arrested by the CNB officers before that could happen.

35 In her sixth long statement,²¹ Shanti was shown the photographs taken of the seized exhibits. She said that she did not recognise the drugs. She reiterated that she did not know that “jamah” was drugs, although she conceded that “jamah” could also be used to refer to drugs. She had claimed that she learnt that the bundle contained drugs as W/Sgt Meena had informed her that they were drugs, and referred to them as “Bothaiporul”. Shanti also conceded that she had every opportunity to check the bundle but chose not to do so. When W/Sgt Meena was queried at trial whether she had told Shanti while recording her contemporaneous statement that the bundle seized contained “bothaiporul”, she testified that she had not done so.²²

36 In her seventh long statement,²³ Shanti gave more information on the four occasions that she had helped “Boy” to deliver “jamah”. Shanti confirmed that she had delivered “jamah” to Zainudin on the third and fourth of those occasions, and that she had been arrested on the fourth occasion.

37 In her eighth long statement,²⁴ which was recorded much later on 21 September 2015 (sixteen months after her arrest), Shanti used a different word to refer to the contents of the bundle. Instead of “jamah”, she now referred to the contents as “jaman”, which she said meant “malaikkaran-odu jaman”. She explained that the term referred to herbs used by the Malays, and claimed that

²¹ P154; AB658.

²² Notes of Evidence, Day 2 p 64 at lines 18-30.

²³ P155; AB666.

²⁴ P156, P157 (Transcript); AB671.

she had told this to the officer who arrested her. Shanti also claimed that she had thought the drugs were “Gula Melaka” (brown sugar used to make cakes) when they were weighed. She also identified Mangalagiri as the person who had passed her the “jaman”.

38 In her ninth and tenth statements which were recorded in February and March 2016,²⁵ Shanti again identified Mangalagiri as the male Indian who had passed her the drugs on 16 May 2014 in the vicinity of Sheng Siong supermarket, Woodlands. She also gave more information about Mangalagiri.

Close of the Prosecution’s case

39 At the close of the Prosecution’s case, having considered the evidence before me, including the statements of both Zainudin and Shanti, I ruled that the Prosecution had adduced evidence in support of the respective charges against Zainudin and Shanti, which was not inherently incredible and satisfied the elements of the charges, and which if unrebutted would warrant their conviction. As such, I administered the standard allocution and called on them to enter their defence.

The Defence (I): Zainudin

40 Zainudin elected to remain silent when his defence was called. In the submissions that his counsel tendered on his behalf, it was not disputed that he knew that the bundle he collected from Shanti contained diamorphine and that he had intended to traffic it. He did not seek to contradict his admissions in his long statements that “Boy Ahmad” had instructed him to repack the heroin into smaller packets and to deliver them to various buyers.

²⁵ P158, P159 (Transcript), P160; AB685–702.

41 Zainudin’s defence against the capital charge was premised on a key argument – that the Prosecution had not proven that he was in possession of the full quantity of the diamorphine that had been seized (*ie*, 22.73g) such as to exceed the threshold of 15g which would attract the mandatory death penalty should he be found guilty and convicted of the charge (unless s 33B(1)(a) of the MDA is invoked). In particular, counsel submitted that it had not been proved beyond reasonable doubt that each and every piece of “loose substance” comprised in K1 and L3 (see [11] above) had been in Zainudin’s possession. K1 and L3 were found to contain not less than 0.10g and 10.91g of diamorphine respectively. Counsel submitted that there was a possibility which was “reasonable rather than wholly speculative” that the “loose substance” may not have originated from plastic bag L2. It was suggested that some of the drugs retrieved from within the rubbish collection area could have originated from someone else living in the same block, who might have also decided to throw the drugs down the rubbish chute when they heard the CNB officers.

The Defence (II): Shanti

42 Shanti’s defence rested on two main contentions: first, that the Prosecution had not proven that she was in possession of the diamorphine, and second, that in any event she did not know the true nature of the drugs and had thought that the “jamah” she was delivering was “jamu” or Malay herbs. In her testimony, Shanti denied that she had knowledge of the contents of the bundle (*ie*, that it contained heroin), and claimed that she had not seen heroin before.

43 Shanti admitted that she had obtained a bundle from Mangalagiri and had passed it to Zainudin sometime between 5.50pm and 6.00pm on 16 May

2014 at the staircase landing between the first and second floor of Block 631. She agreed with the Prosecution that the bundle she had passed to Zainudin was wrapped with newspaper and green masking tape. She also agreed that the newspaper and bit of green masking tape in photograph P67 (labelled as B1), which had been seized from the Flat, was similar to what was wrapped around the bundle. She also agreed that Zainudin gave her a sum of money in return, which was subsequently seized by the CNB when she was arrested.

44 Shanti said that she was under the impression that the bundle contained a “Malay thing”. When asked further, she clarified that she thought that it contained “Malay herbs”, due to the smell it emitted. She had asked “Boy” whether the items were anything illegal. He assured her they were not, but did not tell her what they were. She said that “Boy” had told her that it was “nothing for [her] to be afraid [about]”, and told her, in response to her query, that it was not illegal cigarettes. She said that she had thought “from the very beginning that this was jamu used by men”, and that “Boy” “was shy to say that”. She explained that because she was frightened, she did not say in her statements that Boy had told her “jamah” was something used by Malays even though “Boy” had actually told her so. She was unable to furnish much information about “Boy” as she “[did] not know anything about “Boy””.

45 When Shanti was queried on whether she was “suspicious” of the contents of the bundle, Shanti claimed that she was “not suspicious but wanted to confirm” that “Boy” would not “cause any problems for her”. When she was cross-examined on portions of her statement where she had stated that she *knew* that “Boy” had asked her to do something that was illegal, she claimed that she did not use the words “something illegal” in those statements.

46 Further, when she was referred to portions of her statements where she stated “I was a fool not wanting to know what was inside the bundle “jamah””, Shanti disowned those portions by stating that she “could not remember seeing [sic] this”. When she was again pointed to portions of her statement which stated “I did not want to know what type of “jamah” was inside the bundle”, Shanti stated that she “cannot remember saying that” and then clarified to say that “[she] did not say it.” She claimed that these were neither read back nor shown to her at that time.

47 Shanti’s attention was also drawn to her statements which stated that on 16 May 2014, she was still asking about what was inside the “jamah”. Her reply was that she wanted to confirm what was inside the “jamah” so that she would not get into trouble. According to her, he stated that “it was nothing, and [to] not be worried”, and claimed that “it was a thing used by Malays”.

48 When queried on her understanding of the term “jamah”, Shanti had stated in her sixth long statement that “bothaiporul” could also be called “jamah” as “‘jamah’ is anything”.²⁶ Although this was not disputed in her examination-in-chief, she later claimed in her cross-examination that an entire series of questions and answers in her statement at P154 was not asked or said at all. Yet, she agreed that she had appended her signature to this statement, and had no explanation for why this entire series of questions and answers was in her statement.

49 Shanti further claimed in her cross-examination that various portions of her statements contained things she did not actually tell the recorder (SI Shafiq). She disagreed that the statements were given voluntarily by her. However, she agreed that she was not threatened, induced or forced in any

²⁶ AB664.

way to give those statements. She also claimed that she had only seen her statements the evening before she took the stand (*ie*, on 2 August 2016), even though the committal hearing took place a year ago on 21 August 2015. Counsel subsequently explained that this was due to their oversight in not giving her copies of her statements. There was, however, some discrepancy in terms of when Shanti was shown the statements. Shanti said that it was in the evening of the second day of trial, while on counsel's account, it was two days *before* the trial.²⁷ Nothing, however, seemed to turn on this discrepancy.

50 Finally, Shanti also disputed the precise location where she had met Zainudin and contended that they had not actually met at the lift lobby area on the second floor but at the staircase itself leading up to the lift lobby area. She did not dispute that she had passed a bundle to Zainudin, but maintained that it was contained in a white plastic bag. She further pointed out that no CNB officer had testified to having seen her pass a white plastic bag to Zainudin, and that instead, SSSgt Eugene Eng's evidence was that he saw Zainudin carrying a black plastic bag. In this regard, counsel for Shanti put forward the possibility in his closing submissions that there could have been a separate exchange of plastic bags between Zainudin and a third party after Zainudin received the bundle from Shanti.²⁸ Further, counsel also submitted that there was a possibility that some of the drugs that were retrieved from the Flat and the rubbish collection point were not given to Zainudin by Shanti but were from other sources and were already present in the Flat.²⁹

²⁷ Shanti's closing submissions at para L(b).

²⁸ Shanti's closing submissions at p 32.

²⁹ Shanti's closing submissions at p 48.

Findings (I): Zainudin

51 The charge against Zainudin is one under s 5(1)(a) read with s 5(2) of the MDA. The two sub-sections provide as follows:

5. – (1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore – (a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

52 Section 2 of the MDA provides that the term “traffic” means “to sell, give, administer, transport, send, deliver or distribute”, or to offer to do any of these acts.

53 Having examined the evidence, in particular the statements recorded from Zainudin, I was satisfied that the Prosecution had proved the charge against Zainudin. He admitted in his statements that he was in possession of the heroin and had intended to distribute them to clients on the instructions of “Boy Ahmad”. It was clear from his statements that he had actual knowledge that the brown substance found in the Flat and the rubbish collection point were heroin. In any event, he was presumed to have known the nature of the drug in question (*ie*, diamorphine), and the burden fell on him to rebut that presumption on a balance of probabilities.

Zainudin’s statements

54 Zainudin did not dispute the contents of the six statements (summarised at [15]-[23] above) that were recorded from him. I accepted that

the contents of the statements are of cogent probative value; they are relevant and are therefore admissible evidence.

55 Zainudin’s statements established how he became involved in the business of drug dealing and crucially, that on the day in question, he knew he was in possession of diamorphine and had intended to subsequently distribute the diamorphine to “clients”.

56 From the point of his arrest, Zainudin had always admitted that he knew the two packets he received from Shanti contained heroin. He always referred to the two packets as “batu” or “heroin”. SI Shafiq testified that “batu” is the lingo used by drug consumers and drug traffickers to refer to heroin, and that one “batu” usually referred to about 470g to 490g of heroin. Zainudin admitted to SSI Tony Ng that the granular substances in the rubbish bin at the rubbish collection point was “heroin” and that he had thrown the “heroin” down the rubbish chute when the CNB officers were forcing their way into the Flat. When his contemporaneous statement was recorded, he again admitted to Staff Sergeant Muhammad Helmi bin Abdul Jalal (PW13) (“SSgt Helmi”) that the “cube-like substances” shown to him in the rubbish chute were “heroin”. Thus, even without reference to the presumption in s 18(2) of the MDA, there was cogent evidence to prove that Zainudin had actual knowledge that the two packets contained heroin (*ie*, diamorphine).

57 Zainudin had also admitted in his statements that he had intended to distribute the heroin to “clients” after repacking them into smaller packets as instructed by “Boy Ahmad”. He also gave details on how he had done this on previous occasions, including on 12 May 2014 when he had collected drugs from Shanti and had proceeded to repack and deliver them to various customers.

The aggregate quantity of heroin

58 In his closing submissions, counsel raised the possibility that another person or other persons in the same block might have thrown some quantities of heroin down the rubbish chute at or around the same time as Zainudin. While this possibility could not be wholly discounted, it called for a large measure of speculation and conjecture. It was a highly implausible possibility. With respect, such a conjecture was simply insufficient to raise any reasonable doubt in the circumstances, especially in the light of Zainudin's own undisputed evidence in his statements. In this connection, and for the following reasons, I did not think this submission assisted Zainuddin's defence.

59 First, there was only a very short lapse in time from when Zainudin threw the two packets of heroin down the rubbish chute in the Flat to the time they were discovered by the CNB. Zainudin was arrested at about 6.10pm on 16 May 2014. On his own account, he threw the two packets of heroin down the rubbish chute just before his arrest. SSSgt Eugene Eng proceeded to the rubbish collection point below the Flat less than twenty minutes later, at about 6.30pm, and discovered the heroin in the rubbish bin and chute area.

60 Second, SI Shafiq's evidence was that the street value of heroin at the material time was about \$20 to \$30 for a straw of heroin, which would weigh about 0.3g. The total street value of the heroin recovered in this case was therefore between \$60,000 and \$90,000. A single cube alone such as exhibit K1 which was recovered from within the rubbish chute area had a street value of close to \$200.17. The possibility that someone else, who lived in either unit 924 or 926 on the other floors of the same block, might have thrown such valuable heroin down the rubbish chute at around the same time as Zainudin

was remote and was a matter of pure speculation. These considerations were strongly indicative that the entire quantity of heroin recovered was from the same two “batu” which were in Zainudin’s possession prior to his arrest. The total weight of the heroin detected and retrieved from both the Flat as well as the rubbish collection point was 897.08g, close to the weight of two “batu” that he had admitted to having handled that day.

61 Third, and crucially, up until the closing submissions tendered by his counsel, Zainudin never disputed that all the drugs recovered from the Flat as well as the rubbish collection point belonged to him, and had been in his possession prior to his arrest by the CNB. SI Shafiq had also confirmed with the Ang Mo Kio Town Council that the said rubbish collection point served all the units 924 and 926 of Block 631, which included Zainudin’s unit. When he was first shown the contents of the rubbish bin and asked by SSI Tony Ng what was inside, Zainudin acknowledged that it was heroin, and that all the heroin there belonged to him. He also informed that he had earlier thrown two packets of heroin down the rubbish chute. This was repeated in a contemporaneous statement recorded from him by SSgt Helmi. When the cautioned statement was recorded from him on 17 May 2014 at about 8.18am, it was in relation to a charge of trafficking in 948.3g of heroin and he fully admitted to the offence. Subsequently, when Zainudin was shown photographs of all the drug exhibits, he admitted that all the drug exhibits belonged to him.

62 In his third long statement, Zainudin informed that the two packets of heroin which had been given to him by Shanti was “two batu”, and that each “batu” weighed slightly less than 500g.³⁰ He stated in his second long statement that he had paid a sum of \$8,200 to Shanti for heroin amounting to

³⁰ Agreed Bundle p 718 (P164).

“two batu” a few days before on 12 May 2014.³¹ On that occasion, he had repacked “one batu” into two separate packets, and weighed each packet to ensure that each weighed about 226g. As stated at [56] above, SI Shafiq had also testified that one “batu” usually referred to about 470g to 490g of heroin. All the above supported the conclusion that on 16 May 2014, Zainudin had been in possession of two “batu”, which on his own account as well as on SI Shafiq’s evidence would be close to 1,000g of heroin. The total weight of the heroin retrieved (897.08g) was not far off and was in fact, less than that.

63 In my view, there was no basis to suggest that the chain of evidence linking Zainudin’s disposal of the drugs to their retrieval had been broken, or that there might have been some other extraneous or intervening event that could reasonably have led to the discovery and retrieval of an aggregate quantity of heroin beyond what Zainudin had originally disposed of.

Decision to remain silent

64 Having regard to the totality of the evidence in respect of Zainudin, I drew an adverse inference against him for electing to remain silent after his defence was called. I noted that Zainudin had contemporaneously admitted his guilt and had maintained this position throughout the recording of the rest of his statements. In all likelihood, he had not denied the charges against him during investigation and had chosen to remain silent during trial because he knew that he had been caught red-handed. If he had genuinely handled only a much smaller quantity of heroin that day than what was eventually retrieved in the aggregate, it would have been eminently reasonable for him to seek to offer an explanation and provide clarification in his own defence. He chose not to do so. In the absence of any such explanation, and having regard to his

³¹ Agreed Bundle p 714 (P163).

statements, I was unable to accept that there is any valid explanation which might assist to exculpate him.

Conclusion on Zainudin

65 Zainudin's statements contained clear and unambiguous confessions which show that he was aware that he was repacking the heroin for subsequent distribution on the instructions of "Boy Ahmad" on 16 May 2014. I was satisfied that the Prosecution had proved beyond reasonable doubt that Zainudin knew that the two packets contained heroin, and that he had been in possession of the two packets of heroin for the purpose of trafficking. In addition, I was satisfied that the aggregate quantity of heroin which was retrieved had been in his possession. I was unable to see any merit in the defence's submission that the quantity comprising the "loose substance" in K1 and L3 (containing not less than 0.10g and 10.91g of diamorphine respectively) might not have been in his possession that day.

66 In the circumstances, I was satisfied that the charge against Zainudin under s 5(1)(a) read with s 5(2) of the MDA was proved beyond reasonable doubt.

Findings (II): Shanti

67 Shanti faced a charge of trafficking in the heroin by giving them to Zainudin. She did not deny in her statements or in her oral testimony that she had delivered the bundle to Zainudin on 16 May 2014. Notwithstanding that, counsel submitted that it was not proved beyond reasonable doubt that the bundle that Zainudin had collected from her contained the heroin. I shall address this point first, before dealing with two fundamental aspects of

Shanti's defence, namely, her dispute as to certain portions of her statements and her lack of knowledge of the contents of the bundle.

Evidence of delivery of the bundle to Zainudin

68 There were attempts to discredit the Prosecution's case insofar as the location where the bundle was handed over and the colour of the plastic bag containing the bundle were concerned. There was also an attempt to suggest that there might have been a separate exchange of bags between Zainudin and a third party after he received the bundle from Shanti or that some of the drugs might have belonged to Zainudin. To my mind, these were inconsequential red herrings. The chain of evidence linking her delivery of the bundle to Zainudin, his handling of the heroin contained therein and their eventual retrieval from the Flat and the rubbish collection point was clear, coherent and uncompromised. The submission made in counsel's closing submission that Zainudin *could* have met another person and exchanged the bags was merely a conjecture that lacked evidential basis. The submission that some of the drugs might have belonged to Zainudin was also unsupported.

69 From the evidence adduced as well as her own admission, the Prosecution had proved that Shanti was in possession of the bundle containing the two packets of heroin, described by Zainudin as "two batu", which she delivered to Zainudin. Zainudin's evidence was that after he took the bundle from her, he proceeded to repack the heroin but had to abort his efforts when he heard the CNB officers knocking on his door. He then disposed of the heroin by throwing the two packets down the rubbish chute. There is no mention of any third party or any other intervening event between him meeting Shanti and him returning to the Flat.

70 The only question that remained was whether Shanti had the requisite knowledge that the bundle contained diamorphine. By the operation of s 18(2) of the MDA, Shanti was presumed to have known the nature of the drug which was contained in the bundle in her possession. This shifted the burden on Shanti to prove on a balance of probabilities that she did not know or could not reasonably be expected to have known the nature of the drug in her possession.

Disputed portions of Shanti's statements

71 Shanti's defence centred on her lack of knowledge of the actual contents of the bundle. She had described the contents in various ways in her statements. The admissibility of the 12 statements recorded from Shanti and tendered in evidence was not disputed and she agreed that she was not threatened, induced or forced in any way to give those statements.³² Yet, she sought to disavow portions of her statements, claiming that she never said those matters as recorded. However, she agreed that they were not concocted by the recorder. Neither the recorder (SI Shafiq) nor the interpreter (Mr Manickam) was confronted with the disputed portions during the trial. As stated at [49] above, Shanti's explanation for this was that her counsel, due to their inadvertence, did not show her copies of her statements until the evening of the second day of trial (2 August 2016). I should first state that this is highly unsatisfactory. Counsel have the responsibility and duty of ensuring that the accused persons they are representing are aware of the contents of the statements or other important evidence from an early stage. As this was a criminal case and Shanti was facing a capital charge no less, I gave her the benefit of the doubt and accepted this as the explanation for why she may not have cross-examined the recorder or the interpreter on these inconsistent

³² Transcripts, Day 3, p 7 at lines 12 to 18.

portions. But notwithstanding that, the other inconsistencies and problems with her attempts to disavow those portions remained. These could not be explained away on the basis that she did not have a chance to look at those statements again until after the trial had begun.

72 I was not persuaded by Shanti's selective claims that only some portions of the statements were not what she had told the recorder. If her claims were to be accepted, they would mean that only certain potentially self-incriminating portions of her statements would be excised and disregarded, leaving behind truncated and incoherent descriptions or accounts of events. One striking example appeared in relation to the following paragraph of the third long statement, where Shanti had stated:

I believe that the large amounts of money that I collected on these past occasions that I mentioned were for drugs delivered by other people only after I was arrested on 16 May 14. I do not know who these people are. **I asked "Boy" why I have to collect all these money in large amounts from people.** He replied by saying not to ask him but to do as I am told. I have asked him many times about the large amounts of money that I was tasked to collect. He said the same thing by saying not to ask him about it. **I felt on many occasions that something was wrong.** I still continued to work for "Boy" as I needed money to repay someone who sells tit bits at City Square. I had borrowed RM300 from him of which I repaid RM100 and was left with a RM200 debt from him. There I needed the money for this repayment of loan so I continued to work for "Boy" to collect money in Singapore till the last occasion at Jurong West St 81. I paid the debt of RM200 after I received the payment of RM280 from "Boy".

[Emphasis in bold added]

73 Shanti was referred to this paragraph when she was testifying and was asked to point out which sentences she was disputing. She pointed out only the two sentences in bold, and confirmed that the rest of the paragraph was "okay". She did not put forward any alternative statements that she had allegedly made but which were not recorded. If only those two sentences were

removed, the paragraph would not make sense. In particular, if Shanti had never said the sentence: “I asked Boy...”, then the following line, “He replied by saying...” would not make sense. Moreover Shanti had confirmed that the preceding two paragraphs were accurate. There was no conceivable reason why SI Shafiq would have deliberately inserted these two sentences on his own accord after having faithfully and accurately recorded everything else.

74 As stated in her statement, Shanti had felt on many occasions when undertaking work for “Boy” that “something was wrong”. Following from the evidence that the circumstances under which she worked for “Boy” were highly suspicious, and that she herself felt so on many occasions, it must also have occurred to her that what she was delivering was illegal. In fact, she admitted as much in her third long statement.

75 Again, Shanti tried to distance herself from her admissions by claiming selectively that some portions of the statement (highlighted in bold at [72] above) did not originate from her. Yet, she could not offer any sensible explanation for this assertion. She did not dispute that these statements were read back to her and were signed by her, and that she had been afforded the opportunity to make any amendments should she have wanted to do so. Shanti claimed that some of the words in the paragraph were not read back to her but this would appear to be an afterthought as this claim was never put to the interpreter (Mr Manickam) when he was testifying. In any case, Shanti acknowledged that she was able to read English.

76 I was thus drawn to conclude that the third long statement (and in particular paragraph 30) was accurately recorded, and that Shanti had known all along that she was delivering something that was not only illegal but also valuable. In paragraph 27 of that statement, she stated that she had “asked

[Boy] many times about the large amounts of money that [she] was tasked to collect. He said the same thing by saying not to ask him about it”. Shanti admitted that those were her words.

77 Shanti also knew that the money she was tasked to collect by “Boy” were “payments made by persons receiving the “jamah”. Shanti tried to disavow this sentence, but again she could provide no sensible explanation as to why it was there. She agreed that everything else in that particular paragraph of her statement was said by her.

78 Her claim at trial that “Boy” had told her the money was tontine money was clearly another afterthought. She conceded that she never told this to SI Shafiq. She explained that she thought collecting tontine money was somehow wrong and therefore she did not tell this to him. This strained credulity, given that she knew at the point of recording this statement (18 May 2014 at 3.55pm) that she was facing a capital charge of drug trafficking. In any case, this explanation was also untenable in view of her admission in paragraph 27 of her third long statement (P151), that she had “asked [Boy] many times about the large amounts of money that [she] was tasked to collect ... [h]e said the same thing by saying not to ask him about it”. It therefore could not have been the case that “Boy” had told her that the money was tontine money.

79 Following from the above, I concluded that Shanti knew that the large amounts of money she was collecting was for the “jamah” which she delivered, and she therefore knew that “jamah” was both something illegal and valuable. I did not think that Shanti had offered any coherent or cogent explanations for her disagreement with the portions of her statements which she had taken issue with. Further, as pointed out by the Prosecution, Shanti

agreed, and also demonstrated clearly in court, that she was capable of reading and understanding English. Yet, she did not point out any inaccuracies when her statements were being recorded. Given the above, I was of the view that Shanti's various attempts to distance herself from portions of her statements were not credible. I therefore found that all the statements recorded from Shanti were accurately recorded and accorded due weight to them.

80 I was conscious that Shanti's statements referred to previous activities of a similar nature. In this connection, *Poon Soh Har and another v Public Prosecutor* [1977-1978] SLR(R) 97 is distinguishable on its facts. Unlike the situation in that case, the Prosecution's case against Shanti did not depend solely on similar fact evidence to establish guilt, but was founded on her admissions and the statutory presumption in s 18(2) of the MDA. The evidence of those past activities was relevant to her state of mind and its considerable probative value outweighed any prejudicial effect.

Shanti's knowledge of the contents of the bundle

81 According to Shanti, she was in financial difficulties and was approached by "Boy" sometime in March 2014. Although she agreed to work for him, she "felt on many occasions that something was wrong". His *modus operandi* as conveyed to her, including the use of "A" as a secret code to communicate with her contact person and the collection of large amounts of money, was highly suspicious and, in her own words, "odd". Her queries with "Boy" about what the "jamah" was betrayed her suspicion. They show that she had in fact suspected that "Boy" was engaged in an illegal business and she was involved in assisting him. The Prosecution pointedly cited the following illustrations where she would have been placed on alert:

(a) On one occasion when she was asked to collect money, her role involved collecting money which had been left on the floor of a lift lobby, and then going to a nearby road to hand over the money to someone on a motorcycle. Shanti admitted that this was “odd”. Her explanation was that she had told “Boy” that she did not want to collect money directly from anyone after the incident involving “Chris”. She conceded that she was not the one who requested that money be left on the floor, and in any case, leaving money lying around on a floor in a public area would not address her fears of money being lost. In fact, it should make it even more pronounced, and she would have been made even more suspicious of these transactions.

(b) On the very first occasion when she helped to deliver “jamah” in Singapore, she was told that someone would meet her at Woodlands Centre and say “A”, to which she was supposed to reply “A”, as an “agreed form of code to recognise each other”. She was not given the contact or the name of the person. This was strangely and needlessly secretive if it had been a legitimate business transaction. When confronted with this in court, Shanti changed her evidence to try and explain away this odd arrangement. She claimed that the arrangement was actually done at her request, since she did not wish to speak to any males after the incident with “Chris”.

82 I concurred with the Prosecution’s submission that her explanations were unconvincing and strained, suggesting that they were devised as afterthoughts. “Boy” had also on several occasions refused to tell Shanti what “jamah” was, even when she asked him specifically about it. Shanti must have known that if there had been an innocent explanation, “Boy” would have had no reason to refrain from disclosing them to her and operate under a shroud of

secrecy. She must have known from all of the above circumstances surrounding her work with “Boy” that “Boy” was engaged in an illicit business.

83 Turning next to Shanti’s claim at trial that she thought the bundle contained Malay herbs or “jamu”, I found that she had in fact, at the very least, known that she was delivering something illegal, for which “large amounts of money” had to be collected in payment. She conceded that she could have checked what she was delivering if she had wanted to. However, she chose not to do so despite having both the time and opportunity to do so, after collecting the “jamah” from Mangalagiri at Woodlands at about 5.20pm on 16 May 2014. Before she delivered the bundle to Zainudin at about 6.00pm, she was alone and could have easily checked the contents of the bundle. In her own words, she “did not want to know what was inside”.

84 I saw no basis for Shanti’s claim at trial that she thought the bundle contained Malay herbs or “jamu”. As the Prosecution rightly pointed out in its submissions,³³ this claim did not surface until 21 September 2015, some 16 months after her arrest. By then, she had given a total of nine statements (including the contemporaneous and cautioned statements) after her arrest on 16 May 2014. She elaborated at length on her background and work for “Boy” in the earlier statements but made absolutely no mention of her understanding or belief that the bundle of “jamah” contained herbs of any kind.

85 When Shanti’s contemporaneous statement was recorded, she was specifically asked what “jamah” meant. Shanti said that she did not know. If Shanti had genuinely thought that the “jamah” she had delivered was actually an innocuous item such as Malay herbs, it was difficult to see why she would

³³ Prosecution’s submissions at para 140.

not have simply said so to the arresting officer. It would have been only natural to do so if that was genuinely her understanding or belief. Her explanation for not raising it earlier was that when she was arrested, she was frightened and did not know what to say or how to react. However, when she was confronted with the fact that she had not revealed this information in her later statements as well, Shanti then claimed that she had already told this to W/Sgt Meena at the start. Yet, she thereafter conceded that she had told W/Sgt Meena that she did not know what “jamah” was. Her evidence was inconsistent, confusing and revealed a propensity to prevaricate.

86 Most tellingly, even when Shanti was faced with a capital charge of trafficking in a controlled drug and asked to give her cautioned statement in response, she did not say that the “jamah” was Malay herbs. Instead, the first thing she said was, “I did not know what was inside that plastic bag”. There are multiple references to “jamah” in her statements, where she indicated that she did not know what “jamah” was. If she had truly understood or believed that “jamah” was Malay herbs, it would only have been natural and logical for her to have clarified this at any of these points when she was referring to “jamah”. She did not do so.

87 Her explanation for how she came to conclude that the “jamah” she was delivering contained Malay herbs was unhelpful and inconsistent. She initially conceded that “Boy” did not tell her what the bundle contained during their first conversation about the job, but went on to say that “from the very beginning” she thought it was “jamu used by men” and she “assumed that he was shy” in telling her that. When asked why she made that assumption, she then said that “Boy” had told her it was something used by Malays. When her inconsistency was pointed out to her, she then said that she could not

remember when he had told her this. Shanti was unable to provide a reasonable basis at all for her purported belief that “jamah” was Malay herbs.

88 As noted above (at [84]), the very first time Shanti mentioned Malay herbs was in her statement recorded on 21 September 2015, where she sought to explain the references to “jamah” in her previous statements. I was in full agreement with the Prosecution that the sudden and belated emergence of this reference to “jamah” being Malay herbs amply demonstrated that this explanation was clearly an afterthought. I was unable to see any merit in her claim. She provided no reasonable basis for her purported belief, and could only proffer feeble explanations for why she did not raise this fundamental aspect of her defence at any time until 21 September 2015.

89 Shanti was proved to have been in possession of the bundle which she had delivered to Zainudin. The evidence before me demonstrated that Shanti was undoubtedly fully aware that she was carrying illegal and valuable items; she knew they were not illegal cigarettes. For reasons best known to her, she did not want to check what was in the bundle despite having ample opportunity to do so. Pursuant to s 18(2) of the MDA, Shanti was presumed to know the nature of the “jamah” she was tasked to deliver. Having regard to the observations of the Court of Appeal in *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 (at [21]), Shanti therefore had to prove, on a balance of probabilities, that she did not know or could not reasonably be expected to have known that the bundle contained controlled drugs (*ie*, heroin).

90 In my assessment, Shanti had not discharged the burden of rebutting the operative presumption under s 18(2) of the MDA. The accounts and explanations she provided were neither consistent nor believable. Hence I

found that the Prosecution had proved the charge of trafficking against Shanti beyond reasonable doubt.

Observation on Prosecution's submission of wilful blindness

91 I would venture to make some further brief observations in relation to a point submitted by the Prosecution. It was submitted that Shanti had “clearly been wilfully blind as to the nature of the “jamah” she was tasked to deliver”, and had thus failed to rebut the presumption in s 18(2) of the MDA. With respect, the reference to Shanti being “wilfully blind” appears to conflate two distinct considerations, given that the Prosecution had sought to rely on the operative presumption of knowledge in s 18(2) of the MDA and had not sought to prove actual knowledge.

92 In the circumstances, the preferred approach as a matter of principle is that which was expounded by the Court of Appeal in *Nagaenthiran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 (at [30]), as recently reiterated by Hoo Sheau Peng JC in *Public Prosecutor v Khartik Jasudass and another* [2015] SGHC 199 and Chan Seng Onn J in *Public Prosecutor v Mohsen bin Na'im* [2016] SGHC 150. Where wilful blindness has been proved beyond reasonable doubt, the Prosecution need not place reliance on the presumption in s 18(2) of the MDA.

93 The more principled approach therefore recognises that proving beyond a reasonable doubt that a person is “wilfully blind” is one way to prove actual knowledge. This is not exactly the same exercise as one which involves determining whether the presumption in s 18(2) of the MDA has been rebutted. The end result may however be the same. In the present case, as explained above, I proceeded on the basis that the Prosecution was relying on

the presumption in s 18(2) of the MDA and that Shanti had not successfully proved on a balance of probabilities that she did not know or could not reasonably be expected to have known the nature of the controlled drug.

Conclusion

94 The evidence established that Zainudin had the drugs in his possession for the purpose of trafficking, and Shanti had delivered those drugs to him and had committed the offence of trafficking. I found that the evidence showed that Zainudin knew that he had diamorphine in his possession, and that Shanti had failed to rebut the presumption of knowledge in s 18(2) of the MDA. I was satisfied that the Prosecution had proved the respective charges against both Zainudin and Shanti beyond a reasonable doubt. I therefore found them both guilty and convicted them of their respective charges.

95 The quantity of diamorphine in question was 22.73g. By s 33(1) of the MDA read with its Second Schedule, the punishment prescribed for trafficking more than 15g of diamorphine under s 5(1) of the MDA is death. However, pursuant to s 33B of the MDA, the court has the discretion not to impose the death penalty in certain circumstances. Under s 33B(1)(a) of the MDA, the court may order life imprisonment and caning of *at least* 15 strokes if the two requirements within s 33B(2) of the MDA are satisfied. First, the person convicted must prove, on a balance of probabilities, that his involvement in the offence under s 5(1) of the MDA is restricted to that of a mere courier, as set out in s 33B(2)(a)(i)–(iv) of the MDA. Second, the Public Prosecutor must certify that the person convicted has given substantive assistance to the CNB in disrupting drug trafficking activities within or outside Singapore.

96 In respect of the first requirement, counsel for Zainudin acknowledged that I was bound by the decision of the Court of Appeal in *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 at [63] (“*Chum Tat Suan*”). There, the Court of Appeal had endorsed the views expressed by the High Court in *Public Prosecutor v Abdul Haleem bin Abdul Karim and another* [2013] 3 SLR 734 (“*Abdul Haleem*”) on the narrow meaning to be accorded to the definition of a “courier” in s 33B(2)(a) of the MDA. In *Abdul Haleem*, the High Court concluded (at [51]) that a courier’s involvement is limited to delivering or conveying drugs from point A to point B. In *Chum Tat Suan*, it was also clarified (at [68]) that packing is *not* an act that is contemplated within the meaning of “transporting, sending or delivering”, as set out in s 33B(2)(a) of the MDA.

97 After conviction, the Public Prosecutor issued a certificate of substantive assistance under s 33B(2)(b) of the MDA in respect of Shanti but not for Zainudin. The Prosecution accepted that Shanti was a courier within s 33B(2)(a) of the MDA in that her role in the offence was restricted to transporting the diamorphine under the direction of “Boy”.

98 I was satisfied that Shanti’s role was restricted to that of transporting the diamorphine within s 33B(2)(a) of the MDA. Shanti was thus a courier as defined in the sub-section. Accordingly, I found that Shanti had satisfied the requirements of s 33B(2) of the MDA. I did not think the death penalty would be the appropriate sentence. In the exercise of my discretion within s 33B(1)(a) of the MDA, I imposed the sentence of imprisonment for life on Shanti instead, backdated to 16 May 2014, the date of her arrest. Pursuant to s 325(1)(a) of the CPC, she was not liable to be caned as she was a female.

99 As for Zainudin, I found that his involvement in the offence did not fall within the meaning of s 33B(2)(a) of the MDA which contemplates a narrow definition of what a courier does. It was clear that his act of repacking the drugs was not an act that is contemplated within the meaning of “transporting, sending or delivering”, as set out in s 33B(2)(a) of the MDA. The Public Prosecutor did not issue him a certificate of substantive assistance. As he did not satisfy the requirements set out in s 33B(2)(a) and (b) of the MDA, Zainudin was sentenced to the mandatory death penalty.

100 Two other drug-related charges against Zainudin had been stood down at the commencement of the trial and the Prosecution applied pursuant to s 147 of the CPC to withdraw those charges after I had delivered my decision. I granted the application and ordered a discharge amounting to an acquittal for those two charges.

See Kee Oon
Judicial Commissioner

Ong Luan Tze and Carene Poh Kai Lin (Attorney-General’s
Chambers) for the Prosecution;
Eugene Singarajah Thuraisingam, Jason Peter Dendroff and Suang
Wijaya for the 1st Accused.
A Revi Shanker s/o K Annamalai and James Dhanaraj Selvaraj for
the 2nd Accused.