

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 8

Criminal Case No 12 of 2018

Between

Public Prosecutor

And

- (1) Muhammad Abdul Hadi bin
Haron
- (2) Muhammad Salleh bin Hamid

GROUND OF DECISION

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

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Public Prosecutor
v
Muhammad Abdul Hadi bin Haron and another

[2020] SGHC 8

High Court — Criminal Case No 12 of 2018

Hoo Sheau Peng J

6–9 March, 20–22 March 2018, 26–28 February, 1, 5 March 2019; 19 August, 27 September 2019

10 January 2020

Hoo Sheau Peng J:

1 The first accused person, Mr Muhammad Abdul Hadi bin Haron (“Hadi”), claimed trial to a charge of having in his possession five packets of crystalline substance which contained not less than 325.81g of methamphetamine (which I shall refer to as “the drugs”) for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”).

2 The second accused person, Mr Muhammad Salleh bin Hamid (“Salleh”), claimed trial to a charge of abetting Hadi by instigating him to be in possession of the drugs for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) and s 12 of the MDA.

3 At the end of the joint trial, I found both Hadi and Salleh guilty on their respective charges. I passed the mandatory death penalty upon Salleh and sentenced Hadi to life imprisonment and 15 strokes of the cane. I now set out my grounds for doing so.

Undisputed facts

4 On 22 July 2015 at about 7.10pm, officers from the Central Narcotics Bureau (“CNB”) raided the unit at Block 53 Marine Terrace where Hadi lived.¹ Hadi was arrested in the unit. Upon questioning, Hadi informed SSgt Muhammad Fardlie bin Ramlie (“SSgt Fardlie”) that he had a motorcycle which was parked nearby, and that it contained two bundles which he had collected from Johor Bahru.² Hadi led the CNB officers to his motorcycle (bearing license plate number FBG 636E). From a hidden compartment under the seat of the motorcycle which was accessed by removing two screws, SSgt Tay Keng Chye (“SSgt Tay”) recovered two bundles wrapped in black tape (subsequently marked “A1” and “A2”).³ Three mobile phones (subsequently marked “HADI-HP1”, “HADI-HP2”, and “HADI-HP3”) were also seized from Hadi upon his arrest.

5 “A1” contained three packets of crystalline substance (subsequently marked “A1A1”, “A1A2”, and “A1A3”), while “A2” contained two packets of crystalline substance (subsequently marked “A2A1” and “A2A2”). These

¹ Conditioned statement of SSI Ng Tze Chiang Tony (PS27) at para 5.

² Conditioned statement of SSgt Muhammad Fardlie bin Ramlie (PS20) at para 5; Notes of Evidence (“NEs”), 27 February 2019, page 8, lines 1–2; lines 28–32 (Hadi’s EIC).

³ Conditioned statement of SSgt Tay Keng Chye (PS18) at para 6.

exhibits were sent to the Health Sciences Authority (“HSA”) for analysis. The results of the analysis were as follows:

Exhibit	Gross weight (not less than)	Net weight of methamphetamine (not less than)
A1A1	99.51g	64.87g
A1A2	99.43g	65.33g
A1A3	99.94g	65.75g
A2A1	99.54g	64.87g
A2A2	99.60g	64.99g

As such, “A1” weighed roughly 300g in total, while “A2” weighed roughly 200g in total. Together, they contained not less than 325.81g of methamphetamine (constituting the drugs referred to at [1] above). The integrity of the chain of custody of the drugs was uncontested.

6 Later on the same night of 22 July 2015, at about 9.08pm, Salleh was arrested by CNB officers at a coffee shop at 85 Kallang Avenue.⁴ A total of four mobile phones and a tablet were seized from Salleh’s person and at his flat (which were subsequently marked “SALLEH-HP1”, “SALLEH-HP2”, “SALLEH-HP3”, “SALLEH-HP4”, and “SALLEH-IPAD” respectively).

7 The following outline of the alleged offences was also undisputed. Hadi entered Johor Bahru at about 10.27am on 22 July 2015 and returned to Singapore at about 12.41pm on the same day.⁵ In Johor Bahru, Hadi picked up

⁴ Conditioned statement of DSP Xavier Lek Lai Ann (PS19) at para 3.

⁵ Exhibit P99 (Hadi’s immigration records).

“A1” and “A2” from a woman known as “Kakak”,⁶ also known to Salleh as “Apple”.⁷ Salleh was the person who instructed Hadi (whom he referred to as “Bear”⁸) on the collection from “Kakak”, and also coordinated the same with “Kakak”.⁹ Hadi hid the two bundles in his motorcycle and returned to Singapore.¹⁰ Both Hadi and Salleh knew that the bundles were intended for onward distribution.¹¹ Prior to 22 July 2015, Hadi had performed a number of similar deliveries on Salleh’s instructions.¹²

The case in relation to Salleh

8 The Prosecution sought to admit a total of four statements recorded from Salleh during the course of investigations. At the trial, Salleh challenged the voluntariness of two of these statements: his contemporaneous statement recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) shortly after his arrest on 22 July 2015 at 10.10pm (“Salleh’s contemporaneous statement”), and his cautioned statement recorded under s 23 CPC on 23 July 2015 at 4.31am (“Salleh’s cautioned statement”). Two ancillary hearings were therefore conducted under s 279 of the CPC to determine the admissibility of these statements. At the end of each ancillary hearing, I ruled

⁶ NEs, 27 February 2019, page 35, lines 12–20 (Hadi’s EIC).

⁷ See NEs, 1 March 2019, page 27, lines 1–4 (Salleh’s EIC).

⁸ NEs, 1 March 2019, page 15 lines 4–5 (Salleh’s EIC).

⁹ NEs, 1 March 2019, page 15 line 16 – page 16 line 2 (Salleh’s EIC).

¹⁰ Hadi’s statement recorded under s 22 CPC on 27 July 2015 at 10.43am (“Hadi’s 27 July statement”) at paras 6, 8.

¹¹ Hadi’s 27 July statement at para 8; NEs, 1 March 2019, page 31, lines 20–29 (Salleh’s EIC).

¹² NEs, 27 February 2019, page 13 line 30 – page 14 line 2 (Hadi’s EIC); NEs, 1 March 2019, page 28, lines 1–4 (Salleh’s EIC).

that the statement in question had been made voluntarily and hence admitted it into evidence.

The ancillary hearings

Salleh's contemporaneous statement

9 Salleh's contemporaneous statement was recorded in a CNB operational car by Insp Mohamed Faizal bin Baharin ("Insp Faizal").¹³ The two were alone throughout the course of the statement recording except for a brief moment when SSSgt Mohammad Abdillah bin Rahman ("SSSgt Abdillah") opened the door to assist Insp Faizal.¹⁴

10 Salleh's account of the statement recording was as follows. He denied being involved in drug activities, whereupon Insp Faizal told him not to lie.¹⁵ During this conversation, SSSgt Abdillah entered the car and shouted at Salleh to cooperate and not to give Insp Faizal "a hard time".¹⁶ SSSgt Abdillah then left the car. Insp Faizal then told Salleh that he was facing the death penalty, and to cooperate by admitting to the charge.¹⁷ Insp Faizal said that if Salleh cooperated, Insp Faizal would help Salleh to "reduce the charge".¹⁸ Salleh continued to deny his involvement, and Insp Faizal raised his voice and tried to punch Salleh.¹⁹ As Salleh's hands were handcuffed at his back, he had to twist

¹³ NEs, 9 March 2018, page 17, lines 21–23 (Insp Faizal's EIC).

¹⁴ NEs, 9 March 2018, page 17, lines 24–27; page 18, lines 15–21 (Insp Faizal's EIC);

¹⁵ NEs, 20 March 2018, page 32, lines 15–24 (Salleh's EIC).

¹⁶ NEs, 20 March 2018, page 32, lines 26–30 (Salleh's EIC).

¹⁷ NEs, 20 March 2018, page 33, lines 1–3 (Salleh's EIC).

¹⁸ NEs, 20 March 2018, page 33, lines 14–15 (Salleh's EIC).

¹⁹ NEs, 20 March 2018, page 33, lines 20–22 (Salleh's EIC).

his body to avoid the punch; the punch did not land on him.²⁰ Salleh then gave in and agreed to whatever Insp Faizal wanted to reflect in the statement.²¹

11 In his testimony, Insp Faizal denied asking Salleh to cooperate²² or not to lie,²³ attempting to punch him,²⁴ agitatedly raising his voice,²⁵ or promising to reduce Salleh's charge.²⁶ Insp Faizal denied that any officer had shouted at Salleh to cooperate.²⁷ In his testimony, SSSgt Abdillah likewise denied having done so.²⁸ Insp Faizal also denied telling Salleh prior to the recording of the statement, "You know what you did".²⁹ Insp Faizal denied that in the end, he simply wrote down whatever he wanted in Salleh's contemporaneous statement.³⁰

12 Five other CNB officers, SI Chin Chee Hua, DSP Xavier Lek Lai Ann ("DSP Lek"), ASP Chee Tuck Seng, SSgt Ace Ignatius Siao ("SSgt Siao"), and Sgt Kovalan Gopalakrishna testified that they were in the vicinity of the CNB car during the recording of Salleh's contemporaneous statement and did not notice any improper behaviour by Insp Faizal in the car, or hear any complaints

²⁰ NEs, 20 March 2018, page 35, lines 21–28; page 36, lines 6–13 (Salleh's XX).

²¹ NEs, 20 March 2018, page 34, lines 1–18 (Salleh's EIC).

²² NEs, 9 March 2018, page 31, lines 2–4; page 38, lines 5–9 (Insp Faizal's XX).

²³ NEs, 9 March 2018, page 38, lines 13–15 (Insp Faizal's XX).

²⁴ NEs, 9 March 2018, page 34, lines 23–26; page 39, lines 5–7 (Insp Faizal's XX).

²⁵ NEs, 9 March 2018, page 38 line 20 – page 39 line 4 (Insp Faizal's XX).

²⁶ NEs, 9 March 2018, page 40, lines 27–30 (Insp Faizal's XX).

²⁷ NEs, 9 March 2018, page 36, lines 14–24 (Insp Faizal's XX).

²⁸ NEs, 9 March 2018, page 53, lines 20–27 (SSSgt Abdillah's XX).

²⁹ NEs, 9 March 2018, page 37, lines 12–22 (Insp Faizal's XX).

³⁰ NEs, 9 March 2018, page 40, lines 11–21 (Insp Faizal's XX).

by Salleh about the statement recording process. Instead, they found Salleh's demeanour after the statement recording to be unremarkable.³¹ Of these officers, DSP Lek testified that he was less than two metres away from the car,³² and SSgt Siao testified that he was less than ten metres away from the car³³ during the statement recording process.

13 It is also worth noting that although Salleh alleged that SSSgt Abdillah had entered the car and shouted at him in the midst of the statement recording process (see [10] above), SSSgt Abdillah and Insp Faizal testified that SSSgt Abdillah only entered the car at the end of the statement recording, after a signal was given by Insp Faizal to request for assistance. SSSgt Abdillah uncuffed Salleh for him to sign the statement.³⁴ DSP Lek also insisted that no CNB officer entered the car during the statement recording.³⁵

Salleh's cautioned statement

14 Salleh's cautioned statement was recorded by ASP Lee Jun Tian ("ASP Lee"). Salleh alleged that ASP Lee told him that he would help him "reduce [his] sentence", and this was why he agreed to give his statement.³⁶ Salleh

³¹ NEs, 9 March 2018, page 61, lines 3–29 (SI Chin Chee Hua's EIC); 20 March 2018, page 3, lines 1–13 (DSP Lek's EIC); 20 March 2018, page 16, lines 1–13 (ASP Chee Tuck Seng's EIC); 20 March 2018, page 19 line 29 – page 20 line 19 (SSgt Siao's EIC); 20 March 2018, page 25 line 15 – page 26 line 7 (Sgt Kovalan Gopalakrishna's EIC).

³² NEs, 20 March 2018, page 2, lines 27–30 (DSP Lek's EIC).

³³ NEs, 20 March 2018, page 19, lines 22–25 (SSgt Siao's EIC).

³⁴ NEs, 9 March 2018, page 18, lines 13–16 (Insp Faizal's EIC); NEs, 9 March 2018, page 47, lines 13–19 (SSSgt Abdillah's EIC).

³⁵ NEs, 20 March 2018, page 10, lines 22–28 (DSP Lek's XX).

³⁶ NEs, 21 March 2018, page 32, lines 26–27 (Salleh's EIC).

reported, however, that he was “confused” about whether he was doing the right thing in signing such a statement. Nevertheless, ASP Lee told him to “just sign” the statement as it was required to get Salleh’s “custody” “for [Salleh’s] next Court”. Thus, he signed the statement.³⁷

15 When these allegations were put to him on the stand, ASP Lee denied them in their entirety.³⁸ The interpreter who was present during the statement recording, Ms Norashikin binte Bunyamin (“Ms Norashikin”), likewise denied that ASP Lee had said those words.³⁹ However, ASP Lee and Ms Norashikin appeared to differ in their testimony as to whether either of them had *explained* to Salleh the meaning of the words “abet by instigating” in the charge. ASP Lee said that he had not explained those words,⁴⁰ but Ms Norashikin initially testified that ASP had done so, and that she had translated the same to Salleh.⁴¹ However, when confronted with ASP Lee’s evidence, Ms Norashikin then claimed that she could not remember, and that she had been relying on her usual practice.⁴²

My decision on the admissibility of Salleh’s contemporaneous statement and Salleh’s cautioned statement

Salleh’s contemporaneous statement

16 Salleh’s allegations against Insp Faizal and SSSgt Abdillah were unsupported by any other evidence. In particular, by his account, he did not even

³⁷ NEs, 21 March 2018, page 33, lines 9–24 (Salleh’s EIC).

³⁸ NEs, 21 March 2018, page 9, lines 1–18 (ASP Lee’s XX).

³⁹ NEs, 21 March 2018, page 16, lines 17–25 (Ms Norashikin’s EIC).

⁴⁰ NEs, 21 March 2018, page 6, lines 18–21 (ASP Lee’s XX).

⁴¹ NEs, 21 March 2018, page 18, lines 6–30 (Ms Norashikin’s XX).

⁴² NEs, 21 March 2018, page 20, lines 12–30 (Ms Norashikin’s XX).

try to complain of his mistreatment after the statement recording to any of the other CNB officers.⁴³ Salleh's explanation that he could not trust the other CNB officers with such a complaint because they refused to believe his professions of innocence⁴⁴ simply made no sense. Even if the officers had refused to believe in Salleh's innocence, this did not support a belief that these officers would ignore his allegations of mistreatment. This also failed to explain why Salleh did not complain to someone other than the CNB officers, especially after he was transferred from CNB's custody to that of Prisons.

17 A further difficulty with Salleh's account was his allegation that SSSgt Abdillah had entered the CNB car in the middle of the statement recording to shout at him (see [10] above). I have not been given any reason to believe that SSSgt Abdillah would have entered the car during the statement recording. Further, according to Salleh, SSSgt Abdillah had entered the car "reaching" for something, "overheard the conversation" with Insp Faizal, and then shouted at him.⁴⁵ I did not see why the CNB officers would lie about this particular detail if SSSgt Abdillah had in fact entered the car for an initially innocuous reason, as Salleh had alleged. I preferred the consistent evidence of Insp Faizal, SSSgt Abdillah, and DSP Lek that no one entered the CNB car in the middle of the statement recording (see [13] above).

18 Further, Insp Faizal and SSSgt Abdillah have categorically denied Salleh's allegations against them. This was supported by the evidence of the five other CNB officers who were in the vicinity (see [11] and [12] above).

⁴³ NEs, 20 March 2018, page 37, lines 5–7 (Salleh's XX); page 49, lines 4–6 (Salleh's Re-X).

⁴⁴ NEs, 20 March 2018, page 37, lines 12–14 (Salleh's XX).

⁴⁵ NEs, 20 March 2018, page 32, lines 27–29 (Salleh's EIC).

Although it was not suggested that the five CNB officers kept a close watch on what was happening in the CNB car during the statement recording, it seemed remarkable that none of them would have seen Insp Faizal attempting to punch Salleh, and that all of them would have found Salleh's demeanour unremarkable afterwards, if Salleh's account of the statement recording were true. The only alternative explanation for Salleh's account was that the five CNB officers, together with Insp Faizal and SSSgt Abdillah, had conspired to lie in court, but I could see no reason to prefer Salleh's account over theirs.

19 Finally, it was worth noting that as far as Salleh's allegations regarding being told not to lie, to cooperate, not to give "a hard time", and that he was facing the death penalty were concerned, these in the first place would not ordinarily be capable of amounting to threats or inducements, or oppression, so as to undermine the voluntariness of the ensuing statement.

Salleh's cautioned statement

20 Salleh's account of ASP Lee's alleged inducements to him was lacking in both coherence and detail. Salleh's testimony, both of ASP Lee's alleged offer to reduce his sentence and of his own response to this offer, was exceptionally vague:⁴⁶

Q Now, can you tell the Court whether you gave this statement voluntarily?

A No, Your Honour.

Q Why do you say no?

...

⁴⁶ NEs, 21 March 2018, page 32 line 21 – page 33 line 9 (Salleh's EIC).

- A Okay. Because [ASP Lee] told me he will help me to reduce my sentence. So from then on then I agree to give my statement, Your Honour.
- Q Alright. When he told you he will reduce the sentence, what went through in your mind, please? Please tell the Court.
- A I was quite confused at the point in time, Your Honour. But my understanding that he's helping me, Your Honour.
- Q *In relation to giving the statement, how did it affect you?*
- A Sorry?
- Q You're---you said that he said this thing to you. ... And then you said you gave the statement. Show us---tell us the link within the two. He's---what he told you and then your---giving your statement.
- A *I---basically I was just being induced, Sir. I was attracted to it, Your Honour.*
- Q You were what?
- A Attracted to it, Your Honour.
- Q Attracted to it. Then what happened next after you gave your statement?
- A Yah, but at that point of time, I'm confused. I refuse to sign, Your Honour.

[emphasis added]

This account lacked any explanation of why Salleh initially refused to give any statement, or even an indication that he had refused. Salleh's testimony also glossed over the entire process from Salleh being "attracted to" ASP Lee's alleged offer to the finished statement being produced. Whether ASP Lee's alleged offer resulted in Salleh offering a false statement, or in Salleh allowing ASP Lee to fabricate a statement, or in some other eventuality, was left entirely unspoken.

21 Salleh's account then took an immediate turn to his sudden refusal to sign the statement, thus leading to the second alleged inducement by ASP Lee

that the statement was merely to get Salleh's "custody" at the next hearing. Salleh alleged that he believed ASP Lee's representation and therefore signed the statement.⁴⁷ However, by Salleh's own admission, he knew that the offence he had been charged with was non-bailable, and that he would therefore be in custody in any event.⁴⁸ The lack of logic both in ASP Lee's alleged inducement and in Salleh's response strongly suggested that this account was untrue.

22 As with Salleh's allegations with regards to his contemporaneous statement, Salleh also did not make any attempt to recant his cautioned statement before the trial – such as in his statement recorded on 27 July 2015 at 4.41pm ("Salleh's 27 July statement") or his statement recorded on 29 July 2015 at 3.05pm ("Salleh's 29 July statement"). I found Salleh lacking in credibility as a witness, and could see no reason not to accept ASP Lee's account of the recording of Salleh's cautioned statement. I therefore disbelieved Salleh's allegations.

23 Salleh's counsel, Mr Bajwa, also submitted that Ms Norashikin was not an honest witness because she had come to court simply to support ASP Lee's account of events.⁴⁹ As is clear from the course of her evidence as set out at [15] above, Ms Norashikin testified on certain events at the recording of Salleh's cautioned statement, even though in reality she could not remember those events. What had happened was that Mr Bajwa had suggested to Ms Norashikin that certain words ought to have been explained, and Ms Norashikin simply agreed that that was in fact done, until she realised that ASP Lee had given a

⁴⁷ NEs, 21 March 2018, page 33, lines 21–24 (Salleh's EIC).

⁴⁸ NEs, 21 March 2018, page 37 line 16 – page 38 line 7 (Salleh's XX).

⁴⁹ NEs, 21 March 2018, page 43, lines 11–27 (Mr Bajwa's submissions).

contrary account.⁵⁰ To this extent, I agreed that Ms Norashikin's evidence was not entirely satisfactory. However, it did not justify a conclusion that Ms Norashikin would have told an outright lie by claiming that she did not witness any inducement being made by ASP Lee to Salleh, if the opposite were true. In any event, given my view of the credibility of Salleh's allegations to begin with, I did not think it necessary to rely on any of Ms Norashikin's evidence to find that Salleh's allegations were false.

Conclusion

24 As such, I concluded that the Prosecution had proven beyond reasonable doubt that no threat, inducement or promise had been made to Salleh during the recording of either his contemporaneous statement or his cautioned statement. I admitted both statements into evidence accordingly.

25 In brief, in his contemporaneous statement, Salleh admitted that he was involved in "drug related activities", and that he acted as a "messenger", conveying instructions for the collection and delivery of packages of drugs to Hadi.⁵¹ In his cautioned statement, Salleh stated:

I'm not the only one that instruct him to do the delivery and I wasn't aware of the number of packages of the drugs that was with 'Bear'. That's all.

For completeness, I should add that in his 27 July statement, Salleh categorically denied that he was engaged in any drug activities.⁵² There was also no mention of any drug activities in the 29 July statement.

⁵⁰ NEs, 21 March 2018, page 18 line 6 – page 20 line 15 (Ms Norashikin's XX).

⁵¹ Salleh's contemporaneous statement Q3–Q4.

⁵² Salleh's 27 July statement, para 13.

The Prosecution's case against Salleh

26 Following the admission of Salleh's contemporaneous and cautioned statements into evidence, the Prosecution sought to rely on them to show that Salleh had instigated Hadi to collect the drugs from "Kakak" by instructing him to do so.⁵³ The Prosecution submitted that this was also supported by Hadi's testimony, the phone records from Hadi and Salleh's phones and Salleh's admission in his testimony.⁵⁴ The Prosecution submitted that Salleh likewise admitted in his testimony that he knew that he was instructing Hadi to traffic in methamphetamine.⁵⁵

27 The Prosecution argued that Salleh was prepared for Hadi to collect *any* quantity of methamphetamine, including a quantity which exceeded the capital threshold.⁵⁶ The Prosecution submitted that there was no evidence to suggest that Salleh had any agreement with either Hadi or "Kakak" that he would not be involved in trafficking more than a certain quantity of methamphetamine,⁵⁷ and that Salleh's previous dealings with "Kakak" suggested that he had previously coordinated transactions involving capital quantities of methamphetamine.⁵⁸

⁵³ Prosecution's subs at para 30.

⁵⁴ Prosecution's subs at para 30.

⁵⁵ Prosecution's subs at para 38.

⁵⁶ Prosecution's subs at para 41.

⁵⁷ Prosecution's subs at paras 40–41.

⁵⁸ Prosecution's subs at para 64.

Salleh's defence

28 As stated above at [7], Salleh did not deny that he was the one who liaised with “Kakak” for the collection by Hadi, and that he had instructed Hadi to carry out the collection.⁵⁹ Salleh also did not argue that he did not intend for the drugs collected to be delivered onwards to others. His sole defence was that he did not intend to traffic in more than 250g of methamphetamine (referring to the “weight of the packet”, *ie*, the *gross* weight of the drugs⁶⁰).⁶¹ He had separately agreed not to deal with capital quantities of methamphetamine with “Kakak”⁶² and Hadi.⁶³ Salleh submitted that the phone records demonstrated his confusion when “Kakak” told him that Hadi had collected multiple bundles, as Salleh had expected Hadi only to collect one bundle of not more than 250g.⁶⁴

29 Indeed, in his defence, Salleh no longer challenged the admissibility of his cautioned statement, but instead relied on it as evidence of a common thread in his defence from an early stage that he did not know the number of packets Hadi was going to collect.⁶⁵ Salleh also submitted that in accordance with his agreement with Hadi and “Kakak”, the two previous occasions on which Hadi had collected drugs from “Kakak” on Salleh’s instructions did not involve more than 250g of methamphetamine.⁶⁶ Salleh explained that although he had

⁵⁹ Salleh’s subs at paras 6–8.

⁶⁰ NEs, 5 March 2019, page 22, lines 23–26 (Salleh’s XX).

⁶¹ Salleh’s subs at paras 8–9.

⁶² NEs, 1 March 2019, page 23 line 29 – page 24 line 22 (Salleh’s EIC).

⁶³ NEs, 1 March 2019, page 28, lines 17–32 (Salleh’s EIC).

⁶⁴ Salleh’s subs at paras 12(a), 15(c).

⁶⁵ Salleh’s subs at para 43.

⁶⁶ Salleh’s subs at para 17.

disputed being involved in drugs in his 27 July statement, he had decided to “come clean” in court after a period of reflection.⁶⁷

My decision on Salleh’s conviction

30 In *Public Prosecutor v Andi Ashwar bin Salihin and others* [2019] SGHC 44 (“*Andi Ashwar*”) at [80], the High Court summarised the elements of the offence of abetment of trafficking by instigation as follows:

(a) the *actus reus* is “active suggestion, support, stimulation or encouragement” of the primary offender’s offence; and

(b) the *mens rea* is “knowledge of all essential matters constituting the primary offence” (following *Public Prosecutor v Koh Peng Kiat* [2016] 1 SLR 753 at [26], which was decided in the context of abetment by aiding).

31 When the primary offence is trafficking under s 5(1)(a) read with s 5(2) of the MDA, it is well-established that the elements of the offence are possession of a controlled drug, knowledge of the nature of the drug, and proof that possession of the drug was for the purpose of unauthorised trafficking (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 (“*Ridzuan*”) at [59]). Thus, the charge against Salleh required him to have knowledge of the existence of the bundles in Hadi’s possession, and knowledge that they contained methamphetamine (see *Andi Ashwar* at [84]–[86]). It also required Salleh to know that Hadi intended to possess the bundles for the purpose of trafficking.

⁶⁷ NEs, 5 March 2019, page 54 line 27 – page 55 line 3 (Salleh’s XX).

32 With reference to the first element of Salleh's knowledge of the existence of the bundles, this element would be made out if Salleh had known of the number of bundles which Hadi was to collect. However, it would also be sufficient if Salleh did not know, or had not addressed his mind to, the specific number of bundles involved, but instead knew that Hadi would collect *any* number of bundles which "Kakak" gave him, and that this might include the two bundles that Hadi in fact received. This is analogous to the scenario the Court of Appeal ruled on in *Ridzuan* at [57], albeit in the context of common intention.

33 As for the third element of Salleh's knowledge of Hadi's possession for the purpose of trafficking, what was crucial was that Hadi must have intended that the drugs ultimately be passed on to someone else (who was not Salleh), and not kept by Hadi himself, or passed to Salleh for Salleh's own consumption (see *Andi Ashwar* at [80(c)] and *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 at [75]).

34 There was no question that Salleh instigated Hadi to collect the drugs from "Kakak",⁶⁸ that he knew that the drugs were methamphetamine,⁶⁹ and that they were to be eventually delivered onwards to someone other than Hadi and Salleh.⁷⁰ Thus, the only remaining question was as to Salleh's state of mind regarding the quantity of drugs which Hadi was to collect from "Kakak". The relevant time for this inquiry is at the point when Salleh instigated Hadi to

⁶⁸ See Salleh's cautioned statement; Salleh's contemporaneous statement at Q4-Q6; NEs, 5 March 2019, page 32, lines 11-22 (Salleh's XX).

⁶⁹ See NEs, 5 March 2019, page 21, lines 22-24 (Salleh's XX).

⁷⁰ See Salleh's contemporaneous statement at Q7; NEs, 1 March 2019, page 31, lines 20-29 (Salleh's EIC).

collect the drugs. The fact that Salleh *subsequently* found out the quantity of drugs which Hadi had collected after the fact does not *directly* satisfy this element of the charge.

35 It is therefore important to understand the significance of the phone records of the communications between Salleh and Hadi and between Salleh and “Kakak” *after* Hadi had collected the drugs. They are relevant only to the extent that they shed light on Salleh’s state of mind earlier, during the process of Salleh instructing Hadi to collect the drugs.

36 The starting point is Salleh’s consistent refrain in his testimony that because he had agreed to deal in no more than 250g of methamphetamine, he only expected “Kakak” to give Hadi *one bundle* of drugs, since he expected one bundle to weigh about 250g.⁷¹ If this was Salleh’s state of mind when instructing Hadi to collect the drugs, he would have been surprised and confused if he were to learn subsequently that Hadi had collected more than one bundle. Indeed, he would have been startled and concerned since Hadi did not want to run the risk of facing the death penalty.⁷²

37 However, after Hadi collected the drugs on 22 July 2015, he sent Salleh messages (in Malay) stating “total I have 2 pack only” and “250 each”.⁷³ Asked by his counsel to explain these messages, Salleh’s response was incoherent:⁷⁴

Q ... Now please tell us what did you understand by this message, ‘250 each’?

⁷¹ See, eg, NEs, 1 March 2019, page 22 line 30 – page 23 line 3 (Salleh’s EIC).

⁷² NEs, 1 March 2019, page 24, lines 7–16 (Salleh’s EIC).

⁷³ Exhibit F, p 4, S/N 37–38.

⁷⁴ NEs, 1 March 2019, page 20 line 31 – page 21 line 8 (Salleh’s EIC).

A I'm not too sure at that point of time but from the message itself, it says that he has two packet. So he said, 'It's 250 each.' *So I don't know he's saying whether he has two bundles of 250 **which it seems that way** or it's two of---I also don't know. I'm not too sure.*

Court: Sorry, what's the alternative? Two of?

Witness: Sorry?

Court: You said you don't know whether it's two of---250 each or?

Witness: *Or how the packing it's like?* I don't know. I got no idea.

[emphasis added in italics and bold italics]

38 The reality, as is evident from Salleh's futile attempts to find an alternative meaning of "250 each",⁷⁵ is that these messages inescapably conveyed to Salleh that Hadi had picked up two bundles totalling 500g. Indeed, in an about-face shortly after the exchange set out above, Salleh himself readily accepted that he would have had this understanding.⁷⁶ As Salleh admitted, this contradicted both his understanding that Hadi would receive one bundle, and his agreement with both Hadi and "Kakak" that he would not deal with more than a gross weight of 250g of methamphetamine. Yet, in response, Salleh did not say anything to Hadi that would suggest that this was a startling piece of news. In my view, Salleh's incredible attempt to explain away the meaning of "250 each" went to his credibility as a witness. His lack of response to Hadi also suggested that he did not have any agreement about dealing in less than 250g of drugs.

⁷⁵ See also Salleh's reply subs at para 50(c).

⁷⁶ NEs, 1 March 2019, page 31, lines 9–16 (Salleh's EIC).

39 Instead, immediately after receiving these messages from Hadi, Salleh messaged “Kakak”, resulting in the following exchange (which was in Malay):⁷⁷

Salleh: You do 2, is it?
“Kakak”: Yup
“Kakak”: 3pkt 2pkt
Salleh: Huh
Salleh: 3 or 2?
Salleh: How many packets you gave him?
“Kakak”: 5pkt 100x5
Salleh: Huh??
Salleh: He told me only 2 pkt

About half an hour after that last message to “Kakak”, Salleh then sent the following message to Hadi:⁷⁸

Bro, 2 pkts
Smaller one hv 2 pkt inside
Bigger one hv 3 pkt inside

40 Salleh submitted that his exchange with “Kakak” evidenced his surprise that Hadi had collected more than the agreed quantity of drugs.⁷⁹ I did not accept this characterisation of the messages. Salleh’s surprise was clearly directed at the confusion caused by the message “3pkt 2pkt”, which made it unclear as to precisely how many packets “Kakak” had given Hadi. This confusion might have been compounded by the subsequent message “5pkt 100x5”, given that Salleh had been asking “Kakak” whether she had given Hadi *two or three* packets. At all times, Salleh’s baseline understanding was that Hadi had

⁷⁷ Exhibit F, p 4, S/N 40–48.

⁷⁸ Exhibit F, p 5, S/N 49.

⁷⁹ Salleh’s subs at para 12.

collected two packets: “He told me only 2pkt”. In the end, Salleh’s message to Hadi explaining that the two packets he had collected contained a total of five smaller packets indicated that Salleh had no actual aversion to trafficking in quantities of methamphetamine larger than 250g.

41 I should add that in relation to the message “100x5”, Salleh accepted that it would have suggested to him that the drugs weighed 500g.⁸⁰ To my mind, this only further confirmed what Salleh already knew based on Hadi’s “250 each” message that the weight involved was about 500g. Yet, as stated above at [38], he did not express any concerns to Hadi.

42 Salleh further testified that he asked “Kakak” why she had given Hadi two packets instead of one during a phone call.⁸¹ He pointed to a call record showing a 19-minute phone call received by him from a contact saved as “Wahida”, about one minute after his message to “Kakak” stating “He told me only 2 pkt”.⁸² Salleh sought to demonstrate that “Wahida” was “Kakak”.⁸³ According to Salleh, during this phone call he had an argument with “Kakak” about her giving Hadi two packets of drugs instead of one, and that “Kakak” explained that she gave Hadi more drugs than agreed because she was going away on a break and wanted to clear her stock.⁸⁴ Salleh testified that he then told “Kakak” to arrange to take back the larger bundle containing three packets (*ie*,

⁸⁰ NEs, 1 March 2019, page 25, lines 11–17 (Salleh’s EIC).

⁸¹ NEs, 1 March 2019, page 27, lines 5–22 (Salleh’s EIC).

⁸² Exhibit P45, p 71, S/N 1.

⁸³ NEs, 5 March 2019, page 73 line 3 – page 74 line 7 (Salleh’s Re-X).

⁸⁴ NEs, 1 March 2019, page 27, lines 13–17 (Salleh’s EIC).

about 300g) as he was only willing to accept the remaining bundle (of about 200g).⁸⁵

43 However, Salleh’s account came to an abrupt end. In his evidence-in-chief, Salleh did not go on to explain how the issue of the excess drugs was to be resolved. It was only in cross-examination that Salleh claimed that “Kakak” told him she needed some time to make arrangements to take back the 300g bundle.⁸⁶ Furthermore, Salleh admitted that he then gave Hadi no indication that arrangements were being made for “Kakak” to collect one of the bundles of drugs in Hadi’s possession.⁸⁷ Instead, Salleh simply sent Hadi the matter-of-fact message set out at [39] above.

44 Even proceeding on the assumption that Salleh did receive a call from “Kakak” through the number he had saved as “Wahida”, I was unable to accept Salleh’s claim that he had confronted her about the excess delivery. On the contrary, the messages Salleh had sent to “Kakak” and to Hadi surrounding this alleged call suggested that Salleh had sought clarification regarding the two bundles of drugs that Hadi had picked up, *ie*, that one bundle contained three packets while the other bundle contained two packets, and that Salleh had no concerns about Hadi being in possession of the two bundles of drugs.

45 Salleh’s evidence that he had a distinct agreement with Hadi, and not just “Kakak”, not to deal with more than 250g of methamphetamine⁸⁸ further undermined his defence. Even on Salleh’s own case, there was no assertion that

⁸⁵ NEs, 1 March 2019, page 27, lines 30–32 (Salleh’s EIC).

⁸⁶ NEs, 5 March 2019, page 46, lines 4–28 (Salleh’s XX).

⁸⁷ NEs, 5 March 2019, page 46, lines 18–23 (Salleh’s XX).

⁸⁸ NEs, 1 March 2019, page 28 line 31 – page 29 line 4 (Salleh’s EIC).

he had discussed with *Hadi* the fact that there was an excess bundle. This was hard to believe if Salleh's evidence on his agreement with Hadi were true. Moreover, if such an agreement existed, Hadi himself would have been startled and concerned once he realised that he had received two bundles from "Kakak" weighing about 500g, a far cry from the 250g specified in the agreement. One would expect Hadi to have expressed this concern to Salleh. This did not happen. In sum, the phone records entirely discredited Salleh's account of his agreements with Hadi and "Kakak" limiting the quantity of drugs he was willing to deal with.

46 I also rejected Salleh's submission that his defence at trial was consistent with that indicated in his cautioned statement (see [29] above). In Salleh's cautioned statement, all he said was "... *I wasn't aware of the number of packages* of the drugs that was with 'Bear'" [emphasis added] (see [25] above). Not only was the assertion a clear lie (see [37] above), it was also very different from Salleh's defence, which was that he had a *positive belief* that Hadi would not have collected more than one package of drugs.

47 Salleh's defence was also not stated in his contemporaneous statement – which was in fact in substance an admission to the charge. When cross-examined on this point, Salleh asserted that he was "very afraid" and therefore "*avoided* saying the grams" [emphasis added].⁸⁹ In other words, far from not thinking of his defence, Salleh claimed that he deliberately withheld it in his contemporaneous statement. This was a convoluted and unbelievable explanation.

⁸⁹ NEs, 5 March 2019, page 51, lines 10–16 (Salleh's XX).

48 To bolster his defence, Salleh pointed to a message he had sent to “Kakak” on 21 July 2015, which stated (in Malay) “tomorrow half prepare in the morning”.⁹⁰ Salleh testified that “half” referred to half of 500g, and that he was therefore asking “Kakak” to prepare 250g of methamphetamine for Hadi to collect.⁹¹ As was pointed out to Salleh in cross-examination, there was nothing either in this message or in the surrounding messages to suggest that “half” referred to half of 500g of methamphetamine.⁹² This piece of evidence therefore depended entirely on Salleh’s assertion as to its meaning. However, I have found Salleh’s evidence regarding his agreement with “Kakak” to be entirely lacking in credibility. I therefore rejected Salleh’s evidence on this point.

49 I also agreed with the Prosecution’s submission that there was some evidence in Salleh’s phone records to suggest that he had previous dealings involving more than 250g of methamphetamine.⁹³ For instance, on 5 March 2015, Salleh sent a message to “Kakak” in Malay saying, “2 x 250 ok? About 1.45pm he will reach the usual place he said”.⁹⁴ After being confronted with this message, Salleh offered no explanation of what “2 x 250” referred to other than a bare denial that it was not about methamphetamine.⁹⁵

50 Having regard to the foregoing evidence, the irresistible conclusion was that Salleh in fact had no qualms about dealing in more than 250g of methamphetamine, and that a transaction involving two bundles with a total

⁹⁰ Exhibit F, p 6, S/N 67.

⁹¹ NEs, 1 March 2019, page 23, lines 26–28 (Salleh’s EIC).

⁹² NEs, 5 March 2019, page 33 line 26 – page 34 line 17 (Salleh’s XX).

⁹³ Prosecution’s subs at paras 64–70.

⁹⁴ P48T (Translation of FORT report for SALLEH-HP4), p 29, S/N 15.

⁹⁵ NEs, 5 March 2019, page 49, lines 3–8 (Salleh’s EIC).

gross weight of 500g of methamphetamine was certainly well within Salleh's contemplation when he instructed Hadi to collect an unspecified quantity of methamphetamine from "Kakak". Salleh's defence was an afterthought which he deployed only because he had failed in his challenge to the admissibility of his contemporaneous and cautioned statements. As such, I found that Salleh satisfied the element of knowledge I referred to at [32] above. Since this was the only issue in contention by the end of the trial, and I was satisfied that every other element of the charge was made out on the evidence, I concluded that the charge against Salleh had been proven beyond reasonable doubt.

The case in relation to Hadi

51 I turn now to the case in relation to Hadi. Two contemporaneous statements were recorded from Hadi on 22 July 2015 under s 22 CPC at 8.40pm and 9.12pm respectively ("Hadi's first contemporaneous statement" and "Hadi's second contemporaneous statement" respectively), followed by a cautioned statement under s 23 CPC at 23 July 2015 at 4.12am ("Hadi's cautioned statement"). Statements were also recorded from Hadi under s 22 CPC on 27 July 2015 at 10.43am ("Hadi's 27 July statement"), 28 July 2015 at 2.30pm ("Hadi's 28 July statement"), and 9 December 2015 at 2.40pm ("Hadi's 9 December statement"). Hadi did not challenge the admissibility of any of his statements.

The Prosecution's case against Hadi

52 As I have stated at [31] above, the elements of the offence which Hadi faces are (a) possession of a controlled drug, (b) knowledge of the nature of the drug, and (c) possession of the drug for the purpose of trafficking. The

Prosecution submitted that the first and third elements were undisputed.⁹⁶ In relation to the second element, the Prosecution's case was that Hadi had actual knowledge that the two bundles contained methamphetamine,⁹⁷ and in the alternative, that s 18(2) of the MDA applied to presume Hadi's knowledge of the nature of the drugs, and Hadi was unable to rebut this presumption.⁹⁸

Hadi's defence

53 Hadi did not dispute being in possession of the two bundles containing the drugs,⁹⁹ and that these were meant for onward delivery.¹⁰⁰ Hadi's defence was that he thought the bundles contained gold and cash, as he had collected them in the course of his work as a courier for Salleh, whom he knew to be a gold and currency investor.¹⁰¹ The reason he had to hide the gold and cash was because he was smuggling it from Malaysia into Singapore to evade taxes.¹⁰² In support of this belief, Hadi claimed that on the first occasion he made a delivery for Salleh, he had torn open the bundle to check on its contents as he was concerned that it might contain drugs, and saw that the bundle contained gold and US dollar notes.¹⁰³ He did not open any of the bundles after that first

⁹⁶ Prosecution's subs at para 74.

⁹⁷ Prosecution's subs at para 76.

⁹⁸ Prosecution's subs at para 128.

⁹⁹ See Hadi's first contemporaneous statement at Q1–Q2; Hadi's cautioned statement; Hadi's 27 July statement at para 6; NEs, 27 February 2019, page 10, lines 23–27 (Hadi's EIC).

¹⁰⁰ See Hadi's first contemporaneous statement at Q3; Hadi's cautioned statement; Hadi's 27 July statement at para 10.

¹⁰¹ Hadi's 27 July statement at paras 4, 8.

¹⁰² Hadi's 27 July statement at para 6.

¹⁰³ Hadi's 27 July statement at para 11; NEs, 27 February 2019, page 22, lines 5–12 (Hadi's EIC).

delivery, as Salleh had scolded him for opening the bundle on the first occasion.¹⁰⁴

My decision on Hadi's conviction

54 It is evident that Hadi's defence was premised on his possession of the two bundles which turned out to contain the drugs, and that he intended the bundles to be delivered onwards. Indeed, there was no reason to think that the bundles were intended for Hadi himself, whether they contained gold and cash or drugs. Since Hadi was in possession of the drugs, the presumption of knowledge under s 18(2) MDA applied. To rebut the s 18(2) presumption, Hadi had to "lead evidence to prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug" (*Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [37]). As the Court of Appeal explained in *Obeng Comfort*:

39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, *he should be able to say what he thought or believed he was carrying*, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. ... Similarly, he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. ...

40 Where the accused has stated what he thought he was carrying ('the purported item'), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item. This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting

¹⁰⁴ Hadi's 27 July statement at para 11.

such an item. ... *Ultimately, what the court is concerned with is the credibility and veracity of the accused's account (ie, whether his assertion that he did not know the nature of the drugs is true). This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.*

[emphasis added]

55 It therefore followed that if Hadi failed to prove on a balance of probabilities that he believed he was carrying gold and cash, he would have failed to rebut the s 18(2) presumption.

56 Unlike Salleh, Hadi's defence did not surface for the first time at trial. Instead, it was raised in his 27 July statement, which was recorded five days after his arrest. Nevertheless, it is worth noting that Hadi failed to raise this defence in his first and second contemporaneous statements or in his cautioned statement. In both Hadi's first contemporaneous statement and in Hadi's cautioned statement, he simply stated that he *did not know* what was in the two bundles.¹⁰⁵ I should add that on 22 July 2015 at 8.15pm, shortly before the recording of his first contemporaneous statement, a notice regarding s 33B of the MDA was served on Hadi, and Hadi provided a response which was recorded in writing ("Hadi's s 33B statement"). This statement was admitted into evidence by the Defence.¹⁰⁶ In it, Hadi similarly said that he did not know the contents of the bundles, only that "it's an illegal thing".¹⁰⁷ Hadi's responses in his first contemporaneous statement, cautioned statement and s 33B statement were clearly inconsistent with his defence, which was that he had a positive belief that the bundles contained gold and cash specifically.

¹⁰⁵ Hadi's first contemporaneous statement at Q1.

¹⁰⁶ Exhibits 2D1 and 2D2.

¹⁰⁷ Exhibit 2D2.

57 When asked in cross-examination why his s 33B statement failed to reflect his defence, Hadi claimed that he had told the recorder of the s 33B statement, SSgt Fardlie, that he thought the bundles contained gold and cash. However, SSgt Fardlie “didn’t want to write it [down]”.¹⁰⁸ When asked why his first contemporaneous statement failed to reflect his defence, Hadi said that “[t]he evidence was in front of my eyes ... At that point in time, it didn’t occur to me because what was presented was something else”.¹⁰⁹ As for why his cautioned statement again failed to reflect his defence, Hadi explained that “when I gave this statement, I was informed that I will be facing the death penalty and I was quite shocked”.¹¹⁰ He further claimed that “this was the first time I was charged for [a] capital offence and I did not know the importance of this statement”.¹¹¹

58 As far as the allegation that Hadi had in fact raised his defence shortly after his arrest was concerned, there were significant disparities between the various accounts of how this had happened. When Hadi was narrating the events of his arrest in his 27 July statement, he said that when the two bundles were first recovered from his motorcycle, he had told the CNB officers that they contained gold and cash.¹¹² This happened *before* any statement was recorded from him. In his evidence-in-chief, Hadi likewise testified that shortly before SSgt Fardlie unwrapped one of the bundles after they were first recovered, Hadi

¹⁰⁸ NEs, 28 February 2019, page 38, lines 11–15 (Hadi’s XX).

¹⁰⁹ NEs, 28 February 2019, page 40, lines 3–10 (Hadi’s XX).

¹¹⁰ NEs, 28 February 2019, page 42, lines 4–5 (Hadi’s XX).

¹¹¹ NEs, 28 February 2019, page 42, lines 19–20 (Hadi’s XX).

¹¹² Hadi’s 27 July statement at para 8.

had told him that they contained gold.¹¹³ However, when Hadi's counsel cross-examined SSgt Fardlie, it was put to him that Hadi had told him during the recording of his *first contemporaneous statement* that the bundles contained gold and cash.¹¹⁴ As I mentioned at [57] above, during Hadi's cross-examination he instead asserted that he had told SSgt Fardlie about the gold and cash during the recording of his *s 33B statement*, but not during the recording of his first contemporaneous statement. Conversely, SSgt Fardlie denied that Hadi had ever told him the bundles contained gold, or that he would fail to record this down in the statements.¹¹⁵ In the light of the lack of consistency in Hadi's allegations, I preferred SSgt Fardlie's evidence.

59 Hadi's explanation in respect of his first contemporaneous statement, that he simply failed to think of his defence at the time, was also difficult to believe. This was especially considering his assertion that he had, very shortly before that (either during the recording of his s 33B statement, or when the two bundles were first recovered), told SSgt Fardlie that very defence. As for Hadi's explanation that he was shocked and did not realise the importance of his cautioned statement, this was undermined by the fact that the cautioned statement contained a warning in the form set out in s 23 CPC, informing the accused person of the importance of stating his defence therein. It was recorded in Hadi's cautioned statement that this warning was read out to Hadi, and he had appended his signature beneath it. Since Hadi did not challenge the fact that this warning had been administered to him, I did not accept that he would not have realised the need to state his defence that he had thought the bundles

¹¹³ NEs, 27 February 2019, page 9, lines 30–32 (Hadi's EIC).

¹¹⁴ NEs, 7 March 2018, page 22, line 12 (SSgt Fardlie's XX).

¹¹⁵ NEs, 8 March 2018, page 33, lines 7–14 (SSgt Fardlie's Re-X).

contained gold and cash at least by that point in time. In other words, I inferred that this defence was an afterthought concocted only after the recording of Hadi's cautioned statement.

60 Hadi's account of why he only checked the contents of the bundle during his first delivery for Salleh was also internally inconsistent. In Hadi's 27 July statement, he said that Salleh discovered that he had opened the bundle in the first delivery because Hadi had personally handed Salleh the torn bundle.¹¹⁶ In his testimony, however, Hadi instead claimed that he had deposited that bundle at a location instructed by Salleh, and that he later merely verbally informed Salleh that he had opened the bundle.¹¹⁷ When Salleh's counsel cross-examined Hadi on this inconsistency, Hadi prevaricated, first claiming that his 27 July statement had been "wrongly interpreted", and then claiming that he had forgotten the sequence of events when the statement was recorded.¹¹⁸ In my view, this inconsistency, for which Hadi gave contradictory explanations, affected the credibility of his account.

61 When he was first arrested, Hadi lied about his acquaintance with Salleh. SSgt Fardlie testified that Hadi had told him that he was acting under the instructions of one "Rasta" whom he had never met.¹¹⁹ This was also recorded in Hadi's s 33B statement.¹²⁰ In Hadi's first contemporaneous statement, he similarly claimed that he was acting under the instructions of one "White"

¹¹⁶ Hadi's 27 July statement at para 11.

¹¹⁷ NEs, 27 February 2019, page 31, lines 18–22 (Hadi's EIC).

¹¹⁸ NEs, 27 February 2019, page 46 line 26 – page 47 line 3 (Hadi's XX).

¹¹⁹ Conditioned statement of SSgt Fardlie (PS20) at para 5.

¹²⁰ See NEs, 8 March 2018, page 24, lines 4–11 (SSgt Fardlie's XX).

whom he had never met before.¹²¹ At the trial, Hadi admitted that “Rasta” and “White” both referred to Salleh,¹²² and that he had met Salleh numerous times.¹²³ In respect of both recorded instances of Hadi claiming never to have met Salleh, Hadi asserted that he had merely meant that he had not met Salleh *on that day*.¹²⁴ That was a plainly unsustainable gloss on the clear words recorded by SSgt Fardlie and Hadi’s own statements. Furthermore, in Hadi’s s 33B statement, he alluded to taking instructions from multiple persons.¹²⁵ Seen in this light, Hadi’s use of “Rasta” and “White” to describe the same man in two statements taken less than half an hour apart gave rise to the inference that he was deliberately trying to avoid any associations with Salleh.

62 The Prosecution submitted that Hadi’s lies about never having met Salleh corroborated the fact that he was entirely aware of Salleh’s activities and knew that the bundles contained methamphetamine.¹²⁶ I agreed with this submission. In *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [60], the Court of Appeal summarised the criteria for finding that lies told out of court by an accused person corroborated his guilt (known as *Lucas* lies, after *Regina v Lucas (Ruth)* [1981] QB 720 (“*Lucas*”)):

- (a) The lie told out of court is deliberate;
- (b) It relates to a material issue;
- (c) The motive for the lie is a realisation of guilt and a fear of the truth; and

¹²¹ Hadi’s first contemporaneous statement at Q5.

¹²² NEs, 27 February 2019, page 51, lines 10–15 (Hadi’s XX).

¹²³ NEs, 27 February 2019, page 54, lines 13–14 (Hadi’s XX).

¹²⁴ NEs, 27 February 2019, page 51, lines 30–31; page 52, lines 28–30 (Hadi’s XX).

¹²⁵ See NEs, 8 March 2018, page 23, lines 23–31 (SSgt Fardlie’s XX).

¹²⁶ Prosecution’s subs at para 88.

- (d) The statement must clearly be shown to be a lie by independent evidence.

63 In my view, Hadi's initial claims about never having met Salleh were deliberate lies on a material issue which have been shown to be lies by Hadi's own admissions (which was independent evidence within the meaning of the *Lucas* test: see *Lucas* at 724G). If one were to consider why Hadi would have told these lies, the irresistible conclusion was that it must be because Salleh was jointly engaged in drug trafficking with him, and so distancing himself from the offence required distancing himself from Salleh. If Hadi's defence had been about transporting gold and cash all along, one would expect him to have mounted that defence instead. Since the gold and cash defence was premised upon Salleh being a gold and currency investor, it would have made no sense for Hadi to dissociate himself from Salleh.

64 Between his statements and his testimony at the trial, Hadi also prevaricated over the number of deliveries he had made for Salleh,¹²⁷ as well as the amounts Salleh had paid him for each delivery from Johor Bahru.¹²⁸ The Prosecution submitted that these inconsistencies were also corroborative of Hadi's guilt.¹²⁹ While I considered the numerous inconsistencies in Hadi's evidence to signify his general lack of credibility as a witness, I did not think that these inconsistencies provided concrete reasons to think that he was guilty of the charge.

¹²⁷ See Prosecution's subs at paras 91–95.

¹²⁸ See Prosecution's subs at paras 97–98.

¹²⁹ See Prosecution's subs at para 88.

65 The Prosecution further submitted that the frequent use of code words such as “squid” in the communications between Salleh and Hadi, and the furtive manner in which the items were delivered by Hadi suggested that he could not genuinely have been dealing in gold and cash.¹³⁰ I did not find these matters to be of much probative value, since on Hadi’s own case he would also have thought that he was doing something illegal (*viz*, purportedly evading tax). In a similar vein, the fact that Hadi had forwarded various messages to Salleh warning about CNB and other law enforcement operations¹³¹ did not necessarily mean that Hadi and Salleh were jointly engaged in drug trafficking.

66 Finally, I considered the significance of Salleh’s evidence against Hadi. As I have mentioned at [45] above, one prong of Salleh’s defence was that he had a specific agreement with Hadi not to traffic in more than 250g of methamphetamine. Salleh’s evidence was therefore that Hadi was fully aware that the packages he was collecting contained methamphetamine, and furthermore that Salleh did not deal in gold and cash and had never instructed Hadi to transport gold and cash.¹³²

67 The Prosecution submitted that full weight should be given to Salleh’s evidence against Hadi in this regard.¹³³ According to the Prosecution, notwithstanding the fact that Salleh had lied about the existence of an agreement with Hadi to limit the quantity of methamphetamine trafficked, the remainder of Salleh’s evidence as to his agreement with Hadi was credible. On the other

¹³⁰ Prosecution’s subs at paras 119–125.

¹³¹ See Prosecution’s subs at paras 101–103.

¹³² See NEs, 5 March 2019, page 21, lines 7–28 (Salleh’s XX).

¹³³ Prosecution’s subs at paras 77–87.

hand, Hadi strenuously contended that Salleh's evidence could not be trusted, as he had been found to have been dishonest in challenging the admissibility of his contemporaneous and cautioned statements (see [8] above), after which he radically changed his defence and incriminated Hadi.¹³⁴ Hadi's counsel put to Salleh in cross-examination that he had a propensity to lie,¹³⁵ that Hadi had no reason to resort to trafficking drugs,¹³⁶ and that Salleh pinned the blame on Hadi to save himself.¹³⁷

68 When faced with the evidence of one co-accused person ("Y") against another ("X"), the court must carefully consider the veracity of such evidence. As the Court of Appeal explained in *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 at [59]:

... X may be convicted solely on Y's testimony. However, the foregoing discussion shows that Y's confession has to be very compelling such that it can on its own satisfy the court of X's guilt beyond a reasonable doubt. In this regard, *it would be relevant to consider the state of mind and the incentive that Y might have in giving evidence against X*. If X alleges that Y has a motive to frame him, then this must be proved as a fact Of course, *Y may well be truthful despite having an incentive to lie or could be untruthful despite not having such an incentive*. [emphasis added]

The same concerns must be at the forefront of the court's deliberations, even when it does not convict X solely on the basis of Y's testimony.

69 As Hadi correctly pointed out, Salleh's credibility as a witness would be severely diminished once the court had rejected his challenges to the

¹³⁴ Hadi's subs at para 86.

¹³⁵ NEs, 5 March 2019, page 18, lines 15–22 (Salleh's XX).

¹³⁶ NEs, 5 March 2019, page 10, lines 12–20 (Salleh's XX).

¹³⁷ NEs, 5 March 2019, page 18, lines 2–9 (Salleh's XX).

admissibility of his statements, and his claim of agreeing not to traffic in more than 250g of methamphetamine. Nevertheless, this did not mean that Salleh must necessarily have been untruthful in other aspects of his evidence.

70 That being said, the prong of Salleh’s defence relating to his agreement with Hadi necessarily required Salleh to implicate Hadi with knowledge of the nature of the drugs. Although it was certainly possible for Salleh to have relied solely on the other prong of his defence, which was that he had such an agreement with “Kakak”, Salleh’s defence as he ran it was in fact two-pronged, one relating to Hadi and another relating to “Kakak”. When assessing the credibility of Salleh’s evidence against Hadi, I had to consider whether he had any incentive to lie in the light of the case he was actually running. It was clear that he did have such an incentive.

71 I have found that Salleh was telling the truth about his own involvement in the drug transaction, save that he had no qualms with dealing in capital quantities of methamphetamine (see [50] above). However, this conclusion on its own did not mean that Hadi necessarily had an equal level of knowledge about the drug transactions – Salleh could well have kept him in the dark. I therefore returned to the fact that Salleh attempted to bolster his defence by concocting the existence of an agreement with Hadi to traffic in not more than 250g of methamphetamine. The fact that this defence required Salleh to take the position that Hadi knew the nature of the substance he was transporting made it imprudent to rely on Salleh’s testimony on this point as being corroborative of Hadi’s knowledge of the nature of the drugs.

72 Although I could not place much weight on Salleh’s testimony against Hadi, the remainder of the evidence I have already considered above nevertheless made it clear that Hadi’s assertion that he thought he was

transporting gold and cash could not be believed. Hadi therefore failed to rebut the s 18(2) presumption on the balance of probabilities. Consequently, I found Hadi guilty of the charge against him.

Sentence

73 Having convicted both Salleh and Hadi on their respective charges, I heard submissions from the parties on sentence. Upon conviction, Salleh and Hadi faced the mandatory death penalty, unless they could bring themselves within the scope of the discretionary sentencing regime under s 33B of the MDA. All of the parties submitted solely on the s 33B(2) limb of the provision.

74 Under s 33B(2) MDA, the court has the discretion to sentence a person convicted of an offence carrying the mandatory death penalty to life imprisonment and 15 strokes of the cane, if:

(a) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted —

- (i) to transporting, sending or delivering a controlled drug;
- (ii) to offering to transport, send or deliver a controlled drug;
- (iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
- (iv) to any combination of activities in subparagraphs (i), (ii) and (iii); and

(b) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.

Hadi's sentence

75 Both the Prosecution and Hadi submitted that he was a courier within the meaning of s 33B(2)(a) MDA.¹³⁸ I agreed that Hadi's role was restricted to transporting and delivering the drugs. I therefore found that he fell within the scope of s 33B(2)(a). The Prosecution also tendered a certificate of substantive assistance in favour of Hadi. I did not see any reason not to exercise my discretion under s 33B(1)(a) in Hadi's case. I therefore sentenced him to life imprisonment with effect from 24 July 2015 and 15 strokes of cane.

Salleh's sentence

76 Salleh submitted that he fell within the scope of s 33B(2)(a) MDA. He submitted that his coordinating role between "Kakak" and Hadi was facilitative of, or incidental to, Hadi's transport and delivery of the drugs.¹³⁹ He further submitted that his role was akin to Hadi's, as he had testified that he would deliver the drugs himself if Hadi were unable to do so.¹⁴⁰ The Prosecution submitted, on the other hand, that Salleh's role exceeded the scope of s 33B(2)(a) in two ways: first, he recruited and paid Hadi; and second, he coordinated Hadi's collection of the drugs.¹⁴¹

77 Salleh's role in the present offence, as demonstrated by his own evidence, clearly exceeded that of a courier, and did not fall within s 33B(2)(a). Salleh's evidence was that he was the one who recruited Hadi to collect and

¹³⁸ NEs, 19 August 2019, page 4, lines 9–11 (Mr Foo's submissions); 27 September 2019, page 2, lines 3–10 (Mr Aw's submissions).

¹³⁹ Salleh's courier subs at para 2(a).

¹⁴⁰ Salleh's courier subs at para 2(b).

¹⁴¹ Prosecution's courier subs at para 2.

deliver drugs from “Kakak”.¹⁴² In the course of cross-examining Hadi, Salleh’s counsel also said that his instructions were that Salleh was the one who paid Hadi for all his deliveries, including that on 22 July 2015.¹⁴³ There was nothing to contradict these positions. In *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 (“*Zainudin*”) at [65] and [86], the Court of Appeal reiterated that conduct such as the recruitment and remuneration of drug couriers is far removed from the nature and purpose of conveying drugs. This applied squarely to Salleh.

78 Furthermore, it was also clear from the evidence that Salleh did more than merely relay instructions down the chain incidental to the conveyance of the drugs, and instead performed an independent coordinating role between “Kakak” and Hadi. Salleh testified that he was the one who instructed “Kakak” to prepare the drugs for Hadi to collect on 22 July 2015.¹⁴⁴ He also testified that he was the one who gave Hadi instructions to go to Johor Bahru to collect the drugs,¹⁴⁵ and that he also coordinated the meeting between Hadi and “Kakak”.¹⁴⁶ As the Court of Appeal explained in *Zainudin* at [86], “if the offender does not merely relay instructions but is in reality the source of those instructions, in the sense that he decided the contents of the instructions,” then he goes beyond being a mere courier. In the present case, the evidence clearly suggested that Salleh played a coordinating role in the drug transaction that went beyond the

¹⁴² NEs, 1 March 2019, page 28, lines 22–28 (Salleh’s EIC).

¹⁴³ NEs, 27 February 2019, page 46, lines 1–5 (Hadi’s XX).

¹⁴⁴ NEs, 1 March 2019, page 23, lines 9–28 (Salleh’s EIC).

¹⁴⁵ NEs, 5 March 2019, page 32, lines 11–22 (Salleh’s XX).

¹⁴⁶ NEs, 1 March 2019, page 15 line 16 – page 16 line 18 (Salleh’s EIC).

mere onward relaying of instructions. This was another factor which would also have taken Salleh outside the scope of s 33B(2)(a).

79 The burden of proof is upon the offender himself to show that he falls within s 33B(2)(a) on a balance of probabilities (*Zainudin* at [34]), and Salleh has failed to do so. For the reasons above, I did not accept Salleh’s submission that he was a mere courier. To be clear, the fact that he might potentially have acted as a mere courier *if* Hadi had been unable to make the delivery on that day did not mean that he ought to be treated as a mere courier given that this was not what in fact happened. Moreover, even in that eventuality, it was questionable whether the evidence would have supported Salleh being a mere courier, as he was the one who instructed “Kakak” to prepare drugs for his collection.

80 In the circumstances, although the Prosecution tendered a certificate of substantive assistance in favour of Salleh, I found that he did not qualify for the discretionary sentencing regime under s 33B MDA. I therefore sentenced him to the death penalty.

Hoo Sheau Peng
Judge

Winston Cheng Howe Ming, Marcus Foo and Rimplejit Kaur
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Ragbir Singh S/O Ram Singh Bajwa (Bajwa & Co) and Wong Seow
Pin (S P Wong & Co) for the second accused.
