Public Prosecutor *v* Mas Swan bin Adnan and another [2011] SGHC 107

Case Number : Criminal Case No 22 of 2010

Decision Date : 29 April 2011

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Isaac Tan, Sharmila Sripathy-Shanaz and Wynn Wong (Attorney-General's Chambers) for the prosecution; N Kanagavijayan (Kana & Co) and Ranadhir Gupta (A Zamzam & Co) for the first accused; Mohamed Muzammil bin Mohamed (Muzammil & Company) and K Prasad (K Prasad & Co) for the second accused.

Parties : Public Prosecutor — Mas Swan bin Adnan and another

Criminal Law – Statutory Offences – Section 7 Misuse of Drugs Act – Import of controlled drugs

Evidence – Proof of evidence – Presumptions – Presumption of knowledge of controlled drugs under section 18(2) Misuse of Drugs Act

Evidence – Admissibility of evidence – Similar fact rule

[LawNet Editorial Note: The appeals to this decision in Criminal Appeals Nos 7 and 8 of 2011 were allowed by the Court of Appeal on 14 May 2012. See [2012] SGCA 29.]

29 April 2011 Judgment reserved.

Steven Chong J:

Introduction

1 The two accused persons are Malaysians from the state of Johor, Malaysia. The first accused is Mas Swan Bin Adnan ("Mas Swan"), 27 years old and unemployed at the time of his arrest; [note: 1] the second accused is Roshamima Binti Roslan ("Roshamima"), nicknamed "Wawa", [note: 2] a 24-year-old recovery officer for a bank in Malaysia at the time of her arrest. [note: 3] The two were in a romantic relationship and were due to be engaged on 6 June 2009 and get married the following day. Their marriage plans came to an abrupt halt, however, after they were arrested on 6 May 2009 when entering Singapore in a Malaysian-registered motor car bearing registration number JHA 7781 ("JHA 7781"). Three bundles comprising 123 packets containing a total of 21.48 grams of diamorphine were found in the car.

2 As a result, they were committed to stand trial on one joint charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for importing not less than 21.48 grams of diamorphine read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed") ("Penal Code") ("the Charge"):

> That you [both] on the 6th day of May 2009, at or about 9.56 p.m. in a Malaysian registered motor car JHA 7781, at Woodlands Checkpoint, Singapore ... in furtherance of the common intention of you both, did import into Singapore a controlled drug specified in Class A of the First Schedule of the [MDA], Chapter 185, to wit, one hundred and twenty-three (123) packets of

substances containing not less than 21.48 grams of diamorphine, without any authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 of the [MDA] read with section 34 of the Penal Code, Chapter 224 and punishable under section 33 of the [MDA].

3 In their respective defences, both accused persons adopted different and sometimes conflicting positions. Essentially, Mas Swan admitted to importing bundles which he believed contained "ecstasy" pills and implicated Roshamima as well, whereas Roshamima denied having any knowledge of the existence or presence of the bundles in the car altogether.

Background facts

The events leading up to the arrests

4 On 6 May 2009, at about 9.56 pm, Mas Swan and Roshamima arrived at the Woodlands Immigration Checkpoint ("Woodlands Checkpoint") from Malaysia in JHA 7781. When Corporal Muhammad Ilhan Bin Rahmat, the Immigration and Checkpoints Authority ("ICA") officer who was on duty at Counter 28, screened Mas Swan's passport for clearance, he was immediately alerted that Mas Swan had been blacklisted. The ICA Quick Response Team ("QRT") was notified and they dispatched two officers to Counter 28. After they arrived, the QRT officers gave instructions to Mas Swan to drive to the ICA Arrival Car Secondary Team Office ("ST Office") and to park JHA 7781 at one of the parking lots, with which instructions Mas Swan complied.

5 Mas Swan and Roshamima were later directed to drive JHA 7781 to the Inspection Pit with an ICA officer in the rear seat. At the Inspection Pit, a manual search of the interior and undercarriage of JHA 7781 was carried out but nothing incriminating was found. Mas Swan was then instructed to drive JHA 7781 to the Scanning Area where a backscatter scan (*ie*, an X-ray scan using a Backscatter Van) was conducted on the car. The scan detected three dark spots in the front left door panel of JHA 7781. One of the ICA officers shone his torchlight into the door panel and spotted a green bundle inside.

6 The Police K-9 unit was mobilised but the dogs did not detect the presence of any drugs. JHA 7781 was then driven to the Detention Yard for a more thorough inspection, and Mas Swan and Roshamima were escorted there on foot. At the Detention Yard, the front left door panel was opened partially and three bundles were retrieved from within the door panel: two were wrapped in green tape (the "green bundle" or "green bundles", as the case may be) and one was wrapped in black tape (the "black bundle"). One of the green bundles was cut open by Sergeant Muhammad Jasman Bin Sinwan ("Sgt Jasman") using a pen knife in the presence of Mas Swan and Roshamima and it was found to contain brown granular substances. Sgt Jasman could not recall, however, whether he had shown the brown substance to Mas Swan or Roshamima. [note: 4] Both Mas Swan and Roshamima were immediately placed under arrest and officers from the Central Narcotics Bureau ("CNB") were notified accordingly.

7 One green bundle consisted of 61 smaller packets which subsequent analysis by the Health Science Authority ("HSA") showed to contain 6.81 grams of diamorphine. The other green bundle comprised 61 smaller packets which were found to contain 6.55 grams of diamorphine. The black bundle comprised just one packet and was found to contain 8.12 grams of diamorphine. The diamorphine found in all three bundles formed the subject of the Charge against both Mas Swan and Roshamima (see [2] above). Mas Swan and Roshamima did not challenge the analysis by the HSA of the nature or of the weight of the granular substances contained in the bundles seized from JHA 7781.

8 Mas Swan and Roshamima were then taken to the CNB B3 Office at Woodlands Checkpoint at about 12.40 am on 7 May 2009.

The statements recorded from Mas Swan

9 After they were brought to the CNB B3 Office at Woodlands Checkpoint, Sergeant Azhar Bin Abdul Aziz ("Sgt Azhar") recorded a contemporaneous statement ("P31") [note: 5] from Mas Swan between 1.43 am and 1.55 am. A total of four questions were posed in Malay to Mas Swan who also gave his answers in Malay. Sgt Azhar recorded the entire statement in English:

> Q1. What is this?
>
> A1. I don't know
>
> Q2. Who does it belong to?
>
> A2. I don't know
>
> Q3. The car belongs to who?
>
> A3. The car belongs to me. I took over from a friend of mine and I paid the monthly instalment of the car.
>
> Q4. What is your purpose coming to Singapore?
>
> A4. To meet my girlfriend's aunty to collect marriage gifts.

After recording the statement, Sgt Azhar interpreted it back to Mas Swan in Malay and he duly signed it.

10 At 3.21 am, a police report was lodged at Woodlands Checkpoint Police Station and the three bundles found in JHA 7781 were seized. Both Mas Swan and Roshamima were sent to the CNB headquarters at the Police Cantonment Complex ("PCC"), where Assistant Superintendent of Police Chan Gin Choong ("ASP Gary Chan") recorded a cautioned statement [note: 6] from Mas Swan ("P32") under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") with the assistance of a Malay interpreter, Ms Sofia Bte Sufri ("Ms Sofia"). ASP Gary Chan, who had earlier been appointed the investigating officer at around 12.30 am, [note: 7] spoke in English and recorded the following confession in P32 from Mas Swan between 8.02 am and 8.34 am of 7 May 2009 in his office (room B0310B):

> I admit guilty to the charge. This is my first time bringing drugs into Singapore.

During the trial, Mas Swan challenged the admissibility of P32 which, accordingly, became the subject of a *voir dire*. I will be addressing the admissibility of P32 in a later section of my judgment (see [21]–[31] below).

11 Another six long statements were recorded from Mas Swan under s 121(1) of the CPC:

(a) the first long statement was recorded on 8 May 2009 at about 8.47 pm by ASP Gary Chan ("P34");

(b) the next long statement was recorded on 10 May 2009 at about 2.10 pm by ASP Gary Chan ("P35");

(c) the third long statement was recorded on 10 May 2009 at about 6.53 pm by ASP Gary Chan ("P36");

(d) the fourth long statement was recorded on 12 May 2009 at about 9.36 am by ASP Gary Chan ("P39");

(e) the fifth long statement was recorded about two months later on 7 July 2009 at about 11.05 am by Inspector Dinesh Kumar Rai ("Inspector Dinesh") ("P41"); and

(f) the sixth long statement was recorded on 10 July 2009 at about 2.10 pm by Inspector Dinesh ("P43").

12 Initially, the admissibility of P35 was also contested but counsel for Mas Swan, Mr Kanagavijayan, confirmed during the *voir dire* that he was withdrawing that challenge after it became apparent that Mas Swan's position regarding P35 was not that the statement was involuntarily made but that he had not mentioned some words ascribed to him in the statement. [note: 8]

The statements recorded from Roshamima

13 While at the CNB B3 Office at Woodlands Checkpoint, Corporal Mohammad Nasran Bin Mohd Janbari ("Cpl Nasran") (now a Sergeant) recorded a contemporaneous statement ("P30") from Roshamima between 2.05 am and 2.20 am on 7 May 2009. Woman Sergeant Palan Hemmamalani was present throughout the recording. Cpl Nasran posed a total of six questions in Malay to Roshamima, who answered all the questions in Malay. Cpl Nasran recorded P30 in English:

Q1: What is this? (recorder's note: pointing to the seized exhibits)

A1: I do not know.

Q2: Who does it belong to?

A1[sic]:I do not know.

Q3: Who is this? (recorder's note: pointing to a photocopy of one I/C belonging to Mas Swan bin Adnan, I/C: 830524-01-5311)

A3: He is my boyfriend.

Q4: Who does the car belong to? (recorder's note: car no JHA7781)

A4: Belongs to my boyfriend.

Q5: What is your purpose of coming to Singapore?

A5: To meet my Aunty at Rochor.

Q6: What is the purpose to meet your aunty?

A6: To take some gifts for my engagement.

After recording the statement, Cpl Nasran interpreted it back to Roshamima in Malay which she duly signed.

14 Roshamima was taken to CNB headquarters at PCC (see [10] above), where, from 8.40 am to 9.07 am on the same day, in CNB office room B0310B, ASP Gary Chan recorded a cautioned statement ("P33") from her with the help of Ms Sofia (the same interpreter who assisted in the recording of Mas Swan's statements). P33 reads as follows:

I do not admit to the charge. I only follow [*sic*] Mas Swan after I finish [*sic*] work.

15 Four long statements were later recorded from Roshamima:

(a) the first long statement was recorded on 11 May 2009 at about 9.25 am by ASP Gary Chan ("P37");

(b) the second long statement was recorded on 11 May 2009 at about 2.14 pm by ASP Gary Chan ("P38");

(c) the third long statement was recorded on 12 May 2009 at about 11.10 am by ASP Gary Chan ("P40"); and

(d) the fourth long statement was recorded on 8 July 2009 at about 2.20 pm by Inspector Dinesh ("P42").

All six statements recorded from Roshamima were admitted as evidence without challenge.

Items found in their possession

Money

16 Upon their arrest, a total of RM1,579.90 [note: 9] was found on Mas Swan [note: 10] whereas Roshamima was found to be in possession of money in Malaysia and Singapore currencies totalling RM76.40 and $74.00. [note: 11]

Mobile phones and SIM cards

17 Mas Swan was found to be in possession of a Nokia N73 model mobile phone with a Malaysian SIM card [note: 12] while Roshamima was found to be in possession of a Nokia 6300 model mobile phone with a Malaysian SIM card. Both phones were forensically examined on 4 August 2009 and on 12 September 2009 respectively. The contact lists, recent call records and SMS text messages stored on both phones were extracted as part of the forensic examinations and were tendered by the Prosecution as evidence in court.

Global Positioning System ("GPS") device

18 A GPS device was also seized from JHA 7781. [note: 13] At the start of the trial, counsel for Roshamima, Mr Muzammil, sought to discover the last known location that was programmed into the GPS device. [note: 14] However, the GPS device was inoperable because no one could supply the Personal Identification Number that was required to unlock the device. [note: 15]

ICA travel movement records of Mas Swan and Roshamima

19 The Prosecution also adduced the ICA travel movement records in and out of Singapore for Mas Swan ("P101"), Roshamima ("P102"), and a Malaysian man called "Murie" (real name Mohd Yazrizamurry Bin Md Yasir) ("P103") who had entered Singapore through Woodlands Checkpoint in another car around the same time on 6 May 2009. According to the testimony of Anmbalagi d/o Ayah, a data entry supervisor with the ICA, [note: 16] these automatically-generated records were retrieved from ICA's computer system and showed information such as entry and exit dates and times, point of entry or exit (Woodlands or Tuas) and mode of transport (*eg*, car). [note: 17]

The *voir dire*

20 As mentioned at [10] above, Mas Swan challenged the admissibility of P32 and P35. The challenge against P35 was subsequently withdrawn, and rightly so, given that Mas Swan's position *vis-à-vis* P35 was that some words therein were not mentioned by him. In *Seeraj Ajodha and others v The State* [1982] AC 204 (an appeal to the Judicial Committee of the Privy Council from the decision of the Court of Appeal of Trinidad and Tobago) at 222, Lord Bridge of Harwich stated that if the Prosecution relied upon certain oral statements and the Defence's case was simply that the interview never took place or that the incriminating answers were never given by him, no issue as to voluntariness and hence no question of admissibility arose. What was left for the trial judge to determine was a question of fact, *ie*, whether those words were stated by the accused or not. Accordingly, a *voir dire* was not necessary in relation to P35 and was, as such, conducted only in respect of the admissibility of P32.

The law on the admissibility of confessions

21 Section 24 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") governs the admissibility of a confession made by an accused person:

> **Confession caused by inducement, threat or promise when irrelevant in criminal proceeding**
>
> **24**. A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which

would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

22 It must be noted that s 24 of the EA was recently repealed by the Criminal Procedure Code 2010 (No 15 of 2010) ("CPC 2010"). [note: 18] However, as P32 was recorded on 7 May 2009, before the CPC 2010 came into effect on 2 January 2011, the admissibility of P32 remained to be determined under s 24 of the EA.

The parties' respective cases on the admissibility of P32

23 Mas Swan's case on the inadmissibility of P32 was simple and straightforward. He claimed that after the nature of the Charge and the prescribed death penalty were interpreted to him by Ms Sofia, the interpreter, she added the following words (in Malay) "*Kalau mengaku nanti hukuman rendahkan*" which translates to "If you admit, later the sentence will be reduced" [note: 19] (the "alleged inducement"). Mas Swan claimed that, as a direct result of what Ms Sofia had told him, he admitted to the Charge against him because he was fearful for his life. [note: 20]

24 The Prosecution's case was that P32 was made voluntarily by Mas Swan and that the alleged inducement was simply a desperate attempt to deny its admissibility.

The circumstances surrounding the recording of P32

25 Only three persons, Mas Swan, ASP Gary Chan and Ms Sofia, were present in ASP Gary Chan's office during the recording of P32, and all three testified before me during the *voir dire*: ASP Gary Chan and Ms Sofia for the Prosecution and Mas Swan for himself.

26 During his cross-examination of ASP Gary Chan and Ms Sofia, Mr Kanagavijayan advanced two positions in the alternative: [note: 21] first, that the alleged inducement had come from ASP Gary Chan and Ms Sofia had merely interpreted the alleged inducement to Mas Swan; and second, that Ms Sofia had, *of her own volition*, made the alleged inducement to Mas Swan.

27 Ms Sofia testified that she had not been briefed about the case prior to the recording of P32 and that she had not conversed with ASP Gary Chan during the few minutes when she was with him in his office before Mas Swan was escorted there. [note: 22] ASP Gary Chan's evidence was that he had not issued any threat, inducement or promise to Mas Swan during the recording of P32. He also refuted the suggestion by Mr Kanagavijayan that he had asked Ms Sofia to relay the alleged inducement to Mas Swan. Similarly, Ms Sofia testified that ASP Gary Chan did not instruct her to offer the alleged inducement to Mas Swan and that she did not make the alleged inducement of her own accord. She also gave evidence that she had used the words "*diamorphine atau heroin*", which translates to "diamorphine or heroin", when she explained the Charge to Mas Swan. [note: 23]

28 Although it was put or suggested to both ASP Gary Chan and Ms Sofia that the alleged inducement came from ASP Gary Chan *or* Ms Sofia, when it came to Mas Swan's turn to testify, he was adamant that the alleged inducement was made by Ms Sofia and not ASP Gary Chan. [note: 24] According to Mas Swan (who claimed that he could understand a bit of what ASP Gary Chan had said in English), [note: 25] ASP Gary Chan did not say anything immediately before Ms Sofia made the alleged inducement. [note: 26] Mas Swan also testified that Ms Sofia did not say the words "or heroin" when she explained the Charge to him. [note: 27] Accordingly, the only issue that arose for

determination in the *voir dire* was whether Ms Sofia had made the alleged inducement and had done so of her own accord.

Conclusion on the admissibility of P32

29 I accepted Ms Sofia's evidence that she did not make the alleged inducement to Mas Swan for the following reasons:

(a) First, there was no conceivable reason for Ms Sofia, who was merely acting as an interpreter, to offer any inducement to Mas Swan of her own volition. I rejected Mr Kanagavijayan's suggestion that Ms Sofia had made the alleged inducement in order to make her task easier by getting Mas Swan to admit to the Charge. [note: 28] In my judgment, there was simply no factual or logical basis for Ms Sofia, who was an interpreter of considerable experience (a total of 14 years when P32 was recorded), [note: 29] to believe that her task would be made easier once Mas Swan admitted to the Charge. In fact, what happened was that after P32 was recorded, she was subsequently involved in the recording of six other statements from Mas Swan. Clearly, her task was not made any easier by Mas Swan's "confession" in P32.

(b) Second, Mas Swan's conduct was entirely inconsistent with his own case. Although Mas Swan claimed that he became fearful after being told of the death penalty, incredulously, he admitted that he did not ask for further details regarding the reduction of his sentence or seek independent assurance from ASP Gary Chan, whom Mas Swan knew full well was the investigator in charge of the interview. [note: 30]

30 In the result, I found that P32 was voluntarily made by Mas Swan without inducement and admitted it as evidence in the main trial. Accordingly, all the statements recorded from Mas Swan were admitted as evidence.

31 I remarked at the conclusion of the *voir dire* that Mas Swan's challenge against the admissibility of P32 was wholly unnecessary. [note: 31] Notably, the Prosecution's put to Mas Swan during the *voir dire* was that there could not have been any inducement as there was no mention of "diamorphine", which was the subject matter of the charge, in P32. Further, the Prosecution readily accepted that Mas Swan did not admit to knowing that the bundles contained "diamorphine" in any of his statements. [note: 32] In other words, there was nothing in P32 which was materially different from what had already been disclosed in Mas Swan's other statements which he did not challenge.

The Prosecution's case

The statutory provisions

32 The following provisions of the MDA were relied upon by the Prosecution:

Import and export of controlled drugs

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

…

Presumption of possession and knowledge of controlled drugs

18.—(1) Any person who is proved to have had in his possession or custody or under his control —

(*a*) anything containing a controlled drug;

(*b*) the keys of anything containing a controlled drug;

(*c*) the keys of any place or premises or any part thereof in which a controlled drug is found; or

(*d*) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had that drug in his possession.

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

(3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.

(4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

*The **actus reus** of the offence under s 7 MDA*

33 The word "import" in s 7 of the MDA has the meaning found in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) (see *Ko Mun Cheung and another v Public Prosecutor* [1992] 1 SLR(R) 887 ("*Ko Mun Cheung*") at [20]):

"import", with its grammatical variations and cognate expressions, means to bring or cause to be brought into Singapore by land, sea or air;

34 There is obviously some overlap between "possession" and "importation". Subject to proof of possession (which was admitted in the case of Mas Swan but denied by Roshamima), an act of importation would be made out since neither Mas Swan nor Roshamima had the requisite authorisation under s 7 of the MDA to do so. The remaining issue therefore goes towards the *mens rea* of the two accused persons.

*The **mens rea** of the offence under s 7 MDA*

35 There is no doubt that the importation of drugs is not a strict liability offence and that proof of *mens rea* is required (see *Ng Kwok Chun and another v Public Prosecutor* [1992] 3 SLR(R) 256 ("*Ng Kwok Chun*") at [37]). Similarly, the Court of Appeal in *Abdul Ra'uf bin Abdul Rahman v Public Prosecutor* [1999] 3 SLR(R) 533 ("*Abdul Ra'uf*") at [26] cited the cases of *Ko Mun Cheung*, *Ng Kwok Chun* and *Tse Po Chung Nathan and another v Public Prosecutor* [1993] 1 SLR(R) 308 in support of the proposition that since importation of controlled drugs is not a strict liability offence, it is incumbent on the Prosecution to show that the appellant knew or intended to bring diamorphine into Singapore.

36 The appellant in *Abdul Ra'uf* was charged under s 7 of the MDA for importing into Singapore without authorization four packets containing not less than 21.45g of diamorphine. He was apprehended at the Woodlands Checkpoint. When he was questioned by one Ssgt Lai, the appellant said that "the thing" in his car was "behind the boot" and that there were "four packets" (see *Abdul Ra'uf* at [3]). The Court of Appeal in *Abdul Ra'uf* held that whether the appellant knew that the drugs were in the boot of his car was essentially a question of fact and having reviewed the evidence, it agreed with the trial judge that the appellant had failed to rebut the Prosecution's *prima facie* case against him. The trial judge in *Public Prosecutor v Abdul Ra'uf bin Abdul Rahman* [1999] SGHC 187 at [10] held at the close of the Prosecution's case that:

> 10. I was satisfied from the Prosecution evidence which was not inherently incredible that the Accused was in possession of the 4 packets found in the boot of motorcar WCT 5564 when he drove into Singapore from Johore Bahru. Further that as a result of the various incriminating admissions he made as set out earlier to police and CNB officers including the statement made under s 122(6) of the CPC, all indicated that he knew the contents of the 4 packets as being diamorphine. Further, the *presumptions under the MDA also operated to show that he had possession of the 4 packets and knew of the contents of the packets by virtue of s 18 (1) and (2) and also by virtue of s 21 thereof as he was in control of the car containing the 4 packets*. He was therefore *prima facie* aware of and had knowledge of the diamorphine being in the 4 packets.
>
> [emphasis added]

What is worth noting is that the Court of Appeal in *Abdul Ra'uf* made no comment on the operation of the twin presumptions, *ie*, *ss* 18(2) and 21 of the MDA, relied on by the Prosecution at the trial below.

37 It appears that, for an offence under s 7 of the MDA, the Prosecution can seek to prove *mens rea* on the part of the accused persons in two ways:

(a) by formally proving that the accused persons intended to import the controlled drugs which form the subject matter of the charge, which would in turn require proof of knowledge on the part of the accused persons of the controlled drugs they were importing; or

(b) by relying on the presumptions available under the MDA.

In a factual scenario such as the present case where Mas Swan and Roshamima were apprehended with the bundles of controlled drugs being found in JHA 7781, which in turn means that the bundles of controlled drugs were in their physical *possession*, the Prosecution may rely on the presumption under s 18(2) of the MDA.

38 It should be highlighted that the relationship between "import" (under s 7 of the MDA and s 2(1) of the Interpretation Act) and "possession" (under s 18(2) of the MDA) has not been expressly dealt with by the courts. In most cases involving s 7 of the MDA, the Prosecution has customarily relied on the s 18(2) presumption in order to establish *mens rea* on the accused person's part as in such cases, the accused persons who were charged with importation were, at the time of their respective arrests, in possession (actual or presumed) of the controlled drugs. For instance, where the accused persons were apprehended with the controlled drugs being contained in a sling bag carried by them (see *Iwuchukwu Amara Tochi and another v Public Prosecutor* [2006] 2 SLR(R) 503 ("*Iwuchukwu*

Amara Tochi")), with the controlled drugs stitched to the vest that they were wearing (see *Public Prosecutor v Ko Mun Cheong and another* [1990] 1 SLR(R) 226) or where the controlled drugs were found in the well for the spare tyre in the boot of the car driven by the accused (see *Yeoh Aik Wei v Public Prosecutor* [2003] SGCA 4).

Legal possession of controlled drugs

39 Mas Swan admitted that he was aware of the three bundles of controlled drugs concealed in the door panel of JHA 7781. Roshamima, however, claimed complete ignorance of the existence or presence of the bundles in the door panel of the said vehicle. Therefore, the issue of legal possession of the bundles and their contents arises for determination in the case of Roshamima but not in the case of Mas Swan.

Whether the requisite knowledge pertains to the fact that the bundles contained controlled drugs or diamorphine

40 To establish that Mas Swan had the knowledge that the bundles contained diamorphine, the Prosecution relied on the doctrine of wilful blindness in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") as well as the presumption under s 18(2) of the MDA (see [37] above).

41 In discussing s 18(2) of the MDA, the Court of Appeal in *Tan Kiam Peng* (at [78]–[81]) suggested two possible interpretations of that section's reference to "knowledge":

> 78 Returning to the threshold interpretive issue that arises from a reading of s 18(2) of the [MDA] itself, there are, in our view, at least *two* possible interpretations open to the court.
>
> ***Two possible interpretations***
>
> *(a) Introduction*
>
> 79 As already mentioned, there are *two* possible interpretations.
>
> 80 The *first* possible interpretation is that the reference to knowledge in s 18(2) of the [MDA] is to knowledge that the drug concerned is a *controlled drug*.
>
> 81 The *second* is the interpretation contended for by the appellant in the present proceedings and referred to at the outset of the present part of this judgment: That the reference to knowledge in s 18(2) of the [MDA] is to knowledge that the drug concerned is *not only* a controlled drug *but also* the specific drug which it turns out the accused was in possession of. It should be noted that, in the court below, this particular interpretation was assumed to be the correct one, and the Judge certainly proceeded to render his decision on this basis (see GD, especially at [36]). With respect, however, the situation (as we shall see) is not as clear-cut as the Judge assumed it to be.
>
> [emphasis in original]

Without conclusively deciding the issue, the Court of Appeal at [93] expressed a preference for the second or "narrow" interpretation, *ie*, that s 18(2) presumes that the accused knows the nature of the specific drug in his possession, which effectively means that the *mens rea* requirement for the offence of drug importation under s 7 of the MDA is *knowledge of the precise or specific drug*

concerned and not mere knowledge that the drug concerned was a controlled drug (the latter state of mind being the first or "broad" interpretation) (*Tan Kiam Peng* at [94]–[95]):

> 94 Indeed, it is important to note that had we accepted the first interpretation as being the conclusive one to adopt, that would, in the nature of things, have concluded the present appeal. It will be recalled that the appellant knew that he was in possession of a controlled drug, although he had argued that he did not know that it was the *precise* or *specific* controlled drug which he was *in fact* carrying, *viz*, heroin. Hence, since the first interpretation entails that the reference to knowledge in s 18(2) of the [MDA] is to knowledge that the drug concerned is a *controlled drug* only, and the appellant in the present proceedings had *actual knowledge* that he was in possession of a *controlled drug*, his appeal would necessarily have failed if the first interpretation was adopted.
>
> 95 However, given the specific language of s 18(2) of the [MDA], the need (given the extreme penalties prescribed by the [MDA]) to resolve any ambiguities in interpretation (if they exist) in favour of the accused, as well as the fact that no case has (to the best of our knowledge) adopted the first interpretation, it would appear, in our view, that (whilst not expressing a conclusive view in the absence of detailed argument) the second interpretation appears to be the more persuasive one and (as pointed out at [93] above) will in fact be adopted in the present appeal. It is, nevertheless, important to note that it would be necessary to consider the further question as to whether, on the second interpretation, the appellant in the present proceedings had knowledge that what he was in possession of was *heroin*. This raises, in turn, a further issue, which would apply *equally* to the *first* interpretation - what is *the nature of the knowledge required* under s 18(2). We turn now to consider this particular issue. However, before proceeding to do so, it should be noted that if it is actually proven, on the facts of this particular case, that the appellant had *actual* knowledge that the drugs he was carrying were *not only* controlled drugs within the meaning of the [MDA] *but also* that they contained *heroin*, then the presumption under s 18(2) of the [MDA] *need not even be invoked in the first instance*.
>
> [emphasis in original]

42 I had occasion to consider this issue in *Public Prosecutor v Lim Boon Hiong and another* [2010] 4 SLR(R) 696 ("*Lim Boon Hiong*") at [62], where I adopted the view (without deciding the point) that, since (i) the Prosecution had submitted that it was content to conduct its case on the basis of the "narrow" interpretation; (ii) there had been a lack of detailed argument on the point; and (iii) any ambiguity in the MDA should be construed in favour of the accused, the "narrow" interpretation ought to be applied. I should also add that in *Lim Boon Hiong* (at [63]–[75]), I suggested, in *obiter* remarks, that it may not have made a great deal of difference which interpretation I adopted because, based on the language used in some of the passages of the Court of Appeal's judgment in *Tan Kiam Peng*, there was a *possibility* that the "broad" interpretation would collapse into the "narrow" interpretation if some of the reasoning in *Tan Kiam Peng* was taken to its extremes. Lest my observations in *Lim Boon Hiong* be misunderstood, I should say at once that I was not implying that that was how I thought *Tan Kiam Peng* ought to be interpreted. Indeed, given the tenor of *Tan Kiam Peng*, the Court of Appeal evidently intended for there to be a clear distinction between the "broad" and "narrow" interpretations, and for the latter to be preferred out of fairness to the accused.

43 As it did in *Lim Boon Hiong*, in the present case, the Prosecution made it clear that it was content to give any benefit of the doubt to both Mas Swan and Roshamima and was bringing its case against both accused persons based on the "narrow" interpretation. [note: 33] In other words, the Prosecution accepted that it had to satisfy this Court that Mas Swan and Roshamima had knowledge of the nature of the specific drug which they had brought into Singapore, *ie*, diamorphine.

44 For the statutory presumption under s 18(2) of the MDA to arise and be operative, the Prosecution accepted that it must first prove two points: [note: 34]

(a) that Mas Swan and Roshamima knew that the bundles were concealed in the door panel of JHA 7781; and

(b) both Mas Swan and Roshamima knew that the bundles contained controlled drugs.

Whether the accused persons knew that the bundles contained diamorphine

45 In the case of Mas Swan, the presumption arose because Mas Swan conceded that he knew that the bundles, which he believed to contain "ecstasy" pills, were concealed within the car door panel. In other words, there was effectively an admission on his part that he had in his possession the bundles containing controlled drugs. Section 18(2) of the MDA was therefore triggered and operated in such a fashion that Mas Swan was presumed to have known the nature of the drug, *ie*, that it was diamorphine. It was therefore incumbent on Mas Swan to rebut the presumption by proving, on a balance of probabilities, that he was not aware of the specific nature of the drug, *ie*, diamorphine.

46 In the case against Roshamima, however, the position was quite different. As she had maintained that she had no knowledge of the existence of the bundles containing the controlled drugs, the presumption under s 18(2) of the MDA would only become operative against her if the Prosecution was able to first prove and persuade me that she was in fact aware of the existence of the concealed bundles containing controlled drugs in JHA 7781.

The interplay between the presumption of knowledge under s 18(2) of the MDA and the doctrine of wilful blindness

47 Wilful blindness is relevant in two respects:

(a) The Prosecution can seek to prove actual knowledge *via* the doctrine of wilful blindness if it is not relying on the statutory presumption under s 18(2) of the MDA.

(b) Further or in the alternative, should the Prosecution rely on the statutory presumption, it may invoke the doctrine of wilful blindness to demonstrate that the accused has failed to rebut the presumption under s 18(2) of the MDA.

48 In the present case, the Prosecution sought to rely on wilful blindness on both fronts in the alternative. During oral closing submissions, in the context of s 18(2) of the MDA, the Prosecution submitted that, on the authority of *Tan Kiam Peng*, an accused person has to rebut the presumption at two cumulative levels: first, that he or she did not have actual knowledge *simpliciter* of the nature of the controlled drugs in his or her possession;and then second, that he or she was not wilfully blind as to the nature of the controlled drugs in his or her possession. [note: 35] The Prosecution accepted that Mas Swan's long statements and oral evidence in court did not *ipso facto* prove that he knew the bundles contained diamorphine. [note: 36] This much is clear from paragraph 94 of the Prosecution's submissions:

Accordingly, Mas Swan's long statements and oral evidence in Court, do not *ipso facto* prove that

he knew that the bundles contained diamorphine. In these circumstances, the Prosecution does not rely on actual knowledge *simpliciter*.

Therefore, the Prosecution submitted that, in order for Mas Swan to successfully rebut the presumption under s 18(2) of the MDA, *the legal burden was on him* to show the court that he was *not wilfully blind* that the three bundles he was delivering into Singapore contained diamorphine. [note: 37]

49 I accept that this is the case; nonetheless, the Prosecution may still have an *evidential* burden to discharge. After all, if the accused is able to prove that he or she does not have actual knowledge of the specific nature of the drugs and no issue of wilful blindness is raised by the Prosecution, the presumption under s 18(2) of the MDA would have been rebutted, as was observed in dicta in *Tan Kiam Peng* (at [140]):

> 140 In so far as the doctrine of wilful blindness is concerned, the evidence required to be adduced by the accused to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) of the [MDA] is by no means a mere formality, even though the standard required is the civil standard (of proof on a balance of probabilities). Such an approach is not only just and fair but is also consistent with the underlying policy of the [MDA] itself. *However, we have also demonstrated that in situations where the accused truly does not know the nature of the controlled drug in his or her possession, it is clear that the accused will be able to rebut the presumption of knowledge of the nature of the controlled drug under s 18(2) on a balance of probabilities*. This will be the situation where, for example, the controlled drugs in question were slipped into a package the accused was carrying without his or her knowledge (see also above at [35] and [132]), or where the accused is otherwise devoid of actual knowledge and finds himself or herself in a situation in which the facts and circumstances do not give rise to that level of suspicion that would entail further investigation lest a finding of wilful blindness results. All this, again, is consistent with the underlying policy of the [MDA].
>
> [emphasis added]

50 Typically, the issue of wilful blindness is introduced into the equation by the Prosecution. Having invoked the doctrine of wilful blindness, it seems to me that it is only right and eminently fair that the *evidential* burden should be on the Prosecution to raise sufficient evidence of wilful blindness on the part of the accused to ensure that the accused is unable to rebut the presumption on a balance of probabilities. If that can be established, it must follow that the presumption would remain unrebutted. However, if the Prosecution concedes that the accused did not have actual knowledge and fails on its case of wilful blindness or fails to challenge his evidence as regards his belief, it must follow that the presumption is rebutted.

51 Just to be clear, I am not at all suggesting that the presumption can be rebutted simply by the accused claiming that he was ignorant of the precise nature of the controlled drugs. Instead, I am referring to a specific situation where it has been established either by way of the evidence or the Prosecution's case that the accused in fact truly did not know the specific nature of the drugs because he truly believed that it contained drugs of a different nature than that stated in the charge. Further, I should add, for the avoidance of any doubt, that if the Prosecution seeks to prove actual knowledge *via* the doctrine of wilful blindness *without* relying on the presumption under s 18(2) of the MDA, the Prosecution must prove it beyond any reasonable doubt.

The test for suspicion in the doctrine of wilful blindness

52 As already mentioned in [47] above, to demonstrate that the accused has failed to rebut the presumption under s 18(2) of the MDA, the Prosecution can seek to establish that the accused was wilfully blind as to the specific nature of the controlled drug in his possession. It is common ground that suspicion based on firm grounds and targeted on specific facts is a central feature of the doctrine of wilful blindness (*Tan Kiam Peng* at [125]):

> 125 The second central principle is that suspicion is legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding and the accused deliberately decides to turn a blind eye. However, that suspicion must, as Lord Scott perceptively points out in *Manifest Shipping* (see at [113] above), "be firmly grounded and targeted on specific facts". Mere "untargeted or speculative suspicion" is insufficient (see also Hor ([75] *supra*) at 73). A decision in this last-mentioned instance not to make further inquiries is, as the learned law lord correctly points out, tantamount to negligence, perhaps even gross negligence, and is as such insufficient to constitute a basis for a finding of wilful blindness. As Lord Scott aptly put it (see at [113] above), "[s]uspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts". It is important to note that the (unacceptable) negligence which the Judge referred to in the court below relates to the *level* of *suspicion* required before a decision not to make further inquiries will be considered to constitute wilful blindness. It is equally - if not more - important to emphasise that the Judge was therefore not stating that suspicion *per se* would not be sufficient to ground a finding of wilful blindness. On the contrary, *suspicion is a central as well as integral part of the entire doctrine of wilful blindness*. However, the caveat is that a low level of suspicion premised on a factual matrix that would not lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness where the person concerned did not in fact make further inquiries. What is of vital significance, in our view, is the substance of the matter which (in turn) depends heavily upon the *precise facts* before the court. It is equally important to note that in order for wilful blindness to be established, the appropriate level of suspicion (as just discussed) is a necessary, but not sufficient, condition, inasmuch as that level of suspicion *must then lead to a refusal to investigate further*, thus resulting in "blind eye knowledge" (see also the second quotation from the article by Wasik & Thompson at [127] below).
>
> [emphasis in original]

53 However, it was the Prosecution's submission that wilful blindness is made out if the accused person *ought* to have been suspicious that the bundles contained the specific drug which he was found to be in possession of. In support of this proposition, the Prosecution relied on a passage in *Tan Kiam Peng* (at [126]):

> 126 That having been said, the requirement of suspicion is nevertheless a vital (and, indeed, threshold) one. So, for example, if the accused makes merely token inquiries because he suspects that making more substantive inquiries might lead him to the truth which he does not want to know, that is wilful blindness. *If the factual matrix was such that the accused* ***ought to have been suspicious*** *, the court must then consider the accused's reasons for not making further inquiries*. We will come to this point below but it suffices to state at this juncture that a court would be well justified in thinking that the reason why an accused refused to make further inquiries may be because he or she was virtually certain that if further inquiries were made, his or her suspicions would be confirmed. In such a situation, the level of suspicion is, in fact, quite the opposite of the very first scenario referred to (in the preceding paragraph), and is one where a person in the accused's shoes ought to make further inquiries and the failure to do so would therefore constitute wilful blindness ...

[emphasis added]

When asked whether this in effect meant that the test for suspicion under the doctrine of wilful blindness was an objective one, Deputy Public Prosecutor Ms Sripathy-Shanaz submitted that the test was partially objective and partially subjective. [note: 38]

54 I am unable to agree with the Prosecution's submission that the Court of Appeal in *Tan Kiam Peng* had intended the test for suspicion to be anything other than a subjective one. Certainly, in my judgment, the sentence that the Prosecution cited from *Tan Kiam Peng* above does not bear that out. What the Court of Appeal in *Tan Kiam Peng* was saying was that if the objective facts show that a reasonable person would have been suspicious, this would lead to the Court's examination into the reasons given by the accused for not making inquiries and then drawing the appropriate inferences in determining whether the accused was *in fact* suspicious. This is supported by the Court of Appeal's explanation that a finding of wilful blindness could arise if an accused "was virtually certain that, if further inquires were made, *his or her suspicions* would be confirmed" [emphasis added] (see [53] above).

55 Wilful blindness may be the legal equivalent of actual knowledge, but it is not the same as actual knowledge (see *Public Prosecutor v Koo Pui Fong* [1996] 1 SLR(R) 734 at [15]). Actual knowledge is the subjective mental state where one is certain of the existence of a set of facts. Short of a confession from the accused, the Prosecution would have to rely on objective or circumstantial evidence to *infer* such a subjective mental element. One of these objective means is by relying on the doctrine of wilful blindness, which is an evidential tool towards establishing actual knowledge.

56 It is instructive to quote, at this juncture, the Court of Appeal's pronouncement in *Iwuchukwu Amara Tochi* at [6]:

> 6 ... It would thus create a wrong assumption that there was some sort of positive legal duty, meaning that the first appellant was bound in law to inspect and determine what he was carrying, and that consequentially, if he did not do so, he would be found liable *on account of that failure or omission*. The [MDA] does not prescribe any such duty. All that the [MDA] does (under s 18), is to provide the presumptions of possession and knowledge, and thus the duty of rebutting the presumptions lay with the accused. There could be various reasons why a court might not believe the accused person, or find that he had not rebutted the presumptions. The fact that he made no attempt to check what he was carrying could be one such reason. Whether the court would believe a denial of knowledge of the articles in the accused person's possession (made with or without explanation or reasons) would depend on the circumstances of the individual case.
>
> [emphasis in original]

57 In other words, wilful blindness is not a legal fiction. Instead it is purely a fact-finding inquiry for the trial judge to decide whether, on the evidence before him, the Prosecution has proven that the accused was *in fact* suspicious that the contents contained the drugs for which he is being charged and of which he was wilfully blind. To import the objective test, *ie*, constructive knowledge, into a question of criminal liability when the offence is punishable by death is, in my view, to impose a heavier burden on the accused person than the law permits. Indeed, the Court of Appeal in *Tan Kiam Peng* went some distance to draw a distinction between actual knowledge (which encompasses the doctrine of wilful blindness) and constructive knowledge, and took the view that the latter does not fall within the ambit of s 18(2) of the MDA (see *Tan Kiam Peng* at [133]–[135]). It is perhaps apposite to cite the observation by Devlin J in *Roper v Taylor's Central Garages (Exeter), Limited* [1951] 2 TLR

284 at 289, which was cited with approval in *Tan Kiam Peng* at [116]:

> The case of shutting one's eyes is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not knowledge at all - it comes within the legal conception of constructive knowledge, a conception which, generally speaking, has no place in the criminal law.

Mas Swan's defence

58 Mas Swan elected to give evidence in court. Essentially, Mas Swan admitted that he knew the three bundles found in JHA 7781 on 6 May 2009 contained controlled drugs and that he was delivering them on behalf of a Malay Singaporean man whom he knew as "Mickey" (real name Shahiran Bin Osman). [note: 39] According to Mas Swan, Mickey was a friend of "Murie", who was in turn a friend of Roshamima. [note: 40] Mas Swan also admitted to making a total of four successful drug deliveries for Mickey before being arrested. [note: 41] He claimed, however, to have believed that the bundles he was delivering contained "ecstasy" pills and not heroin. [note: 42] Therefore, it was submitted by Mr Kanagavijayan that the Charge against Mas Swan has not been made out.

Whether Mas Swan has rebutted the statutory presumption that he knew that the bundles contained diamorphine

Mas Swan's evidence was consistent that he believed the bundles contained "ecstasy" pills

59 It was Mas Swan's consistent evidence throughout his statements and oral testimony in court that he believed the bundles he was delivering for Mickey contained "ecstasy" pills. As early as the recording of his first long statement, P34 (barely two days after he was arrested), Mas Swan admitted that he had knowingly imported "ecstasy" pills or "*biji*". [note: 43] In *all* of his subsequent statements (see [11] above), only "drugs" or "ecstasy", as opposed to diamorphine or heroin, was mentioned. Even in his cautioned statement, P32, only "drugs" was mentioned.

60 According to Mas Swan, whenever there was a delivery for Mickey, Roshamima would inform Mas Swan on the day of the delivery that there would be a "segmen" and give him the location where he was supposed to drive JHA 7781 to. He testified that the word "segmen" referred to the job of bringing "ecstasy" into Singapore by Roshamima, Murie and himself. Mas Swan also claimed that he discovered the bundles they were delivering contained "ecstasy" pills only after one or two visits to Singapore with Roshamima. [note: 44] Mas Swan admitted that he had never seen the contents of the bundles [note: 45] and believed that the bundles contained "ecstasy" pills because Roshamima had told him so. [note: 46] He confirmed, however, that if he had opened the bundles and saw the "*assam*"-like substance, he would have known that the contents were not "ecstasy" pills or "ice". [note: 47]

61 Mas Swan's entire examination-in-chief was thus conducted by Mr Kanagavijayan on the basis that Mas Swan believed the bundles contained "ecstasy" pills:

> Q So at that point of time as far as you were concerned, when you mention barang or item, what are you referring to?
>
> A Ecstasy pills, your Honour.
>
> Q Do you know in which part of the car JHA 7781 was this Ecstasy pills to be placed, which part of the car?

A From my previous experience, I have seen that they placed the tablets or the pills at the passenger---at the passenger door.

Q Front---front seat passenger door or back seat passenger door?

A The front passenger door, your Honour.

Q And how did you know this, that these Ecstasy pills were to be placed in the front passenger door? How did you know this?

A Prior to that incident---prior to my arrest, I've seen them---prior to my arrest, I have seen Murie---sorry, Murie and Wawa taking the---taking the Ecstasy from the front passenger door. That is on the 3rd of May---I---there was an occasion, I can't recall whether the date was on either the 30th of April or the 1st of May or the 3rd of May, I saw them, "them" meaning Wawa and Murie taking out the Ecstasy pills from the front passenger door, your Honour.

...

Q When you left Skudai with Roshamima into Singapore in JHA7781, did you know if there were Ecstasy tablets in the vehicle?

A Yes, I know that there's Ecstasy tablets in that vehicle, your Honour.

Q So did you know in which part of the vehicle were these Ecstasy tablets placed?

A The passenger door.

Q Did you see anyone placing these Ecstasy tablets on the passenger door?

A No---

Q Then---

A ---I did not.

Q ---how did you know that the Ecstasy tablets were placed in the front passenger door?

A Because B2 [Roshamima] told me.

Objective evidence that Mas Swan believed the bundles contained "ecstasy" pills

62 Having heard all the witnesses, in my judgment, there is sufficient evidence before me to show that Mas Swan had reason to believe and in fact believed that the bundles contained "ecstasy" pills. I now provide my findings based on my assessment of the evidence.

63 As Roshamima's defence was that she did not know there were bundles concealed in JHA 7781, the evidence of Mas Swan and Roshamima conflicted wherever Mas Swan's evidence implicated Roshamima. However, after reviewing the evidence in its totality, I preferred Mas Swan's evidence over Roshamima's for the following reasons:

(a) First, Mas Swan's evidence in his statements and oral testimony was much more

consistent throughout when compared to Roshamima's evidence. Further, his evidence was also corroborated by most of the objective evidence. Although there were slight shifts in Mas Swan's evidence, those differences were, in my view, mostly immaterial or could be explained away as lapses in memory due to the passage of time. In comparison, while on the stand, Roshamima contrived all sorts of explanations when confronted with her previous statements and when her testimony at the stand was contradicted by objective evidence such as SMS text messages (see [117] and [119] below).

(b) Secondly, Mas Swan's evidence was self-incriminating whereas Roshamima's evidence was entirely self-serving. There was, in my view, utterly *no reason* for Mas Swan to incriminate Roshamima along with himself and significantly none was suggested by Mr Muzammil, counsel for Roshamima. After all, he certainly derived no benefit from implicating Roshamima. In fact, there was probably even more reason for him to exculpate her as they were in a romantic relationship and were about to be engaged to be married when they were arrested.

(1) How Mas Swan got inducted into importing controlled drugs into Singapore

64 Although Mas Swan vacillated in his evidence as to how he actually became acquainted with Mickey, the evidence showed that Mas Swan became involved in delivering drugs for Mickey through Roshamima, who was already delivering drugs into Singapore using JHA 7781 and who had suggested to Mas Swan to deliver drugs for Mickey if he wanted to make "fast money". [note: 48] Roshamima herself admitted in her statement to introducing Mickey to Mas Swan. [note: 49] Mas Swan also claimed that it was Roshamima who had told him that the bundles they were delivering for Mickey contained "ecstasy" pills and that they would be paid RM1,000 to be shared between the two of them. [note: 50] During investigations, Mas Swan was unable to identify Mickey from a collection of photographs [note: 51] shown to him [note: 52] whereas Roshamima managed to identify Mickey's photograph [note: 53] from the same collection that was shown to Mas Swan. [note: 54]

65 After agreeing to help Mickey, Mas Swan applied for his very first passport on 20 April 2009 so that he could bring drugs into Singapore; [note: 55] and he was issued an international passport bearing number "A20132600" [note: 56] on the same day. Mas Swan testified in court that he had applied for his passport at Roshamima's request so that they could both visit places in Singapore. [note: 57] Roshamima challenged, however, Mas Swan's allegation that she had persuaded him to apply for a passport to enter Singapore, claiming that he had applied for a passport voluntarily on his own accord. [note: 58] In my judgment, it was immaterial whether it was Mas Swan or Roshamima who had initiated Mas Swan's passport application. What was more significant, and I so find, was that Mas Swan was introduced to Mickey by Roshamima and that he had applied for a passport so that he could deliver drugs into Singapore for Mickey.

(2) The *modus operandi* in importing controlled drugs into Singapore

66 Together with Roshamima, Mas Swan made a total of four successful drug deliveries for Mickey before their arrest: [note: 59] the first two occurred sometime between 21 April 2009 and 30 April 2009; the third was on 1 May 2009; and the fourth was on 3 May 2009. Whenever there was a delivery, Roshamima would, on the day of the delivery, [note: 60] inform Mas Swan that there would be a "segmen" and give him the location where Mas Swan was supposed to drive JHA 7781 to. After being instructed by Roshamima, Mas Swan would drive JHA 7781 to the specified location for an exchange of cars with one of Mickey's men, [note: 61] who would drive JHA 7781 away. Mas Swan and

Roshamima would then await a call telling them that JHA 7781 was ready for collection. After collecting JHA 7781, they would proceed to enter Singapore with the drugs concealed in the car.

67 I pause here to note that, during the trial, Mr Muzammil objected to the admissibility of evidence that Roshamima was involved in deliveries for Mickey prior to 6 May 2009, on the ground that it was similar fact evidence. Although I have separately determined at [126] below that the similar fact evidence was admissible for the purpose of showing that Roshamima's defence was unbelievable, the evidence that Roshamima was involved in delivering bundles for Mickey some time before she "recruited" Mas Swan was, in my view, also relevant here to show that Mas Swan *had reason to believe* what she had told him regarding the nature of the drugs they were delivering.

(3) The events leading up to the arrest of Mas Swan and Roshamima

68 In the afternoon of 6 May 2009, Mas Swan drove a car bearing license plate number JKG 4956 [note: 62] (the "Myvi") to Hotel Seri Malaysia to meet Murie. From the hotel, they then drove separately in two cars to a shop that sold car-accessories: Mas Swan drove the Myvi while Murie drove JHA 7781. [note: 63] At the shop, Murie told Mas Swan that he and Roshamima [note: 64] intended to deliver "ecstasy" pills into Singapore that day [note: 65] and asked Mas Swan whether he (Mas Swan) was joining him, to which Mas Swan confirmed that he was. [note: 66] Roshamima also called Mas Swan sometime in the afternoon to inform him that there would be a "segmen" later that day, a term Mas Swan understood as referring to their task of bringing drugs into Singapore. [note: 67] Murie then asked Mas Swan for some "ice 0.5" or "*sejuk*", which Mas Swan knew was a prohibited drug. [note: 68] Mas Swan obligingly went to collect some "ice" from a friend called "Cek Han" while Murie fetched Roshamima from her work place. [note: 69] Roshamima claimed to have fallen asleep in the car because she was tired, having consumed "ice" for the past three days in succession.

69 After obtaining RM300 worth (half a gram) of "ice" from Cek Han, [note: 70] Mas Swan went home to collect his passport so that he could enter Singapore with Murie [note: 71] and Roshamima. [note: 72] The three of them met at a Shell petrol station at Taman Tasek around 6 pm with Murie and Roshamima arriving in JHA 7781. Subsequently, Mas Swan took over the wheel of JHA 7781 and Murie ended up driving the Myvi. [note: 73] Roshamima remained asleep, in JHA 7781. They then travelled to an Esso petrol station at Taman Tun Aminah [note: 74] and Mas Swan handed JHA 7781 over to one of Mickey's men. Mas Swan knew that the exchange of cars at the Esso petrol station was to facilitate the placing of the "ecstasy" pills in JHA 7781. [note: 75] On the witness stand, Roshamima claimed, however, that she did not know the reason for going to the Esso petrol station [note: 76] and sought to retract the part of her statement P38 [note: 77] where she stated that she had followed Mas Swan to the Esso petrol station to exchange cars with a man who worked for Mickey. In her attempt to explain why she had made the statement in P38 to ASP Gary Chan in the first place, Roshamima alleged that when P38 was recorded, she had simply assumed *ex post facto* that the bundles found in JHA 7781 on 6 May 2009 must have been placed there by one of Mickey's men because their packaging was similar to bundles she had previously delivered for Mickey. [note: 78]

70 I find that there was evidence to show that Mas Swan had agreed, on the afternoon of 6 May 2009, with Murie to deliver drugs into Singapore on the same day and that Mas Swan knew that there would be an exchange of cars at the Esso petrol station so that the drugs could be concealed in JHA 7781. This finding is supported not only by Mas Swan's evidence implicating himself, but also by an exchange of SMS text messages between Mas Swan and Murie that same evening:

first, a message was sent from Mas Swan to Murie at 5.39 pm: "*Ko gi amik wawa, aku gi amik brg 05. Kita jumpa kat shell tasik*.", which was initially translated as "You go fetch wawa [which was Roshamima's nickname], I go and take 'brg' 05. We meet at shell lake". [note: 79] It was later clarified that the words "*shell tasik*" referred to a Shell petrol station at Taman Tasek [note: 80] and that "*brg 05*" meant "ice 0.5". [note: 81] Tellingly, the reply from Murie to Mas Swan was: "*K.cpt taw..kul 6.15 kete nk pas kat die org*." [note: 82], which translates as "K be fast...at 6.15 *need to pass the car to them* [emphasis added]". [note: 83] It was clear that Murie was referring to handing over JHA 7781 to Mickey's men so that the drugs could be concealed in the car.

71 At the Esso petrol station, a man arrived in a Singapore-registered car and drove off in JHA 7781. Murie then drove off in the Singapore-registered car while Mas Swan ended up driving the Myvi with Roshamima alongside him again. [note: 84] Subsequently, the three of them went to a car workshop called "K K Auto" in Taman Seri Pulai and ended up at an eatery in Skudai as they waited for JHA 7781 to be re-delivered to them. [note: 85] Mas Swan claimed that, while they were eating there, Murie or Roshamima received a phone call to inform that the "*barang*" or "items" [note: 86] had been placed in JHA 7781. Mas Swan understood the term "*barang*" to refer to "ecstasy" pills. [note: 87] Roshamima denied receiving any call. [note: 88]

72 After the call, Murie drove off in the Singapore-registered car and returned to the eatery in JHA 7781. The three of them then journeyed to Singapore in two cars: Mas Swan and Roshamima were in JHA 7781 with Roshamima driving; [note: 89] and Murie was alone in the Myvi. There was some dispute whether Mas Swan or Roshamima was the driver when JHA 7781 entered Singapore, but nothing turns on this. Mas Swan claimed that, while on the way to Singapore, Roshamima informed Mas Swan that there were three bundles [note: 90] of "*barang*" in the front passenger door. [note: 91] Contrary to Mas Swan's allegation, Roshamima denied telling him that there were three bundles of "ecstasy" pills in JHA 7781 while they were on their way to Singapore. [note: 92] Before arriving at the Johor Immigration Checkpoint in Malaysia, they made a stop by the side of the road so that Murie could programme the destination on the GPS device that had been placed in JHA 7781. [note: 93]

(4) Phone calls and text messages to Roshamima's phone after their arrest

73 Mas Swan and Roshamima were subsequently detained while attempting to pass through Woodlands Checkpoint. Roshamima testified that while she and Mas Swan were at the ST Office, she saw the Myvi (which Murie was driving) parked in one of the lots beside JHA 7781. [note: 94] A series of phone calls was then made to Roshamima's mobile phone. Roshamima answered two calls from Murie: the first was received at 10.15 pm and lasted 56 seconds while the second call was received at 10.27 pm and lasted 54 seconds. She later answered two phone calls from Mickey: the first was received at 10.34 pm and lasted 11 seconds whereas the second call was received at 10.39 pm but was immediately disconnected. [note: 95] Thereafter, Roshamima was unable to answer the subsequent phone calls and, accordingly, the incoming calls were registered as missed calls. Six missed calls originated from Murie's Malaysia [note: 96] and Singapore [note: 97] numbers at the following times and dates:

(a) 11.23 pm on 6 May 2009;

(b) 11.41 pm on 6 May 2009;

(c) 12.09 am on 7 May 2009;

(d) 12.11 am on 7 May 2009;

(e) 12.36 am on 7 May 2009; and

(f) 12.49 am on 7 May 2009.

Another three missed calls came from Mickey's number:

(a) 11.17 pm on 6 May 2009;

(b) 12.25 am on 7 May 2009; and

(c) 1.20 am on 7 May 2009.

At the time of the trial, no evidence was adduced as to the whereabouts of Mickey and Murie.

74 It was clear to me that these phone calls were frantic attempts by both Mickey and Murie, who the evidence before me established as being part of a drug importing syndicate, to communicate with Roshamima because they were anxious to ascertain the situation at the Woodlands Checkpoint and the whereabouts of the drugs. If Roshamima was in fact ignorant of the presence of the controlled drugs in the car as she claimed, there would be every reason for her to speak to Murie and Mickey for either or both of them to come over to the ST Office to assist her to establish her alleged innocence or to alert the police of Murie's presence so that he could be questioned about the bundles concealed in the car. The flurry of phone calls from Mickey and Murie to Roshamima's mobile phone immediately after she and Mas Swan were detained at the Woodlands Checkpoint ineluctably showed not only that Roshamima was working for Mickey on that day and that she knew that there were bundles of drugs concealed in JHA 7781, but also that Roshamima was the person of contact and played a larger role in the delivery of drugs for Mickey, which corroborated Mas Swan's claim that he was merely following Roshamima after she had recently recruited him into the syndicate.

75 It is notable that Mas Swan did not receive any calls from either Murie or Mickey after he and Roshamima were detained and that all calls were made to Roshamima instead. Therefore, I believed Mas Swan's evidence that Roshamima was fully aware of the fact that they were delivering drugs for Mickey on 6 May 2009 and did in fact tell him, on that same day, that they were delivering "ecstasy" pills into Singapore.

(5) Mas Swan's evidence that he had never seen diamorphine prior to the arrest

76 As a result of the search, the three bundles of drugs were retrieved from the front left door panel of JHA 7781 (see [6] above). Mas Swan recalled that, after one of the bundles was cut open in front of him, he saw a small packet inside which contained a substance having the shape of "*assam*" or preserved prune. [note: 98] He could not recall seeing the colour of the substance. [note: 99] Mas Swan claimed that he had seen "ecstasy" pills before [note: 100] but openly admitted that the shape of the substance shown to him did not have the shape of "ecstasy" pills at all. [note: 101] Mas Swan also claimed to have heard of heroin but had never seen any before. [note: 102]

(6) The dynamics of personalities between Mas Swan and Roshamima

77 In summary, having assessed the evidence, I find, on a balance of probabilities, that Mas Swan believed Roshamima when she told him that they were delivering "ecstasy" pills on 6 May 2009 for the following reasons:

(a) Roshamima started delivering the bundles into Singapore some time before Mas Swan and it was Roshamima who brought Mas Swan into the delivery racket.

(b) As such, Mas Swan was fully aware that Roshamima had knowledge and details of the drug deliveries. During the trial, Roshamima came across as someone with an assertive and dominant personality. In contrast, from my own observation of Mas Swan during his testimony in court, I found him to be mild-mannered and somewhat timid. He came across as someone who was following instructions from Roshamima as regards the deliveries. Mas Swan was not told of the destination for each of the deliveries. He was not involved in the packing of the bundles. He was also not the one who retrieved the bundles from the door panel of JHA 7781 on 6 May 2009 or the previous occasions. His role was simply to accompany Roshamima to make the deliveries in Singapore. Even when they were detained at the Woodlands checkpoint, all calls from Murie and Mickey went to Roshamima's mobile and not Mas Swan's. This is another clear indication of the limited role and knowledge of Mas Swan.

(c) Consistent with the above assessment, on each occasion when delivery of the bundles was to take place, it was usually Roshamima who would inform Mas Swan of the "segmen", *ie*, the delivery of "ecstasy" pills into Singapore.

(d) Further, they were to be engaged and it was Roshamima who recruited Mas Swan to assist in the drug deliveries. Under these circumstances and given the dynamics of their personalities, I can accept that Mas Swan would have no reason to disbelieve what Roshamima had told him, *ie*, that the bundles contained "ecstasy" pills.

The Prosecution did not challenge Mas Swan's evidence regarding his belief that the bundles contained "ecstasy" pills

78 During the cross-examination of Mas Swan, the Prosecution did not at any point in time challenge Mas Swan's statements or oral evidence that he believed the bundles he was delivering contained "ecstasy" pills. This position is consistent with my findings that Mas Swan believed Roshamima when she told him that the bundles contained "ecstasy" pills. The Prosecution evidently shared the same view which might well explain why they did not challenge Mas Swan's belief. Under the rule in *Browne v Dunn* (1893) 6 R 67, unchallenged testimony may be considered by the court to be undisputed by the opposing party and therefore accepted by the court (*Ong Pang Siew v Public Prosecutor* [2011] 1 SLR 606 at [81]).

79 The recent case of *Khor Soon Lee v Public Prosecutor* [2011] SGCA 17 ("*Khor Soon Lee*") involved an appellant who had made previous deliveries of controlled drugs for one "Tony". The appellant was sometimes told that the bundles contained "5" (Erimin) and "K" (ketamine), but was not told of the contents at other times. The appellant's evidence at trial was that he had asked Tony in July 2008 (the appellant was arrested at Woodland's Checkpoint on 9 August 2008) whether heroin (diamorphine) would be involved in the deliveries as he was afraid of the death penalty. Tony's response was that he had never placed heroin inside the packages that the appellant was told to carry. Notably, the Prosecution did not challenge the appellant's evidence on Tony's response (see [6] of *Khor Soon Lee*). The Court of Appeal remarked at [23] of *Khor Soon Lee*:

> 23 In this regard, the fact that the Appellant had assisted in transporting *only* Controlled Drugs on a *significant number* of occasions *in the past* does weigh in favour of the Appellant. *Importantly, as we have noted above, this particular factual aspect of the Appellant's account was uncontroverted by the Prosecution in the court below as well as on appeal*.
>
> [emphasis in original]

80 In fact, based on the questions posed to Mas Swan, the Prosecution appeared to have gone so far as to accept that Mas Swan had in fact believed that the bundles contained "ecstasy" pills: [note: 103]

> Q 6th of May, when you came into Singapore, before you even crossed the immigration into Singapore, you already knew that there were three bundles of drugs in the front panel---front door panel of [JHA 7781], correct?
>
> A Yes, yes.
>
> Q You know that these three bundles hidden in the door panel were meant for delivery in Singapore, right?
>
> A Yes.
>
> Q But what you did not know was what the contents of these three bundles were, do you agree?
>
> A Yes.
>
> Q *In fact, you believe, according to your evidence, you believe the contents to be Ecstasy, but that is only a---merely a belief, your presumption. Do you agree?*
>
> A *But I believe that they are Ecstasy*.
>
> Q *Correct, that's in fact what I'm saying. You believe, you presume---more importantly, you presume. You did not see, you did not check the contents. You presumed they were Ecstasy, correct?*
>
> A *Yes*.
>
> [emphasis added]

81 Further all the relevant questions which were put by the Prosecution to Mas Swan were on the

premise that the bundles contained *drugs* and not diamorphine. [note: 104]

82 Subsequently, without challenging Mas Swan's evidence that he believed the bundles contained "ecstasy" pills, the Prosecution then proceeded to focus their cross-examination on Mas Swan's failure to check the contents of the bundles despite having had the opportunity to do so.

Q And in specific reference---with specific reference to 6th of May, if you had opened the bundle and found the *assam*-like substance, you would then be able to know that it was not Ecstasy. Agree?

A Yes.

Q And when you were travelling from---when you were travelling from petrol station in Shell in Taman Tun Aminah---Taman Munshi Ibrahim, I'm sorry---

Tan: Thank you, Mr Muzammil.

Q ---you were travelling with Roshamima in 7781 from that petrol station, travelling towards Singapore, you had the opportunity, if you wanted, to open the bundles and check it. Would you agree? Would you agree? You had the opportunity to check?

Nadarajan: No, Munshi Ibrahim, not Munshi Abdullah.

Interpreter: Oh, sorry.

Tan: Munshi Ibrahim.

A Yes.

Q Right? You could have, there's nothing stopping you from taking out the bundles. You know they were in the panel. You take them out and you check. If you wanted to, you could have done that, right, Mr Mas Swan?

A Yes.

Q Yes, but you did not want to check. You made---you chose not to check for the reason which you clearly said in paragraph 29 and 34 of your statements, that is, "I don't care what is inside as long as I get the financial reward". Agree?

Interpreter: Thirty-what? Thirty---

Tan: 29 and 34.

Interpreter: Thank you.

Tan: And I've set out the reasons for him, which is, "I don't really care what's in the con---in the bundles; as long as I get paid, I get the financial reward, I'm willing to bring it in."

A Disagree.

Q Dis---why do you disagree? You agreed that you knew the bundles were in the car. You agreed that you could check if you wanted to. Why do you disagree as to the reason why you did not want to check?

Interpreter: Sorry, can I have it again? I forgot already, so sorry.

Q You agreed---

Court: Slowly, Mr Tan.

Tan: Yes, Sir.

Court: This is an important question.

Q You agreed that you knew the three bundles were in the car.

Interpreter: Yah.

Q You agreed you had the opportunity to check if you wanted to.

Interpreter: Yah.

Q But you have disagreed as to the reason why you did not check. Right? So can you tell us why you chose not to check the bundles, Mr Mas Swan?

A Because I already---I believe that---I believe Mima when she said it's Ecstasy pills, and also I'm scared that they might be---be angry with me, "they" meaning Mima or Murie if I were to mess---I were to, you know, cut up the---the---the bundle.

Q So I put it to you, Mr Mas Swan, that these are excuses. These are not true. The reason why you chose not to check is because you did not care. The money was attractive. So long as you were paid, you did not want to know.

Interpreter: What---what's the last part? Money did not---what? Sorry, the last part.

Q So long as you were paid, and you did not want to know.

Interpreter: Oh, money was attractive, is it? Was attractive.

A Disagree.

83 It became apparent to me that from the way it conducted its case, the Prosecution was not seeking to challenge Mas Swan's actual belief, but rather, was attempting to persuade me that the presumption had not been successfully rebutted, by way of the doctrine of wilful blindness which I will separately cover below.

Whether the Prosecution was able to prove via the doctrine of wilful blindness that Mas Swan had failed to rebut the presumption

84 Although the Prosecution relied on the doctrine of wilful blindness in attempting to prove the Charge against Mas Swan and/or to demonstrate that the presumption had not been successfully rebutted by him, it was, however, *not* the Prosecution's case that Mas Swan's suspicions were *in fact* aroused. The Prosecution submitted that wilful blindness was made out in Mas Swan's case on the basis that his suspicions that the bundles contained heroin *ought* to have been aroused, and any reasonable person with his characteristics *would not* have believed Roshamima's claims that the bundles contained "ecstasy" pills, [note: 105] *ie*, the test of wilful blindness, as the Prosecution understood it, was a subjective-objective test. During closing submissions, Prosecution submitted that given the manner in which the bundles were concealed behind the door panel of JHA 7781 and the covert nature of the delivery in Singapore, Mas Swan *ought* to have suspected that the bundles contained diamorphine.

85 The Prosecution also relied on the fact that Mas Swan did not check the contents of the bundles because he *did not care* what he was delivering for Mickey. The Prosecution highlighted Mas Swan's statement in P35 that because he needed money, it did not matter to him what type of drugs he was bringing into Singapore. Notably, however, Mas Swan stated in P36: "I do know that bringing

in ecstasy into Singapore is illegal but I have to do it because I need the money. Actually it does not matter what Mickey put in my car. I will still do it as long as he pays the reward after that." Therefore, while it is true that Mas Swan conceded that, ultimately, it did not matter what drugs he was bringing into Singapore, he had consistently maintained the position that he honestly believed the bundles contained "ecstasy" pills.

86 However, none of the above goes to show that Mas Swan was *in fact* suspicious that the bundles contained diamorphine. The manner in which they were concealed and the covert nature of the intended delivery all point towards the illicit nature of the bundles, which is entirely consistent with Mas Swan's belief that he was delivering other controlled drugs such as "ecstasy" pills. The fact that Mas Swan had several or even ample opportunities to inspect the bundles likewise does not prove that he was wilfully blind to the true contents of the bundles. In fact, once it is accepted that Mas Swan believed that he was delivering bundles containing "ecstasy" pills (see my finding at [77] above), then, logically, it must follow that there would be no reason for him to be *suspicious* that the bundles contained anything but "ecstasy" pills. The considerations raised by the Prosecution would only be relevant in the present case if the test was purely objective or objective-subjective in nature, which, for the reasons already stated at [54]–[57] above, was a position I cannot agree with. As the Court of Appeal in *Khor Soon Lee* emphasized at [24]:

> 24 … A mere suspicion it could have been, but it was far from being a distinct enough peculiarity (in and of itself) to raise a strong suspicion. *At the very least, the suspicion must bear a reasonable connection to the specific drug at issue*. In both instances, [the appellant's] failure to check the contents of the package would, at best, constitute only *negligence or recklessness*.
>
> [emphasis in original]

87 In conclusion, I find that Mas Swan has successfully rebutted the presumption under s 18(2) of the MDA for the following reasons:

(a) Based on my assessment of the evidence before me, I accept that Mas Swan did *in fact* believe Roshamima that the bundles contained "ecstasy" pills.

(b) The Prosecution has also failed to adduce sufficient evidence that Mas Swan was *in fact* suspicious that the bundles contained diamorphine. As such the Prosecution fails in its case of wilful blindness against Mas Swan as well.

(c) My finding is entirely consistent with the fact that Mas Swan's evidence as regards his belief was *unchallenged* by the Prosecution.

It is imperative to stress, lest it be misinterpreted, that my finding that the presumption against Mas Swan has been rebutted was not due to Mas Swan's mere assertion that he believed the bundles contained ecstasy pills. Instead, my decision on this point was based on my own assessment of the available evidence before me that Mas Swan did believe Roshamima that the bundles contained "ecstasy" pills as well as the manner in which the Prosecution conducted its case against Mas Swan.

Roshamima's defence

88 Roshamima also elected to enter her defence, which was that she did not know that three bundles had been concealed in the front passenger door panel of JHA 7781 when both she and Mas Swan entered Singapore on 6 May 2009. The essence of her evidence (taking into account her

differing versions of the exact person they were supposed to meet in Singapore) was that they had entered Singapore on that day not to deliver drugs but to obtain items for their planned engagement/wedding.

89 As mentioned at [67] above, Mr Muzammil challenged the admissibility of the parts of Mas Swan's evidence and Roshamima's statements that refer to her prior involvement in delivering bundles for Mickey on the ground that they contain similar fact evidence that was highly prejudicial to her defence. [note: 106]

Whether the charge of importation is made out once the Prosecution proves possession of controlled drugs

90 Roshamima's defence, as mentioned above, was that she had *no knowledge whatsoever* that the bundles were concealed or existed in the door panel. If, however, the Prosecution was able to persuade me that Roshamima was aware of the concealed bundles and knew that they contained controlled drugs, the statutory presumption under s 18(2) of the MDA would, accordingly, become operative and it would then be for Roshamima to rebut it, failing which the Charge against her would be made out.

91 In this connection, it is pertinent to highlight that Roshamima did not lead any positive evidence to prove that she was not aware of the true nature of the controlled drugs. This must be so since she chose to defend the Charge at the threshold level that she had no knowledge of the existence of the bundles that were concealed in the door panel of JHA 7781 and was accordingly not in *legal possession* of the controlled drugs. It therefore follows that if the Prosecution was able to prove that Roshamima was aware that bundles containing controlled drugs were concealed in the car door panel, the presumption under s 18(2) of the MDA would operate against her, and because she has not adduced any evidence to rebut that presumption, the Charge against her would, without more, indubitably be made out. This logical sequence and its inevitable outcome were eventually conceded by Mr Muzammil during oral submissions, [note: 107] though I would like to add that I am relying on what I understand to be the legal position, and not on his concession, in making such a finding.

Whether Roshamima knew the bundles were concealed in JHA 7781 and that they contained controlled drugs

92 As I preferred Mas Swan's evidence over Roshamima's evidence and have already found at [77] above that Roshamima knew there were bundles containing controlled drugs in JHA 7781 when they both entered Singapore on 6 May 2009, it would follow that the Charge against Roshamima has thus been made out. For completeness, I nevertheless consider here the arguments that were raised by Mr Muzammil that have not been expressly dealt with above.

Roshamima's account of their purpose of visiting Singapore on 6 May 2009

93 The central argument raised by Roshamima in her defence was that they had entered Singapore on that day not to deliver drugs but to obtain items for their planned engagement/wedding (see [88] above).

(1) The differing identities of the person whom they were supposed to meet in Singapore on 6 May 2009

94 In her contemporaneous statement, P30, Roshamima claimed that their purpose for entering Singapore on 6 May 2009 was to meet *her aunt* somewhere in the Rochor area (see [13] above).

However, in her subsequent long statement P37, Roshamima changed her evidence by stating that they were supposed to meet *Murie's foster brother's wife* because Roshamima intended to *order* "decorative gifts" from her. [note: 108] During examination-in-chief, she then mentioned, for the first time, that they wanted to *borrow* (and not buy) decorative items from two different persons: *Murie's adopted elder sister named "Ann"* (who allegedly resides in Woodlands), and one "*makcik" whom Roshamima claimed was Murie's aunt*. [note: 109] In addition, Roshamimi also claimed that she addressed "Ann" as "makcik". [note: 110] Neither was called by Roshamima to corroborate her claims.

95 When asked to explain why she had described Ann as Murie's adopted elder brother's wife [note: 111] in P37 and then later as Murie's adopted elder sister, Roshamima astonishingly replied that they both meant the same thing to her:

> Q You told the Court that Ann was his adopted elder sister. His foster brother's wife is his sister-in-law.
>
> A And the el---his---his adopt---his adopted elder sister would also be his adopted brother's wife. That's my understanding of their relationship. [note: 112]

(2) The alleged corroborative evidence of their purpose of visiting Singapore on 6 May 2009

96 In an attempt to lend credence to her account, Roshamima also referred to an SMS text message which was addressed to Murie and saved in the "Draft" folder of her phone at 2.28 pm on 6 May 2009: [note: 113] "*Aku ckp aku jmpe mkck kat rodc*", which was translated to "I said I met/meet *makcik* at/near 'rodc'". [note: 114] She claimed that the word "*rodc*" meant "Rochor" and she had drafted the message to Murie so that he could inform Mas Swan that both she and Mas Swan would be meeting Murie's aunt at Rochor Centre. [note: 115]

97 When asked whether she had communicated to Mas Swan the purpose of entering Singapore to visit Murie's aunt, she initially claimed that she told him sometime after lunch on 6 May 2009. [note: 116] She later testified to have already informed him the day before, on 5 May 2009. When asked to explain the different dates, she finally settled on the account that she first informed Mas Swan on 5 May 2009 and subsequently called him again on 6 May 2009 to confirm the visit. [note: 117]

(3) Mas Swan's conflicting account of their purpose for visiting Singapore on 6 May 2009

98 Although Mas Swan initially claimed in his first few statements that the purpose of entering Singapore on 6 May 2009 was to meet Roshamima's aunt to collect "marriage gifts" [note: 118] or "wedding decoration gifts", [note: 119] he later retracted those parts of his statements and admitted they were untrue. [note: 120] He then stated that while he and Roshamima were in the ST Office, just before JHA 7781 was searched, Roshamima had directed him to say that, if anyone were to ask him about their purpose for entering Singapore, he should say that they were going to visit her aunt to collect wedding gifts. [note: 121] Predictably, she denied doing so. [note: 122]

99 At the trial, Roshamima gave conflicting and different explanations as to who she was supposed to meet during her visit to Singapore. Her evidence underwent several changes and she failed to give any satisfactory explanation for her wavering testimony. Ultimately, I accepted Mas Swan's evidence that Roshamima had fabricated another purpose for visiting Singapore in order to conceal the true

purpose of their visit, *ie*, to deliver controlled drugs into Singapore. The fact that she attempted to concoct such a story, in my view, reinforces my finding that she in fact knew that the purpose of the visit to Singapore was to deliver the bundles of controlled drugs which were concealed in JHA 7781. In my judgment, even if Roshamima had visited Singapore on 6 May 2009 to collect or buy wedding gifts (which I have found not to be true), it did not exclude the fact that she knew she was delivering controlled drugs into Singapore.

Whether parts of Mas Swan's and Roshamima's evidence were inadmissible against Roshamima by virtue of the similar fact rule

100 As there was sufficient evidence before me, without referring to the similar fact evidence, to make a finding that Roshamima knew that the bundles retrieved from JHA 7781 on 6 May 2009 contained controlled drugs (see [77] above), it is not strictly necessary for me to consider whether the similar fact evidence was admissible. However, for completeness, I have made a finding on this issue.

The law on similar fact evidence

101 The relevant provisions that govern the admissibility of similar fact evidence are ss 14 and 15 of the EA which, *inter alia*, provide as follows:

> **Facts showing existence of state of mind or of body or bodily feeling**
>
> **14**. Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.
>
> *Explanation* 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists not generally but in reference to the particular matter in question.
>
> *Explanation* 2.—But where upon the trial of a person accused of an offence the previous commission by the accused of an offence is relevant within the meaning of this section, the previous conviction of such person shall also be a relevant fact.
>
> *Illustrations*
>
> (a) A is accused of receiving stolen goods, knowing them to be stolen. It is proved that he was in possession of a particular stolen article.
>
> The fact that at the same time he was in possession of many other stolen articles is relevant as tending to show that he knew each and all of the articles of which he was in possession to be stolen.
>
> (b) A is accused of fraudulently delivering to another person a counterfeit coin, which at the time when he delivered it he knew to be counterfeit.
>
> The fact that at the time of its delivery A was possessed of a number of other pieces of counterfeit coin is relevant.
>
> The fact that A had been previously convicted of delivering to another person as genuine a

counterfeit coin, knowing it to be counterfeit, is relevant.

Facts bearing on question whether act was accidental or intentional

15. When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

Illustrations

(*a*) A is accused of burning down his house in order to obtain money for which it is insured.

The facts that A lived in several houses successively, each of which he insured, in each of which a fire occurred, and after each of which fires A received payment from a different insurance office, are relevant as tending to show that the fire was not accidental.

(*b*) A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive.

The question is whether this false entry was accidental or intentional.

The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(*c*) A is accused of fraudulently delivering to B a counterfeit dollar.

The question is whether the delivery of the dollar was accidental.

The facts that soon before or soon after the delivery to B, A delivered counterfeit dollars to C, D and E are relevant as showing that the delivery to B was not accidental.

102 Both ss 14 and 15 of the EA were the subject of detailed discussion in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 ("*Tan Meng Jee*"), in which Yong Pung How CJ, who delivered the judgment of the Court of Appeal, explained that similar fact evidence was generally excluded because (at [41]):

> 41 ... to allow it in every instance is to risk the conviction of an accused not on the evidence relating to the facts but because of past behaviour or disposition towards crime. Such evidence without doubt has a prejudicial effect against the accused. However, at times, similar facts can be so probative of guilt that to ignore it via the imposition of a blanket prohibition would unduly impair the interests of justice.

After reviewing the Singapore authorities on the matter, the Court of Appeal observed that the decisions could be classified into two categories: first, those in which the admissibility of similar fact evidence was determined by applying a test of balancing the probative value of the similar fact evidence against its prejudicial effect, a test which later found expression in the House of Lords decision in *Director of Public Prosecutions v Boardman* [1975] AC 421 ("*Boardman*"), and second, those in which the admissibility of the similar fact evidence was determined according to the categories of relevance under ss 14 and 15 without reference to any probative value/prejudicial

effect balancing test (see *Tan Meng Jee* at [44]–[47]). It then went on to approve the *Boardman* test and superimposed it onto ss 14 and 15 of the EA (see *Tan Meng Jee* at [48]).

103 The Court of Appeal saw no controversy in adopting the *Boardman* test because it was of the view that a probative value/prejudicial effect balancing test was already inherent within ss 14 and 15 of the EA (*Tan Meng Jee* at [49]–[50]):

> 49 While the plain wording of the Evidence Act does seem to adopt a categorisation approach to similar fact evidence, we think it quite clear, without deciding whether similar facts adduced for other purposes can ever be relevant, that at least where the similar facts are being adduced to prove one of the matters identified in ss 14 and 15, a balancing process must take place. Explanation 1 to s 14 states that the similar fact "must show that the state of mind exists not generally but in reference to the particular matter in question". Illustration (*o*), in this respect, is instructive. The fact that a person has the habit of shooting at people with intent to kill is irrelevant where he is being tried for the murder of a specific person. The fact that he has previously tried to shoot the same person is, however, relevant. The illustration gives us some guidance as to how the balance should be struck. Similar fact evidence is always prejudicial. In the instant case, the fact that the appellant had previously trafficked in drugs, if allowed to exercise any influence on the mind of the trier of fact, would undoubtedly prejudice the appellant. It is only when the evidence corresponds materially to the present facts that the interests of justice demand that they be admitted.
>
> 50 We find the same sort of balancing test implicit in the wording of s 15. The section uses the term "*similar* occurrence". The balancing approach involves balancing probative weight and prejudicial effect. The more "similar" the evidence, the more probative. If the possibility of prejudice is higher, then the degree of similarity needs to be correspondingly higher before the evidence is admissible. There is no magic in the term "similar". In reality, what is "similar" enough is only so because its prejudicial effect has been outweighed by the sheer probity of the similar fact evidence.
>
> [emphasis in original]

104 The Court of Appeal's approval of the *Boardman* test was also influenced by two other factors: first, the it accepted that the courts had a general discretion to exclude any kind of evidence (not just similar fact evidence) prejudicial to the accused if it would be *unjust* to do so ("the fairness exception"), even if the evidence was deemed relevant and admissible under the EA; and second, it took the view that the *Boardman* test was, in substance, simply another form of the fairness exception (at [51] and [52]):

> 51 That there has to be a balancing process, therefore, seems to us to be beyond doubt. We are aware, however, of the difficulties inherent in the actual application of this test. Associate Professor Chin Tet Yung in his textbook, *Evidence*, has this to say:
>
> > The ... approach involving degrees of relevancy can be described as probably one of the most difficult doctrines to understand and apply in the law of evidence.
>
> 52 In response, we make first the observation that the alternative strict categorisation test has never itself been wholly "strict". As Professor Chin points out, there is a judicial discretion to exclude prejudicial evidence which actually mirrors the *Boardman* test. In *Noor Mohamed v R* [1949] AC 182, Lord du Parcq delivering the advice of the Privy Council said that, *where it would be unjust to admit prejudicial evidence even though technically admissible, a discretion would lie*

to the judge to exclude that evidence. We are of the view that the difference between that discretion and the balancing process which we have identified to be inherent in the wording of the Evidence Act is one of degree rather than of substance. As to the actual content of the balancing process, the editors of *Cross on Evidence* have usefully identified three factors, namely, cogency, strength of inference and relevance. Although non-exhaustive, these factors should provide some guidance to the trial judge. The relevance of such evidence is always a matter of law and an appeal lies to this court should the trial judge have been mistaken in admitting it…

[emphasis added]

105 However, the authority of *Tan Meng Jee* (and the subsequent cases that have relied on it) on the application of the *Boardman* test has, for all practical purposes, been superseded by the recent decision of the court of three judges in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*"). Although, under the doctrine of *stare decisis*, *Tan Meng Jee*, a Court of Appeal decision, is technically of greater authority than *Phyllis Tan*, Professor Jeffrey Pinsler SC has commented, persuasively, that the latter must now be regarded as the leading authority for the following reasons (*Evidence and the Litigation Process* (LexisNexis, 3rd Ed, 2010) ("*Pinsler*") at para 10.19):

... Apart from the composition of the court (including the Chief Justice and a Justice of Appeal) and the reference by the Court of Appeal in [*Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377] to *Phyllis* as the case in which the matter would be determined, and the subsequent observation by the Court of Appeal [in *Lee Chez Kee v PP* [2008] 3 SLR(R) 447] concerning the status of *Phyllis* on the issue of discretion, the Chief Justice's judgment [in *Phyllis*] is clearly intended to resolve various difficulties created by previous cases (including decisions of the Court of Appeal) and to clarify the law once and for all.

106 In *Phyllis Tan*, Chan Sek Keong CJ, who delivered the judgment, concluded, after a comprehensive review of the authorities, that the fairness exception as expressed in the House of Lords decision *R v Sang* [1980] AC 402 was inapplicable in Singapore because it was inconsistent with the overarching principle in the EA that "all relevant evidence is admissible unless specifically expressed to be inadmissible" (although Chan CJ did acknowledge that in so far as cases involving entrapment evidence were concerned, an application of the common law fairness exception should result in the same outcome because, by definition, the probative effect of entrapment evidence would always outweigh its prejudicial effect on the accused) (see *Phyllis Tan* at [126]). Commenting on *Phyllis Tan*, the Court of Appeal in *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 ("*Lee Chez Kee*") further observed that the courts have no residual discretion to exclude evidence deemed legally relevant under the EA (at [106]):

106 ... the court of three judges has recently in *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239 ("*Phyllis Tan*") persuasively ruled that apart from the confines of the EA, there is no residual discretion to exclude evidence which is otherwise rendered legally relevant by the EA.

107 Based on these observations in *Phyllis Tan* and *Lee Chez Kee*, it is clear that the admissibility of similar fact evidence has to be determined according to the categories of relevance under ss 14 and 15 and *Tan Meng Jee* is inconsistent with the EA in so far as it allows for the exclusion of similar fact evidence that is otherwise deemed relevant under those provisions. This does not necessarily mean, however, that all previous cases where the probative value/prejudicial effect balancing test had been applied, *eg*, *Tan Meng Jee*, were therefore wrongly decided. As mentioned by the Court of

Appeal in *Tan Meng Jee* at [49]–[50], both the requirement in Explanation 1 to s 14 (see [101] above) and the term "similar occurrence" in s 15 appear to correspond with the "striking similarity" test extensively referred to in *Boardman*, which is an application of the probative value/prejudicial effect balancing test: the more "similar" the evidence, the more probative it is (see *Tan Meng Jee* at [50]; *Hin Hup Bus Service (a firm) v Tay Chwee Hiang* [2006] 4 SLR(R) 723 at [39]). Accordingly, in my view, decisions that have applied the "striking similarity" test are therefore entirely consistent with ss 14 and 15 of the EA.

108 Both ss 14 and 15 of the EA allow for the admission of similar fact evidence to show the accused's state of mind. According to the editors of *Sarkar's Law of Evidence* (Wadhwa & Co, 16th Ed, 2007) ("*Sarkar*") and *Ratanlal & Dhirajlal's The Law of Evidence* (Wadhwa & Co, 22nd Ed, 2006) ("*Ratanlal*") (at p 313), s 15 is an application of s 14, which embodies the general rule governing the admissibility of similar fact evidence (*Sarkar* at p 385):

> When studying s 14, it is well to consider the provision in s 15 which is an application of the rule in s 14. The two sections should be read together for a grasp of the true principle. S 14 deals with the relevancy of facts showing intention, knowledge, &c, when the existence of any state of mind or body or bodily feeling is in issue. Under s 15 when the act in question forms a *series* of similar occurrences, evidence of similar facts is admissible to prove intention or knowledge of the person and to rebut the defence of accident, mistake, etc. The [Indian] Evidence Act does not go beyond the English law in regard to the admissibility of similar facts to prove states of mind.

109 The general rule in s 14 is, however, subject to the very important qualification in Explanation 1 that the state of mind shown must be a condition of thought and feeling having distinct and immediate reference to the particular matter in question and cannot simply be evidence of general disposition, habit and tendency to do the act in question (see *Sarkar* at p 384). Being an application of the general rule, s 15 must also be read subject to s 14 so far as evidence of state of mind is concerned (see *Sarkar* at p 401).

110 In short, s 15 of the EA only applies where:

(a) there is a question whether an act was intentional or accidental, or was done with a particular knowledge or intention; and

(b) it is sought to prove that the act forms part of a *series* of similar occurrences.

The operating principle behind s 15 was explained in *Pinsler* at para 3.17:

> ... The point of [s 15] is that if the accused alleges that his act was unintentional or done without particular knowledge, the prosecution may wish to adduce evidence of 'a series of similar occurrences' in which the accused was involved and thereby show the improbability of the accused's explanation. The basis of the principle is *that 'a series of acts with the same characteristics is unlikely to be produced by accident or inadvertence*'.
>
> [emphasis added]

In fact, the object of s 15 goes further than that of s 14 (*Sarkar* at 405):

> The evidence of similar acts may have the object of negativing an innocent intent as in s. 14, but

this section goes further. Here, the object is not merely to negative innocent intent, but *to prove a pre-existing plan or design and that the act charged is only one of a class or series designed to bring about a certain result with a certain object*.

[emphasis added]

111 Given that Roshamima's defence was that she had entered Singapore with the purpose of visiting Murie's aunt or his adopted brother's wife or his adopted elder sister and did not know there were bundles hidden in the door panel of JHA 7781, the Prosecution correctly sought to rely on s 15 of the EA to admit evidence of her previous deliveries of bundles for Mickey to show that her entering into Singapore on 6 May 2009 was simply the latest instance of a series of deliveries of bundles for Mickey. The issue then was whether the evidence of the previous deliveries shared sufficient common features or similarities with the events that occurred on 6 May 2009 to render it relevant and admissible under s 15 of the EA; and, after reviewing the evidence, I came to the conclusion that that test has been met in the present case.

The similar fact evidence showing that Roshamima delivered bundles for Mickey with Murie and Mas Swan

(1) Roshamima's previous deliveries

112 Besides Mas Swan's statements implicating Roshamima that she was involved in delivering bundles for Mickey prior to 6 May 2009, Roshamima also admitted to having delivered bundles for Mickey before 6 May 2009. She also revealed that she was paid RM1,000 per trip to follow Murie into Singapore by car to deliver bundles [note: 123] that were packaged identically to the ones seized on the day of their arrest on 6 May 2009. [note: 124] On at least one occasion, JHA 7781 was used to deliver a bundle which was likewise concealed in the driver's door panel. [note: 125]

113 Roshamima affirmed her evidence in P38 that she and Mas Swan had previously delivered bundles for Mickey on two occasions: once to Woodlands and the other to Jalan Kayu, [note: 126] possibly on 30 April 2009 (after 9.10 pm) and 1 May 2009 (after 11.28 pm), [note: 127] although she was unsure of the exact dates. [note: 128] On the first occasion, they had entered Singapore together in JHA 7781 to deliver a bundle to someone in Woodlands on Mickey's behalf. [note: 129] Prior to entering Singapore, Mas Swan drove JHA 7781 to a place called Plaza Pelangi to meet Mickey. [note: 130] She claimed that Mickey had contacted her earlier, asking her to help deliver items into Singapore and that she relented only after Mas Swan gave his approval. [note: 131] Essentially, contrary to the evidence before me, she attempted to portray herself as a mere follower of Mas Swan's decision to help Mickey. [note: 132] She also testified that Mickey had assured her that the items were not dangerous and were simply "*ubat*" or medicine [note: 133] but admitted, however, to being suspicious of the fact that the bundle was hidden in the door panel and the fact that they were instructed to park in a dark place upon arrival in Singapore. When questioned by her own counsel on whether she raised her suspicions with Mickey, she claimed to have done so but subsequently became "too lazy" to press him further after he reassured her that the items were not dangerous. [note: 134] After the delivery, Mickey handed her RM2,000, out of which RM1,000 was for helping Mickey, RM500 was a wedding gift, and RM500 was for repayment of a personal loan. [note: 135]

114 On the subsequent occasion, possibly around 1 May 2009, Mickey had contacted Roshamima

for help. Roshamima asked Mickey to tell her what the contents of the bundles were and again allegedly received the same assurance that it was not dangerous and the police authorities would not apprehend them. [note: 136] Although she continued to have doubts as to what Mickey had told her, she chose to ignore them. [note: 137] After agreeing to help Mickey, Roshamima and Mas Swan delivered two bundles to Jalan Kayu in Singapore: one bundle was hidden in the front passenger's door panel and the other was hidden in the driver's door panel. [note: 138] She retrieved both bundles from the door panels only after they had arrived at their destination. [note: 139] Before entering Singapore, Mas Swan and Roshamima had driven JHA 7781 to a Shell "Kipmart" at Tampoi in order to exchange cars with one of Mickey's men. [note: 140] She claimed that, after the delivery, Mickey paid Mas Swan a sum of RM1,000 although she received nothing. [note: 141] On both occasions, Roshamima was the one who removed the bundles from the door panels and both of them never saw the contents inside the bundles, although they both handled the bundles. [note: 142] She accepted that she had the opportunity to open the bundles but did not do so because Mickey had told her not to "spoil" them. [note: 143]

(2) Money received from the previous deliveries

115 She also admitted to twice using JHA 7781 to deliver bundles into Singapore together with Mas Swan, on Mickey's instructions. [note: 144] Murie occasionally came along in his own car. [note: 145] Mas Swan and Roshamima were paid a total sum of RM2,000 by Mickey for each delivery. [note: 146] Roshamima claimed that, on a few occasions, Mickey assured her that the bundles did not contain drugs [note: 147] or anything illegal (one such assurance came immediately after he had instructed Roshamima to relay to Murie the news that a man whom they all knew as "Skin" had been arrested). [note: 148] She also claimed to have asked Murie whether he was delivering drugs or cigarettes into Singapore but Murie denied doing so. [note: 149] It did occur to her, however, that the RM1,000 paid to her for each delivery was a large and suspicious sum of money, although she eventually decided "not to think too much into it". [note: 150]

116 On the two occasions that she and Mas Swan delivered bundles for Mickey, they would first arrange for JHA 7781 to be handed over to one of Mickey's men in Johor so that the bundle intended for delivery could be placed in the car. After the bundle was hidden in JHA 7781, the car would be returned to them and they would then drive the car into Singapore. After they had reached their destination in Singapore, Roshamima would, as instructed, remove the bundle that was concealed in the panel of the front passenger seat before passing it to someone who would arrive to collect it from them. [note: 151]

(3) Documentary evidence: Traveller's movement records and phone records

117 According to the traveller's movement records from ICA, Mas Swan and Roshamima entered Singapore on 30 April 2009 at about 9.10 pm and left Singapore at about 12.29 am on 1 May 2009. [note: 152] This was also Mas Swan's third visit into Singapore after obtaining his passport. On the morning of 30 April 2009, a series of SMS text messages were sent from Roshamima's mobile phone:

	To	Time	Text (in Malay)	Translation

1	Mickey	6.02 am	*Akum, abg leh cn4omkan dgn wa x ari ni ada segmen ke x?*	Peace be upon you, abg/abang/dear [note: 153] can you confirm with wa today got "segmen" or not?
2	Murie	6.16 am	*Ada segmen xari ni? In4om aku awl2 k..* [note: 154]	Got "segmen" or not today? Inform me early k..
3	Mas Swan	6.18 am	*Xtau ada segmen ke x ari. Abg ready je r.* [note: 155]	Don't know got "segmen" or not today. Abg/Abang/Dear just get ready only.
4	Mas Swan	7.18 am	*Ada segmen ari ni* [note: 156]	Got "segmen" today.
5	Mas Swan	7.19 am	*Adoi ada segmen tp kol muri xdpt. Leceh tol r*	Oh dear got "segmen" but called muri cannot get. Really troublesome
6	Mas Swan	7.21 am	*Fllow kot, t syg bgtau.*	May be follow, "sayang" will tell later.
7	Murie	7.24 am	*Bgun r! Ada segmen ni*	Wake up! got "segmen"

The Prosecution sought to use the above SMS text messages to show that, on 30 April 2009, Roshamima was actively preparing for a "segmen", *ie*, delivery of bundles of drugs into Singapore.

118 Although Roshamima made a desperate attempt to explain that the word "segmen" was a code-word for "ice" and did not refer to the job of delivering drugs into Singapore (as claimed by Mas Swan), it was obvious that there was no truth whatsoever in her evidence on this point. Not only did Roshamima's answers on the witness stand sound contrived, she even contradicted herself at one point as she struggled during cross-examination to explain at different times the meanings of the SMS text messages she had sent on 30 April 2009. First, she claimed that she was asking Murie for "ice", and, perhaps unwittingly, later claimed that she wanted to return Murie some "ice" before she finished her supply. By way of contrast, Mas Swan's evidence, which I accepted, was consistent and clearly much more credible when seen in light of the other corroborating evidence. Accordingly, I find that, at all material times, Roshamima knew that she was delivering controlled drugs each time she made a delivery on Mickey's behalf.

119 The traveller's movement records from ICA also show that on 9 March 2009 Roshamima and Murie had entered Singapore at around the same time (11.17 pm) [note: 157] and left Singapore slightly more than an hour later (12.32 am the next day). [note: 158] A series of SMS messages were retrieved from the "Deleted" folder in Roshamima's mobile phone. These SMS text messages were received on the evening of 9 March 2009, not long before Roshamima and Murie had entered Singapore that night:

	From	**Time**	**Text (in Malay)**	**Translation**
1	Murie	7.49 pm	*X taw lg. tgu dieowg bg taw*	Don't know yet. Wait for them to tell

2	Murie	7.53 pm	*Ko jgn risau..brg aku taw die smpn katne..cume law dieowg srh ko bwk kete sorang2, ko bgtaw aku dulu.n jgn bwk law aku x bg kputusan. faham?*	You don't worry.. "brg"/*barang*/stuff/thing/goods [note: 159] I know where he/she keep.. **but if they tell you to bring the car alone, you tell me first. Don't bring if I didn't give my decision, understand?**
3	Murie	8.05 pm	*Ko blh msk sorang ke? np smpai tmbk je? law die org same2 ngn ko xpe.ape2 hal, srh die org kol aku..ko bkn kj ngn die org..ko kj ngn aku*.	Can you enter alone? Why only until the causeway? If only until the causeway then no need..if they are together with you never mind. If there's anything. ask them to call me..**you are not working with them..you're working with me**.
4	Murie	8.27 pm	*K. mcm ni,ko ckp ngn die org..ko cume akan dgr ckp aku je..ape2 pn,aku yg bg kata putus.jgn trpedaya ngn kata2 dn duet.nyawa ko skrg tggjwb aku..*	K.its like this, you tell them..you will only listen to what I say..whatever it is, I'm the one making the decision. **don't be deceived by words and money.your life is now my responsibility**..
5	Murie	8.40 pm	*Mury rsaukan ko ni wa,.Ko pn, kne ikt ckp die,cz pe2,.Die yg tggung..Jgn kjarkan wet sgt..Ak tau ko nga nk crk wet,p kne ngat kje ni,rsiko tggi..Jd kne plan*	Mury worried about you wa..also you have to follow what he says, because whatever it is..he's the one responsible..don't be chasing after money only..**I know you're in need of money, but have to remember this work is highly risky..so must plan**
6	Murie	8.40 pm	*n pk btol2, k*	have to think carefully, k
7	Murie	9.00 pm	*Itu aku taw..walaupn kte wat 2 team,aku kne taw gak ape2 hal pn..bdk2 umh ko semua taw yg ko wat job ngn aku.aku yg bwk ko msk dlm team ni..in case jd b*	I know that..although we make 2 team, I still have to know whatever the matter is..the boys at your house all know you do job with me**. I'm the one who brought you into this team..in case**
8	Murie	9.00 pm	*n d e brk,die org cari aku, bkn mamat spore atau pn adam..brt tggjwb aku wa..law nk wat 2 team skali pn, np aku die owg ketepikn? np mst nk bcng asing2??*	**something bad happens, they will look for me, not mamat s p o r e or adam..my responsibility is heavy wa**..even if with 2 team, why did they exclude me? why must discussion be done separately?

[emphasis in bold added]

The Prosecution relied on this series of SMS messages to show that, even before Mas Swan was recruited to deliver drugs, Roshamima was already deeply involved in a drug importing syndicate with Murie as early as 9 March 2009, and that she was no naive "babe in the woods". [note: 160] The references in the SMS text messages such as" *your life is now my responsibility*", "*have to remember this work is highly risky..so must plan*", "*something bad happens, they will look for me, not mamat spore or adam..my responsibility is heavy*" clearly referred to the highly risky tasks of delivering controlled drugs into Singapore. Roshamima was not able to provide any credible explanation for these text messages.

120 In an attempt to explain the SMS text messages that Murie had sent her on 9 March 2009 (see [119] above), Roshamima claimed that, on that day, together with Murie, she met someone called "Adam" who told her to drive a car (not JHA 7781) [note: 161] carrying drugs, *ie*, "*Batu*" or "ice" [note: 162], into Singapore. When asked to explain Murie's role on that day and why he had sent her messages reminding her that she was working for him, Roshamima said she did not know (see item 3 at [119] above):

> Court: Okay. Why would Murie remind you in this SMS that you are working for him?
>
> Witness: I do not---I---I do not know why but he just want me to tell Adam---Adam that I'm working for him i.e. Murie and I should not come out with other things. I should not be telling Adam that I have been accompanying Murie to see his friends in Singapore. [note: 163]

Similarly, she could not explain what Murie meant when he referred to there being two "teams" (see item 7 at [119] above):

> Q Why did he have to say that there were two teams? Even if what you say is true, why did Murie have to say that you and---that you made two teams?
>
> Why?
>
> A I do not know why he said like that. Maybe because when I told Murie that Adam said we made two teams, so this is---this is what Murie SMS me.
>
> Court: But this---this is Murie telling you, Roshamima, that "we", as in Murie, make two teams. This is not a sport, correct? The teams does not refer to a sport, correct? So these two teams refer to what? Teams for what purpose?
>
> Witness: Because I narrated to Murie that Adam told me that they, Adam, making two teams, so---and then this was the response---the SMS response from Murie, your Honour, touching also on the two teams but I---I myself am not sure what is these two team about.
>
> Court: So what is happening, according to you, is every time you recei---you receive an SMS, you will call---you will call Murie and Murie will then SMS you?

Witness: It's either way. We could communicate with each other via SMS or via calling each other, your Honour, Murie and I. So whatever---during the discussion with Adam, I would narrate---I would back---feedback to Murie, either by phoning him or SMS him, your Honour. And then during the discussion---during the discussion with Adam and Murie would give me a call and so---so it was a bit of---a bit of a pandemonium because I was trying to focus on both. When I was discussing with Adam and suddenly there was this incoming call from Murie, and so therefore I was not able to focus on both of them, so I---I don't---at times I do not know what the---what certain terms like in this case the "team" means, your Honour, because I was doing two things at one time, talking to Adam and also talking to---or receiving SMS from this Murie.

Tan: May I continue, Sir?

Court: Yes, please.

121 She confirmed, however, that she was indeed in financial difficulty at the time, as mentioned in Murie's SMS message (see item 5 at [119] above). [note: 164]

122 When asked during cross-examination what the word "segmen" in her SMS text message to Murie on 30 April 2009 meant (see item 2 at [117] above), Roshamima explained that the word referred to "ice" and she was actually asking Mickey and Murie for some "ice". [note: 165] She also explained that her subsequent message to Mas Swan (see item 3 at [117] above) was an instruction to get some money and be ready in case there was "ice" available for them. [note: 166] However, subsequently during another point of cross-examination, she claimed instead that she wanted to *return* Murie some "ice". [note: 167] As for her message to Mas Swan telling him "May be follow, "sayang" will tell later" (see item 6 at [117] above), she explained that Murie wanted to go for a karaoke session and she had simply asked Mas Swan whether he wanted to follow Murie as well. [note: 168]

123 Mas Swan's evidence that Roshamima was regularly involved in Mickey's drug syndicate was also corroborated by the ICA travel movement records, which showed that Roshamima had travelled into Singapore a total number of 29 times for very short visits late at night within a period of about 3 months, and also the SMS text messages retrieved from Roshamima's mobile phone, which showed that she was doing work with Murie which was "highly risky" and involved Murie expressing concern that Roshamima's "life [was] now [his] responsibility" (see [119] above).

(4) Roshamima's account of the purpose of her previous visits to Singapore

124 Roshamima confirmed that between 25 February 2009 and 6 May 2009, she had entered Singapore together with Murie a total of 17 times, [note: 169] and that the purpose for the majority of those visits was to meet Murie's friends [note: 170] and to visit night clubs in the Orchard Road and Clarke Quay areas. [note: 171] Based on her recollection, only one or two of those visits were for the purpose of delivering bundles [note: 172] and on at least one occasion, JHA 7781 was the car used for the delivery. [note: 173] During the trial, Roshamima sought to retract the following portions of her statement in P38 which stated that Murie had paid her RM1,000 each time she followed him into Singapore, [note: 174] claiming that it was suggested to her by ASP Gary Chan and was untrue

because she did not receive such money. [note: 175] She did admit, however, that Murie had paid her money in sums of RM300–400 and, occasionally, in Singapore dollars as "tips" [note: 176] whenever she accompanied him to visit night clubs and karaoke bars in Malaysia or Singapore. [note: 177]

125 Roshamima admitted that on these two occasions, Mickey had spoken to her, and not Mas Swan, about bringing in the bundles. Roshamima said that Mas Swan had always let her do the "talking". [note: 178]

My findings on the admissibility of the similar fact evidence

126 In the light of the foregoing, it was clear that, on 6 May 2009, just like on the previous occasions, Roshamima knew that there had been an exchange of cars with one of Mickey's men prior to their entering Singapore. This much was evident from her long statements. [note: 179] I disbelieved her evidence on the witness stand that that portion of her statement was based on her assumption that the bundles were placed there by one of Mickey's men, an assumption that was formed only *after* she was shown the three bundles found in JHA 7781 on 6 May 2009 (see [69] above). In my view, if she had truly assumed *ex post facto* that the bundles had been placed in JHA 7781 by one of Mickey's men, she would have said so in her long statement instead of telling the recording officer that the purpose of bringing JHA 7781 to the Esso petrol station on 6 May 2009 was to exchange cars with someone working for Mickey.

127 Roshamima's explanation on the witness stand was simply too incredible for it to be taken seriously. Further to that, the circumstances surrounding the exchange of cars, such as the involvement of Mas Swan and Murie, the similar wait for JHA 7781 to be returned to them after the exchange of cars, and the direct route into Singapore after taking back possession of JHA 7781, were *virtually identical* to the previous times Roshamima delivered bundles for Mickey.

128 The highly similar circumstances show that it was very likely that Roshamima was aware that they were delivering bundles of controlled drugs into Singapore on 6 May 2009. For that reason, I find that the evidence in Mas Swan's and Roshamima's statements relevant and admissible under s 15 of the EA. Likewise, the "striking" similarity between the similar fact evidence and the events on 6 May 2009 gives the evidence an explanatory force that is highly probative of the level of Roshamima's knowledge on 6 May 2009. Therefore, in my judgment, I find that the evidence was also admissible under the probative effect/prejudicial effect balancing test.

129 In summary, I find that the Prosecution has proved beyond a reasonable doubt that Roshamima knew on 6 May 2009 when she entered Singapore in JHA 7781 with Mas Swan that bundles containing controlled drugs were concealed in the door panel of the car on each of the following bases:

(a) I accepted Mas Swan's evidence over Roshamima's that they both knew that the bundles of controlled drugs were concealed in the door panel of JHA 7781.

(b) The admission of similar fact evidence of previous deliveries under strikingly similar circumstances and/or under the probative effect/prejudicial effect balancing test that Roshamima knew that bundles of controlled drugs were concealed in the door panel of JHA 7781.

130 As Roshamima did not adduce any evidence that she believed that the bundles contained controlled drugs other than diamorphine, the presumption under s 18(2) of the MDA remains unrebutted.

Conclusion

Conclusion

131 By reason of my findings, after having carefully reviewed and considered all the evidence before me, I make the following orders:

(a) As I am satisfied that Mas Swan has successfully rebutted the presumption under s 18(2) of the MDA, the Prosecution has failed to prove the Charge against Mas Swan beyond a reasonable doubt. Therefore the Charge against Mas Swan has not been made out and I acquit him of the Charge accordingly.

(b) In view of my finding that Mas Swan has successfully rebutted the presumption under s 18(2) of MDA, the Charge as currently framed against Roshamima would have to be amended. Pursuant to my power under s163(1) of the CPC, I altered the Charge against Roshamima as follows:

AMENDED CHARGE

You,

Roshamima binti Roslan, F/24 yrs

FIN No: G9049352W

Date of Birth: 22 October 1985

are charged that you, on 6 May 2009, at or about 9.56 p.m. in a Malaysian registered motor car bearing registration number JHA 7781, at Woodlands Checkpoint, Singapore, did import into Singapore a controlled drug specified in Class A of the First Schedule of the [MDA], Chapter 185, to wit, one hundred and twenty-three (123) packets of substances containing not less than 21.48 grams of diamorphine, without any authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 of the [MDA] and punishable under section 33 of the [MDA].

Pursuant to s 163(2) of the CPC, the Amended Charge was read out and explained to Roshamima. In accordance with s 164(1) of the CPC, Roshamima was called upon to enter her plea. After consulting her counsel, Mr Muzammil, Roshamima maintained her original plea of not guilty and confirmed that she did not wish to call any new witness or recall any witness in relation to the Amended Charge. As there is no material difference between the Amended Charge and the Charge, I am satisfied that the Prosecution has proven the ingredients of the Amended Charge against Roshamima beyond a reasonable doubt. In the premises, I find Roshamima guilty of the Amended Charge and hereby convict her under s 7 of the MDA. The mandatory death sentence prescribed under s 33 read with the Second Schedule of the MDA is pronounced accordingly.

[note: 1] NE, Day 6, p 29, lines 6-8

[note: 2] P34, p 2 para [3]

[note: 3] NE, Day 6, p 29, lines 3-5

[note: 4] NE, Day 1, p 60, lines 30-32

[note: 5] AB 198

[note: 6] Cautioned Statement, P32

[note: 7] NE, Day 3, p 49

[note: 8] NE, Day 3, p 56

[note: 9] AB 234

[note: 10] AB 234, Item 15 c) read with NE, Day 5, p 46, lines 27-32

[note: 11] AB 235

[note: 12] NE, Day 7, p 28, lines 13-16

[note: 13] AB191 at 10(b)

[note: 14] NE, Day 1, p 105, lines 15-17

[note: 15] NE, Day 2, p 41, lines 23-30

[note: 16] NE, Day 3, p 2, lines 1-4, 16-21

[note: 17] NE, Day 3, p 4, lines 16-21

[note: 18] Para 39(a) of Sch 6 to CPC 2010

[note: 19] NE, Day 4, p 10, lines 6-7, 18-23

[note: 20] Defence's Submissions (Trial within a Trial) at para [2]

[note: 21] NE, Day 4, p 10, lines 24-27, 31

[note: 22] NE, Day 4, p 6, lines 26-31

[note: 23] NE, Day 4, p 4, lines 6-9

[note: 24] NE, Day 4, p 24, lines 2-13

[note: 25] NE, Day 4, p 22, lines 13-22

[note: 26] NE, Day 4, p 24, lines 5-10

[note: 27] NE, Day 4, p 16, lines 14-18

[note: 28] NE, Day 4, p 11, lines 7-12

[note: 29] NE, Day 3, p 2, lines 16-19

[note: 30] NE, Day 4, p 25 lines 6-10, 17-26; p 26, lines 3-5

[note: 31] NE, Day 4, p 49, lines 21-29

[note: 32] Submissions by Prosecution (Voir Dire) at p 4 paras [10]-[11]

[note: 33] Prosecution's Closing Submissions, p17 at [19]

[note: 34] NE, Day 12, p 42, lines 9-16

[note: 35] NE, Day 12, p 37, lines 18-20; p 38, lines 5-32; p 39, lines 1-4, 17-23

[note: 36] Prosecution's Closing Submissions at p 50 paras [94]-[95]

[note: 37] NE, Day 12, p 46, lines 3-8; p 47, lines 2-4

[note: 38] NE, Day 12, p 7, lines 15-20

[note: 39] P34 at para [5]

[note: 40] P39 at para [40]

[note: 41] P35 at paras [14]; [18]; [21] and [23]

[note: 42] P34 at para [7]

[note: 43] P34 at para [5]

[note: 44] NE, Day 6, p 12 lines 24-29; p24, lines 6-9

[note: 45] NE, Day 7, p 56, lines 30-32

[note: 46] NE, Day 7, p 56, lines 22-24

[note: 47] NE, Day 7, p 58, lines 5-11

[note: 48] P36 at para [34]

[note: 49] P40 at para [36]

[note: 50] P41 at para [46]

[note: 51] PB 311

[note: 52] P43 at para [55]

[note: 53] PB 303: Photo 22

[note: 54] P42 at para [41]

[note: 55] P36 at para [32]

[note: 56] Exhibit 52A

[note: 57] NE, Day 5, p 13

[note: 58] NE, Day 9, p 33, lines 1-4

[note: 59] P35 at [14], [18], [21] and [23]

[note: 60] P35 at [14], [18], [21], [23]

[note: 61] P35 at [14], [18], [21], [23]

[note: 62] P37 at p 3 para [5]

[note: 63] NE, Day 5, p16, lines 18-22; p17, lines 26-29

[note: 64] NE, Day 5, p 22, lines 1-8, p 23, lines 24-32

[note: 65] NE, Day 5, p 22, lines 5-8

[note: 66] NE, Day 6, p 34, lines 8-13

[note: 67] P35 at para [14]

[note: 68] NE, Day 7, p 54, lines 28-30

[note: 69] NE, Day 8, p 57, lines 9-11

[note: 70] NE, Day 6, p 37, lines 23-32

[note: 71] NE, Day 5, p 21, lines 23-24, 27-28, 30-32

[note: 72] NE, Day 5, p 23, lines 27-29

[note: 73] NE, Day 8, p 59, line 10, p 60 line 18

[note: 74] NE, Day 8, p 60, lines 13-15

[note: 75] NE, Day 5 p 14 lines 18-21 *cf* NE Day 5, p 30, lines 10-31, p 31 lines 28-32, p 32, lines 1-9

[note: 76] NE, Day 8, p 6, lines 18-19

[note: 77] Para [33]

[note: 78] NE, Day 10, p 37, lines 7-26, p 38, lines 4-10

[note: 79] PSB 11 item 15

[note: 80] NE, Day 6, p 41, lines 26-31

[note: 81] NE, Day 5, p 51, lines 20-21

[note: 82] AB 89 item 15

[note: 83] PSB 5 item 25

[note: 84] NE, Day 5, p 28, lines 7-15

[note: 85] NE, Day 5, p 28, lines 18-29, p 29, lines 6-9, p 30, lines 6-13

[note: 86] NE, Day 5, p 30, lines 12-13

[note: 87] NE, Day 5, p 32-33

[note: 88] NE, Day 8, p 63, line 9

[note: 89] NE, Day 6, p 39, lines 17-20

[note: 90] NE, Day 6, p 42, lines 19-22

[note: 91] NE, Day 6, p 2, lines 21-33

[note: 92] NE, Day 9, p 26, lines 27-31

[note: 93] NE, Day 6, p 42, lines 27-30, p 43, lines 16-24; Day 8, p 65

[note: 94] NE, Day 10, p 60, lines 27-31

[note: 95] AB133 items 6 and 7

[note: 96] AB132

[note: 97] P37 at para [11]

[note: 98] NE, Day 5, p 38, lines 4-9

[note: 99] NE, Day 5, p 38, line 6

[note: 100] NE, Day 5, p 39, lines 26-32; p 40, lines 12-17

[note: 101] NE, Day 5, p 40, lines 28-31; p 43, lines 16-23

[note: 102] NE, Day 5, p 43, lines 16-23

[note: 103] NE, Day 7, p58, line 20; p 60, line 28

[note: 104] NE, Day 7 p53, Day 8 pp 3, 8, 18 and 19

[note: 105] NE, Day 12, pp 36-37

[note: 106] Submissions on behalf of Roshamima at para [7]

[note: 107] NE, Day 12, p 25-26

[note: 108] P37 at Para 7

[note: 109] NE, Day 8, p 48, lines 18-20

[note: 110] NE, Day 8, p 49, lines 18-19

[note: 111] NE, Day 10, p 44, lines 16-18, 19-22 ("Isteri pada abang angkat")

[note: 112] NE, Day 10, p 44, lines 19-22

[note: 113] NE, Day 9, p3, lines 14-19, p 4, lines 31-32, p 5, lines 27-30, p 6, lines 8-10

[note: 114] PSB 39 item 10; NE, Day 4, p 69, line13, p 70 line 3

[note: 115] NE, Day 8, p 19-20, lines 28-31, Day 10, p 49, lines 11-25

[note: 116] NE, Day 8, p 55, lines 29-31; Day 9, p 24, lines 13-20

[note: 117] NE, Day 10, p 41, lines 1-9

[note: 118] P31 at ans 4

[note: 119] P34 at para [4]

[note: 120] P36 at para [33]

[note: 121] NE, Day 6, p 53, lines 18-23

[note: 122] NE, Day 9, p 27, lines 28-32

[note: 123] P38 at paras [20] and [30]

[note: 124] P38 at para [20]

[note: 125] P38 at para [30]

[note: 126] NE, Day 9, p 16-20

[note: 127] P102

[note: 128] P38 at para [22]; NE, Day 9, p 13:17-20

[note: 129] NE, Day 9, p 10, lines 2-15

[note: 130] NE, Day 9, p 10, lines 16-20

[note: 131] NE, Day 9, p 10, lines 24-26, 29-30

[note: 132] NE, Day 9, p 21, lines 17-21

[note: 133] NE, Day 9, p 11, lines 2-8

[note: 134] NE, Day 9, p 11:16-22

[note: 135] P38 at para [25]; NE, Day 9, p 12, lines 1-19

[note: 136] P38 at para [26]; NE, Day 9, p 55, lines 2-5

[note: 137] NE, Day 9, p 56, lines 5-8

[note: 138] P38 at para [27]; NE, Day 9, p 13, line 23; p 14 line 1

[note: 139] NE, Day 9, p 14, lines 2-4

[note: 140] NE, Day 9, p 13, lines 1-4

[note: 141] NE, Day 9, p 15, lines 23-29

[note: 142] NE, Day 9, p 38 line 31; p 39 line 23

[note: 143] NE, Day 10, p 8, lines 27-31

[note: 144] P38 at para [22]

[note: 145] P38 at para [21]

[note: 146] P38 at paras [25] and [28]

[note: 147] P38 at para [22]

[note: 148] P42 at para [47]

[note: 149] P38 at para [30]

[note: 150] P38 at para [25]

[note: 151] P38

[note: 152] P101 and P102

[note: 153] NE, Day 8, p 58, lines 7-8

[note: 154] AB 122 item 57

[note: 155] AB 122 item 58

[note: 156] AB 122 item 63

[note: 157] P102 at p 3 (11.18 pm); P103 at p 4 (11.17 pm)

[note: 158] P102 at p 3 (12.33 am); P103 at p 3 (12.32 am)

[note: 159] NE, Day 4, p 61, lines 20-24

[note: 160] Prosecution's Closing Submissions at p 94 paras [191] and [193]

[note: 161] NE, Day 10, p 12, lines 29-32

[note: 162] NE, Day 10, p 16, lines 4-10

[note: 163] NE, Day 10, p 15, lines 13-19

[note: 164] NE, Day 10, p 19, lines 17-19

[note: 165] NE, Day 9, p 22, lines 2-4

[note: 166] NE, Day 10, p 25, lines 3-8

[note: 167] NE, Day 10, p 25, line 30, p 26, line 7

[note: 168] NE, Day 9, p 22, lines 24-31

[note: 169] Submissions on behalf of Roshamima at para [D(b)]

[note: 170] NE, Day 9, p 31, line 31, p 32 line 6

[note: 171] NE, Day 9, p 62, lines 16-29

[note: 172] NE, Day 9, p 61, lines 24-26

[note: 173] NE, Day 9, p 64, lines 24-26

[note: 174] P38 at paragraph 30

[note: 175] NE, Day 9, p 66, lines 1-9

[note: 176] NE, Day 9, p 57, lines 27-32

[note: 177] NE, Day 9, p 11, lines 11-17, p16, lines 1-7

[note: 178] NE, day 9, p 39, lines 24-28

[note: 179] Roshamima's 2nd long statement ("P37") at [16]-[17]; Roshamima's 3rd long statement ("P40") at [37], [39]