Abdul Kahar bin Othman
v
Public Prosecutor

[2016] SGCA 11

Court of Appeal — Criminal Appeal No 4 of 2015
Chao Hick Tin JA, Woo Bih Li J and Tay Yong Kwang J
1 October 2015

Criminal law — Statutory offences — Misuse of Drugs Act (Cap 185, 2008 Rev Ed)

Criminal procedure and sentencing — Appeal — Adducing fresh evidence

24 February 2016

Chao Hick Tin JA (delivering the grounds of decision of the court):

Introduction

1 This was an appeal by an offender ("the Appellant") against his conviction and sentence of death on two charges of trafficking in diamorphine under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). It was heard together with his application for leave to adduce further evidence on appeal.

2 The main issue was whether there was sufficient evidence to rebut the presumption under s 18(2) of the MDA that the Appellant knew the nature of the drugs which were in his possession. The appeal also raised a subsidiary

question as to the admissibility of the cautioned statements and long statements purportedly given by the Appellant under, respectively, s 122(6) and s 121 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), that being the version of the Criminal Procedure Code which was in force at the time of the Appellant's arrest.

3 The Appellant's principal contention on appeal, as in the court below, was that he had been given the drugs in question by a friend known as "Latif" for safekeeping. He claimed that he had no knowledge that what he was safekeeping for Latif was in fact drugs, much less knowledge of the nature of those drugs.

4 After hearing the parties' arguments, we dismissed both the application for leave to adduce further evidence and the appeal. These are our reasons.

The facts

The Appellant is arrested with drugs in his car

5 On 6 July 2010 at around 3.17pm, the Appellant was driving on a slip road from Boon Lay Way onto Jurong Town Hall Road when officers from the Central Narcotics Bureau ("CNB") stopped and arrested him. The Appellant and his car were brought to a nearby open-air car park, where the car was searched. A red tote bag ("G1") was recovered from under the passenger seat of the car. G1 contained a packet of brown granular substance wrapped in newspaper.[1] This packet (also referred to hereafter as "the wrapped package in G1" where appropriate to the context) was later found, upon analysis by the

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[1] ROP vol 2 at p 23, P42.

Health Sciences Authority ("the HSA"), to contain 26.13g of diamorphine, and formed the subject of the first charge against the Appellant.

6 While the Appellant and the CNB officers were at the car park, SSgt Mohd Hafiz Jumali was instructed to record a statement from the Appellant. SSgt Hafiz claimed that he asked the Appellant three questions about the contents of G1 – namely, "What is this?", "Who does it belong to?" and "What are these for?" – all of which questions, the Appellant refused to answer.[2] SSgt Hafiz recorded the Appellant's refusal to respond to his questions in his pocket book.[3] SSgt Hafiz's pocket book entry was countersigned by one of his colleagues as a witness.[4] The Appellant, on the other hand, claimed that he was asked only one question (*viz*, "What is this?"), to which he replied that he did not know.[5] The Appellant also said that his response made SSgt Hafiz upset, and that the latter told him that he (SSgt Hafiz) could always "ask another officer to sign" if the Appellant did not admit to the offence.[6]

The Appellant's flat is searched and drugs are found in his bedroom

7 The CNB officers thereafter escorted the Appellant to the Housing and Development Board ("HDB") flat at Block 325 Bukit Batok Street 33, #06-03 ("the Flat") where he lived, arriving there at about 4.15pm. The Appellant's mother ("Mdm Bibah"), who owned the Flat and with whom the Appellant lived, was in the Flat at that time. The CNB officers searched the Flat, including

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2 NE 25 April 2013 at p 65 line 14–p 66 line 8.

3 ROP vol 2 at pp 166–167; NE 25 April 2013 at p 66 lines 7–8.

4 NE 26 April 2013 at p 3 lines 25–30.

5 NE 2 May 2013 at p 2 lines 4–12.

6 NE 2 May 2013 at p 2 lines 11–12.

the Appellant's bedroom. The bedroom door was locked when the CNB officers first arrived, but the CNB officers managed to unlock it with a key found on the Appellant.[7]

8 A red plastic bag ("A1")[8] and a black plastic bag with prints ("A2")[9] were recovered from the Appellant's bedroom. A1 contained a packet of brown granular substance wrapped in newspaper, two sachets of crystalline substance and multiple packets of smaller unused Ziploc sachets.[10] A2 contained two packets of brown granular substance which were wrapped in two further layers of plastic bags.[11] The contents of A1 and A2, which were later found, upon analysis by the HSA, to contain 40.64g of diamorphine, formed the subject of the second charge against the Appellant. Traces of the Appellant's DNA were also found on both the interior and the exterior surfaces of A1.

9 There was a dispute over the precise location where A1 and A2 were found. The Prosecution's witnesses gave evidence[12] that A1 and A2 were found concealed, but as two separate bags, in a cavity in a cupboard in the Appellant's bedroom.[13] That cavity could only be accessed when a drawer in the cupboard was removed in its entirety. In contrast, the Appellant testified that A1 was

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7 NE 24 April 2013 at p 50 line 30–p 51 line 1.

8 ROP vol 2 at p 17, P29.

9 ROP vol 2 at p 18, P31.

10 ROP vol 2 at p 17, P30.

11 ROP vol 2 at pp 18–19, P32–P33.

12 NE 25 April 2013 at p 49 lines 18–20.

13 ROP vol 2 at pp 11–12, P17–P19.

placed *inside* A2, and that A2 (with A1 inside) was placed in a drawer in the aforesaid cupboard, which was where the two bags found.[14]

10 Other items recovered from the Appellant's bedroom included a metal spoon, a digital pocket weighing scale, a packet of rubber bands and a brown envelope with numbers scribbled on it.[15] The spoon and the weighing scale were stained with traces of diamorphine.[16] The Appellant claimed that both the spoon and the weighing scale were found in A2, together with the rest of the drugs. In addition, a large amount of cash totalling more than $70,000 was recovered from another cupboard (different from the one mentioned at [9] above) in the bedroom.[17]

11 Mdm Bibah's bank passbook was also seized during the search of the Flat. There was approximately $100,000 standing to the credit of Mdm Bibah in her bank account.

12 At the Flat, SSgt Hafiz, who had earlier been instructed to record a statement from the Appellant (see [6] above), was instructed to record a second statement from the Appellant. He did so while he was alone with the Appellant in the latter's bedroom. SSgt Hafiz claimed that he asked the Appellant three questions about the contents of A1 and A2 – namely, "What is this?", "To whom does it belongs [*sic*] to?" and "What do you … intend to do with these two big

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14 ROP vol 2 at p 11, P17; NE 30 April 2013 at p 25 lines 9–23.

15 ROP vol 2 at p 19, P34; p 22, P39.

16 ROP vol 2 at pp 31–32.

17 ROP vol 2 at pp 20–21, P35–P38.

packets?" – to which the Appellant refused to respond.[18] SSgt Hafiz recorded this in his pocket book, and his entry was countersigned by his colleague as a witness.[19] The Appellant, on the other hand, claimed that SSgt Hafiz asked him only one question (*viz*, "What is this?"), to which he replied, "I don't know".[20]

13 After the Flat was searched, the CNB officers brought the Appellant to the Woodlands Immigration Checkpoint ("Woodlands Checkpoint"), where further searches were carried out on the Appellant's vehicle. The Appellant was thereafter brought back to the CNB headquarters, where he was given food at around midnight.

The Appellant's cautioned statements are recorded

14 On 7 July 2010 at 2.51am, ASP Aaron Tang recorded two cautioned statements from the Appellant in respect of each of the charges against him. The Appellant elected to speak in Malay, and the statements were recorded in the presence of Mdm Sophia Binte Sufri, who acted as the Malay interpreter. Only the Appellant, ASP Tang and Mdm Sophia were present at the recording of the cautioned statements. The recording of both cautioned statements concluded at about 3.40am. The pre- and post-statement medical examinations of the Appellant were conducted at Alexandra Hospital. Apart from superficial abrasions on the left side of the Appellant's forehead, there were no other significant clinical findings.[21]

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18 NE 26 April 2013 at p 12 line 22–p 13 line 30.

19 NE 26 April 2013 at p 14 lines 6–13.

20 NE 2 May 2013 at p 3 lines 6–23.

21 ROP vol 2 at p 63.

15 Both of the Appellant's cautioned statements were very brief, but admitted guilt. The first of the two cautioned statements read:[22]

> My family does not know about my activities. My family is not involved in this matter[.] I hope that my wife in Indonesia can be allowed into Singapore to see me. That's all.

The second statement read:[23]

> I am sorry. I don't change. I have caused problems to everyone especially my family and my wife. Now, I cannot look after her. I am sorry to her and my family. That's all.

16 ASP Tang's evidence was that the recording of the cautioned statements was routine and took place in accordance with the stipulated procedure.[24] Before those statements were recorded, the charges were interpreted and explained to the Appellant, who indicated that he understood the nature of the charges and the sentence which would follow (*viz*, the death sentence) if he was convicted. ASP Tang also said that he recorded both cautioned statements early in the morning because he wanted to give the Appellant early notice of the charges against him. ASP Tang said that this was his usual practice.[25]

17 The Appellant, on the other hand, disputed the admissibility of his cautioned statements. He asserted that he had not given the statements voluntarily in that: (a) they had been procured by threats, inducement or promises from ASP Tang; (b) they had been recorded under oppressive conditions; and (c) their contents had been fabricated. In any case, the Appellant claimed, the statements had either been inaccurately interpreted by Mdm Sophia

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22 ROP vol 2 at p 172.

23 ROP vol 2 at p 176.

24 NE 26 April 2013 p 64 line 23–p 69 line 16.

25 NE 29 April 2013 at p 12 lines 4–11.

or not interpreted at all. We examine in greater detail below (at [61]–[63]) these contentions by the Appellant.

The Appellant's long statements are recorded

18 ASP Tang also recorded three long statements by the Appellant, one on each of the three days after 7 July 2010. The first long statement was recorded on 8 July 2010 between 9.20am and 11.30am; the second, on 9 July 2010 between 3.40pm and 5.45pm; and the third, on 10 July 2010 between 10.35am and 11.35am. As in the case of the recording of the Appellant's cautioned statements, only the Appellant, ASP Tang and Mdm Sophia were present at each of the three sessions.

19 In the three long statements,[26] the Appellant admitted that A1, A2 and the wrapped package in G1 belonged to him, and that he knew they contained heroin. He admitted that he had purchased heroin in large quantities and had repacked it into smaller packets, which he would then sell for profit. That was the reason why he had a weighing scale and smaller Ziploc sachets in his bedroom. At the time of his arrest on the afternoon of 6 July 2010, the Appellant had been on his way home from Joo Koon Circle after receiving a quantity of heroin which he had purchased from Latif.

20 The long statements further stated that the money in the Appellant's bedroom belonged to him; approximately half of it was from his savings, and the other half came from selling drugs. The statements also revealed that the

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[26] ROP vol 2 at pp 177–182; pp 187–192; pp 203–205.

brown envelope found in the Appellant's bedroom contained his notations relating to drug purchases.

21 ASP Tang claimed that he recorded each of the long statements in accordance with the proper procedure.[27] At each session, he asked the Appellant questions, which were interpreted to the latter by Mdm Sophia. The Appellant's responses were translated to ASP Tang, who recorded them in prose. ASP Tang then printed out each statement, and had Mdm Sophia read and interpret it to the Appellant. ASP Tang gave the Appellant an opportunity to amend each statement (which the latter in fact did for the first long statement),[28] and thereafter asked him to sign it.

22 The Appellant disputed the admissibility of his three long statements. The grounds of his challenge were, however, unclear. His case on the inadmissibility of these statements included allegations of threats, as well as allegations that ASP Tang and Mdm Sophia had fabricated the statements in their entirety without consulting him at all.[29] As Mdm Sophia passed away before the case came to trial,[30] the admissibility of the Appellant's cautioned statements and long statements came down to a contest between ASP Tang's and the Appellant's evidence on the manner and the circumstances in which the statements were recorded.

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27 NE 26 April 2013 at p 70 line 8–p 72 line 24; p 73 lines 28–30; p 75 line 31–p 76 line 3.

28 NE 26 April 2013 at p 71 line 24–p 72 line 13; ROP vol 2 at p 179, para 13.

29 NE 29 April 2013 at p 13 lines 14–25.

30 NE 26 April 2013 at p 64 lines 21–22.

The Appellant's evidence at the trial as to how he came to be in possession of the drugs

23 The contents of the Appellant's three long statements stood in stark contrast to his evidence at the trial. In his oral evidence at the trial, the Appellant said that he did not know that A1, A2 and the wrapped package in G1 contained drugs. He was given those three items by Latif for safekeeping on the day of his arrest (*ie*, 6 July 2010), and was supposed to return them to Latif that evening. He did not check what was in them and therefore did not know that they contained drugs.

24 According to the Appellant's oral evidence, he became acquainted with Latif when they met in Johor in November or December 2009.[31] Both of them were then purchasing supplies for their respective upholstery companies.[32] Between then and 6 July 2010, they met approximately six to seven times and became good friends.[33]

25 The Appellant testified that at about 7.00am on the morning of 6 July 2010, Latif called him and asked him to meet at the void deck of the HDB block where he (the Appellant) lived.[34] Upon the Appellant's inquiry as to what the meeting was for, Latif simply said that it was important. The Appellant said that it did not occur to him to probe further. At the meeting at the void deck, Latif handed the Appellant a black plastic bag; that black plastic bag was A2. The Appellant's account of this was as follows:[35]

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31 NE 30 April 2013 at p 22 line 15.

32 NE 30 April 2013 at p 22 lines 2–3.

33 NE 30 April 2013 at p 22 lines 19–21.

34 NE 30 April 2013 at pp 21–22.

35 NE 30 April 2013 at p 22 line 31–p 23 line 4.

> When I reached the void deck, I met him. He said, "I want to ask for your help. I want to go to Jurong. I have something important about work to do". I asked him what kind of help that I could render for him. He said, "Please keep this bag for me." The bag is black in colour. So I asked him, "What is the content of the bag?" He replied, "This is something to do with my work. I have to bring this to Johor." …

The Appellant also said in his oral evidence that he noticed a red plastic bag inside A2; that red plastic bag was A1.

26 At the aforesaid meeting, Latif further instructed the Appellant to meet him again at Joo Koon Circle at about 3.00pm on the same day to receive *another* item for safekeeping. Latif explained that he had "some *barang* to do with his work which he needs to bring back to Johor".[36] The Appellant agreed. After the meeting at the void deck, the Appellant returned to the Flat and kept A2 (along with A1) in the drawer mentioned at [9] above. He did not take out the contents of A2 (nor those of A1) to inspect them; neither did he look into either of the bags.

27 As requested by Latif, at about 3.00pm on the same day, the Appellant drove to Joo Koon Circle. On receiving a call from Latif, the Appellant informed the former that he had arrived.[37] Latif entered the Appellant's car and asked him for a bag. The Appellant handed Latif the red tote bag which he kept in his car; that red tote bag was G1. Latif alighted from the car and returned a short while later with a package in G1, *ie*, the wrapped package mentioned at [5] above. The Appellant asked Latif what was in the package, but Latif merely gave the same response as he had that morning in relation to A1 and A2, *ie*, that the package

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[36] NE 30 April 2013 at p 24 line 11.

[37] NE 30 April 2013 at pp 26–27.

had something to do with his "work". The Appellant did not look into G1 or the wrapped package in it,[38] and immediately placed it on the floorboard of the front passenger seat.

28 The Appellant was stopped and arrested on his way home.

The decision below

29 In the court below, the trial judge ("the Judge") conducted a *voir dire* to determine the admissibility of the Appellant's cautioned statements and long statements. He concluded that the statements had been made voluntarily and were thus admissible as evidence.

30 The Judge rejected the evidence given by the Appellant at the *voir dire* on the grounds that it was inconsistent (see *Public Prosecutor v Abdul Kahar bin Othman* [2013] SGHC 164 ("*Abdul Kahar (Conviction)*") at [7]). He noted that the Appellant first claimed that the admissions in his statements had been induced by threats that his mother would be implicated if he did not admit to the offences. He thereafter claimed that the statements had been fabricated by ASP Tang and Mdm Sofia. He finally said that ASP Tang had asked him some questions which he had answered, and ASP Tang had then recorded those answers in the statements. The Judge also observed that the statements made by the Appellant were interspersed with specific details about his family which could only have come from him and not from ASP Tang. The Judge therefore preferred and accepted ASP Tang's evidence that the recording of the statements was routine, and that the statements had been given voluntarily by the Appellant.

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[38] NE 30 April 2013 at p 27 line 7.

31 The Judge convicted the Appellant of both charges as he was satisfied that the Prosecution had proved beyond reasonable doubt that the Appellant "was possessing diamorphine for the purpose of trafficking" (see *Abdul Kahar (Conviction)* at [15]). The following factors lay behind the Judge's decision.

32 First, the Judge noted that the Appellant had not given any satisfactory explanation as to why Latif needed him to safekeep two bags of the size of A1 and A2 when both bags "could have easily been carried by Latif" (see *Abdul Kahar (Conviction)* at [8]). Second, the Judge rejected the Appellant's evidence that A1 and A2 had not been concealed in a cavity in the cupboard mentioned at [9] above, but had instead been found in a drawer in that cupboard (see *Abdul Kahar (Conviction)* at [9]). The Judge preferred the evidence of the Prosecution's witnesses that the two bags had indeed been concealed in a cavity in the cupboard. In this regard, he noted that the CNB officers had, in the Appellant's presence, taken photographs of the place where A1 and A2 were found, and reasoned that if the two bags had indeed been found in the drawer mentioned by the Appellant, the Appellant would have indicated that to the CNB officers when they were photographing the scene. However, he did not do so. Third, the Judge held that if the Appellant truly did not know that A1, A2 and the wrapped package in G1 contained drugs, it did not make sense for him not to say anything or explain himself when confronted with the drugs in his car and at the Flat (see *Abdul Kahar (Conviction)* at [11]). Fourth, the Judge was of the view that the Appellant had not satisfactorily explained why traces of his DNA were found on (*inter alia*) the interior surface of A1 (see *Abdul Kahar (Conviction)* at [9]). Fifth, the Judge held that the Appellant had not given a satisfactory explanation as to why he had approximately $70,000 in cash in his bedroom, how there came to be a sum of approximately $100,000 in Mdm Bibah's bank account and why Mdm Bibah's bank passbook was found

in his bedroom (see *Abdul Kahar (Conviction)* at [12]). Sixth, the Judge found that the Appellant's cautioned statements indicated guilt on his part (see *Abdul Kahar (Conviction)* at [13]).

33 The Judge eventually sentenced the Appellant to death, but only after a procedural detour, which we will elaborate on further at [96]–[97] below.

The arguments on appeal

The Appellant's arguments

34 Before this court, the Appellant argued that for two reasons, the Judge erred in finding that he had made his cautioned statements and long statements voluntarily. First, there were, according to the Appellant, "fertile areas" which ASP Tang could have threatened him with.[39] ASP Tang could have threatened to implicate Mdm Bibah, or to confiscate her money or the Flat. He could also have threatened not to allow the Appellant's wife, who was then in Indonesia, to come to Singapore. The Appellant claimed that those threats were in fact made, and thus rendered his statements involuntary.[40]

35 Second, the Appellant contended that his evidence at the trial was not inconsistent.[41] He made it clear during cross-examination that those parts of his statements relating to his personal details were provided by him, while those parts of his statements relating to the drugs were fabricated by ASP Tang.

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39 Appellant's Skeletal Arguments at para 28.

40 Appellant's Skeletal Arguments at paras 36–37.

41 Appellant's Skeletal Arguments at para 42.

36 The Appellant also argued that his conviction by the Judge was against the weight of the evidence. In particular, he contended that the Judge erred in finding that he knew the nature of the contents of A1, A2 and the wrapped package in G1. This was because:[42]

(a) The Appellant came to know Latif in the course of their respective upholstery businesses and genuinely thought that the contents of A1, A2 and the wrapped package in G1 had to do with upholstery work.

(b) The Appellant had asked Latif what the contents of A1, A2 and the wrapped package in G1 were and had found Latif's responses satisfactory.

(c) The Appellant trusted Latif and thus had no reason to suspect that A1, A2 and the wrapped package in G1 contained drugs.

For these reasons, the Appellant argued, the Judge was wrong to conclude that his evidence at the trial was "unconvincing" and that there were gaps in that evidence.[43]

37 The Appellant further argued that the Judge erred in rejecting his evidence that A1 and the drug paraphernalia therein were found in A2.[44] No reasons were given for this argument, apart from the assertion that the

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42 Appellant's Skeletal Arguments at para 23.

43 Appellant's Skeletal Arguments at para 24.

44 Appellant's Skeletal Arguments at paras 51–56.

Appellant's evidence should have been preferred to that of the Prosecution's witnesses.

38 In addition, the Appellant contended that the Judge was incorrect to draw adverse conclusions from the cash found in his bedroom[45] and the money in Mdm Bibah's bank account.[46] This was because the cash came from his upholstery business, while the sum of approximately $100,000 in Mdm Bibah's bank account represented her lifelong savings, which she had accumulated while working as a cleaner at a hotel. The further evidence which the Appellant sought leave to adduce on appeal was directed at reinforcing these points.

39 The Appellant argued that in any event, the execution of his death sentence should be stayed because there were "constitutional issues" arising out of s 33B of the MDA which had yet to be resolved.[47] Section 33B contains the "substantial assistance" provision introduced by legislative amendments which came into effect on 1 January 2013. In brief, this provision permits the court to sentence a drug courier to life imprisonment instead of death upon the statutory prerequisites specified in s 33B(2) being satisfied. The Appellant argued that the execution of his death sentence should be stayed until the aforesaid constitutional issues were resolved.

The Prosecution's arguments

40 The Prosecution, on the other hand, argued that the Judge was correct to admit the Appellant's statements because his evidence at the trial was both

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45 Appellant's Skeletal Arguments at paras 67–70.

46 Appellant's Skeletal Arguments at paras 71–77.

47 Appellant's Skeletal Arguments at paras 78–83.

internally and externally inconsistent.[48] In contrast, the Prosecution's witnesses gave consistent evidence that withstood cross-examination.

41 The Prosecution argued that there was, in any event, sufficient evidence, as set out below, to sustain the Appellant's conviction even if his statements were not admitted as evidence:

(a) The circumstances showed that the Appellant knew that A1, A2 and the wrapped package in G1 contained drugs. The Appellant's behaviour after his arrest was that of a guilty person.[49] He was uncooperative and even attempted to flee from the CNB officers when he was stopped by them.

(b) The Appellant's failure to give any explanation when he was confronted with the drugs was telling.[50] He did not explain to the CNB officers that he was merely safekeeping A1, A2 and the wrapped package in G1 for a friend; he simply kept quiet.

(c) The drugs in A1 and A2 were carefully concealed out of sight in the Appellant's bedroom in a cavity in a cupboard.[51]

(d) The Appellant's DNA was found on (*inter alia*) the interior surface of A1, which suggested that he had opened the bag even though he claimed not to have done so.[52]

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48 Respondent's Skeletal Arguments at paras 44–48.

49 Respondent's Skeletal Arguments at paras 55–57.

50 Respondent's Skeletal Arguments at paras 58–61.

51 Respondent's Skeletal Arguments at paras 62–64.

52 Respondent's Skeletal Arguments at para 65.

42 With regard to the Appellant's submissions on staying the execution of his death sentence, the Prosecution argued that there was no legal basis for granting such a stay pending the resolution of issues concerning s 33B of the MDA raised in other unrelated cases. It was clear, in any event, that s 33B was inapplicable to the Appellant, and there was no reason to stay the execution of his death sentence.[53]

The issues before this court

43 Four issues arose for our consideration:

(a) first, whether leave should be granted to the Appellant to adduce further evidence at the hearing of the appeal to explain the large amount of cash found in his bedroom and the sizeable balance in his mother's bank account;

(b) second, whether the Judge erred in admitting as evidence the Appellant's two cautioned statements and three long statements on the basis that they had been made voluntarily;

(c) third, whether the Judge erred in finding that the Appellant had failed to establish that he did not know the nature of the drugs in his possession; and

(d) fourth, whether the execution of the Appellant's death sentence should be stayed.

44 We deal with each of these four issues in turn below.

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[53] Respondent's Skeletal Arguments at paras 71–74.

Whether leave should be granted to the Appellant to adduce further evidence at the hearing of the appeal

45 We begin with the Appellant's application for leave to adduce further evidence on appeal. The further evidence in question consisted of two affidavits. The first was an affidavit affirmed by Mdm Bibah that purported to explain how she had accumulated the sum of approximately $100,000 in her bank account. The affidavit exhibited monthly bank statements for that account dating back to January 2007. The second affidavit was one affirmed by the Appellant's brother, Mr Abdul Mutalib bin Othman, which was said to show that the cash found in the Appellant's bedroom were the Appellant's earnings from his upholstery business, and not money made from drug trafficking.

The applicable legal principles

46 There was no dispute between the parties as to the legal principles governing the Appellant's application for leave to adduce further evidence. These principles were considered in, *inter alia*, *Mohammad Zam bin Abdul Rashid v Public Prosecutor* [2007] 2 SLR(R) 410 ("*Abdul Rashid*"), a case decided when the relevant statutory provision at the time was s 55(1) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("the SCJA (1999 Rev Ed)"). That provision stipulated that the Court of Appeal had the power to admit further evidence on appeal where it was necessary to do so:

> In dealing with any appeal, the Court of Appeal may, if it thinks additional evidence is necessary, either take such evidence itself or direct it to be taken by the trial court.

We note in passing that s 55(1) of the SCJA (1999 Rev Ed) was later replicated in s 55(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which provision has since been repealed and replaced by s 392(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

47 In *Abdul Rashid*, the offender sought to introduce further evidence in his appeal against sentence after pleading guilty in the court below. We held that s 55(1) of the SCJA (1999 Rev Ed) permitted an appellate court to "grant leave to adduce further evidence to avoid a miscarriage of justice", but that important objective had to be balanced against "the public interest in the finality of trial and [in] ensuring that trials are not reopened each time evidence that should have been admitted at first instance was not admitted" (see *Abdul Rashid* at [6]). What was paramount under s 55(1) was "relevancy, more specifically, materiality, as well as the credibility … of the further evidence [sought] to be adduced" (see likewise *Abdul Rashid* at [6]).

48 We also observed in *Abdul Rashid* (at [7]) that the principles laid down in *Ladd v Marshall* [1954] 1 WLR 1489 provided a helpful "reference" in assessing whether further evidence should be permitted on appeal. However, we pointed out at the same time that *Ladd v Marshall* was a civil case, and that the court had to be mindful of "the higher burden of proving guilt in a criminal case" when applying those principles in the criminal context (see likewise *Abdul Rashid* at [7]).

49 Under the *Ladd v Marshall* principles, further evidence may only be introduced on appeal where the evidence in question: (a) was not obtainable with reasonable diligence at the time of the proceedings in the court below; (b) would have an important influence on the result of the case; and (c) is apparently credible, although not incontrovertible. In the light of these principles as well as the considerations which will be alluded to hereafter, we dismissed the Appellant's application for leave to adduce further evidence on appeal as we were not satisfied that the threshold for permitting the introduction of such evidence had been crossed.

Mdm Bibah's affidavit

50 Where the affidavit of Mdm Bibah was concerned, that affidavit stated that the money in her bank account was an "accumulation of many years of hard work and contributions" from her seven children.[54] Mdm Bibah worked as a cleaner at a hotel until her retirement in 1996, and her salary had been paid into that bank account.[55] The affidavit also set out the amount and the frequency of the allowances that Mdm Bibah received from her children, which were apparently also paid into that account.

51 In our judgment, the affidavit and the bank statements exhibited thereto were of little relevance to the main issue in this appeal, namely, whether the Appellant had knowledge of the nature of the drugs in his possession. Furthermore, Mdm Bibah's affidavit did not even explain how she came to acquire the sum of approximately $100,000 that stood in her bank account, particularly the large amounts which were credited into the account over the five months preceding the Appellant's arrest.

52 The earliest exhibited bank statement indicated that in January 2007,[56] the account balance stood at approximately $44,000. The account balance hovered at around this amount (with only small and erratic withdrawals and deposits in between) until February 2010, some three years later, when there was a deposit of $20,000.[57] There were thereafter two more deposits, each of

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54 Bibah Binti Ahmad's affidavit at para 4.

55 Bibah Binti Ahmad's affidavit at para 5.

56 Bibah Binti Ahmad's affidavit at p 11.

57 Bibah Binti Ahmad's affidavit at p 48.

$10,000 in March 2010 and May 2010 respectively,[58] and another deposit of $20,000 in June 2010.[59] This raised the account balance to approximately $104,000. After those four sizeable deposits, the account balance reverted to the previous pattern of hovering at roughly the same amount (*viz*, approximately $104,000), with only small and erratic withdrawals and deposits in between. The latest bank statement exhibited in Mdm Bibah's affidavit, which was for the month of October 2013, reflected a balance of $105,531.07.[60]

53 Mdm Bibah failed to give any explanation for the four sizeable deposits into her bank account between February 2010 and June 2010. By that time, she was already well into her retirement, and had not earned any salary for approximately 14 years. Her only source of funds consisted of the modest allowances from her children, which could not satisfactorily account for the large sums deposited into her bank account during that short five-month period.

54 We would go further and venture to suggest that the deposits into Mdm Bibah's bank account during those five months, instead of assisting the Appellant's case, appeared to be wholly consistent with his long statements. The second long statement indicated that the Appellant started peddling drugs about "4 to 5 months" prior to his arrest on 6 July 2010.[61] According to that long statement, therefore, the Appellant was dealing in drugs between February 2010 and early July 2010. There was, in our view, an uncanny coincidence between this period, when the Appellant was peddling drugs (according to his second

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58 Bibah Binti Ahmad's affidavit at pp 49 and 51.

59 Bibah Binti Ahmad's affidavit at p 52.

60 Bibah Binti Ahmad's affidavit at p 92.

61 ROP vol 2 at p 190, para 41.

long statement), and the inexplicable large sums deposited into his mother's bank account during that same period.

Mr Mutalib's affidavit

55 Turning now to Mr Mutalib's affidavit, that affidavit was likewise, in our judgment, of little relevance. The affidavit confirmed that Mr Mutalib had employed the Appellant as a sub-contractor in relation to an upholstery business, and exhibited documents which allegedly showed cash payments that Mr Mutalib's company had made to the Appellant for the latter's work.[62] The suggestion was that those cash payments accounted for the cash found in the Appellant's bedroom.

56 The exhibited documents were, however, cryptic, and did not in fact show or prove that cash payments had indeed been made by Mr Mutalib's company to the Appellant. The documents consisted of handwritten notes on sheets of ruled paper, with columns containing multiple rows of random figures and random sums of money.[63] The meaning and effect of those handwritten notes was indecipherable, and no attempt was made by the Appellant's counsel to explain what those notes meant.

57 We were thus of the view that the evidence in Mr Mutalib's affidavit did not even satisfy *any* of the *Ladd v Marshall* criteria. We accordingly dismissed the Appellant's application for leave to adduce further evidence on appeal. This brings us to the substantive issues which arose in the appeal, to which we now turn.

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62 Abdul Mutalib bin Othman's affidavit at p 1.

63 Abdul Mutalib bin Othman's affidavit at pp 9–21.

Whether the Judge erred in admitting as evidence the Appellant's two cautioned statements and three long statements on the basis that they had been made voluntarily

58 We mentioned earlier that the admissibility of the Appellant's two cautioned statements and three long statements turned on which of two competing accounts of the recording of those statements ought to be preferred and accepted, the Appellant's or ASP Tang's. This undoubtedly required an assessment of their credibility and veracity – an assessment which the Judge was best placed to make. It is trite that in such circumstances, an appellate court will interfere with the trial judge's finding of fact only where it is plainly wrong or against the weight of the evidence (see *ADF v Public Prosecutor* [2010] 1 SLR 874 at [16(a)]).

59 In our judgment, far from his finding in this regard being plainly wrong or against the weight of evidence, the Judge was more than justified in the conclusions that he reached. There was therefore no basis for us to interfere with his finding that the two cautioned statements and the three long statements by the Appellant had been made voluntarily and were thus admissible as evidence.

60 The Appellant's evidence on the inadmissibility of his statements was erratic, and his explanations, highly improbable. These two factors, apart from undermining the veracity of his account of the recording of the statements, combined to detract from his overall reliability and credibility as a witness. We will address the position in respect of the two cautioned statements before turning to the position in respect of the three long statements.

The admissibility of the two cautioned statements

61 Three factors led us to reject the Appellant's narrative as to the involuntariness of his two cautioned statements. First, there were

inconsistencies between the case which the Appellant's counsel put to ASP Tang and the Appellant's own evidence; indeed, there were inconsistencies even within the Appellant's own evidence. Four of these inconsistencies bear mention:

(a) The Appellant's counsel, when cross-examining ASP Tang, put it to him that the Appellant's cautioned statements had been made involuntarily because they had been induced by threats or had been recorded under oppressive circumstances. Significantly, counsel *did not* put to ASP Tang an additional ground which the Appellant mentioned for the first time only in his examination-in-chief, namely, that he had been induced to admit to the offences by a promise from ASP Tang to help to bring his (the Appellant's) wife to Singapore to see him.[64]

(b) The Appellant's counsel, when cross-examining ASP Tang, put it to him that the Appellant's cautioned statements had been induced principally by two threats: first, seizure of the money in Mdm Bibah's bank account and the cash in the Appellant's bedroom;[65] and, second, forfeiture of the Flat, which belonged to Mdm Bibah.[66] Under cross-examination, the Appellant brought up a third threat that had hitherto not been mentioned, namely, a threat by Mdm Sophia (the Malay interpreter) to the effect that the Prosecution's evidence against the Appellant was very strong, so he had better admit to the offences.[67] This

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64 NE 29 April 2013 at p 20 lines 13–19.

65 NE 29 April 2013 at p 8 lines 21–27; p 11 line 30–p 12 line 2.

66 NE 29 April 2013 at p 9 lines 6–17.

67 NE 29 April 2013 at p 22 line 32–p 23 line 15.

third threat was not, however, put to ASP Tang, nor was it mentioned in the Appellant's examination-in-chief.

(c) The Appellant's counsel suggested that the Appellant's cautioned statements had been made under oppressive conditions because they had been recorded very early in the morning and the Appellant "only had his dinner past midnight".[68] The suggestion was that at the time the Appellant gave the cautioned statements, he was tired; he had not been fed until very late in the night. In this regard, we note that the Appellant, in his examination-in-chief, was asked, "Did you have food?", to which he replied, "Yes, they gave me food" at "[m]idnight".[69] This was consistent with the impression given by the Appellant's counsel. During cross-examination, however, the Appellant changed his complaint, and said that while he had been given food at midnight, he had not eaten it because he had no appetite.[70]

(d) The Appellant first admitted in his evidence-in-chief that his cautioned statements had been recorded by ASP Tang with Mdm Sophia acting as the Malay interpreter.[71] His position was that the admissions in those statements were involuntary because they had been made under threat. In cross-examination, however, the Appellant changed his position and claimed that the cautioned statements had not been made by him at all and also had not been explained to him. Instead, ASP Tang

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68 NE 29 April 2013 at p 12 lines 12–18.

69 NE 29 April 2013 at p 18 lines 24–27.

70 NE 29 April 2013 at p 28 lines 7–10.

71 NE 29 April 2013 at p 20 lines 11–12.

and/or Mdm Sophia had fabricated the statements, and the Appellant had merely been asked to sign whenever a signature was required.[72]

62 The second factor that led us to reject the Appellant's contention as to the inadmissibility of his cautioned statements was the plain implausibility of some of his assertions. This could be seen from the evidence on at least three occasions:

(a) The Appellant said in his cross-examination that during the recording of his cautioned statements, he told Mdm Sophia that "this *barang* [*ie*, the drugs] is not mine",[73] and that he was "in unstable condition".[74] When the Appellant was further asked in cross-examination whether Mdm Sophia translated those assertions to ASP Tang, the Appellant's response was that he did not understand English. While English may not have been the Appellant's primary language, it is, in our view, doubtful that his command of English was indeed so poor that he could not even tell whether or not Mdm Sophia was trying to relay his message to ASP Tang. Moreover, there was no reason to think that Mdm Sophia might not have been doing her job properly at the time.

(b) The Appellant at times suggested that it was *Mdm Sophia*, and not ASP Tang, who had threatened him. For example, in his cross-examination, he stated:[75]

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72 NE 29 April 2013 at p 30 line 14–p 31 line 23.

73 NE 29 April 2013 at p 19 line 4.

74 NE 29 April 2013 at p 29 line 15.

75 NE 29 April 2013 at p 24 lines 8–10.

> Mdm Sophia said, "You have to admit. If you do not admit", my mother will face problem. My mother's money, my mother's flat, my own savings, my own cash, they will seize.

No mention was made of this threat having emanated from ASP Tang. If the Appellant's account were accepted, it would mean that Mdm Sophia had either, independently of ASP Tang, threatened the Appellant to obtain admissions from him, or had colluded with ASP Tang to do so. To us, both scenarios seemed highly improbable.

(c) The Appellant's assertion that he had been induced to admit to the offences because he did not want the CNB to confiscate the cash found in his bedroom likewise appeared implausible. Given that the Appellant had, in his cautioned statements, effectively admitted to selling drugs for profit, if at least part of the large amount of cash found in his bedroom had come from peddling drugs, that would give the CNB all the more reason to confiscate the cash. It is inconceivable that the Appellant would think that by admitting to selling drugs, the CNB would not confiscate the cash found in his bedroom. We would add that this alleged inducement is incredible in another sense – namely, that the Appellant viewed his money as being more important than his own life.

63 The third and final factor that led us to reject the Appellant's account of the recording of his cautioned statements lay in the results of the pre- and post-statement medical examinations at Alexandra Hospital, which were conducted shortly before and shortly after the cautioned statements were taken from him. The fact that the Appellant gave the cautioned statements voluntarily is entirely consistent with the results of the medical examinations, which did not indicate anything out of the ordinary apart from superficial abrasions on the left side of the Appellant's forehead. If the Appellant had indeed been "in shock" and "in

trauma" as he claimed,[76] and if such "shock" and "trauma" had been severe enough to whittle away his ability to give a voluntary statement, that would have been apparent at the medical examinations.

The admissibility of the three long statements

64 The Appellant's evidence relating to the recording of his long statements did not fare much better. The most glaring inconsistency related to the Appellant's central contention during cross-examination that the long statements had all been fabricated by ASP Tang. His position was that he had merely been "told to sit down and face [ASP Tang and Mdm Sophia] [while] they make this statement".[77] There "wasn't any interpretation",[78] and he was not "even asked to give [his] account of what happened".[79]

65 There were at least three difficulties with this central contention. First, it was raised only during the Appellant's cross-examination. This allegation of fabrication was not put to ASP Tang, nor did the Appellant mention it in his own examination-in-chief. Second, no reasons were proffered as to why ASP Tang and Mdm Sophia would want to work together so brazenly to fabricate statements against the Appellant. Third, when it was drawn to the Appellant's attention that there were numerous personal details in the long statements that ASP Tang could not possibly have conjured up without his input, the Appellant then admitted that "whatever question [ASP Tang] asked,

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76 NE 29 April 2013 at p 28 line 14.

77 NE 29 April 2013 at p 32 line 23.

78 NE 29 April 2013 at p 32 line 18.

79 NE 29 April 2013 at p 33 line 3.

I answered him".[80] This was a sharp departure from the Appellant's previous position that apart from the threats made to him, no other questions were asked of him.[81]

66 The position that the Appellant eventually settled on was that in so far as his long statements related to his "personal thing, … [his] family", he was asked questions (and therefore provided input); but in so far as his long statements related to the drugs found in his possession or drug trafficking, he was not asked any questions (and therefore did not provide any input), and the facts set out in the statements were fabricated by ASP Tang.[82]

Conclusion on the admissibility of the Appellant's statements

67 The above inconsistencies and shortcomings could well have been overlooked if viewed in isolation. But, the cumulative picture that emerged from the Appellant's testimony on the recording of his statements was that he was making broad, unfocused and self-serving assertions in support of his position that his statements had been given involuntarily. His evidence was internally inconsistent and shifting, and even the final position that he settled on was difficult to accept.

68 ASP Tang's evidence, in contrast, was systematic and detailed. ASP Tang gave evidence that the recording of the Appellant's statements had been routine, and that the statements had been interpreted and read back to the Appellant, who had been permitted to make corrections before signing the

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80 NE 29 April 2013 at p 36 lines 22–27.

81 NE 29 April 2013 at p 33 line 3–p 34 line 3.

82 NE 30 April 2013 at p 49 lines 26–30.

statements. ASP Tang's evidence was unshaken under cross-examination. We therefore found no basis to disturb the Judge's finding that the two cautioned statements and the three long statements by the Appellant had been made voluntarily. Those statements were, in our judgment, rightly admitted as evidence.

Whether the Judge erred in finding that the Appellant had failed to establish that he did not know the nature of the drugs in his possession

69 We move on now to the Judge's finding on the Appellant's knowledge of the nature of the drugs in his possession. The Appellant did not appear to dispute that A1, A2 and the wrapped package in G1 (*viz*, the articles containing the drugs) were in his possession. The fact of possession triggers the presumption under s 18(2) of the MDA that the Appellant knew the nature of the drugs in those three articles. Section 18(2) states:

> Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

The only question before us was whether, on the evidence, the Appellant had rebutted this presumption.

70 The Judge held that the Appellant had not done so. Having considered the evidence, we could not see any basis to disturb the Judge's conclusion on this point. In explaining our reasons for so deciding, we first set out the law and review some cases which are illustrative of how and when the presumption of knowledge may be rebutted. We then turn to the objective contemporaneous evidence in the present case, which, in our judgment, corroborated and fortified the Judge's conclusion that the Appellant was in fact peddling drugs and not just safekeeping the drugs in question for Latif.

The law

71 In *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*"), this court addressed the effect of the presumption under s 18(2) of the MDA, and what an accused would need to show (as well as to what standard of proof) to rebut the presumption. In short, the accused would be required to establish on a balance of probabilities the *non*-existence of knowledge of the nature of the drugs concerned. He could do so by proving, for example, that he had mistakenly thought that the drugs in his possession were something innocuous, such as detergent. The remarks of Chan Sek Keong CJ in *Nagaenthran* at [23], [24] and [27] are instructive and bear setting out at length:

> 23 … To rebut the presumption of knowledge, all the accused has to do is to prove, on a balance of probabilities, that he *did not know* the nature of the controlled drug referred to in the charge. The material issue in s 18(2) of the MDA is *not* the *existence* of the accused's knowledge of the controlled drug, *but* the *non-existence* of such knowledge on his part.
>
> 24 As to the meaning of the phrase "the nature of the drug", our view is that it refers to the actual controlled drug found in the "thing" (*eg*, the bag or container, *etc*) that was in the possession of the accused at the material time. For instance, if heroin is found in a bag or a container in the accused's possession and he is unable to prove, on a balance of probabilities, that he had no knowledge of the heroin (see [27] below), he would be presumed under s 18(2) of the MDA to have known of the heroin in his possession.
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> …
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> 27 How can an accused rebut the presumption of knowledge of the nature of the controlled drug found in his possession (*eg*, in a bag he is carrying or on his person)? He can do so by proving, on a balance of probabilities, that he genuinely believed that what was in his possession was something innocuous (*eg*, washing powder, when it was in fact heroin (see *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256)), or that he thought it was a controlled drug other than the one actually found in this possession (*eg*, where he genuinely believed he was carrying "ice", rather than heroin (see *Khor Soon Lee v PP* [2011] 3 SLR 201)).
>
> [emphasis in original]

72 Chan CJ also emphasised at [31] of *Nagaenthran* that the inquiry was, in the final analysis, one of fact. It would turn on the veracity and credibility of the accused person's evidence:

> … Consistent with the burden which he has to discharge, the accused has to adduce sufficient evidence to demonstrate, on a *balance of probabilities*, that he did not know the *nature* of [the] drug. This is a question of fact in each case, and turns very much on the trial judge's assessment of the credibility of the defence witnesses (especially that of the accused, if he chooses to testify). [emphasis in original]

73 *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*") was a case where this court found that the accused had succeeded in rebutting the presumption under s 18(2) of the MDA by proving on a balance of probabilities that he did not know the drugs in his possession contained heroin.

74 The accused in that case was found at Woodlands Checkpoint to be in possession of a package containing not less than 27.86g of diamorphine. He admitted that he was a drug courier for a person named Tony, and that he had been tasked by Tony to carry drugs from Malaysia into Singapore. He asserted, however, that he had been led to believe that he was carrying only erimin, ketamine and ecstasy, the trafficking of which did not attract the death penalty, and not heroin, the trafficking of which did.

75 The accused's evidence was that when Tony approached him to deliver drugs, he specifically asked Tony whether heroin would be involved in the deliveries. The accused did not want to traffic in heroin because he was afraid of the death penalty. Tony assured the accused that the deliveries would not involve heroin. The accused's evidence to that effect was not challenged by the Prosecution (see *Khor Soon Lee* at [6]).

76 In the result, this court held that in the circumstances, the accused had rebutted the presumption of knowledge under s 18(2) of the MDA. The court relied on the following facts to reach that conclusion:

(a) The accused had, on numerous previous occasions, assisted Tony in transporting drugs into Singapore. He had been assured by Tony on those occasions that the drugs did not include heroin. There was accordingly a consistent pattern of importing controlled drugs, the importation of which did not carry the sanction of capital punishment. The particular transaction involved in *Khor Soon Lee*, which involved diamorphine, was a deviation from this consistent pattern (see *Khor Soon Lee* at [23]).

(b) In view of the consistent and established pattern of importation, the accused had no reason to suspect that the package in question in *Khor Soon Lee* contained diamorphine (see *Khor Soon Lee* at [24]).

(c) The accused had a close personal relationship with Tony and trusted him. That explained why he believed Tony's assurance that the packages which he delivered for Tony would not contain diamorphine, and why he adhered to Tony's instructions not to open up those packages (see *Khor Soon Lee* at [25]).

(d) Tony's DNA was found on the package in question in *Khor Soon Lee*, which corroborated the accused's account that Tony had a significant role in the transaction (see *Khor Soon Lee* at [25]).

(e) All of the above assertions were not challenged by the Prosecution.

This court therefore concluded that whilst the accused might have been negligent or reckless in not checking the contents of the package involved in *Khor Soon Lee*, he had not been wilfully blind and, therefore, had established the *non*-existence of any knowledge that what he was carrying was heroin (see *Khor Soon Lee* at [28]).

77 The later case of *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 ("*Dinesh Pillai*") provides a useful contrast to *Khor Soon Lee*.

78 The offender in *Dinesh Pillai* was paid to deliver "secret" and "expensive" food from Malaysia to Singapore (see *Dinesh Pillai* at [2]). The food was given to the offender wrapped in brown paper and placed in a red plastic bag along with a packet of curry and a packet of freshly cut chilli. The offender was instructed to carry the packet of food across Woodlands Checkpoint, and thereafter wait for instructions on whom it was to be delivered to.

79 The offender made two deliveries in this manner on separate occasions. He was paid RM200 for the first delivery and RM300 for the second. He was arrested while making his third delivery, and the substance wrapped in brown paper on that occasion ("the Brown Packet") was found, upon analysis, to contain not less than 19.35g of diamorphine. The offender argued that "although he suspected that the Brown Packet contained contraband or something illegal, he never associated it with a controlled drug, much less diamorphine" (see *Dinesh Pillai* at [19]). He claimed that he was shocked when he was informed by the CNB that the Brown Packet contained diamorphine.

80 This court dismissed the offender's argument and held that he had not rebutted the presumption of knowledge under s 18(2) of the MDA. This was because he did not believe that the Brown Packet contained only food and had the opportunity to check what was in it; yet, he did not do so (see *Dinesh Pillai* at [20]–[21]):

> 20 … This is not a case where the appellant reasonably believed that the Brown Packet contained some controlled drug other than diamorphine (*eg*, "ice", ecstasy, *etc*) and had good reason for such belief (compare, *eg*, … *Khor Soon Lee* …) … In the present case, the appellant *did not bother to take the simple step of peeping into the Brown Packet to see what it contained despite suspecting that it contained something illegal* …
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> 21 In our view, the appellant has failed to rebut the s 18(2) MDA presumption on a balance of probabilities because *he turned a blind eye to what the Brown Packet contained despite suspecting that it contained something illegal*. The factual distinction between this case and *Khor Soon Lee* is that in the latter case, *the accused did not have any suspicion that he was carrying anything other than erimin and ketamine (which the court accepted)*. In contrast, in the present case, the appellant was aware that he was carrying something illegal, and he could easily have verified what that thing was by simply opening the Brown Packet. *It was not enough for the appellant to take the position that he did not open the Brown Packet because he had been told not to do so.* …
>
> [emphasis added]

81 *Khor Soon Lee* and *Dinesh Pillai* illustrate the need to examine with care the entire circumstances in which the transaction in question occurred, and, in relation to cases such as the present, the importance of scrutinising the evidence and narrative given by the offender to determine its veracity.

The evidence in the present case

82 In the present case, we could not find any basis for interfering with the Judge's conclusion that the Appellant knew the nature of the drugs in his possession. There were at least three factors, all independent of the admissions

in the Appellant's statements, which led us to reject his narrative and affirm the Judge's conclusion.

Gaps and internal incoherence in the Appellant's narrative

83 First, there were gaps in the Appellant's account of the material events that ruptured the internal coherence of his narrative. The Appellant offered no convincing explanation for his unquestioning subservience to Latif. He did not explain why Latif telephoned for no apparent reason to ask him to safekeep A1, A2 and the wrapped package in G1 for a day. He also did not explain why he agreed to Latif's request without inquiring further. In respect of A1 and A2, the Appellant said that Latif "wanted to see his friend in Jurong", and that "[i]t was troublesome for him to … bring [the bags] along with him".[83] But, even if that was accepted – *ie*, even if it was indeed the case that the Appellant was prepared to safekeep A1 and A2 for Latif for no apparent reason – there was no reason why the Appellant should have been willing to drive to Joo Koon Circle from the Flat in Bukit Batok later in the afternoon on the same day just to receive yet *another* item from Latif (*viz*, the wrapped package in G1) for safekeeping.

84 The bizarreness of the Appellant's account was heightened by his admission that he had never "collected any stuff from [Latif] before – prior to the day of [his] arrest".[84] The Appellant also gave no explanation as to why he did not probe Latif further on the contents of A1, A2 and the wrapped package in G1, or even just glance at or feel the contents of those three items to try to find out for himself what they contained. The Appellant was satisfied, without

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83 NE 2 May 2013 at p 25 lines 13–15; p 26 lines 11–14.

84 NE 30 April 2013 at p 52 lines 4–6.

more, by the weak explanation given by Latif that the contents of those three items related to the latter's "work".

The Appellant's unsatisfactory explanation for the DNA found on the interior surface of A1

85 The second factor which led us to affirm the Judge's decision on the Appellant's knowledge of the nature of the drugs in his possession lay in his explanation, which we found far from persuasive, as to why his DNA came to be on (*inter alia*) the interior surface of A1. The DNA Profiling Laboratory at the HSA conducted DNA profiling on A1, and the results revealed the presence of the Appellant's DNA on both the exterior and the interior surfaces of A1. The Appellant's evidence was that when he received A1 and A2 from Latif, A1 was inside A2. The Appellant did not open up A2 or even look into it after receiving it from Latif. Instead, he placed A2 (with A1 inside) straight into a drawer in a cupboard in his bedroom.

86 The Appellant did not dispute the fact that his DNA was found on, *inter alia*, the *interior* surface of what, by his account, was the *inner* bag (*ie*, A1). Instead, during cross-examination, he attempted to explain the presence of his DNA on the interior surface of A1 in this way: when he placed A2 (which, according to him, was the outer bag) into the above-mentioned drawer, he "noticed [at] the opening [of A2], there was a plastic bag, red plastic bag [*ie*, A1] … that is about to come out".[85] He therefore had to "push" the red bag (A1) into the drawer. Upon being confronted with the fact that his DNA had been

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[85] NE 2 May 2013 at p 18 lines 5–6.

found on the *interior* surface (in addition to the exterior surface) of A1, the Appellant attempted to explain the presence of his DNA as follows:[86]

> Q Mr Kahar, do you know that DNA analysis show[s] that your DNA profile was found on … the interior surface of this red plastic bag?
>
> A (No audible answer)
>
> …
>
> Q Do you know that?
>
> A Yes because I used my fingers to push the red plastic bag in.
>
> Q Once. You pushed it once, according to your evidence.
>
> ***A*** ***Yes but right inside, it's quite long that I touched it.***
>
> ***Q*** ***Now it's quite long that you touched it. So like one push was a long push. Is that what you are asking the Court to believe?***
>
> ***A*** ***Yes because I pushed it to the maximum when I –***
>
> Q Now I put it to you that it's not true.
>
> A I disagree.
>
> [emphasis added in bold italics]

The Appellant's explanation was, in our judgment, entirely unsatisfactory and unconvincing. The presence of the Appellant's DNA on the interior surface of A1 suggested that he had handled the contents of that bag. This seriously undermined the Appellant's narrative that he only received A1 (placed inside A2) for safekeeping and did not look into or feel the contents of either bag.

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86 NE 2 May 2013 at p 18 line 26–p 19 line 7.

The Appellant's unsatisfactory explanation for two suspicious text messages

87 Our third reason for upholding the Judge's ruling on the state of the Appellant's knowledge for the purposes of s 18(2) of the MDA was the Appellant's failure to give any satisfactory explanation for two suspicious text messages which he received on his cellular phone from persons who were saved as "Contacts" in the phone. The first was a text message from one "Unna", which was received on 2 July 2010. The Appellant's evidence was that Unna was a "normal friend" with whom he did not have any "business dealing[s]"; they merely met up "to socialise, just to sit and drink".[87] The message from Unna stated:[88]

> … "How are you bang? Have you returned? ***I have 1 deal to talk with [you], if you get 5 balls***" – or more – "***in one week I give you for a price of … 6100***/-, bang … for a week I have no work, bang … My boss asked me to talk to you, bang. Since so many things have depleted … Now I have 1 ball with me, if you agree" – I can pass it – "I can pass" – it – "to you at 5 o'clock later. Sorry bang, every day I feel miserable. … Please reply bang" [emphasis added in bold italics]

This message contradicted the Appellant's claim that he did not have any business dealings with Unna. More importantly, it suggested that the Appellant was in a position to sell Unna "5 balls" for "6100".

88 The second text message was from Latif, and it stated:[89]

> … "Bang, why do you not take the call, bang? I am worried. ***If there is any problem, please let me know***, bang. ***Are you short of the stuff*** (lit: Horse). If I have done something wrong,

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87 NE 2 May 2013 at p 30 lines 4–28.

88 NE 2 May 2013 at p 31 lines 12–18.

89 NE 23 April 2013 at p 10 lines 8–11.

> please forgive me. Please reply or call me, bang". [emphasis added in bold italics]

The second text message was especially significant because it was received at 2.22pm on 7 July 2010,[90] the day after the Appellant's arrest. It was thus sent to the Appellant the day after he claimed to have received A1, A2 and the wrapped package in G1 from Latif for safekeeping. This message was incompatible with the Appellant's account that Latif had given him those three items the day before merely for safekeeping. If that had indeed been the case, one would have expected Latif to simply ask the Appellant where he (the Appellant) was, so that Latif could retrieve those items from him. Instead, the text message expressed Latif's concern that there might have been a "problem" with what he had given the Appellant the previous day, and that the Appellant might have been "short of the stuff".

89 Taking it at its highest, the second text message suggested that the Appellant had purchased drugs from Latif, and that Latif was asking him whether the amount of drugs was correct. Even taking it at its lowest, this message undermined the Appellant's account of his interactions with Latif on 6 July 2010. It was not just a case of the Appellant blindly obeying Latif's instructions to safekeep A1, A2 and the wrapped package in G1.

90 When the Appellant was cross-examined on these two text messages, his only response was to deny that he knew what either of these messages meant,[91] even though they were from persons who were saved as "Contacts" in his cellular phone.

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90 ROP vol 2 at p 71, S/No 10.

91 NE 2 May 2013 at p 32 lines 3–6; p 38 line 22.

Conclusion on the state of the Appellant's knowledge

91 In our judgment, the glaring and unexplained (or inadequately explained) inconsistencies and gaps in the Appellant's evidence as set out at [83]–[90] above, when viewed against the backdrop of his diminished credibility and reliability as a witness (see [60] above), were fatal to his contention that he was merely safekeeping A1, A2 and the wrapped package in G1 for Latif, and had no knowledge of what those items contained. Even leaving aside the admissions in the Appellant's statements, the large amount of cash found in his bedroom and the sizeable sum of approximately $100,000 in Mdm Bibah's bank account, it was our judgment that the Appellant had failed to establish on a balance of probabilities that he did not know the nature of the drugs in his possession.

92 These factors, when considered in their totality, corroborated the admissions in the Appellant's cautioned statements and long statements, which, in our view, were rightly admitted by the Judge as evidence. The large quantity of drugs found in the Appellant's bedroom, together with other drug-related paraphernalia such as smaller unused Ziploc bags, rubber bands, a stained weighing scale and a stained spoon, strongly suggested that the Appellant was trafficking in drugs. The Appellant had therefore failed to rebut the presumption of knowledge under s 18(2) of the MDA, and the Judge was entitled to find that the Prosecution had established beyond reasonable doubt that the Appellant was in possession of the drugs for the purpose of trafficking in them. We therefore dismissed his appeal.

93 There is, however, one inconsequential error in the Judge's decision which we need to mention. One of the factors which the Judge relied on in convicting the Appellant was that Mdm Bibah's passbook had been found in the

Appellant's bedroom as opposed to her own bedroom (see *Abdul Kahar (Conviction)* at [12]; see also [32] above). That was, however, an incorrect factual position. The Prosecution's witnesses gave clear and uncontroverted evidence that the passbook had been recovered from *Mdm Bibah's* bedroom rather than the Appellant's.[92] That said, this error on the part of the Judge was immaterial to our conclusion that the Appellant had not rebutted the presumption of knowledge under s 18(2) of the MDA.

Whether the execution of the Appellant's death sentence should be stayed

94 We now turn to consider the Appellant's contention that the execution of his death sentence should be stayed pending the resolution of the constitutional issues arising out of s 33B of the MDA "in *Muhammad Ridzuan bin Md Ali v AG* (Civil Appeal No. 131 of 2014), and/or *Re: Chen Ming Jian* (Originating Summons No. HC/OS514/2015".[93] We rejected this argument as it was wholly without merit.

95 First, the Appellant did not establish any legal basis for staying the execution of his death sentence pending the resolution of two other *unrelated* cases. Second, it was, in any event, difficult to see how the outcome of the two other cases which raised the constitutionality of s 33B of the MDA would have any bearing on the Appellant's case. It was clear that the Appellant could not avail himself of the "substantive assistance" provision in s 33B of the MDA as the prerequisites to trigger the operation of that provision had not been met. The Public Prosecutor had not given the Appellant a certificate of substantive assistance. Moreover, the Appellant's involvement in drug trafficking was not

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92 ROP vol 2 at p 274, para 7.

93 Appellant's petition of appeal at para 10.

confined to "transporting, sending or delivering a controlled drug" within the terms of s 33B(2)(*a*)(i) of the MDA.

96 At this juncture, we should explain that the Judge convicted the Appellant of the two drug trafficking charges on 27 August 2013, and thereafter delivered his judgment on sentence (reported as *Public Prosecutor v Abdul Kahar bin Othman* [2013] SGHC 222 ("*Abdul Kahar (Sentencing)*")) on 24 October 2013. In that judgment, the Judge drew attention to the then "newly-enacted s 33B of the [MDA]" (see *Abdul Kahar (Sentencing)* at [1]). He held that "[a]lthough … the [Appellant's] involvement … went beyond transporting, sending, or delivering the drugs", he would give the Appellant "the benefit of the doubt" (see *Abdul Kahar (Sentencing)* at [4]) since the case was "among the first cases under the new provisions" (see *Abdul Kahar (Sentencing)* at [5]). He thus held that the Appellant "had acted as a 'courier' only" (see *Abdul Kahar (Sentencing)* at [5]).

97 The Judge's decision on sentence formed the basis of a criminal reference brought by the Prosecution and heard by this court as it was constituted for the present appeal. We unanimously held, in a judgment reported as *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 ("*Chum Tat Suan*"), that the Judge was "wrong to have held that [the Appellant] was a courier when the Judge was 'satisfied that [the Appellant's] involvement in trafficking *went beyond transporting, sending or delivering* [the drugs]'" [emphasis in original] (see *Chum Tat Suan* at [70]). We thus quashed the Judge's decision on sentence, and remitted the matter to him to determine whether the Appellant's involvement in drug trafficking was restricted to the activities within s 33B(2)(*a*) of the MDA. Thereafter, the Judge found that the activities which the Appellant had engaged in fell outside the scope of that provision, and accordingly sentenced him to death.

98 In our judgment, it was clear that the Appellant would not be able to avail himself of s 33B(2)(*a*) of the MDA, not least because his involvement in drug trafficking went beyond "transporting, sending or delivering a controlled drug". There was no reason to interfere with the Judge's finding that the Appellant was actively involved in purchasing, re-packaging and selling drugs. We therefore refused to stay the execution of the Appellant's death sentence.

Conclusion

99 For all of the foregoing reasons, we could not find any basis to interfere with the Judge's decision to convict the Appellant and sentence him to death. We also could not see any basis to admit the further evidence which the Appellant sought leave to introduce on appeal, or to stay the execution of his death sentence. We therefore dismissed his appeal, as well as his application for leave to adduce further evidence and his request for a stay of the execution of his sentence.

Chao Hick Tin	Woo Bih Li	Tay Yong Kwang
Judge of Appeal	Judge	Judge

Rupert Seah (Rupert Seah & Co) and Ranadhir Gupta (A ZamZam & Co) for the appellant;
Mark Jayaratnam and Lim How Khang (Attorney-General's Chambers) for the respondent.