

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 272

Criminal Case No 50 of 2016

Between

Public Prosecutor

And

Gopu Jaya Raman

JUDGMENT

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

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Public Prosecutor
v
Gopu Jaya Raman

[2016] SGHC 272

High Court — Criminal Case No 50 of 2016
Pang Khang Chau JC
3, 4, 5, 6, 7 October 2016; 21 November 2016

8 December 2016

Judgment reserved.

Pang Khang Chau JC

1 The accused, Gopu Jaya Raman, a 30-year-old Malaysian male, faced the following charge:

That you, **GOPU JAYA RAMAN**, on 24 March 2014 at about 7:48 p.m., at the Motorcycle Arrival Lane, Woodlands Checkpoint, Singapore, in a motorcycle bearing license plate number WWR 1358, did import into Singapore three bundles containing not less than 1351.4 grams of granular powdery substance which was analyzed and found to contain not less than 46 grams of diamorphine, a “Class A” controlled drug listed in the First Schedule to the Misuse of Drugs Act, Chapter 185, Rev. Ed. 2008, without authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under section 7 punishable under Section 33(1) of the said Act.

The arrest

2 The accused was arrested after the Immigration and Checkpoints Authority (“ICA”) officers on duty at the Motorcycle Arrival Lane at Woodlands Checkpoint performed a 100% check on the motorcycle ridden by the accused, and discovered two black bundles hidden in the left fender of the motorcycle. According to ICA officer Cpl Abdul Hakim, who performed the search, the accused looked confused and lost when the bundles were discovered and said in Malay, “What’s that? That’s not my bike.”

3 Upon discovering the two black bundles, the ICA officers suspended their search of the motorcycle and contacted the Central Narcotics Bureau (“CNB”). When the CNB officers arrived and continued with the search, a third black bundle was discovered in the right fender of the motorcycle. The three bundles were subsequently analysed and found to contain not less than 46 grams of diamorphine. A DNA swab was done on the bundles but no DNA samples could be found on them.

4 When arrested, the accused had RM55 and no Singapore currency on him. He was carrying two mobile phones. The first, marked “GJ-HP1”, is described in evidence as either “the pink phone” or “the purple phone”. The second, marked “GJ-HP2”, was black in colour and had a cracked screen rendering its screen display unreadable. Each of the two mobile phones had a Malaysian SIM card in it. In addition, the accused was carrying a Singapore SIM card in his wallet. According to the accused, the Singapore SIM card was loaned to him by a person called “Ah Boy”. Ah Boy was also the person from whom the accused obtained the motorcycle, which the accused said belonged to Ganesh, Ah Boy’s business partner. The accused confessed to having smuggled drugs into Singapore for Ganesh and Ah Boy on two previous

occasions, using the same motorcycle as the one he was arrested with on 24 March 2014. He also admitted that he had used the same Singapore SIM card to contact the recipients of the drugs on those previous two occasions.

The accused's version of events

5 The accused's defence, in essence, is that he borrowed the motorcycle on 24 March 2014 to visit his girlfriend, Revalthi, and a friend, John, in Singapore to celebrate his birthday, that he did not agree to deliver drugs on that occasion, and that the drugs were hidden in the motorcycle without his knowledge. The accused had been consistent throughout in the general outline of his defence. In his contemporaneous statement given half an hour after his arrest, the accused said, "I don't know that this bundle are inside the bike". In his statement under s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") given four hours after his arrest, the accused said, "I am innocent. I am really not aware that there are drugs in the bike." This refrain was consistently repeated in his subsequent statements.

Anatomy of the motorcycle

6 To understand the accused's story, it is necessary to first explain the motorcycle's anatomy. The make and model of the motorcycle is Demak DV110. The seat of the motorcycle can be lifted up to reveal the opening to the fuel tank and a storage compartment. In other words, one would need to lift up the seat in order to refuel the motorcycle, and doing so would expose the contents of the storage compartment. The storage compartment (marked as "GJ-Seat Compartment Lid" in evidence and hereafter referred to as the "seat compartment lid" for convenience) is secured to the motorcycle by four screws. When these four screws are removed, the seat compartment lid can be

removed to reveal a sizeable empty space on the insides of the motorcycle's fenders. This space inside the fenders is not completely sealed off by the seat compartment lid. There are gaps at the back of the seat compartment lid which would allow a person standing behind the motorcycle, with the aid of a torchlight, to look into the space inside the fenders.

7 I have spent some time explaining this because, on the night of the accused's arrest, the drugs were found inside the fender, *beneath* the seat compartment lid whereas, on the two previous occasions he delivered drugs to Singapore, the drugs were said by the accused to have been placed *on* the seat compartment lid. The accused thus claimed that, on 24 March 2014, he checked for drugs on the seat compartment lid and found none, not knowing that there were drugs hidden beneath the seat compartment lid.

8 This would also be a useful juncture to mention that, on the night of the arrest, a scarf and a screwdriver were found under the seat, on the seat compartment lid. Forensic examination was inconclusive on whether the accused had used the screwdriver to unscrew the seat compartment lid. The DNA profile obtained from the screwdriver was a complicated mixed DNA profile from at least three persons, thus rendering the DNA profile uninterpretable. No transferred materials were found between the screwdriver and the four screws used to secure the seat compartment lid. I regard the absence of transferred materials as a neutral factor. As a matter of logic, while the presence of transferred materials would prove that the screwdriver had come into contact with the four screws, the absence of transferred materials is insufficient to prove that the screwdriver had never been used on the four screws.

9 Defence counsel argued that, because the blade of the screwdriver was too large to fit perfectly into the slots on the screw heads, the screwdriver was unlikely to have been used by the accused to unscrew the seat compartment lid for the purposes of placing the drugs underneath it. In my view, nothing much turns on this. The evidence of forensic scientist Ms Leong Wai Ying on the first day of trial shows that, if the screwdriver were tilted at an angle, its blade could penetrate the slots on the screw heads by between 67% and 97%. The conclusion I drew from these numbers is that using this screwdriver to unscrew the seat compartment lid would not have been a very difficult task.

10 The observations in [6] above are based largely on my personal inspection of the motorcycle, which took place on the second day of trial in the presence of the accused, defence counsel and deputy public prosecutors. The observation concerning gaps at the back of the seat compartment lid are well illustrated by photographs “D2” and “P62” taken during my inspection of the motorcycle.

Main elements of the accused’s evidence

11 The main elements of the accused’s evidence are as follows:

(a) From 2010 to 2014, the accused had worked at various jobs in Singapore and Malaysia. Sometime around Chinese New Year 2014, the accused quit his job as a lab cleaner in Singapore and went back to live in Johor Bahru. He remained unemployed until his arrest on 24 March 2014.

(b) The accused was introduced to Ganesh and Ah Boy in January 2014 by a friend, Siva, at a restaurant in Tampoi, Malaysia. Thereafter,

they would meet often at the same restaurant. (It is unclear from the evidence whether these were arranged meetings or chance meetings as a result of them frequenting the same restaurant.)

(c) Being in need of money to pay his children's school fees, the accused borrowed RM4,000 from Ganesh in February 2014, promising to return the money in two weeks. When the accused could not repay the loan after two weeks, Ganesh became very angry with the accused.

(d) Ah Boy then suggested that the accused help deliver drugs to Singapore for Ganesh and Ah Boy, promising that "within 2 or 3 trips the full loan can be settled". Ah Boy added that if the accused did not either pay up immediately or help deliver drugs, Ganesh would send his men to "disturb" the accused's family. Fearing for the safety of his family, the accused agreed.

(e) The first drug delivery was made on 10 March 2014. The accused collected the motorcycle at 5.00am from Ah Boy's house, where he was shown three green bundles placed under the seat, on the seat compartment lid. The green bundles were covered with a scarf to hide the bundles from view should the seat be lifted. This is the same scarf referred to in [8] above. To arrange the delivery, Ganesh sent the recipients' number to the accused by SMS, and the accused called the recipients to fix the meeting. After delivering the drugs, the accused met his girlfriend, Revalthi, for breakfast before returning to Johor Bahru, Malaysia.

(f) The accused knew these were drugs because he was told by Ganesh that the green bundles contained *sappadu*, which he

understood as a reference to drugs. Although he was not told what type of drugs the green bundles contained, he was told that the consequences of getting caught would not be serious and he would probably get a prison sentence of two to three years.

(g) On 12 March 2014, the accused similarly went to Ah Boy's house in the morning and was shown three green bundles under the seat of the motorcycle, on the seat compartment lid. Again, the green bundles were covered with the scarf. Again, the accused was given the recipient's number by Ganesh via SMS. Again, he went to meet his girlfriend after delivering the drugs, before returning to Johor Bahru, Malaysia.

(h) The accused had met his girlfriend in Singapore about three or four times during the month of March 2014, and these meetings would take place in the morning near her residence in Ang Mo Kio, after her shift as a security guard.

(i) Prior to the first drug delivery, the accused had also travelled into Singapore on 1, 4, 5 and 6 March 2014 on Ganesh's instructions. The accused explained that these trips were undertaken for familiarisation purposes, and not for drug deliveries.

(j) On 24 March 2014, the accused called Ganesh to borrow RM150. The accused had met with a traffic accident the night before and sustained some injuries to his chest and leg. He wanted to use the money to visit a doctor. Ganesh initially asked the accused why Ganesh should lend the accused money since the accused was "not doing any work for him". The accused replied that he would return the

money after getting a job. Ganesh then responded by asking the accused to look for Ah Boy.

(k) The accused met Ah Boy at about 2.40pm. Ah Boy asked the accused if he could deliver “10 stones” the next morning (on 25 March 2014). Aware that this was a reference to delivery of drugs, the accused declined, explaining that he had already delivered drugs to Singapore twice and he did not wish to do it anymore. After conferring with Ganesh over the phone, Ah Boy passed RM150 to the accused and told the accused that Ganesh would be calling him.

(l) After getting the RM150, the accused went to see a doctor and reached home at about 4.00pm. Sometime between 4.00pm and 6.00pm, the accused called Ganesh to borrow a motorcycle to go to Singapore. Ganesh asked the accused to collect the motorcycle from Ah Boy, with the request that the accused return early as Ganesh needed the motorcycle the next day. The accused collected the motorcycle from Ah Boy shortly after 6.00pm.

(m) When refuelling the motorcycle before crossing the Malaysia customs, the accused checked “the usual place where the drugs were placed but nothing was found”. The accused explained that he decided to conduct the check because of the request earlier in the day by Ah Boy for him to bring “10 stones”, which he had refused. It did not occur to the accused to check underneath the seat compartment lid because he did not expect drugs to be hidden there, given his previous experience delivering drugs for Ganesh and Ah Boy using the same motorcycle.

(n) After clearing the Malaysia customs and before arriving at Woodlands Checkpoint, the accused received a phone call from Ganesh. Ganesh asked the accused for his location. The accused replied that he was approaching Woodlands Checkpoint. Ganesh then told the accused to call back once he has cleared Woodlands Checkpoint. This aroused the accused's suspicion and he asked Ganesh why the accused should call him.

(o) There is some divergence between the accused's statements under s 22 of the CPC ("the s 22 statements") and his evidence in court concerning what happened next:

(i) According to the accused's s 22 statements, Ganesh replied that the accused should call him because the recipients had changed their contact numbers. Ganesh also told the accused not to call anybody else when he reached Woodlands. At that point, the accused knew there were drugs inside the motorcycle. The accused then asked Ganesh if Ganesh had put any drugs in the motorcycle. Ganesh laughed it off and said "ok ok call me once you reached". When the call ended, the accused had arrived at Woodlands Checkpoint. He thought of surrendering the drugs to the ICA officers at Woodlands Checkpoint but was too scared to do so. He thus proceeded to have his passport cleared.

(ii) According to the accused's evidence in Court, Ganesh simply replied "Call me, just call me". The accused then asked Ganesh if Ganesh had put any drugs in the motorcycle. Ganesh just laughed and said "call me once you reached". By then, the

accused suspected something was wrong and guessed that there could be drugs in the motorcycle. However, as he had already arrived at the Woodlands Checkpoint, there was no way he could have turned back, so he had no choice but to proceed to have his passport cleared.

(p) The key differences between the two versions are:

(i) In the s 22 statements, Ganesh was said to have explained that the recipients' contact numbers have changed. In court, the accused denied that Ganesh had given any such explanation during the telephone conversation.

(ii) In the s 22 statements, the accused admitted unequivocally that, from his telephone conversation with Ganesh, he *knew* that there were drugs inside the motorcycle as he went into Woodlands Checkpoint. In court, the accused resiled from this admission and said instead that he merely suspected or guessed that there were drugs.

The law

12 Section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) provides that:

7. Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

13 Section 2 of the Interpretation Act (Cap 1, 1997 Rev Ed) defines “import” as “to bring or caused to be brought into Singapore by land, sea or air.”

14 In *Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052, the Court of Appeal clarified (at [70]) that for a prosecution under s 7 of the MDA, it is not necessary for the Prosecution to prove that the importation was for the purposes of trafficking. An offence under s 7 would be made out as long as the drugs were brought into Singapore.

15 In relation to the facts of the present case, two statutory presumptions are relevant. First, s 21 of the MDA provides that:

21. If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

16 It is not disputed that the three black bundles containing diamorphine were found inside the fenders of the motorcycle. The accused admitted, in his statements and at trial, that he was in charge of the motorcycle for the time being when the drugs were found. I therefore find that the presumption under s 21 of the MDA has been triggered.

17 Next, s 18(2) of the MDA provides that:

(2) 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.

18 Since the accused is presumed pursuant to s 21 of the MDA to have had the drugs in his possession, I also find that the presumption under s 18(2) of the MDA has been triggered.

19 Once the presumptions are triggered, the burden shifts to the accused to rebut those presumptions on the balance of probabilities. If he fails to rebut

those presumptions, he will be convicted of the offence of unauthorised importation of the controlled drug diamorphine.

The accused has failed to rebut the presumptions under the MDA

20 The accused gave evidence in his defence. He did not call any other witnesses. Therefore, the success or otherwise of his defence turns largely on assessment of his credibility.

21 In assessing the credibility of a witness, relevant considerations include his demeanour, the internal consistency of his evidence, and the external consistency of his evidence (*ie*, the extent to which it coheres with objective evidence or with the testimony of other witnesses) (see *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592 at [9]).

The presumption of possession of the drugs

22 The presumption of possession under s 21 of the MDA may be rebutted by the accused proving on the balance of probabilities that he did not know of the existence of the drugs in the motorcycle prior to him crossing into Singapore (*Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [16]).

23 For the reasons given below, I find that the accused has failed to prove that the trip to Singapore on 24 March 2014 was made solely for the purposes of visiting his girlfriend, Revalthi, and his friend, John, and not for the purposes of delivering drugs.

The accused has failed to prove that the purpose of his trip to Singapore was to visit Revalthi and John

24 The accused's claim that he made the trip to visit his girlfriend and John is a bare assertion not backed up by objective evidence. The accused's evidence is that he did not make prior arrangements for the visit with either of them. It is therefore not possible to corroborate the accused's intention to visit them with either Revalthi or John. As it turned out, John could not be found and Revalthi could do no more than to confirm that there was indeed no arrangement to meet up with the accused on the night of 24 March 2014.

The evidence concerning Revalthi

25 To begin with, in his contemporaneous statement, the accused only said he was planning to visit John. He only spoke of his plan to visit Revalthi in the statement given under s 23 of the CPC four hours later. According to Revalthi's testimony:

- (a) She worked as a security guard from 8.00pm to 8.00am every night.
- (b) She is not sure if the accused knew her exact working hours, but she knows he was aware that she worked the night shift.
- (c) She met the accused three or four times during the month of March 2014.
- (d) Her meetings with the accused would always be in the morning, after her shift. They would meet below her flat in Ang Mo Kio and go for breakfast. These meetings would last for one to two hours, after which Revalthi would return home to sleep.

- (e) She has never met the accused at night.

26 The accused's evidence concerning his plan to meet Revalthi is plagued with inconsistencies. According to the accused's s 22 statement, he intended to look for Revalthi at Ang Mo Kio and bring her for dinner to celebrate his birthday, but only after first meeting John to discuss the accused's job search in Singapore.

27 In court, during cross-examination, the accused added that, besides discussing work with John, he also wanted to celebrate his birthday with John. When asked how he planned to celebrate with John, the accused answered that there were no specific plans but he believed that, once he told John that it was his birthday, John would definitely invite him out to eat. Here lies the first inconsistency – there is a clear contradiction between the accused's claim that he expected John to bring him out to eat and the accused's claim that he wanted to bring Revalthi out for dinner, especially bearing in mind that it was already close to 8.00pm by the time the accused reached Woodlands Checkpoint. If the accused were to go for a meal with John on 24 March 2014 before meeting Revalthi, it would probably be close to 10.00pm by the time the accused met Revalthi. In the absence of prior arrangements, it would have been quite unreasonable to expect Revalthi not to have had her dinner by then.

28 The second inconsistency arises from the fact that, because Revalthi worked the night shift, it would not have been possible for the accused to have met her in Ang Mo Kio as claimed in his s 22 statement. When the fact that Revalthi would have been working on the night of 24 March 2014 was brought to the accused's attention during cross-examination, the accused changed his story and claimed that he would have called Revalthi after

arriving in Singapore to find out where her workplace was and then gone to meet her at her work place. When confronted with the fact that his testimony in court differed from his s 22 statement, the accused was not able to explain the inconsistency. All he could say was: “My intention was to bring her to eat. Since she is working. I can only go to her workplace. This is my answer.”

29 The third inconsistency arose when the accused was asked during cross-examination about the possibility that Revalthi might not have been able to meet the accused on the night of 24 March 2014 as she was working. The accused’s response was: “Possible but she works as a security guard, she would have at least had 10 to 15 minutes to spare for me”. Spending 10 to 15 minutes with Revalthi is a very different proposition from having dinner with Revalthi. It is not believable that the accused would be willing to ask Ganesh, to whom he already owed favours and who had previously threatened the accused’s family, for permission to borrow the motorcycle, and to incur the cost of petrol for a trip to Singapore when he was already so desperately short of money, for only a chance to spend 10 to 15 minutes with Revalthi.

30 Finally, the fact that the accused had only RM55 and no Singapore currency on him belies any genuine intention to take Revalthi out for dinner. When asked during cross-examination how he planned to bring Revalthi out for dinner in Singapore without any Singapore currency on him, the accused replied “I would have changed the 50 Ringgit and used that”. When asked why he couldn’t have changed the currency over in Malaysia, he answered “It did not occur to me over there”. This is yet another indication that, in truth, the accused had no plans to visit Revalthi and take her out for dinner.

31 For the foregoing reasons, I find that the accused has failed to prove that he had planned to meet Revalthi on the night of 24 March 2014.

32 I should add that, in arriving at the foregoing conclusion, I gave no weight to the apparent inconsistencies between the accused and Revalthi concerning the dates of various phone calls and planned meetings. The accused's birthday is on 23 March but Revalthi mistakenly remembered it as 24 March when giving evidence in court. This resulted in a one-day discrepancy between the accused's and Revalthi's recollection of some events. As defence counsel rightly pointed out in closing submission, this is one of those discrepancies which fall within V K Rajah J's *dicta* in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 (at [85]) that "minor discrepancies in a witness's testimony should not be held against the witness in assessing his credibility. This is because human fallibility in observation, retention and recollection is both common and understandable."

The evidence concerning John

33 As for John, the accused's evidence is that he and John used to be colleagues at a branch of the bakery chain Bengawan Solo, and that John stays at a hostel on "Woodlands Loop Sector 1" near the premises of that branch. The accused does not know John's full name. The CNB investigation officer, ASP Billy Lee ("ASP Lee") testified to having sent an e-mail to Bengawan Solo regarding John and receiving a reply that there was no such person. A Malaysian number attributed to a "John" was found in the contacts list in the accused's pink/purple mobile phone (GJ-HP1) and a Singapore number attributed to a "John" was found in the contacts list in the accused's black mobile phone with a cracked screen (GJ-HP2). CNB sent the Malaysian number to Malaysia's CID for screening but with no result. CNB, however,

failed to send the Singapore number for screening. When asked why in court, ASP Lee explained that it was his oversight. A belated screening was done on the Singapore number for “John” a few days before commencement of trial and the number was traced to a pre-paid card which was registered on 12 July 2016. In other words, it is no longer possible to trace the person who was using this number back in March 2014.

34 In closing submissions, defence counsel made much of CNB’s oversight concerning the Singapore number for “John”. Characterising the investigation as “lackadaisical” and “slipshod”, defence counsel argued that it lies ill in the mouth of the Prosecution to turn its failure to investigate thoroughly to its advantage by making the submission that John does not exist.

35 I agree with defence counsel that CNB’s inability to locate John does not mean that John is a fictitious character. I therefore reject the Prosecution’s submission that John does not exist.

36 I also reject the Prosecution’s argument that because the accused would only have been able to call John’s Malaysian number (John’s Singapore number being contained solely in the black mobile phone (GJ-HP2), which had a non-functioning screen), he could not have intended to contact John. The Prosecution’s point is that it would not have been “cost-prudent” to do so as calling a Malaysian number in Singapore from another Malaysian number would involve channelling the call through a Singapore service provider’s roaming service, thus incurring expensive roaming charges. The accused explained under cross-examination that in some areas of Singapore, it is possible to get a “free line” for calls from one Malaysian number to another Malaysian number. I do not find the accused’s explanation implausible. It is

well-known, and I accordingly take judicial notice, that the Malaysian service providers' network coverage do extend to some areas of Singapore. Consequently, a call made in those areas from one Malaysian number to another Malaysian number could be connected directly through Malaysian service providers without the need to incur roaming charges.

37 However, even if I were to accept that the accused had a friend called John who lived in Woodlands and whom the accused visited often, it would not change the fact that the accused, by his own admission, had not made arrangements with John to visit him on 24 March 2014. This means that, even if John could be located, he would not be in a position to say anything to corroborate the accused's story. The accused was the only person who would have been aware of his private intention or lack of it. Thus, the accused's claim that he planned to visit John on this particular occasion is a bare assertion not capable of corroboration by objective evidence. Evaluated in light of my finding concerning Revalthi, I am not prepared to accept the accused's claim that he planned to visit John on the night of 24 March 2014.

38 Before leaving the discussion concerning Revalthi and John, I would add that, even if I were to believe the accused concerning his plans to meet either Revalthi or John on 24 March 2014, it would still be insufficient to rebut the presumption of possession. The accused gave evidence that, on the two previous occasions on which he delivered drugs, he went to Ang Mo Kio to meet Revalthi for breakfast after delivering the drugs. Therefore, proof that the accused intended to visit a friend or friends on a particular trip would not amount to proof that the trip was not made for the purpose of delivering drugs.

Evidence of an arrangement between Ganesh and the accused to deliver drugs on 24 March 2014

39 I turn now to examine the evidence which points to the existence of an arrangement between Ganesh and the accused to deliver drugs on 24 March 2014. In the s 22 statement recorded on 27 March 2014, the accused said:

While riding towards Woodlands custom I received a call from Ganesh. I then talked to him while I was riding. Ganesh then asked for my location. I told him that I am near Singapore Checkpoint. Ganesh then tell me to call him once I reached Woodlands. When he tell me this I suspected something. I then asked him why should I call him. *He then tell me that all the recipients changed their contact numbers.* So once you reached Woodlands you call me. When he told me that I confirmed there are drugs inside the bike. Ganesh also told me not to call anybody when I reached Woodlands. He told me to call him once I reached.

[emphasis added]

Later on in the same statement, the accused said:

After that an Indian CNB officer came in and served me a notice. I then agreed to cooperate with CNB. He then brought me to the bike. They then push the bike to an enclosed area. They then brought me to the CNB office. They then took a short statement from me. I then gave them Ah Boy, Ganesh and whatever recipients number I have. *I then inform the officer that the recipient changed the contact number already.* At that point in time Ganesh kept calling my Malaysia number and I was not able to pick up. I then tell the officer that I am supposed to change the SIM card to Singapore SIM card and call Ganesh upon reaching Woodlands.

[emphasis added]

In the s 22 statement recorded on 28 March 2014, the accused said:

Like what I mentioned earlier that I suspect that there are drugs inside the bike when Ganesh call me after I clear the Malaysia custom. Ganesh told me to call him when I reached Singapore *as the recipients already changed their contact numbers.*

[emphasis added]

40 In the lines emphasised in italics in the above passages, Ganesh is said to have told the accused that the recipients had changed their contact numbers, thus making it necessary for the accused to call Ganesh after crossing into Singapore instead of calling anybody else. The clear implications from these lines are:

- (a) Ganesh expected the accused to understand what “the recipients” meant;
- (b) Ganesh had previously given the recipients’ contact numbers to the accused; and
- (c) The change in the recipients’ contact numbers necessitated a change from plans previously agreed between Ganesh and the accused, thus the request from Ganesh for the accused to call back after reaching Woodlands, before he called anyone else.

41 At trial, the accused retracted the lines emphasised in italics. During the cross-examination of the investigation officer ASP Lee, defence counsel put to ASP Lee that the accused did not utter those lines during the recording of the statements. ASP Lee responded clearly and firmly with “I disagree”. When defence counsel put the same question to the Tamil interpreter Mdm Malliga Anandha Krishnan (“Mdm Malliga”), she replied that she could not remember. When asked where she was when the statement was recorded, she replied that she was in the interview room.

42 The accused sought to cast doubt on ASP Lee’s credibility by tendering in evidence a complaint he made to Assistant Registrar James Lee

during a Pre-Trial Conference on 27 January 2015. The complaint reads as follows:

Investigating Officer came to record statement from me on 2 January 2015 without interpreter. Investigating Officer wanted me to state something different in the statement from my previous statements. He told me that if I do so, I will get a lighter sentence of 20 to 25 years. He told me to admit, but I did not do anything wrong. I was also not shown my previous statements. I was very confused.

After showing this complaint to ASP Lee, the defence counsel then put to ASP Lee that he had told the accused that the court would only believe ASP Lee and the interpreter and would not believe the accused. ASP Lee denied that he had said this to the accused. This complaint lacks credibility. Given that ASP Lee saw the accused on 2 January 2015 without an interpreter, I seriously doubt he would have told the accused that the Court would only believe ASP Lee *and the interpreter*.

43 Going back to the disputed lines in the s 22 statements of 27 and 28 March 2014, I reject the allegation by the accused that those lines were inserted by ASP Lee without the accused having uttered them. When asked in cross-examination whether he was saying that ASP Lee had simply made up those statements, the accused replied “I do not know about that.” When the accused was asked whether he knew of any reason why ASP Lee would want to insert those lines into the statement if the accused did not utter them, the accused replied “Do not know”. When asked whether he agreed that almost everything else in the statements were accurate, the accused replied “yes”.

44 Both ASP Lee and Mdm Malliga testified that, after the statements were typed and printed out by ASP Lee, Mdm Malliga interpreted the statement and read it back to the accused in Tamil. The accused was then

asked if he wished to make any corrections and he declined. Neither ASP Lee nor Mdm Malliga was challenged on this aspect of their evidence. Although Mdm Malliga said in court that she could not remember if the disputed lines were said by the accused, I do not think any conclusion can be drawn from that. The statements were recorded two and a half years ago and Mdm Malliga, being a professional interpreter, would have served as an interpreter for many other cases since then. It is perfectly understandable that her memory of each statement she had acted as interpreter for would have faded with time. As for ASP Lee, having heard his testimony and observed him during cross-examination, I could see no reason to doubt the veracity of his evidence.

45 The notion that Ganesh should have said things to the accused indicative of the existence of a prior arrangement with the accused to deliver drugs also dovetails with the following text messages which the accused received that evening (translated into English, where applicable, and with abbreviations written out in full below for ease of understanding):

- (a) At 6.39pm, from Ah Boy: “Did not bring cigarettes”
- (b) At 6.59pm, from Ganesh: “Don’t come in. Call me”
- (c) At 7.02pm, from Ganesh: “YOU CALL ME. Don’t call Boy”
- (d) At 7.06pm, from Ah Boy: “Call me Ganesh urgent”
- (e) At 7.24pm, from Ganesh: “Bro answer la my call”
- (f) At 7.38pm, from Ganesh: “Bro quick lah. Boss scold me”
- (g) At 7.41pm, from Ganesh: “Call bro”

- (h) At 7.54pm, from Ganesh: “Call please”
- (i) At 8.38pm, from Ganesh: “Message me can or not... don’t be like this”
- (j) Also at 8.38pm, from Ganesh: “Call”
- (k) At 8.45pm, from Ganesh: “Call”
- (l) At 9.12pm, from Ganesh: “Call”

46 The Prosecution’s submission is that these messages show that the accused was in communication with Ganesh and Ah Boy before clearing Malaysia customs. The accused’s evidence is that he was aware of these messages only after he was caught. The Prosecution argued that the accused’s claim was “too convenient”, and that there was no reason why the accused would not have been aware of the messages since he had managed to pick up a call from Ganesh. On this point, I have to disagree with the Prosecution’s contention. As explained by defence counsel in his reply submission, it is clearly easier for a person riding or driving a vehicle to answer phone calls than to read and respond to text messages.

47 Nevertheless, even accepting that the accused did not see these messages until after his arrest, the existence of these messages constitute strong evidence against the accused’s story that the drugs were planted in the motorcycle without his knowledge. First, the frantic pace of the messages – seven messages within an hour – shows that Ganesh and Ah Boy were trying to contact the accused urgently. The accused had not proffered any explanation for these messages. His only answer during cross-examination when asked why each of these messages was sent to him was “I do not know”.

The content and pace of these messages point strongly towards the conclusion that Ganesh and Ah Boy were attempting to contact the accused urgently to inform him of a sudden change to a previously agreed plan. This would have dovetailed with what the accused said in his s 22 statements concerning Ganesh telling the accused that the recipients' contact numbers have changed.

48 Further, if it were indeed true that Ganesh had planted drugs in the motorcycle for the accused to transport into Singapore unwittingly, it would have been illogical for Ganesh to send so many messages at such a frantic pace to the accused before he reached Singapore, since these messages would very likely cause alarm to the accused and result in the accused aborting his trip to Singapore.

The Singapore SIM card belonging to Ah Boy found in the accused's wallet

49 I also find it significant that the accused was carrying a Singapore SIM card given to him by Ah Boy. As the accused explained in evidence, this was the same Singapore SIM card he had used during the two previous drug deliveries to contact the recipients in Singapore. The following exchange during cross-examination is instructive:

Q: Okay. So you are telling us that this was given to you by Boy. When did Boy give this to you?

A: *When I went to collect the motor.*

Q: So, he not only gave---lends you his motorbike, he also gave you a Singapore SIM to use?

A: Yes, Your Honour.

Q: Why would he do that? I thought you were not very close, right?

A: Like I said earlier---

Q: Yes.

- A: ---it would be easier to contact when I come into Singapore. People like my girlfriend and John.
- Q: Yes. Of course it will be easier, but the question is why would---why would Boy be so nice to you? Why would he give you this SIM card for no reason?
- A: There is reason.
- Q: Yes.
- A: We were friends.
- Q: You're not close friends, right?
- A: Yes, Your Honour.
- Q: And, in fact, you---I mean, apart from his work, which you say I think he works by lending money to people and his residential place, his contact, phone number, you don't really know anything much about him, right?
- A: Yes, Your Honour.
- Q: And, in fact, wasn't he the one who, in essence, delivered---or rather, threatened you by telling you that you---well, you either pay up your loan to Ganesh or you work for them. And if you don't---if you do not, Ganesh will send his men to disturb your family. You remember this?
- A: This was said by Ganesh, not Boy. He did not say that.
- Q: Yes. If you look at page 24 of the supplementary bundle---
- A: Boy only told me what Ganesh had mentioned. He said that Ganesh would send people---
- Q: Yes.
- A: ---if I do not pay up and it's already in my statement.
- Q: Yes, so Boy was the one who gave you two options, right? Either pay Ganesh or Ganesh is going to send people to disturb your family. That's what Boy told you.
- A: Yes, Your Honour.
- Q: All right, so clearly Boy is looking out for Ganesh's interest, right? He's not looking out for your interest. He's not helping you.

- A: Yes, Your Honour.
- Q: And you have mentioned that Boy and Ganesh are partners. They are work partners.
- A: Yes, Your Honour.
- Q: So, with o---this background of your relationship with Boy, you still---it's---you're still---you're still telling us that he's your friend, is it?
- A: Yes, Your Honour, but I only interacted with him as a friend.
- Q: All right. And you are---and you are still telling us that Boy gave you this Singapore SIM card out of the goodwill of his heart.
- A: *Possible.*
- Q: Well, I'm suggesting to you that that is false and that the reason you brought the Singapore SIM card into Singapore on the 24th March 2014 is so as to contact the recipients for the drugs.
- A: I disagree.
- [emphasis added]

50 From this exchange, it is clear to me that despite the accused's description of Ah Boy as a "friend", their relationship was primarily business. Considering that this was the SIM card given by Ah Boy to the accused for contacting recipients during the previous two drug deliveries, it is difficult to believe that Ah Boy would have given the SIM card to the accused on 24 March 2014 for purposes unrelated to Ah Boy's drug business. The accused's assertion that Ah Boy passed him the Singapore SIM card because they were friends rings hollow in light of his earlier admission that he and Ah Boy were not close. When pushed to the corner during cross-examination with the question "and you are still telling us that Boy gave you this Singapore SIM card out of the goodwill of his heart?", the accused could only muster a feeble "possible".

Inconsistency in the accused's evidence concerning the level of his suspicion

51 Yet another internal inconsistency in the accused's evidence affecting the accused's credibility concerns the extent to which he suspected there were drugs in the motorcycle. During some parts of his testimony, the accused was adamant that he did not have any suspicion that the motorcycle could contain drugs:

Q: Okay. So you asked---you asked Ganesh---you asked to borrow Ganesh's bike and they gave you this motorcycle instead which had been used previously to deliver drugs, right?

A: Yes, Your Honour.

Q: Wouldn't you have been suspicious of their intentions when they lend you this particular motorbike?

A: *I did not have any suspicion.*

Q: Bearing in mind that just before this, they had also asked you to help them deliver drugs, right?

A: I don't understand.

Q: Just before---just before they agreed to lend you this motorbike, they had also asked you to help them deliver drugs the next day. You recall this?

A: Yes, Your Honour.

Q: All right. So, they had asked you to help them to deliver drugs. And then eventually they lend you a motorcycle which had been used previously to deliver drugs, Now would this---bearing this---bearing in mind this circumstance, you would have suspected at least, would you not, at the point when you took this motorbike that there were drugs in the motorbike?

A: *No suspicions.*

[emphasis added]

52 However, in his s 22 statement, the accused admitted to being suspicious of whether the motorcycle contained drugs:

Before I enter Malaysia custom I do not know anything. I check the usual place where the drugs were placed but nothing was found. I did a check because earlier they asked me to bring 10 stones but I refused. So I do a check to see if they put any drugs to ask me to bring in. It is only after crossing the Malaysia custom and receiving Ganesh call then I am aware that I have drugs. But I was unable to return. So I have to proceed.

53 When the accused was asked about this passage in cross-examination, he agreed that it showed he was aware, when he decided to check for drugs, that it was possible that there were drugs in the motorcycle.

The inference to be drawn from messages sent by the accused to Ganesh after his arrest

54 After the accused was arrested, he agreed to cooperate with CNB to lure out the intended recipients of the drugs. As part of this follow-up operation, the accused was allowed to communicate with Ganesh under the supervision and direction of CNB officers Cpl Vengedesh Raj Nainar (“Cpl Vengedesh”) and Cpl Sollehen bin Sahadan. In the course of this operation, Cpl Vengedesh asked the accused to send out a message to Ganesh in Malay which read, “... Don’t play around bro just now never say got drugs. Now ask to bring back. Crazy is it. I cannot bring. Quick send someone to take the drugs if not leave motor and drugs here.”

55 Defence counsel argued that this meant Cpl Vengedesh believed the accused did not have knowledge of the drugs and that this belief was derived from information which Cpl Vengedesh gleaned from listening to the telephone conversations between the accused and Ganesh during the follow-up operation. Defence counsel further argued that Cpl Vengedesh had conceded during cross-examination that it would have been illogical for him to ask the accused to send the above message to Ganesh if the accused had knowledge of

the drugs. With respect to defence counsel, Cpl Vengedesh made no such concession. What Cpl Vengedesh agreed to in cross-examination was that it would have been illogical to send the message if the accused *had not told Cpl Vengedesh* that the accused did not know about the drugs. A concession that the accused had told Cpl Vengedesh about the accused's alleged lack of knowledge is very different from a concession that the accused did not know about the drugs.

56 In any event, the fact that Cpl Vengedesh allowed the accused to send out that message does not necessarily imply that Cpl Vengedesh believed the accused's story that he had no knowledge of the drugs. The follow-up operation commenced a couple of hours after the accused's arrest. In the absence of additional information and given the need to act quickly, the CNB officers conducting the follow-up operation had no time to carefully assess the veracity of everything said by the accused. The main concern was to gather information on the other persons involved in the drug transaction and to ensnare them if possible. It was unsurprising that the CNB officers went along with the accused's version of events for that purpose.

57 Lastly, even if Cpl Vengedesh had been persuaded by the accused, the probative value of such a belief on the part of one CNB officer would be insufficient, in light of all the matters discussed above, to tilt the balance in favour of the accused.

Conclusion on the presumption of possession

58 For the reasons given above, I am persuaded that the accused took possession of the motorcycle for the purpose of delivering drugs to Singapore and knowing that drugs are hidden in the motorcycle. I do not accept the

accused's story that the drugs were planted in the motorcycle without his knowledge.

59 In arriving at this conclusion, I also took into account:

- (a) Cpl Hakim's evidence that the accused looked confused and lost when the bundles were discovered;
- (b) The fact that the accused had consistently maintained the position that he did not know of the existence of the drugs, from the moment the drugs were discovered to his contemporaneous statement to all his subsequent statements to CNB; and
- (c) Defence counsel's argument that the accused volunteered information to CNB about his previous two drug deliveries at the earliest opportunity, when he could have been silent on this matter if he had wanted to be dishonest.

These are points which weighed heavily on my mind as I evaluated the evidence. In the end, looking at the evidence in totality, I found that these points were much outweighed by the inconsistencies in the accused's account, by the inexplicable shifts in the accused's evidence, by the implausible answers given by the accused during cross-examination, and by the objective evidence available in the form of text messages from Ganesh and Ah Boy.

60 I therefore find that the accused has failed to prove, on the balance of probabilities, that he did not know of the existence of the drugs in the motorcycle when he undertook the trip to Singapore on 24 March 2014. As a consequence, the presumption of possession under s 21 of the MDA remains un rebutted.

The presumption of knowledge of the nature of the drugs

61 Since the accused's defence is that he did not know about the existence of the drugs, he has offered no evidence to rebut the presumption under s 18(2) of the MDA that he knew of the nature of the drugs. As such, the presumption under s 18(2) of the MDA remains unrebutted.

62 Although the accused gave evidence that, on the two previous occasions he delivered drugs, the nature of the drugs were "not so serious", this has no bearing on the present case. It is not the accused's contention that, because he had carried less serious drugs on previous occasions, he believed on 24 March 2014 that he was carrying drugs of a similar nature. He denies having known that he was carrying drugs at all, and is thus in no position to offer any evidence to rebut the presumption under s 18(2) of the MDA once he fails to rebut the presumption under s 21.

63 Nonetheless, I would add for completeness that even if the accused were to make such an argument, it could not succeed given the circumstances. The accused's evidence concerning the two previous occasions he delivered drugs was that he did not know what type of drugs he was carrying, he relied on assurances given by Ganesh that the drugs were "not so serious", and he did not take any steps himself to find out the nature of the drugs he was asked to deliver. As the court put it in *Public Prosecutor v Lisa Ismaniar* [2015] SGHC 177 ("*Lisa Ismaniar*") at [19]:

If it is shown that a person could and ought to have checked but intentionally did not, the inference must be that she either knew what it was or feared what she might find should she check. In either case, she cannot then argue that the legal presumptions have been rebutted. The presumptions can only be rebutted by reasonable evidence that the accused did not know that she was carrying [the drug in question].

64 I am mindful that it is very much a matter of speculation what the accused's submission concerning the s 18(2) presumption would have been if he had adopted a different tack for his defence at trial. The inescapable fact remains that the accused offered no evidence in the present case to rebut the s 18(2) presumption. In the absence of any evidence or submission from the accused on this point it will be neither reasonable nor appropriate for me to make any pronouncements beyond what is in [61] above.

Other matters canvassed by the parties

65 Two other issues remain which were gone into at length during the trial but which do not fit within the foregoing analysis. Ultimately, neither issue is material to my decision, but I discuss them for the sake of completeness as much time was spent on them by both the Prosecution and the Defence. The two issues are:

- (a) Who removed the four screws securing the seat compartment lid and when this was done; and
- (b) The accused's state of belief/knowledge concerning the existence of the drugs after he received the call from Ganesh while approaching Woodlands Checkpoint.

Who removed the four screws securing the seat compartment lid and when this was done

66 During the trial and closing submission, defence counsel explored at length the question of who removed the four screws securing the seat compartment lid to the motorcycle and when this was done. Defence counsel did this in order to dispute the ICA officers' evidence that they discovered the

drugs without having to remove the seat compartment lid. Defence counsel challenged this aspect of the ICA officers' evidence as it could undermine the accused's claim that the drugs were hidden in such a way that he could not reasonably be expected to have discovered them when he checked the motorcycle for drugs.

67 My observations on this submission are as follows:

(a) I accept the evidence of the ICA officers that, with the aid of a torchlight, they could have discovered the bundles hidden in the fenders without removing the seat compartment lid. I was able to confirm this personally when I inspected the motorcycle (see [6] and [10] above).

(b) I also accept that, if the accused were checking for drugs when he was refuelling the motorcycle, it would have been extremely difficult for him to notice the black bundles hidden in the fenders unless he knew where to look and was using a torchlight to aid his search.

(c) In any event, this submission is moot because:

(i) The accused admitted in cross-examination that he only checked above the seat compartment lid and, once he saw that there were no drugs on the seat compartment lid, he stopped his search and did not think of continuing with a more thorough check; and

(ii) The question whether the accused could reasonably be expected to have discovered the drugs would only be relevant if

it were accepted that the drugs were planted in the motorcycle without the accused's knowledge. This is clearly not the case, given my findings in [58] above.

The accused's state of belief/knowledge concerning the existence of the drugs after receiving the call from Ganesh when approaching Woodlands Checkpoint

68 In his s 22 statement of 27 March 2014, the accused said that once he received the call from Ganesh after clearing Malaysia customs, he "confirmed that there are drugs inside the bike". Later on in the same statement, he said "I really do not know that there is drugs in the bike until the moment Ganesh called me after I crossed JB custom." In his s 22 statement of 28 March 2014, in relation to the call from Ganesh, the accused said "at that point of time I know there must be drugs in the bike. I was too afraid to surrender." Later on in the same statement, the accused said "It is only after crossing the Malaysia custom and receiving Ganesh call then I am aware that I have drugs. But I was unable to return. So I have to proceed".

69 If I had believed the accused's story that the drugs were planted in the motorcycle without the accused's knowledge, the question would arise as to whether the foregoing statements constitute an admission by the accused that he had travelled into Singapore knowing that he was carrying drugs in the motorcycle. However, given my findings in [58] above that the accused has failed to prove on the balance of probabilities that the drugs were planted without his knowledge, this is not a question I need to address.

Conclusion

70 For the above reasons, I find that the accused has failed to rebut the presumptions under ss 21 and 18(2) of the MDA. Accordingly, I am satisfied that the Prosecution has proven its case beyond reasonable doubt. I thus find the accused guilty as charged and convict him accordingly.

Pang Khang Chau
Judicial Commissioner

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