

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2020] SGHC 98**

Criminal Case No 2 of 2018

Between

Public Prosecutor

And

Punithan a/l Genasan

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**JUDGMENT**

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

## TABLE OF CONTENTS

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<b>INTRODUCTION.....</b>	<b>1</b>
<b>FACTS.....</b>	<b>2</b>
<b>THE LAW.....</b>	<b>5</b>
<b>THE MAIN ISSUE.....</b>	<b>7</b>
<b>MY DECISION .....</b>	<b>12</b>
GENERAL AND PRELIMINARY ISSUES .....	13
<i>The Couriers' status as convicted accomplices .....</i>	<i>13</i>
<i>The relationship between Shanmugam, Suief and the accused.....</i>	<i>15</i>
(1) The relationship between Suief and the accused.....	16
(2) The relationship between Shanmugam and the accused.....	19
(3) The lack of a relationship between Shanmugam and Suief .....	20
(4) My conclusion.....	21
<i>The evidential status of the Phone Records .....</i>	<i>22</i>
(1) The rule in Browne v Dunn.....	23
(2) The owner of the Mobile Phone Number.....	28
<i>The source of the Controlled Drugs .....</i>	<i>30</i>
SPECIFIC EVENTS AND CREDIBILITY OF SHANMUGAM AND SUIEF.....	32
<i>Credibility.....</i>	<i>33</i>
(1) The law on credibility and a note on the HC 2014 Trial.....	33
(2) Suief's credibility .....	34
(3) Shanmugam's credibility and the weight to be placed on his evidence.....	34
<i>The specific events.....</i>	<i>41</i>

(1)	12 October 2011 .....	41
	(A) <i>The Couriers' accounts are consistent in all material aspects.</i> .....	41
	(B) <i>The Defence's alternative explanation for 12 October 2011 does not raise a reasonable doubt</i> .....	47
	(C) <i>My conclusion as to the events on 12 October 2011</i> .....	56
	(D) <i>A side note about the events of 12 October 2011</i> .....	57
(2)	27 October 2011 .....	61
	(A) <i>The planting of the Controlled Drugs in the Kenari car and the second alibi defence</i> .....	61
	(B) <i>The phone calls</i> .....	65
(3)	28 October 2011 .....	68
	<i>My conclusion</i> .....	75
	<i>Final denials: the Kenari car and Raja</i> .....	76
<b>CONCLUSION</b> .....		<b>81</b>

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**Public Prosecutor**  
**v**  
**Punithan a/l Genasan**

**[2020] SGHC 98**

High Court — Criminal Case No 2 of 2018

Chan Seng Onn J

11, 12, 16 – 18 January, 9 – 12 July, 21, 22, 27, 28 November 2018, 14  
January, 7, 8 February, 19, 20, 26, 28 November 2019, 2 March 2020

15 May 2020

Judgment reserved.

**Chan Seng Onn J:**

**Introduction**

1 The accused person, Punithan a/l Genasan, claimed trial to the following charge under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) and s 34 of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”):

That you, PUNITHAN A/L GENASAN,

on 28 October 2011, in Singapore, together with one V Shanmugam a/l Veloo and Mohd Suief bin Ismail, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) (“the Act”), *to wit*, that on 12 October 2011, at the West Coast McDonald's carpark you had introduced the said V Shanmugam A/L Veloo to one Mohd Suief Bin Ismail to facilitate an impending drug transaction, and pursuant to this meeting between the three of

you, on 28 October 2011, V Shanmugam A/L Veloo, acting under your direction, came into Singapore driving a motor vehicle JLT8467 and met up with Mohd Suief Bin Ismail, and V Shanmugam A/L Veloo did have in his possession, with your knowledge and consent, 10 packets of granular/powdery substance which were analysed and found to contain not less than 28.50g of diamorphine, which is a Class A controlled drug listed in the First Schedule to the Act, for the purposes of trafficking in the said controlled drug with Mohd Suief Bin Ismail, and the possession and intended transaction of the said controlled drug was without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Act read with section 5(2) of the Act and section 34 of the Penal Code (Cap 224, 2008 Rev Ed), and the offence is punishable under s 33(1) of the Act.

2 His trial follows on the back of the convictions of V Shanmugam a/l Veloo (“Shanmugam”) and Mohd Suief bin Ismail (“Suief”) (collectively, the “Couriers”). The Prosecution’s case is that the accused was the mastermind who directed the Couriers to transport and deliver not less than 28.50g of diamorphine on 28 October 2011. The Defence’s case is a denial of the accused’s involvement.

3 At the end of the trial, I reserved judgment. Having considered the evidence led at trial and the submissions of the parties, I find that the Prosecution has proven the charge against the accused beyond a reasonable doubt and I convict him accordingly. Here are the reasons for my decision.

### **Facts**

4 I begin with the undisputed facts.

5 On 28 October 2011, the Couriers trafficked in not less 28.50g of diamorphine in furtherance of their common intention. They were convicted after a joint trial before Choo Han Teck J on 3 February 2015 (see *PP v V*

*Shanmugam a/l Veloo and another* [2015] SGHC 33 (“HC 2014 Trial”). Shanmugam was sentenced to life imprisonment and 15 strokes of the cane while Suief was sentenced to death. Their convictions and respective sentences were upheld by the Court of Appeal (“CA”) in *Mohd Suief bin Ismail v PP* [2016] 2 SLR 893.

6 While there is no agreed statement of facts, the following points do not appear to be in dispute:

- (a) The accused was not in Singapore on 28 October 2011.<sup>1</sup>
- (b) On 28 October 2011, Shanmugam entered Singapore driving a vehicle with license plate no. JLT 8467 (“Kenari car”).<sup>2</sup>
- (c) Shanmugam picked up Suief from a bus stop at Haw Par Villa before driving to an Esso petrol kiosk.<sup>3</sup>
- (d) The Couriers proceeded to Block 405 Pandan Gardens. There, Suief alighted from the Kenari car carrying a black plastic bag (“Black Plastic Bag”) containing three bundles of diamorphine.<sup>4</sup> He placed the Black Plastic Bag amongst some flowerpots on the staircase landing between the seventh and eighth floor of Block 405 Pandan Gardens (“Staircase Landing”).<sup>5</sup>

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<sup>1</sup> Prosecution’s Closing Submissions (“PCS”) at para 2; Agreed Bundle (“AB”) CH-P104 (ICA records), p 207.

<sup>2</sup> Defence Closing Submissions (“DCS”) at para 111; PCS at para 15.

<sup>3</sup> PCS at para 16; DCS at para 111.

<sup>4</sup> AB CH-PS 26, pp 196 – 197.

<sup>5</sup> DCS at para 112; PCS at paras 17 – 18.

(e) Officers from the Central Narcotics Bureau (“CNB”) arrested Suief at his mother’s flat on the 13th floor of Block 405 Pandan Gardens and Shanmugam in the Kenari car.<sup>6</sup>

(f) Three bundles of diamorphine were found inside the Black Plastic Bag which was placed amongst the flowerpots at the Staircase Landing. Seven bundles of diamorphine were found inside a Mizuno Bag (“Mizuno Bag”) in the Kenari car.<sup>7</sup>

(g) The ten bundles were found to contain not less than 28.50g of diamorphine (collectively, “the Controlled Drugs”).<sup>8</sup>

7 The accused last entered and left Singapore on 12 October 2011.<sup>9</sup>

8 During the course of investigations, Shanmugam implicated the accused as being the mastermind behind the drug transaction on 28 October 2011.<sup>10</sup> Investigating Officer Assistant Superintendent Xie Junhao thus applied for a warrant of arrest for the accused on 25 February 2014.<sup>11</sup> The accused was arrested in Malaysia on 16 January 2016, extradited to Singapore on 21 January 2016 and arrested by CNB officers at the Woodlands Checkpoint.<sup>12</sup>

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<sup>6</sup> DCS at para 113; PCS at para 18.

<sup>7</sup> DCS at para 113; PCS at para 19.

<sup>8</sup> AB CH-P89 to CH-P98, pp 124 – 143.

<sup>9</sup> AB CH-P104 (ICA records), p 207.

<sup>10</sup> Exhibit P159 at paras 14-16.

<sup>11</sup> NEs 11 January 2018 p 55 lines 11 – 19; PCS at para 22.

<sup>12</sup> AB, Exhibit CH-P102 pp 203 – 204.

### The law

9 The accused faces a charge under s 5(1)(a) read with s 5(2) of the MDA and s 34 of the Penal Code. As it is undisputed that the Couriers were the actual traffickers of the Controlled Drugs on 28 October 2011, I focus on s 34 of the Penal Code which states as follows:

**Each of several persons liable for an act done by all, in like manner as if done by him alone**

**34.** When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

10 In *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Ridzuan*”), a case involving two individuals jointly charged for trafficking in diamorphine in furtherance of a common intention, the CA laid out the relevant principles governing the interplay between s 5(1)(a) of the MDA and s 34 of the Penal Code.

(a) The purpose of s 34 of the Penal Code is to impute *constructive* liability on a secondary offender in relation to an offence arising from a criminal act committed by the actual doer in furtherance of the common intention shared by the actual doer and the secondary offender (at [27] citing *Daniel Vijay s/o Katherasan v PP* [2010] 4 SLR 1119 (“*Daniel Vijay*”) at [76]).

(b) To impute liability to a secondary offender under s 34 of the Penal Code, three elements must be shown, namely: (a) the criminal act; (b) the common intention; and (c) the participation (at [34]).



(c) The criminal act encompasses the aggregate of all the diverse acts done by the actual doer and secondary offender which collectively give rise to the offence that they have been charged with (at [35] citing *Daniel Vijay* at [92]). In *Ridzuan*, the criminal act encompassed the secondary offender's arrangements to take delivery of the bundles of drugs from a "jockey" (a term for a courier) and the actual doer's collection of the drugs pursuant to those arrangements from the "jockey".

(d) The common intention can form before or during the commission of an offence (at [41] citing *Daniel Vijay* at [109]). The existence of the common intention must frequently be inferred from the offenders' conduct and all other relevant circumstances (at [42] citing *Daniel Vijay* at [97]). The common intention must include the intention to commit the very criminal act done by the actual doer; only then will the criminal act done by the actual doer be considered to have been done in furtherance of the common intention of the actual doer and the secondary offender (at [43] citing *Daniel Vijay* at [166]). In *Ridzuan*, the common intention of both the actual doer and secondary offender was to collect any number of bundles of heroin handed to them by the "jockey".

(e) The element of participation requires that the secondary offender either participates in the specific criminal act committed by the actual doer or that he participates in any of the diverse acts which altogether forms the unity of criminal behaviour resulting in the offence for which they are charged, such offence being commonly intended by all the offenders (at [36] citing *Daniel Vijay* at [163]). In *Ridzuan*, the element of participation was made out as the secondary offender arranged for the collection of the bundles and relayed instructions to the actual doer to collect the bundles.

11 Given that the parties do not dispute that the Couriers have committed the offence of trafficking in the Controlled Drugs, the Prosecution bears the burden of proving the following:

- (a) A criminal act was committed by the accused and the Couriers. The aggregate of their diverse acts that resulted in Shanmugam transporting the Controlled Drugs into Singapore for the purposes of trafficking with Suief would encompass the accused's recruitment of Shanmugam and Suief as couriers and the arrangements made by the accused to transport the Controlled Drugs.
- (b) The accused shared a common intention with the Couriers to transport the Controlled Drugs.
- (c) The accused participated in the diverse acts that resulted in Shanmugam's possession of the Controlled Drugs for the purpose of trafficking with Suief.

12 Finally, the CA was of the view in *Ridzuan* that where the elements of s 34 of the Penal Code are satisfied, constructive liability for the criminal act which constitutes an offence is imputed to the secondary offender (*ie*, the accused). There is no need for the elements of that offence to be made out additionally against the secondary offender (at [29]).

### **The main issue**

13 The sole issue at trial is the accused's complicity in trafficking the Controlled Drugs.

14 The Prosecution’s case is that the accused was the mastermind who introduced the Couriers to each other on 12 October 2011 to facilitate an impending drug transaction and directed Shanmugam to drive the Kenari car into Singapore on 28 October 2011 to meet up with Suief. Pursuant to the accused’s instructions, Shanmugam had the Controlled Drugs in his possession for the purpose of trafficking them with Suief (“the Drug Transaction”). This was with the accused’s knowledge and consent.<sup>13</sup>

15 I will state a brief account of the Couriers’ evidence here for context; a more detailed account will be set out later in the judgment.

(a) One Anuar introduced Suief to the accused in March or April 2011 as Suief was searching for a job. Suief agreed to work for the accused and started to assist him by receiving and delivering shipments of diamorphine from Malaysia.

(b) The accused was a regular patron of Shanmugam’s flower shop in Johor, Malaysia. In August or September 2011, the accused offered Shanmugam a monthly salary of RM 7,000 to make trips into Singapore with the Kenari car and deliver the car to the accused’s friends.

(c) On 12 October 2011, the accused introduced Shanmugam to Suief at West Coast McDonald’s to facilitate an impending drug transaction that would take place after Deepavali (“the introduction meeting”). The meeting was necessary as Shanmugam would be replacing

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<sup>13</sup> PCS at para 1.

the accused's brother as the person driving the Kenari car into Singapore with drugs to meet Suief.

(d) On 24 October 2011, the accused forwarded Suief's mobile phone number to Shanmugam.

(e) On 27 October 2011, the accused took possession of the Kenari car for a few hours before returning it to Shanmugam. The accused also called Shanmugam twice late at night to remind him to meet Suief the next day.

(f) On 28 October 2011, Shanmugam drove the Kenari car to Singapore upon the accused's instructions and met Suief at the Haw Par Villa bus stop. Suief was carrying the virtually empty Mizuno Bag when he entered the Kenari car. Suief said that Shanmugam told him there were ten bundles of "barang" (*ie*, diamorphine) in the car.

(g) The Couriers then went to an Esso petrol kiosk. Suief stepped out to purchase drinks. Suief claimed that when he returned, he saw that three bundles of diamorphine were packed into the Black Plastic Bag while the remaining seven bundles of diamorphine were packed into the Mizuno Bag.<sup>14</sup>

(h) The accused subsequently called Suief and asked him to deliver three bundles to one Ali Bell by placing them amongst the flower pots at the Staircase Landing.

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<sup>14</sup> NEs 16 January 2018 p 13 lines 4 – 31.

(i) The Couriers proceeded to Block 405 Pandan Gardens and Suief exited the Kenari car carrying the Black Plastic Bag which contained three bundles of diamorphine.<sup>15</sup> Suief was arrested by CNB officers at his mother’s house on the 13th floor of Block 405 Pandan Gardens while Shanmugam was arrested in the Kenari car.

16 The Defence’s case is a denial of the accused’s involvement in the Drug Transaction and the specific events leading up to it.

17 First, the Defence argues that the testimonies of the Couriers should be rejected as they were “entirely inconsistent, lacked credibility and their evidence was wholly devoid of any merit whatsoever”.<sup>16</sup>

18 Second, it proffers an alternative explanation of the events from 12 October 2011 to 28 October 2011. In gist: <sup>17</sup>

(a) In 2011, the accused worked for a Malaysian registered moneylending company called “Pinjaman Berlesen Wang” (“the Moneylender”) and entered Singapore on 11 and 12 October 2011 to collect debt moneys from the Moneylender’s agents in Singapore.

(b) On 12 October 2011, the accused never went to the West Coast McDonald’s as he was pre-occupied collecting a debt for the Moneylender and was accompanied by his friend, one Gobi Krishna a/l Karuppiah (“Gobi”) at all material times.

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<sup>15</sup> NEs 16 January 2018 p 17 lines 26 – 29.

<sup>16</sup> DCS at paras 12.

<sup>17</sup> DCS at paras 6 – 9.

(c) The accused never had possession of the Kenari car and thus could not have passed it to Shanmugam at any point or concealed the Controlled Drugs in the Kenari car.

(d) Specifically, on 27 October 2011, the accused did not pass possession of the Kenari car containing the Controlled Drugs to Shanmugam in Johor. This was impossible as the accused was in Kulim, Kedah celebrating Deepavali with his family.

(e) On 27 October 2011, the accused did not give Shanmugam instructions to drive the Kenari car containing the Controlled Drugs into Singapore on 28 October 2011.

(f) The accused did not know that the Kenari car contained the Controlled Drugs. He did not give any instructions to the Couriers to transport or deliver the Controlled Drugs in the car on 28 October 2011.

19 As seen from the puts by the Defence to Shanmugam<sup>18</sup> and Suief,<sup>19</sup> and the submissions made, the Defence’s case is also that the accused “did not even know [the Couriers]” and thus could not have coordinated the Drug Transaction.<sup>20</sup> In connection with this, the Defence points out that the accused had consistently denied any association with the Couriers.<sup>21</sup>

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<sup>18</sup> NEs 12 July 2018 p 41 lines 6 – 10.

<sup>19</sup> NEs 18 January 2018 p 24 lines 1 – 6.

<sup>20</sup> Defence Reply Submissions (“DRS”) at para 44.

<sup>21</sup> DRS at para 44; NEs 7 February 2019 p 54 lines 11 – 15, p 56 lines 4 – 8; 8 February 2019 p 50, lines 2 - 6.

**My decision**

20 I agree with the Prosecution that the accused was the mastermind behind the Couriers’ illegal trafficking activities on 28 October 2011.

21 Given the arguments advanced before me and the composite events that make up the accused’s charge, my reasons will be grouped into two sections. I will deal first with four preliminary points that pertain generally to the accused’s complicity, namely:

- (a) the Couriers’ status as convicted accomplices;
- (b) the relationship between Shanmugam, Suief and the accused;
- (c) the evidential status of the mobile phone records extracted from Shanmugam’s phone and SIM card as well as Suief’s two phones (collectively, the “Phone Records”); and
- (d) the source of the Controlled Drugs.

22 I will then examine the credibility of the Couriers’ testimonies in relation to the specific events as well as the veracity of the alternative version of events proffered by the Defence, namely on:

- (a) 12 October 2011;
- (b) 27 October 2011; and
- (c) 28 October 2011.

***General and preliminary issues***

*The Couriers’ status as convicted accomplices*

23 At the outset, it is important to clarify the implications that flow from Shanmugam and Suief’s status as convicted accomplices.

24 The Defence rightly points out that accomplice evidence forms a special category of evidence and ought to be treated with more caution than normal (*Tan Khee Koon v Public Prosecutor* [1995] 3 SLR(R) 404 (“*Tan Khee Koon*”) at [38]).<sup>22</sup> This general rule of evidence finds expression in Illustration (b) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) (“Evidence Act”):

**Court may presume existence of certain fact**

**116.** The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

*Illustrations*

The court may presume –

...

(b) that an accomplice is unworthy of credit and his evidence needs to be treated with caution;

25 Per Yong Pung How CJ in *Tan Khee Khoon* at [38], the rationale for this is that “an accomplice is an interested party, who would have reasons of his own to exaggerate the culpability of or implicate the accused, while reducing the magnitude or importance of his own involvement in the matter”. Further, s 116

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<sup>22</sup> DCS at para 16.



of the Evidence Act is couched in terms of a discretion that is to be exercised by the judge.

26 Having regard to the factual matrix of this case, I decline to exercise my discretion to presume that the Couriers are unworthy of credit solely on the basis of their status as accomplices. I find that the above rationale does not apply. Suief has been sentenced to death and Shanmugam has been sentenced to life imprisonment and 15 strokes of the cane for their respective involvement in the Drug Transaction. Their appeals were dismissed five days after the accused was extradited to Singapore and the time has passed for them to attempt to reduce their culpability by implicating the accused.

27 Suief gave clear evidence that he has no motive for falsely implicating the accused;<sup>23</sup> this was unshaken despite vigorous cross-examination by Mr Peter Keith Fernando, counsel for the Defence (“Mr Fernando”).<sup>24</sup> Shanmugam, as I will explain later, appears to have done his best to exonerate the accused.

28 Further, the accomplice testimony in this case is corroborated to some extent by documentary evidence in the form of the Phone Records and the travel movement records from the Immigration and Checkpoints Authority of Singapore (“ICA”). Suief’s testimony is further corroborated by Shanmugam’s evidence in material aspects.

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<sup>23</sup> NEs 12 January 2018 p 50, lines 26 – 31.

<sup>24</sup> NEs 18 January 2018 p 25, lines 4 – 8.

29 Be that as it may, I remain mindful of the need to be cautious when examining the evidence of the Couriers given their status as accomplices and the profound implications of the capital charge facing the accused.

30 A second implication flows from the status of the Couriers as convicted accomplices, this time focusing on the word “convicted”. In the Couriers’ joint trial, some findings of fact made by the High Court and affirmed by the CA may be relevant to the present case. Be that as it may, this is a *separate* case involving a different accused person who must be judged separately. Accordingly, apart from the undisputed facts listed at [5] – [7] above, I have not adopted any other findings of fact from those judgments in coming to my decision.

*The relationship between Shanmugam, Suief and the accused*

31 I begin by examining the nature and existence of the relationship between the accused and the Couriers individually as well as the relationship between the Couriers themselves.

32 A key tenet of the accused’s defence is that he “did not even know [the Couriers]” (see above at [19]).<sup>25</sup> If true, this would mean that the accused could not have recruited the Shanmugam and Suief to be his drug couriers, introduced Shanmugam to Suief on 12 October 2011, passed the Kenari car to Shanmugam or provided the Couriers with instructions for the transport and delivery of the Controlled Drugs on 28 October 2011.

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<sup>25</sup> DCS at para 44.

33 I find this to be wholly unbelievable. It is patently clear on the facts that the accused had a relationship with Shanmugam and Suief, and that the accused was the only shared link between them. The Couriers were able to provide some personal details about the accused. They also gave detailed and textured accounts of how they met the accused and their interactions with him. In contrast, the accused was unable to offer any explanation as to the Couriers' accounts apart from a bare denial of his association with them.<sup>26</sup>

(1) The relationship between Suief and the accused

34 Suief gave a detailed account of how he met the accused. He testified that his friend, Anuar, introduced them sometime in March or April 2011 during a meeting at a Teh Tarik coffee shop in Woodlands ("the Teh Tarik Meeting").<sup>27</sup> This was done with a view to offering Suief a job as a drug deliveryman.<sup>28</sup>

(a) He could recall specific facts about the meeting such as its location,<sup>29</sup> the accused's mode of transport (*ie*, a motorcycle)<sup>30</sup> and the fact that Anuar had to work that day.<sup>31</sup>

(b) Suief also recalled that Anuar had given him the accused's number prior to the meeting at the Teh Tarik coffee shop and that he had

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<sup>26</sup> NEs 8 February 2019 p 50 line 2 - p 51 line 26.

<sup>27</sup> NEs 12 January 2018 p 22 lines 15 – 24, p 22 line 28 – p 23 line 16.

<sup>28</sup> NEs 12 January 2018 p 59 line 30 – p 60 line 8.

<sup>29</sup> NEs 12 January 2018 p 22 line 28 – p 23 line 16.

<sup>30</sup> NEs 12 January 2018 p 58 line 12 – 13.

<sup>31</sup> NEs 12 January 2018 p 69 lines 5 -6.

saved the accused's number as "Boyz".<sup>32</sup> This is corroborated by the mobile phone records from Suief's two phones which both show that the same number "+60164978192" ("the Mobile Phone Number") is saved under the name "Boyz" and "boyz".<sup>33</sup>

(c) The Defence has highlighted two discrepancies between Suief's statement (D1) and his testimony at trial: (1) whether Anuar was present during the Teh Tarik Meeting; and (2) whether Suief had gotten the accused's number at the Teh Tarik meeting or prior to it.<sup>34</sup> These are minor details and I do not think that they detract from the realistic and detailed nature of Suief's account.

35 Crucially, Suief's testimony shows that there was a history of drug dealing between him and the accused even *before* Shanmugam was introduced to him on 12 October 2011.

(a) First, Suief testified that he had received four shipments of heroin (street name for diamorphine) from the accused which included the Drug Transaction on 28 October 2011.<sup>35</sup> Although there is some discrepancy as to the third shipment (see [114(b)] – [114(d)] below), Suief eventually testified that the first three shipments of heroin were delivered to him by one Mathan and the last was delivered by Shanmugam.<sup>36</sup> Both drove the Kenari car to deliver the drugs to Suief.<sup>37</sup>

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<sup>32</sup> NEs 12 January 2018 p 60 lines 22 – 31, p 61 lines 2 – 8.

<sup>33</sup> AB, CH-P83 p 67; CH-P84 p 87.

<sup>34</sup> DCS at the table prior to para 48.

<sup>35</sup> NEs 12 January 2018 p 25 lines 9 – 11.

<sup>36</sup> NEs 12 January 2018 p 27 lines 17 – 22.

(b) Second, there was an agreed payment structure. Suief would receive approximately \$100 for each completed delivery from Anuar.<sup>38</sup> This would apply regardless of the number of bundles delivered.<sup>39</sup>

(c) Third, Suief also knew personal details about the accused. He knew that Mathan is the accused's brother<sup>40</sup> and that the accused previously worked in lift maintenance<sup>41</sup> (although he wrongly identified the company).

(d) Finally, the mobile phone record from Suief's phone, B2-HP2, shows that Suief had sent a text message "130 53908 4 punithan genasan" to an unknown number on 9 June 2011, some five months before 28 October 2011.<sup>42</sup> The name "punithan genasan" in the text message corresponds with the full name of the accused "Punithan a/l Genasan". This is further proof that there was some manner of association between Suief and the accused.

36 In light of the above, I find that there was a relationship between Suief and the accused.

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<sup>37</sup> NEs 12 January 2018 p 31 line 26 – p 32 line 3, p 34 lines 15 – 27.

<sup>38</sup> NEs 12 January 2018 p 29 lines 12 – 13, p 84 lines 12 – 26.

<sup>39</sup> NEs 12 January 2018 p 29 lines 23 – 27.

<sup>40</sup> NEs 12 January 2018 p 23 line 26 – p 24 line 7.

<sup>41</sup> NEs 12 January 2018 p 48 lines 2 – 9.

<sup>42</sup> AB CH-P84 p 93.

(2) The relationship between Shanmugam and the accused

37 Shanmugam was similarly able to give a vivid account of his association with the accused.

38 Shanmugam was able to recount personal details about the accused. He knew that the accused's brother is Mathan, that the accused previously worked in lift maintenance<sup>43</sup> and that the accused's mother lives in Kedah. In relation to the last point, Shanmugam testified that the accused had told him *on the eve of the Drug Transaction* that he was "going back to his mother's place in Kedah".<sup>44</sup> The accused confirmed this at trial.

39 Shanmugam was also able to recount how he met the accused. He testified that they met approximately three to four months prior to 28 October 2011 as the accused was a regular patron who visited his flower shop twice a week.<sup>45</sup> When it was put to him that this was false, Shanmugam was able to give further details about the accused's purchases. On more than one occasion, the accused paid RM 50 for large flower garlands. Shanmugam even knew that the accused used these for religious worship.<sup>46</sup>

40 In August or September 2011, the accused asked Shanmugam to work for him and offered to pay him RM 7,000 monthly.<sup>47</sup> In return, Shanmugam was to drive the Kenari car into Singapore whenever the accused asked him to, and

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<sup>43</sup> NEs 9 July 2018 p 8 line 29 – p 9 line 15.

<sup>44</sup> NEs 9 July 2018 p 48 lines 9 – 13.

<sup>45</sup> NEs 9 July 2018 p 84 lines 9 – 27.

<sup>46</sup> NEs 9 July 2018 p 86 lines 2 – 31.

<sup>47</sup> NEs 9 July 2018 p 89 lines 22-29, p 37 lines 23 – 26.

pass the car to the accused's friends.<sup>48</sup> Shanmugam accepted the offer as it was double what he could earn from his flower shop business.<sup>49</sup> Shanmugam's testimony in this regard is consistent with his statement given on 30 October 2011, some seven years prior.<sup>50</sup>

41 In light of the above, I find that there was a relationship between Shanmugam and the accused.

(3) The lack of a relationship between Shanmugam and Suief

42 It is clear that the Couriers did not know each other and that the only link between them was the accused. Suief stated that the first time he met Shanmugam was during the introduction meeting on 12 October 2011.<sup>51</sup> This is corroborated by Shanmugam's account as follows:

(a) Shanmugam referred to Suief as "Aboy". He testified that prior to their joint arrest on 28 October 2011, he did not know Suief's real name.<sup>52</sup> Shanmugam was clear that he had only met Suief twice in his entire life; once during the introduction meeting on 12 October 2011 and again during the Drug Transaction on 28 October 2011.<sup>53</sup>

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<sup>48</sup> NEs 9 July 2018 p 91 lines 2 – 9; P154 at paras 2, 4 and 5; P159 at paras 15 – 16.

<sup>49</sup> NEs 9 July 2018 p 91 lines 7 – 11.

<sup>50</sup> P159 at paras 15 – 16.

<sup>51</sup> NEs 12 January 2018 p 99 lines 19 -20.

<sup>52</sup> NEs 9 July 2018 p 4 line 29 – p 5 line 5.

<sup>53</sup> NEs 9 July 2018 p 9 lines 21 – 28.

(b) Crucially, Shanmugam testified that he did not have any mutual friends or acquaintances with Suief apart from the accused.<sup>54</sup> While there were no contacts saved in Shanmugam’s mobile phone under the name “Aboy” or “Suief”, it is telling that four days before the Drug Transaction, Shanmugam received a text message from the Mobile Phone Number stating “Aboy 98944870”.<sup>55</sup> The number “98944870” belonged to Suief.<sup>56</sup>

(4) My conclusion

43 To conclude this section, I find that the Couriers had both provided detailed and cogent accounts of their respective relationships with the accused. In contrast, the accused was unable to explain how the Couriers knew personal details about him and merely asserted that that he had no connection to them.<sup>57</sup> I thus reject the accused’s bare and unsubstantiated assertion and find that he had a relationship with each of the Couriers. I also find that the Couriers did not have any relationship with each other *prior* to the accused’s personal introduction of Shanmugam to Suief on 12 October 2011, an event that led to the Couriers’ second meeting with each other 16 days later on 28 October 2011 when both the Couriers were arrested at Pandan Gardens for drug trafficking activities. During the 16 days between 12 October 2011 and 28 October 2011, the Couriers never met each other again and thus, they did not have much of a relationship to speak of, even *after* the introduction by the accused. It appears

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<sup>54</sup> NEs 9 July 2018 p 31 lines 29 – 31.

<sup>55</sup> AB CH-P82, p 52.

<sup>56</sup> NEs 11 January 2018 p 27 lines 25 – 27.

<sup>57</sup> NEs 8 February 2019 p 50 line 2 – p 51 line 26.



also from the Couriers' evidence that for these two meetings of the Couriers on 12 and 28 October 2011, the only mutual link between them was the accused.

44 I note, *in passing*, that the accused's blatant statement that he did not know the Couriers amounts to a Lucas lie that is capable of corroborating the accused's guilt (see *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [60] which sets out the requirements for a Lucas lie to amount to a corroboration of evidence of guilt). The lie was deliberate as it was repeated in the accused's statements to the CNB and again at trial. If true, this statement is capable of completely extricating the accused from the Couriers' drug trafficking activities and thus relates to a material issue. The accused's assertion that he did not know the Couriers has been proven false by independent evidence (*ie*, the testimonies of the Couriers and the Phone Records). Simply put, there was no reason for the accused to fabricate such a blatant lie except for the realisation of his guilt and a fear of the truth.

*The evidential status of the Phone Records*

45 A simple perusal of the Phone Records reveals that numerous calls and messages transpired between the Mobile Phone Number and the Couriers.<sup>58</sup>

(a) The Prosecution submits that the Mobile Phone Number belonged to the accused and uses the Phone Records to *corroborate* the Couriers' testimonies that they were acting on the accused's instructions at all material times and that the accused called Shanmugam on 27

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<sup>58</sup> AB CH-P83, CH-P84 and CH-P85.

October 2011 with instructions pertaining to the Drug Transaction the next day.<sup>59</sup>

(b) On the other hand, the Defence contends that the accused never owned the Mobile Phone Number and never used it to communicate with the Couriers.<sup>60</sup>

46 In this section, I will not deal with the precise ramifications of the evidence within the Phone Records on the accused's complicity in the Drug Transaction. This will be dealt with as part of my analysis of the specific events of 27 and 28 October 2011. Instead, I focus solely on the *logically prior* question of whether the Prosecution is entitled to rely on the Phone Records as part of its case against the accused.

47 This question arises because, as the Defence astutely points out, the Prosecution "never referred Punithan to [the Mobile Phone Number] nor any phone record relating to it or asked any questions regarding it". The Defence submits that pursuant to the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*"), it is not open to the Prosecution to use the Phone Records as corroborative evidence for the Couriers' testimonies.<sup>61</sup>

(1) The rule in *Browne v Dunn*

48 The rule in *Browne v Dunn* is a flexible rule of practice intended to secure procedural fairness in litigation. As stated in *Harven a/l Segar v Public*

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<sup>59</sup> PCS at para 24.

<sup>60</sup> DCS at para 7.

<sup>61</sup> DRS at para 21.

*Prosecutor* [2017] 1 SLR 771 (“*Harven*”), the rule requires that (at [66] citing *Sudha Natrajan v The Bank of East Asia Ltd* [2017] 1 SLR 141 at [48]):

...

[W]here a submission is going to be made about a witness or the evidence given by the witness which is of such a nature and of such importance that it ought fairly to have been put to the witness to give him the opportunity to meet that submission, to counter it or to explain himself, then if it has not been so put, the party concerned will not be allowed to make that submission.

49 The rationale behind it is threefold (see *Awtar Singh s/o Margar Singh v Public Prosecutor* [2000] 2 SLR(R) 435 (“*Awtar Singh*”) at [43] citing *Allied Pastoral Holdings Pty Ltd v Commissioner of Taxation* [1983] 1 NSWLR 1 at [23]):

Firstly, it gives the witness the opportunity to deny the challenge on oath, to show his mettle under attack (so to speak), although this may often be of little value. Secondly, and far more significantly, it gives the party calling the witness the opportunity to call corroborative evidence which in the absence of such a challenge is unlikely to have been called. Thirdly, it gives the witness opportunity both to explain or to qualify his own evidence in the light of the contradiction of which warning has been given and also, if he can, to explain or to qualify the other evidence upon which the challenge is to be based.

50 The rule is not necessarily satisfied by a formulaic recitation of a party’s case to the witness, with an invitation merely to agree or disagree. Rather, in evaluating any given objection, consideration should be given to the totality of evidence in the case. The rule does not require every point to be put to a witness but this would generally be required when the submission is at the “very heart of the matter” (see *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42] citing *Lo Sook Ling Adela v Au Mei Yin Christina* [2002] 1 SLR(R) 326 at [40]). Furthermore, a failure to do so may mean that the court may consider the unchallenged testimony to be undisputed

by the opposing party and thus accepted (see *Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [81]).

51 In my view, the Prosecution should have referred the accused to the Phone Records and put it directly to him that he had owned a SIM card with the Mobile Phone Number and had used it to give instructions to the Couriers for the Drug Transaction. However, it does not mean that the Prosecution is thus precluded from relying on the Phone Records as *corroborative evidence* of the Couriers' testimonies that the accused was the only person linking them up and making the arrangements for the Drug Transaction, and that the accused had used the Mobile Phone Number to do so. Neither does it mean that I am prepared to accept the accused's testimony that he had never owned a SIM card with the Mobile Phone Number at any time, and therefore he could not possibly have made any arrangements with the Couriers for the Drug Transaction.<sup>62</sup> I give two reasons for this.

52 First, the Phone Records and the Mobile Phone Number are only relevant in so far as they corroborate the Couriers' testimonies that the accused gave them instructions about the trafficking arrangements for the Controlled Drugs. The latter point was extensively put to the accused by DPP Terence Chua ("DPP Chua"):<sup>63</sup>

Q And then on the night of the 27th, you called Shanmugam to remind him of his role on the 28th of October. That is to drive the Kenari to Singapore and meet up with Suief.

A I disagree.

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<sup>62</sup> NEs 7 February 2019 p 20 line 27 – p 22 line 12.

<sup>63</sup> NEs 8 February 2019 p 53 line 15 – p 54 line 26.

Q And that was when you told him that you were going back to his mother pla---to your mother's place in Kedah.

A I disagree.

Q And similarly, you contacted Suief to instruct him what to do.

A I disagree.

Q And pursuant to your instruction, Shanmugam drove the Kenari into Singapore on the 28th of October with 10 packets of diamorphine hidden inside.

A I disagree.

Q Pursuant to your instruction, Shanmugam met up with Suief in Singapore on the 28th of October.

A I disagree.

...

Q And I'm putting it to you that Mohd Suief's account of events as to what transpired in Singapore - that is in relation to the instructions of where to bring the drugs to - is the truth.

A I disagree.

...

Q I put it to you that the drugs were in Shanmugam's possession on the 28th of October 2011 for the purpose of trafficking with Mohd Suief Bin Ismail, both of whom were acting under your instructions at all material times.

A I disagree.

In this regard, it cannot be said that the Prosecution completely failed to challenge the accused's evidence that he did not own the Mobile Phone Number (even though it was done in an admittedly tangential fashion).

53 Second, even if the Prosecution had failed to put directly to the accused that he had in fact owned a SIM card with the Mobile Phone Number and used it to give instructions to the Couriers for the Drug Transaction, the accused's

response to the Prosecution's case (if asked) would have been predictable as the accused had pre-empted the Prosecution's questions by testifying that he owned a different phone number "0194277752",<sup>64</sup> and had never owned a phone number ending with "92" in the year 2011 (which covered the period of the Drug Transaction).<sup>65</sup> As the Mobile Phone Number, shown as "+60164978192" on the mobile phone records of both Couriers also ends with a "92", the accused's own evidence clearly is that he never owned the Mobile Phone Number. At trial, the Prosecution expended considerable time and effort to show that both Shanmugam and Suief *separately* associated the Mobile Phone Number solely with the accused (see below at [57]). The Prosecution's challenge to the accused that he owned and used the Mobile Phone Number to contact the Couriers was made quite clear to him, albeit not directly put to him. I accept, however, that the ownership of the Mobile Phone Number is nevertheless *one part* of the overall evidence led by the Prosecution. It goes towards proving a crucial factual element – that it was the accused who had made the drug trafficking arrangements and given instructions for the Drug Transaction. This had been adequately put to the accused by the Prosecution (see [52] above).

54 In my view, it was patently obvious to the accused what the Prosecution's case is, namely that the accused communicated with and gave instructions to the Couriers for the Drug Transaction via the Mobile Phone Number. Given that the accused's defence is a complete denial of any involvement in the Drug Transaction, "it could not be said that the failure to put

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<sup>64</sup> NE 7 February 2019 p 20 line 30.

<sup>65</sup> NE 7 February 2019 p 22 lines 5 – 7.

the question to the [accused] resulted in any procedural unfairness to him, in the sense that he had been deprived of an opportunity to explain his evidence which would amount to nothing more than another denial” (*Awtar Singh* ([49] *supra*) at [44]).

55 In light of the foregoing, I thus find that the Prosecution’s lapse does not preclude it from submitting firstly that the accused contacted the Couriers and gave them instructions pertaining to the Drug Transaction, and secondly that the accused had done so through the Mobile Phone Number.

(2) The owner of the Mobile Phone Number

56 In any event, the totality of the evidence leads me to the irresistible inference that the accused was the one communicating with the Couriers through the Mobile Phone Number.

57 Suief gave clear and unequivocal evidence that the Mobile Phone Number belonged to the accused and was the only number used by him to contact Suief.<sup>66</sup> In contrast, Shanmugam prevaricated repeatedly when questioned about the Mobile Phone Number. However, he eventually conceded that as the accused was the only mutual acquaintance between himself and Suief, logically speaking, the message sent to Shanmugam from the Mobile Phone Number stating “Aboy 98944870” (*ie*, Suief’s phone number)<sup>67</sup> on 24 October 2011 could only have come from the accused.<sup>68</sup> In connection with this,

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<sup>66</sup> NEs, 12 January 2018 p 36 lines 15 – 23.

<sup>67</sup> NEs 11 January 2018 p 27 lines 11 – 15; 9 July 2018 p 6 line 22 – p 7 line 3.

<sup>68</sup> NEs 9 July 2018 p 32 line 20 – p 34 line 13, p 35 lines 14 – 29; AB CH-P82 p 52.

although Shanmugam's mobile phone number could not be conclusively ascertained at trial,<sup>69</sup> Shanmugam also testified that he received two phone calls on 27 October 2011 which he believed to be from the accused because "in these two calls [the accused] called and introduced himself as 'Punithan'",<sup>70</sup> or "Puni".<sup>71</sup> The message and the phone calls were from the Mobile Phone Number.<sup>72</sup>

58 The accused's response to this was a complete denial that he owned the Mobile Phone Number (see [53] above). While the accused was not arrested with it, SIM cards are easy to procure and even easier to throw away. Furthermore, the accused was arrested many years after the Drug Transaction. Under the circumstances, it was simple for the accused to put forth a plain denial.

59 The crux of the issue is this: if it is clear that the Couriers did not have a relationship with each other, there must have been a common thread that pulled them together and coordinated their actions such that Shanmugam could drive into Singapore on 28 October 2011 and know exactly where and when to pick up Suief, whom he had met only once before. Having considered the evidence before me, I am satisfied that this common thread was the accused who communicated remotely with the Couriers via the Mobile Phone Number and I believe the Couriers in relation to this aspect of their evidence.

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<sup>69</sup> NEs 16 January 2018 p 6 lines 8 – 28; 10 July 2018 p 2 lines 1 – 6.

<sup>70</sup> NEs 10 July 2018 p 5 lines 21 – 24.

<sup>71</sup> NEs 10 July 2018 p 6 lines 28 – 30.

<sup>72</sup> AB pp 46 - 52.



*The source of the Controlled Drugs*

60 Before moving on to deal with the specific events, it is vital to determine whether Shanmugam had brought the Controlled Drugs with him into Singapore on 28 October 2011 or whether they had come from Suief when he entered the Kenari car carrying the Mizuno Bag. The answer to this question has implications for my analysis of the events on 27 and 28 October 2011.

61 The Prosecution submits that Shanmugam brought the Controlled Drugs into Singapore on 28 October 2011 and that Suief had entered the Kenari car carrying the virtually empty Mizuno Bag, which certainly did not contain any bundles of diamorphine.<sup>73</sup>

62 The Defence’s position on this issue is not clear. It is implicit in its submissions that the Defence accepts that Shanmugam entered Singapore with the Controlled Drugs.<sup>74</sup> However, Mr Fernando also suggested to Suief that Suief arranged to meet Shanmugam on 28 October 2011 and entered the Kenari car carrying the Controlled Drugs in his Mizuno Bag.<sup>75</sup>

63 I accept the Prosecution’s position. At trial, Suief consistently maintained that the Mizuno Bag was virtually empty when he entered the Kenari car at the Haw Par Villa bus stop.<sup>76</sup> Suief remembered Shanmugam telling him that there were ten bundles of “barang” (*ie*, referring to diamorphine) in the

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<sup>73</sup> PCS at para 15.

<sup>74</sup> DCS at para 6 and 35; DRS at para 17(b).

<sup>75</sup> NEs 18 January 2018 p 24 lines 11 – 14.

<sup>76</sup> NEs 12 January 2018 p 42 lines 29 – 32, 16 January 2018 p 4 lines 29 – 32.

car.<sup>77</sup> While the Defence points out that Suief's evidence at trial and in his statement differs as to whether or not Shanmugam said *where* the Controlled Drugs were in the Kenari car,<sup>78</sup> the crucial point is that on both fronts, *the Controlled Drugs were already in the Kenari car before Suief entered*.<sup>79</sup>

64 Shanmugam could not remember if the Mizuno Bag was empty before Suief entered the Kenari car.<sup>80</sup> He stated that after picking Suief up, he drove to an Esso petrol kiosk. There, Suief stayed in the car while Shanmugam got out to buy drinks from the Cheers convenience store. Shanmugam claimed that the Controlled Drugs only appeared on the passenger seat *beside* the Mizuno Bag after he returned.<sup>81</sup> When he returned, Suief opened the Mizuno Bag and asked him for help to place the bundles *into* it.<sup>82</sup>

65 Shanmugam's version set out above is plainly false because CNB officers observed that Suief was the one who stepped out to buy drinks, not Shanmugam. Even if it were true, his story still aligns with Suief's story that the Controlled Drugs were in the Kenari car from the start. Shanmugam remembered that Suief was only carrying the Mizuno bag when he entered the car. If Shanmugam had to put the bundles of diamorphine *into* the bag at the Esso petrol kiosk, this would logically mean that the bundles were not originally in the bag and must have come from somewhere else, *ie*, the Kenari car.

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<sup>77</sup> NEs 12 January 2018 p 43 line 7.

<sup>78</sup> DCS at para 35.

<sup>79</sup> NEs 12 January 2018 p 42 line 29 – p 43 line 7.

<sup>80</sup> NEs 9 July 2018 p 75 lines 4 – 13.

<sup>81</sup> NEs 9 July 2018 p 59 lines 15 – 18, p 61 lines 25 – 28.

<sup>82</sup> NEs 9 July 2018 p 60 lines 3 – 10.

66 For completeness, I also note that Shanmugam tried to claim that the bundles were not in the car before he met Suief.<sup>83</sup> He knew this because he “checked on the surfaces” on the morning of 28 October 2011 to see if “Punithan had left anything behind”.<sup>84</sup> Even assuming this to be true, Shanmugam later conceded that his checks were not thorough and that he had omitted to check certain areas which could very well be used to conceal the bundles, eg, inside a large speaker which is hollow inside.<sup>85</sup>

67 I thus conclude that the ten bundles containing the Controlled Drugs were already inside the Kenari car when Shanmugam drove it into Singapore on 28 October 2011.

***Specific events and credibility of Shanmugam and Suief***

68 It is the Prosecution’s burden to prove the elements of s 34 of the Penal Code beyond a reasonable doubt. To do so, it must adduce proof of the accused’s part in the specific events leading up to and including the trafficking of the Controlled Drugs on 28 October 2011. As the Prosecution’s case is heavily dependent on the testimony of the Couriers, their credibility and the weight to be attributed to their evidence in relation to each specific event thus lie at the heart of this case.

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<sup>83</sup> NEs 9 July 2018 p 65 lines 17 – 21.

<sup>84</sup> NEs 9 July 2018 p 67 lines 8 – 10, p 68 lines 11 – 16.

<sup>85</sup> NEs 9 July 2018 p 74 lines 1 – 9.

69 A large number of substantive issues arise under this section, not least because there are three specific events that are crucial to the accused's complicity in the drug trafficking transaction.

70 I will structure my analysis to deal first with the general credibility of Suief and Shanmugam before turning to consider the specific events of 12, 27 and 28 October 2011. In considering each specific event, I will test the veracity of Shanmugam and Suief's accounts against each other and against the objective documentary evidence. I will also weigh it against the Defence's alternative explanation (if any).

### *Credibility*

(1) The law on credibility and a note on the HC 2014 Trial

71 I pause at this juncture to make an important point. As part of its case that the Couriers are unworthy of credit, the Defence refers at length to the trial transcripts from the HC 2014 Trial. Unsurprisingly, there are numerous flagrant inconsistencies between their evidence in 2014 and their evidence before me, especially in relation to Suief.

72 I do not think it right to judge the Couriers' credibility based on their evidence in 2014 when they were both fighting to avoid liability in respect of their own capital charges. This is especially since both of them admitted that they had not been completely truthful during the HC 2014 Trial. When referred to his version of events given during the HC 2014 Trial, Suief affirmed the truth of his current evidence and stated that "my case is a capital case so I'm afraid

of the death penalty. That was the reason I said so.”<sup>86</sup> Shanmugam’s evidence was to a similar effect.

73 I have thus placed no weight on the purported inaccuracies and inconsistencies that arise out of the Couriers’ testimonies in relation to the Controlled Drugs during the HC 2014 Trial.

(2) Suief’s credibility

74 Evaluating his evidence as a whole, I find Suief to be a frank and forthright witness whose evidence suffices on its own to support the Prosecution’s case. As will be shown later, his evidence withstood vigorous cross-examination by Mr Fernando and was internally consistent in all material aspects. It is also corroborated by the Phone Records, the travel movement records from the ICA (“ICA records”) in relation to both Shanmugam and the accused and Shanmugam’s testimony (when it could be relied upon). Ignoring the inconsistencies arising from his evidence during the HC 2014 Trial, the remaining inconsistencies are minor and do not make a dent in his credibility. Accordingly, I am not persuaded that the Defence’s attempt to impeach Suief’s credibility succeeded.

(3) Shanmugam’s credibility and the weight to be placed on his evidence

75 In respect of certain parts of his testimony, Shanmugam was not a credible witness. In this regard, I agree with the Prosecution that his credibility had been impeached and allow the application to substitute some parts of Shanmugam’s testimony with certain sections of his statements, namely his

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<sup>86</sup> NEs 18 January 2018 p 29 lines 12 – 22.

statements dated 22 January 2016 (“P154”), 30 October 2011 (“P159”) and 28 October 2011 (“P160”).<sup>87</sup>

76 I will first explain my decision on Shanmugam’s credibility before proceeding to deal with the weight to be placed on his statements.

77 It was obvious from the very beginning that Shanmugam was an unwilling witness; he began his examination-in-chief by telling me so.<sup>88</sup>

78 It would not be an exaggeration to say that after his examination-in-chief, Shanmugam’s evidence shifted, twisted and turned at every possible juncture. While I will leave the detailed facts in his testimony for later, a brief sketch of *how his testimony progressed* is useful to explain my decision on his credibility.

(a) When Shanmugam first took the stand, his evidence largely mirrored Suief’s evidence in implicating the accused despite his unwillingness to testify. Shanmugam was generally willing to answer background questions pertaining to aspects such as his flower shop<sup>89</sup> business and his relationship with Suief.<sup>90</sup> However, Shanmugam became extremely reticent when DPP Nicholas Wuan (“DPP Wuan”) asked him about details which pertained specifically to the trafficking of the Controlled Drugs. Examples of this include: the reason why he had to pass

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<sup>87</sup> NEs 21 November 2018 p 44 line 29 – p 46 line 14 for P154, 14 January 2019 p 36 lines 17 – 24 for P159 and 14 January 2019 p 41 lines 23 – 30 for P160.

<sup>88</sup> NEs 9 July 2018 p 2 line 21.

<sup>89</sup> NEs 9 July 2018 p 3 lines 28 – 29.

<sup>90</sup> NEs 9 July 2018 p 31 lines 29 -31.

the Kenari car to Suief,<sup>91</sup> whether the accused owned the Mobile Phone Number<sup>92</sup> and details about what happened immediately prior to his arrest.<sup>93</sup> Crucially, Shanmugam stated unequivocally that everything he said in his statement was true.<sup>94</sup>

(b) His evidence changed radically during cross-examination. On his third day of cross-examination, Shanmugam stated that he could not recall *anything* about the series of events that led to his own conviction for trafficking.<sup>95</sup> In connection with this, he made the following claims:

(i) He could no longer remember anything about 27 and 28 October 2011 because he was “intoxicated and also stoned with drugs” (“the Intoxication Claim”).<sup>96</sup>

(ii) He only sobered up when he woke up in a holding cell. Suief was present for a short while and took the opportunity to tell Shanmugam to falsely implicate the accused, instead of Suief. Suief told Shanmugam that “thereafter, that is your skill”.<sup>97</sup> Shanmugam claimed that everything in his statement and his evidence in court was untrue because it was based on a “long

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<sup>91</sup> NEs 9 July 2018 p 28 lines 9 – 10, p 45 lines 8 – 10.

<sup>92</sup> NEs 9 July 2018 p 32 line 20 – p 34 line 13.

<sup>93</sup> NEs 9 July 2018 p 58 lines 16 – 19.

<sup>94</sup> NEs 9 July 2018 p 27 lines 6- 7.

<sup>95</sup> NEs 11 July 2018 p 47 lines 20 – 22.

<sup>96</sup> NEs 12 July 2018 p 35 lines 28 – 31; 11 July 2018 p 41 line 31 – p 42 line 1, p 56 lines 12 – 23.

<sup>97</sup> NEs 12 July 2018 p 21 lines 24 – 28.

story” that Suief told him in the holding cell.<sup>98</sup> Shanmugam claimed that prior to Suief telling him about the accused, he had no idea that the accused was even involved in the case. He got angry at the accused because of Suief’s long story and thus started to falsely implicate him in his long statements to the CNB (“the False Incrimination Claim”).<sup>99</sup>

(c) In re-examination, Shanmugam changed his evidence yet again and started to lay the blame on an individual named “Raja” (see below at [159]).

79 In my view, both the Intoxication Claim and the False Incrimination Claim are baseless and devoid of merit. They can be dealt with summarily.

80 I agree with the Prosecution that the Intoxication Claim can rightly be described as “outlandish”.<sup>100</sup> As a matter of common sense, if Shanmugam was indeed so “stoned” from excessive alcohol and drug consumption, it is highly improbable that he would be capable of driving the Kenari car all the way from Johor to Singapore, getting past the necessary immigration and customs checks at the border, driving to a precise pickup location to meet Suief and then arriving at Block 405 Pandan Gardens without incident. Shanmugam was also examined by two doctors on 28 October 2011, both of whom have testified that he showed no signs of being intoxicated or high on drugs.<sup>101</sup> Suief, who was Shanmugam’s

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<sup>98</sup> NEs 21 November 2018 p 22 lines 13 – 27.

<sup>99</sup> NEs 14 January 2019 p 31 line 29 – p 32 line 13.

<sup>100</sup> PCS at para 44.

<sup>101</sup> NEs 14 January 2019 p 25 lines 1 – 30.



passenger in the car and who was in close proximity with Shanmugam prior to his arrest on 28 October 2011, testified as to the same.<sup>102</sup>

81 In relation to the False Incrimination Claim, Suief categorically denied asking Shanmugam to falsely implicate the accused in their trafficking activities.<sup>103</sup> In fact, even if Suief wanted to falsely implicate the accused by influencing Shanmugam, this would have been physically impossible.

(a) Suief refuted Shanmugam's claim that they were placed in the same cell by stating that they had no chance to even communicate with each other after their arrest, much less being left in the same cell.<sup>104</sup> This was corroborated by the Couriers' escorting officers who both confirmed that the co-accused persons (as they then were) were not allowed to communicate with each other after they were arrested. The rationale behind this was to prevent co-accused persons from collaborating on their statements.<sup>105</sup> The lock-up diary also shows that Shanmugam and Suief were placed in holding cells that were at least three cells apart.<sup>106</sup> If any of them had attempted to shout across the cells to relay details of the long story to each other, officers would have taken action immediately to silence them.<sup>107</sup>

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<sup>102</sup> NEs 27 November 2018 p 46 line 26 – p 47 line 5.

<sup>103</sup> NEs 27 November 2018 p 44 lines 1 -4.

<sup>104</sup> NEs 27 November 2018 p 44 line 5 – p 46 line 16.

<sup>105</sup> NEs 27 November 2018 p 4 lines 9 – 16, p 6 line 32 – p 7 line 1

<sup>106</sup> NEs 27 November 2018 p 28 lines 22- 23.

<sup>107</sup> NEs 27 November 2018 p 29 lines 5-7.

(b) Even taking the Defence’s case at its highest and assuming that the Couriers could sneak in a word or a gesture before the officers stopped them, the False Implication Claim will still fail. Shanmugam provided a complete picture of his various interactions with the accused. His account flowed naturally from one specific event to the next and was replete with vivid details such as the accused’s purchase of large flower garlands from Shanmugam’s flower shop – these details, while not strictly relevant to the drug trafficking charge, show that there is some penumbra of truth despite the core of deceit that underlies Shanmugam’s *later* evidence. Crucially, it is impossible for Shanmugam to have created such a detailed account through a short interaction with Suief that somehow escaped the attention of their guards.

(c) In a bid to show that Shanmugam acted upon Suief’s long story, the Defence called a prison inmate,<sup>108</sup> Tamil Alagan a/l Gunasekaran (“Tamil”) to testify that Shanmugam had passed a message through one “Thatha” (another inmate) to ask Tamil to falsely incriminate the accused as being the source of the drugs for Tamil’s own drug offence.<sup>109</sup> Tamil’s evidence can be rejected out of hand because Tamil admitted that he had no way of knowing whether the message even came from Shanmugam.<sup>110</sup>

82 From my brief sketch of the manner in which Shanmugam gave his evidence and the outlandish claims he raised in the course of it, it is obvious that Shanmugam was not an entirely credible witness.

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<sup>108</sup> DCS at paras 64 and 70.

<sup>109</sup> NEs 20 November 2019 p 120 lines 21 – 23.

<sup>110</sup> NEs 26 November 2019 p 9 line 27 – p 10 line 5.

83 That said, I do not agree with the Defence that *all* of his evidence must be rejected. As will be evident later, Shanmugam's testimony during his examination-in-chief is corroborated in material aspects by Suief's evidence and other documentary evidence. It was only later during his third day of cross-examination that he turned hostile.

84 I turn now to the general weight to be given to particular sections of P154, P159 and P160 as admitted under s 147(3) of the Evidence Act. In estimating their weight, s 147(6) of the Evidence Act stipulates that regard must be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts. The following relevant considerations, some overlapping with s 147(6) of the Evidence Act, are laid out in *Public Prosecutor v Heah Lian Khin* [2000] 2 SLR(R) 745 at [55]:

- (a) the contemporaneity of a statement with the occurrence or existence of the facts stated;
- (b) the possibility of misrepresentation by the maker of the statement;
- (c) the explanations for the inconsistencies;
- (d) the context of the statement; and
- (e) the cogency and coherence of the facts relied upon.

85 I note that P154 was recorded after Shanmugam's appeal was dismissed, approximately five years after his arrest. However, P159 and P160 were recorded almost immediately after Shanmugam's arrest *while* he was facing a capital charge. There was a strong impetus for Shanmugam to misrepresent the facts in P159 and P160 even though these two statements were made far more contemporaneously than P154. There are also a number of inconsistencies at various points in these statements which Shanmugam was not able or unwilling to explain (especially since he had turned openly hostile by the time DPP Wuan questioned him about them). I thus only accord some weight to the statements when the contents therein are capable of being independently verified by Suief's testimony or the objective documentary records.

*The specific events*

(1) 12 October 2011

86 12 October 2011 marks the start of the events leading up to the Drug Transaction because it was the first time that the Couriers met each other. I will first look at the veracity and consistency of the accounts given by the Couriers before analysing the alternative explanation given by the Defence.

(A) THE COURIERS' ACCOUNTS ARE CONSISTENT IN ALL MATERIAL ASPECTS.

87 The ICA records show that the accused entered Singapore on 12 October 2011 by car at 7.04 am and left at 12.19 pm on the same day.<sup>111</sup> Shanmugam entered soon after at 7.24 am and left at 9.36 am on the same day.<sup>112</sup> Shanmugam

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<sup>111</sup> AB CH-P104 p 207; P104A.

<sup>112</sup> AB CH-P103 p 205.

stated that he met the accused before entering the Johor customs and took over the Kenari car from the accused to drive it across the Causeway.<sup>113</sup> Shanmugam was with his mother and daughter.<sup>114</sup> The accused was accompanied by an unknown Tamil man.<sup>115</sup> After entering Singapore, he made his way to Clementi McDonald's (later ascertained to be the West Coast McDonald's).<sup>116</sup> By the time he got there, the accused and Suief were both present.<sup>117</sup>

88 Suief testified that the accused picked him up at the Haw Par Villa bus stop on 12 October 2011 and drove them both to the West Coast McDonald's. The car was not the Kenari car and the accused was alone.<sup>118</sup> Shanmugam had not yet arrived<sup>119</sup> when they got there. The two of them thus waited in the car and ate some food purchased from the West Coast McDonald's.<sup>120</sup>

89 Shanmugam and Suief gave consistent accounts of the material aspects of the introduction meeting.

- (a) The timing and location of the meeting: Suief said that it occurred "2 to 3 weeks" prior to Deepavali which fell on 26 October 2011,<sup>121</sup> Shanmugam said that it was "about 3 weeks before the arrest" which

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<sup>113</sup> NEs 10 July 2018 p 74 lines 8 – 13.

<sup>114</sup> NEs 9 July 2018 p 10 line 21.

<sup>115</sup> NEs 10 July 2018 p 74 lines 14 – 16.

<sup>116</sup> NEs 11 July 2018 p 4 lines 2 -8.

<sup>117</sup> NEs 11 July 2018 p 6 lines 27 – 28.

<sup>118</sup> NEs 12 January 2018 p 96 line 12 – p 97 line 8, p 98 lines 15 – 16.

<sup>119</sup> NEs 12 January 2018 p 103 line 7 – 8.

<sup>120</sup> NEs 12 January 2018 p 100 line 31 – p 101 line 6.

<sup>121</sup> NEs 12 January 2018 p 38 lines 5 – 9.

occurred on 28 October 2011.<sup>122</sup> Both agreed that their meeting took place at the West Coast McDonald's.

(b) The purpose of the meeting: Suief's unwavering testimony was that the accused wished to introduce Shanmugam to him because Shanmugam would be taking over Mathan's job of driving the Kenari car to send diamorphine into Singapore.<sup>123</sup> This is consistent with Suief's statement which states that "[the accused] and his men did not want to come into Singapore anymore ... Shanmugam would be helping to send me the heroin".<sup>124</sup>

(i) In line with his general tendency to deflect any question relating to the Controlled Drugs, Shanmugam repeatedly maintained that his job was only to "pass the car" to Suief on the day of the Drug Transaction.<sup>125</sup> That said, this evidence has some corroborative effect because Shanmugam does not deny that the meeting at the West Coast McDonald's was meant to introduce him to Suief for reasons pertaining to his job (*ie*, of "passing" the car to Suief).<sup>126</sup>

(c) How the introduction took place: The Couriers agreed that Shanmugam arrived later and was driving the Kenari car. The accused did

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<sup>122</sup> NEs 9 July 2018 p 9 lines 31 -32.

<sup>123</sup> NEs 18 January 2018 p 27 line 15.

<sup>124</sup> D1 at para 6.

<sup>125</sup> NEs 9 July 2018 p 26 lines 18 – 25, p 28 lines 5 – 6, 21 – 22, p 46 lines 23 – 26; 10 July 2018 p 13 lines 1 – 7.

<sup>126</sup> NEs 9 July 2018 p 28 lines 2 – 7.

not do much to introduce them and the Couriers introduced themselves. Suief stated that he was able to recognise Shanmugam as the accused had pointed at the Kenari car and told him that Shanmugam had arrived.<sup>127</sup>

(i) The Defence submits that Suief was being internally inconsistent<sup>128</sup> as he stated during examination-in-chief that the accused introduced him to Shanmugam and the Couriers shook hands. However, in cross-examination, Suief said that the accused did not leave the car and did not introduce the Couriers.

(ii) I do not agree with the Defence that Suief was being internally inconsistent. Suief stated during his examination-in-chief that he alighted from the car but made no mention of the accused leaving the car.<sup>129</sup> Further, during cross-examination, Suief seemed confused as to whether an introduction in the car (*ie*, the accused pointing at the Kenari car and telling Suief that Shanmugam had arrived) counted as an introduction; he agreed, at first, with Mr Fernando that “Punithan did not get down from the car and introduce [him] to Shanmugam” and said that the accused merely pointed his finger at Shanmugam<sup>130</sup>. However, when Mr Fernando tried to reconfirm this point, Suief stated that the accused “introduced in the car”.<sup>131</sup>

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<sup>127</sup> NEs 12 January 2018 p 103 lines 16 – 30, p 104 lines 1 – 10.

<sup>128</sup> DCS at para 24(c).

<sup>129</sup> NEs 12 January 2018 p 39 lines 20 – 21, p 40 lines 3 – 13.

<sup>130</sup> NEs 12 January 2018 p 103 lines 20 – 24

<sup>131</sup> NEs 12 January 2018 p 104 lines 4 – 8.

(d) Thus, the Couriers' testimonies are congruent with each other on the three key aspects above.

90 The Defence seeks to discredit the Couriers' testimonies in relation to 12 October 2011. It points out a number of inconsistencies. In my view, the stated inconsistencies are immaterial and do not go to the heart of the matter. I will list only the most obvious ones.

(a) The number of people at the meeting: Shanmugam testified that there was another Malay man apart from Suief and the accused,<sup>132</sup> whereas Suief said that Shanmugam's daughter and mother were in the Kenari car when Shanmugam arrived.<sup>133</sup> Since none of the above three individuals participated in the introduction meeting, their presence is irrelevant.

(i) I find that Suief was more likely to be telling the truth. Shanmugam did actually bring his mother and daughter to Singapore that day, except that he claimed to have left them at a shopping centre in Woodlands.<sup>134</sup> This being the first meeting between Shanmugam and Suief, it is unlikely that Suief would know that Shanmugam has a daughter, and even less likely that Suief would be able to specifically pinpoint the exact two family members who had accompanied Shanmugam into Singapore, unless Suief had seen them in the Kenari car and was told who they were. Further, Suief does not appear to have a motive to lie

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<sup>132</sup> NEs 10 July 2018 p 111 line 7, 11 July 2018 p 8 lines 8 – 23.

<sup>133</sup> NEs 12 January 2018 p 38 line 26 – p 39 line 7.

<sup>134</sup> NEs 9 July 2018 p 22 lines 8 – 15.



about the presence (or lack thereof) of Shanmugam's family members at the West Coast McDonald's as they did not play a role in the introduction meeting.

(b) Shanmugam claimed that Suief took his car keys and drove off with the Kenari car for 45 minutes before returning it.<sup>135</sup> Suief denied that this set of events took place.<sup>136</sup> While this is an obvious divergence between their evidence, this sequence of events occurred after the introduction meeting, which both Shanmugam and Suief agreed had taken place. Further, whether the Kenari car was indeed passed to Suief on this occasion for 45 minutes and the reasons behind this do not directly concern the present charge. For completeness, I will deal with this divergence in their evidence about what happened after the introduction meeting in more detail in a side note at [113] to [115].

(c) Shanmugam claimed that the accused was riding on a motorcycle with an unknown Tamil man when the accused crossed the causeway. He reconvened with the accused and the unknown Tamil man at a car park in Woodlands.<sup>137</sup> He stated that the accused and the unknown Tamil man headed to the West Coast McDonald's on the motorcycle with him following behind in the Kenari car.<sup>138</sup> I reject Shanmugam's evidence that the accused was on a motorcycle as the ICA records show that the

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<sup>135</sup> NEs 11 July 2018 p 10 line 30.

<sup>136</sup> NEs 12 January 2018 p 40 lines 3 – 5, p 106 lines 10 – 14.

<sup>137</sup> NEs 9 July 2018 p 23 lines 22 – 25.

<sup>138</sup> NEs 9 July 2018 p 23 line 31 – p 24 line 16.

accused entered Singapore in a car.<sup>139</sup> Further, even if it is true that the accused was on a motorcycle, Shanmugam agreed that: (a) he did not see the accused arrive at the West Coast McDonald's on a motorcycle as he was late; and (b) that he lost sight of the accused and the unknown Tamil man during the journey and thus travelled there alone.<sup>140</sup>

91 Barring cases of witness collusion, it is never possible to obtain two accounts that are 100% identical. This is because of differences in the way that people perceive, remember and recount events. These differences are compounded when the particular event in question occurred more than seven to eight years ago (depending on when the Couriers gave evidence). I thus accept that Suief's testimony in relation to the events of 12 October 2011 is internally consistent on all material respects and is corroborated by aspects of Shanmugam's testimony (where reliable) and the ICA records.

(B) THE DEFENCE'S ALTERNATIVE EXPLANATION FOR 12 OCTOBER 2011 DOES NOT RAISE A REASONABLE DOUBT

92 Consistent with the accused's position that he did not know the Couriers and did not associate with them, the accused's defence is that he was not present at the introduction meeting on 12 October 2011 as he was collecting a debt for the Moneylender. In support of this, Gobi testified that he was with the accused at all material times on 12 October 2011 and they had not gone to the West Coast McDonald's (henceforth, the "Alibi Defence").

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<sup>139</sup> P104A.

<sup>140</sup> NEs 11 July 2018 p 16 line 32 – p 17 line 11.

93 In response to the Prosecution’s questions that he abruptly ended his regularly monthly trips to Singapore after 12 October 2011 as the Couriers were caught by the CNB, the accused said that he only entered Singapore to carry out his debt collection duties from the Moneylender’s agents in 2011. On 11 October 2011, he collected \$10,000 for the Moneylender and embezzled \$5,000 by gambling it away at Marina Bay Sands Casino.<sup>141</sup> The accused also had to collect \$10,000 for the Moneylender on 12 October 2011 and thus entered Singapore again.<sup>142</sup> There was thus a shortfall of \$5,000 when he handed in the moneys to his supervisor, Annamalai a/l Krishnan (“Annamalai”)<sup>143</sup> on 12 October 2011. While the accused retained his job, he was no longer given any debt collection duties in Singapore and thus had no reason to come to Singapore until he was extradited in 2016 (henceforth, the “Debt Collection Defence”).<sup>144</sup>

94 I will deal first with the Alibi Defence.

95 Gobi testified that he was with the accused at all times when the accused entered Singapore on 12 October 2011 and that the accused never met the Couriers. The ICA records also show that they both entered and left Singapore within minutes of each other (although I note that on its own, this does not mean that Gobi and the accused could not have parted ways once they entered Singapore and regrouped later on).<sup>145</sup> Gobi’s evidence, if credible, would

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<sup>141</sup> NEs 7 February 2019 p 19 lines 12 – 19, p 43 lines 16 – 23.

<sup>142</sup> NEs 7 February 2019 p 32 lines 24 – 31.

<sup>143</sup> NEs 7 February 2019 p 19 lines 12 - 30.

<sup>144</sup> DCS at para 93.

<sup>145</sup> P104A.

completely extricate the accused from the events of 12 October 2011. Unfortunately for the accused, it did not.

96 I agree with the Prosecution that Gobi’s memory was “oddly specific”.<sup>146</sup> Gobi could remember 12 October 2011 in great detail even though the trip was just another journey down to Singapore to carry out his job as a lift technician and had occurred more than eight years ago. He could recall that he had parked his car along Serangoon Road and that he had used an escalator (as opposed to a staircase) to get to Tekka Market’s second floor.<sup>147</sup> Astoundingly, he could even provide details concerning the amount of time, *in minutes*, that he had spent with the accused at various locations.<sup>148</sup> As astutely pointed out by the Prosecution, Gobi’s superhuman memory appeared to fail him when he was asked general questions regarding his interactions with the accused, *eg*, when the accused left his lift maintenance company and how often they met up in 2015.<sup>149</sup>

97 Gobi’s evidence is also unreliable because it is tainted by way of innocent infection. Gobi admitted that he had discussed his evidence with the accused before the accused took the stand.<sup>150</sup> Gobi said that “[t]here were some things [the accused] forgot and [which Gobi] jolted his memory”.<sup>151</sup> This worked the other way as well: “[Gobi] jolted [the accused’s] memory and [the

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<sup>146</sup> PCS at para 78.

<sup>147</sup> NEs 19 November 2019 p 55 lines 14 – 18.

<sup>148</sup> NEs 19 November 2019 p 64 lines 10 – 13, p 54 line 13.

<sup>149</sup> NEs 19 November 2019 p 60 lines 9 -15, p 67 lines 19 -20.

<sup>150</sup> NEs 19 November 2019 p 73 lines 1 -11.

<sup>151</sup> NEs 19 November 2019 p 73 line 3.

accused] jolted [Gobi's memory]".<sup>152</sup> Through his conversation with the accused, Gobi was able to give a long list of details that they *both* remembered.<sup>153</sup> Additionally, as Gobi and the accused are "very close"<sup>154</sup> and "met frequently",<sup>155</sup> it cannot therefore be ruled out that Gobi would lie to protect the accused.

98 I thus reject the Alibi Defence as Gobi's evidence is not reliable and he does not appear to me to be a credible witness.

99 In contrast, I accept the Debt Collection Defence because I agree with the Defence that this is amply supported by the testimonies of its witnesses and the objective documentary record.

100 The accused's wife, one Perinba Malar Mahendran ("Perinba") testified that she was with the accused on 11 October 2011 when he was collecting debts in Singapore.<sup>156</sup> She testified that he did indeed work for the Moneylender and had used the Moneylender's money to gamble at the Marina Bay Sands Casino on 11 October 2011.<sup>157</sup> Her passport shows that she entered Singapore on 11 October 2011.<sup>158</sup> The Prosecution also conceded that the accused gambled away \$5,000 at the Marina Bay Sands Casino on 11 October 2011.<sup>159</sup> I further note

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<sup>152</sup> NEs 19 November 2019 p 74 line 3.

<sup>153</sup> NEs 19 November 2019 p 73 lines 14 – 20.

<sup>154</sup> NEs 19 November 2019 p 76 line 9.

<sup>155</sup> NEs 19 November 2019 p 60 line 20.

<sup>156</sup> NEs 19 November 2019 p 22 lines 5 – 24.

<sup>157</sup> NEs 19 November 2019 p 23 line 15 – p 24 line 11

<sup>158</sup> P164 at p 3.

<sup>159</sup> NEs 19 November 2019 p 1 lines 28 – 32.

that the Prosecution did not seriously contest the fact that the accused was employed by the Moneylender. I thus accept Perinba's evidence on this front.

101 Annamalai was the accused's supervisor in 2011. He testified that he instructed the accused to enter Singapore on both 11 and 12 October 2011 to collect debt moneys from the Moneylender's Singapore agents. He remembered this incident specifically because the accused had embezzled \$5,000.<sup>160</sup>

102 Annamalai is a credible witness. He had no reason to lie and his account is intrinsically logical. He was able to provide coherent replies when questioned as to the various aspects of his account.

103 The clearest example of this is when Annamalai was questioned as to why the Moneylender continued to employ the accused despite the embezzlement. Annamalai explained that he successfully interceded for the accused and the accused's job scope was narrowed such that there would be no further chances for dishonesty. After the embezzlement, the accused's role was restricted to debt collection in Malaysia and he was no longer allowed to collect debts in Singapore. The two roles were different.<sup>161</sup> For the latter, the accused could carry out debt collection alone as only one employee was required to collect the debt moneys from the Moneylender's Singapore agents and *not* the debtors directly. However, for the former, two employees would be assigned for the debt collection because the employees had to collect the moneys directly from the debtors and problems could arise. There was thus little opportunity for

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<sup>160</sup> NEs 19 November 2019 p 102 lines 14 to 31, p 104 lines 22 to 25

<sup>161</sup> NEs 19 November 2019 p 93 lines 1 – 15, p 107 lines 1 – 26.

further dishonesty. Additionally, the accused had to repay the debt (plus interest) to the Moneylender.<sup>162</sup>

104 The Prosecution argues that Annamalai is not credible for two reasons:

(a) Annamalai might have been mistaken as to the date of the embezzlement.<sup>163</sup> Annamalai unequivocally stated that the date of embezzlement was 11 October 2011.<sup>164</sup> The reason he gave on why he could so clearly remember the date after some eight years later was that this was the only time the accused embezzled money *and* the first time that the accused had a back-to-back assignment (*ie*, an assignment to collect debt moneys in Singapore on two consecutive days which were 11 and 12 October 2011).<sup>165</sup> The accused had separately testified that from 4 August 2011 to 12 October 2011, he only entered Singapore for work-related purposes (as corroborated by Perinba<sup>166</sup>).<sup>167</sup> Having regard to the ICA records, the first time that the accused had entered Singapore on two consecutive days was not on 11 and 12 October 2011 but rather on 24 and 25 August 2011.<sup>168</sup> Following Annamalai's logic, the date of embezzlement would be 24 August 2011, rather than 11 October 2011.

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<sup>162</sup> NEs 19 November 2019 p 103 lines 16 – 25.

<sup>163</sup> PCS at para 85.

<sup>164</sup> NEs 19 November 2019 p 117 line 30 – p 118 line 2.

<sup>165</sup> NEs 19 November 2019 p 118 line 30 – p 119 line 2.

<sup>166</sup> NEs 19 November 2019 p 21 lines 18 – 20.

<sup>167</sup> NEs 8 February 2019 p 5 lines 20 – 32.

<sup>168</sup> AB CH-P104 p 207.

(b) When confronted with the ICA records showing two consecutive dates of entry by the accused on 24 and 25 August 2011, Annamalai “changed tack”<sup>169</sup> during cross-examination by saying that he remembered the date of 11 October 2011 for only *one* reason (as opposed to *two* reasons), *ie*, that it was the first time that the accused had gambled the Moneylender’s money away.<sup>170</sup>

105 I do not think that the Prosecution succeeds in casting doubt on Annamalai’s credibility. Taking the Prosecution’s case at its highest, it can only be said that Annamalai might be mistaken as to the date of the accused’s *first* back-to-back assignment. Annamalai himself admitted that he could not fully recall if the accused had other back-to-back assignments because “there were no problems before ... therefore, it did not really retain in [his] memory”.<sup>171</sup> What is crucial is that Annamalai never wavered from his position that the accused had embezzled \$5,000 from the Moneylender on 11 October 2011 and that Annamalai remembered this because it was the first time the accused had done such a thing.<sup>172</sup>

106 Ong Jun Leong Kelvin’s (“Kelvin”) evidence further shores up the Defence’s case on this front. Kelvin testified that he was the Moneylender’s Singapore agent who passed the accused debt moneys totalling \$10,000 on 12 October 2011. Kelvin could remember meeting the accused on 12 October 2011 because the date was connected to striking events in his personal life, namely

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<sup>169</sup> PCS at para 86.

<sup>170</sup> NEs 19 November 2019 p 121 lines 4 – 12.

<sup>171</sup> NEs 19 November 2019 p 125 lines 10 – 13.

<sup>172</sup> NEs 19 November 2019 p 122 lines 13 – 22, p 123 line 31 – p 124 line 13.



that his mother had fallen down injuring herself on 11 October 2011 and his family members had a big quarrel on 12 October 2011 due to financial issues.<sup>173</sup>

107 I do not agree with the Prosecution that the circumstances under which Kelvin was called to be a witness are suspect.<sup>174</sup> Kelvin does not appear to have a motive to lie to exonerate the accused because they had only met twice prior to being reunited in remand.<sup>175</sup> Further, the accused did not even recognise Kelvin when they first met in prison;<sup>176</sup> it was Kelvin who first approached the accused in prison and offered to testify on the accused's behalf.<sup>177</sup>

108 Drawing together the various strands of evidence, I find that the Defence has proven the Debt Collection Defence on a balance of probabilities. However, I do not believe that it assists the accused by proving that he was not present at the West Coast McDonald's on 12 October 2011 to introduce the Couriers. Let me explain.

109 The accused had ample time on 12 October 2011 to meet the Couriers *and* collect the debt moneys from Kelvin. The ICA records show that the accused was in Singapore from 7.04 am to 12.19 pm (*ie*, 5 hours and 15 minutes) while Shanmugam was in Singapore from 7.24 am to 9.36 am (*ie*, 2 hours and 12 minutes).<sup>178</sup> Even assuming that the accused only left the West Coast

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<sup>173</sup> NEs 20 November 2019 p 31 lines 2 – 27.

<sup>174</sup> PCS at para 90.

<sup>175</sup> NEs 20 November 2019 p 11 lines 1 – 8, p 37 lines 8 – 9.

<sup>176</sup> NEs 20 November 2019 p 43 lines 27 – 28.

<sup>177</sup> NEs 20 November 2019 p 40 lines 20 – 25.

<sup>178</sup> P104A; AB CH-P103 p 205.

McDonald's *after* Shanmugam left Singapore at 9.36 am, the accused would have approximately 2 hours and 43 minutes (*ie*, between 9.36 am and 12.19 pm) to travel to Ang Mo Kio to meet Kelvin, collect the debt moneys and head to the Woodlands Checkpoint. If I assume that the accused and Shanmugam left the West Coast McDonald's at about the *same time* and that Shanmugam needed about 36 minutes to travel to the Woodland's Checkpoint, both the accused and Shanmugam would have left the West Coast McDonald's at about 9.00 am. If so, the accused would have approximately 3 hours and 19 minutes (*ie*, between 9.00 am and 12.19 pm) to travel to Ang Mo Kio to meet Kelvin, collect the debt moneys and return to the Woodlands Checkpoint. After factoring in the possibility of adverse traffic conditions, the entire car journey should take no longer than 2 hours. Kelvin testified that he met the accused sometime from 10 am to 10.30 am on 12 October 2011 and that it would take him less than a minute to hand over the debt moneys to the accused.<sup>179</sup> Assuming that Gobi was being truthful when he testified that the accused left him for 15 to 20 minutes to collect the moneys from Kelvin, the maximum time necessary for the whole journey from the West Coast McDonald's to Ang Mo Kio for the debt collection (with 20 minutes allowance for the debt collection itself) and then to the Woodlands Checkpoint would be 2 hours and 20 minutes. This still leaves between 23 minutes of spare time (if the accused left the West Coast McDonald's at 9.36 am) and 59 minutes of spare time (if the accused left the West Coast McDonald's earlier at 9.00 am), thus making it possible for the accused to collect the debt moneys for the Moneylender *and* be at the West Coast McDonald's on 12 October 2011 during the whole time that Shanmugam was there.

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<sup>179</sup> NEs 20 November 2019 p 18 lines 1 – 16, p 17 lines 5 – 6.

110 For the accused to come all the way to Singapore just to make an introduction of one Courier to the other would likely be a complete waste of time, effort and petrol. When the accused came to Singapore on 12 October 2011 as part of his work assignment to collect debt monies from Kelvin, it would be very convenient to use that opportunity to introduce Shanmugam to Suief. This is what I believe had happened. The alibi of the Defence is not a good alibi because there was only co-incidence of the date, 12 October 2011, but no co-incidence of the time of the debt collection and the time of the introduction meeting to be able to establish that the accused could not have been present at the introduction meeting.

(C) MY CONCLUSION AS TO THE EVENTS ON 12 OCTOBER 2011

111 In light of the foregoing, I find that the Prosecution has proven beyond a reasonable doubt that the accused introduced Shanmugam to Suief at West Coast McDonald's for the purpose of facilitating an impending drug transaction sometime after Deepavali.

112 The crux of the issue is this: if it is clear that Shanmugam and Suief (1) were not known to each other prior to the introduction meeting on 12 October 2011; (2) did not have any mutual acquaintances apart from the accused; and (3) eventually ended up working *together* as couriers trafficking in not less than 28.50 g of diamorphine on 28 October 2011 *after* having been *earlier* recruited *separately* as drug couriers by the accused, there must be a starting point to their very short 16-day relationship. Given the totality of the evidence before me, I am driven inexorably to the conclusion that it began with the accused's introduction of Shanmugam to Suief at the West Coast McDonald's on 12 October 2011 for the purpose of linking them up to form the courier chain for the accused, despite his repeated (but unsupported) protestations otherwise.

## (D) A SIDE NOTE ABOUT THE EVENTS OF 12 OCTOBER 2011

113 As an aside, I note that there is some peculiarity in the events of 12 October 2011, which appear strange and inexplicable. Focusing first on Shanmugam's evidence, it appears that the accused had a strong desire to avoid being in the Kenari car at the Checkpoint.<sup>180</sup> The accused took the trouble to drive the Kenari car all the way up to the Johor customs before handing it over to Shanmugam just before crossing the Checkpoint. His decision seems illogical because the Kenari car could easily have accommodated five passengers, namely, the accused, the unknown Tamil man, Shanmugam as well as Shanmugam's mother and daughter, and there was no necessity to drive two cars into Singapore, meet at the *same* place, *ie*, the West Coast McDonald's and then head back to Johor on the same day, even if a slight detour to Ang Mo Kio was called for.<sup>181</sup> Further, Shanmugam recalled that Suief drove off with the Kenari car *after* the introduction meeting and returned the car 45 minutes later,<sup>182</sup> while Suief denied this (see [90(b)] above).

114 Suief's evidence in this regard is worth exploring.

(a) As a backdrop, it is pertinent to note that Suief admitted to working as a drug courier for the accused even *before* he was introduced to Shanmugam.<sup>183</sup> One or two months *prior* to the introduction meeting, the accused had asked Shanmugam to work for him as a drug courier and

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<sup>180</sup> NEs 10 July 2018 p 84 lines 30 -31.

<sup>181</sup> NEs 10 July 2018 p 84 lines 11 – 18.

<sup>182</sup> NEs 11 July 2018 p 10 line 30.

<sup>183</sup> NEs 12 January p 98 lines 15 – 28, p 99 lines 6 – 11, 19 – 20.

offered to pay him RM 7,000 monthly,<sup>184</sup> and Shanmugam accepted the offer as it was double what he could earn from his flower shop business (see above at [40]).<sup>185</sup> To complete the loop, the accused would have had to introduce Shanmugam to Suief; both Shanmugam and Suief said the introduction meeting took place on 12 October 2011 at the West Coast McDonald's. The main point is that both Suief and Shanmugam had *separately agreed* to work as drug couriers for the accused *before* the two couriers had met each other in person at the introduction meeting. *If* the accused wanted to use the occasion of the introduction meeting in Singapore on 12 October 2011 to have a drug consignment using these two couriers, Shanmugam and Suief, he *could have done* so because both couriers had *already agreed* to work for him. The absence of a prior personal introduction would not be an obstacle. In other words, *if* the accused wished, he could have killed not two, *but three birds with one stone* on 12 October 2011, namely to: (a) collect debt monies for the Moneylender; (b) introduce the Couriers to each other; and (c) opportunistically use Shanmugam to deliver a shipment of heroin in the Kenari car to Suief.

(b) When DPP Chua first asked Suief how many times he had collected heroin as part of his arrangement with the accused, Suief replied four times.<sup>186</sup>

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<sup>184</sup> NEs 9 July 2018 p 89 lines 22-29, p 37 lines 23 – 26.

<sup>185</sup> NEs 9 July 2018 p 91 lines 7 – 11.

<sup>186</sup> NEs 12 January 2018 p 25 line 11.

(c) Suief initially stated that the Shanmugam had brought him heroin *two* out of the four times.<sup>187</sup> He elaborated that one of those instances was Suief's *fourth* shipment of heroin from the accused,<sup>188</sup> and that *two* shipments were by other people.<sup>189</sup> Suief then backtracked from his earlier position to say that the first three shipments were *not* from Shanmugam.<sup>190</sup> Suief elaborated specifically about the third shipment and said that: "[t]he *third* time, I only got to know [Shanmugam]. Then the fourth time...I got the drugs from Shanmugam".<sup>191</sup> The *fourth* time was the day of the Drug Transaction.<sup>192</sup>

(d) Suief later asserted that on the *third* time, Mathan (*ie*, the accused's brother) delivered the drugs.<sup>193</sup>

115 Shanmugam might have been telling the truth about Suief taking away the Kenari car for 45 minutes. *If* the Kenari car also contained drugs on 12 October 2011, it may explain why Suief had to take the car away for 45 minutes in order to make a drug delivery. This may also explain why the accused did not remain in the Kenari car when it crossed the border checkpoints as he did not want to be implicated and therefore, got into another car. This may also explain the vacillation in Suief's evidence in relation to the third time he collected

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<sup>187</sup> NEs 12 January 2018 p 25 lines 14 – 16.

<sup>188</sup> NEs 12 January 2018 p 25 line 20.

<sup>189</sup> NEs 12 January 2018 p 25 line 22

<sup>190</sup> NEs 12 January 2018 p 25 line 31 – p 26 line 6.

<sup>191</sup> NEs 12 January 2018 p 26 lines 11 – 13.

<sup>192</sup> NEs 12 January 2018 p 27 lines 24 – 25.

<sup>193</sup> NEs 12 January 2018 p 27 lines 14 – 16.

heroin. Finally, it may explain why there is a discrepancy, as correctly pointed out by the Defence, between Shanmugam and Suief's evidence in relation to Suief driving the Kenari car away for 45 minutes after the introduction meeting.<sup>194</sup> It is pertinent to note that Suief *initially* mentioned Shanmugam had brought in two shipments of heroin and alluded to the fact that Shanmugam had brought in the *third* shipment of drugs, which would then have tied in with Shanmugam's evidence that Suief took away the Kenari car for 45 minutes after their introduction at the West Coast McDonald's on 12 October 2011. However, Suief later corrected himself and said it was not Shanmugam but Mathan who delivered the third shipment of drugs to him. If so, that would have taken place presumably on some other day *prior* to the 12 October 2011. Suief, understandably, did not wish to say that he received a further shipment of heroin on the day of the introduction meeting when he first met Shanmugam.

116 I must emphasise that this side note concerning the side events on 12 October 2011 is not used by me in any way in deciding whether the accused is guilty of the present charge against him. Apart from my earlier and separate finding of fact that the accused had introduced Shanmugam to Suief on 12 October 2011 at the West Coast McDonald's to facilitate an impending drug transaction sometime after Deepavali (see [111]), the rest of the side events on 12 October 2011 are strictly irrelevant to the accused's charge.

117 The side note only serves in a very limited way to provide a plausible explanation for: (a) the peculiarity of the side events on 12 October 2011 as narrated by Shanmugam that appear strange and inexplicable, *ie*, why

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<sup>194</sup> DCS at para 27(f) and the table prior to para 27.

Shanmugam and the accused needed to use two cars instead of one car when they were going to Singapore to meet at the *same* place, *ie*, the West Coast McDonald's; (b) the vacillations in Suief's evidence concerning the third shipment of drugs he received; (c) the inconsistency between the Couriers' testimonies in relation to the events immediately *after* the introduction meeting on 12 October 2011 as to whether Suief had driven the Kenari car away for 45 minutes before returning it to Shanmugam; and (d) if so, then Suief's peculiar behaviour in driving the Kenari car away for 45 minutes before returning it to Shanmugam, should Shanmugam's evidence on this point be preferred over Suief's.

118 I now return to the main issues in this case.

(2) 27 October 2011

119 27 October 2011 is significant for two reasons. First, it was the day on which the Controlled Drugs were planted in the Kenari car. Second, there were multiple phone calls between Shanmugam and the accused that evening. As the events on 27 October 2011 took place in Malaysia, I will be focusing on Shanmugam's testimony in his examination-in-chief, and the portions of his statements admitted under s 147(3) of the Evidence Act.

(A) THE PLANTING OF THE CONTROLLED DRUGS IN THE KENARI CAR AND THE SECOND ALIBI DEFENCE

120 I start with the planting of the Controlled Drugs in the Kenari car. I have previously found that Shanmugam drove into Singapore on 28 October 2011 with the Controlled Drugs in the Kenari car (see [67] above).



121 At trial, Shanmugam knew that the Kenari car belonged to the accused's friend, Raja. Shanmugam was able to recognise it at a glance<sup>195</sup> because the accused had allowed him to borrow the Kenari car previously and Shanmugam had driven it on at least a few occasions, *eg*, to send his mother to visit a hospital or a clinic in Singapore.<sup>196</sup>

122 Shanmugam estimated that two to three days before his arrest on 28 October 2011, the accused asked for the Kenari car and Shanmugam obliged. On 27 October 2011, Shanmugam recalled that he was in Singapore during the day and when he returned to his home in Johor in the evening, he saw that the car was parked in its usual place outside his rental home.<sup>197</sup>

123 Shanmugam's testimony at trial in this respect is consistent with P154, his statement recorded a day after the accused was arrested in Singapore. There, Shanmugam positively identified 27 October 2011 as the date the Kenari car was taken away.<sup>198</sup> More pertinently, I note that even *after* Shanmugam had turned hostile and started to make the Intoxication Claim during cross-examination, he still maintained that the accused took away the Kenari car on either 26 or 27 October 2011 and returned it on the evening of the latter date.<sup>199</sup> I thus find that Shanmugam's evidence is consistent and credible on this front.

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<sup>195</sup> NEs 9 July 2018 p 10 lines 8 – 30.

<sup>196</sup> NEs 9 July 2018 p 12 lines 11 – 14, p 11 lines 11 – 31.

<sup>197</sup> NEs 9 July 2018 p 53 line 25 – p 54 line 5.

<sup>198</sup> P154 at para 12.

<sup>199</sup> NEs 10 July 2018 p 21 line 5 – 9.

124 In response, the Defence relies on Perinba's evidence to mount a second alibi defence. Perinba testified that it was impossible for the accused to have taken the Kenari car from Shanmugam on 27 October 2011 as the couple were in the accused's hometown of Kulim, Kedah celebrating Deepavali with their family.<sup>200</sup> They had left their Johor home on 24 October 2011 and stayed for a week in Kedah. Perinba stated that the accused could not have returned to Johor because "[her husband] was with [her] all the time."<sup>201</sup>

125 The Defence fails to raise reasonable doubt with this second alibi defence.

126 First, Perinba is an interested witness as she is the accused's wife and loves him. Her exonerating evidence must thus be treated with caution (see *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] SGHC 333 ("*Farida*") at [13]).

127 Second, even if I were to treat Perinba as a dispassionate witness with no interest in the matter, her evidence does not create a viable alibi defence. Perinba had overstated her position when she said that she was "very sure" that the accused had never been able to leave Kedah and return to Johor on 27 October 2011.<sup>202</sup> The accused had a yearly habit of going to Dannok, Thailand with his male friends immediately after Deepavali.<sup>203</sup> It was revealed during Perinba's examination-in-chief that she could not actually remember whether

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<sup>200</sup> NEs 19 November 2019 p 28 lines 7 – 31.

<sup>201</sup> NEs 19 November 2019 p 29 lines 15 – 21.

<sup>202</sup> NEs 19 November 2019 p 29 lines 15 – 20.

<sup>203</sup> NEs 7 February 2019 p 50 lines 1 – 3, p 52 lines 13 – 24.

the accused had left her to go to Dannok in 2011.<sup>204</sup> This meant that Perinba could not be so sure that the accused had remained constantly in Kedah during the relevant period. Neither could Perinba be so certain that after leaving his mother's place in Kedah, the accused could not have headed immediately for Johor instead of Dannok in 2011.

128 The flaws in her evidence were further exposed during cross-examination. Perinba did not actually remember being with the accused for the entirety of their trip to Kedah and her reason for claiming that the accused could not have returned to Johor was that he never told her that he was going and she believed that he would not lie to her. Her testimony on this point is important and is worth laying out in full:<sup>205</sup>

Q But you cannot recall, alright, whether he went to Deepavali---sorry, whether he went to Thailand during that Deepavali season, am I correct?

A That is right.

Q And yet you are certain that he didn't leave Kedah to go to Johor?

A I'm certain because he was with me all the while, while we were in Kedah.

Q Yes, but you see, if you were certain that he was with you all the while, why aren't you not sure that he went to Thailand?

A I don't know whether he had gone to Thailand. If he had not gone to Thailand, he would have been with me.

Q Ah, I see. So let's say he tells you "I'm going off to Thailand", right, he could have driven off, driven back to Johor and then back the next day, and you wouldn't have known, right?

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<sup>204</sup> NEs 19 November 2019 p 29 lines 9 – 14.

<sup>205</sup> NEs 19 November 2019 p 39 line 26 – p 40 line 25.

A There's no chance he went to---he went anywhere because if he had gone to Thailand, he would go first day and he would return the very next day morning itself.

Q Yes, but if---you see, if you had gone to---if he had driven off in his car, you don't know where he went in the car. He could have driven back all the way down to Johor and returned the next day. It's about 7½ hours, 8 hours' drive. It's still doable, correct?

...

A I'm sure that he didn't come to Johor.

Q Why are you so sure?

A *I know about my husband.*

Q Because you trust him? Not that you know for a fact because you were not with him what---all the time, right? Or at least you can't remember whether you were with him all the time, because you were not sure whether he went to Thailand. So if you are not sure whether he went to Thailand, by that same token, you cannot be sure that he didn't drive down to Johor while he said he was going to Thailand.

A *He wouldn't lie to me and go anywhere.*

[emphases added]

129 Bearing the above in mind, I find that the accused's second alibi defence fails and accept Shanmugam's testimony that the accused had taken the Kenari car on 27 October 2011 and returned it to him in time for the Drug Transaction on 28 October 2011.

(B) THE PHONE CALLS

130 Shanmugam testified that on 27 October 2011 at 10.56 pm and 10.58 pm, he received two phone calls from the Mobile Phone Number. As established previously, the Mobile Phone Number belonged to the accused (above at [56]). Shanmugam recalled that the accused told him that "he's going back to his

mother's place in Kedah" and reminded Shanmugam to deliver the Kenari car to Suief the next day.<sup>206</sup> The contents of this call bolster the Prosecution's case that the accused had been in Johor on 27 October 2011 to return the Kenari car to Shanmugam and thereafter, Shanmugam would be *returning* to his mother's place in Kedah.

131 More importantly, it sheds light on the accused's state of mind because the Kenari car contained the Controlled Drugs when Shanmugam drove into Singapore on 28 October 2011. As mentioned above, Shanmugam took pains to emphasise that he was innocent because he thought that his role was to deliver the Kenari car to Suief (or to deliver illegal documents per P154).<sup>207</sup> Taking Shanmugam's evidence at its highest, the fact that the accused specifically called Shanmugam late at night the day immediately prior to the Drug Transaction and reminded him to "pass the car"<sup>208</sup> the next day is telling. It indicates that the accused knew that the Controlled Drugs were present in the Kenari car and engineered events to ensure that the Drug Transaction would proceed smoothly the next day when Shanmugam "pass[ed] the car" so to speak to Suief in Singapore pursuant to the accused's instructions and reminders.

132 Shanmugam's evidence of the car being taken away by the accused and returned to him on 27 October 2011 is a fairly significant point as it suggests that the accused would then have had the opportunity to place the Controlled Drugs in the Kenari car but the location where it was hidden might not have

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<sup>206</sup> NEs 9 July 2018 p 48, lines 5 – 15.

<sup>207</sup> P154 at paras 5 and 6.

<sup>208</sup> P154 at para 12.

been specifically made known to Shanmugam before he was asked by the accused to drive the Kenari car into Singapore on 28 October 2011.

133 Apart from the two phone calls from the accused late at night, Shanmugam also mentioned that Suief called him on 27 October 2011. Suief asked if the accused had told Shanmugam about “tomorrow’s work” and if “[Shanmugam] knew how to get there”.<sup>209</sup>

134 It is important to appreciate that Shanmugam’s evidence is backed up by his mobile phone record on 27 October 2011 as tabulated:<sup>210</sup>

S/N	Call Type	Time
1	Missed call from Mobile Phone Number	20:39:46
2	Missed call from Mobile Phone Number	20:40:18
3	Missed call from Mobile Phone Number	20:40:53
4	Missed call from Mobile Phone Number	20:47:55
5	Missed call from Mobile Phone Number	20:57:00
6	Outgoing call to Mobile Phone Number	21:02:23
7	Outgoing call to Mobile Phone Number	21:02:33
8	Outgoing call to Mobile Phone Number	21:03:37
9	Outgoing call to Mobile Phone Number	21:04:34
10	Incoming call from Mobile Phone Number	21:05:09

<sup>209</sup> NEs 9 July 2018 p 50 lines 6 – 12.

<sup>210</sup> AB CH-P82, pp 46, 47 and 49.

11	Incoming call from Mobile Phone Number	21:49:21
12	<b>Incoming call from Mobile Phone Number</b>	22:56:28
13	<b>Incoming call from Mobile Phone Number</b>	22:58:19
14	<b>Incoming call from Suief's number</b>	23:05:04
15	<b>Incoming call from Suief's number</b>	23:14:10
16	<b>Incoming call from Suief's number</b>	23:26:05

The phone calls to Shanmugam at around 11 pm from the accused and the phone calls from Suief that followed soon thereafter are bolded.

135 Even amongst close friends, it is unusual for there to be so many calls within a day. While Shanmugam was unable to recall anything further about the other calls,<sup>211</sup> the sheer number of calls that night and their frequency (*ie*, 16 calls within three hours first with the accused and then with Suief) lead me to conclude that the accused and the Couriers were discussing the arrangements for the Drug Transaction the next day.

(3) 28 October 2011

136 The events of 28 October 2011 were hotly contested during the trial. Numerous volleys were fired over the minutest detail such as whether Shanmugam had told Suief where 10 bundles of the Controlled Drug were hidden in the Kenari car, whether Shanmugam or Suief had gone to buy drinks

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<sup>211</sup> NEs 9 July 2018 p 53 lines 13 – 14.

at the Esso petrol kiosk, why Suief had taken the stairs instead of the lift at Block 405 Pandan Gardens, *et cetera*.<sup>212</sup> In this regard, the Defence argues that the testimonies of the Couriers are so fragmented and inconsistent that it would be unsafe to rely upon them.

137 While the Couriers' testimonies about the above events do have a bearing upon their individual credibility, I have already dealt extensively with this above. The real significance of the events taking place on 28 October 2011 lies in whether the Couriers were acting under the accused's instructions in (1) bringing the Controlled Drugs into Singapore and (2) delivering them. I thus focus my inquiry on these two points.

138 On 28 October 2011, the accused called Shanmugam before Shanmugam left for Singapore to check on Shanmugam's progress in bringing the drugs into Singapore and asked Shanmugam where he was. Shanmugam informed the accused that he was on his way to Singapore and the accused replied saying "Suief is waiting for you".<sup>213</sup> Shanmugam knew where to meet Suief because Suief called him as soon as he entered Singapore and said: "Where are you? Already late. I am waiting at Haw Par Villa bus stop, come quickly."<sup>214</sup>

139 Suief could not remember whether he had called Shanmugam prior to the meeting and was unable to confirm Shanmugam's number for checks to be

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<sup>212</sup> PCS at paras 15 – 18; DCS at paras 33 – 38, 41 – 44; PRS at paras 57 – 70; DRS at paras 17 – 18.

<sup>213</sup> NEs 9 July 2018, p 56 lines 11 – 17.

<sup>214</sup> NEs 9 July 2018, p 56 lines 27 – 28.



made with the Phone Records.<sup>215</sup> Shanmugam's phone records appear to be incomplete as there is no record of any calls on 28 October 2011. Nonetheless, Suief's evidence corroborates Shanmugam's evidence as he said that Shanmugam was late for an hour.<sup>216</sup> CNB officers who were tailing Suief also observed that they met at the Haw Par Villa bus stop at about 11:36 am.<sup>217</sup>

140 When Suief entered the Kenari car, he brought with him the virtually empty Mizuno Bag.<sup>218</sup> Shanmugam then drove to an Esso petrol kiosk. CNB officer Assistant Superintendent Sea Hoon Cheng, who was trailing the Couriers, observed that Suief got out of the Kenari car and walked to the Cheers convenience store to purchase drinks. The Couriers then drove to Block 405 Pandan Gardens. This was because Suief wanted to retrieve items from his mother's house for his Friday prayers.<sup>219</sup>

141 From the time that Suief entered the Kenari car to the time he got off at Pandan Gardens, Suief received a number of instructing phone calls from the accused and Ali Bell, the latter being the intended recipient of three bundles of diamorphine. Suief was informed by the accused and Ali Bell that he should place three bundles of diamorphine at the Staircase Landing.<sup>220</sup> The remaining

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<sup>215</sup> NEs 16 January 2018 p 3 lines 18 – 20; 12 January 2018 p 42 lines 8 – 9.

<sup>216</sup> NEs 12 January 2018 p 42 lines 13 -14.

<sup>217</sup> AB CH-PS14 p 160.

<sup>218</sup> NEs 12 January 2018 p 42 line 29 – p 43 line 4.

<sup>219</sup> NEs 12 January 2018 p 46 lines 4-5.

<sup>220</sup> NEs 12 January 2018 p 45 line 29 - p 46 line 11, p 46 lines 18 - 28.

seven bundles of diamorphine were packed into the Mizuno Bag pending the accused's further instructions.<sup>221</sup>

142 The Defence submits that that there are discrepancies in Suief's evidence as to the instructions he received on 28 October 2011.<sup>222</sup>

(a) During examination-in-chief, Suief stated that the next time the accused contacted him after 12 October 2011 was on 28 October 2011.<sup>223</sup> The accused instructed him to deliver heroin to Ali Bell and confirmed that Shanmugam would be sending him the heroin.<sup>224</sup> Subsequently, the accused found out that Suief wished to go to Block 405 Pandan Gardens and instructed Suief to place three of the bundles amongst some flower pots on the Staircase Landing. Ali Bell gave Suief the same instructions.<sup>225</sup> This was mirrored in re-examination.<sup>226</sup>

(b) In his statement,<sup>227</sup> Suief stated that the accused called him after Deepavali and on 28 October 2011 to confirm that Shanmugam would be coming to Singapore with the heroin on that day. The accused told Suief to meet Shanmugam at the Haw Par Villa bus stop.

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<sup>221</sup> NEs 12 January 2018 p 45 lines 11 – 15.

<sup>222</sup> DCS at paras 34 and 37.

<sup>223</sup> NEs 12 January 2018 p 40 lines 14 – 15.

<sup>224</sup> NEs 12 January 2018 p 40 line 24 – p 41 line 3.

<sup>225</sup> NEs 12 January 2018, p 46 lines 1 -15.

<sup>226</sup> NEs 18 January 2018 p 26 line 26 - p 27 line 1.

<sup>227</sup> D1 at paras 7 – 8.

(c) During cross-examination, Suief stated that Shanmugam had told him to give the three bundles of diamorphine to Ali Bell and that Ali Bell later called Suief to confirm this.<sup>228</sup> Ali Bell told him to place the three bundles at the Staircase Landing.

143 The Defence submits that there was a “striking absence of Punithan’s involvement” in Suief’s cross-examination evidence and states that it is a material internal inconsistency.<sup>229</sup>

144 I am unable to agree. First, Suief had already mentioned earlier that the accused *and* Ali Bell called to inform him to place the three bundles of diamorphine at the Staircase Landing. Second, Suief did subsequently clarify during cross-examination that the accused did call him to give him instructions as to where to place the drugs after the Couriers left the Esso petrol kiosk.<sup>230</sup>

145 Nonetheless, as there is some inconsistency in Suief’s evidence on this crucial aspect of the charge, I am prepared to assume, out of an abundance of caution (see [29] above), that Suief’s evidence is unclear as to whether the accused did indeed call to give him instructions on 28 October 2011. Even so, having regard to two other sources of evidence, it is clear that the Defence’s contention must still fail.

146 First, Shanmugam testified that Suief received a call when they were travelling from the Esso petrol kiosk to Pandan Gardens to deliver the three

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<sup>228</sup> NEs 16 January 2016 p 15 line 31 – p 16 line 25, p 22 line 30 – p 23 line 4.

<sup>229</sup> DCS at para 37.

<sup>230</sup> NEs 18 January 2018 p 13 lines 14 – 20, 29.

bundles. While Shanmugam could not confirm the identity of the caller, he distinctly recalled that the accused's name was mentioned during the call.<sup>231</sup>

147 Second, Suief's mobile phone record makes it clear that Suief communicated with Ali Bell *and* the accused.

148 On 28 October 2011, there were four calls between Suief and Ali Bell within approximately 30 minutes.<sup>232</sup> Ali Bell's number was "9467793" and was saved in Suief's phone B2-HP2 under the contact name "botak".<sup>233</sup>

S/N	Call Type	Time
1	Incoming call from Ali Bell	11:58:20
2	Outgoing call to Ali Bell	12:11:21
3	Outgoing call to Ali Bell	12:11:46
4	Incoming call from Ali Bell	12:31:22

149 On 28 October 2011, there were nine calls between Suief and the accused in the span of approximately 73 minutes.<sup>234</sup> The calls also increased in frequency nearing the time of delivery of the three bundles of drugs to Block 405 Pandan Gardens.

S/N	Call Type	Time
1	Outgoing calls to Mobile Phone Number	10:52:12

<sup>231</sup> NEs 9 July 2018 p 76 lines 4 – 11.

<sup>232</sup> AB CH-P84 pp 88 – 91.

<sup>233</sup> NEs 16 January 2018, p 2 lines 11 – 17; AB CH-P84 p 87.

<sup>234</sup> AB CH-P84 pp 88 – 91

2	Outgoing calls to Mobile Phone Number	10:52:30
3	Outgoing calls to Mobile Phone Number	10:55:49
4	Outgoing calls to Mobile Phone Number	11:02:28
5	Incoming call from Mobile Phone Number	11:15:13
6	Incoming call from Mobile Phone Number	11:36:17
7	Incoming call from Mobile Phone Number	11:55:52
8	Incoming call from Mobile Phone Number	11:57:49
9	Incoming call from Mobile Phone Number	12:05:47

150 The 13 calls show that Suief was in constant contact with both Ali Bell *and* the accused. This lends credence to Suief's evidence that *both* of them were giving him instructions pertaining to the delivery of the Controlled Drugs on 28 October 2011. The fact that the bulk of the calls, ten out of 13, were made in the immediate lead up to the delivery of the three bundles of drugs to Block 405 Pandan Gardens leads me to believe that these were linked to the delivery.

151 I have already rejected the Defence's claim that the Mobile Phone Number did not belong to the accused (see [56] above). I thus find that Shanmugam brought ten bundles containing not less than 28.50g of diamorphine in the Kenari car into Singapore on the accused's instructions. Further, the accused directed the Couriers to transport the bundles within Singapore and to deliver three of them to Ali Bell at Block 405 Pandan Gardens. I find on the totality of the evidence that the accused was the mastermind of this entire criminal endeavour.

*My conclusion*

152 It is trite that a finding on credibility can be based on some or all of the following: (a) the witness' demeanour; (b) the internal consistency in the content of his evidence; or (c) the external consistency between the content of his evidence and the extrinsic evidence (see *Farida* ([126] *supra*) at [9]). Drawing the various pieces of evidence together and after carefully evaluating the demeanour of the various witnesses, the internal consistency of their evidence and the external consistency of their evidence with the objective extrinsic evidence, my findings can be briefly summarised as follows:

(a) Suief is a credible witness whose evidence suffices on its own to support the Prosecution's case. On the whole, his evidence is both internally and externally consistent. He also testified in a forthright manner, to the extent of admitting that he had lied during the HC 2014 Trial.

(b) Shanmugam was initially a credible witness despite his obvious unwillingness to testify. For reasons of his own, he turned completely hostile during his cross-examination and fabricated a number of ludicrous and outlandish claims in an attempt to neutralise the damning effect of his earlier evidence against the accused (*ie*, during examination-in-chief). That being said, I have placed *some* weight on his evidence given during examination-in-chief and his statements when they are capable of being corroborated by other sources of evidence, *ie*, Suief's testimony, the ICA records and the Phone Records.

(c) There is sufficient consistency in the evidence of the Couriers as corroborated by objective documentary records to establish their version of events on 12, 27 and 28 October 2011.

(d) Seen as a whole, the specific events show that the accused was the directing mind behind the Drug Transaction on 28 October 2011. His complicity is not restricted to giving instructions to the Couriers on 28 October 2011 and passing the drugs to Shanmugam although these would suffice to impute constructive liability on the accused. The accused leveraged on his individual association with Shanmugam and Suief to recruit them both as his couriers and even made a trip down to Singapore to introduce them to each other.

(e) The accused's bare assertion that he did not know the Couriers and thus was not associated with their trafficking activities is artificial and contrived.

(f) The Defence's alternative explanation for the specific events do not suffice to raise a reasonable doubt.

153 I thus find that the Prosecution has proven its case beyond a reasonable doubt such that s 34 of the Penal Code operates to impute constructive liability on the accused.

*Final denials: the Kenari car and Raja*

154 Out of an abundance of caution, I also will deal with the Defence's final submission on the Kenari car and Shanmugam's final attempt to exonerate the accused.

155 The Defence submits that it was not possible for the accused to be complicit in the trafficking activities of the Couriers as he never had possession of the Kenari car and thus could not have passed possession of it, along with the Controlled Drugs, to Shanmugam on 27 October 2011. In support of this, the Defence sought to adduce two statements from the registered owner of the Kenari car, Tamilchelvy a/p Maripan (“Tamilchelvy”) and her brother, Vignesh Maripan (“Vignesh”) under s 32(1)(j)(iii) of the Evidence Act.

156 I allowed the application to adduce hearsay evidence. I was satisfied that both Tamilchelvy and Vignesh are Malaysian citizens habitually resident outside of Singapore. Mr Fernando expended considerable effort to secure their attendance, which included repeated phone calls and voice messages to their stated landline number and personally visiting their residence in Johor on 27 November 2019, but to no avail.<sup>235</sup>

157 Be that as it may, I do not think that the statements assist the Defence. Read together, the statements show that Tamilchelvy sold the Kenari car to Vignesh’s friend, Towing Raja. Towing Raja informed Tamilchelvy that he had a friend named “Raja” who was interested in taking over the Kenari car. In return for the use of the car, “Raja” would pay the car instalments to Tamilchelvy’s finance company. The car would remain registered in Tamilchelvy’s name.<sup>236</sup>

158 I do not need to go further than to say that the above accounts, even if accepted, are not inconsistent with the Prosecution’s case and the testimonies of

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<sup>235</sup> Affidavit of Mr. Peter Keith Fernando at paras 4, 8 -15.

<sup>236</sup> D7 and D8.



the Couriers. The accused did not have to be the registered owner of the Kenari car in order to pass possession of it to Shanmugam. It was also not conclusively determined that the accused was not Towing Raja, “Raja” or a person who had obtained possession of the Kenari car from Tamilchelvy, the registered owner of the car. This being the case, I reject the Defence’s argument that the accused never possessed the Kenari car.

159 I turn finally to Shanmugam’s final attempt to exonerate the accused. At the start of re-examination, Shanmugam recovered partially from his earlier amnesia in relation to the specific events that led to the Drug Transaction and the facts relating to it.<sup>237</sup> Shanmugam started to say that “Raja” was responsible for, *inter alia*, passing him the Kenari car, offering him the job of delivering the Kenari car,<sup>238</sup> introducing him to Suief<sup>239</sup> and masterminding the entire trafficking operation.<sup>240</sup> I reject these claims as there is no support for them whatsoever.

160 I end off with a final observation. Shanmugam’s persistent attempts not to implicate the accused can be rationalised by looking at the broader background. Shanmugam’s foster mother, Somunainar Thilagavathi (“Somunainar”) testified that after Shanmugam’s arrest, two mystery men approached her to ask her about Shanmugam. They asked where Shanmugam

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<sup>237</sup> NEs 21 November 2018 p 4 lines 6 – 19.

<sup>238</sup> NEs 21 November 2018 p 4 lines 14 – 28.

<sup>239</sup> NEs 21 November 2018 p 10 lines 10 – 20.

<sup>240</sup> NEs 21 November 2018 p 11 lines 1 – 4.

was and whether she is his mother. Somunainar relayed this incident to Shanmugam when she visited him in jail.<sup>241</sup>

161 I agree with the Prosecution that it is telling that when Somunainar relayed this incident to Shanmugam, Shanmugam did not ask her for the identities of the two men. Instead, he warned her not to talk to strangers and not to open the door if anyone comes and approaches her.<sup>242</sup> When asked about this incident, Shanmugam asked her to be careful because he is in prison and thus unable to protect Somunainar and his child if anything happens to them.<sup>243</sup> Shanmugam tried to play off his caution to his family as just “general information” with “no inner meaning”.<sup>244</sup> However, his words ring hollow when considered against the definitive way he couched the nature of the danger, *ie*, “someone who *will* give them problems” [emphasis added],<sup>245</sup> his conduct at trial and the following exchange:<sup>246</sup>

Witness: I am unable to continue further after this.

Court: Why?

Witness: I feel a lot of---I feel pressure.

Court: You just have to tell the truth. What’s [sic] pressure is that?

Witness: If I were not to follow what I have mentioned in the statement, *it is not me would be affected, the others will be affected.*

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<sup>241</sup> NEs 22 November 2018 p 4 lines 4 – 23.

<sup>242</sup> NEs 22 November 2018 p 4 lines 25 - 27.

<sup>243</sup> NEs 14 January 2019, p 46 lines 16 - 18

<sup>244</sup> NEs 14 January 2019 p 46 lines 22 – 23.

<sup>245</sup> NEs 14 January 2019, p 46 lines 19 -20.

<sup>246</sup> NEs 9 July 2018 p 73 lines 9 – 14.

[emphasis added]

162 While it is not conclusively ascertained whether Shanmugam was told of this incident after the accused was arrested, Shanmugam was clearly facing pressure from a particular source. There is no other reason why Shanmugam would choose to protect the man whose actions directly contributed to his sentence of life imprisonment and 15 strokes of the cane.

### **Conclusion**

163 I find that the Prosecution has proven beyond a reasonable doubt that the accused was complicit in the Drug Transaction by (a) recruiting Shanmugam and Suief to be his drug couriers; (b) introducing Shanmugam to Suief on 12 October 2011 for the purpose of facilitating an impending drug transaction; (c) providing the Kenari car containing the Controlled Drugs to Shanmugam on 27 October 2011; and (d) coordinating the transport and delivery of the Controlled Drugs on 28 October 2011 by providing instructions to both Shanmugam and Suief. I thus convict the accused of the charge.

164 I will hear parties on sentence.

Chan Seng Onn  
Judge

Terence Chua and Wuan Kin Lek Nicholas (Attorney-General's  
Chambers) for the Public Prosecutor;  
Peter Keith Fernando (Leo Fernando LLC), Chia Kok Seng (KSCGP  
Juris LLP) and Chenthil Kumar Kumarasingam (Oon & Bazul LLP)  
for the accused.

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