IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 21

Criminal Appeal No 5 of 2017

Between

SINNAPPAN A/L NADARAJAH

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Illegal importation of controlled drugs]

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Sinnappan a/l Nadarajah
v
Public Prosecutor

[2018] SGCA 21

Court of Appeal — Criminal Appeal No 5 of 2017
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Steven Chong JA
17 October 2017; 23 January 2018

3 May 2018 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 We have before us an appeal by Mr Sinnappan a/l Nadarajah ("the Appellant") against his conviction of one count of importing not less than 319.37g of methamphetamine, an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The charge reads as follows:

> … you, on the 16th day of May 2012, at or about 6.17 a.m., at the Woodlands Checkpoint, Singapore, in a Malaysian registered car JDH 7952, did import a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), to wit, four (4) packets of crystalline substance weighing 498.2 grams, which were analysed and found to contain not less than 319.37 grams of methamphetamine, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the said Act, and further upon your conviction under section 7 of the said Act, you may alternatively be liable to be punished under section 33B of the said Act.

After a trial of the matter, the Judge convicted the Appellant. His reasons can be found at *Public Prosecutor v Sinnappan a/l Nadarajah* [2017] SGHC 25 ("the Judgment"). The Appellant was also sentenced to life imprisonment and 15 strokes of the cane pursuant to s 33B(2) of the MDA.

2 This appeal focuses on whether the Appellant had knowledge of the presence and the nature of the drugs found in the car he was driving into Singapore. At the trial, the Prosecution relied heavily on a series of text messages and call records extracted from the Appellant's mobile phones to show that the Appellant had a prior arrangement with one "Ravindran" to bring controlled drugs into Singapore. The Appellant's key contention in this appeal is that he had no knowledge whatsoever of these messages and that, in this regard, these mobile phone records are unreliable and should not be relied upon to establish his guilt. Alternatively, he contends that his defence is compatible with the contents of these text messages.

3 For completeness, we note that, although the Appellant alleged in his Petition of Appeal that the Judge had descended into the arena during the trial, he did not press this particular point in oral submissions before this court. In our view, this allegation was wholly without foundation. There was no evidence whatsoever that the Judge had intervened in an unacceptable manner, having regard to the principles laid down by this court in *Mohammed Ali bin Johari v Public Prosecutor* [2008] 4 SLR(R) 1058 (and summarised at [175]).

Facts

4 The Appellant is a 33-year-old Malaysian citizen. At the time of his arrest, he was 27 years old and resided in Johor, Malaysia with his wife, Ms Vasagi A/P Madavan ("Vasagi"), his two children and his wife's sister and

parents. Prior to his arrest, the Appellant had been working for Keppel Logistics at Tuas, Singapore, as a forklift driver, earning an average monthly income of $1,500.

The Appellant's arrest and the seizure of the drug exhibits

5 On 16 May 2012, at about 6.17am, the Appellant entered the Woodlands Checkpoint alone in a Malaysian registered car with licence plate number "JDH 7952" ("the Car"). The Car was registered in the name of the Appellant's father-in-law. During a routine inspection of the Car, a bundle wrapped in black tape ("the Bundle") was recovered from a tissue box placed behind the headrests of the rear passenger seats. The Bundle was subsequently unwrapped and found to contain four packets of crystalline substance weighing a total of 498.2g, which were analysed by the Health Sciences Authority and found to contain not less than 319.37g of methamphetamine ("the drugs"). The Appellant was arrested at the Woodlands Checkpoint. A further search was conducted on the Car but nothing incriminating was found. The drug exhibits and the tissue box from which the Bundle was retrieved were analysed for deoxyribonucleic acid ("DNA") profiles, but no DNA profiles were obtained from any of the swabs.

The mobile phones

6 Three mobile phones were seized from the Appellant upon his arrest:

(a) a "Sony Ericsson K800i", containing one "hi!" Universal Subscriber Identity Module ("SIM") card and one "SanDisk" 2GB Micro SD card ("HP1");

(b) a "Sony Ericsson W100i" mobile phone containing one "DiGi" SIM card and one 2GB Micro SD card ("HP2"); and

(c) a "Sony Ericsson K320i" mobile phone containing one "DiGi" SIM card ("HP3").

7 We will refer to the three mobile phones as "HP1", "HP2" and "HP3", respectively. Each of the mobile phones was first examined by the Forensic Response Team of the Central Narcotics Bureau ("CNB") and then forwarded to the Technology Crime Forensic Branch of the Criminal Investigation Division for analysis. As the Appellant challenges the reliability of the phone records, we will examine these mobile phone reports in detail later.

Proceedings below

The Prosecution's case

8 Before the Judge, the Prosecution argued that since the Bundle was found inside the Car that the Appellant was driving, the Appellant was presumed under s 21 of the MDA ("s 21") to be in possession of the methamphetamine found in the Car and was further presumed under s 18(2) of the MDA ("s 18(2)") to have known the nature of the drugs in his possession. The operation of these presumptions was not disputed by the Appellant. The central inquiry at the trial was thus whether the Appellant was able to rebut these presumptions on a balance of probabilities.

9 The Prosecution's case, relying heavily on the messages and call records recovered from the Appellant's mobile phones, was that the Appellant had entered into an arrangement with one "Ravindran" to bring controlled drugs into Singapore. When the Appellant was arrested and was thereby unable to deliver the drugs at the appointed time and place, Ravindran became increasingly agitated and sent the Appellant a series of threatening messages. The Prosecution argued that the Appellant had failed to provide a reasonable

explanation for these messages which were incriminating in nature.

10 The messages and call records in question were extracted from HP1 and HP2, and presented by the Prosecution in the following sequence which was reproduced at [43] of the Judgment as follows:

S/No	Sender	Recipient	Time on 16 May 2012	Type/Text (with translation in italics)	Source
1	Accused	Ravindran	00:07	Pkl brp? ada brp *What time? Have how many?*	HP2
2	Ravindran	Accused	00:42	Chinna ti I conform ok ada keja tak *Chinna later I confirm ok got keja or not*	HP2
3	Accused	Ravindran	00:44	Cpt kasi confirm. I nak tdr *Quickly give confirm. I want to sleep*	HP2
4	Accused	Ravindran	00:45	Cpt kasi confirm. I nak tdr *Quickly give confirm. I want to sleep*	HP2
5	Ravindran	Accused	05:31	Col me	HP2
6	Accused	Ravindran	05:32	[Dialled call]	HP2
7	Ravindran	Accused	05:48	[Received call]	HP2
8	Ravindran	Accused	06:58	Pundek angkat china tauke tggu. *Pundek pick up China tauke waiting*	HP2
9	Ravindran	Accused	07:17	Lu jawap ke,tau nak wa ajar skarang. *Your answer or, want me to*	HP2

				teach now.	
10	Ravindran	Accused	07:19	Anak u mau. *Your child wants*	HP2
11	Ravindran	Accused	07:21	C	HP1
12	Ravindran	Accused	07:24	Ptndek pundek lu mau mati. *Pundek* you want to die	HP2
13	Ravindran	Accused	07:32	[Missed call]	HP2
14	Ravindran	Accused	07:41	Jangan macam bodnh tau chinna. *"Don't behave like stupid, Chinna (referring accused)".*	HP1
15	Ravindran	Accused	07:42	Hoi apa lu bikin? *"Ooi, what are you doing?"*	HP1
16	Ravindran	Accused	07:45	Lu mau tengok kana pa wa punya patern, tgu wa tunjuk. *"You want to know what, right, what's my pattern or what I'm able to do, you wait, I will show you."*	HP1
17	Ravindran	Accused	07:49	C	HP1
18	Ravindran	Accused	07:52	Lu mau mati kan, tengok ok. *"You want to die right? See, okay."*	HP1
19	Ravindran	Accused	07:52	Otak pakai ok, keja sudah lambat *Use brain ok, keja is already late*	HP2
20	Ravindran	Accused	07:52	[Missed call]	HP1
21	Ravindran	Accused	07:52	[Received call]	HP1

22	Ravindran	Accused	07:53	C	HP2
23	Ravindran	Accused	07:55	Cau cibei lu tengok *"[An expletive], and you wait and see."*	HP1
24	Ravindran	Accused	11:13	C	HP1

Table 1: Text messages and call records of HP1 and HP2

The Appellant's defence

11 The Appellant's defence was that he had no knowledge of the Bundle in the Car and was therefore able to rebut the presumptions of possession and knowledge under ss 21 and 18(2). According to the Appellant, it was Ravindran, his wife's cousin, who had planted the Bundle in the Car without his knowledge whilst he was in Malaysia. In the early morning of 16 May 2012, Ravindran had asked to meet the Appellant and requested that he deliver the Bundle to someone in Woodlands, Singapore. The Appellant refused because he suspected that the Bundle contained "ganja". When the Appellant left the Car to buy his breakfast, Ravindran must have taken the opportunity to open one of the rear doors of the Car – which, as Ravindran was aware, had faulty locks – and placed the Bundle within the tissue box behind the rear passenger seats. The Appellant then drove the Car into Singapore, unaware that the Bundle was in the Car. Later, after he had cleared the customs checkpoint at Johor Bahru, Ravindran called and asked the Appellant to call him after he reached Woodlands.

12 The Appellant claimed that his only reason for entering Singapore on 16 May 2012 was to apply for a personal loan at the POSB Bank branch in Woodlands. He had applied for leave from work on 16 May 2012 in order to attend an appointment at a motorcycle shop in Johor Bahru at 1pm. He claimed that the night before, he had asked Ravindran whether there was work for him

at Ravindran's mobile phone shop named "Theeran Telekomunikasi" at Taman Universiti, Johor Bahru. The Appellant had worked part-time at the shop about five to six times prior to his arrest, his job being to take damaged mobile phones to another shop for repairs. Since Ravindran informed him that there was no work, he went ahead with his plans to obtain a loan from the POSB Bank branch at Woodlands in the morning on 16 May 2012, intending to return to Johor Bahru in time for his appointment at the motorcycle shop at 1pm.

13 With respect to the phone records, the Appellant claimed that he had no knowledge of, and did not send or receive, *all* of the messages relied upon by the Prosecution at Table 1. Further, he sought to impugn the reliability of the records of HP1 and HP2 to support his claim that the records in Table 1 were not attributable to him. Under cross-examination, the Prosecution urged him to explain why Ravindran might have sent him the messages that came in after the time of his arrest on 16 May 2012 (*ie*, S/Nos 8 onwards in Table 1). The Appellant claimed that he had no need to explain those messages because he had not seen them. Subsequently, he suggested that Ravindran had sent the messages because Ravindran was angry that the Appellant had not called him, picked up the phone or replied to his messages. As Ravindran alone was aware that the drugs were in the Car without the Appellant's knowledge, Ravindran was anxious to retrieve the drugs he had planted, which is why he sent those threatening messages.

Decision below

14 The Judge found that the phone records were highly incriminating and that the Appellant was unable to proffer a convincing explanation for them (Judgment at [41]). The first four messages suggested that Ravindran was to assign him work that was time-specific and quantitative in nature. The

Appellant's denial that he had even sent or received those messages was not satisfactory (at [47]). The messages between 6.58am and 7.52am reflected Ravindran's increasingly agitated state, to the point of issuing serious threats of harm to the Appellant and his child. It was for the Appellant to furnish a plausible explanation, consistent with his defence, as to why Ravindran had sent him these messages. The Judge was not satisfied with the Appellant's explanation that Ravindran was so angry because the Appellant was not answering his calls when he was trying to retrieve the drugs planted in the Car without the Appellant's knowledge (at [53]). Further, the Judge found that the Appellant was unable to explain the specific content and tone of the messages in a way that cohered with his defence.

15 As regards the accuracy and reliability of the phone records, the Judge found that the extraction of data from HP1 was complete and rejected the Defence's attempt to impugn the content or timestamps of the messages extracted from HP1 (at [61]). In relation to HP2, the Judge found that the Defence failed to show that the data extracted was inaccurate or unreliable. The Judge accepted that when arranged in a chronological order, the messages formed a narrative sequence that cohered with the Prosecution's case (at [69]).

16 In assessing the credibility of the Appellant's version of events, the Judge considered it unlikely and implausible that Ravindran would have planted the drugs in the Car without the Appellant's knowledge with no convenient means of retrieval (at [79]). Although the Appellant spent much time at trial proving his credibility on many other aspects of his narrative, such as his reasons for coming into Singapore and why he had taken leave on 16 May 2012, the Judge regarded this evidence as of peripheral relevance to the central issue of whether the Appellant was guilty of the offence (at [80]). These aspects of his narrative were not inconsistent with the Prosecution's case. Ultimately, the

inconsistency between the Appellant's version of events and the text messages found in his mobile phones was an inconsistency which went to the heart of the charges against him (at [82]).

17 The Judge concluded that the text messages provided strong support for the Prosecution's submission and could even be considered the centrepiece of the Prosecution's case (at [88]). Since the Appellant was unable to provide a convincing explanation for the messages, he had failed to rebut the presumptions operating against him and was found guilty as charged.

Arguments on appeal

18 On appeal, the Appellant makes the following arguments:

(a) First, in relation to the phone records, he takes issue with the accuracy of the dates and times of the messages and the completeness of the data retrieved from HP1 and HP2.

(b) Second, even if the phone records are found to be reliable, the Appellant argues that the contents of the messages are consistent with his defence.

(c) Third, the Appellant claims that he was disadvantaged in conducting his defence because he was not confronted with the phone records relied upon by the Prosecution until the trial itself.

(d) Fourth, the Appellant highlights that many details in his version of events were corroborated by independent evidence.

(e) Finally, the Appellant initially argued that there was a breach of natural justice because the Judge had descended into the arena during

> the trial by taking an active role in questioning the witnesses. However, as we have already noted at the outset of this judgment (see above at [3]), this argument was not pursued in earnest during the hearing of the appeal on 17 October 2017. In any event (and as also noted at the outset of this judgment), we see no basis for a finding that the Judge interfered excessively and unfairly during the trial.

19 In the main, the Prosecution responds that the phone records are accurate and reliable, that the Appellant's explanation of the text messages and version of events is unbelievable, and that the aspects of the Appellant's account that were independently corroborated were peripheral to the central inquiry in determining the Appellant's guilt.

20 The appeal was heard in part on 17 October 2017. We adjourned the hearing for the Prosecution to tender further submissions to confirm or refute certain factual issues that were raised by the Appellant's counsel in relation to the phone records. The Prosecution tendered further written submissions on 5 January 2018. At the second hearing on 23 January 2018, at the court's direction, the parties addressed the court on the reliability of the records pertaining to HP2 at the time of the offence; the conclusions that may be drawn from the records pertaining to HP2 alone; and the inferences that may fairly be drawn from the Appellant's statements at trial or his investigation statements, in particular, inferences concerning his ability or inability to explain the messages sent to him on 16 May 2012, having regard to the manner in which the phone records were presented to him when his statements were taken. After hearing the parties, we reserved judgment.

Our decision

The applicable legal principles

21 In this appeal, the ultimate issue is whether, in all the circumstances of the case, the Judge was correct to find that the Appellant had failed to rebut the presumptions of possession and knowledge under ss 21 and 18(2). We begin by setting out the test for rebutting the presumptions in ss 21 and 18(2). Section 21 provides as follows:

> **Presumption relating to vehicle**
>
> **21.** If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

22 To rebut the presumption in s 21, the accused has to prove, on a balance of probabilities, that he did not have the drug in his possession. In *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633, this court observed in relation to the presumption of possession in s 18(1) of the MDA that "the most obvious way in which the presumption can be rebutted is by establishing that the accused did not know that the thing in issue contained that which is shown to be the drug in question" (at [35]). This statement applies to the presumption of possession in s 21 as well. If, for instance, the accused is able to persuade the court that the drug was placed in his vehicle without his knowledge, the presumption could be rebutted successfully. In so doing, the accused would be establishing that he did not have the *mens rea* of possession (see *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 at [112]).

23 Section 18(2) of the MDA provides as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**— …
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

24 To rebut the presumption in s 18(2), the accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug. In *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903, this court observed (at [18]) that the accused can do so by showing that "he did not know or could not reasonably be expected to have known the nature of the controlled drug".

25 The Appellant seeks to rebut the presumptions under ss 21 and 18(2) by proving on a balance of probabilities that he had no knowledge that the Bundle was in the Car.

Whether the phone records are reliable

26 We first examine the Appellant's arguments for impugning the reliability of the mobile phone records which the Judge described as the "centrepiece" of the Prosecution's case. By way of background, the Prosecution adduced as evidence two kinds of reports of the phone records:

(a) First, there were reports produced by the Technology Crime Forensic Branch ("TCFB") of the Criminal Investigation Division (which we shall refer to as "TCFB Reports"). The TCFB Reports were compiled by Mr Mohd Rozaili Bin Idris ("Mr Rozaili"), a Technology Crime Forensic Examiner who gave evidence at the trial.

(b) Second, there were reports produced by the Forensic Response Team ("FORT") of the CNB (which we shall refer to as "FORT Reports"). The FORT Reports were admitted into evidence during the testimony of Investigation Officer Mohaideen Abdul Kadir Bin Gose Ahmad Sha ("IO Mohaideen"), whose field diary had made reference to the FORT Reports using the term "mobile preview reports". The FORT Reports were prepared by Mr Muhamad Nizam Bin Abudol Ramin, who was not called as a witness at the trial.

The reliability of the records for HP1

27 The Prosecution adduced a FORT Report and a TCFB Report for HP1. The text messages in Table 1 (see [10] above) which were retrieved from HP1 are found in the FORT Report, while the call records are found in both the FORT Report and the TCFB Report. The Appellant raised several difficulties over the reliability of the records pertaining to HP1 which were borne out by the record upon our examination. This included difficulties over verifying that the TCFB Report for HP1 had extracted all the data from the device because the device had experienced intermittent power failure during the forensic examination; discrepancies between the FORT Report and IO Mohaideen's contemporaneous record in his field diary about the *timing* and *sender* of the threatening messages observed on HP1; and the unexplained record of an outgoing call and a missed call on HP1 at 7.51am and 7.52am after the Appellant had already been arrested. Further, we note that in the course of the trial below, the Prosecution had itself acknowledged that there were "certain issues with HP1", including "issues with timing" and "issues with the extraction". For this reason, the Prosecution initially intended to rely only on the records pertaining to HP2, although it eventually relied on the FORT Report for HP1 in its closing submissions.

28 In this appeal, the Prosecution has taken the position that *even if* only the records of HP2 are accepted as reliable, the Appellant would still fail to rebut the presumptions under ss 21 and 18(2). They contend that the records of HP2 alone are sufficient to support the Prosecution's case that the Appellant knew of the drugs in the Car, and are also sufficient to prove that the Appellant lied about critical aspects of the evidence and could offer no cogent explanation of the HP2 records. We also note that the messages that were more pivotal to the Judge's assessment (namely S/Nos 1–4, 8–9 and 19 in Table 1) emanated from HP2. Therefore, we will focus on the reliability of the records pertaining to HP2 around the time of the offence.

The reliability of the records for HP2

29 The Prosecution adduced a FORT Report and a TCFB Report for HP2. The FORT Report is of no relevance because the software employed by FORT did not support the extraction of text messages, call logs or contacts from HP2. All the text messages and calls in Table 1 which were retrieved from HP2 are found in the TCFB Report. Mr Rozaili prepared the TCFB Report for HP2 by manually taking photographs of HP2's contents because the forensic tool utilised by the TCFB did not support HP2's model. The TCFB also retrieved data from HP2's SIM Card, where three numbers were stored under the contact names "Ravindran/1", "Ravindran/5" and "Ravindran/7".

30 The Appellant *did not challenge the contents* of the messages retrieved from HP2. His attack was on the accuracy of the timing of the records for HP2, and the completeness of those records. His wider argument was that he required an accurate account of the timing and sequence of the messages in order for him to give a meaningful explanation of their contents. If the records were proven to be unreliable, the court should not place weight on the messages and the

Appellant should not be expected to explain them.

31 To impugn the reliability of the records, the Appellant's first premise was that the messages relied upon by the Prosecution were stored in the *device* of HP2, not in the SIM Card. This was contrary to the Judge's observation at [61] of the Judgment. Storage on the device meant that the date and time stamps of the messages and calls were tied to the settings on the device, which could have been manually set by the user. As the data was not extracted using a cable, there was no way of independently verifying whether the date and time stamps recorded were consistent with international date and time. The Prosecution accepted that the date and time stamps would be based on the device's settings.

32 Therefore, the material question is whether there is sufficient evidence to demonstrate that the date and time settings on the device were wrong around the time of the offence. In this regard, the Appellant pointed out, first, that there were messages reporting the results of lotteries drawn *after* the date of the messages. For instance, a text message dated 25 July 2011 reported the winning lottery numbers for the lottery drawn on 1 April 2012. We set out the relevant details of these messages in chronological order in the table below. Although the text of the messages only stated the date and month of the lottery, the Appellant and the Prosecution both accepted that the lotteries were drawn in 2012 and made their submissions on that basis.

S/No	Date stamp on HP2	Date that lottery was drawn
1	25 July 2011	1 April 2012
2	27 July 2011	3 April 2012

3	28 July 2011	4 April 2012
4	18 August 2011	25 April 2012
5	18 April 2012	18 April 2012
6	22 April 2012	22 April 2012
7	28 April 2012	28 April 2012
8	2 May 2012	2 May 2012
9	5 May 2012	5 May 2012
10	6 May 2012	6 May 2012
11	8 May 2012	8 May 2012
12	9 May 2012	9 May 2012
13	12 May 2012	12 May 2012
14	13 May 2012	13 May 2012

Table 2: Text messages containing lottery results in HP2

33 The Appellant relies on this discrepancy in dates to challenge the reliability of *all* the messages stored in HP2. The Prosecution did not dispute that the dates of several lottery draws did not match the dates of the messages reporting them. Nonetheless, the Judge was not convinced that this showed that the date settings were wrong at the time of the offence because there was no discrepancy from 18 April 2012 up to 13 May 2012 (Judgment at [68]). However, the Appellant highlights that the message reporting the results for the lottery drawn on 25 April 2012 (at S/No 4 in Table 2) carried a date stamp of 18 August 2011. Thus, even after the date was correctly set on 18 April 2012 and 22 April 2012, the device lapsed back to a wrong date setting before or on 25 April 2012. Subsequently, the device registered the correct date stamps again

from 28 April 2012 up to 13 May 2012. Since neither the Appellant nor Vasagi – who were the only users of HP2 – had any reason to set the device to a false date and time, the Appellant submits that this must mean that either the phone records were inaccurate or the device was not recording time properly.

34 In our view, the relevant inquiry is whether the messages in *Table 1* (above at [10]) were correctly dated 16 May 2012. We accept the Prosecution's submission that the discrepancy in date stamps for four of the lottery results before May 2012 does *not* prove that the device settings were wrong *on 16 May 2012*. The lottery results clearly show that the device's date settings were accurate throughout the period from 28 April 2012 to 13 May 2012 – merely three days before the offence. Any inaccuracy in HP2's date settings must therefore have been resolved before this period, and there is no reason to suggest that they were wrong between 13 and 16 May 2012.

35 Second, the Appellant raised the issue of a mismatch between the time that Mr Rozaili reportedly examined HP2 and the time shown on the HP2 device in the photographs of each screen-display taken by Mr Rozaili (exhibited in the TCFB Report). When Mr Rozaili performed a forensic examination of HP2 on 4 May 2013, he observed that the date and time set on the device was 23 August 2012 at 7.09pm, whereas the international date and time was 4 May 2013 at 6.10pm. He explained during the trial that this difference in date and time could be due to HP2's battery having gone flat during the interim period. The Appellant's argument focused on the time displayed by the device during Mr Rozaili's examination. Mr Rozaili reported that he conducted a manual examination on the handset of HP2 between 6.11pm and 8.58pm on 4 May 2013. After adjusting this time range to compensate for the time difference of 59 minutes observed at the start of Mr Rozaili's examination, one would expect the photographs to show the handset displaying times between 7.10pm and

9.57pm. Yet, in Mr Rozaili's photographs of each screen-display of the device, the earliest time displayed on the handset is "23:21" while the latest time is "02:02".

36 We are of the view that this discrepancy does not undermine the accuracy of the date and time of the messages received on 16 May 2012. This discrepancy in date and time was observed at the time of *retrieval*. It does not prove that the date and time settings on HP2 were wrong at the time that the calls and messages relied upon by the Prosecution were *received* on 16 May 2012. In any case, when questioned about this discrepancy during cross-examination, Mr Rozaili explained that the handset displayed a much later time in the screenshots because he did not take the screenshots in one sitting. Nonetheless, Mr Rozaili conceded that it was possible that the time displayed on the handset was not accurate. In our view, although he did not state so in his statement attached to the TCFB Report, that Mr Rozaili did not take the screenshots in a single sitting constitutes a plausible explanation for the aforementioned discrepancy.

37 The two other discrepancies raised by the Appellant may be considered together in the light of the totality of the evidence. The first pertains to the messages at S/Nos 8 and 9 of Table 1 in which Ravindran asks the Appellant to answer the phone. The Appellant argues that this ought to have been preceded by calls or missed calls from Ravindran, yet none were recorded immediately before these messages. This would suggest either that the records for HP2 were incomplete or that the date and time stamps were inaccurate. Next, the Appellant highlights that the record of a phone call from the Appellant's wife, Vasagi, at 5.31am on 16 May 2012 contradicted Vagasi's testimony that she was asleep at that time. Vasagi's call is not reflected in Table 1 as the Prosecution did not rely on it, but it is undisputed that it was in HP2's records on 16 May 2012.

38 Against these points, we consider other aspects of the evidence that, the Prosecution submits, positively show that HP2 was set to an accurate time around the time of the offence. First, the Appellant's own evidence was that he had never seen the messages set out at Table 1. This is consistent with the records showing that the messages and calls from 6.58am onwards came in after the Appellant's arrest, following which time he would not have had access to his phone. Second, the records show that Ravindran sent a message asking the Appellant to call him at 5.31am on 16 May 2012, following which the Appellant called Ravindran at 5.32am. Ravindran then called the Appellant at 5.48am. These records are broadly consistent with the Appellant's own account that he had two phone calls with Ravindran that morning, whether incoming or outgoing. We note that in his investigation statements and oral evidence, the Appellant has maintained a broadly consistent account of the rough time range of his two calls with Ravindran that morning. The two calls with Ravindran at 5.32am and 5.48am (S/Nos 6–7 in Table 1) fall within this time range. Finally, the Prosecution submits that the record of a missed call from a number identified as Vasagi's at 7.41am is consistent with Vasagi's testimony that she had called the Appellant after 7am on 16 May 2012, but had failed to contact him. Again, Vasagi's missed call is not reflected in Table 1, but it is undisputed that it formed part of HP2's records on 16 May 2012.

39 Viewing the evidence as a whole, we accept that the records pertaining to HP2 at the time of the offence are reliable. In our judgment, the crux of the matter is that it was the Appellant's consistent evidence that he had never seen the messages set out at Table 1. The Appellant never claimed to have received the messages on a different occasion before 16 May 2012 and for reasons unrelated to the drugs found in his possession. Having eliminated the possibility that the messages were received prior to 16 May 2012, it must be the case that

they were indeed received around the time of his arrest. Indeed, even the Appellant's case theory that the drugs were planted by Ravindran relies on the premise that Ravindran's messages were contemporaneous with his arrest. For if the messages did not come in around the time of his arrest, then it would be bizarre that Ravindran, having planted the drugs in the Car, did not try to contact him to retrieve the drugs around the time he was expected to have entered Singapore. Thus it can be seen that the Appellant's attempt to disavow the messages and attack the phone records is incompatible with his own case and is in reality an attempt to distance himself from the messages. The remaining discrepancies raised by the Appellant do not detract from this conclusion. In addition, we accept the Prosecution's submissions that the Appellant's and Vasagi's testimony corroborated the time range of the relevant calls records on 16 May 2012, showing that by the time the messages and calls were exchanged on 16 May 2012, the device was set to an accurate time and date.

40 After the second hearing, the Appellant wrote to the court by way of a letter dated 11 March 2018 to put forward one additional reason why the records pertaining to HP2 were unreliable. He noted that in the TCFB Report, the phone displayed the name of the sender of the messages as "Ravindran", whereas the call records displayed only the caller's phone number without a contact name. He claimed that the names of contacts saved in the SIM Card ought to have been displayed for both the messages and the calls. In our judgment, this point has no bearing on our reasons for finding that the records pertaining to HP2 at the time of the offence were reliable. The Appellant does not dispute that the calls were correctly traced to Ravindran based on the SIM Card information (see [29] above). As we will explain at [52] below, there is no reason to believe that the messages and calls were exchanged with any other "Ravindran" besides the Appellant's relative.

41 Having concluded that the records of HP2 around the time of the offence are reliable, we turn to examine whether the Appellant has rebutted the presumptions under ss 21 and 18(2), considering all the circumstances of the case, including the messages and call records of HP2.

Whether the Appellant had no knowledge that the Bundle was in the Car

Analysis of the records of HP2

42 We begin by considering what conclusions may be drawn from the records of HP2 only around the time of the offence. In the table below, we reproduce the relevant text messages and call records from HP2 only:

S/No	Sender	Recipient	Time on 16 May 2012	Type/Text (with translation in italics)	Source
1	Accused	Ravindran	00:07	Pkl brp? ada brp *What time? Have how many?*	HP2
2	Ravindran	Accused	00:42	Chinna ti I conform ok ada keja tak *Chinna later I confirm ok got keja or not*	HP2
3	Accused	Ravindran	00:44	Cpt kasi confirm. I nak tdr *Quickly give confirm. I want to sleep*	HP2
4	Accused	Ravindran	00:45	Cpt kasi confirm. I nak tdr *Quickly give confirm. I want to sleep*	HP2
5	Ravindran	Accused	05:31	Col me	HP2
6	Accused	Ravindran	05:32	[Dialled call]	HP2
7	Ravindran	Accused	05:48	[Received call]	HP2

8	Ravindran	Accused	06:58	Pundek angkat china tauke tggu. *Pundek pick up China tauke waiting*	HP2
9	Ravindran	Accused	07:17	Lu jawap ke,tau nak wa ajar skarang. *Your answer or, want me to teach now.*	HP2
10	Ravindran	Accused	07:19	Anak u mau. *Your child wants*	HP2
11	Ravindran	Accused	07:24	Ptndek pundek lu mau mati. *Pundek pundek* you want to die	HP2
12	Ravindran	Accused	07:32	[Missed call]	HP2
13	Ravindran	Accused	07:52	Otak pakai ok, keja sudah lambat *Use brain ok, keja is already late*	HP2
14	Ravindran	Accused	07:53	C	HP2

Table 3: Text messages and call records from HP2 only

43 The Appellant contends that the contents of the text messages are consistent with his case that the drugs were planted in the Car by Ravindran without his knowledge. In relation to the messages and calls preceding the time of his arrest (S/Nos 1–7 in Table 3), the Appellant explained that he had asked Ravindran to confirm whether there was work at Ravindran's mobile phone shop so that he would know whether to proceed to the Woodlands POSB Bank branch in the morning on 16 May 2012. Thus the Appellant's query of "what time" and "how many" at 12.07am referred to the time and quantity of phones that the Appellant had to pick up from Ravindran, while in Ravindran's reply at

12.42am, "keja" referred to the work at Ravindran's mobile phone shop. Again, the message at 7.52am saying "keja is already late" (S/No 13 of Table 3) referred to the work at Ravindran's mobile shop as well.

44 In relation to the messages and calls after the time of his arrest (*ie*, S/No 8 onwards), the Appellant explains that Ravindran was angry because he was anxious to retrieve the planted drugs from the Car for delivery to the intended recipient. The Appellant's counsel emphasises that the messages say nothing about the Appellant's knowledge or involvement. There was no message or call from the intended recipient of the drugs. When the Appellant failed to call Ravindran as he had promised to before crossing the Causeway, Ravindran grew increasingly furious because he was unable to retrieve the drugs. However, this, the Appellant argues, had no bearing on whether the Appellant knew of the drugs. The Appellant tries to explain Ravindran's message at 6.58am ("Pundek pick up China tauke waiting") by suggesting that "China" was a reference to the Appellant, whose nickname was "Chinna". The "tauke", he argues, referred to Ravindran as the boss of the mobile phone shop. Thus the message simply implored the Appellant to pick up the phone because Ravindran was waiting for him at the shop. Finally, the Appellant claims that it is not clear that the messages emanated from his cousin "Ravindran" who had associations with drugs because there were three contacts stored under the name "Ravindran" in HP2.

45 In response, the Prosecution seeks to uphold the Judge's findings that the messages are highly incriminating and that the Appellant has failed to provide a plausible explanation of them.

46 In our judgment, having established that the messages in Table 3 were sent by Ravindran to the Appellant's HP2 on 16 May 2012, the messages are

simply incompatible with the Appellant's case that the drugs were planted in the Car by Ravindran without the Appellant's knowledge and consent.

47 First, we do not accept that "keja" (referred to at S/Nos 1 and 13 in Table 3) can sensibly refer to work at Ravindran's mobile phone shop. It is undisputed that "keja" is Tamil for "work". To begin with, the Appellant's attempt to relate the first four messages to work at Ravindran's mobile phone shop is inconsistent with his evidence at the trial, where he denied that these were the messages he had sent and received concerning the mobile phone shop the night before his arrest. Turning to the language of the messages, the Appellant's message to Ravindran at 12.07am asks "what time" and "how many". We agree with the Prosecution that this suggests that there is a time element and a quantitative element to the work. If the Appellant was concerned with mobile phones, there would be no coherent reason to ask "how many"; the number of mobile phones made no difference to the nature of the Appellant's job (to send them for repair) or the amount that the Appellant would be paid. Next, when Ravindran replies at 12.42am that he would confirm later whether "got keja or not", the Appellant sends two messages in quick succession at 12.44am and 12.45am urging him for a reply (at S/Nos 2–4 in Table 3). It strains credibility that the Appellant would have felt so anxious about picking up mobile phones for repair at such a late hour of the night. Further, it is inexplicable that following this innocuous conversation about mobile phones, Ravindran would suddenly appear at the breakfast stalls with a package of drugs after speaking with the Appellant on the phone early the next morning.

48 "Keja" is mentioned again in Ravindran's message at 7.52am (S/No 13 at Table 3, "Use brain ok, *keja* is already late"). We agree with the Judge that this message suggests that (i) there was work to be carried out; (ii) that the work had to be carried out by a certain time; and (iii) the Appellant was responsible

for the lateness of the work. This message contradicts the Appellant's account that he went to Singapore because Ravindran had confirmed that there was *no work* at the mobile phone shop. Furthermore, it makes no sense that Ravindran would have proceeded to issue threats of violence if mobile phones were all that was at stake. It was unlikely that a mobile phone shop would even be open at such an early hour, and the Appellant did not produce evidence of any mobile phone shop awaiting the Appellant's delivery.

49 Next, we deal with Ravindran's message at 6.58am (S/No 8 at Table 3, "Pundek pick up China tauke waiting"). We find this message very damaging to the Appellant's case and are not persuaded by the Appellant's attempts to explain it in a manner that coheres with his defence. First, the attempt to explain "China" as a reference to the Appellant's nickname "Chinna", and "tauke" as a reference to Ravindran, is not sensible. We note that during examination-in-chief, the Appellant agreed that his name could be abbreviated as "Sinna", "Chinna" or "China". He also suggested under cross-examination that "China" in message S/No 8 could be a misspelling of the short form of his name. However, the Appellant later conceded that in the phrase "China *tauke* waiting", "China" "refers to the country, China". Reading the message as a whole, it appears to us more likely that Ravindran was using the derogatory Tamil term "pundek" to refer to the Appellant, while "China" was an adjective describing the "tauke" who was waiting.

50 Proceeding with this reading, we find the message at S/No 8 to be laden with context. The message states that there is a "China tauke" waiting and implies that (i) the Appellant had a role to play in keeping the "China tauke" waiting; (ii) the Appellant was expected to understand without further elaboration who this "China tauke" was and what he was waiting for; and (iii) the fact that the "China tauke" was kept waiting was sufficiently serious to

warrant calling the Appellant "pundek" and prompt the threatening messages that followed. The unspoken assumptions underlying the contents of the message suggest that there was clearly a prior understanding between Ravindran and the Appellant. On the other hand, if the Appellant's version of events were true and the Appellant had no prior knowledge of the existence of the drugs, it would have been exceedingly strange for Ravindran to have mentioned a "China *tauke* waiting" in his first message to the Appellant since the time that the Appellant had left Johor Bahru.

51 In our view, the Appellant's defence does not reasonably explain why Ravindran would send a message of such a nature to the Appellant. If it were true that the drugs had been planted without his knowledge, the Appellant would not know who this "China tauke" was, why it was of concern to him that a "China tauke" was waiting, and why Ravindran was in such a fit out of the blue. If Ravindran was attempting to retrieve the drugs he had planted, it would make no sense for him to initiate contact with the Appellant by referring to a "China tauke", especially if the Appellant had refused to carry the drugs for him earlier the same morning. This message fits far better with the Prosecution's case that there was a prior arrangement between Ravindran and the Appellant for the Appellant to deliver drugs to a "China tauke" in Singapore. Clearly, if the Appellant had been tasked to deliver something to the "China tauke", he was late on account of his arrest.

52 Third, there is no merit in the Appellant's contention that the messages could have emanated from a different Ravindran, and not his relative. It bears notice that it was the Appellant's own evidence that his wife's cousin by the name of Ravindran was a drug trafficker. The Appellant had testified that he had another friend from school by the name of Ravindran. However, he said that the number of his friend Ravindran "will be in my handphone 1", not in

HP2. He also testified that he last contacted this Ravindran from school a "[v]ery long time ago". More importantly, there is no conceivable reason why his long lost friend would have sent him these messages at this time, containing such abusive language without any prior context or recent contact. The Appellant offered no such explanation. Finally, the Appellant's case that the drugs were planted by his relative is consistent with the messages emanating from his relative.

53 Viewing the entire sequence of messages as a whole, we find it highly improbable that Ravindran had planted the drugs in the Car without the Appellant's knowledge. The Appellant strived to impress upon us that it was conceivable that Ravindran would be furious and abusive purely because he could not retrieve the drugs that he had planted in the Car for onward delivery, regardless of whether the Appellant played a part in this plan. Taking the messages from 7.17am to 7.24am (at S/Nos 9−11 in Table 3) in isolation, the threats and abusive language may not show conclusively that the Appellant knew about the presence of the drugs in the Car. However, we have explained above why, in our view, the contents of the messages are simply incompatible with the Appellant's case theory. The Appellant's involvement is all the more evident considering that this series of messages was initiated by his message at 12.07am the night before. From Ravindran's response at 12.42am, it is clear that the Appellant was asking about "keja", and "keja" is mentioned by Ravindran again at 7.52am. We have explained at [47]–[48] above why we do not believe that these messages were unrelated to a drug transaction. The threats of "want me to teach", "your child wants", and "you want to die" (at S/Nos 9–11 in Table 3) were all sandwiched between the messages referring to the "China tauke waiting" and the "keja" which was late. The entire message chain simply does not fit the theory that the Appellant had refused to carry the drugs, was

unaware that drugs had been planted, and had angered Ravindran simply by failing to be contactable.

54 Finally, the Appellant's attempt at the trial to completely dissociate himself from the first four messages in Table 3 raises doubts about his credibility. At the trial, the Appellant denied sending or receiving the messages between 12.07am and 12.45am the night before his arrest, including the messages *sent by him*. We find that the Appellant's denial cannot stand in the face of the objective records for HP2, which we have found to be reliable. These messages were found to be stored in HP2.

55 Moreover, apart from the exact timing of the messages, the contents of the four messages between 12.07am and 12.45am (at S/Nos 1–4 in Table 3) are broadly consistent with the Appellant's own account of his communications with Ravindran the night before his arrest:

> (a) In statements recorded on 16 May 2012 and 18 May 2012, without having seen the mobile phone records, the Appellant said that he had messaged Ravindran the night before his arrest to ask if there was work the next day. Before 10.30pm, Ravindran informed the Appellant in a text message that he did not know if there was work. At about 12 midnight, the Appellant called Ravindran and informed him that if there was no work, he would go to the bank in Singapore in the morning using his father-in-law's car. Ravindran asked what time the Appellant would be going to Singapore, and the Appellant responded that he was going around 5 to 5.30am. On 16 May 2012, Ravindran called the Appellant sometime around 5.20am while the Appellant was on his way to a fire station close to the Causeway where he could buy breakfast. Ravindran asked for his whereabouts and instructed him to wait. This

was followed by a text message from Ravindran asking the Appellant to wait inside the Car. At about 5.45am, Ravindran approached the Car with the Bundle and asked the Appellant to deliver it to someone in Woodlands, Singapore. The Appellant stated in his statements that he refused to do so.

(b) At the trial, the Appellant maintained a largely similar account but claimed that the messages mentioned in his investigation statements were sent at different timings from the messages at S/Nos 1–4 of Table 3 and were not reflected in the phone records in evidence.

56 In our view, the Appellant's attempt to contradict the objective records has no substance whatsoever. It is for the Appellant to provide an explanation to account for the messages which were indisputably found in HP2. He offered no evidence to substantiate his position that the messages he had sent the night before his arrest were different messages that were not reflected in the phone records. In fact, his unsubstantiated assertions are contradicted by his own statements recorded on 16 May 2012 and 18 May 2012. The Prosecution submits that the Appellant had attempted to distance himself from the messages at S/Nos 1–4 at the trial because he realised upon viewing the objective records that the references to "keja" and "how many" were incriminating and did not cohere with his case that he had inquired about work at the mobile shop. The objective records also did not substantiate other aspects of his account, such as the timing of the messages and the fact that there was no call by the Appellant to Ravindran at midnight. We find it reasonable to draw the inference that the Appellant chose to disown all the messages in this chain, including, inexplicably, messages emanating from himself, because he understood their contents to be incriminating.

57 For the foregoing reasons, we conclude that the records of HP2 pertaining to the time of the offence support the Prosecution's case that the Appellant had a prior arrangement with Ravindran to bring the drugs into Singapore. We find the Appellant's defence incompatible with the messages in Table 3 and see no merit in the Appellant's attempts to explain away the incriminating aspects of the messages. The Appellant's credibility is undermined by his attempt to dissociate himself from all the messages that, according to the objective records, were sent and received by him.

The relevance of the Appellant being confronted with the phone records for the first time during the trial

58 Next, the Appellant claims that he was disadvantaged in conducting his defence because he was not confronted with the phone records of HP2 until the trial itself, more than four years after the messages came in.

59 In the course of investigations, the Appellant was questioned about the phone records on two occasions. According to IO Mohaideen's field diary, IO Mohaideen interviewed him on 20 May 2012:

> Interviewed [the Appellant] with regards to the threatening messages in his handphones (Exhibits labelled SN-HP1 & SN-HP2)". I showed the messages to [the Appellant]. [The Appellant] continues to maintain his innocence and insists he is set up by Ravi.

A day earlier, on 19 May 2012, IO Mohaideen had made notations in his field diary about the messages he had observed on HP1 and HP2. However, IO Mohaideen testified that he interviewed the Appellant using the FORT Reports, as the TCFB Reports would not have been ready at that time. Since the FORT Report for HP2 did not generate any data, the only way that the Appellant could have been asked about the messages on HP2 was if he was shown the HP2

device itself. But, the Appellant argues, there was no evidence that he was shown the device itself. The Appellant testified that he was shown only one page of the FORT Report which set out the threatening messages sent to HP1, and not any physical devices.

60 On 20 February 2014, the Appellant was questioned by Woman Inspector Ng Peixin about the three handphone numbers saved under the name "Ravindran". This contact information was extracted from the SIM Card and reported at Annex A of the TCFB Report on HP2. The Appellant was not asked about the contents of the text messages retrieved from HP2 on this occasion.

61 The Appellant argues that he has been prejudiced by the failure to confront him with the phone records before the trial, because he was not given a chance to explain these messages earlier while his memory would have been fresh and his explanations more credible. The Appellant gave evidence that if he had been confronted with the messages contemporaneously, he would have asked Ravindran for an explanation. Moreover, he takes issue with the fact that the Prosecution had examined him on the phone records as though they constituted a composite sequence when there were actually discrepancies in timing and doubts about which "Ravindran" had sent the messages.

62 In our view, this contention does not assist the Appellant in proving his defence. The Appellant has advanced a case in which he completely denies receiving or having anything to do with any of the messages relied upon by the Prosecution. He has asserted all along that Ravindran alone can explain why he sent those messages to the Appellant. It is not his case that he had received the messages and would have been able to provide a better, more accurate or more credible explanation of their context if they had been put to him closer to the time of the offence. Therefore, we do not think that he was deprived of the

opportunity to supplement his case with more details that he could have substantiated more credibly if he had done so contemporaneously. Even if proven, the delay in questioning the Appellant about the messages on HP2 has not prejudiced his case. Indeed, the Appellant's response to IO Mohaideen on 20 May 2012 was that he had been "set up by Ravi", which was materially the same as his defence at the trial.

63 In any event, we think that it is a fair inference that IO Mohaideen was mistaken when he testified that he interviewed the Appellant using the FORT Reports. The TCFB Report for HP2 was not ready and the FORT Report for HP2 contained no data. Therefore, when IO Mohaideen made a note in his field diary on 19 May 2012 that there were threatening messages on HP2, he could only have read the messages by manually scrolling through and viewing the messages on the HP2 device. In his field diary entry on 20 May 2012, IO Mohaideen states that he interviewed the Appellant regarding the threatening messages on both exhibits HP1 and HP2. His field diary is the most contemporaneous piece of evidence. Since, as far as HP2 was concerned, IO Mohaideen could only have been referring to messages viewed on the device itself, it may be inferred that the Appellant was shown the threatening messages using the HP2 device on 20 May 2012. It was never put to IO Mohaideen at the trial that the Appellant was *not* shown the threatening messages using the HP2 device on 20 May 2012.

The evidence on other aspects of the Appellant's narrative

64 Finally, the Appellant's counsel urged us to consider that many other aspects of the Appellant's narrative were corroborated by objective evidence. This included evidence of the Appellant's application for leave on 16 May 2012; the location of the motorcycle shop from which the Appellant planned to

purchase a new motorcycle as well as the Appellant's plans to apply for a loan from the POSB Bank Woodlands branch. It was also emphasised that the Appellant had consistently maintained from the time of his arrest that Ravindran was responsible for the presence of the drugs in the Car, and that the Appellant had gone out of his way to provide the CNB with leads on Ravindran.

65 However, we are in agreement with the Judge (at [81]–[82] of the Judgment) that even if the Appellant is proved credible in these respects, the evidence on these issues is peripheral to the main inquiry concerning the Appellant's possession and knowledge of the drugs in the Car. The fact that the Appellant was planning to apply for a loan at the POSB Bank branch in Woodlands, or that he was planning to return to Johor Bahru in time for an appointment at the motorcycle shop, is not inconsistent with, and does not rebut, the Prosecution's case. The Appellant could have entered Singapore for multiple purposes, one of which was to deliver the drugs. We are thus of the view that the Judge did not err in placing less weight on this evidence.

Conclusion

66 For the foregoing reasons, we find that the Appellant has failed to rebut the presumptions of possession and knowledge under ss 21 and 18(2). The records of HP2 pertaining to the time of the offence support the Prosecution's case that the Appellant had a prior arrangement with Ravindran to bring the drugs into Singapore. The Appellant has not provided a reasonable explanation for them, and his case that the drugs were planted in the Car does not stand up to scrutiny in the light of these messages. Against this, there is no positive evidence to show that the Appellant had refused to carry the drugs and that the drugs had been planted by Ravindran.

67 This case stands in obvious contrast to the recent decision in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499, where this court, by a majority, acquitted an appellant after being satisfied that the drugs had been placed in his motorcycle without his knowledge. As the majority noted (at [25]), each case involves a delicate and fact-sensitive inquiry. It must be emphasised that the determination of guilt is an evidential matter decided on the merits of each case. Having considered all the circumstances in this case, we find that the Appellant's appeal fails. Accordingly, we affirm the Appellant's conviction.

Sundaresh Menon	Andrew Phang Boon Leong	Steven Chong
Chief Justice	Judge of Appeal	Judge of Appeal

Mahmood Gaznavi s/o Bashir Muhammad and Khadijah Yasin (Mahmood Gaznavi & Partners) for the appellant;
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