IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 262

Criminal Case No 36 of 2017

Between

Public Prosecutor

And

Saravanan Chandaram

GROUNDS OF DECISION

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

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v
Saravanan Chandaram

[2017] SGHC 262

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Introduction

1 I convicted the accused, Saravanan Chandaram, a 31 year old Malaysian citizen ("the Accused") on two charges of importing into Singapore cannabis and cannabis mixture respectively, contrary to s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"), which is punishable under either ss 33(1) or 33B(1) of the MDA. At the sentencing stage, following my finding that the Accused's involvement in the offence was restricted to that of a "courier" as stated under s 33B(2)(*a*) of the MDA and the issuance of a certificate of substantive assistance by the Public Prosecutor ("the Prosecution"), I exercised my discretion under s 33B(1)(*a*) of the MDA to impose a global sentence of life imprisonment and 24 strokes of the cane.

Background

Undisputed facts

2 The Accused faced two charges. The first charge concerned the importation into Singapore of 1,383.6g of cannabis on 6 November 2014:

> … on the 6th day of November 2014, at about 10.40 a.m., at Woodlands Checkpoint, Singapore, did import into Singapore a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.), *to wit*, by bringing into Singapore **ten (10) bundles containing not less than 1383.6 grams of vegetable matter which was analysed and found to be cannabis**, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) and punishable under Section 33(1) of the said Act, and alternatively, upon conviction, you may be liable to be punished under Section 33B(1) of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.).
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> [emphasis in original]

The second charge concerned the importation into Singapore on the same day of 3,295.7g of fragmented vegetable matter containing cannabinol and tetrahydrocannabinol, commonly referred to as "cannabis mixture":

> … on the 6th day of November 2014, at about 10.40 a.m., at Woodlands Checkpoint, Singapore, did import into Singapore, a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev Ed), *to wit*, by bringing into Singapore **ten (10) bundles containing not less than 3295.7 grams of fragmented vegetable matter which was analysed and found to contain cannabinol and tetrahydrocannabinol**, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) and punishable under Section 33(1) of the said Act, and alternatively, upon conviction, you may be liable to be punished under Section 33B(1) of the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.).
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> [emphasis in original]

3 An agreed statement of facts ("ASOF") was tendered, duly signed by the Prosecution and the Defence, under s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC"). The facts agreed, together with the other undisputed facts, were as follows.

4 At the material time, the Accused was working as a driver and bodyguard for an unidentified Malaysian man, one "Aya". The Accused knew that Aya was a drug syndicate leader in Malaysia, who organised the delivery of drug consignments into Singapore.[1]

5 On 5 November 2014, the Accused agreed with Aya to deliver ten bundles ("the Bundles") to a customer in Singapore in return for a payment of S$5,000.[2] Following Aya's instructions, the Accused rented for the delivery a Malaysian-registered car bearing vehicle number JNQ 4606 ("the Car") and tinted its windows at a workshop.[3] The Accused then met Aya and collected the ten Bundles from him. The Accused concealed the Bundles in two areas of the Car: six bundles in the arm rest of the left rear passenger seat, and four bundles in that of the right rear passenger seat.[4] He then locked the Car and passed the Car keys to Aya. On the next day, at about 10.00am, the Accused collected the Car keys from Aya's relative.[5] The Accused then drove the Car into Singapore via the Woodlands Checkpoint. Subsequently, at about 10.42am, a search was conducted on the Car at the inspection pit in the Accused's presence.[6] As the

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1 ASOF at paras 2 and 28; NE 25/05/17, Day 3, pp 41–42.

2 ASOF at para 29.

3 ASOF at para 4; NE 25/05/17, Day 3, p 7.

4 ASOF at para 29; NE 25/05/17, Day 3, p 9.

5 NE 25/05/17, Day 3, pp 7–11.

Bundles were discovered by the enforcement authorities and suspected to contain controlled drugs, the Accused was arrested.[7]

6 The Accused admitted to bringing the Bundles into Singapore.[8] The Bundles contained not less than 1,383.6g of cannabis and not less than 3,295.7g of fragmented vegetable matter which was found to contain cannabinol and tetrahydrocannabinol.[9] Cannabis, cannabinol, and tetrahydrocannabinol are Class A controlled drugs listed in the First Schedule of the MDA. The Accused was not authorised to import these controlled drugs into Singapore under the MDA or the Regulations made thereunder.[10]

7 Amongst others, two statements were recorded from the Accused.[11] In his contemporaneous statement dated 6 November 2014 and his cautioned statement dated 7 November 2014, the Accused made several references to "drugs". Why he made these references was disputed by the parties: the Prosecution argued that this showed the Accused's knowledge that he was carrying controlled drugs, while the Defence contended that the reference was made because the officers from Central Narcotics Bureau ("CNB") opened some of the Bundles and informed the Accused that they contained drugs.

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6 ASOF at paras 4–5 and 30.

7 ASOF at paras 5–6.

8 ASOF at para 31.

9 ASOF at para 18.

10 ASOF at para 31.

11 ASOF at paras 20–21.

Accused's version of the facts

8 The Accused denied knowing, at the material time of the offence, that the Bundles were controlled drugs. The version given by the Accused was that he had been asked by Aya to deliver the Bundles to Singapore in order to repay a loan previously taken by him from Aya for his son's operation. When asked to repay the loan by Aya, the Accused initially sought to repay it by way of deductions from his salary. However as Aya did not agree to this, the Accused agreed to deliver "tembakau" (which the Accused understood as tobacco)[12] but made it clear to Aya that he would not deliver drugs. The Accused knew of the serious consequences of drug trafficking in Singapore, including the possibility of capital punishment.[13] The Accused claimed that Aya offered to pay him RM2,000 to deliver ten packets of tobacco.[14] Aya reassured him that if he was arrested for smuggling tobacco, he would only get a few months' imprisonment.[15]

9 The Accused eventually agreed to deliver the tobacco; his fears of arrest for smuggling tobacco was overcome when he smoked some "ice" just before the delivery.[16]

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12 NE 25/05/17, Day 3, p 6.

13 NE 25/05/17, Day 3, p 18.

14 NE 25/05/17, Day 3, p 20.

15 NE 25/05/17, Day 3, p 6.

16 NE 25/05/17, Day 3, p 8.

The Prosecution's case

10 The Prosecution's primary case was that the respective presumptions of possession and knowledge of the nature of the drugs under ss 18(1) and 18(2) of the MDA applied and was unrebutted.

11 By virtue of s 18(1) of the MDA, the Accused was presumed to be in possession of the drugs concealed in the Bundles because he was in control of the Car when it was driven into Singapore.[17]

12 The presumption under s 18(2) of the MDA was not rebutted, applying *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*"). The Accused's version that he thought he was bringing in tobacco was not sufficient to rebut the presumption of knowledge under s 18(2) of the MDA.

13 The Accused's bare defence that he thought he was bringing contraband tobacco into Singapore was not believable. This belief was unfounded because of the suspicious circumstances surrounding the delivery of the Bundles. For instance, the Accused was paid a disproportionately high amount of S$5,000, as captured in the ASOF,[18] an amount higher than the typical sale price of ten bundles of tobacco.[19] There were also other suspicious circumstances suggesting that this was not an ordinary delivery. There was a short notice for the delivery despite there being no reason for any urgency; a Car was rented, the windows of the Car were tinted, and the Bundles were concealed. Furthermore, parts of the contents of the Bundles were clearly visible to the Accused and the Accused

17 Prosecution's Closing Submissions at para 10.

18 ASOF at para 29.

19 Prosecution's Closing Submissions at paras 41–45.

admitted to being able to distinguish between cannabis and tobacco by sight. The Accused also had no reason to trust Aya, whom he only knew from three months before. They had no personal relationship, only a working one. Tellingly, the Accused knew that Aya was a drug dealer. As the Accused had seen tobacco previously, there was no basis to think that tobacco packets would be packed as the Bundles were. The Accused also could not provide details of the runner who had told him about the smuggling of tobacco. The Accused's excuse that he did not check as he wanted to avoid accusations of theft and complaint from the customer was unbelievable given that he was running the risk of the death penalty. Given the suspicious circumstances, the Accused should have checked; he had the opportunity to ask and the opportunity to check.[20]

14 The present case was different from the case of *Public Prosecutor v Phuthita Somchit and another* [2011] 3 SLR 719 ("*Somchit*"), cited by the Defence. In that case, the duration of relationship was some 1.5 years; with the parties discussing marriage; and there was interaction with the family.[21] It was also different from the case of *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*)", in which there was friendship for about a year and the accused there met the person he trusted on a weekly basis.[22] Instead, the present case bore factual similarities with *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 ("*Norasharee*"), in which it was found that there was insufficient basis for the supposed trust.[23] In particular, the trust that the Accused placed in Aya was

[20] Prosecution's Closing Submissions at paras 46–55.

[21] Prosecution's Reply Submissions at paras 9–10.

[22] Prosecution's Reply Submissions at para 12.

unbelievable. Aya was involved in illegal activities as a drug syndicate leader. The Accused alleged that his suspicion was not aroused as the Bundles were wrapped with multiple layers and he had complied with directions from Aya whom he trusted. But the failure to check was significant as his suspicion should have been aroused when he saw the contents of one of the Bundles through a gap in its wrappings.[24]

15 The prior conduct of the Accused also indicated that the presumption under s 18(2) of the MDA was not rebutted. The Accused was working for Aya, *ie*, a drug boss, and had consumed "ice" ahead of the transportation to ease his fear of getting caught.[25]

16 Further, the Accused admitted to having knowledge of the nature of the drugs in his contemporaneous and cautioned statements. In the contemporaneous statement, the recorder, Senior Staff Sergeant Samir bin Haroon ("SSSgt Samir") spoke to the Accused in Malay and the Accused stated that "[d]rugs were found". In his cautioned statement recorded by ASP Laurence Seow ("ASP Seow") using English, the Accused also admitted to bringing drugs into Singapore. The contemporaneous and cautioned statements were properly recorded under ss 22 and 23 of the CPC respectively.[26]

17 Various allegations made by the Defence about impropriety in the recording of the statements should be rejected.[27] The Accused claimed in court

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23 Prosecution's Reply Submissions at paras 13–14.

24 Prosecution's Reply Submissions at paras 16–18.

25 Prosecution's Closing Submissions at para 59.

26 Prosecution's Closing Submissions at paras 16–22.

that he had been suffering from drug withdrawal symptoms at the time the statements were taken, that he was not conversant in the languages used, and that the statements had not been read back to him. None of these was substantiated. The Accused was, according to the recorders, conversant in Malay and English.[28] Bad grades in school were relied upon by the Defence, but in the Accused's interview with the psychiatrist, the Accused admitted that he had previously helped Aya with English translation. In the statements and at trial, the Accused also admitted that he spoke English and Malay for 11 years, and could speak in Tamil, Malay and English.[29]

18 Furthermore, there was nothing to make out any withdrawal symptoms suffered by the Accused at the time that the statements were taken. Instead, the evidence revealed that the Accused appeared normal and calm during the statement recording process. The Accused was also inconsistent as to when he suffered from these alleged withdrawal symptoms. It was initially claimed that the withdrawal symptoms were suffered from 10 November 2014 but then it was later alleged that he suffered this earlier during the recording of the contemporaneous and cautioned statements on 6 and 7 November 2014. In any event, his claims of withdrawal symptoms were rebutted by the medical evidence.[30] Similarly, there was no failure to have the statements read back to the Accused, as testified by SSSgt Samir and ASP Seow.[31]

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27 Prosecution's Closing Submissions at para 33.

28 Prosecution's Closing Submissions at para 26.

29 Prosecution's Closing Submissions at para 28.

30 Prosecution's Closing Submissions at paras 30–31.

31 Prosecution's Closing Submissions at para 32.

19 The evidence showed that the Accused had independently identified the Bundles as drugs, without the aid of any identification of the drugs by the CNB officers. The Accused claimed that he had identified the Bundles as drugs in his statements only because the CNB officers tore open two of the Bundles and informed him that drugs were found. There were, however, inconsistencies and embellishments in the Accused's version. There were no signs of tampering of the Bundles and none of the Bundles were in fact torn. The Accused was also not able to properly identify the officers who were supposedly responsible for showing him the contents of the Bundles. Additionally, these allegations were not put to the Prosecution's witnesses by the Defence, contrary to the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*").[32]

20 The case of *Public Prosecutor v Gobi a/l Avedian* [2017] SGHC 145 ("*Gobi*"), cited by the Defence to argue that the presumption under s 18(2) of the MDA was rebutted, was distinguishable as the accused in that case had been consistent throughout and his account was corroborated. In the present case, in contrast, there were inconsistencies between the various statements given and the Accused's position at trial, in terms of what was being transported and the amount of reward promised for the delivery. The Defence was unable to explain these inconsistences. Its case was founded on bare assertions only.[33]

21 While the Defence sought instead a conviction of the Accused for the importation of Class C controlled drugs, there was not only no evidence supporting this alternative defence at all, and it was also wholly inconsistent with the defence proffered during the trial.[34]

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32 Prosecution's Closing Submissions at paras 34–39.

33 Prosecution's Reply Submissions at paras 28–34.

22 The Accused also failed to state his defence in his statements, entitling the court to draw an adverse inference pursuant to s 261(1) of the CPC. The Accused said that he was not asked to provide his defence, but this excuse was contradicted by his own testimony in court.[35]

The Defence's case

23 The Defence's sole case was that the Accused lacked the knowledge that he was transporting controlled drugs – he thought that he was only transporting tobacco.[36] The Defence pointed to the following assurances and representations made by Aya, whom the Accused deeply trusted:[37]

(a) the Accused would only be transporting tobacco;

(b) in the event that the Accused was arrested, the custodial sentence would not exceed a few months; and

(c) the Accused should not open the Bundles because the customers might complain that the packets were open and suspect that the Accused might have stolen some tobacco.

The Accused's suspicion was also not aroused because there was no smell emanating from the Bundles.[38]

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34 Prosecution's Reply Submissions at paras 35–36.

35 Prosecution's Closing Submissions at paras 56–58.

36 Defence's Closing Submissions at para 2.

37 Defence's Closing Submissions at paras 6–10 and 26.

38 Defence's Closing Submissions at para 11.

24 The Defence argued that the Accused did not admit in his statements that he knew that the drugs were cannabis or derivatives of cannabis. There was no independent identification of the Bundles containing drugs – the Accused used the word "drugs" in his statements because some of the Bundles were opened by the CNB officers and was informed by them that they contained drugs. In fact, one of the CNB officers, SSSgt Samir, accepted that this was the possible explanation for the Accused's word choice. The Accused had no knowledge that the Bundles contained drugs because he could not see through the Bundles as they were wrapped.[39]

25 Overall, the Defence submitted that the Accused had successfully rebutted the presumption of knowledge of the nature of the drugs under s 18(2) of the MDA. There is no fixed formula for such rebuttal.[40] The Accused had been assured by Aya that he would be delivering tobacco, a position that the Accused consistently maintained from the time of his arrest to his evidence at trial. Accordingly, the Accused's version should be preferred because he was a truthful and consistent witness.[41]

26 Lastly, citing the outcome reached in *Gobi*, the Defence argued that the Accused should, in the alternative, be convicted for importing a Class C controlled drug.[42]

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39 Defence's Reply Submissions at paras 3–20.

40 Defence's Closing Submissions at para 25.

41 Defence's Closing Submissions at paras 26–29.

42 Defence's Closing Submissions at para 31.

The decision

27 In the present case, the Defence did not dispute the identity of the drugs found in the Bundles – the drug analysis, chain of custody, and integrity of the process were all not challenged. The act of importation was also not in issue: the drugs in question were driven into Singapore by the Accused. As the Accused admitted to driving the Car into Singapore, possession of the drugs by him was not in issue by virtue of s 18(1) of the MDA.

28 Instead, what was hotly disputed was whether the Accused knew that what he was carrying in the Bundles was controlled drugs. The Prosecution invoked s 18(2) of the MDA, *ie*, an accused is presumed to have known the nature of the drugs he possessed. As a result, the burden lay on the Accused to show, on a balance of probabilities, that he did not in fact know of the nature of the drugs.

29 The Prosecution pointed to the contemporaneous and cautioned statements made by the Accused in which references were made to "drugs" being transported; this, it was said, showed the Accused's knowledge. The Defence, on the other hand, argued that these references followed on from the Accused having been shown the contents of the Bundles and his being told that the Bundles contained drugs by the CNB officers.

30 I was not satisfied that the Accused's reference to drugs showed pre-existing knowledge. I accepted that there was a real possibility that his usage of the term "drugs" flowed from what he was shown or told by the CNB officers.

31 That conclusion, however, did not lead to the result that the Accused did not know of the nature of the drugs. The Defence still had to make this out on a balance of probabilities. The Defence pointed to the trust that the Accused reposed in Aya, and the various assurances given by Aya to the Accused (see [23] above). Parallels were drawn with a number of cases such as *Somchit* and *Khor Soon Lee*. However, these cases are distinguishable in terms of the degree of trust, and the circumstances giving rise to such trust. I accepted the Prosecution's arguments that the Accused's relationship with Aya was not of the same level, being one of only a few months' duration even by the Accused's own account. Aya's known activity in smuggling drugs should also have made the Accused wary of any assurances given by Aya. Even if Aya was indeed involved in both drug and tobacco smuggling, in the overall circumstances of the case, it was not believable for the Accused to just accept at face value what Aya had told him, *ie*, that the Accused was delivering tobacco only.

32 Other surrounding circumstances, including the lack of control over the Car and its contents overnight, and the measures taken in respect of the Car such as the fact that it had to be rented and the tinting of its windows, should have raised concerns which would have weakened substantially any assurance that was supposedly given. There was also the reward promised of S$5,000, agreed to by the Defence in the ASOF,[43] which was significantly higher than the sale value of tobacco of that quantity, which, according to the Accused's own evidence, was RM7,000. While the Accused gave a lower figure for his reward of RM2,000 at trial, his explanation for the change of figure from the ASOF was left wanting. Even if the quantum of his reward was only RM2,000, that

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[43] ASOF at para 29.

was still a significant amount for a delivery of tobacco supposedly worth RM7,000.

33 Furthermore, given the available opportunities for the Accused to check and verify the contents of the Bundle with Aya and the absence of any reasonable basis for the Accused to rely on the assurances from and any relationship with Aya, I found, beyond a reasonable doubt, that the Accused did actually know that the Bundles contained the controlled drugs for which he was charged with.

Analysis

34 Following the Court of Appeal's decision in *Ng Kwok Chun and another v Public Prosecutor* [1992] 3 SLR(R) 256, the elements of a charge for importation into Singapore of a controlled drug under s 7 of the MDA are (at [39]):

(a) the bringing of the drugs into Singapore; and

(b) the accused knew or intended to bring the drugs into Singapore.

On the second limb, the relevant *mens rea* in this case was that of knowledge. This requires that the accused knows that he was bringing drugs and that these drugs were being brought into Singapore. Knowledge that drugs were being brought in requires knowledge of the nature of what was being brought in.

Bringing into Singapore

35 The Defence did not challenge the *actus reus* of the element of importation. The Accused was, on his own version, bringing the Bundles into

Singapore; he just thought that he was transporting tobacco instead. The Bundles, containing the drugs, were hidden in the Car by the Accused himself.

Knowledge that drugs were brought into Singapore

36 While there was no issue that Singapore was the intended destination of the Bundles being smuggled in, the controversy between the parties was whether the Accused knew at the material time that the Bundles contained controlled drugs.

Knowledge of the nature of the drugs

37 After careful consideration of the evidence and the parties' submission, I found that the Accused had actual knowledge that he was carrying drugs, *ie*, the cannabis and cannabis mixture, as charged. The Prosecution invoked the presumption of knowledge under s 18(2) of the MDA. I found that the evidence disclosed showed actual knowledge, including wilful blindness; and that in any event, the evidence also led to the conclusion that the s 18(2) presumption was not rebutted. But as the Prosecution proceeded on the basis of the statutory presumption, whether the presumption under s 18(2) of the MDA was rebutted will be considered first, before turning to the issue of actual knowledge and wilful blindness.

The presumption under s 18(2) of the MDA

38 Section 18(2) of the MDA provides for a presumption of knowledge of the nature of the drug:

> 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.

39 Where the presumption under s 18(2) applies, this has to be rebutted by the accused on the balance of probabilities: see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [75] and *Public Prosecutor v Ilechukwu Chukwudi* [2015] SGCA 33 ("*Ilechukwu*") at [30], referring to *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [31].

40 The Defence argued that the Accused's version, *ie*, he had only agreed to bring in tobacco into Singapore, was credible and established on the balance of probabilities. In particular, the presumption of knowledge was rebutted in light of:[44]

(a) the relationship between Aya and the Accused; and

(b) the fact that a credible and consistent account had been given of how the Accused came to be arrested with the Bundles.

41 A rebuttal may be established if the accused is able to show that "he did not know or could not reasonably be expected to have known the nature of the controlled drug": *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [18]. As explained by the Court of Appeal in *Obeng Comfort*, referring to *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257:

> 37 …. The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to

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[44] Defence's Closing Submissions at paras 26–29.

> establish the nature of the drug in question, *the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps.*
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> …
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> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. *It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs.* If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. …
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> [emphasis added]

42 Here, of course the Accused did claim that he thought the Bundles contained something else, *ie*, tobacco. However, the guidance from the Court of Appeal in *Obeng Comfort* goes further (at [40]):

> Where the accused has stated what he thought he was carrying ("the purported item"), *the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item.* This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. Ultimately, *what the court is concerned with is the credibility and veracity of the accused's account (ie, whether his assertion that he did not know the nature of the drugs is true).* This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.

[emphasis added]

43 Thus, the version proffered by the Accused must be tested against the probabilities of the situation and the objective evidence.

(1) The relationship with Aya

44 The Defence maintained that the Accused was entitled to rely on what Aya had told him because of their relationship. It was argued that this was similar to the case of *Somchit*. However, as argued by the Prosecution, the relationship and trust between the accused and the person who gave instructions to the accused in that case was of a markedly different level.[45] In that case, the accused, Somchit, relied on her relationship with one Quek, to justify her claim that she did not know that she was handling heroin or diamorphine. The parties in *Somchit* had known each other for almost one and a half years; they were in a romantic relationship with discussions about marriage; Quek gave Somchit a monthly allowance; Quek was in direct contact with Somchit's family and even arranged for her nephew to work for him in Singapore. These indicated a level of connection and interaction of a very great degree: they were in effect a couple, though not married. There was nothing of that nature between the Accused and Aya in the present case.

45 The present case also differed from *Khor Soon Lee*. There the accused, Khor, had trusted one Tony as to what Khor was to carry into Singapore as well. But the relationship between Khor and Tony lasted for a year, with weekly meetings. They were, as the Court of Appeal there found, in "a friendly relationship" (*Khor Soon Lee* at [25]), justifying trust. Crucially, the

[45] Prosecution's Reply Submissions at para 9.

Court of Appeal opined that the facts in *Khor Soon Lee* were "rather unusual" and saw it fit for the following "strong cautionary note … to be sounded" (at [29]):

> … Given the finely balanced set of facts in the present appeal, *nothing in this case sets a precedent for future cases* (which ought, in any event, to turn on their own particular facts). Still less will future courts countenance accused persons seeking to 'manufacture defences' in order to effect a similar fact pattern.
>
> [emphasis added]

46 A case in contrast was cited by the Prosecution: *Norasharee*. An allegation of trust being reposed by the accused there was rejected by the Court of Appeal as the object of that trust was involved in "a spectrum of illegal activities", had previously threatened to beat the accused, and had shown himself to be "untrustworthy" (at [50]).

47 In my judgment, the line between these cases is drawn simply on the basis that the relationship of trust must be one that is credible on the facts as alleged; where the description of the alleged relationship contains incongruities, the likely result will be that the version proffered by the accused will be rejected and the presumption will remain unrebutted. But where the description of the relationship is coherent, credible and there is nothing to cast doubt on what is testified, the court will conclude that there is sufficient support for the accused's version and that the presumption has been rebutted on the balance of probabilities.

48 In the present case, there was insufficient basis on the Accused's own version for him to have reposed trust in Aya that all he was smuggling into Singapore was tobacco. First, there was little basis for the Accused to repose much trust in Aya because the Accused only knew Aya through a "friend's

friend" three months before the incident.[46] Second, the Accused admitted that he knew that Aya was a "drug syndicate leader" who organised the importation of drugs into Singapore.[47] Third, Aya had in fact initially asked the Accused to smuggle drugs to Singapore.[48] Taken together, these factors should have made the Accused wary, if not, chary, of any contraband item which Aya would have paid the Accused to bring into Singapore given the circumstances of the request and their relationship. In the circumstances, the Accused's reposing of trust in Aya defied credit.

49 Against that context, the failure of the Accused to check the contents of the Bundles was also significant. There was nothing to support the passive posture purportedly taken by the Accused – all the circumstances pointed against the reposing of trust, and therefore active steps should have been taken to assure himself that what he thought was true. That the Accused did not check, despite these circumstances, militated in favour of rejecting his version.

(2) Reward for smuggling

50 The reward supposedly offered by Aya to the Accused to smuggle the tobacco was also disproportionately significant. As alluded to above at [32], there was a dispute as to the amount of reward actually offered. However, in the ASOF, which had been agreed to and signed by the Defence, there was a reference to the Accused receiving S$5,000. There was no move to have the ASOF set aside; in the circumstances, therefore, the ASOF was conclusive.

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46 NE 25/05/17, Day 3, pp 4–5.

47 ASOF at paras 2 and 28; NE 25/05/17, Day 3, p 41.

48 NE 25/05/17, Day 3, p 6.

Furthermore, even if there had been such an attempt, there was nothing before me to justify any such setting aside of the ASOF – short of the Accused being misled or misapprehending what he had agreed to, it is difficult to fathom what other grounds would justify discarding the ASOF.

51 Further, several other aspects rendered the Accused's version incredulous. A car was *specifically rented* for the delivery even though the Accused already drove a car at the material time, which he used while serving as a personal driver of Aya.[49] The Accused also admitted at trial that this was "the *first time*" [emphasis added] he had to rent a car for his delivery[50] even though he had previously made several other trips to Singapore in the course of working for Aya.[51] The Accused also took the Car to a workshop to have its windows tinted without asking Aya of the reasons for doing so even though this was the *first time* Aya had asked the Accused to tint a car.[52] Further, even though the Car was parked at the Accused's estate, the keys to the Car were held overnight by Aya and only passed to the Accused by Aya's relative the next morning.[53] All of these, on top of the Accused having to conceal the Bundles in the Car, would seem to be too disproportionate to the smuggling of tobacco that was to be sold for about RM7,000 or so in Singapore.[54] If anything, these additional measures, which involved particular effort and money being

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49 NE 25/05/17, Day 3, pp 45–46.

50 NE 25/05/17, Day 3, p 60.

51 NE 25/05/17, Day 3, p 42.

52 NE 26/05/17, Day 4, p 4.

53 NE 25/05/17, Day 3, p 10.

54 NE 25/05/17, Day 3, p 47.

expended, should have made the Accused wary had he really thought that he was merely smuggling tobacco.

52 The failure of the Accused to mention this version in his cautioned statement was also another factor that pointed to the rejection of his version, and thus to his failure to rebut the presumption under s 18(2) of the MDA. Section 261(1) of the CPC reads:

> **Inferences from accused's silence**
>
> **261.**—(1) Where in any criminal proceeding evidence is given that the accused on being charged with an offence, or informed by a police officer or any other person charged with the duty of investigating offences that he may be prosecuted for an offence, ***failed to mention any fact which he subsequently relies on in his defence***, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, the court may in determining —
>
> (*a*) whether to commit the accused for trial;
>
> (*b*) whether there is a case to answer; and
>
> (*c*) *whether the accused is guilty of the offence charged*,
>
> *draw such inferences from the failure as appear proper*; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.
>
> [emphasis added in italics and bold italics]

The Accused should have mentioned his defence upon being cautioned: see *Ilechukwu* at [52]. It would have been reasonable for him to have raised his version of the story, particularly that he thought he was carrying tobacco. That he did not do so, gave rise to the inference that this was not the truth and was merely an afterthought.

53 No explanation was given by the Accused for this failure, other than that he was not asked.[55] That was not a sufficient explanation at all. The Accused, in response to a question as to why he had admitted in his cautioned statement that he had brought drugs into Singapore, said that he was sleepy and intoxicated at the time he gave that statement.[56] As will be seen below (at [69]), I rejected the allegation that he was not fit to give his statement. But aside from that, if he had been able to respond as he actually did regarding the reasons why he had given an adverse response in an earlier statement, he would also have reasonably been expected to explain and recount why he had thought that he was bringing tobacco into Singapore or at the very least state this defence upon being cautioned. This he did not do.

54 For these reasons, I found that the Defence failed to rebut on the balance of probabilities the presumption of knowledge of the nature of drugs that arose under s 18(2) of the MDA.

Actual knowledge

55 The above conclusions on the Accused's failure to rebut the s 18(2) presumption were also grounds for finding actual knowledge, *ie*, the deficiencies in the Accused's evidence above also pointed to the conclusion that even apart from the statutory presumption, the Accused was not able to raise a reasonable doubt as to his knowledge of the nature of the drugs.

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55 NE 26/05/17, Day 4, p 26.

56 NE 25/05/17, Day 3, p 16.

56 In assessing the evidence as to whether the Accused actually knew that what he was transporting were drugs, the Prosecution need only prove its case beyond a reasonable doubt, not beyond any shadow or trace of doubt. What amounts to reasonable doubt is usually more readily assessed from the perspective of the accused person, *ie*, whether he has raised a reasonable doubt. On occasion, the reasonable doubt may be readily found where the Prosecution's evidence is insufficiently strong, though all the elements of the charge are made out, there may be significant doubts about the credibility of the witnesses, for instance, or the chain of inferences pointing to the guilt of the accused. In these instances, there may be little need for the accused to do more than to raise questions about the Prosecution's evidence. However, in other contexts, where the Prosecution has more substantive evidence, the accused, to raise a reasonable doubt, needs to put before the court some evidence. All the evidence, from both sides, is then assessed by the court, and a determination is ultimately made. If the Prosecution's evidence is cogent and convincing, and meets the requisite standard, the accused is convicted.

57 In the present case, the evidence recounted above, particularly the circumstances of the transaction, such as the preparations made in respect of the concealment of the Bundles, the steps taken to prepare the rented Car by tinting the windows, and the handing over of the Car keys to Aya overnight, indubitably pointed against the Bundles containing only tobacco.

58 The reward of S$5,000 offered to the Accused[57] also showed that the Accused was, on his own evidence, being asked to transport items of worth. It was also noteworthy that the amount to be paid to the Accused was significantly

[57] ASOF at para 29.

more than what was supposed to be the cost of ten packets of tobacco. The circumstances leading up to the transporting of the contraband in Singapore were, as described by the Prosecution, "incongruous":[58]

(a) the preparations were extensive;

(b) the Car was tinted;

(c) the Bundles were hidden away; and

(d) the Car keys kept overnight by Aya.

The amount of effort undertaken in preparation for the delivery was remarkably disproportionate if it had truly been smuggling of tobacco only. These went beyond what would be expected in the typical smuggling of non-narcotic contraband.

59 Taken together with the Accused's own statement that he knew that Aya was involved in drug trafficking, all the circumstances pointed to the Accused knowing that he was transporting controlled drugs.

60 The Accused knew that there were items hidden in the Car that he was driving into Singapore. The present case was not one in which the Accused denied all knowledge that he was carrying contraband. The Accused, knowing that there was contraband, had to raise a reasonable doubt about his knowledge of the nature of that contraband. The evidential burden lay upon him to adduce

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[58] Prosecution's Reply Submissions at para 37.

evidence that would have such an effect. His testimony, however, was at best not believable, and, at worst, incongruous.

61 Given the rejection of the Defence's version, what was left was only the version put forward by the Prosecution, namely, that the Accused knew that he was carrying Class A controlled drugs into Singapore. Nothing else was at all plausible on the facts such as to have raised a reasonable doubt.

Wilful blindness

62 Wilful blindness is a form of actual knowledge: see *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 at [133]–[134] and *Obeng Comfort* at [41].

63 The circumstances discussed above also pointed towards wilful blindness being made out. The Accused worked for Aya, as a bodyguard and driver, knew that Aya dealt in drugs, collected drug money for him and even smoked "ice" with him. Taken together with the elaborate preparations noted above (at [58]), carrying hidden contraband goods for smuggling in this context should have triggered a very high degree of suspicion on the Accused's part. His decision not to inquire further, or to check, the contents of the Bundle could only be indicative of a desire not to uncover what he must have already known – the Accused was therefore wilfully blind.

The statements made by the Accused

64 To be clear, I did not in my conclusions rely on the references to "drugs" made in the contemporaneous and cautioned statements given by the Accused. While I did not accept some of the arguments made by the Defence in respect

of these statements, I did accept that there was sufficient ambiguity such that it was unsafe to rely on these to show the Accused's knowledge that he was carrying drugs.

65 The Prosecution invoked two statements of the Accused as showing that he had known at the material time that he was carrying drugs: these were the contemporaneous and cautioned statements under ss 22 and 23 of the CPC respectively.[59] The contemporaneous statement dated 6 November 2014 recorded by SSSgt Samir, went as follows:[60]

> Q2) Earlier when you were stopped, what was found in your car?
>
> A2) Drugs were found.
>
> Q3) How many of the drugs were found?
>
> A3) There were 10 bundles.
>
> Q4) Do you know what drugs are those?
>
> A4) I do not know what drugs, but I know they are drugs.

66 The cautioned statement dated 7 November 2014 was recorded by ASP Seow. ASP Seow recorded what the Accused said in answer to the warning under s 23 of the CPC as follows:[61]

> I admit to bringing drugs into Singapore. I would rather die than be in prison for life sentence.

67 While the Accused did not allege involuntariness, the Accused alleged that there was improper recording as he was not fluent in either Malay, which

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59 Prosecution's Closing Submissions at paras 19–22.

60 PSB at p 179 (Exhibit P76).

61 PSB at p 204 (Exhibit P77).

was the language in which the contemporaneous statement was recorded, or English, which was the language in which the cautioned statement was recorded. The recorders denied that there had been any difficulty in communication, maintaining that the Accused was able to converse with them, and they had in any event asked the Accused what language he wanted to use.[62]

68 The Accused tried to show that he had difficulties with both English and Malay languages, relying on his poor school results.[63] However, as noted by the Prosecution, his school results dated back to 2003, more than 11 years before the offences were committed.[64] Given that he lived in Malaysia, and had in fact at some point transported foreigners from Johor Bahru to Singapore for a living,[65] I found it hard to believe that even if his command of Malay and English had been poor in school during examinations, that there would not have been the opportunity and incentive to improve them over his adult and working life.

69 The Accused also invoked drug withdrawal symptoms at the time the statements were taken. This was not supported by the medical examination conducted – Dr Mithran Kukanesen examined the Accused on 6 and 7 November 2014 (*ie*, the dates when the relevant statements were recorded) and did not observe any drug withdrawal symptoms.[66] Additionally, two doctors, who examined the Accused on 8 and 9 November 2014 respectively, gave statements that the Accused was not suffering from any drug withdrawal

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62 NE 23/05/17, Day 1, pp 67 and 74–76; NE 24/05/17, Day 2, pp 11–14.

63 NE 23/05/17, Day 1, pp 75–76; NE 24/05/17, Day 2, p 14.

64 Prosecution's Closing Submissions at para 27.

65 NE 25/05/17, Day 3, pp 28–29.

66 CH-PS10, CH-P67 and CH-P68.

symptoms.[67] Another doctor also testified that the Accused was alert, coherent, conscious and responsive as of the assessment on 10 November 2014.[68] In any event, this point was not strongly pursued by the Defence in its submissions.

70 The argument was also made that the statements were not recorded in compliance with the requirements of the CPC, in that the statements had not been read back to the Accused. There was nothing to show any reasonable doubt as to this: the recorders of these statements were not cross-examined on this matter. Neither was there anything compelling in the evidence of the Accused on this score. In any event, any non-compliance with the requirements does not necessarily lead to non-admissibility of the evidence: see Explanation 2, paragraph (*e*) to s 258 of the CPC. While the Court of Appeal in *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 held that a residual discretion exists to exclude improperly recorded statements if its prejudicial effect exceeded its probative value, there was nothing in the present case to show that.

71 However, as regards the more pertinent question of whether the statements showed that the Accused knew that the Bundles contained drugs, I was not satisfied that the statements pointed to this. There was ambiguity as the Accused could have used the term "drugs" in response to what he had perceived or heard from the CNB officers. It would have been otherwise had there been explicit or specific questions asking whether he knew or how he knew that the Bundles contained drugs. As it was, however, I was left with the statements on

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67 CH-PS11 and CH-PS12.

68 NE 23/05/17, Day 1, pp 38–40.

the one hand, and the distinct possibility that the Accused said what he said because he had been told by the CNB officers that the Bundles contained drugs.

72 The Prosecution tried to head off this conclusion, arguing that the Accused independently identified the packages as containing drugs.[69] However, the Prosecution's submissions pointed instead to supposed inconsistences and embellishments in the Accused's evidence which were alleged to render his evidence unreliable. In this regard, it was argued that the Accused was not able to properly and consistently identify the CNB officers who had supposedly torn open the Bundles and informed him of the contents; the Accused was also unable to identify the torn Bundles or how extensive the tearing was.[70]

73 It may be that these are points that could be against the Accused, but they do not establish that the Accused actually admitted to knowledge of the drugs through what he had said in his statements. As alluded to above (at [71]), the ambiguity was inherent in the words used in the statement. Any inconsistency or other shortcomings in the Accused's evidence could not establish that the Accused had by what he said admitted to having knowledge of the Bundles' contents. Even if he had lied, that would not establish the *ex ante* fact of knowledge.

74 The Prosecution also argued that the Defence failed to corroborate the Accused's assertions.[71] This too could not take the Prosecution very far. The

69 Prosecution's Closing Submissions at paras 34–38.

70 Prosecution's Closing Submissions at paras 35–36.

71 Prosecution's Closing Submissions at para 37.

72 Prosecution's Closing Submissions at para 38.

ambiguity in what was recorded in the statements could not be cured by any absence of corroboration. Similarly, the Prosecution's invocation of *Browne v Dunn*,[72] whilst perhaps technically correct, could not exclude an interpretation of the statements relied upon by the Prosecution itself.

75 In the circumstances, I could not give weight to these statements insofar as they were relied upon to show the Accused's knowledge of the nature of the drugs at the material time. There was sufficient doubt raised by the Defence that the Accused had mentioned "[d]rugs were found" only because he had witnessed what the CNB officers had found and/or told him after unwrapping the Bundles. I accordingly attached no weight to the statements as showing the Accused's knowledge of the drugs.

Alternative charge

76 While the alternative argument made by the Defence contended that the Accused should be convicted of transporting Class C controlled drugs, there was nothing in his evidence alleging any belief or knowledge that he was involved with that lower class of drugs as opposed to Class A controlled drugs. The Defence's arguments appeared to be inspired by the alternative conviction in cases such as *Gobi* or *Khor Soon Lee*. But the circumstances in those cases were different. In *Khor Soon Lee*, the Court of Appeal agreed with the Defence, based on a consistent pattern of conduct that was adduced by the accused, that the accused would only transport drugs which did not carry the risk of death penalty (at [27] and [29]). Similarly in *Gobi*, an assurance had been given that the drugs were only "chocolate", *ie*, less serious drugs. As the trial judge in *Gobi* accepted the version given by the accused there (at [34]), the reduction of the charge to a Class C controlled drug followed. In contrast, in the present case,

there was simply no evidence that the Accused believed that he was carrying a *less serious drug*. Here, there was only a binary choice: either the Accused knew he was carrying cannabis and cannabis mixture, or he did not. Having failed to make out the latter to rebut the presumption under s 18(2) of the MDA, the inexorable conclusion was that the Accused knew that he was carrying Class A controlled drugs.

77 For the foregoing reasons, the Accused was convicted of the two charges as framed.

Sentence

78 For the purpose of sentencing, it was not disputed that the Accused's involvement in the transaction was limited only to the transportation, sending, or delivery of a controlled drug. I therefore found the Accused to be a courier within the meaning of s 33B(2)(*a*) of the MDA. Further, as the Accused was granted a certificate of substantive assistance by the Prosecution under s 33B(2)(*b*) of the MDA, he was eligible to be sentenced under s 33B(1)(*a*) of the MDA to imprisonment for life and caning of not less than 15 strokes for each of the charges, instead of capital punishment.

79 The Defence's oral mitigation stated that the Accused had become involved in the transaction because he had to borrow money from Aya to pay for his son's medical treatment. It was also highlighted that he had cooperated with the police and that he was heretofore untraced. The Defence thus submitted for the minimum sentence possible.[73] The Prosecution left sentencing to the court and made no further submissions.[74]

80 In my judgment, there was nothing on the facts to indicate that the court should impose capital punishment rather life imprisonment. Accordingly, life imprisonment was imposed for each of the two charges and the sentences were to run concurrently, with effect from the date of remand, *ie*, 8 November 2014. As for caning, as there were no other factors pointing to the need for a heavier punishment, I imposed the minimum number of strokes per charge, which was 15 (see s 33B(1)(*a*) of the MDA). This took the total to 30 strokes of the cane for the two charges, above the maximum permitted under s 328(6) of the CPC. The order was thus made for the statutory maximum of 24 strokes to be imposed.

Conclusion

81 For the above reasons, I found the Accused guilty of the two charges as framed, and in light of my discretion to sentence the Accused under s 33B(1)(*a*) of the MDA and in the absence of any aggravating factors, I imposed a global sentence of life imprisonment and 24 strokes of the cane.

Aedit Abdullah
Judge

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[73] NE 22/08/17, Day 5, p 7.

[74] NE 22/08/17, Day 5, p 7.

Muhamad Imaduddien and Shen Wanqin (Attorney-General's Chambers) for the Public Prosecutor;
Singa Retnam and Mohamed Baiross (I.R.B. Law LLP) for the Accused.
