

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 93

Criminal Case No 74 of 2018

Between

Public Prosecutor

And

Mohamed Shalleh bin Abdul
Latiff

FOUNDATIONS OF DECISION

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

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Public Prosecutor
v
Mohamed Shalleh bin Abdul Latiff

[2019] SGHC 93

High Court — Criminal Case No 74 of 2018
Hoo Sheau Peng J
23–25, 30 October, 1 November; 31 December 2018; 28 January 2019

10 April 2019

Hoo Sheau Peng J:

Introduction

1 The accused, Mohamed Shalleh bin Abdul Latiff, claimed trial to a charge of possession of not less than 54.04g of diamorphine for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”).

2 At the conclusion of the trial, I found that the charge against the accused had been proved beyond a reasonable doubt, and convicted him accordingly. The mandatory sentence of death was passed on the accused.

3 The accused has filed an appeal against conviction and sentence. I now provide the full reasons for my decision.

The Prosecution’s case

Events leading to the accused’s arrest and the seizure of the drugs

4 On 11 August 2016 at about 2.40pm, officers from the Central Narcotics Bureau (“CNB”) conducted an operation in the vicinity of Balestier Road and Boon Teck Road. A Malaysian-registered car driven by a man later identified as one Khairul Nizam bin Ramthan (“the Malaysian man”), bearing license plate number JKS7602 (“the Malaysian car”), entered Boon Teck Road before parking at the side of the road.¹

5 At about 3.00pm, a Singapore-registered car driven by a man later identified as the accused, bearing license plate number SGL179Y (“the accused’s car”) also entered Boon Teck Road and parked on the opposite side of the road from the Malaysian car.²

6 Soon after, the Malaysian man alighted, walked to the rear of the Malaysian car and opened the boot. Thereafter, he approached the accused’s car and boarded, sitting in the front passenger seat. At about 3.06pm, the Malaysian man alighted from the accused’s car. He went to the back of his car before returning to the driver’s seat. The accused’s car then drove off. Shortly after, the Malaysian car drove off as well.³

7 Some of the CNB officers tailed the accused’s car to Mei Ling Street. At about 3.30pm, the accused’s car was stopped, and the accused was placed under arrest.⁴ Other CNB officers tailed the Malaysian car. At about 3.40pm, the Malaysian man was arrested at the Woodlands Checkpoint.⁵

¹ Agreed Bundle (“AB”) p 269.

² AB p 269.

³ AB pp 269–270.

8 Upon a search of the accused’s car, the following items were found from the floorboard of the front passenger seat:⁶

(a) one orange plastic bag (later marked B1 by Senior Staff Sergeant Tay Keng Chye (“SSSgt Tay”)), which contained one “Lexus” box (B1A) which in turn contained two packets of crystalline substances (B1A1); and

(b) three zip-lock bags each containing one bundle wrapped in brown paper (collectively referred to as the “three bundles”). The three bundles were marked collectively as B2 by SSSgt Tay.

9 SSSgt Tay found the orange plastic bag, containing the “Lexus” box, just beside the three bundles on the floorboard.⁷ The three bundles were each roughly palm-sized, round and irregularly shaped.⁸ They were photographed in Exhibit P25. SSSgt Tay explained that in the photograph, the three bundles (after being taken out of the zip-lock bags and brown paper in which they were wrapped) were marked as A2A1, A3A1 and A4A1⁹ being separate markings assigned by the Investigation Officer.¹⁰ These were the same three bundles which SSSgt Tay had identified collectively as B2.

10 The contents of the three bundles formed the subject matter of the charge.

⁴ AB pp 211 and 270.

⁵ AB pp 211 and 270.

⁶ AB p 240.

⁷ Notes of Evidence (“NEs”) (24 October 2018) p 6, ln 25–26.

⁸ NEs (24 October 2018) p 7, ln 5–6.

⁹ Exhibit P27.

¹⁰ NEs (24 October 2018) p 5, ln 5–13.

Analysis of the drugs

11 The three bundles were sent to the Health Sciences Authority for analysis. Collectively, they were found to contain not less than 1,360.9g of granular/powdery substance which was analysed and found to contain not less than 54.04g of diamorphine (“the drugs”).¹¹ There was no dispute as to the integrity and proper custody of all the exhibits at the material times, and I shall not go into the details here.

The accused’s statements

12 The Prosecution relied on a total of five statements provided by the accused in the course of investigations, which it sought to admit pursuant to s 258(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). The Defence did not object to their admissibility. The pertinent points within the statements were as follows:

(a) The accused had been doing free-lance work as a delivery driver since December 2015.¹²

(b) The accused maintained, across his various statements, that he was only delivering contraband cigarettes.¹³ In a contemporaneous statement recorded shortly after the accused’s arrest, he stated that “[he] was told that [the three bundles] contained two and [a] half cartons of cigarette[s]”.¹⁴ The accused, in later statements, stated that his “knowledge”¹⁵ or “belief”¹⁶ was that the delivery involved cigarettes.

¹¹ AB pp 122–124.

¹² AB p 295, para 1.

¹³ AB pp 222, 296, 314, 324.

¹⁴ AB p 222

¹⁵ AB pp 294, 296.

(c) The delivery on the day of his arrest was arranged by a man known to the accused as “Bai”. The accused assisted Bai in collecting cigarettes a total of two times, which included the collection on 11 August 2016, being the day of his arrest. The accused had known Bai since 2008 while they were in prison together, and had accumulated a debt of about \$7,000 to \$8,000 to Bai. When Bai asked the accused to help him collect contraband cigarettes, Bai told the accused that he would deduct a certain amount from the accused’s debt, although Bai did not state how much would be deducted. This was the reason why the accused agreed to assist Bai in collection of contraband cigarettes. The accused had believed Bai that it was about the collection of cigarettes. Bai had told the accused that a Malaysian man (who turned out to be the Malaysian man) would deliver to him two and a half cartons of contraband cigarettes.¹⁷

(d) Five days before the accused’s arrest, Bai had told him to collect cigarettes from the Malaysian man at Boon Teck Road. When the accused went there to wait, the Malaysian man made the delivery. He passed to the accused a green plastic bag containing some brown bundles. The accused did not check how many brown bundles there were, and did not give the Malaysian man any money. The accused then went to Mei Ling Street, where an unknown Malay male (the “Malay man”) boarded his car, took the green plastic bag and passed him \$200 as “coffee money”.¹⁸

¹⁶ AB pp 314, para 16.

¹⁷ AB p 314, para 16.

¹⁸ AB p 314, para 15.

(e) The day before the accused's arrest, the accused received a call from Bai. The accused told Bai that he was headed to his flat to check his letterbox, and gave his unit number to Bai upon Bai's request. Bai also told the accused to call him 15 minutes before reaching his flat. When the accused later checked his letterbox, he found one envelope containing cash. The accused called Bai as he suspected that the cash was from him. Bai told the accused to "keep the seven thousand", and the accused would receive instructions from him the next day (*ie*, the day of the accused's arrest) on what he should do.¹⁹

(f) On the day of his arrest, the accused asked Bai what the money was for. Bai informed him that it was "debt that they owed him", and instructed the accused to give the money to the Malaysian man.²⁰ The accused did not know why Bai was giving away the money that was supposedly a debt owed to him.²¹

(g) About one hour prior to his arrest, the accused received a call from Bai, who instructed him to collect cigarettes from the Malaysian man at Boon Teck Road. The accused made his way there, and saw the Malaysian car parked along the road. The Malaysian man then boarded the accused's front passenger seat, and told the accused that he was told to pass "these *barang*", which meant "things" in Malay, to him. The Malaysian man then took out the orange plastic bag and the three bundles from his bag and placed them on the floor board of the front passenger seat. The accused told the Malaysian man to take the envelope containing \$7,000 with him. The Malaysian man did so, and left without

¹⁹ AB p 313, para 14.

²⁰ AB p 314, para 19.

²¹ AB p 324, para 28.

saying anything else. The entire meeting between the accused and the Malaysian man lasted for about five minutes.²²

(h) As per Bai's instruction, the accused was then supposed to go to Mei Ling Street to wait for Bai's call, which would contain instructions on whom to deliver the three bundles to.²³

(i) The accused later identified the Malaysian man based on a photograph. He did not know the Malaysian man's name.²⁴

(j) Apart from the above points stated in his statements, the accused did not know anything else about Bai or the Malaysian man.²⁵

Close of the Prosecution's case

13 At the close of the Prosecution's case, I found that a *prima facie* case had been made out against the accused and called upon him to give his defence.

The defence

14 At the trial, the accused did not dispute that the three bundles were in his possession²⁶ and that he intended to deliver the three bundles to a third party at Mei Ling Street on the instructions of Bai.²⁷ His defence was that he did not

²² AB p 313, para 13.

²³ AB pp 222, 313, para 14.

²⁴ AB p 313, para 12.

²⁵ AB p 315, para 26.

²⁶ NEs (30 October 2018) p 72, ln 29–32.

²⁷ NEs (30 October 2018) p 21, ln 5–6.

know that the three bundles contained the drugs; he thought that they contained cigarettes. I set out the salient points of his evidence below:

(a) The accused elaborated on his relationship with Bai:

(i) In 2008, while they were in prison together, they would interact in the prison yard about twice a week, for approximately four months. They lost contact with each other thereafter.²⁸

(ii) The next period the accused met Bai was from April/May to August 2014, twice or thrice a week, at the Kranji Turf Club (“the turf club”). The accused would go there to place bets with Bai, who worked there as a “bookie” (*ie*, an illegal bookmaker).²⁹ On one occasion, the accused’s cousin was also at the turf club at the same time as Bai and the accused. The accused then learned that his cousin had known Bai since the 1990s.³⁰ As a result of his gambling, the accused owed Bai \$7,000 to \$8,000.³¹ The accused then lost contact with Bai once again, as he was admitted into a Drug Rehabilitation Centre.³²

(iii) The next meeting with Bai was a fortuitous one in January 2016, at a mutual friend’s wedding. The conversation between the accused and Bai consisted of Bai asking the accused for repayment of his debt, the accused asking for more time, and then exchanging contact numbers with Bai. They lost contact thereafter once more.³³

²⁸ NEs (30 October 2018) p 3, ln 27 to p 4, ln 16.

²⁹ NEs (30 October 2018) p 4, ln 24 to p 5, ln 1.

³⁰ NEs (30 October 2018) p 5, ln 19–20.

³¹ NEs (30 October 2018) p 5, ln 23–25.

³² NEs (30 October 2018) p 5, ln 31–32.

(iv) During 2016's *Ramadan* month, Bai contacted the accused via the Facebook social networking site. During this interaction, the accused promised to try to repay Bai via \$200 instalments every week.³⁴ The accused made a total of six instalment payments to Bai prior to his arrest, totalling \$1,200.³⁵

(b) Bai was in the business of dealing with contraband cigarettes, and Bai had informed the accused of this.³⁶ At no point in time did the accused and Bai talk about drugs. The accused did not know that Bai was dealing in drugs.³⁷

(c) On the first occasion Bai asked for the accused's assistance to deliver cigarettes ("the first occasion"),³⁸ the accused agreed to Bai's request as he owed him money, and also because Bai was his friend.³⁹ There was no discussion of any payment to the accused. The accused did not inform Bai of the "coffee money" of \$200 that he received from the Malay man.⁴⁰ The accused believed Bai that the delivery only concerned contraband cigarettes. As such, the accused did not open the green plastic bag to see what was inside, did not touch the green plastic bag, and did not suspect anything at all.⁴¹ When making the delivery, the Malay man who got into the accused's car had verbally confirmed with

³³ NEs (30 October 2018) p 6, ln 1–13.

³⁴ NEs (30 October 2018) p 6, ln 19–25.

³⁵ NEs (30 October 2018) p 24, ln 2–3.

³⁶ NEs (30 October 2018) p 7, ln 14.

³⁷ NEs (30 October 2018) p 25, ln 4–11.

³⁸ NEs (30 October 2018) p 7, ln 24–25.

³⁹ NEs (30 October 2018) p 9, ln 15.

⁴⁰ NEs (30 October 2018) p 9, ln 5 and 13.

⁴¹ NEs (30 October 2018) p 9, ln 19 to p 10, ln 1.

the accused the contents of the green plastic bag by asking if the bag contained the cigarettes that Bai had asked the accused to send.⁴²

(d) On the second occasion Bai asked the accused for assistance, it related to the delivery leading to the accused's arrest on 11 August 2016 ("the second occasion"). After passing the envelope of \$7,000 to the accused the day before, Bai called the accused on 11 August 2016, instructing him to pass the money to the Malaysian man, collect two and a half cartons of contraband cigarettes in exchange, and deliver them to Mei Ling Street thereafter.⁴³ When the Malaysian man entered the accused's car, the only item he placed on the floorboard was an orange plastic bag.⁴⁴ The accused saw that the orange plastic bag was tied up by its handles, and so the accused could not see its contents.⁴⁵ The accused was under the belief that the orange plastic bag contained contraband cigarettes, because Bai had told him so.⁴⁶ The accused was not suspicious that it contained anything other than contraband cigarettes.⁴⁷

(e) The accused believed and trusted Bai because (a) Bai had previously informed him that he dealt in the business of contraband cigarettes; (b) Bai did not insist that the accused pay his debts due to him; and (c) Bai was a friend of the accused and his cousin, and the accused's cousin had told him that Bai could be trusted.⁴⁸

⁴² NEs (30 October 2018) p 8, ln 24–27.

⁴³ NEs (30 October 2018) p 11, ln 26–28, p 20, ln 5 to p 21, ln 6; AB p 103.

⁴⁴ NEs (30 October 2018) p 13, ln 12–14.

⁴⁵ NEs (30 October 2018) p 13, ln 31 to p 14, ln 4.

⁴⁶ NEs (30 October 2018) p 16, ln 10–17.

⁴⁷ NEs (30 October 2018) p 17, ln 1–3.

⁴⁸ NEs (30 October 2018) p 7, ln 5–12, p 16, ln 21–29.

(f) The accused was aware that he was taking a risk by helping Bai on both occasions. The accused contemplated that the risk was a potential fine.⁴⁹

(g) The accused only realised that the orange plastic bag contained a box and the three bundles when his car was searched by CNB officers.⁵⁰

(h) On the first occasion, there was neither payment by Bai to the accused, nor any deduction of the accused's debt to Bai, for his assistance in the delivery. On the second occasion, Bai said that he would make a deduction of the accused's debt, although Bai did not specify the quantum to the accused.⁵¹ The accused intended to ask Bai about the offset quantum only after the delivery was complete. The accused did not ask Bai immediately when Bai asked for the accused's assistance because Bai was in a hurry then.⁵²

(i) In addition to the accused's delivery job, from which he earned about \$2,800 per month, the accused also worked as a debt-collector for a friend, earning an additional \$3,600 to \$4,000 per month.⁵³

15 In addition, the accused gave the following evidence while under cross-examination:

⁴⁹ NEs (30 October 2018) p 24, ln 22–28.

⁵⁰ NEs (30 October 2018) p 25, ln 28–30.

⁵¹ NEs (30 October 2018) p 24, ln 4–14.

⁵² NEs (30 October 2018) p 47, ln 10–15.

⁵³ NEs (30 October 2018) p 22, ln 17 to p 23, ln 8.

(a) The accused and Bai were not close friends, whether while in prison,⁵⁴ at the turf club⁵⁵ or between January and June 2016.⁵⁶ While at the turf club, the accused's only interactions with Bai related to the placing of bets. His relationship with Bai was that of a customer who placed bets with Bai.⁵⁷ The accused did not know Bai's actual name or his address, and agreed that he did not know much about Bai. The accused, however, knew that Bai was also known as "Azabhai", that he was a Singaporean who married in Batam, and that he lived somewhere in Bedok.⁵⁸

(b) The accused knew that the reason behind Bai spending time in prison in 2008 was for offences relating to money-laundering and being a "bookie" (*ie*, an illegal bookmaker).⁵⁹

(c) On the date of the accused's arrest, the Malaysian man had only placed the orange plastic bag on the floorboard of the front passenger seat; there were no other items placed there.⁶⁰ Just by looking at the orange plastic bag, the accused could not tell that it contained the three bundles.⁶¹

(d) On both occasions, the accused could have stopped anywhere along his way from Boon Teck Road to Mei Ling Street to check the

⁵⁴ NEs (30 October 2018) p 48, ln 19–20.

⁵⁵ NEs (30 October 2018) p 49, ln 29–32.

⁵⁶ NEs (30 October 2018) p 51, ln 3–9.

⁵⁷ NEs (30 October 2018) p 50, ln 1–3.

⁵⁸ NEs (30 October 2018) p 53, ln 12–31.

⁵⁹ NEs (30 October 2018) p 47, ln 27–28.

⁶⁰ NEs (30 October 2018) p 30, ln 30 to p 31 ln 1.

⁶¹ NEs (30 October 2018) p 31, ln 10–12.

contents of the items he received from the Malaysian man. Although it would not have taken more than five minutes to conduct such a check, he did not do so. This was because he trusted Bai.⁶²

(e) Apart from his trust in Bai, another reason why the accused believed that on the first occasion, the green plastic bag contained cigarettes was that he had previously purchased contraband cigarettes packaged similarly in a brown paper bag.⁶³

(f) The accused was himself a consumer of contraband cigarettes, which he purchased for \$6 per packet, about half the cost of duty-paid cigarettes sold through legal channels.⁶⁴ The accused had purchased a carton of cigarettes before, and agreed that two cartons of duty-paid cigarettes would cost \$260.⁶⁵ Besides the delivery jobs for Bai, the accused had also delivered cartons of cigarettes for another friend of his. On that occasion, he had noted the “squarish” form of the carton of cigarettes.⁶⁶

(g) Even if the accused had seen the three bundles as wrapped in brown paper, he would still have proceeded with the delivery as he would still have believed that they contained cigarette packets, because it was possible that the cigarettes were repacked into smaller packets.⁶⁷

⁶² NEs (30 October 2018) p 39, ln 29 to p 40, ln 9.

⁶³ NEs (30 October 2018) p 43, ln 47 to p 44, ln 5.

⁶⁴ NEs (30 October 2018) p 35, ln 7–22.

⁶⁵ NEs (30 October 2018) p 35, ln 25 to p 36, ln 8.

⁶⁶ NEs (30 October 2018) p 37, ln 12–21.

⁶⁷ NEs (30 October 2018) p 41, ln 7–24.

(h) The accused stated that his reason for helping Bai – the offset of his debt as stated in his statement and reproduced at [12(c)] above – only pertained to the second occasion. The first occasion was a pure favour done for Bai, with no debt offset involved.⁶⁸

The law

16 The applicable law was not in dispute. The relevant provisions within the MDA constituting the charge reads:

Trafficking in controlled drugs

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

17 The Court of Appeal held in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (at [59]) that the elements of a charge of trafficking under s 5(1)(a) read with s 5(2) of the MDA are (a) possession of a controlled drug, which may be proved or presumed under s 18(1) of the MDA; (b) knowledge of the nature of the drug, which may be proved or presumed under s 18(2) of the MDA; and (c) proof that possession of the drug was for the purpose of trafficking which was not authorised. There was no dispute between the parties as to the law.

18 As for the knowledge of the nature of the drug, s 18(2) of the MDA provides:

⁶⁸ NEs (30 October 2018) p 55, ln 9–12.

Presumption of possession and knowledge of controlled drugs

18. ...

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

19 If the Prosecution is able to invoke the presumption of knowledge, the accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug: *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [37]. The court elaborated:

... The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, *for reasons special to himself or to his situation, did not have such knowledge or did not take such steps*. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities. ... [emphasis added]

20 On the specific situation where the accused relies on his belief in information given by the drugs supplier in an attempt to rebut the presumption of knowledge under s 18(2) of the MDA, I noted the Court of Appeal's guidance in *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 at [39]:

In determining whether an accused person believed subjectively the information given by the drugs supplier about the drugs, the court will consider the knowledge of and the efforts made by the accused person to find out about the drugs that he was going to traffic in. In our view, *unique circumstances* justifying a *very high level of trust* must be shown by the accused person before the court is persuaded that the accused person is entitled to rely *solely or mainly on the information given by the drugs supplier*. ... [emphasis added]

Decision on conviction

21 Essentially, the accused admitted to elements (a) and (c) of the offence as stated at [17] above. The accused was in physical possession of the three bundles, which were found to contain not less than 54.04g of diamorphine.⁶⁹ He further admitted that he intended to deliver the three bundles to a third party at Mei Ling Street.⁷⁰ In fact, possession and the intention to traffic were elements of the offence which were undisputed in the Defence's written submissions. Thus, the Prosecution was able to invoke the presumption of knowledge of the nature of the drugs, under s 18(2) of the MDA, against the accused. The burden was for the accused to rebut the presumption that he knew that the drugs were diamorphine.

22 The accused contested having knowledge of the nature of the drugs. The Defence's case was that the accused believed that he received contraband cigarettes instead.⁷¹ The accused mainly sought to establish this by claiming that Bai told him that the delivery only concerned cigarettes, and that he believed Bai. Having considered the evidence, I did not accept the accused's claim that he believed that the delivery concerned contraband cigarettes, whether by reason of his trust in Bai or otherwise. I rejected his account for the following reasons.

Lack of basis to trust Bai

23 To begin with, the evidence of the accused's relationship with Bai failed to justify the high level of trust he purportedly placed in Bai. I acknowledge that the accused was not a stranger with Bai.⁷² As asserted by the Defence, the

⁶⁹ NEs (30 October 2018) p 72, ln 29–32.

⁷⁰ NEs (30 October 2018) p 21, ln 5–6.

⁷¹ Defence's Closing Submissions at para 6.

accused was acquainted with Bai since 2008. The accused claimed that he believed and trusted Bai's information because (a) Bai had previously informed him that he dealt in the business of contraband cigarettes; (b) Bai did not insist that the accused pay his debts due to him; and (c) Bai was a friend of the accused and his cousin, and the accused's cousin had told him that Bai could be trusted. As a result of the accused's belief and trust in Bai, the accused did not have any suspicion that the orange plastic bag contained anything else other than contraband cigarettes, so much so that he neither opened nor touched the bag to verify its contents for himself.

24 However, these matters provided weak support for the accused's strong claim of trust in Bai. During cross-examination, the accused admitted that he did not know basic details such as Bai's actual name or his address. The accused only knew bare details such as Bai being known as "Azabhai", Bai being a Singaporean who married in Batam, and Bai living somewhere in Bedok.

25 In fact, the accused agreed that he was not close friends with Bai whether while in prison, at the turf club or between January and June 2016 (being the estimated period between the accused and Bai meeting at a wedding and when they next interacted during the *Ramadan* month). Viewed in this context, the fact that the accused conversed with Bai more frequently than with other prisoners in 2008 meant little. While at the turf club in 2014, the accused's relationship with Bai was largely that of a customer and his (illegal) bookmaker. In 2016, the accused simply had once chance encounter with Bai in January, followed by an online interaction in the *Ramadan* month. Between these bouts of interaction, the accused lost contact with Bai. In other words, the accused's interaction with Bai consisted of little more than what was borne out of

⁷² Defence's Reply Submissions ("DRS") at para 3.

circumstance, unlawful transactions and chance. It was doubtful that the accused trusted Bai to the degree he claimed he did.

26 While the accused accepted that he did not know much about Bai at all, one key fact the accused *did* know about Bai was that Bai had a history of involvement in various illegal activities, ranging from money-laundering, illegal bookmaking and smuggling of contraband cigarettes. Despite this, the accused claimed that he never contemplated that Bai could also be involved in drugs trafficking. Nevertheless, the point is that the accused had the knowledge that Bai was a man who frequently resorted to illegal activities, and there were grounds for the accused to proceed with caution in his dealings with Bai.

27 I turn to the accused's other two reasons for his trust in Bai – that Bai did not insist on repayment of the accused's debt, and that the accused's cousin had known Bai since the 1990s and told him that Bai could be trusted. The former reason was illogical. While it might result in the accused feeling gratitude towards Bai, it did not explain any purported trust. As for the latter, I fully address it below, but for now it suffices to say that it was insufficient to explain the accused's trust in Bai. Even if we disregard the fact that the Defence omitted to call the accused's cousin to give evidence on the issue, the accused still failed to provide any reason why the accused could trust his cousin's assurance that Bai could be trusted. The mere fact that his cousin knew Bai since the 1990s, without more, was inadequate.

Failure to mention important aspects of his defence in statements

28 At the outset, I must acknowledge that the accused maintained that he was informed that the bundles contained cigarettes, from the recording of his contemporaneous statement and throughout the investigative process. However,

the accused omitted to mention the following points, which he raised for the first time at trial:

- (a) During the first occasion, the recipient of the green plastic bag had allegedly confirmed that the bag contained cigarettes before accepting receipt;
- (b) On the first occasion, another reason why the accused believed that the green plastic bag contained only cigarettes was that he had previously purchased contraband cigarettes which were packed in a similar brown packaging;
- (c) One factor contributing to the accused's trust in Bai was the fact that the accused's cousin had known Bai since the 1990s and told the accused that Bai could be trusted; and
- (d) The different reasons as to why the accused agreed to assist Bai on the first and second occasions.

29 It was unsatisfactory that the accused would omit to add these details in his statements, given their importance in explaining his belief that the delivery involved cigarettes, and his trust in Bai's information.

30 Pieces of evidence that the accused relied on as confirmation of the truth of Bai's information, namely the points at [28(a)] and [28(b)], were omitted. The accused explained under cross-examination that he had not mentioned the point at [28(a)] because he "[found] it not important because [he knew] Bai, but [he did] not know [the Malay] man".⁷³ However, it should have been apparent to the accused that these two points would have corroborated Bai's alleged

⁷³ NEs (30 October 2018) p 57, ln 19–20.

information – whether through verification of such information with the Malay man who received the green plastic bag, or with his past experience of purchasing contraband cigarettes packed in a similar brown packaging. They were therefore pieces of information that he should have raised in his defence to explain why he trusted Bai. I further note that the point at [28(b)] was also raised even more belatedly, at the cross-examination stage.

31 As for the point at [28(c)] above, the accused explained that his omission to mention his cousin was because he was not asked about it, and he was not sure if it was relevant.⁷⁴ However, even if the statements were recorded in a question-and-answer format,⁷⁵ it was still important for the accused to mention this aspect of his defence. Indeed, the recording officer would not know to ask about the accused's cousin. The fact that these points were not mentioned in the accused's previous statements, even though they were important to his defence, reveals a degree of embellishment involved in his evidence in court.

32 As for [28(d)], the accused's evidence seemed to be inconsistent with the contents of his statements on why he assisted Bai on the two occasions. In court, he had claimed that the delivery on the first occasion was a pure favour for Bai, with no consequent offset of his debt. As for the second occasion, Bai agreed to offset some of the accused's debt, but the accused did not know the quantum of the offset. The accused simply intended to ask Bai about the quantum after the delivery was complete. However, in his statement, it was not clearly stated that Bai said that he would offset some of the accused's debt only in relation to the second occasion, and not for both occasions.⁷⁶ Also, the accused did not mention why he agreed to help Bai on the first occasion.

⁷⁴ NEs (30 October 2018) p 59, ln 14.

⁷⁵ DRS at para 5.

⁷⁶ AB p 314 at para 16.

33 In any case, the accused's account in court was unlikely. Even taking the accused's account at its highest, on the first occasion, it defied logic that the accused would assume the risk of criminal punishment for delivering contraband cigarettes for nothing in return. This is especially since the accused and Bai were not close friends. As for the second occasion, it should have been important to the accused to agree with Bai on the quantum to be offset from his debt before embarking on any work, so as to ensure that any risk he took was worthwhile. In fact, the accused admitted that it was important to him that his debt be offset.⁷⁷ However, the accused did not ask Bai about this.

34 Given all of the above, I found his defence hard to believe.

Contradiction of key aspect of evidence

35 Moreover, I noted that the accused's account was contradicted by SSSgt Tay's evidence on one key aspect. The accused claimed that the three bundles had, since the time of his receipt of it, been placed *within* the orange plastic bag, such that they were never visible to him. He thus never had sight of the three bundles within the orange plastic bag, and the first time he discovered that they were contained within the orange plastic bag was when CNB officers searched his vehicle.

36 This account ran contrary to the clear evidence of SSSgt Tay. According to SSSgt Tay, the three bundles were placed beside the orange plastic bag, quite separate from it, on the floorboard.⁷⁸ Upon being recalled as a witness, SSSgt Tay elaborated that since the orange plastic bag was separate from the three bundles, he had marked them as B1 and B2 respectively. This is in contrast with

⁷⁷ NEs (30 October 2018) p 47, ln 1–2.

⁷⁸ NEs (1 November 2018) p 3, ln 26–30.

the contents of the orange plastic bag, the “Lexus” box, which he marked as “B1A” – to indicate that the box was within the orange plastic bag marked as B1.⁷⁹ If the three bundles had been found within the orange plastic bag, SSSgt Tay would have marked them as “B1B” instead.⁸⁰ I found no reason to disbelieve SSSgt Tay’s evidence, and accepted that the three bundles were in fact located outside the orange plastic bag when they were found by SSSgt Tay. This is a significant matter. As the three bundles were left exposed on the floorboard, the accused would have caught sight of their appearance. Their round and irregular shape should have aroused suspicion that they contained something else besides cartons of cigarettes.

37 When confronted with the possibility that he had seen the round shape of the three bundles, the accused insisted that he would still believe that they contained cigarettes, as it was possible that the cigarettes were repacked into smaller packets. This claim was not tenable. The accused had been given specific instructions from Bai to expect receipt of *two and a half cartons* of cigarettes. If the accused then caught sight of the three bundles, which he could not visually verify as being the expected two and a half cartons, I did not believe that the accused would still have proceeded to blindly accept receipt of the items while simultaneously relinquishing the \$7,000 contained in the envelope to the Malaysian man.

Conclusion

38 Having reviewed the evidence in totality, I found that the accused failed to show any unique circumstances justifying the high level of trust in Bai, and I was unpersuaded that he relied on the information allegedly given by Bai. I

⁷⁹ NEs (1 November 2018) p 6, ln 30–32.

⁸⁰ NEs (1 November 2018) p 6, ln 22–24.

should add that this finding was made in the context of the highly suspicious nature of the transaction involved.

39 First, the envelope of \$7,000, a substantial sum, was transmitted to the accused in a covert manner. Bai chose not to pass it directly to the accused, but instead arranged for it to be left in his letterbox. Next, the transaction that the accused was asked to assist in was one with some degree of complexity. Instead of getting the Malaysian man to deliver the “cigarettes” straight to the recipient at Mei Ling Street, Bai involved the accused in the process. The extent of trouble that Bai took to effect this delivery should have triggered the accused’s suspicion as to the value and nature of the goods involved. Third, as set out above at [36], the round and irregular shape of the three bundles would have raised concerns whether they contained cartons of cigarettes. For all these suspicious circumstances to be overlooked, and for the accused not to take any steps to enquire further into the nature of the contents of the three bundles, a high degree of trust in Bai would have had to be found. However, it was a degree of trust which was not borne out by the evidence of this case.

40 By the foregoing, I found that the accused did not successfully rebut the presumption of knowledge under s 18(2) of the MDA on a balance of probabilities. Accordingly, I found that the charge against the accused had been established beyond a reasonable doubt, and I convicted the accused.

Decision on sentence

41 Turning to the decision on sentence, the prescribed punishment under s 33(1) read with the Second Schedule of the MDA is death. However, the alternative sentencing regime in s 33B(1)(a) of the MDA provides the court with the discretion to impose a mandatory term of life imprisonment and not less than

15 strokes of the cane where (i) the offender satisfies the court that his acts fall within s 33B(2)(a)(i)–(iv) of the MDA, and (ii) the Public Prosecutor certifies that the offender has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore under s 33B(2)(b).

42 I found on a balance of probabilities that the accused’s role in the drug transaction was restricted to that of a courier, and fell within s 33B(2)(a) of the MDA. His involvement was limited to delivering the drugs. This was undisputed by the Prosecution.⁸¹ However, as the Public Prosecutor did not issue a certificate of substantive assistance, the requirement within s 33B(2)(b) was not met. As the alternative sentencing regime was not available, I imposed the mandatory sentence of death on the accused.

Hoo Sheau Peng
Judge

Anandan Bala, Wong Woon Kwong and Theong Li Han
(Attorney-General’s Chambers) for the Prosecution;
Ram Goswami (Ram Goswami) and Dhanaraj James Selvaraj (James
Selvaraj LLC) for the accused.

⁸¹ Prosecution’s Closing Submissions at para 40.