IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 17

Criminal Appeal No 57 of 2017

Between

RAMESH A/L PERUMAL

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

Criminal Appeal No 58 of 2017

Between

CHANDER KUMAR A/L JAYAGARAN

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal law] — [Statutory offences] — [Misuse of Drugs Act]
[Statutory interpretation] — [Construction of statute]

Ramesh a/l Perumal
v
Public Prosecutor and another appeal

[2019] SGCA 17

Court of Appeal — Criminal Appeals Nos 57 and 58 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
15 August 2018

15 March 2019 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 In the decision of the Privy Council in *Ong Ah Chuan v Public Prosecutor* [1979–1980] SLR(R) 710 ("*Ong Ah Chuan*"), Lord Diplock observed that it is a fundamental rule of natural justice in criminal law that a person should not be punished for an offence unless it has been established to the satisfaction of an independent tribunal that he committed it: *Ong Ah Chuan* at [27], as cited in the judgment of Chan Sek Keong CJ in *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 at [106]. It is a logical corollary of this fundamental principle that an accused cannot be found guilty if there are gaps in the evidence which the trial judge feels she needs to fill in order to be satisfied that the Prosecution has met its burden of proof (*per* VK Rajah JA in *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 at [59]).

Thus, we recently observed in *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [72] that a trial court generally should not make a finding that resolves against the accused what would otherwise amount to a vital weakness in the Prosecution's case, when the Prosecution itself has not sought to address that weakness by adducing evidence and making submissions to support such a finding.

2 These principles are of especial importance in the context of charges for offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). It is often the case that accused persons caught with drugs in their possession will seek to disassociate themselves entirely from the drugs by claiming that they had no knowledge of them at all, or that they believed they were items of a completely different, completely innocent nature. Having disavowed all knowledge of the drugs, the accused person often gets caught in a tangle of inconsistencies and adverse facts which he cannot explain when the evidence is tested at trial. In such situations, the courts may rightly take into account the weaknesses and inconsistencies in the accused's account and his general lack of credibility in determining his guilt; *yet* it is precisely in such situations that the courts must also guard against the mind-set that once an unbelievable defence is rejected, everything is to be taken *against* the accused. This might lead a court, inadvertently, to fill certain gaps in the evidence in order to support a finding against the accused, when it is rightly the Prosecution which bears the burden of filling such evidential gaps, failing which a conviction cannot be sustained.

3 In the present case, one of the appellants advanced what has been described as an "all or nothing" defence (see *Public Prosecutor v Mas Swan bin Adnan* [2012] 3 SLR 527 ("*Mas Swan bin Adnan*") at [68]). He sought to

exculpate himself entirely by asserting that he believed what turned out to be drugs in a bag found in his possession were office documents instead. This narrative was unbelievable and inconsistent with several facets of the evidence. Consequently, the entire defence was rejected and, in the trial judge's view, nothing was left in its wake. This led the trial judge to find that one element of the offence – that possession was for the purpose of trafficking – was effectively "not contested" because the appellant had failed to make any submissions in that regard. This, in turn, may have led the trial judge to overlook certain gaps in the Prosecution's case regarding this element of the offence. As we shall explain, we find that this element of the offence was not in fact proved beyond reasonable doubt, and therefore the appellant may only be convicted of the lesser charge of possession.

4 This case also offers us the opportunity to revisit a line of authorities which suggest that an individual who takes possession of drugs with the intention of returning them to their owner, or the person from whom he received them, is in possession of those drugs for the purpose of trafficking. As we shall explain, where an individual merely returns drugs to the person from whom he received them, this without more does not come within the definition of trafficking. Similarly, where an individual is in possession of drugs for the intended purpose of returning them to the person from whom he received them, such an individual cannot be said to possess those drugs for the purpose of trafficking.

Background

5 Ramesh a/l Perumal ("Ramesh") and Chander Kumar a/l Jayagaran ("Chander") are the appellants in Criminal Appeals 57 and 58 of 2017, respectively. They were jointly tried on charges relating to nine bundles of

diamorphine which were brought into Singapore from Malaysia in a lorry driven by Chander, with Ramesh as a passenger.

6 Chander faced three charges under the MDA:

(a) One charge under s 5(1)(*a*) read with s 5(2) of the MDA for possession of two bundles containing not less than 14.79g of diamorphine ("the AB bundles") for the purpose of trafficking.

(b) One charge under s 5(1)(*a*) of the MDA for trafficking by delivering three bundles containing not less than 19.27g of diamorphine ("the E bundles") to one Harun bin Idris ("Harun").

(c) One charge under s 5(1)(*a*) of the MDA for trafficking by giving four bundles containing not less than 29.96g of diamorphine ("the D bundles") to Ramesh.

7 Ramesh faced a single charge under s 5(1)(*a*) read with s 5(2) of the MDA for possession of the D bundles for the purpose of trafficking.

8 Following a six-day trial, the learned High Court Judge ("the Judge") found that all of the charges were made out and convicted Ramesh and Chander accordingly: see *Public Prosecutor v Ramesh a/l Perumal and another* [2017] SGHC 290 ("the Judgment"). The Prosecution issued both Chander and Ramesh Certificates of Substantive Assistance under s 33B(2)(*b*) of the MDA. The Judge found that they were both couriers, and sentenced Chander to life imprisonment and 24 strokes of the cane, and Ramesh to life imprisonment and 15 strokes of the cane. Ramesh and Chander have appealed against both their convictions and sentences. They are both unrepresented in these appeals.

Facts

9 Save as otherwise stated, the following facts are not in dispute. Ramesh and Chander both worked as drivers for Millennium Transport Agency, a company based in Johor Bahru, Malaysia which handled deliveries in Singapore (Judgment at [5]). On 26 July 2013, they drove into Singapore in a lorry bearing the registration number JNS 2583 C ("the first lorry") and cleared the Woodlands Checkpoint at about 7.40am. They then proceeded to a parking location along Woodlands Road where another lorry ("the second lorry") was parked (Judgment at [6]). At some point during the journey, Ramesh received a blue "SG brand" bag ("D1") containing the D bundles from Chander. The precise circumstances under which this occurred, and what Chander told Ramesh about D1, are disputed.

10 At the Woodlands Road parking lot, Ramesh alighted from the first lorry and boarded the second lorry, carrying D1 with him. Chander and Ramesh then drove off separately. At about 8.30am, officers from the Central Narcotics Bureau ("CNB") spotted Chander stopping the first lorry close to a food centre at 20 Marsiling Lane. Here, he met with Harun. Chander informed Harun that the items meant for him were on the passenger's side of the lorry. Harun retrieved a white plastic bag which contained the E bundles from the floor of the passenger's side of the first lorry, and placed an envelope and a stack of cash on the passenger seat. Harun and Chander then parted ways (Judgment at [7]).

11 Chander then drove to the premises of Sankyu (Singapore) Pte Ltd ("Sankyu") at 11 Clementi Loop. He stopped the first lorry and alighted, and was arrested by CNB officers at about 8.55am. The CNB officers searched the lorry and seized one of the AB bundles from the area between the driver and passenger seats, and another from a compartment under the radio. The officers

also recovered cash amounting to $6,950 from a compartment above the driver's seat (Judgment at [8]).

12 Shortly thereafter, at about 9.00am, Ramesh also stopped the second lorry at 11 Clementi Loop, and alighted. While he was walking towards the premises of Sankyu, he was arrested by CNB officers. The officers searched the second lorry and seized D1 from the area between the driver and passenger seats. The D bundles were recovered from D1 (Judgment at [9]).

13 The AB bundles, E bundles and D bundles were submitted to the Health Sciences Authority ("HSA") for analysis (Judgment at [10]). It was found that the E bundles contained not less than 19.27g of diamorphine, the AB bundles contained not less than 14.79g of diamorphine, and the D bundles contained not less than 29.96g of diamorphine. The HSA also found that Ramesh's deoxyribonucleic acid ("DNA") was detected on the adhesive side of the tape used to wrap one of the D bundles, D1A2 (Judgment at [11]).

14 In the course of investigations, six statements were recorded from Ramesh, including:

(a) A contemporaneous statement recorded pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") shortly after the arrest;

(b) A cautioned statement recorded pursuant to s 23 of the CPC on 26 June 2013, at about 11.00pm on the day of the arrest; and

(c) Four long statements recorded pursuant to s 22 of the CPC from 30 June 2013 to 24 April 2014 (P98, P100, P102 and P104).

15 Ten statements were recorded from Chander, including:

(a) Two contemporaneous statements recorded pursuant to s 22 of the CPC on 26 June 2013 at about 9.40am and 11.37am respectively;

(b) Three cautioned statements recorded pursuant to s 23 of the CPC on 27 June 2013 (P94, P95 and P96);

(c) Five long statements recorded pursuant to s 22 of the CPC from 29 June 2013 to 30 April 2014 (P97, P99, P101, P103 and P105).

16 These statements will be discussed in further detail where necessary. It suffices to briefly summarise their contents here. In Ramesh's contemporaneous statements and his four long statements, his position was that he did not know about the contents of D1. When the police arrested him and showed him the contents of D1, he claimed that this was the first time he had seen the D bundles. He also claimed that Chander had told him that D1 contained company items or office documents, and passed them to him for safekeeping. Chander had told him he would take D1 back from Ramesh later that day, and would bring the items in D1 back to Malaysia.

17 As for Chander's statements, he initially stated in his contemporaneous statements that he did not know what was inside the bundles, but "someone on top" had asked him to give the bundles to someone else. Later, however, in all three of his cautioned statements, Chander said that he admitted to each charge, and pleaded for mercy and a light sentence. In his third cautioned statement, P96, after he was read a charge for trafficking by giving the D bundles to Ramesh, Chander stated as follows:

> I admit to the charge, however I wish to state that *I gave the 4 bundles to him after he asked for his share of 4 bundles which was given to him by the Malaysian supplier. The Malaysian supplier gave the 4 bundles because he wanted to do the job.* However since Ramesh lorry was parked in Singapore, he came with me in the same lorry from Johor Bahru. *That was the reason why his share of the drugs was also in my lorry*, which I subsequently handed over to him. Please try to help me reunite with my family. I will never do this mistake again. I am remorseful for what I did. I plead for mercy. I am the sole breadwinner of my family.
>
> [emphasis added]

18 Chander's position changed again in his long statements. He claimed that he had been approached by a man named Roy to deliver "pakku" or "pinang" (meaning betel nuts) without the necessary permits sometime in May 2013. On 25 June 2013, Roy had approached him again and asked him to help make another delivery of betel nuts to various locations in Singapore. Chander agreed. Thus, he claimed that he believed that the D, E and AB bundles contained betel nuts.

19 At trial, the crux of Ramesh's defence was the same as that which he had set out in his statements. He claimed he did not know that D1 contained drugs. Chander had passed him D1 sometime in the morning of 26 June 2013 and had asked him to hold on to the bag, saying that it contained "company item(s)" or "office documents" (Judgment at [33]). On Ramesh's evidence, Chander had told Ramesh that he would take D1 back some time later that day.

20 As for Chander, the crux of his defence at trial was that, as he had mentioned in his long statements, he did not know that the bundles contained diamorphine, because Roy had told him, and he believed, that they contained betel nuts (Judgment at [66]).

The decision below

Chander

21 In considering whether the charges against Chander were made out, the Judge structured his analysis with reference to two questions: First, whether Chander's confessions in his three cautioned statements were sufficient without more to convict him on the three charges; and second, if Chander's confessions in his three cautioned statements were disregarded, whether there was sufficient evidence to convict him (Judgment at [67]).

22 As to the first question, the Judge found that Chander's cautioned statements "stated or suggested the inference that he committed [the offences]", and they thus constituted admissible confessions within the meaning of s 258(7) of the CPC. The statements amounted to express admissions of guilt without requiring any inference on the Judge's part. They also unequivocally connected Chander with each of the three offences he had been charged with, since Chander had given the statements immediately after the charges were explained and interpreted to him by the assigned interpreter, V I Ramanathan ("PW41"). Chander's pleas for leniency and mercy and his expressions of remorse were clearly made in reference to the particulars of the offences set out in the charges (Judgment at [71]).

23 While Chander sought to downplay the confessions by claiming that he made them because he was scared and confused upon being told that he was facing capital drug charges, the Judge noted that Chander's claims were contradicted by the evidence of PW41, who testified that Chander looked normal and calm while giving the cautioned statements. In any event, if Chander were truly anxious, it would have been more logical for him to deny the charges

rather than admit to them (Judgment at [72]). The Judge also rejected Chander's submission that P96 should not be treated as a confession because PW41 had mistranslated his statement, which he gave in Tamil. The Judge held that PW41 was an experienced interpreter and it was unlikely that he had made any mistake. It was equally unlikely that he had deliberately mistranslated Chander's statements, there being no reason for him to do this.

24 Thus, the Judge found that Chander's three cautioned statements provided a sufficient basis to convict Chander on all three charges without more (Judgment at [75]). Nevertheless, the Judge went on to consider whether there was sufficient evidence to support the charges against Chander if the confessions in his cautioned statements were disregarded. (Judgment at [76]).

25 The Judge reasoned that for the two charges relating to the D and E bundles under s 5(1)(*a*) of the MDA, the element of trafficking was clearly satisfied because Chander had admitted to giving the D bundles to Ramesh, and the E bundles to Harun in his contemporaneous statements and long statements (Judgment at [77] – [78]). As for the charge under s 5(1)(*a*) read with s 5(2) of the MDA for possession of the AB bundles for the purpose of trafficking, it was clear that the element of possession for the purpose of trafficking was satisfied because on Chander's own evidence, he had intended to give the AB bundles to another recipient (Judgment at [79]). The only element of the three charges which was in dispute was that of knowledge of the nature of the drugs. Since the Prosecution had established that Chander was in possession of the AB, D and E bundles, it could invoke the presumption of possession under s 18(2) of the MDA and the question was whether Chander was able to rebut this presumption (Judgment at [80]).

26 The Judge found that Chander was not able to rebut the presumption of knowledge because his claim that he thought that the bundles contained betel nuts instead of diamorphine ("the betel nut defence") was not credible. Chander had failed to mention the betel nut defence in both the contemporaneous and cautioned statements which were recorded shortly after his arrest. He only mentioned the defence for the first time in his first long statement, P97, which was recorded on 29 June 2013, some two days after his arrest (Judgment at [81]–[82]).

27 Further, even if it were true that Roy had told Chander that he was helping to deliver betel nuts, Chander was wilfully blind to the fact that the bundles did not contain betel nuts (Judgment at [83]). Although Chander claimed that he had previously delivered a bundle of betel nuts to Harun in May 2013, Harun's evidence was that the bundle which Chander delivered on this occasion contained diamorphine and not betel nuts. During that delivery, Harun had passed Chander money to be given to Roy. Roy had counted the money in front of Chander, and he had admitted during cross-examination that he saw Roy counting a lot of money. In the Judge's view this large sum of money would have piqued Chander's suspicion that he was not delivering betel nuts for Roy. That he still refused to inquire into the contents of the bundles showed that he was wilfully blind (Judgment at [83]).

28 Therefore, even disregarding the confessions made in the cautioned statements, the Judge found that Chander was unable to rebut the presumption of knowledge in s 18(2) of the MDA, and the charges against him were made out.

Ramesh

29 The Judge found that all the elements of possession of a controlled drug for the purpose of trafficking were made out beyond reasonable doubt against Ramesh. As for the element of possession, there was no doubt that Ramesh was physically in possession of D1, and accordingly, the D bundles (Judgment at [37]). As for whether Ramesh had knowledge of the D bundles, the Judge accepted Chander's testimony that he had told Ramesh that he had kept the nine bundles in the dashboard compartment of the first lorry, and that, after they arrived at the Woodlands Road location where the second lorry was parked, he had further instructed Ramesh to open the dashboard compartment, retrieve the D bundles, and place them in D1 (Judgment at [38]). Chander's evidence on this issue was reliable and consistent. That Ramesh had knowledge of the D bundles was also corroborated by the following pieces of evidence:

(a) Ramesh's DNA had been found on the adhesive side of the tapes used to wrap one of the D bundles. The Judge reasoned that Ramesh's DNA could have been accidentally transferred onto the tape wrapping when Ramesh was checking to see which of the three plastic bags hidden in the dashboard compartment was the plastic bag containing the D bundles. Ramesh's competing explanation that his DNA transferred onto the tape when he unknowingly brushed the bundle away from his leg while he was in the first lorry was implausible and a mere afterthought which Ramesh had come up with only after he was confronted with the DNA evidence (Judgment at [40]–[42]).

(b) Ramesh's own actions when he was questioned by Senior Station Inspector David Ng ("PW45") immediately after his arrest showed that he had knowledge of the D bundles. PW45 testified that

while the second lorry was being searched, he had asked Ramesh "Where is the illegal thing?", and Ramesh had used his head to point to D1. The fact that Ramesh associated D1 with something "illegal" was indicative of his knowledge that D1 contained the D bundles (Judgment at [43]).

(c) There was evidence that Ramesh had attempted to conceal D1 before alighting from the second lorry. D1 was found partially hidden behind a pillow which was placed between the driver and passenger seat. This was inconsistent with Ramesh's evidence that he just "threw the bag onto the space beside the driver seat" upon receiving D1 from Chander. The inference to be drawn was that Ramesh had deliberately hidden D1 by covering it with the pillow. There would have been no reason for him to do this if he did not know that D1 contained the D bundles (Judgment at [44]).

30 Even if the evidence was insufficient to positively prove that Ramesh was in possession of the D bundles, the Judge found that the Prosecution was able to invoke the presumption of possession under s 18(1)(*a*) of the MDA (Judgment at [50]–[51]). Ramesh was unable to rebut this presumption because his claim that he thought that D1 contained office documents was not to be believed.

31 The Judge also observed that Ramesh was generally not a credible witness. While Ramesh claimed that he did not know Roy (the man who had given Chander the nine bundles – see [18] above), or Roy's friend, the evidence showed that a number which Chander identified as belonging to Roy's friend had called him five times on 26 June 2013, between the time he received D1

from Chander and the time of his arrest. Ramesh had also changed his evidence several times regarding what certain callers had said to him on the phone shortly before he was arrested (Judgment at [56(a)]). For these reasons (among others), the Judge concluded that Ramesh was unable to rebut the presumption that he was in possession of the D bundles (Judgment at [57]).

32 The Judge found that the Prosecution was also able to invoke the presumption of knowledge under s 18(2) of the MDA. Ramesh was unable to rebut this presumption for the same reasons that led the Judge to conclude that Ramesh was in possession of the D bundles and knew that they were within D1. In short, the only argument Ramesh had raised to rebut the presumptions of possession and knowledge was his claim that he thought that D1 contained office documents. This was no more than a "bare assertion" (Judgment at [59]).

33 Finally, the Judge found that Ramesh was in possession of the D bundles for the purpose of trafficking. He observed that this issue was "not contested" as Ramesh had "failed to make any specific submissions in this regard" (Judgment at [61]). Chander's evidence was that Ramesh was supposed to deliver the D bundles to a recipient in Bedok. Even on Ramesh's own evidence, he was supposed to give D1 back to Chander eventually. In the Judge's view, this came within the definition of "traffic" in s 2 of the MDA (Judgment at [62]).

Chander's appeal

The parties' cases

34 Chander's position on appeal is essentially the same as that which he took at the trial below. He claims that he had been told the packages he was to deliver contained betel nuts, and did not know that they contained drugs. He had

done other delivery jobs before in respect of which he received payments of between RM300 to RM500 for delivering boxes of duty unpaid items, and he thus thought that the items which Roy had asked him to deliver this time were similar to other duty unpaid items he had delivered before.

35 Chander further claims that he only admitted to the charges in his cautioned statements because he was confused and nervous. In this regard, Chander seeks to impugn the credibility of the interpreter, PW41, who testified that Chander was calm when giving the cautioned statements. Chander highlights that although this was PW41's initial position, PW41 later admitted under cross-examination that this was only an assumption, and he could not remember exactly whether Chander was calm.

36 The Prosecution argues that Chander's defence is unmeritorious and unsupported by any objective evidence. Chander's betel nut defence was an afterthought because if Roy had told him the bundles contained betel nuts, Chander would have mentioned this in his contemporaneous and/or cautioned statements. Further, the Prosecution emphasises that, as the Judge noted (see [27] above), Chander acknowledged at trial that he had made a previous delivery to Harun on Roy's instructions. On that occasion, Harun had passed him S$2,300 in an envelope. Chander had admitted to seeing Roy count the cash which Harun had handed over, and that he had seen Roy counting "a lot" of notes in denominations of S$10 and S$50. Chander should have been suspicious as to the contents of the bundles which he was delivering, and his failure to inquire into contents of the bundles constitutes wilful blindness.

37 The Prosecution further submits that if indeed Roy had told Chander that the bundles contained betel nuts, there was no reason why Chander should have

been so trusting of Roy. Further, Chander's claim that he told Ramesh that the bundles contained betel nuts was flatly contradicted by Ramesh's own evidence, which was that Chander had told him that D1 contained office documents and personal things.

Our decision on the charges relating to the E bundles and the AB bundles

38 We shall, in the following few paragraphs, only give our decision and reasons concerning the charges against Chander relating to the E bundles and the AB bundles. For reasons which we will shortly explain in greater detail, our findings in relation to *Ramesh's* appeal have a bearing on the charge against *Chander* for trafficking of the D bundles. We shall therefore revisit the charge against Chander concerning the D bundles at [120]–[128] below.

39 We find that the Judge did not err in convicting Chander on the two charges against him relating to the E bundles and the AB bundles, respectively. With regard to the trafficking charge for the E bundles under s 5(1)(*a*) of the MDA, it is clear and undisputed that the element of trafficking was made out because Chander, on his own admission, did pass the bundles to Harun. With regard to the charge for possession of the AB bundles for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA, Chander's own account was that he was supposed to deliver them to a third party recipient, which satisfies the element of possession for the purpose of trafficking. The only element which Chander disputed for all the charges (including the D bundles) is whether he had knowledge of the nature of the drugs.

40 The Prosecution was entitled to invoke the presumption under s 18(2) of the MDA. Thus, the question is whether Chander has rebutted that presumption. In our judgment, he clearly has not. As noted by this court in *Obeng Comfort v*

Public Prosecutor [2017] 1 SLR 633 ("*Obeng Comfort*") at [39], where the accused seeks to rebut the presumption of knowledge, he should, as a matter of common sense and practical application, be able to say what he thought or believed he was carrying. The court will then assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item (*Obeng Comfort* at [40]). Chander's claim that he believed the bundles contained betel nuts was unbelievable and inconsistent with the following objective facts.

41 First, Chander had not mentioned the betel nut defence in his contemporaneous and cautioned statements. Crucially, in P97, Chander alleged that Ramesh was reluctant to deliver undeclared betel nuts for Roy "as he was afraid that he had to pay the *permit fine* if he were caught" (emphasis added). He claimed that he responded to Ramesh's concerns by telling him "not to worry as Roy would pay the fine if he were caught". Chander evidently believed that the penalties for importing undeclared betel nuts were relatively light, and the worst punishment which might be imposed for this offence was a fine. Seen in this context, when Chander was arrested and charged with the much graver offence of trafficking in diamorphine, he would naturally have informed the police immediately that he had been led to believe he was simply delivering bundles of betel nuts. That he did not do this, and only mentioned betel nuts for the first time in his long statements, suggests that the betel nut defence was an afterthought.

42 Second, and in a similar vein, Chander's claim that he thought the bundles contained betel nuts is undermined by his cautioned statements. If Chander had truly been led to believe the bundles contained betel nuts, there would have been no reason for him to admit to the charges for trafficking in

diamorphine and to plead for leniency and mercy. Chander claimed that he had admitted to the charges because he was "confused and frightened" after CNB officers had told him that the bundles contained drugs and that he was "going to be hanged". If indeed CNB officers had said this to Chander, it would have been wholly counterintuitive for Chander to then *admit* to the charges, rather than denying them vehemently. The fact that Chander admitted to the charges in his cautioned statements suggests that his betel nut defence was a fiction. He was fully aware of the nature of the contents of the bundles from the outset, and understood the consequences which he was facing, and this was what had led him to confess to the charges and to plead for mercy.

43 Third, when Chander had previously delivered diamorphine to Harun in May 2013, Harun had handed Chander a sum of $2,300 in return. Given the large sum of money involved, Chander must have known that what he had previously delivered to Harun, and was again delivering on 26 June 2013, could not have been betel nuts.

44 For the foregoing reasons, we uphold the Judge's finding that Chander had not rebutted the presumption of knowledge under s 18(2) of the MDA on a balance of probabilities. The two charges against Chander in respect of the E bundles and the AB bundles were thus made out, and there is no reason to disturb Chander's conviction upon those charges.

45 As for the question of the appropriate sentence, we shall return to this issue at [128] below, after we discuss our findings relating to the charge against Chander concerning the D bundles.

Ramesh's appeal

The parties' cases

46 Whereas Ramesh's position at trial was that he believed that D1 contained office documents, and that he had never seen the D bundles until he was arrested and they were shown to him by the CNB officers, Ramesh admitted on appeal that he had opened D1 after receiving it from Chander, and that he saw four black bundles inside. Since one of the bundles was not properly wrapped, he took it and handled it to see what it was. According to Ramesh, this was why his DNA was found on one of the bundles. He maintained, however, that although he knew that there were bundles inside D1, he was "not very sure" what was inside the bundles, and did not give the matter any thought.

47 Ramesh raises several other arguments in his skeletal submissions which are generally targeted at undermining Chander's testimony and credibility.

48 First, Ramesh claims that Chander lied in saying that he called Ramesh sometime after 8.00pm on 25 June 2013 to inform him about the delivery job which Roy wanted him to do. Ramesh stresses that the phone records show that the call which he received from Chander on the night of 25 June 2013 only lasted for about 11 seconds. According to Ramesh, Chander had simply called him to tell him to give him a wake-up call the following morning.

49 Second, Ramesh points to several inconsistencies in Chander's account of what he told Ramesh concerning the nine bundles and where they had been stored in the first lorry.

50 Third, Ramesh argues that Chander falsely testified that a text message containing Ramesh's mobile number which was sent to Roy's friend at 7.50am

was actually sent by Ramesh himself using Chander's mobile phone. The Prosecution had suggested that this text message must have been sent by Ramesh and not Chander himself because Chander would have been driving the first lorry at this time. Ramesh argues that it could not have been true that he used Chander's phone to send his mobile number to Roy's friend because he was not even in the same vehicle as Chander at the time at which the message was sent. In this regard, Ramesh highlights that, according to his call records, he received calls on his mobile phone from Chander at 7.50am and 7.46am. He argues that Chander would not have called him if they had been in the first lorry together at 7.50am.

51 Fourth, Ramesh argues that it is not true that a supplier in Malaysia gave him the D bundles and told him to do the job of delivering them. According to his call records, it was only after Chander had sent his phone number to Roy's friend that Roy's friend began to call him. Before that, Roy's friend had not called him at all. Ramesh contends that if it were true that he had agreed to help Roy's friend deliver the D bundles, Roy's friend would have called him much earlier.

52 Fifth, Ramesh maintains that Chander had told him that the bag contained office documents and his personal things. Thus, he could not have known what the D bundles really were. He also stresses that he only agreed to hold on to D1 for Chander temporarily and that it was Chander's responsibility to take D1 back from him.

53 Sixth, Ramesh denies that he *hid* D1 in the second lorry, as the Judge had found. He claims that he simply placed the bag at the back of the second lorry.

54 Seventh, Ramesh stresses that, even though the drugs were found in the vehicle he drove, he did not earn any money, and did not give or sell the drugs in the D bundles to anyone. Thus, he argues, he should receive the "minimum sentence".

55 The Prosecution argues that the Judge was right to have found that the presumption of knowledge stood unrebutted with respect to Ramesh. In this regard, the Prosecution highlights that Ramesh had responded to the CNB officers' question of whether there was anything illegal inside the second lorry by referring to D1, that he had attempted to conceal D1 before leaving the second lorry, and that he had given inconsistent evidence about the number of phone calls which he had received from Roy's friend on his mobile phone. The Prosecution also highlights that Ramesh has changed his position on appeal in relation to whether he had opened D1 to have a look at its contents, and that this only casts further doubt on Ramesh's credibility.

Our decision

56 Before we turn to the merits of Ramesh's appeal, we pause to briefly discuss the law concerning the operation of the presumptions in ss 17 and 18 of the MDA, since this informs what the Prosecution was required to establish to make out the charge against Ramesh.

57 It is well established that the presumptions of trafficking and possession in ss 17 and 18(1) of the MDA respectively cannot run together, because the presumption of trafficking applies only where possession is proved (see *Lim Lye Huat Benny v Public Prosecutor* [1995] 3 SLR(R) 689 and *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 ("*Ali bin Mohamad Bahashwan*").

58 As for whether the presumption concerning trafficking in s 17 of the MDA may be applied alongside the presumption of knowledge of the nature of the drugs in s 18(2) of the MDA, this court has held in a line of authorities beginning with *Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548, that these two presumptions cannot be applied in the same case (see also *Tang Hai Liang v Public Prosecutor* [2011] SGCA 38 at [18]–[19] and *Hishamrudin bin Mohd v Public Prosecutor* [2017] SGCA 41 at [48]). Notwithstanding certain *obiter dicta* to the contrary in *Aziz bin Abdul Kadir v Public Prosecutor* [1999] 2 SLR(R) 314, we have recently affirmed in *Zainal bin Hamad v Public Prosecutor* [2018] 2 SLR 1119 ("*Zainal bin Hamad*") that the presumptions in ss 17 and 18(2) *cannot* apply concurrently. We reasoned that s 18 of the MDA stands apart from s 17 of the same Act, in that s 18 deals with the issue of knowing possession, whereas s 17 of the MDA deals with the purpose for which an accused has possession of the item in question. Given Parliament's specific intention that the presumption in s 17 may only be invoked where the fact of possession is proved, we held that this should also be the position in relation to the fact of knowledge of the nature of the item possessed (*Zainal bin Hamad* at [46]–[47]).

59 We thus held that it was important for the Prosecution to identify clearly whether it intends to rely on the presumption of trafficking under s 17 of the MDA; for if that presumption is relied on, the Prosecution must prove the facts of both possession and knowledge. Conversely, if the Prosecution intends to rely on either or both of the presumptions under s 18 of the MDA, then it must prove the fact of trafficking (or possession for the purpose of trafficking) (*Zainal bin Hamad* at [52]). These principles have a material influence on the present case because, as we shall explain, we find that there is insufficient evidence to establish beyond reasonable doubt that Ramesh knew the specific

nature of the drugs. That being the case, the Prosecution must rely on the presumption of knowledge in s 18(2) of the MDA, and assuming this is not rebutted, it must then prove that Ramesh had the drugs for the purpose of trafficking without recourse to any presumption. This is where we find that there are significant gaps in the Prosecution's case.

60 We also preface our analysis of Ramesh's appeal by noting that in mounting the case against Ramesh, the Prosecution had sought to rely on P96, which was Chander's third cautioned statement in relation to the charge against him for trafficking by giving the D bundles to Ramesh. It will be recalled that in P96 (see [17] above), Chander had stated that he had given Ramesh the D bundles because Ramesh had "asked for his share" of the bundles which were given to him (Ramesh) by a Malaysian supplier because Ramesh had "wanted to do the job". At trial, the Prosecution had sought to argue that the court could take this into consideration as against Ramesh pursuant to s 258(5) of the CPC, which provides, in material part, as follows:

> (5) When more persons than one are *being tried jointly for the same offence*, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession. [emphasis added]

61 The Judge disagreed with the Prosecution on the basis that Chander and Ramesh were not being tried for the same offence. He reasoned that s 258(5) of the CPC would only apply if the co-accused persons in question faced precisely the same charges for identical crimes, or if one of the co-accused persons was charged with abetting the other in the commission of the offence with which the other was charged, or if one of the co-accused persons was charged with attempting to commit the exact same offence as the other.

62 Here, Ramesh and Chander were tried jointly for *distinct and independent* offences. Thus, s 258(5) of the CPC did not permit the court to take P96 into consideration in the case against Ramesh (Judgment at [46]–[48]). The Judge observed that his understanding of s 258(5) of the CPC was supported by the decision of this court in *Lee Yuan Kwang and others v Public Prosecutor* [1995] 1 SLR(R) 778 ("*Lee Yuan Kwang*") concerning s 30 of the Evidence Act (Cap 97, 1990 Rev Ed) which was *in pari materia* with the present s 258(5) of the CPC. This aspect of the Judge's decision has not been challenged on appeal and we agree with this aspect of the Judge's analysis. We therefore do not consider P96 in considering the merits of Ramesh's appeal.

63 Turning then to our analysis proper, the three elements of the offence of possession of a controlled drug for the purpose of trafficking are: possession of the controlled drug; knowledge of the nature of the drug; and proof that possession of the drug was for the purpose of trafficking which was not authorised (see *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [28]). We discuss each of these elements in turn.

Possession

64 Where the Prosecution seeks to prove the fact of possession, it must prove that the accused was in possession of a given package or container, and that he knew that it contained some item, which may later be established to be controlled drugs (see *Zainal bin Hamad* at [12]). There was no doubt that Ramesh was physically in possession of D1, which contained the drugs. He had taken custody of D1 upon receiving it from Chander, and it was recovered from the lorry which he was driving. It was clear that he also had knowledge of the D bundles, since his position on appeal was that he had opened D1, seen the D

bundles, and even touched one of them. We are satisfied that this element of the offence was made out beyond a reasonable doubt.

Knowledge of the nature of the drugs

65 For the purposes of a charge for trafficking, or possession for the purpose of trafficking, the requirement of knowledge of the nature of the drugs refers to knowledge of the *actual* controlled drug. Thus, for instance, if the accused is charged with possession of heroin for the purpose of trafficking, the accused must have known that the drug in his possession was heroin: see *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [24]–[26]). The point in issue is therefore whether Ramesh knew that the bundles in his possession contained diamorphine.

66 On the evidence, we had no difficulty finding that Ramesh knew that the D bundles contained an illicit substance. That much was clear based on the following facts:

(a) First, as PW45 had testified, when the lorry was searched and CNB officers questioned Ramesh on where the "illegal thing" was, Ramesh answered "middle" in English and pointed to the area between the driver and passenger seats, where D1 was recovered.

(b) Second, Ramesh's had shifted his position regarding what he believed was contained within D1. Whereas in his statements and at the trial, Ramesh had claimed that he never opened D1, believed that it only contained office documents, and had never seen the D bundles prior to his arrest, he has taken an entirely new stance on appeal and has admitted that he did open D1 and even inspected one of the D bundles. That he

did not say this in his statements from the outset suggests that from the moment he was first arrested, Ramesh saw a strong need to disassociate himself with the D bundles. This indicates that he knew that they contained some illegal substance, the possession of which could attract a harsh penalty.

(c) Third, on 26 June 2013, Ramesh received numerous phone calls of a significant duration from Roy's friend. Ramesh has argued that he could not have been involved in any intended trafficking activities because Roy's friend had only started contacting him on the morning of 26 June 2013, after Ramesh's number was sent via text message to Roy's friend from Chander's mobile phone (see [51] above). We find that this submission is not borne out by the evidence. Instead, Ramesh's phone records show that the day before his arrest, on 25 June 2013, Ramesh received two phone calls from another number, 601116190791, which Chander identified as being *Roy's* number. Ramesh also received more than ten calls from this number on 18 June 2013, some lasting as long as 55 seconds. While this evidence does not directly prove that Ramesh knew what the D bundles contained, it suggests that Ramesh's involvement and level of interaction with the suppliers of the bundles was greater than he had represented.

67 Notwithstanding the foregoing points, however, in our judgment, on the evidence, there is little which goes towards proving that Ramesh knew that the D bundles contained *diamorphine*. We accept that Ramesh may well have known that the D bundles contained some illicit substance and that he could face harsh consequences for having been found with them in his possession. This would explain why he had sought to disassociate himself from these

bundles from the point of his arrest and throughout the proceedings below. Yet knowledge that the D bundles contained an illicit substance, even an illicit substance attracting harsh penalties, is different from knowledge of the nature of the drug.

68 The fact that Ramesh had received numerous calls from Roy on 18 June 2013 and 25 June 2013, and several calls from Roy's friend on the day of his arrest, does not suffice to prove that Ramesh knew the nature of the drugs, given that there is no information before the court concerning what was discussed or what Ramesh was told during these telephone conversations. At the hearing of these appeals, DPP Francis Ng SC ("DPP Ng") accepted that the best he could do was to submit that the number and duration of these calls suggested "some kind of arrangement", but that was as far as the evidence could be taken. We also note that unlike Chander, who had previously performed a delivery to Harun in May 2013 and had witnessed a large sum of money being paid for the bundles delivered (see [43] above), there was no evidence that Ramesh had previously performed a similar delivery of bundles.

69 Indeed, the only evidence which directly addressed what Ramesh knew about the contents of the bundles was Chander's account; and Chander's account, in keeping with his own defence, was that he had told Ramesh that the bundles contained betel nuts. What is even *more* significant was that Chander had said in his long statement, P99, that "[o]n the day of arrest…this was the *first time* that Ramesh brought in the 'pinang' with me" (emphasis added). He added that as far as he knew, "Ramesh [had] never done this before". We also note that throughout Chander's statements, there were several references to Ramesh being reluctant to assist with the deliveries and initially refusing to be involved. The overall impression which emerges from Chander's statements is

that Ramesh was fairly inexperienced and not very well acquainted with the tasks that Roy had asked him and Chander to perform. Given this evidence, it seems at least reasonably plausible that even though Ramesh did have some level of interaction and involvement with Roy and the suppliers of the drugs generally, it was not to such an extent that Ramesh knew the full details of their operations, including the precise contents of the bundles.

70 For the foregoing reasons, we find that the element of knowledge of the nature of the drugs has not been made out against Ramesh beyond a reasonable doubt. Of course, given that Ramesh was proven to have had the drugs in his possession, he is also presumed under s 18(2) of the MDA to have knowledge of their specific nature. As noted above at [40], in order to rebut the presumption, Ramesh would have to give an account of what he thought or believed he was carrying, which the court will assess against the objective facts (*Obeng Comfort* at [40]). In this regard, Ramesh's explanation that he believed that D1 contained office documents is wholly unsustainable, given that he has since admitted that he opened D1 and saw that there were four bundles within. Equally, Ramesh's claim that he saw the bundles but was "not very sure" what was inside of them and did not give this matter much thought was not credible, and was wholly inconsistent with what he had testified at trial. In any event, it was utterly insufficient to rebut the presumption of knowledge. This element of the charge was, therefore, made out on the basis of the presumption.

71 As we have highlighted above, however, given that the Prosecution needed to invoke the presumption in s 18(2) of the MDA in order to establish this element of the offence, it could not also rely on the presumption of trafficking in s 17 of the MDA. We thus turn to discuss whether this element had been made out beyond a reasonable doubt.

Possession for the purpose of trafficking

72 To recapitulate, the Judge found that Ramesh was in possession of the drugs for the purpose of trafficking on the basis of Chander's evidence that Ramesh was supposed to deliver the D bundles to a recipient in Bedok. He further held that, in any case, on Ramesh's own assertion that he was supposed to return D1 to Chander, this act of returning the drugs would come within the definition of "trafficking" in s 2 of the MDA. We shall first discuss whether there was sufficient evidence to establish that Ramesh was supposed to deliver the D bundles to a recipient in Bedok, which was the Prosecution's primary position, before we address the question of whether Ramesh would have committed an act of trafficking by returning the drugs to Chander.

(1) The Prosecution's primary position: that Ramesh was supposed to deliver the D bundles to a recipient in Bedok

73 Chander's evidence formed the linchpin of the Prosecution's case that Ramesh was supposed to deliver the D bundles to a third party recipient. It is therefore necessary to discuss, in some detail, Chander's statements and testimony on this issue, as well as the way in which the Prosecution developed the case against Ramesh at trial.

CHANDER'S EVIDENCE

74 Chander's evidence in his long statements suggested that, at least up until the point when he parted ways with Ramesh in Singapore, he (Chander) was the main point of contact with Roy regarding the delivery of the bundles. On Chander's version of events, it was he himself, and not Roy or anyone else, who engaged Ramesh to assist with the deliveries. On Chander's account, he enlisted Ramesh's assistance over the course of two phone calls that took place

sometime in the evening of 25 June 2013, the night before he and Ramesh were arrested. Earlier that evening, Chander had met Roy at a coffee shop in Johor Bahru at about 8.00pm. Roy told him there were nine bundles of betel nuts to be delivered to three persons. After this conversation with Roy, Chander called Ramesh shortly after 8.00pm to ask for his assistance. At first, Ramesh declined to help with the deliveries as he was afraid he would have to pay a permit fine if he was caught. Despite Chander's attempts to assuage his concerns, Ramesh was still unwilling to assist, and so Chander hung up the phone. Later, however, after Roy called Chander once again to ask for help with making deliveries, Chander agreed to assist and called Ramesh again around 11.30pm or midnight to try to persuade Ramesh to assist. Ramesh said that he would only deliver "the items" in Singapore if the recipient would meet him, and if he did not have to make any extra deliveries. Otherwise, he would bring the items back to Malaysia.

75 Chander's long statements suggest that during the journey from his and Ramesh's office in Johor Bahru into Singapore, the conversation between him and Ramesh only related to where the bundles were kept within the lorry and what Ramesh should do with these bundles. Chander told Ramesh (a) that the bundles were kept in the dashboard compartment; and (b) that he should open the dashboard compartment, take the bundles which were "meant for him" and keep those bundles in D1. There was no suggestion, however, that Chander told Ramesh any details such as the location to which he was supposed to deliver the bundles, and whom the bundles should be delivered to.

76 In P101, Chander's long statement recorded on 2 July 2013, Chander stated that Roy had called him while he was driving along the Causeway on the morning of 26 June 2013. During this call, Chander asked Roy "what to do with

the deliveries". Roy said that three bundles were to be delivered at Woodlands, four bundles were to be sent to Bedok, and to await further calls in respect of the other two bundles. Chander told Roy he could not go to Bedok because it was not on his collection route for that day, and that he would pass the four bundles meant for delivery in Bedok to his friend, by which he meant Ramesh. He decided to pass the four bundles to Ramesh "because he had a collection work at Aljunied, which was nearby". At trial, Chander claimed that during this conversation, Ramesh was in the lorry with him, and contrary to what Ramesh claimed, Ramesh was not asleep and would have overheard his conversation with Roy. According to P101, Ramesh still did not want to go to Bedok and stressed to Chander that he would only send the "barang" if he had extra time left over after making his deliveries.

THE PROSECUTION'S CASE AGAINST RAMESH

77 With regard to the question of how Ramesh became involved in the arrangements for the delivery of the D bundles, the case which the Prosecution initially put to Ramesh closely tracked Chander's version of events in his long statements. In line with Chander's account, on 3 May 2017, when Ramesh was under cross-examination, the Prosecution put to Ramesh that he knew that the bundles were intended for delivery because of the conversation that he had with Chander *on the night of 25 June 2013*:

> Q …Now on the evening of 25th June 2013, Chander told you there was an opportunity for you to earn side income?
>
> A No.
>
> Q Now, I put it to you that on the evening of 25th June 2013, Chander did tell you there was an opportunity to earn such side income.
>
> A I disagree.

Q And I put it to you that this side income involved you delivering things in Singapore.

A I disagree.

Q And I put it to you that you told Chander you interested if you had spare time after your work deliveries (*sic*).

A I disagree.

Q And I put it to you that Chander asked you for help to deliver something in Singapore the next day, meaning 26th June 2013.

A I disagree.

Q Chander told you as well that you would be paid for the delivery.

A I disagree.

Q And Chander told you that for each bundle you delivered, you would be paid RM250.

A I disagree.

Q I put it to you that you told Chander you agreed to deliver the four bundles.

A I disagree.

Q Now, I suggest to you that Chander actually told you that you'll be delivering drugs.

A I disagree.

Q I suggest to you that you agreed to deliver these four bundles of drugs as you were in need of money.

A I disagree.

…

Q And I suggest to you that you knew that some of these bundles were for you to deliver, pursuant to your discussion with Chander the night before.

A I disagree.

78 Similarly, on 4 May 2017, the Prosecution continued to suggest to Ramesh that when he saw certain plastic bags containing bundles in Chander's motorcycle basket on the morning of 26 June 2013, he was already aware what

the bundles were and what they contained, because of the conversation he had had with Chander the night before:

> Q And I put it to you that when you arrived at Chander's motorcycle, there were already three white plastic bags containing bundles that had been deposited in the basket of the motorcycle.
>
> A I disagree.
>
> Q I suggest to you that you were aware that these three plastic bags were in the motorcycle and that they contained bundles wrapped in black tape.
>
> A I disagree.
>
> Q And I suggest to you that you knew that some of these bundles were for you to deliver, pursuant to your discussion with Chander the night before.
>
> A I disagree.

79 Later that day, when Chander took the stand and was under cross-examination, Ramesh's defence counsel, Mr Allagarsamy, questioned Chander about the details of his phone conversations with Ramesh on the night of 25 June 2013:

> Q Okay, I want you to re-enact the conversation. How did the call --- second call go --- … please narrate starting.
>
> A I would call him "Ramesh." "Ramesh, just now I told you about bring the *pakku*" --- and I told him how this is --- if caught ---
>
> …
>
> If --- if --- if you are caught, this is just a *jaman* whereby a fine has to be paid, there would not be any problem. And Ramesh said, "Okay." And Ramesh said that, "if the person who's collecting it comes to collect it then I would bring it; if not, I would bring it back to Malaysia. This is what I told Roy.

80 Mr Allagarsamy then challenged Chander on his evidence that he had called Ramesh twice in the evening of 25 June 2013 and had engaged in the detailed conversation which he claimed to have had with Ramesh. In particular, Mr Allagarsamy suggested that, as re-enacted by Chander, the conversation would have lasted for a duration of at least a minute. Yet the call records showed that the only phone conversation between Ramesh and Chander that evening was one 11-second phone call from Chander to Ramesh at 12.21 am.

81 In response to Mr Allagarsamy, Chander stated that he had three telephone numbers and it could be that he had used a different phone number to call Ramesh. Significantly, however, this suggestion was not taken up by the Prosecution. In fact, the Prosecution appears to have recognised the validity of Mr Allagarsamy's challenge to Chander because on the next day of trial (5 May 2017), when *Chander* was under cross-examination, the Prosecution changed its tack and suggested to Chander that he *did not* speak to Ramesh about the deliveries on the night of 25 June 2013, but rather in the morning of 26 June 2013:

> Q Now, I suggest to you that *you did not speak to Ramesh about delivering the four bundles on the night of 25th June 2013 but you actually did so on the 26th of June 2013 as you were travelling to Singapore.*
>
> A I disagree.
>
> [emphasis added]

82 It was clear to us that there were significant problems with the manner in which the Prosecution's case against Ramesh had developed. To begin with, as a matter of procedural fairness, and given that this was a joint trial, it was incumbent upon the Prosecution to develop a unified case theory regarding the material facts which both Chander and Ramesh, and their respective counsels, could challenge as a single, objective account; rather than two separate case

theories which contradicted each other. The Prosecution had shifted its position regarding an important aspect of its case: which was the issue of when Chander had the crucial discussion with Ramesh during which he obtained Ramesh's agreement to help with delivering the D bundles. The result of the shift in the Prosecution's position was to render this aspect of the case against Ramesh a moving target. *After* Mr Allagarsamy had mounted a serious challenge to the veracity of Chander's account (a challenge *based on* the case which was put to Ramesh in the earlier part of the trial), the Prosecution changed tack and put to Chander that the conversation occurred at a completely different time. We note that following from this change in the Prosecution's case, Mr Allagarsamy did not seek to ask Chander any additional questions, or to test his evidence further. Nevertheless, it seems to us that Mr Allagarsamy might have taken a very different approach while cross-examining Chander – and perhaps also while leading evidence from Ramesh – if the Prosecution had adopted the position from the outset that Chander only told Ramesh about the plan to deliver the bundles on the way from Johor Bahru to Singapore.

83 Quite apart from procedural fairness, we find that there are problems with the narrative which the Prosecution eventually settled on, which was that the crucial discussion between Chander and Ramesh took place while they were *en route* to Singapore in the first lorry. We highlight three difficulties in particular.

84 First, whereas Chander had always maintained that he made two phone calls to Ramesh on the night of 25 June 2013 at around 8.00pm and 11.30pm to persuade Ramesh to assist with the delivery of the bundles, the call records show that there was only one 11-second phone call between Chander and Ramesh on the night in question. This contradiction between the objective evidence and

Chander's narrative creates doubts about Chander's credibility and reliability, and how much weight ought to be given to his evidence in general. This, in turn, casts doubt on the Prosecution's case against Ramesh as a whole, given that Chander's testimony was central to the Prosecution's case that Ramesh agreed to perform a delivery of the D bundles.

85 Second, even assuming that Chander's testimony with regard to Ramesh was generally reliable, we found it difficult to accept the case which the Prosecution ultimately advanced – which was that Chander had engaged Ramesh to assist in delivering the D bundles in the course of a conversation which transpired while they were on their way to Singapore from Malaysia in the first lorry. As we have found (see [66] above), Ramesh clearly knew that the D bundles contained some illicit substance and that being found in possession of that illicit substance could result in harsh consequences for him. It is likely that this was why, on Chander's own account, Ramesh was extremely reluctant to assist in performing deliveries of the bundles for fear of the consequences he might face if he was caught. He had also repeatedly said that he would only perform the deliveries if he had spare time after completing his delivery assignments, failing which he would simply bring the items back with him to Malaysia. This evidence simply does not sit well with the case that Ramesh would have agreed to perform a delivery of the D bundles on the spur of the moment, based on a brief exchange with Chander on the way from Johor Bahru to Singapore.

86 Third, we found that the Prosecution had generally offered a somewhat fragmented narrative as to what exactly Ramesh had agreed to do with the D bundles. There was no evidence concerning who exactly Ramesh was to deliver the bundles to. There was also no evidence concerning how much, if anything,

Ramesh had been offered in return for performing a delivery of the D bundles. In P103, Chander stated that he informed Ramesh that there was "side income" to be earned from performing the deliveries, but apart from this general statement, there was nothing to suggest that Ramesh had been promised any sum of money in return for delivering the D bundles. Of course, this is not to say that proof of possession for the purpose of trafficking invariably requires evidence as to what sum of money or reward the accused was promised in return for an act of trafficking. Yet, it was part of the Prosecution's own case that Ramesh had agreed to perform a delivery of the D bundles for some financial motive, and in light of this, there was a clear gap in the evidence as to what incentive Ramesh had been offered which might have led him to agree to deliver the drugs. Further, given Chander's evidence that Ramesh was extremely reluctant to perform a delivery of the bundles, it was even more unlikely that Chander could have persuaded Ramesh to perform a delivery of the drugs in the course of a short conversation during the journey from Singapore to Malaysia, if no financial incentive had yet been discussed.

87 These reasons lead us to find that there are reasonable doubts as to the Prosecution's case that Ramesh agreed to perform a delivery of the D bundles at Chander's behest. At the hearing of these appeals, DPP Ng urged the court to look at the totality of the facts and consider that Ramesh had agreed to take on the bundles. In our judgment, however, the fact that Ramesh had agreed to take on the D bundles did not mean, without more, that he must have agreed to perform a delivery of the same. There may well have been other reasons why he would have received the D bundles from Chander, and at least one reasonable possibility was suggested by Ramesh's defence: that he was safekeeping the drugs with the intention of returning them to Chander either at 1.00pm or at the end of the work day. It bears mention that this was not a position which Ramesh

adopted abruptly or belatedly at trial. Rather, Ramesh consistently asserted in his contemporaneous statement, his cautioned statement and his first long statement (P98) that Chander had asked him to "keep" D1 (and/or that Chander had said he would later take D1 back from him). We would add that even though one key aspect of Ramesh's "all or nothing" defence – namely, his claim that he believed D1 contained office documents – is untenable and has been abandoned by Ramesh himself, this does not mean that all other aspects of his defence, including his claim that he was merely safekeeping D1 for Chander, should be rejected. The court should not shut its mind to any defence which is reasonably available on the evidence, even where that defence is (in some respects) inconsistent with the accused's own narrative (see *Mas Swan bin Adnan* at [68], as well as the observations we made at [1]–[3] above). In this case, we find that the evidence discloses a reasonable possibility that Ramesh was, as he claims, merely safekeeping the D bundles for Chander. This makes it necessary to address the Prosecution's alternative position that his intended act of returning the D bundles to Chander would have constituted trafficking, and that Ramesh was therefore in possession of the drugs for the purpose of trafficking.

(2) The Prosecution's alternative position: that Ramesh would have trafficked in the drugs by returning them to Chander

88 The Judge concluded that even if Ramesh had returned D1 to Chander, this would have come within the meaning of "trafficking" in s 2 of the MDA, given that "traffic" is defined to include the acts of giving and delivering (Judgment at [62]). The Prosecution argues that the Judge did not err in so deciding, because this court has previously held that a person who possesses drugs with the intention of returning them to their original owner is in possession of those drugs for the purpose of trafficking. We shall thus examine

the line of authorities relied upon by the Prosecution.

89 In *Public Prosecutor v Goh Hock Huat* [1994] 3 SLR(R) 375 ("*Goh Hock Huat*"), the accused ("Goh") was found with 742.89g of diamorphine in his apartment and was charged under ss 5(*a*) and 17 of the version of the MDA then in force, the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) ("the 1985 MDA"). The charge alleged that Goh was guilty of "traffic[king] … by offering to sell, distribute or deliver" these drugs. The drugs recovered from his apartment were found alongside empty sachets, a digital weighing scale and various other apparatus and materials for dividing the drugs into smaller portions for distribution. Some of the drugs had been repacked from larger bundles into smaller sachets. Goh admitted that he knew the drugs were diamorphine and that he had repacked some of the drugs (at [6]). His defence was that the drugs were given to him by one Lu Lai Heng ("Lu") and that he was merely a bailee or custodian of the drugs, holding them until Lu would come to collect them from his apartment. The trial judge accepted that Goh was merely keeping the drugs for Lu and had not offered to deliver the drugs to Lu. He also accepted Goh's counsel's submission that the return of drugs to an owner, instead of a third party, was not delivery. On this basis, he acquitted Goh of the trafficking charge. It should be noted that Goh's case was prosecuted and decided before the 1993 amendments to the MDA introduced the provision in s 5(2) that "a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking". Prior to the introduction of s 5(2), s 5 of the 1985 MDA only proscribed actually trafficking (s 5(*a*)) or offering to traffic in a controlled drug (s 5(*b*)), or doing any act preparatory to or for the purpose of trafficking in a controlled drug (s 5(*c*)).

90 On appeal, this court agreed with the trial judge's finding that the charge

of trafficking under s 5(*a*) was not made out. The drugs had remained with Goh at all times and there was thus no delivery which could amount to trafficking. However, Yong Pung How CJ, delivering the judgment of the court, added that if Goh *had* transported the drugs back to Lu, this would have constituted trafficking (at [20]):

> In our view, if the respondent had transported the drugs back to Lu, the owner, or had handed them back to him on his calling for them on New Year's Eve, then, even though Lu was the owner, *there would clearly have been a delivery within the definition of trafficking under the Act.* The requirement is merely the transfer of possession from one party to another. [emphasis added]

91 Nevertheless, having found that there was no delivery of the drugs back to Lu and hence no actual trafficking, the court amended the charge to refer instead to Goh committing an offence under s 5(*c*) of the 1985 MDA by doing acts preparatory to trafficking. Yong CJ observed that while the act of possession itself would not come within the purview of "acts preparatory to or for the purpose of trafficking", the position would be different if the possession or keeping of the drugs was "merely the prelude" to an act of trafficking (at [23]). On the facts, it was clear that the drugs were being kept by Goh for the purpose of facilitating their later distribution by Lu. Goh had even repacked the drugs into smaller sachets to facilitate their distribution shortly before his arrest (at [23]). Goh was thus convicted of the charge under s 5(*c*) of the 1985 MDA.

92 This court next had occasion to consider whether a "bailee" who holds drugs with the intention of returning them to their owner is in possession of the drugs for the purpose of trafficking in *Lee Yuan Kwang*. The case involved four appellants who were jointly tried for drug trafficking. The first appellant, Lee Yuan Kwang ("Lee") delivered a total of 192.12g of diamorphine, contained in two envelopes and a paper bag, to the third appellant, Choo Tong Sai ("Choo").

Choo, in turn, handed the paper bag, which held 166.3g of diamorphine, to the fourth appellant, Yakoob bin Mohammed ("Yakoob"). Yakoob was arrested shortly thereafter and was charged with trafficking by virtue of having 166.3g of diamorphine in his possession for the purpose of trafficking (*ie*, under s 5(2) of the 1985 MDA).

93 It was not in dispute that Yakoob was in possession of the paper bag, and that he knew that it contained heroin (see *Lee Yuan Kwang* at [48]). Yakoob's defence was that his intention was to return the drugs to Lee, their "rightful owner". Lee was a close friend of Yakoob's and, as a favour, Yakoob had agreed to safekeep the drugs for Lee in his locker at his workplace while Lee was in Malaysia. Since he was intending to return the drugs to Lee, it was argued on behalf of Yakoob that this act of returning the drugs would not constitute an act of "delivery" which would fall within the definition of trafficking. The trial judge disbelieved Yakoob's assertion that he was merely safekeeping the drugs for Lee, and convicted him on the charge.

94 On appeal, this court upheld Yakoob's conviction. Yong CJ, delivering the judgment of the court, noted that Yakoob's appeal raised the same question considered in *Goh Hock Huat* as to whether the act of returning the drugs to their owner would constitute delivery within the definition of trafficking under the MDA (*Lee Yuan Kwang* at [55]). In his view, it was clear that this question should be answered in the affirmative (at [57]):

> Yakoob's evidence was that he had originally intended to keep the drugs for Lee as requested. Upon realising that a substantial quantity of drugs was involved, he later vacillated and was considering whether to return them to Lee when he was arrested. *On either analysis, whether he was a mere bailee or custodian or even if he was in the process of returning the drugs to Lee, it was evident that he had possession of the drugs for the purpose of trafficking, ie he would eventually transfer*

> *possession back to Lee*. This alone would bring Yakoob's case within s 5(2). Adopting the court's interpretation of "deliver" in *Goh Hock Huat*, he could not succeed in rebutting the presumption of possession of the drugs for the purpose of trafficking on the basis of the argument that "returning" the drugs to Lee was not trafficking. *By a future act which would transfer possession of the drugs to Lee, Yakoob would be admitting, in effect, that he would deliver the drugs to Lee*, albeit at a subsequent time. … [emphasis added]

95 The court then turned to address several authorities which counsel for Yakoob had referred to in support of the argument that the return of drugs to their owner would not amount to trafficking.

(a) First, counsel had submitted that the 1985 MDA only sought to punish traffickers who intended to purvey drugs to end-users, citing the observations of Lord Diplock in *Ong Ah Chuan* at [10] that "supplying or distributing addictive drugs to others is the evil against which s 3 (of the 1973 version of the MDA) with its draconian penalties is directed". Dismissing this argument, the court opined that the 1993 amendments to the MDA had "changed the complexion of [the presumption concerning trafficking in] s 17 and also introduced s 5(2)". On this basis the court did not see how the Privy Council's views in *Ong Ah Chuan* could have any relevance in the current statutory climate (*Lee Yuan Kwang* at [60]). The court also noted that the MDA made no reference to "end-users" or promotion or distribution of drugs, apart from the fact that "distribute" came within the definitions of "traffic" in s 2 of the MDA. There was no requirement that the person found in possession had to be a dealer or supplier in order for the presumption of trafficking in s 17 of the 1985 MDA to operate, nor was there any requirement for any proximate connection between the accused and any particular end-user.

(b) Counsel for Yakoob had also relied on the Australian decision of *R v Carey* (1990) 20 NSWLR 292 ("*Carey*"), where the New South Wales Court of Criminal Appeal acquitted the accused of a charge for supplying prohibited drugs under s 25 of the Drugs Misuse and Trafficking Act 1985 (No 226 of 1985) (NSW) ("the New South Wales Act"), because the accused was only in possession of the drugs for temporary safekeeping and was intending to return them to her sister. Yong CJ held that this case could be "easily distinguished" because s 25(1) of the New South Wales Act proscribed the *supply* of prohibited drugs, which carried the connotation that there must be some element of provision, distribution or promotion of the drugs (*Lee Yuan Kwang* at [60]). The provisions of the 1985 MDA and the definition of "traffic" within the statute were worded in dissimilar terms.

96 On the facts of *Lee Yuan Kwang*, the court held (at [61]) that the reasonable inference to be drawn from all the circumstances was that Yakoob knew of Lee's drug trafficking activities. Yakoob had failed to discharge his burden of rebutting the presumption concerning trafficking, and his conviction was thus upheld.

97 The decision in *Lee Yuan Kwang* was subsequently affirmed in a later decision of this court, *Jingga bin Md Selamat alias Kwan Ah Chiam v Public Prosecutor* [2001] SGCA 32 ("*Jingga bin Md Selamat*"). The accused in that case, Jingga bin Md Selamat ("Jingga") was arrested in a small flat where he was staying with his family. Officers recovered a grey plastic box containing 175 sachets of granular substance which were found to contain 78.04g of diamorphine from under a bed. Jingga claimed that his friend, Emran, had passed him the drugs in a plastic bag and at the time when he received the plastic

bag, he did not know that it contained drugs. He also claimed that after he found out that the plastic bag contained drugs, he had no intention of trafficking in the drugs and was only helping his friend, Emran, to keep them until he would come to collect them the next day (*Jingga bin Md Selamat* at [22]). The trial judge rejected these arguments and convicted Jingga on a charge for possession of 78.04g of diamorphine for the purpose of trafficking.

98 On appeal, this court found that there was no reason to disturb Jingga's conviction and that the evidence "established overwhelmingly that he knew what was in the bag" (at [27]). On this basis, the appeal was dismissed. The court then added "in passing" that "[t]he fact that the appellant intended to return he drugs to the person to whom they belonged would not render the act of possession any less a possession for the purpose of trafficking" (at [28], citing *Lee Yuan Kwang*).

99 With this brief summary of the relevant precedents, we turn now to discuss whether we agree with these earlier authorities and whether they should continue to represent the law.

(3) Whether a "bailee" traffics in drugs by returning them to a bailor

100 We would preface our discussion of this issue with a comment on *Goh Hock Huat, Lee Yuan Kwang* and *Jingga bin Md Selamat* concerning terminology. The courts have sometimes spoken in terms of whether the accused had committed, or would have committed, an act of trafficking by returning the drugs to their *owner* (see *Goh Hock Huat* at [20] and *Lee Yuan Kwang* at [56]) or the "person to whom they belonged" (see *Jingga bin Md Selamat* at [28]). In each of these cases, the individuals who entrusted the drugs to the accused persons were taken to be the "owner" of the drugs. The cases

have also sometimes used the language of bailment (see *Lee Yuan Kwang* at [56]). In our view, the use of terms such as "owner" and "person to whom [the drugs] belonged" may give rise to confusion insofar as it invokes notions of legal entitlement and property in the drugs. It has also been observed that in these situations, it is inappropriate to draw any analogy with bailment because such comparisons to bailment suggest that the person who deposited the drugs with the "bailee" or custodian has a right to ownership or immediate possession of the drugs, which, given the illegal subject matter, he does not (see *R v Maginnis* [1987] 2 WLR 765 at 771 *per* Lord Keith of Kinkel). In continuing to use the language of bailment in the present context, we emphasise that nothing we say in this judgment should be taken as any suggestion that the "bailor" has any rights to ownership or possession. The question is thus framed as whether an accused who takes custody of the drugs *traffics* in such drugs if he intends to and in fact returns them to the person who initially entrusted him with the drugs.

101 In short, we are satisfied that this question should be answered in the negative, and to the extent that it is necessary to do so, we depart from the previous decisions in *Goh Hock Huat, Lee Yuan Kwang* and *Jingga bin Md Selamat*. We would note that *Goh Hock Huat* and *Lee Yuan Kwang* were, in fact, not strictly cases of "bailment" in that it was found that the accused persons were not solely in possession of the drugs for the purpose of safekeeping them and returning them to the "bailor". In *Goh Hock Huat*, it was evident that the accused, Goh, had the drugs in his possession for the purposes of preparing them for distribution, and *had* prepared some of them for distribution by apportioning them into sachets (see [89] above). Goh was thus convicted on an amended charge under s 5(*c*) of the 1985 MDA for "do[ing] or offer[ing] to do any act preparatory to or for the purpose of trafficking in a controlled drug". The comments at [20] of *Goh Hock Huat*, in which the Court of Appeal opined that

if, hypothetically, Goh had returned the drugs to Lu, this would have come within the definition of trafficking, were thus made in *obiter*. The court's brief observation that such a return of the drugs would constitute trafficking because "[t]he requirement is merely the transfer of possession from one party to another" was also not accompanied by a detailed treatment of the issue.

102 Similarly, in *Lee Yuan Kwang*, the court was not convinced by Yakoob's account that he was in possession of the drugs for the sole purpose of returning them to Lee. Although the Court of Appeal's comments concerning whether a bailee traffics in drugs by returning them to a bailor (at [55]–[60]) were made on the hypothetical basis that Yakoob's narrative were accepted, in the court's ultimate assessment of the evidence, there were numerous inconsistencies and problems with Yakoob's version of events. Having enumerated these inconsistencies, the court concluded that "crucial aspects of [Yakoob's] evidence (that is, his evidence that he was planning to return the drugs to Lee) were less than convincing" and "[t]he only reasonable inference to be drawn from all the circumstances was that Yakoob knew of Lee's drug trafficking activities". The court thus found that Yakoob's claim that he was in possession of the drugs for the purpose of returning them to Lee was insufficient to rebut the presumption of trafficking under s 17 of the 1985 MDA, which was applicable in Yakoob's case. We also add that in *Jingga bin Md Selamat*, the court's observations that Jingga would have been in possession of the drugs for the purpose of trafficking even if he had intended to return them to Emran were made "in passing" (at [28]), and the court appears to have adopted the position in *Lee Yuan Kwang* without considering the issue in great detail.

103 In our judgment, the natural starting point of the inquiry is the definition of "traffic" in s 2 of the MDA, which specifies that "traffic" means to sell, give,

administer, transport, send, deliver, distribute, or to offer to do any of these things. The verb "return" is not found in that definition. In *Goh Hock Huat* and *Lee Yuan Kwang*, however, the courts considered that the act of returning drugs to a bailor would come within the meaning of the term "deliver". That term is defined in the *Oxford English Dictionary* as follows: "To hand over, transfer, commit to another's possession or keeping; [specifically] to give or distribute to the proper person" (Oxford University Press, 2nd Ed, 1989, Vol IV, p 422). It is perhaps a possible interpretation of the term that to "deliver" encompasses acts of returning the drugs. This view is arguably reflected in the decision of the Supreme Court of Western Australia in *Cosimo Antonio Manisco v the Queen* (1995) 79 A Crim R 213 where, in considering whether a bailee's act of returning drugs to a bailor would come within the meaning of the term "supply" in s 6(1) of the Western Australia Misuse of Drugs Act 1981 (Act 66 of 1981) (WA), Pidgeon J observed as follows:

> An owner delivering a product to a defendant so that the defendant is an agent or factor of the owner to arrange its further sale for distribution could well amount to a supply by the owner. The fact that the defendant received the drug for further distribution would mean that he is in possession of it with the necessary intent. However, I do not consider [that] the re-delivery to the owner pursuant to a bailment comes within this category. *The legislature has used the word "supply" as distinct from the word "deliver".* [emphasis added]

104 The above passage might suggest that in Pidgeon J's view, the act of returning would come within the meaning of the term "deliver", if that had been the word used in the Western Australian Misuse of Drugs Act 1981. It is *also* possible however that the term "deliver" may have been used by Parliament without an intention to include the act of returning; for in the sense in which the word "deliver" is typically used, it does not necessarily encompass the idea of "transferring or bringing back". That this is one possible understanding of the

meaning of "deliver" is arguably demonstrated by the fact that Pidgeon J used the specific term "*re-delivery*" in the above passage to describe the act of returning.

105 In our judgment, the highest at which the point can be put is to say that it is unclear whether in using the term "deliver", Parliament intended to include the act of returning drugs to a person originally in possession of them in the definition of "traffic" in s 2 of the MDA. In our judgment, the terms "traffic" and "deliver" must be interpreted purposively, in light of the legislative policy underlying the MDA, as required by s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed). The purpose of the statute is to be determined first with reference to internal sources, and then, where appropriate, with reference to extraneous material either (a) to confirm that the ordinary meaning of the provision is the correct and intended meaning, (b) to ascertain the meaning of the provision where it is ambiguous or obscure, or (c) to ascertain the meaning of the text in question where, having deduced the ordinary meaning of the text and considering the underlying object of the written law, the ordinary meaning is manifestly absurd or unreasonable (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [42]–[47]). In this case, the internal sources within the MDA, including its long title, the wording of ss 2, 5(1) and 5(2) of the MDA and other legislative provisions within the MDA are of limited assistance in shedding light on whether the term "traffic" encompasses the act of returning, which necessitates recourse to the external sources to ascertain the meaning of the term.

106 This court recently had occasion to examine the legislative policy behind the MDA in *Ali bin Mohamad Bahashwan*. There, the question was whether a buyer who orders drugs from a seller for delivery to himself for his own

consumption ("a consuming-recipient") could be liable for abetting the seller to traffic in the drugs under s 5 read with s 12 of the MDA. We held that this question should be answered in the negative, noting that there was a specialised principle of statutory interpretation under which a person was exempt from being held liable for being an accessory to a statutory offence if he was a person whom the legislature did not intend to make liable for committing the statutory offence in question (at [62], citing *R v Tyrrell* [1894] 1 QB 710). We noted that it was a well-established policy of the MDA to differentiate as between traffickers and mere addicts (at [67]), and this was demonstrated by the Parliamentary debates leading up to the enactment of the MDA in 1973, as well as the fact that the MDA provided much less severe penalties for the offences of consumption and possession as compared with the punishments prescribed for trafficking (at [65]–[66]).

107 The issue before this court is admittedly different from the question which the court considered in *Ali bin Mohamad Bahashwan*. That case dealt with the manner in which the legislative policy behind the MDA should inform the application of the rules on accessory liability, whereas we are presently concerned with the position of a "bailee" of drugs, and whether such a "bailee" is liable for the primary offence of trafficking (including possession for the purpose of trafficking) by virtue of their acts or intended acts of returning the drugs to the bailor. Nevertheless, in both cases, this court is concerned with interpreting the MDA in such a way as to promote the object of that Act. In this regard, it is useful to recall that in *Ali bin Mohamad Bahashwan* (at [64]), we noted that the MDA was enacted to address the problem of drug abuse, and the imposition of heavy punishment on drug traffickers is a central part of that design.

108 It is clear that Parliament's intention was to target those involved in the *supply and distribution* of drugs within society. This is evident from the remarks of the then-Minister for Health and Home Affairs, Chua Sian Chin, who moved the Second Reading of the Misuse of Drugs Bill (*Singapore Parliamentary Debates, Official Report* (16 February 1973) vol 32 at cols 415–417):

> The ill-gotten gains of the drug traffic are huge. The key men operating behind the scene are ruthless and cunning and possess ample funds. They do their utmost *to push drugs through*. Though we may not have drug-trafficking and drug addiction to the same degree as, for instance, in the United States, we have some quite big-time traffickers and their pedlars moving around the Republic, *selling their evil goods and corrupting the lives of all those who succumb to them*.
>
> …
>
> The young person falls under the influence of such a drug in a variety of ways. … The danger is that when he finds that the effects of such a drug are not too upsetting but rather pleasant in the transient light-headed feeling it induces, he continues to take it.
>
> After this, he so very easily progresses to more potent drugs that will give him that same feeling of euphoria after failing to get it with those drugs which he first used, even in increasing quantities. Once he becomes "hooked" on a hard drug, e.g. morphine or heroin, his path to ruination and disaster is certain…It is known that once a person is hooked to a hard drug, he will lie, cheat, steal or even kill just to get the drugs. *Thus, a drug trafficker is the most abominable of human beings if he can be deemed "human". He is a merchant of "living death" which he brings to a fellow human being. He, therefore, deserves the maximum punishment.*
>
> [emphasis added]

109 The above remarks demonstrate that in enacting the MDA and legislating for harsh penalties to be imposed in respect of trafficking offences, Parliament was not simply concerned with addressing the *movement* of drugs *per se*, but the movement of drugs *along the supply chain towards end-users*. More recently, the following remarks of then-Deputy Prime Minister and

Minister for Home Affairs Mr Teo Chee Hean, who moved the Second Reading of the Misuse of Drugs Amendment Bill (*Singapore Parliamentary Debates, Official Report* (12 November 2012) vol 89) show that the key policy objective of the MDA continues to be the disruption of supply and distribution of drugs to end-users, and that the harsh penalties provided for trafficking are a key part of this objective:

> Mr Speaker, Sir, the threat posed by organised drug syndicates is a very serious one. The global drug situation is worsening, with the number of drug users across the world increasing from 180 million to some 210 million over the last decade. Within our own region, the drug problem has become worse. Illicit drugs draw thousands of people every year into a web of addiction and despair. Their family members and the rest of society also pay a heavy price.
>
> Those who trade in illegal drugs are still attracted by the huge financial gains to be made, and deterring them requires the strictest enforcement coupled with the severest of penalties.
>
> [emphasis added]

110 The implications of this legislative policy on the interpretation of the MDA are demonstrated in the decision of the Privy Council in *Ong Ah Chuan*, where Lord Diplock construed the word "transport" in s 3 of the 1973 MDA to mean moving drugs from one person to another (at [10]), rather than simply from one place to another. Lord Diplock noted that apart from the statutory definition of the term "trafficking", the ordinary meaning of the verb "traffic" imports the existence of a *supplier* and a person *to whom the goods are to be supplied* (at [10]). He noted, further, that six of the seven verbs used to describe the various acts which constitute trafficking (*ie*, sell, give, administer, send, deliver and distribute) refer to various ways in which a *supplier or distributor*, who has drugs in his possession, may transfer possession of them to some other person. It followed that the term "transport" was not used in the sense of merely conveying or carrying or moving from one place to another, but in the sense of

promoting the distribution of the drug to another (at [10]). He thus concluded that supplying or distributing addictive drugs to others is the evil against which s 3 (the provision in the 1973 MDA which created the offence of trafficking) was directed. We agree with the views of Lord Diplock and, in our judgment, a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking". It follows that a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking". There is a fundamental difference in character between this type of possession and possession with a view to *passing the drugs onwards* to a third party. In the former situation, the returning of the drugs to a person who already was in possession of them to begin with cannot form part of the process of disseminating those drugs in a particular direction – *ie*, from a source of supply towards the recipients to whom the drugs are to be supplied – because the act of returning the drugs runs counter to that very direction. On the other hand, in the latter situation, the intended transfer of the drugs to a third party is presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer.

111 We note that in *Lee Yuan Kwang*, the Court of Appeal rejected counsel's attempt to rely on the remarks of Lord Diplock in *Ong Ah Chuan*. Yong CJ reasoned that the 1993 amendments to the MDA had "changed the complexion of s 17" and had also introduced s 5(2), and thus it was difficult to see how the statements of the Privy Council in *Ong Ah Chuan* could have any relevance in the current statutory climate. It was also said that the definition of trafficking in the MDA makes no reference to end-users, nor does it require any directly proximate connection between the accused found in possession of the drugs and

any particular end-user (*Lee Yuan Kwang* at [60]).

112 With respect, however, we do not see how the 1993 amendments to the MDA had changed the statutory climate so radically. The fact that Parliament had deemed possession of the drugs for the purpose of trafficking to be equivalent to actual trafficking by virtue of s 5(2) did not alter the definition of trafficking under the MDA in any way, nor did it undermine Lord Diplock's observations that the ordinary meaning and statutory definition of trafficking in s 2 implied the existence of a supplier of drugs and a person to whom drugs were supplied.

113 We should add that we are in general agreement with the point made in *Lee Yuan Kwang* at [60] that the MDA imposes no requirement of any proximate connection between an accused who is found in possession of drugs and an end-user. Indeed, given the intricacies of the drug trade, there will commonly be numerous links in the supply chain between the manufacturer of an illicit drug and its ultimate consumer. In that context, it would be wholly unrealistic to require proof that an accused who transfers, or intends to transfer, the drugs from one party to another has any end-user within his contemplation or any specific intention to purvey the drugs to *consumers* in particular. Moreover, such a requirement would have the absurd effect of reducing s 5 of the MDA to a provision which only applies to those who are further down in the supply chain, while exempting those further up in the supply chain from liability.

114 Thus, while we have endorsed Lord Diplock's observation that the ordinary meaning and statutory definition of traffic in the MDA contemplates the existence of a supplier and a party to whom the drugs are supplied, and while

we have also found that Parliament's objective under the MDA was to address the movement of drugs towards end-users, this should not be taken as any suggestion that establishing the offence of trafficking or possession for the purpose of trafficking requires the Prosecution to prove that the accused was moving the drugs closer to their ultimate consumer. In the vast majority of cases, it can reasonably be assumed that the movement of drugs from one person to another, anywhere along the supply or distribution chain, was done to facilitate the movement of drugs towards their ultimate consumers. It is clear, however, that this assumption does not hold true in the case of a person who merely holds the drugs as "bailee" with a view to returning them to the "bailor" who entrusted him with the drugs in the first place. Such a person cannot, *without more*, be liable for trafficking because the act of returning the drugs is not *part of* the process of supply or distribution of drugs.

115 We would add that, depending on the facts and circumstances of the case, such a "bailee" may well be liable under s 12 of the MDA for abetting or doing acts preparatory to, or in furtherance of, the commission of a trafficking offence. In *Chan Heng Kong and another v Public Prosecutor* [2012] SGCA 18 at [33]–[34], this court held that the term "abet" in s 12 of the MDA carries the same meaning as that word in s 107 of the Penal Code (Cap 224, 1985 Rev Ed), and includes "instigation, conspiracy, and aiding". In terms of *mens rea*, the alleged abettor must have had knowledge of the essential matters constituting the primary offence (see *Koh Peng Kiat v Public Prosecutor* [2016] 1 SLR 753 at [22]–[23]). Thus, for instance, where an accused person agrees to safekeep drugs for the specific purpose of helping a primary offender to evade detection, knowing that the primary offender intends to distribute, deliver, or otherwise traffic in the drugs, this would likely constitute abetment by aiding.

116 In the present case, however, we do not think that the facts before the court disclose an alternative charge of abetment of trafficking, or doing acts preparatory to or for the purposes of trafficking on Ramesh's part. No charge of abetment is made out because there is insufficient evidence concerning what was to be done with the D bundles, and therefore, no primary offence of trafficking to speak of. Ramesh claims that he was supposed to return Chander the drugs at 1.00pm or at the end of their workday. If that is so, there is certainly no evidence before the court concerning whether Ramesh knew of Chander's intentions, assuming for the moment that Chander is found to have had the intention of trafficking the D bundles. There was also no evidence before the court to suggest that, by taking temporary possession of the D bundles, Ramesh had enabled, assisted or facilitated any act of trafficking of the D bundles.

117 In the circumstances, we find that the appropriate course of action is to amend the charge against Ramesh to a charge for possession *simpliciter* under s 8(*a*) of the MDA. At the hearing of the appeals, DPP Ng informed the court that if the charge against Ramesh were to be amended in this manner, the Prosecution would seek the maximum sentence of ten years' imprisonment, having regard to the quantity of drugs in question. In the High Court decision of *Liew Zheng Yang v Public Prosecutor* [2017] 5 SLR 1160, Steven Chong JA held that in the context of a charge for possession of a controlled drug, it would not be appropriate for the court to take what is known as a "multiple starting points" approach in which the punishment range for a given offence is determined solely with reference to the quantity of drugs involved (at [9]). This was because the offence of possession may be committed for a variety of reasons and under a variety of circumstances (at [11]). Chong JA noted, however, that in general, offenders who possess drugs to traffic in them should be punished more severely than those who possess them for their own

consumption, as in the former case, harm is caused to others while in the latter case, harm is caused to oneself (at [14]).

118 We have found that the Prosecution has not proved beyond a reasonable doubt that Ramesh was in possession of the drugs for the purpose of trafficking. Nevertheless, it is clear that he was not in possession of the drugs for his own consumption. On the assumption that Ramesh had agreed to take custody of D1 in order to safekeep the drugs for Chander, we find that he must have known that he was committing some act that was connected (at least in the loose sense of the word) to the illicit circulation of the drugs, even if this did not amount to abetment of trafficking. That being so, we are of the view that this is an appropriate case for imposing a penalty at the high end of the sentencing range. Having regard to the fact that the quantity of diamorphine in question was 29.96g – almost double that which would attract capital punishment in the context of a trafficking charge – we find that it is appropriate to impose a sentence of ten years' imprisonment.

Conclusion on Ramesh's appeal

119 For the foregoing reasons, we allow Ramesh's appeal and convict him on the amended charge for possession of the D bundles under s 8(*a*) of the MDA. We sentence him to ten years' imprisonment backdated to the date of remand.

The charge against Chander relating to the D bundles

120 Thus far, we have not discussed our decision relating to the charge against Chander concerning the D bundles because, as alluded to earlier, our findings in relation to Ramesh's appeal have a bearing on this particular charge against Chander. Notwithstanding the fact that Chander did not dispute that the

actus reus of the charge for trafficking in the D bundles was made out against him (since it is uncontroversial that he did transfer possession of them to Ramesh), given that these appeals arise from a joint trial, we must now consider the charge against Chander in the light of the finding that the evidence discloses a reasonable possibility that Chander gave Ramesh the D bundles *with a view to later taking them back from Ramesh*.

121 For the avoidance of doubt, we acknowledge that in Chander's case, the relevant evidence to be considered includes his cautioned statement, P96, where he stated that he gave Ramesh the D bundles from the "Malaysian supplier" apparently knowing that "[Ramesh] wanted to do the job" (see [17] above). This statement, though inadmissible as against Ramesh (see [62] above), is admissible against *Chander*. Assuming that "the job" refers to some subsequent act of delivery by Ramesh, P96 runs contrary to Ramesh's narrative that Chander gave him the drugs purely for safekeeping, and was intending to take them back. In our judgment, however, P96 must be given limited weight in light of the very real possibility that Chander may have been seeking to distance himself from the D bundles and to shift responsibility for them onto Ramesh. Thus, notwithstanding P96, we find that the evidence does not exclude the reasonable possibility that Chander may indeed have given Ramesh the D bundles only for safekeeping, and with a view to later taking them back.

122 The legal question that follows is whether the act of giving another person drugs with a view to eventually taking them back comes within the definition of trafficking in the MDA. We have, at [103]–[110] above, observed that there is a potential ambiguity as to whether the act of "returning" comes within the meaning "delivery" in the definition of "traffic" in s 2 of the MDA, and that the term "delivery" should be read purposively, having regard to

Parliament's intention to address the movement of drugs along a supply chain and towards a notional consumer. It might perhaps be argued that transferring possession of drugs to another with a view to taking them back equally does not constitute a movement of drugs along the supply chain towards end users, and therefore cannot amount to trafficking.

123 In our judgment, however, the act of giving drugs to a "bailee", even if this is done with a view to taking them back, is unambiguously within the ordinary meaning of terms such as "giving" and "delivering" which are found in the definition of "traffic" in s 2 of the MDA. Indeed, the definition of "delivery" found in the *Oxford English Dictionary* (see [103] above) specifically includes the act of "[committing an item] *to another's keeping*" (emphasis added). It would thus be inappropriate to similarly construe the definition of giving and delivering as excluding entrusting drugs to another's safekeeping on the basis of extrinsic materials such as the Parliamentary debates we have alluded to at [108] and [109] above.

124 To this, we would also add that this understanding of the definition of "traffic" (as including giving drugs to another temporarily, with a view to taking them back) does not lead to a result that is *manifestly* absurd or unreasonable such as to permit recourse to extrinsic materials. In particular, it is not manifestly absurd that an individual in the position of a "bailor" who *initiates* a safekeeping arrangement by giving the drugs to a "bailee" should be liable for trafficking. Such a person arguably stands in a position of greater culpability as opposed to a recipient who only returns the drugs to the person from whom they originated. The "bailee", in returning the drugs, does not move the drugs to a third party and without more cannot be said to advance trafficking in the sense of contributing to the movement along the supply chain towards the ultimate

consumer. But as far as the "bailor" is concerned, by delivering the drugs to the "bailee", he has already moved the drugs on to a third party, and thus facilitates the dissemination of drugs.

125 In respect of a "bailor" who seeks to take himself out of the purposively ascertained definition of trafficking, the mere fact that he intends to reclaim the drugs would be insufficient because he would presumptively already have engaged in trafficking by moving drugs to a new link in the supply chain. Such a "bailor" would only be able to take himself outside the definition of trafficking if he were to prove that the movement of the drugs to the "bailee" was not done to facilitate the further dissemination of the drugs. For instance, he could prove that he intended to consume the drugs after reclaiming the drugs from the "bailee".

126 Significantly in the present case, Chander's version of events is that he was not expecting to get the drugs back from Ramesh at all and Chander has thus not offered a reason for why he would want to take the drugs back.

127 Therefore, we find that even though there is a reasonable possibility that Chander gave Ramesh the D bundles with a view to reclaiming possession of them, this would nevertheless have amounted to trafficking within the meaning of s 5(1)(*a*) of the MDA. The charge against Chander for trafficking in the D bundles is therefore made out beyond a reasonable doubt and we uphold Chander's conviction on this count.

128 With regard to sentence, the three charges against Chander involved 29.96g, 14.79g and 19.27g of diamorphine (see [6] above). Given the quantities of diamorphine in question, Chander would have been liable to be sentenced to death in respect of two of these charges – the charge for trafficking by delivering

the E bundles containing 19.27g of diamorphine to Harun as well as the charge for trafficking by giving the D bundles containing 29.96g of diamorphine to Ramesh. It follows that under s 33B(1)(*a*) of the MDA, the Judge was obliged to impose the sentence of life imprisonment in respect of two of these charges. As Chander had been sentenced in respect of three distinct offences, regardless of which sentences the Judge ordered to run consecutively, the Judge would have had to impose an overall term of life imprisonment. Thus, there is no reason to doubt the correctness of the sentence which the Judge imposed. We therefore dismiss Chander's appeal.

Sundaresh Menon	Andrew Phang Boon Leong	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

The appellants in Criminal Appeal Nos 57 and 58 of 2017 in person;
Francis Ng Yong Kiat, SC and Shana Poon (Attorney-General's Chambers) for the respondent.