Mohammad Ashik bin Aris *v* Public Prosecutor
[2011] SGCA 46

Case Number	: Criminal Appeal No 10 of 2011
Decision Date	: 07 September 2011
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: S K Kumar (S K Kumar Law Practice LLP) for the appellant; Anandan Bala, Pao Pei Yu Peggy and Lim How Khang (Attorney-General's Chambers) for the respondent.
Parties	: Mohammad Ashik bin Aris — Public Prosecutor

Criminal Law – Misuse of Drugs Act

Evidence

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [2011] SGHC 111.]

7 September 2011

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

Introduction

1 This was an appeal by Mohammad Ashik bin Aris ("the appellant") against the decision of the trial judge ("the Judge") in Criminal Case No 25 of 2010 (see *Public Prosecutor v Mohammad Ashik bin Aris* [2011] SGHC 111 ("the GD")) convicting him of one charge of consumption of methamphetamine, an offence under s 8(*b*)(ii) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). At the conclusion of the hearing, we dismissed the appeal. We now give our reasons.

Background

2 The background facts are set out at [2]–[5] of the GD. To provide a brief summary, on 22 January 2010, the appellant was arrested while he was in possession of a pipe (which subsequent scientific analysis found to be stained with methamphetamine), 18 packets of crystalline white substance and several empty packets.

3 After the appellant was taken to the Bedok Police Headquarters ("BPHQ"), three samples of urine (collectively, "the Urine Samples") were taken from him. The first sample tested positive for methamphetamine in an Instant Urine Test done at the BPHQ. The second and third samples ("the Second and Third Samples") were sent for testing by the Health Sciences Authority ("HSA"). The tests on those two samples revealed the presence of methamphetamine, and certificates under s 16 of the MDA ("s 16 certificates") were issued to that effect.

4 On the day of his arrest, the appellant also made three incriminating statements which stated the following facts:

(a) earlier that morning, he had bought 2.4g of "Ice" (a well-known street name for

methamphetamine) from one "Kopi Kia" and had repacked the "Ice" into 24 packets;

(b) he had consumed six of the 24 packets, with the remaining 18 packets intended for resale to his former colleagues at a price of $50 per packet;

(c) he had bought "Ice" from "Kopi Kia" on five to six previous occasions, both for his own consumption and for resale; and

(d) he was a heavy "Ice" smoker who consumed five to six packets every day.

The statutory provisions

5 Before we provide a summary of the Judge's decision and the arguments of the parties in this appeal, it is convenient that we first set out the relevant statutory provisions in the MDA, *ie*, ss 8(*b*), 16, 22, 31(1) and 31(4). They are as follows:

Possession and consumption of controlled drugs

8. Except as authorised by this Act, it shall be an offence for a person to —

...

(*b*) smoke, administer to himself or otherwise consume —

(i) a controlled drug, other than a specified drug; or

(ii) a specified drug.

…

Certificate of analyst, etc.

16. A certificate purporting —

(*a*) to be signed by —

(i) an analyst employed by the [HSA]; or

(ii) such other person as the Minister may, by notification in the *Gazette*, appoint; and

(*b*) to relate to a controlled drug or controlled substance,

shall be admitted in evidence, in any proceedings for an offence under this Act, on its production by the prosecution without proof of signature and, until the contrary is proved, shall be proof of all matters contained therein.

…

Presumption relating to urine test

22. If any controlled drug is found in the urine of a person as a result of both urine tests conducted under section 31(4)(*b*), he shall be presumed, until the contrary is proved, to have

consumed that controlled drug in contravention of section 8(*b*).

…

Urine tests

31.—(1) Any officer of the [Central Narcotics] Bureau, immigration officer or police officer not below the rank of sergeant may, if he reasonably suspects any person to have committed an offence under section 8(*b*), require that person to provide a specimen of his urine for urine tests to be conducted under this section.

...

(4) A specimen of urine provided under this section shall be divided into 3 parts and dealt with, in such manner and in accordance with such procedure as may be prescribed, as follows:

(*a*) a preliminary urine test shall be conducted on one part of the urine specimen; and

(*b*) each of the remaining 2 parts of the urine specimen shall be marked and sealed and a urine test shall be conducted on each part by a different person, being either an analyst employed by the [HSA] or any person as the Minister may, by notification in the *Gazette*, appoint for such purpose.

The Judge's findings

6 The Judge decided that, on the facts, the Prosecution had proved the charge against the appellant in the following three ways:

(a) The appellant had voluntarily confessed that he had consumed what he believed to be "Ice". In relation to the *actus reus* of the offence charged, the Judge stated that the only dispute was as to the precise identity of the substance which was in fact consumed by the appellant. He found that this element was proved because the appellant had sufficient knowledge of, and familiarity with, methamphetamine for his belief that he was consuming methamphetamine to be true.

(b) The appellant had failed to rebut the presumption in s 22 of the MDA ("the s 22 presumption") that he had consumed methamphetamine, which presumption was triggered by the fact that methamphetamine had been found in his urine by the tests conducted by the HSA on the Second and Third Samples. The Judge held, on the evidence, that the HSA had complied fully with the requirements of s 31(4)(*b*) of the MDA (referred to hereafter as "s 31(4)(*b*)" for short), thereby triggering the s 22 presumption.

(c) The Judge held that the presumption in s 16 of the MDA ("the s 16 presumption") had also been triggered by the issue of the s 16 certificates by the HSA even if s 31(4)(*b*) had not been complied with. The appellant had failed to prove the contrary of the matters stated in the s 16 certificates issued. The Judge also rejected the appellant's argument that all the methamphetamine detected was due to contamination of the Second and Third Samples prior to the urine tests.

The issues in this appeal

7 The first (and also the main) issue in this appeal was whether the urine-testing procedures of

the HSA at the material time complied with the requirements of s 31(4)(*b*). It was not disputed that because of and since the decision of the High Court in *Lim Boon Keong v Public Prosecutor* [2010] 4 SLR 451 ("*Lim Boon Keong*"), the HSA had, *ex abundanti cautela*, changed its urine-testing procedures (effective from 30 June 2010) in order to comply with the observations of the court as to the legality or propriety of those procedures. Although this appeal was concerned only with the pre-30 June 2010 urine-testing procedures, which were the procedures used in the analysis of the Second and Third Samples, the Prosecution's position in this appeal was that those procedures were in full compliance with the requirements of s 31(4)(*b*), and it invited this court to make a ruling to that effect.

8 The second issue in this appeal concerned the relationship between ss 16, 22 and 31(4)(*b*), and, in particular, whether non-compliance with s 31(4)(*b*) would *ipso facto* lead to the rebuttal of the s 16 presumption.

9 The third issue concerned other ways in which the Prosecution could prove consumption apart from relying on the statutory presumptions in the MDA, and, in particular, whether, in principle, confessions were in themselves sufficient to establish the *actus reus* of the offence under s 8(*b*) of the MDA ("the s 8(*b*) offence") beyond a reasonable doubt.

The first issue: Compliance with s 31(4)(*b*)

10 The significance of compliance with s 31(4)(*b*) is that if there are positive results from both of the urine tests carried out pursuant to this subsection, the s 22 presumption will operate to presume that the accused person has, in contravention of s 8(*b*), consumed the controlled drug detected in his urine samples. This means that both the *actus reus* and the *mens rea* of the s 8(*b*) offence are presumed by s 22: see *Vadugaiah Mahendran v Public Prosecutor* [1995] 3 SLR(R) 719 at [24] (see only the first three sentences); and *Public Prosecutor v Tan Loon Lui* [2003] 2 SLR(R) 216 at [6]. In examining whether the HSA's urine-testing procedures at the material time complied with s 31(4)(*b*), we considered three specific questions, namely:

(a) when a urine test begins;

(b) what the stipulation in s 31(4)(*b*) that a urine test must be "conducted … by" (in the context of the present appeal) an analyst employed by the HSA (an "analyst") entails; and

(c) what the requirement in s 31(4)(*b*) that each of the urine tests mentioned therein must be conducted "by a different person" entails.

The analysis of urine by the HSA

11 For present purposes, it is necessary to outline briefly the steps involved in the urine-testing procedures of the HSA which were in issue. The Judge has helpfully conducted a detailed exposition of the entire process: see [77]–[180] and Annex A of the GD. Typically, a screening test is first conducted on one of the two parts of the urine sample mentioned in s 31(4)(*b*) from an accused person by an "auto-analyser" (the accuracy of which was not challenged in the present appeal). The screening test is a preliminary test to detect the presence of controlled drugs. It was introduced by the HSA to reduce the number of urine samples sent for the Gas Chromatography/Mass Spectrometry ("GC/MS") test. If the screening test produces a negative result, the HSA's practice is not to proceed with further testing, but the statutory provisions do not prohibit it from carrying out the GC/MS test on the two parts of the urine sample concerned. If no further testing is done, the consequence will be that the charge against the accused person may have to be withdrawn if there is no other evidence

of consumption against him.

12 If the screening test shows a positive result, the two parts of the urine sample mentioned in s 31(4)(*b*) are then sent for the GC/MS test. To prepare each part of the urine sample for this test, a process involving sampling, solid phase extraction ("SPE") and derivatisation is carried out, where the urine is subjected to physical manipulation and chemical reactions. Various chemical compounds are also added.

13 Once the sampling, SPE and derivatisation stage is completed, the glass vial containing the first part of the urine sample from the accused person is placed on a tray. This tray also contains other vials with liquids whose identities and components are known, such as quality control samples with specific types and amounts of controlled drugs. The GC/MS instrument then carries out the GC/MS test on all the vials. This test is automated, and is done according to the sequence and parameters programmed into the instrument's computer by a laboratory officer ("LO") before the start of the test. The glass vial containing the second part of the urine sample from the accused person undergoes the same process, but in a different workflow.

14 All the results generated by the GC/MS instrument (known as "chromatograms") for the first set of vials (which includes, *inter alia*, the vial containing the first part of the urine sample from the accused person) are handed over to an analyst. Similarly, all the chromatograms for the second set of vials (which includes, *inter alia*, the vial containing the second part of the urine sample from the accused person) are handed over to a different analyst. Each analyst then analyses and interprets the data for his own set of chromatograms, reaches his conclusions for each part of the urine sample in question and issues s 16 certificates based on those conclusions.

15 All the chromatograms, s 16 certificates and other documents are then passed to a senior analyst who carries out a final review.

When a urine test under s 31(4)(b) begins

16 As mentioned at [10] above, the first question we had to consider *vis-à-vis* the issue of compliance with s 31(4)(*b*) was when a urine test under this subsection begins. In this connection, we note that the appellant took issue before the Judge with the propriety or regularity of the urine collection process at the BPHQ, which he contended was part of the urine test (see [242] of the GD). This argument was not pursued on appeal.

17 The appellant argued that a urine test under s 31(4)(*b*) began at the screening stage referred to at [11] above, and, therefore, the Judge was wrong to find that it began only at the sampling, SPE and derivatisation stage. Although the appellant conceded that, on the facts, nothing had gone wrong *per se* at the screening stage in his case, he argued that a finding on the issue of whether the screening stage constituted part of a urine test was nonetheless important because if the screening stage did indeed form part of a urine test, an analyst must "conduct" this stage personally to comply with s 31(4)(*b*).

18 We did not agree with the appellant's submission that a urine test under s 31(4)(*b*) begins at the screening stage. We agreed with the Judge that it begins instead at the sampling, SPE and derivatisation stage for the reasons set out at [246]–[250] of the GD. The screening test has absolutely no impact on what is reported in a s 16 certificate, except that a negative result at the screening stage means that if the HSA does not proceed with further testing (which will usually be the case, given the HSA's practice (see [11] above)), no s 16 certificate will be issued at all. In such a case, a false negative result at the screening stage can only be to an accused person's benefit.

19 Before we turn to the next question, we note that although the Prosecution argued before the Judge that a urine test under s 31(4)(*b*) began at the GC/MS test proper and thus did not include the sampling, SPE and derivatisation stage, it did not, in this appeal, dispute the correctness of the Judge's finding that the latter (*ie*, the sampling, SPE and derivatisation stage) formed part of a urine test. We agreed with the Judge's findings on this point at [251]–[254] of the GD.

What the stipulation in s 31(4)(b) that a urine test must be "conducted … by" an analyst entails

20 We move now to the question of what the stipulation in s 31(4)(*b*) that a urine test must be "conducted … by" an analyst entails. The appellant argued that in order for an analyst to have "conducted" a urine test, the latter must have been continuously present throughout the entire process of the test. This was required because Parliament intended that the presence throughout the entire test process of an analyst, as a professional scientist, would prevent any abuse or inadvertent mix-ups. In support of this argument, the appellant referred to the following speeches in Parliament when the second urine test was introduced in place of the previous one-test regime (see *Singapore Parliamentary Debates, Official Report* (9 November 1977) vol 37 at cols 180–182):

> **Mr S. Dhanabalan (Kallang)**: Mr Speaker, Sir, I would also like a clarification on the second urine test. It is not unknown that even in medical laboratories and hospitals where the staff are specially trained to conduct tests that there are cases of mix-up. Here we have cases of people who are not specialised to take such samples, and I think we would appreciate the Minister's assurance that very detailed methods of taking test samples would be laid down. Of course, it is not possible to have a foolproof system but I think a detailed system of taking test samples which would minimise the incidence of mix-up would be appreciated.
>
> ...
>
> **Mr Chua Sian Chin [Minister for Home Affairs and Education]**: … Sir, to explain to the Member for Kallang, these tests are not done by medical officers. They are done by scientists. *We have scientists in the Department of Scientific Services* [which was later incorporated into the HSA] *to do these tests. The Department is the proper authority for doing these tests. Members can be assured that these tests are carried out properly and they can depend on the tests to be accurate*.
>
> [emphasis added]

The appellant also pointed out that in *Singapore Parliamentary Debates, Official Report* (30 November 1989) vol 54 at col 865, Prof S Jayakumar (the then Minister for Home Affairs) stated, "Both samples will be tested by different chemists with the necessary safeguards". In reliance on these statements, the appellant took issue with the HSA's practice and procedure of not requiring its analysts to be present at all during the entire urine-testing process until the point when they were assigned the task of analysing and interpreting the chromatograms, *ie*, until after the GC/MS test had been completed.

21 It was not clear to us precisely what *degree* of presence (or involvement) by an analyst was, in the appellant's contention, necessary. Before the Judge, the appellant argued that actual, continuous and real-time supervision was required. This was a much higher degree of involvement than "mere" presence in the laboratory, unless what the appellant had intended to suggest was that the analyst was required to stand behind or near the LO when the latter carried out the various steps in the urine-testing process. Even then, it was not clear whether the appellant's counsel was advocating that the ratio of analysts to LOs should be 1:1, or 1:2, or lesser.

22 We agreed with the Judge's comprehensive analysis and conclusion (at [258]–[264] of the GD) that the urine-testing procedures used by the HSA at the material time fully complied with s 31(4)(*b*) in the sense that a urine test would be "conducted … by" an analyst if those procedures were followed. In our view, the phrase "conducted … by" has a spectrum of possible meanings and does not necessarily mean that the person who "conducts" an activity has to personally carry out, or personally supervise in real-time, each of the steps which constitute that activity. One way of looking at the urine-testing process is that the role of the analyst is like that of a conductor who conducts an orchestra. The conductor does not have to play every single instrument well or at all, so long as he is still able to retain overall control of the orchestral performance (see [199] of the GD). As Scrutton LJ stated in *Council of the Pharmaceutical Society of Great Britain v Fuller* [1932] 96 JP 422 at 424:

> In my view "conduct" means something very like "control" or "manage," so that a man may conduct the business without personally undertaking or carrying out every item that is done in the business. ... [T]he business may be conducted by a man who does not himself perform every act which forms part of the business, it is enough that he controls it, regulates it and has the power which he exercises of giving orders as to how it shall be carried on.

23 Within the spectrum of possible meanings of the phrase "conducted … by" in s 31(4)(*b*), the choice of which meaning to attribute to that phrase must be guided by a purposive approach: see s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed). The legislative history of s 31(4)(*b*) and the relevant Parliamentary debates (see [216]–[227] of the GD, and also *Lim Boon Keong* at [25]–[28]) indicate that the general thrust and tenor of the introduction of the second urine test in 1977 and the subsequent amendment of the then equivalent of s 22 of the MDA in 1989 was directed at reducing the possibility of human error or abuse. In our view, there is no rational nexus between the appellant's proposition (*viz*, that an analyst must be continuously present throughout the entire urine-testing process) and this objective because most of the errors that may occur are not detectable visually and, further, a Laboratory Manual is available for reference in the HSA's laboratory. For errors which can be detected visually, for example, a mix-up of urine samples due to an erroneous reading of the labels on the bottles containing the samples, such errors may be detected with at least equal efficacy by anyone competent in reading and who has an eye for detail as by an analyst. It would thus be unduly onerous and unreasonable to read the words "conducted … by" in s 31(4)(*b*) as imposing a requirement that an analyst must carry out all the steps in the urine-testing process, or at least supervise these steps, in order to avoid this particular type of errors (*ie*, errors which can be detected visually).

24 In short, we agreed with the Judge that an analyst is not required by s 31(4)(*b*) to be present in the laboratory throughout, or to physically supervise in real-time, all the various steps involved in a urine test. All that is necessary is that the analyst should have regard to all the chromatograms generated from the set of vials assigned to him (containing, *inter alia*, one part of the urine sample mentioned in s 31(4)(*b*) and quality control samples) before arriving at his conclusions. In so doing, the analyst would be able to detect any errors in the steps which are part of the urine test, including the steps carried out at the sampling, SPE and derivatisation stage. We accept that there is a rational nexus between a requirement for an analyst to conduct real-time supervision of that stage (*ie*, the sampling, SPE and derivatisation stage) and the objective of the 1977 and 1989 amendments, because that stage involves the physical and chemical manipulation of the accused person's actual urine sample with scientific instruments. However, in our view, to read such a requirement into s 31(4)(*b*) would be to place an unnecessarily onerous burden on the HSA in achieving the purpose of s 31(4)(*b*) because the analyst would then be required to both supervise the sampling, SPE and derivatisation stage *and* analyse all the chromatograms in the light of the fact that most of the possible errors which may occur are not detectable visually. The risk of human error due to fatigue or

inertia would correspondingly increase, particularly due to the large number of urine samples that have to be analysed by the HSA daily.

25 We were of the opinion that: (a) the division of labour in the HSA's laboratory at the material time was an efficient arrangement which nonetheless provided a sufficient safeguard that the steps which required a higher level of expertise (*ie*, the interpretation and analysis of all the chromatograms) would be carried out by personnel with the appropriate qualifications and training; and (b) those steps provided a meaningful and effective means of supervising the urine tests.

26 We did not think that the reference to the Parliamentary debates (at [20] above) provided any assistance to the appellant because they merely contemplated that urine tests would be "carried out" or "done" by scientists. Those debates did not specify *how* urine tests were to be carried out. The answer to this question naturally changes over time with advances in science and technology. We were satisfied, based on the HSA's urine-testing procedures at the material time and in the light of the Judge's thorough analysis, that the HSA's analysts have sufficient supervision of the entire urine test such that they are able to claim responsibility for it and for the conclusions stated in the s 16 certificates that they issue: see *Lim Boon Keong* at [39] (see only the second last sentence).

27 There is another equally good reason for adopting a purposive reading of s 31(4)(*b*) to achieve this result. The relevant offence (*viz*, the s 8(*b*) offence) is that of consuming a controlled or specified drug (referred to hereafter as "a specified drug" *per se* for convenience): the quantity or weight of the specified drug in question is not relevant to the commission of the offence. The urine tests under s 31(4)(*b*) are conducted to determine the presence of specified drugs in an accused person's urine sample, and not to determine their concentration or their weight. The introduction of the second urine test in 1977 was intended to detect any errors due to a contamination or a mix-up of urine samples. Once urine samples are properly obtained from an accused person, errors in the detection of the existence of a specified drug in those samples can only occur due to a mix-up or contamination of the samples, and not due to the urine test itself because it is performed automatically by specially-designed equipment. Furthermore, the urine from an accused person is tested three times: once by the relevant enforcement agency and twice by the HSA. Hence, the need for an analyst to personally carry out or supervise all the steps involved in a urine test is not justified by the purpose of the test.

28 During the hearing of this appeal, we observed that although s 31(4) provides that the three parts of an accused person's urine sample "shall be ... dealt with, in such manner and in accordance with such procedure as may be prescribed", there is no prescribed procedure, whether in the MDA or the Misuse of Drugs (Urine Specimens and Urine Tests) Regulations (Cap 185, Rg 6, 1999 Rev Ed) ("the Regulations"), for dealing with that part of the urine sample which is subjected to the preliminary urine test mentioned in s 31(4)(*a*). Equally, the relevance and the admissibility of the results of this preliminary urine test are not provided for. Presumably, this omission is due to the fact that the preliminary urine test is done to sieve out cases with negative results, and therefore has no adverse consequences for the accused person, whatever its result might be. However, this irregularity should, in our view, be rectified by a prescriptive measure as required by s 31(4) itself. In any event, s 31(4) should also make clear whether or not, in the event that the preliminary urine test on one part of an accused person's urine sample produces a negative result, the Central Narcotics Bureau (or other relevant enforcement agency) has the discretion to send the remaining two parts of the urine sample to the HSA for further analysis in the interest of good governance and to accord with the Minister for Home Affairs' statement in 2006 that the amendments to the MDA (including the provision for the preliminary urine test) were "to enhance the operational efficiency and effectiveness of the CNB [Central Narcotics Bureau]": see *Singapore Parliamentary Debates, Official Report* (16 January 2006) vol 80 at cols 2095–2103. However, we would note that if the preliminary urine

test on one part of an accused person's urine sample produces a negative result whereas the tests done by the HSA on the remaining two parts of that urine sample produce positive results, the accused person would not be able to rebut the s 22 presumption if the Prosecution is able to show that the HSA's tests are more reliable than the preliminary urine test: see *Public Prosecutor v Ang Soon Huat* [1990] 2 SLR(R) 246 ("*Ang Soon Huat*") at [48], where the High Court held that it was incumbent on the Prosecution to produce additional expert evidence to prove the propriety of its drug analysis procedures in the face of a dispute between experts as to the proper method of conducting such analysis.

29 Before we turn to the next question pertinent to the issue of compliance with s 31(4)(*b*), we note that although counsel for the appellant initially argued that reg 5(2) of the Regulations supported his proposition that an analyst had to be continuously present throughout the entire urine-testing process because s 31(4)(*b*) had to be read harmoniously with reg 5(2) in the event of inconsistency between the two provisions, he accepted that this argument was a non-starter because it inverted the true position. It is the Regulations, being subsidiary legislation, which have to be read harmoniously with the MDA.

What the requirement in s 31(4)(b) that each urine test must be conducted "by a different person" entails

30 The next question which we considered *vis-à-vis* compliance with s 31(4)(*b*) was this: what does the requirement that "[each] urine test shall be conducted … *by a different person*" [emphasis added] entail? The appellant argued that the Judge was wrong to find that under the HSA's urine-testing procedures at the material time, each of the urine tests done pursuant to s 31(4)(*b*) was conducted "by a different person". The appellant submitted that this was because the rationale of s 31(4)(*b*) required that in respect of the two parts of the urine sample mentioned in that provision, a person involved in the workflow for one part of the urine sample could not be involved at all in the workflow for the other part of that same urine sample. This was so regardless of whether the person was tasked with actually performing a particular step, or with merely checking that the step was properly carried out.

31 We rejected the appellant's argument and agreed with the Judge's analysis and conclusion (at [270]–[276] of the GD). In our view, the Judge was correct to find that an analyst "conducted" a urine test by means of his analysis and interpretation of the set of chromatograms assigned to him (see [14] above). The requirement in s 31(4)(*b*) that each urine test must be conducted "by a different person" refers *only* to this stage, *viz*, the stage of analysing and interpreting chromatograms. The HSA's laboratory protocols prohibit an analyst, when analysing and interpreting the set of chromatograms assigned to him (which chromatograms, as stated at [14] above, relate to one of the two parts of an accused person's urine sample mentioned in s 31(4)(*b*)), from referring to the other set of chromatograms (which relate to the other part of the accused person's urine sample) assigned to another analyst and/or from discussing the matter with the other analyst. For this reason, the statement in *Lim Boon Keong* (at [40]) that "the personnel involved in the testing of one urine sample cannot be involved in any way at all in the testing of the other urine sample" is not a correct interpretation of the "by a different person" requirement in s 31(4)(*b*).

32 At the material time, the HSA required checks to be carried out on each step in the urine-testing process, beginning from the point of receipt of urine samples from enforcement agencies and ending with the final review by a senior analyst. The appellant argued that this practice breached the "by a different person" requirement in s 31(4)(*b*) because some of the personnel who carried out those checks in the workflow for the set of vials containing one part of an accused person's urine sample were also involved in the workflow for the set of vials containing the other part of the

accused person's urine sample. In our view, this argument was neither here nor there because the "by a different person" requirement refers only to the stage of analysing and interpreting chromatograms (see [31] above). In fact, those checks reinforce the safeguards against error and abuse in favour of accused persons who are factually innocent, *eg*, they reinforce the safeguards against a mix-up in urine samples at the HSA's laboratory, thus furthering the legislative purpose of the amendments in 1977 and 1989 (as set out at [23] above).

33 Finally, we agreed with the appellant that the phrase "a different officer" in reg 5(2) of the Regulations (which requires the HSA to "arrange for each of the 2 urine specimens to be tested by a different officer") should be interpreted consistently with s 31(4)(*b*), *ie*, that phrase should be read as (in the words of s 31(4)(*b*)) "a different person, being either an analyst employed by the [HSA] or any person as the Minister may, by notification in the *Gazette*, appoint for such purpose". Although we agreed with the appellant on this particular point, this did not affect our conclusion that the requirements of s 31(4)(*b*) were complied with because the HSA's urine-testing procedures at the material time stipulated that a different analyst was required to conduct the analysis and interpretation of each set of chromatograms.

The second issue: The relationship between sections 16, 22 and 31(4)(*b*) of the MDA

34 We turn now to the second issue in this appeal, *viz*, the relationship between ss 16, 22 and 31(4)(*b*) of the MDA. In the GD, the Judge also found that, on the assumption that the s 22 presumption did not operate due to non-compliance with s 31(4)(*b*), the Prosecution had nonetheless proved its case against the appellant on the basis of the s 16 presumption. The appellant advanced the following two arguments against this finding:

(a) the result of non-compliance with s 31(4)(*b*) is that the s 16 certificates issued by the HSA are either inadmissible or incapable of triggering the s 16 presumption; and

(b) even if the s 16 presumption was triggered in the present case despite non-compliance with s 31(4)(*b*), the Prosecution had not proved beyond a reasonable doubt that the appellant had consumed methamphetamine because all the methamphetamine detected in the Second and Third Samples (as defined at [3] above) was due to pre-contamination.

The relationship between sections 16 and 22

35 We agreed with the Judge (at [30]–[33] of the GD) that ss 16 and 22: (a) exist separately and operate independently of each other; (b) possess different prerequisites; and (c) give rise to presumptions which are different in nature. In other words, they have different functions. We would add that a successful rebuttal of the s 16 presumption would *ipso facto* constitute a rebuttal of the s 22 presumption (if the latter is triggered in the first place by positive results obtained from two urine tests conducted in accordance with s 31(4)(*b*)) because the implicit assumption of s 22 (*viz*, that the two urine tests mentioned in s 31(4)(*b*) are in themselves accurate in their identification of the specified drug(s) in the urine sample in question) would have been fatally undermined.

The relationship between sections 16 and 31(4)(b)

36 The main arguments on the second issue in this appeal concerned the distinct question of the effect of non-compliance with s 31(4)(*b*) on the operation of s 16. Such non-compliance could possibly have the following effects:

(a) the s 16 certificates issued by the HSA would be inadmissible;

(b) the s 16 certificates would be incapable of triggering the s 16 presumption; and/or

(c) the non-compliance could be used as a factor in rebutting the s 16 presumption.

Whether non-compliance with s 31(4)(b) would render s 16 certificates inadmissible

37 The appellant argued that non-compliance with the requirements of s 31(4)(*b*) would *ipso facto* render any s 16 certificate inadmissible in evidence. He referred to ss 31(1) and 31(2) of the MDA, which confer a power on certain officers to require the provision of urine samples on pain of conviction. No other authority was cited for this argument, and we rejected it. Sections 31(1) and 31(2) deal with the distinct issue of the power to compel the provision of urine samples, which should not be conflated with the issue of the admissibility of a s 16 certificate issued by, or purportedly issued by the HSA. On its face, all that the MDA provides is that the s 22 presumption is not triggered if there is non-compliance with s 31(4)(*b*). Hence, such non-compliance simply means that the Prosecution cannot rely on the results of the urine tests conducted by the HSA, as set out in the HSA's s 16 certificates, as presumptive evidence of consumption. In short, where there is non-compliance with s 31(4)(*b*), the Prosecution would have to prove the *actus reus* of the s 8(*b*) offence, *ie*, consumption, independently of the s 22 presumption. However, a s 16 certificate would still be admissible in evidence to show that certain tests to detect the existence and quantity of specified drug(s) in an accused person's urine sample were done by the HSA. Such tests are capable of proving beyond a reasonable doubt the *existence and quantity* of specified drug(s) in the accused person's urine sample (as opposing to proving the accused person's *consumption* of such drug(s)).

Whether non-compliance with s 31(4)(b) would render a s 16 certificate incapable of triggering the s 16 presumption

38 The appellant also argued that non-compliance with s 31(4)(*b*) would *ipso facto* mean that the s 16 presumption could not be triggered by any s 16 certificate which purported to certify the existence and/or quantity of a specified drug detected in the urine sample of an accused person. This was the sole basis upon which he challenged the Judge's finding that the s 16 presumption would nonetheless operate in relation to s 16 certificates even if there was non-compliance with s 31(4)(*b*).

39 We also rejected this argument. The plain wording of s 16 shows that the presumption set out therein is triggered by the production of a s 16 certificate purporting: (a) to be signed by an analyst or a person appointed by the Minister by notification in the *Gazette*; and (b) to relate to a controlled drug or controlled substance. In *Lim Boon Keong* (at [47]), the judge stated that "a court should not accept a s 16 certificate as presumptive proof that a controlled drug is found in an accused person's urine if the urine tests were not carried out in compliance with s 31(4)(*b*)". This statement is ambiguous because it may mean either: (a) that non-compliance with s 31(4)(*b*) renders a s 16 certificate incapable of triggering the s 16 presumption; or (b) that such non-compliance can be used to *rebut* the s 16 presumption. We believe that the judge intended to suggest the latter meaning rather than the former. The evidential issue flowing from the latter meaning is dealt with in the next section.

Whether non-compliance with s 31(4)(b) can be used to rebut the s 16 presumption

40 *Vis-à-vis* the issue of whether non-compliance with s 31(4)(*b*) can be relied upon to *rebut* the s 16 presumption, the appellant took no position on this issue as his argument was that such non-compliance had the result of either causing a s 16 certificate to be inadmissible, or causing the s 16 presumption to be inapplicable. The appellant also conceded that he was not challenging the *scientific* aspects of the analysis which led to the detection of a specified drug and the quantity thereof in a

urine sample.

41 During the hearing, the Prosecution submitted that although some circumstances which constituted non-compliance with s 31(4)(*b*) could be used to rebut the s 16 presumption, not all instances of non-compliance would result in such a rebuttal. We agreed. Although it is strictly unnecessary for us to deal with this matter in this appeal, given that we agreed with the Judge that the HSA's urine-testing procedures at the material time fully complied with the requirements of s 31(4)(*b*), we think it desirable that we give our views on the circumstances in which the s 16 presumption can be rebutted.

42 The presumption that has to be rebutted under s 16 pertains to what is set out in a s 16 certificate, *viz*, the existence of a specified drug and its weight. As we have stated earlier (at [27] above), the s 8(*b*) offence pertains to *consumption of a specified drug, and not the quantity of specified drug consumed*. This is significant because any non-compliance with s 31(4)(*b*) is likely to affect the *quantity* of specified drug found in an accused person's urine sample, rather than its *existence*. Even if a failure to comply with s 31(4)(*b*) is assumed to lead to an inaccurate finding on the quantity of specified drug found in an accused person's urine sample, it is hardly likely to lead to an error in the detection of that drug's *existence in the urine sample*. As we have also stated (likewise at [27] above), once urine samples have been properly collected from an accused person, any error in the detection of the existence of a specified drug in the accused person's urine samples is possible only where there is a mix-up of the samples (*eg*, where someone else's urine sample has been inadvertently tested as that of the accused person), or where the accused person's urine samples, which were previously free of specified drugs, are contaminated during the process of testing. Suppose we assume that both of the urine tests mentioned in s 31(4)(*b*) were conducted (in the sense described at [22]–[26] above) by the same analyst in a clear breach of the provision: although the same analyst conducted both tests, he is still more likely than a non-analyst to reach the results of the tests accurately. The key to rebutting the s 16 presumption is demonstrating forensic inaccuracy, *ie*, the inaccuracy of the identification and/or quantification of the specified drug purportedly detected: see, *eg*, *Ang Soon Huat*. For this reason, it is highly unlikely that the s 16 presumption can be rebutted by showing only that the same analyst conducted both urine tests under s 31(4)(*b*) in breach of the express stipulation therein.

43 Another case of a clear breach of s 31(4)(*b*) would be where the s 16 certificate for one of the two parts of the urine sample mentioned in s 31(4)(*b*) is issued by an analyst who did not in fact conduct the urine test on that part of the urine sample. In such a scenario, if the Prosecution were to tender the s 16 certificate signed by the analyst who in fact conducted the urine test on the other part of the same urine sample, it may well be that the court may find that the accused person has failed to rebut the s 16 presumption. In such a scenario, there is nothing in the MDA which prohibits the Prosecution from relying on the probative weight (in the sense of its evidential value) of the s 16 certificate relating to the other part of the urine sample to prove the *existence* of the specified drug as certified by the second-mentioned analyst.

44 For the avoidance of doubt, we would also reiterate our observation in *Tan Chin Hock v Public Prosecutor* [2011] 1 SLR 1079 at [23] and [26] that an accused person who takes issue with the accuracy of a s 16 certificate *must* cross-examine the analyst (or other authorised person) who apparently or purportedly signed it if the former wishes to take issue with the procedure or the circumstances surrounding the preparing, signing and issuance of the certificate. This is because the s 16 presumption, once triggered, operates in relation to all the matters stated in a s 16 certificate. In other words, to rebut the s 16 presumption, an accused person has to prove, on a balance of probabilities, that a particular matter stated in a s 16 certificate is incorrect.

Whether all the methamphetamine detected in the Second and Third Samples was due to pre

Whether all the methamphetamine detected in the Second and Third Samples was due to pre-contamination

45 Apart from the argument that non-compliance with s 31(4)(*b*) rendered the s 16 certificates issued in the present case inadmissible or incapable of triggering the s 16 presumption, the appellant also raised the issue of pre-contamination of the Second and Third Samples (*ie*, contamination during the collection of those urine samples). The Judge rejected this argument on the ground that there was no reasonable doubt that the appellant had consumed methamphetamine because it was fanciful and incredible to argue that the very high level of methamphetamine detected in both the Second and Third Samples was entirely due to pre-contamination (at [43]–[65] of the GD). We agreed with the Judge and likewise rejected the appellant's argument on pre-contamination. Even if, for example, 80% of the methamphetamine detected in the Second and Third Samples had been present in those samples due to contamination, the fact remains that the remaining 20% of the methamphetamine detected would still have been present due to the appellant's consumption of that drug. As we mentioned at (*inter alia*) [27] above, for the purposes of the s 8(*b*) offence, what is crucial in testing a urine sample is the detection of the *existence* of a specified drug, and not the ascertainment of the quantity of that drug, in the sample.

The third issue: Other ways in which the Prosecution can prove consumption outside of the statutory presumptions

46 A careful analysis of the legislative framework under s 31 of the MDA for testing urine samples for the presence of specified drugs in connection with drug consumption offences shows that the MDA does not impose an obligation on the Prosecution to undertake any such tests if it does not wish to rely on either the s 22 presumption to prove consumption of a specified drug, or the s 16 presumption to prove the presence and the quantity of specified drug in an accused person's urine sample. Positive results from urine tests conducted in compliance with s 31(4)(*b*) will trigger the s 22 presumption, and also the s 16 presumption if s 16 certificates duly signed by the prescribed signatories are tendered as evidence of the facts stated in the said certificates. However, there is nothing in the MDA which prevents or prohibits the Prosecution from adducing evidence (by means other than s 16 certificates) of reliable scientific tests of an accused person's urine sample to prove the existence therein of a specified drug, regardless of whether or not the test results trigger the s 16 presumption. If accepted by the court as being reliable, such proof is likely to be sufficient evidence of the fact that the accused person did indeed consume the specified drug found in his urine sample. However, such evidence does not in itself prove that the accused person committed the s 8(*b*) offence because the Prosecution must further prove that the accused person knew that he was consuming the specified drug in question. Without an admission or a confession of that fact, it would be difficult for the Prosecution to prove it. That was why s 22 was enacted to shift the burden of proving absence of knowledge to the accused person in a drug consumption offence. It therefore behoves the Prosecution to ensure that the HSA complies with s 31(4)(*b*).

The sufficiency of the appellant's confessions

47 In the present case, the appellant argued that his confessions were, as a matter of law, in themselves insufficient to establish his guilt, and that the effect of ss 31(1) and 31(2) of the MDA in authorising the taking of the Urine Samples from him, on pain of conviction, was to overrule the common law position that a confession, *per se*, is sufficient in law to convict a person.

48 We did not accept this argument. The urine-testing provisions in s 31 were not intended to abrogate the probative value of a confession. As we have mentioned earlier (at [46] above), the urine-testing provisions were intended to shift the burden of proving lack of knowledge of

consumption to the accused person. An admissible confession may be sufficient to establish the *actus reus* of a drug consumption offence to the criminal standard of proof. When deciding whether it in fact does so, the court will of course have regard to all the circumstances of the case, and, in particular, the accused person's knowledge of and familiarity with the substance which he purported to identify in his confession: see *Lim Boon Keong* at [53]–[59]. This is an issue of weight, and not admissibility.

49 That said, since the MDA has provided a legislative framework to test the urine samples of accused persons, the courts should be slow to conclude that the *actus reus* (as opposed to the *mens rea*) of a drug consumption offence has been proved solely on the basis of confessions if: (a) no urine test, or no urine test conducted in accordance with s 31(4)(*b*), has been carried out; and (b) there is no other objective evidence from which the court may infer that the confessions in question are reliable. By way of illustration of when a confession may be treated as reliable in this context, the appellant's confession of consumption in the present case was supported by his having in his possession, when he was arrested, a pipe which was found to be stained with methamphetamine and also several empty packets (see [2] above).

50 For these reasons, we agreed with the Judge (at [9]–[14] of the GD) that the Prosecution had proved the appellant's guilt beyond a reasonable doubt solely on the basis of his confessions.

Conclusion

51 For the reasons given above, we dismissed the appeal.