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Public Prosecutor
v
Hishamrudin Bin Mohd

[2016] SGHC 56

High Court — Criminal Case No 18 of 2013

Chan Seng Onn J

1–4, 8–11 October 2013; 14–16, 21–22 May; 5–7, 12–15, 19–21, 26–29
August 2014; 24–26 February; 4–6, 10–12 March 2015; 14–15, 19–22,
28–29 January; 2 February 2016

Criminal law — Statutory offences — Misuse of Drugs Act

Evidence — Witnesses — Corroboration

Evidence — Witnesses — Impeaching witness' credibility

6 April 2016

Chan Seng Onn J:

Introduction

1 The accused, a 54 year-old Singaporean male who was a Senior Sales Consultant at the time of his arrest, claimed trial before me on two charges of trafficking diamorphine under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the “MDA”). The first charge (the “non-capital charge”) is set out as follows:

That you, HISHAMRUDIN BIN MOHD, on the 7th day of October 2010, at about 9.30 a.m., in a vehicle bearing registration licence plate number SJV 4311S, at basement car park of City Square Mall, 180 Kitchener Road, Singapore, did traffic in a

controlled drug specified in Class A of the First Schedule of the [MDA], to wit, by having in your possession for the purpose of trafficking, fifty-nine (59) packets of granular substance which was analysed and found to contain **not less than 3.56 grams of diamorphine**, without any authorisation under the [MDA] or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the [MDA], and punishable under Section 33 of the [MDA]. [emphasis added]

2 The second charge (the “capital charge”) reads as follows:

That you, HISHAMRUDIN BIN MOHD, on the 7th day of October 2010, at or about 1.30 p.m, in Block 83 Commonwealth Close #12-167, Singapore did traffic in a controlled drug specified in Class A of the First Schedule of the [MDA], to wit, by having in your possession for the purpose of trafficking, one hundred and ninety-three (193) packets of brown granular/powdery substance which was analysed and found to contain **not less than 34.94 grams of diamorphine**, without any authorisation under the [MDA] or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) of the [MDA], and punishable under Section 33 of the [MDA], and further upon your conviction under section 5(1)(a) read with section 5(2) of the [MDA], you may alternatively be liable to be punished under section 33B of the [MDA]. [emphasis added]

3 This was a protracted trial that took place over five tranches from October 2013 to February 2016, with different counsel and prosecutors handling the matter for the accused and Prosecution over the course of the trial. The accused was assigned free legal counsel under the Legal Assistance Scheme for Capital Offences (“LASCO”), but he repeatedly discharged his assigned LASCO counsel (totalling to no less than four lawyers over the whole trial, two who acted as his counsel and another two who separately acted as his McKenzie friend) until he eventually appeared in person without the assistance of any McKenzie friend in the last tranche.

4 In his defence, the accused made several serious accusations against the Prosecution and officers from the Central Narcotics Bureau (“CNB”), including

the allegation that he had been framed by CNB officers and that the Prosecution's exhibits had been forged and tampered with. The accused's claims were strongly denied and submitted by the Prosecution to be baseless and clearly fabricated.

5 I found the accused guilty of both charges and convicted him accordingly. For the non-capital charge, I sentenced the accused to six years' imprisonment with effect from the date of his remand on 9 October 2010. For the capital charge, the Prosecution informed the court that the Public Prosecutor would not be issuing a certificate of substantive assistance under s 33B(2)(b) of the MDA, and I imposed the mandatory death penalty on the accused accordingly.

Background facts

The accused was arrested with drugs in his car

6 In the morning of 7 October 2010, the accused left Block 83 Commonwealth Close #12-167 Singapore (the "Flat"), the flat where he was the sole lessee of¹ and was staying at, and drove his car (bearing license plate number SJV 4311S² and registered under the accused) to City Square Mall (the "Mall"). The accused parked his car at the basement four ("B4") carpark of the Mall, locked his car and made his way by foot to the coffeeshop at Shing Hotel along Kitchener Road, where he met one Ahad Bin Salleh ("Ahad"). At the coffeeshop, the accused passed Ahad an envelope containing S\$3,000 in \$10

¹ Transcript dated 26 August 2014 (Day 24), at p 86: 16–24; Exhibit P354.

² Transcript dated 20 January 2016 (Day 40), at p 77: 2–6; Exhibit P353.

note denominations.³ Thereafter, CNB officers arrested the accused at the coffeeshop. Another team of CNB officers also arrested Ahad on the same day.

7 SSSgt Alwin Wong Kah Hung (“SSSgt Alwin”) searched the accused in the CNB operational car and recovered the accused’s car key with a remote control from the accused’s shorts.⁴ The accused was then brought to his car in the B4 carpark of the Mall where his car was unlocked in his presence using the recovered car key.⁵ The car was searched then, and one white ‘Choices’ plastic bag labelled A1 was recovered from the floor mat of the front passenger seat of the car. This was witnessed by the accused.⁶ The accused was further searched at the B4 carpark and the keys to his Flat were recovered.⁷ A contemporaneous statement was also recorded from the accused at the carpark.⁸

8 The White ‘Choices’ plastic bag, or Exhibit A1, held two newspaper-wrapped bundles which contained 29 and 30 packets of brown granular substance respectively that were analysed and found to collectively contain not less than 3.56 grams of diamorphine.⁹

³ Transcript dated 20 January 2016 (Day 40), at p 54: 19–24.

⁴ Transcript dated 11 October 2013 (Day 8) at p 147; Transcript dated 20 January 2016 (Day 40), at p 116: 14–29.

⁵ Transcript dated 20 January 2016 (Day 40), at p 118: 7–9.

⁶ Transcript dated 20 January 2016 (Day 40), at pp 133–134.

⁷ Transcript dated 20 January 2016 (Day 40), at p 134: 12–24.

⁸ Transcript dated 20 January 2016 (Day 40), at p 60.

⁹ Exhibits P85 and P86.

The accused's Flat was searched and drugs were found in his bedroom

9 On the same day, CNB officers escorted the accused and arrived at the Flat at about 1.30 p.m. The Flat was unlocked using the keys recovered from the accused in his presence.¹⁰ One Rosli Bin Sukaimi (“Rosli”) was found inside the bathroom of the Flat¹¹ and was arrested.

10 CNB officers searched the Flat in the accused's presence.¹² One luggage bag marked B1 was recovered from the accused's bedroom¹³ which the accused was the sole occupant of.¹⁴ The accused informed W/SSgt Jenny Woo (“W/SSgt Jenny”) then that the luggage bag belonged to the maid.¹⁵ One digital weighing scale belonging to the accused was recovered from the kitchen by SSSgt Kua Boon San,¹⁶ and 193 packets of brown granular/powdery substance and several drug paraphernalia were recovered from the luggage bag.

11 SSgt Sunny Low (“SSgt Sunny”) swabbed the drug exhibits recovered in the Flat,¹⁷ and photographs were also taken in the Flat.¹⁸ The accused was eventually brought to the CNB headquarters where the drug exhibits were

¹⁰ Transcript dated 21 January 2016 (Day 41), at pp 10–11.

¹¹ Transcript dated 2 October 2013 (Day 2), at p 134: 17–22.

¹² Transcript dated 21 January 2016 (Day 41), at p 11: 6–8.

¹³ Transcript dated 21 January 2016 (Day 41), at p 14: 5–8; Exhibit P34.

¹⁴ Transcript dated 21 January 2016 (Day 41), at p 11: 14–19.

¹⁵ Transcript dated 3 October 2013 (Day 3), at p 21: 6–27.

¹⁶ Transcript dated 22 May 2014 (Day 13), at p 70: 8–12; Transcript dated 29 August 2014 (Day 27), at p 55: 8–11; Exhibit P64.

¹⁷ Transcript dated 2 October 2013 (Day 2), at p 15: 12–13.

¹⁸ Transcript dated 21 January 2016 (Day 41), at p 28: 4–24.

weighed in his presence.¹⁹ The 193 packets recovered from the Flat were analysed and found to contain not less than 34.94 grams of diamorphine.²⁰

The Prosecution's case

The non-capital charge

12 In respect of the non-capital charge, it was the Prosecution's case that the accused had in his possession the 59 packets of diamorphine that were recovered from his car. The accused was spotted holding a white-coloured bundle in his left hand before entering his car at about 8.55 a.m. on 7 October 2010 by SSI Heng Chin Kok ("SSI Heng"). CNB officers tailed his car to the Mall, and his car was seen entering the entrance of the B4 carpark of the Mall. CCTV footage also showed his car entering the carpark and him taking the lift from B4 to the ground level of the Mall before walking towards the exit thereafter. The accused was seen leaving the Mall by SSI Heng and SSgt Ravichandran Ramu for the coffeeshop at Shing Hotel. After the accused's arrest (after being seen passing Ahad a white envelope containing S\$3,000), the accused's car key was recovered during a search of the accused. The accused was brought to his car which was unlocked and searched in his presence.

13 Under the directions of DSP Tan Seow Keong ("DSP Tan"), SSSgt Chan Kin Foong took photographs of the Mall, and of the car at the B4 carpark of the Mall in the presence of the accused. The contents of the 'Choices' plastic bag that was recovered from the floor mat of the front passenger seat were placed on a Ziploc bag on top of the car boot and counted in the presence of the accused.

¹⁹ Transcript dated 21 January 2016 (Day 41), at p 42: 14-16.

²⁰ Exhibits P81, P82, and P87 to P92.

Several other items were seized from the car: a bottle of mineral water, two pairs of sunglasses, one piece of cloth, and one piece of rubber band. DNA analysis revealed that the DNA of the accused was found on the gear knob, steering wheel and handbrake of the car, on one of the sunglasses, on the bottle of mineral water and on the piece of cloth and rubber band. More importantly, the accused's DNA was discovered on the interior and exterior of the 'Choices' plastic bag containing the drug exhibits. The Prosecution thus relied on the DNA evidence, testimonies of the CNB officers involved, a letter from the Land Transport Authority confirming the accused's ownership of the car, as well as the presumption of possession under s 21 of the MDA, where any controlled drug found in any vehicle shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle.

14 The Prosecution also submitted that the accused had actual knowledge of the nature of controlled drugs in the 'Choices' plastic bag recovered from the vehicle. They relied on the following to indicate that the accused had actual knowledge of the nature of controlled drugs found in the car:

- (a) the accused's DNA was found on the interior and exterior of the 'Choices' plastic bag that contained the controlled drugs;
- (b) pages of the newspaper used to wrap the drugs in the 'Choices' plastic bag were part of a same set of newspaper from which other pages were found in the luggage bag found in the accused's Flat which contained more drug exhibits;
- (c) the plastic packets that were sealed and found in the 'Choices' plastic bag were heat-sealed using the same heat sealer as those that were sealed and found in the luggage bag in the Flat, and the accused's DNA was found on that heat-sealer; and

(d) the accused was the registered owner of the car, and had admitted during cross-examination that he had parked and locked the car at the B4 carpark of the Mall that morning on 7 October 2010.

15 Lastly, in support of the case that the accused had the 3.56 grams of diamorphine in his possession for the purpose of trafficking, the Prosecution relied on the presumption in s 17(c) of the MDA and pointed me, in addition to the abovementioned facts in [14], to the fact that the luggage bag that was found in the Flat contained numerous drug paraphernalia used for trafficking of controlled drugs, such as the said heat-sealer, a knife, a brush, a pair of scissors and empty plastic sachets (see below at [19]).

The capital charge

16 In respect of the capital charge, it was the Prosecution's case that it had proven beyond a reasonable doubt that the accused had in his possession the 193 packets of controlled drugs recovered from the Flat, which were subsequently analysed and found to contain not less than 34.94 grams of diamorphine.

17 The accused did not deny ownership of the Flat, and also admitted that the Flat was unlocked in his presence by the CNB officers who also searched the Flat in his presence and that Rosli, who was found in the bathroom, was arrested then on 7 October 2010. The luggage bag that contained the drug exhibits was recovered from the bedroom of the Flat by W/SSgt Jenny, who asked the accused for the keys to the padlock of the main compartment of the luggage bag. The accused claimed that he did not have the keys, and said that the luggage bag belonged to his family maid, Meisaroh.

18 Two weighing scales, some batteries, a lighter, a white candle, two chargers and one extension plug were recovered from the small front compartment of the luggage bag which was not locked. SSSgt Alwin used an operational cutter to cut the padlock of the main compartment of the luggage bag in the presence of the accused. Thereafter, W/SSgt Jenny searched the main compartment, saw a plastic bag containing brown granular substances and was told to wait for the arrival of the Forensic Management Branch officer by ASP Aaron Tang. The controlled drugs found in the luggage bag were revealed after analysis to have contained not less than 34.94 grams of diamorphine.

19 The following drug paraphernalia were recovered from the luggage bag:

- (a) one 'BIG BOOKSHOP' plastic bag containing white candles, brown envelopes, white envelopes, red rubber bands, disposal gloves, plastic bags and empty plastic sachets;
- (b) one paper box containing one electronic heat-sealer, operating instructions, an adjusting tool, plastic bag, white strip and two Styrofoam boxes;
- (c) one box of disposable vinyl exam gloves;
- (d) one pink 'BODY PALACE' bag containing three packets of drugs, one metal spoon, a sheathed knife, a brush, a pair of scissors and empty plastic sachets;
- (e) one stack of newspapers;
- (f) an assortment of empty plastic bags; and
- (g) one black lighter.

20 A digital weighing scale was also recovered from beneath the kitchen sink of the Flat, as well as another ‘BIG BOOKSHOP’ plastic bag containing eight packets of white envelopes, one liquid corrector, one receipt, and another ‘RAW’ bag containing a yellow plastic sheet with numerous empty plastic sachets in it. A set of two keys for the padlock on the main compartment of the luggage bag was also found in a drawer in the wardrobe of the bedroom in the Flat.

21 The accused admitted to owning the digital weighing scale recovered from the kitchen, and also admitted that the controlled drugs and items mentioned above in [18] and [19] were found in the luggage bag by the CNB officers on the day of his arrest in the Flat. DNA of the accused was found on numerous items recovered from the luggage bag, including the plastic packets that contained the drugs. The Housing Development Board confirmed the accused as the registered sole lessee of the Flat, and the accused admitted he had resided in the bedroom where the luggage bag was recovered from. Rosli, who had stayed in the Flat for a period of time, also testified that the accused had used the bedroom when he was in Singapore. Records from the Immigration and Checkpoints Authority revealed that the accused was in Singapore for the whole month of July (with the exception of 24 to 27 July 2010) until the date of his arrest on 7 October 2010.

22 Two other persons had regular access to the Flat: Rosli, as well as the accused’s family maid, Meisaroh. The Prosecution submitted that there was neither DNA nor other objective evidence to suggest that the luggage bag in the bedroom belonged to either of them. Rosli testified that he was absent from the Flat when he stayed in Studio M Hotel from 3 to 6 October 2010, and at a chalet on the night of 6 October 2010 just before the date of the arrest on 7 October 2010. This was corroborated by evidence from Studio M Hotel adduced by the

Prosecution. Rosli also testified at trial that he did not give the keys to the Flat to anyone, and he denied ownership of the luggage bag and stated that he had not seen it before 7 October 2010. As for Meisaroh, she testified at trial that she had only gone to the Flat occasionally to deliver food to the accused or to tidy the Flat up, and had neither opened the cupboards in the Flat nor seen the luggage bag before. Thus, the Prosecution submitted that in light of the above, the accused who was the main occupant of the bedroom and Flat, had in his possession the controlled drugs found in the bedroom.

23 For the Prosecution's case that the accused had actual knowledge of the nature of the controlled drugs found in the luggage bag, the Prosecution relied on the overwhelming DNA evidence. DNA of the accused was found on several items in the luggage bag, including the interior and exterior of plastic bags that contained controlled drugs, as well as the heat-sealer and the exterior of several drug paraphernalia. Hair of the accused was also found heat-sealed onto a particular plastic packet of drugs.

24 Lastly, the Prosecution submitted that the drug paraphernalia seized from the luggage bag and the Flat (see above at [18]–[20]) was strong evidence that the accused possessed the controlled drugs found in the luggage bag for the purposes of trafficking. The presumption in s 17 of the MDA was also resorted to, as the amount of diamorphine analysed and found (not less than 34.94 grams of diamorphine) exceeded the required 2 grams of diamorphine in s 17(c) of the MDA to trigger the presumption that the accused had possessed the controlled drugs for the purposes of trafficking.

Accused's credibility

25 The Prosecution also submitted that the accused had been repeatedly lying and giving false testimony to the court, and sought to establish that the

following lies amounted to a corroboration of the accused's guilt and lack of credibility:

- (a) The accused lied about the number of envelopes that he handed to Ahad on the day of his arrest;
- (b) The accused lied when he claimed that the sum of \$3,000 that he handed to Ahad belonged to himself;
- (c) The accused lied about his movements on the day of his arrest;
- (d) The accused lied when he claimed that the luggage bag did not belong to him;
- (e) The accused lied when he claimed that the maid and his mother had found a discarded face mask in the Flat; and
- (f) The accused lied and fabricated serious allegations against DSP Tan, alleging that DSP Tan had threatened the maid with bodily harm to ensure that she would not attend court to testify.

The accused's case

26 In his defence during the trial, the accused flatly denied possession of the controlled drugs in both charges, and denied that he knew the nature of the controlled drugs or that he possessed them for the purposes of trafficking. Broadly, he claimed that (a) the controlled drugs were planted by someone in his car and in the Flat; (b) he was framed by CNB officers; (c) the Prosecution's exhibits were forged; and (d) exhibits and photographs were tampered with.

27 The accused also apparently believed that all these were part of a ploy and that there were "hidden messages" and a "hidden agenda" to "fix [him]"

up”²¹ by tampering with evidence and exhibits by CNB. This, he claimed, was evidenced by the repeated appearances of the number “9” through the summation of digits in time stamps, exhibit labels, frame numbers for negatives of photographs, numbers in the long statements he gave, etc. which pointed to the CNB’s OC Special Investigation Team “9”.

Controlled drugs were planted in his car and Flat

28 The accused claimed that he suspected that “someone” had planted the ‘Choices’ plastic bag in his car. In his long statement dated 12 October 2010, the accused claimed that he suspected Hashim, someone he met the evening before the date of his arrest, on 6 October 2010, to have planted the controlled drugs in his car. On the fifth day of trial, he suspected that W/SSgt Jenny or her colleagues from CNB were the ones who planted the drugs in his car.²² Later on in the trial, the accused changed his mind and stated that he no longer believed that it was Hashim²³ or CNB officers²⁴ that planted the drugs. Instead, the accused claimed that it was a “mystery” how the drugs appeared in the car,²⁵ and that some unknown person could have planted the drugs in the car.²⁶

29 As for the controlled drugs found in the luggage bag that was recovered from his bedroom, the accused claimed that W/SSgt Jenny or another CNB

²¹ Accused’s written submissions (part 4 of 6), at pp 13–15.

²² Transcript dated 8 October 2013 (Day 5), at p 41: 19–20.

²³ Transcript dated 21 January 2016 (Day 41), at p 104: 1–13.

²⁴ Transcript dated 21 January 2016 (Day 41), at p 104: 15–18.

²⁵ Transcript dated 21 January 2016 (Day 41), at p 105: 25–27.

²⁶ Transcript dated 21 January 2016 (Day 41), at p 105: 7–14.

officer had planted the luggage bag in his Flat.²⁷ This was allegedly done by sending a team of CNB officers to his Flat in Commonwealth while they had his keys on 7 October 2010, while another team of CNB officers escorted him to another flat in Eunos Crescent to “buy time” to plant the luggage bag.²⁸ Later during the trial, the accused changed his tune and claimed that Rosli and his friends were the ones who had planted the drugs in the luggage bag in the Flat as Rosli knew that the accused would be leaving for Vietnam the next day on 8 October 2010.²⁹

Exhibits and evidence were planted, tampered with or forged

30 As for the accused’s version of what transpired during the search of his Flat on 7 October 2010, the accused claimed, during his cross-examination of DSP Tan that the following pieces of evidence or exhibits were planted or retrieved in the following manner by DSP Tan to “mislead the Court” and “get [a] false conviction”:³⁰

- (a) DSP Tan had planted the accused’s strand of hair—which he had found in an interview room, accused’s car or Flat (the accused apparently had a hair loss problem) on a plastic packet of drugs (exhibit labelled B1E3D1);³¹ and

²⁷ Transcript dated 8 October 2013 (Day 5), at p 68: 29–30.

²⁸ Transcript dated 8 October 2013 (Day 5), at p 51: 6–13.

²⁹ Transcript dated 13 August 2014 (Day 18), at pp 43–44.

³⁰ Transcript dated 5 March 2015 (Day 32), at p 30: 6–7.

³¹ Transcript dated 26 February 2015 (Day 30), at pp 33.

(b) DSP Tan had planted “extra” exhibits labelled B1A, B1B and B1C, which consisted of two digital weighing scales; a black electrical extension socket, two hand phone chargers, a lighter and batteries; and a roll of toilet paper respectively.³²

31 The accused also claimed that DSP Tan had interfered with various exhibits before he sent them to the Health Sciences Authority for analysis:

(a) DSP was “forced to make new [exhibit] labels and photos” after planting the three said exhibits at [30(b)];

(b) DSP Tan had interfered with exhibits during a photo-taking session;³³

(c) DSP Tan and his team of CNB officers had used the saliva accumulated in his first face mask to plant the accused’s DNA on exhibit B1E2F1 before SSgt Sunny had swabbed the said exhibit, and this was done using the swab stick SSgt Sunny had used at CNB HQ because the swab boxes were allegedly not sealed;³⁴ and

(d) DSP Tan had used the saliva from the accused’s second face mask to plant the accused’s DNA on the exhibits of DSP Tan’s choice.³⁵

(e) DSP Tan had planted the accused’s DNA on the knife and sheath that was found in the luggage bag using DNA from the accused’s used

³² Transcript dated 4 March 2015 (Day 31), at pp 28–32.

³³ Transcript dated 29 August 2014 (Day 27), at p 80: 4–6.

³⁴ Transcript dated 4 March 2015 (Day 31), at p 7.

³⁵ Transcript dated 4 March 2015 (Day 31), at p 6.

face mask, and bottles and spoon that were apparently issued to the accused.³⁶

32 The accused claimed that the first face mask used by him during CNB's photo-taking session at the Flat was thrown in the Flat, and found by the family maid, Meisaroh and his mother on 8 October 2010. He also alleged that the second face mask that he used was brought to CNB Headquarters, and that it was contaminated with his saliva because he was spouting vulgarities for an extended period of time during the photo-taking session.³⁷

33 In addition, the accused claimed that the following documents were forged and/or altered:

- (a) All his long statements, with some of the signatures on them forged;
- (b) His contemporaneous statement;
- (c) Police K9 utilisation form;
- (d) Four pages of the police investigation diary showing the weighing of the drugs; and
- (e) The receipt of articles seized from the bedroom of the Flat.

34 Lastly, the accused also claimed that the negatives of photographs tendered as evidence had been tampered with and that there were six missing negatives and photographs.

³⁶ Transcript dated 4 March 2015 (Day 31), at p 4: 15–17.

³⁷ Transcript dated 4 March 2015 (Day 31), at p 6.

Allegations against DSP Tan

35 Other than the accused's 'Number Nine' theory (see above at [27]), the accused also claimed that DSP Tan was personally motivated to frame and set him up to cover up two instances of alleged assault on the accused by DSP Tan and his team of CNB officers on 7 October 2010 in the CNB operational car and at the accused's Flat.³⁸ The accused claimed he was punched "hard on [his] left thigh" in the car in the first instance. As for the second instance of alleged assault in the Flat, the accused claimed that he was "slammed...down" on his right shoulder by a CNB officer while the swivel chair he was sitting on was pulled by another, causing him to fall to the floor in a sitting position.³⁹ This was alleged to have taken place at about 4.30 pm on 7 October 2010, before the photo-taking and swab session was conducted by the CNB officers in the Flat. The accused also alleged and suggested that DSP Tan had tried to ensure that the accused's family maid would not attend court to testify, by threatening her with bodily harm, as part of DSP Tan's attempt to frame him.⁴⁰

The decision of the court***The accused's (lack of) credibility and his incredible allegations****The law on witness credibility and lies*

36 In *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR(R) 592, Yong Pung How CJ's observation at [9] is instructive:

³⁸ Transcript dated 5 March 2015 (Day 32), p 35: 17–22.

³⁹ Accused's written submissions (part 4 of 6), at pp 6–7; Transcript dated 10 October 2013 (Day 7), at pp 79–80.

⁴⁰ Transcript dated 29 August 2014 (Day 27), at p 79: 31–32.

A judge can make a finding on the credibility of a witness based on some or all of the following:

- (a) His demeanour.
- (b) The internal consistency (or lack thereof) in the content of his evidence.
- (c) The external consistency (or lack thereof) between the content of his evidence and extrinsic evidence (for example, the evidence of other witnesses, documentary evidence or exhibits).

37 When there are minor discrepancies in the testimony of a witness, they should not be held against the witness in assessing his credibility; human fallibility in observation, retention and recollection is recognised and understandable: see *Jagatheesan s/o Krishnasamy v Public Prosecutor* [2006] 4 SLR(R) 45 (“*Jagatheesan*”) at [82]; *Chean Siong Guat v Public Prosecutor* [1969] 2 MLJ 63 at 63–64; *Ng Kwee Leong v Public Prosecutor* [1998] 3 SLR(R) 281 at [17]. Thus, a flawed witness does not equate to an untruthful witness, and the court is perfectly entitled to accept the other parts of a witness’s testimony which are credible and untainted by discrepancies (see *Lewis Christine v Public Prosecutor* [2001] 2 SLR(R) 131 at [19]; *ADF v Public Prosecutor* [2010] 1 SLR 874 at [25]).

38 On the other hand, a “systematic and widespread pattern of many inconsistencies coming together” can destroy the credibility of a witness (*Public Prosecutor v Yeow Beng Chye* [2003] SGHC 74 at [27]; *Jagatheesan* at [83]). In a situation where an accused person lies deliberately in relation to a material issue, the lies may corroborate other existing evidence against the accused. The accused may have intentionally lied, not for innocent reasons, but because he knows that he would be linked to the crime if he is to tell the truth. The Court of Appeal in *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 (“*Ilechukwu*”) presented the requirements laid down by the English

Court of Appeal in *Regina v Lucas (Ruth)* [1981] QB 720 at 724 (the “*Lucas* test”) as such:

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

39 These requirements were accepted and applied by the Court of Appeal in *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [33] and *Kamrul Hasan Abdul Quddus v Public Prosecutor* [2011] SGCA 52 at [18], and recently endorsed again in *Ilechukwu* at [60]. A lie (regardless whether told in or out of court) that satisfies the above four conditions can be referred to as a *Lucas* lie. The *Lucas* conditions apply whether or not corroboration is required or desirable for certain forms of evidence, e.g. identification evidence, evidence of an accomplice (which was the case in *Lucas* itself). *Lucas* lies may amount to corroboration in *all situations* as any other existing forms of evidence can always be strengthened by corroboration.

40 The operation of the *Lucas* conditions in situations where statutory presumptions are triggered is no different. *Lucas* lies in such situations would amount to corroboration of any other evidence against the accused, although it may be the case that such corroboration may not be necessary to find certain facts in the first place, given the operation of statutory presumptions that may apply.

Inconsistencies in the accused's evidence

41 Reverting to the present case, the internal inconsistencies and vacillations in the accused's evidence were numerous:

(a) The accused alleged at different times of the trial, changing his tune, that different people had planted the drug exhibits in his car and Flat (see above [28]–[29]);

(b) The accused repeatedly denied on the second,⁴¹ fourth,⁴² fifth⁴³ and 40th day⁴⁴ of trial that there were three envelopes instead of just one white envelope that he had held and passed to Ahad on 7 October 2010, but thereafter claimed that he had made a mistake regarding this matter and admitted that he was carrying only one envelope containing \$3,000;⁴⁵

(c) The accused stated in his long statement recorded on 13 October 2010⁴⁶ that he had borrowed \$3,000 from Ahad on 6 October 2010, and had returned the said monies to Ahad in a white envelope on 7 October 2010, but had later during the course of trial offered a different account that he had passed \$3,000 to Ahad for him to change the monies from

⁴¹ Transcript dated 2 October 2013 (Day 2) at p 117: 26–28.

⁴² Transcript dated 4 October 2013 (Day 4) at pp 94–95.

⁴³ Transcript dated 8 October 2013 (Day 5), at pp 121–122.

⁴⁴ Transcript dated 20 January 2016 (Day 40), at p 97: 9–26.

⁴⁵ Transcript dated 22 January 2016 (Day 42), at p 1: 7–20.

⁴⁶ Exhibit D4, at para 5.

\$10 to \$50 denominations, purportedly for the purposes of remitting them to Vietnam;⁴⁷

(d) Regarding his movements on the day of his arrest, the accused initially in his long statements dated 13 October 2010 and 14 October 2010⁴⁸ stated that upon his arrest, he was brought to his Flat at Commonwealth Close first and then later to another flat at Eunos Crescent, however he repeatedly denied this position and later claimed he was brought to Eunos Crescent first before Commonwealth Close during trial;⁴⁹ and

(e) In relation to the luggage bag found with controlled drugs in his Flat, the accused stated that he was not aware of the contents of the bag in his cautioned statement dated 8 October 2010,⁵⁰ but thereafter the accused in his long statement dated 14 October 2010⁵¹ stated that the luggage bag belonged to him and claimed that it was empty at the time he left it in the Flat; during trial, the accused then claimed that all his long statements were forgeries and were altered⁵² and claimed that the bag did not belong to him, was not in the Flat when he left the Flat in

⁴⁷ Transcript dated 19 January 2016 (Day 39), at p 106.

⁴⁸ Exhibit D4, paras 13 and 28.

⁴⁹ Transcript dated 9 October 2013 (Day 6), at pp 61–62; Transcript dated 22 May 2014 (Day 13), at pp 38–39; Transcript dated 21 May 2014 (Day 12), at pp 77–78; Transcript dated (Day 26), at pp 3–4.

⁵⁰ Exhibit D5.

⁵¹ Exhibit D4, para 20.

⁵² Transcript dated 29 August 2014 (Day 27), at p 75.

the morning of 7 October 2010 and was planted by CNB officers, Rosli, or Rosli's friends (see above at [29]).

42 There were several major external inconsistencies between the accused's evidence and the extrinsic evidence as well:

(a) Testimony from CNB officers as well as CCTV footage showing the accused holding one white envelope on the day of arrest refuted the accused's initial insistence that he had three and not one envelope;⁵³

(b) The Prosecution adduced evidence in the form of the testimony of a tow truck driver with relevant receipts⁵⁴ to prove the movements of the accused on the day of his arrest. This was consonant with what was testified by the CNB officers and in the accused's long statements but was contrary to what the accused was claiming during trial;

(c) The DNA evidence was inconsistent with the accused's insistence during trial that the luggage bag was not his and was planted by others: DNA of the accused was found on items in the luggage bag, including the interior and exterior of plastic bags that contained the controlled drugs, as well as on the heat-sealer and the exterior of several drug paraphernalia found in the luggage bag;

(d) Contrary to what the accused had claimed, the family maid testified that she had not seen any used face mask in the Flat;⁵⁵

⁵³ Exhibit P351.

⁵⁴ Exhibit P368; Transcript dated 21 May 2014 (Day 12), at pp 52–54.

⁵⁵ Transcript dated 11 March 2014 (Day 35), at p 24: 5–6.

(e) Unlike what the accused alleged, the family maid also testified that she was not forced to leave Singapore, had never been threatened by anyone with any harm before she left, and had instead left Singapore for Indonesia to get married;⁵⁶

(f) The accused's claims that the photographs tendered to court and their negatives were tampered were flatly refuted by an expert forensic scientist, Dr Alaric Koh, who testified that there were no signs of tampering based on the examination of the negatives and that the photographs were taken from three rolls of films and by the same camera, with the running frame numbers in the negatives corresponding with the order of the photographs tendered to court;

(g) Despite the accused's allegations that there were forged signatures on his long statements, the expert report produced by a handwriting expert engaged by the accused (Ms Yang Chiew Yung ("Ms Yang"), a forensic scientist from the Forensic Experts Group) did not indicate that any of the signatures or handwritten portions of the long statements of the accused were forged;

(h) Similarly, the particulars in the police K9 utilisation form were corroborated by the testimony from CNB officers;

(i) Lastly, against the accused's allegations that signatures on four pages of the police investigation diary showing the weighing of drugs and the receipt of articles seized from the bedroom were forged, Ms Yang's expert report did not opine so, and instead stated that the

⁵⁶ Transcript dated 11 March 2015 (Day 35), at pp 5–6.

disputed signatures on the former belonged to the accused while the disputed signatures on the latter had indications that they were written by the accused with the exception of one inconclusive signature.

43 Thus, based on the accused's widespread pattern of extensive internal and external inconsistencies, I found the accused severely lacking in credibility. In fact, the accused had admitted in court during cross-examination that he had told DSP Tan a "white lie"⁵⁷ after he was arrested, and repeated this "white lie" during the recording of his long statement dated 13 October 2010 to help Ahad apparently. Similarly, the accused also admitted during cross-examination that he did not in fact see any CNB officers contaminating the exhibits with his face mask.⁵⁸ In the light of this, and the fact that the accused's allegations that he was framed by the authorities were unsupported and were instead refuted by other evidence, I found the accused's "theories", including his "Number Nine" theory (see above at [27]), incredible and unbelievable. The discrepancies in the accused's testimony were of a "widespread pattern of many inconsistencies coming together" that destroyed his credibility altogether. His discrepancies were not "innocent" and must be distinguished from unintended mistakes in his recollection; the accused was short on the truth, and long on embellishment and in making spurious bare allegations. It was as if he cast a wide net of theories that allegedly explained everything away, only for him to catch nothing in the face of other evidence against him.

⁵⁷ Transcript dated 21 January 2016 (Day 41), at p 115.

⁵⁸ Transcript dated 21 January 2016 (Day 41), at p 80.

The accused's Lucas lies

44 Out of the six lies raised by the Prosecution (see above at [25]) to have been told by the accused, I was of the view that the first and second lies were not *Lucas* lies. The first lie regarding the exact number of envelopes the accused had handed to Ahad was inconsequential and not relating to a material issue. The second purported lie regarding the ownership of the sum of \$3,000 in the envelope handed to Ahad was not strictly proved to be a lie by independent evidence. The Prosecution had instead invited the court to draw an adverse inference against the accused on this matter since the accused did not produce Ahad as his witness to testify that the said monies belonged to the accused.⁵⁹

45 On the other hand, I found that the other four lies put forth by the Prosecution were deliberate, relating to material issues regarding either the accused's case or the elements of the drug charges, and shown to be false by independent evidence. The accused's movements on the day of his arrest were confirmed by the testimony of the tow truck driver (see above at [42(b)]); DNA evidence was found on the items recovered from the luggage bag in the Flat (see above at [42(c)]); the maid had testified that she did not find a discarded face mask in the Flat (see above at [42(d)]); and the maid also testified that she was never threatened by anyone with bodily harm before she left Singapore (see above at [42(e)]). I was of the view that these lies were deliberately told by the accused and motivated by the accused's desire to distance himself from the drugs found and to establish his "theories" that he was framed. The lies were not made for innocent reasons. The accused's endeavour to distance himself as far as possible from the drug exhibits indisputably found in his car and Flat was exaggerated to the extent they were shown to be incredible and to be lies. As

⁵⁹ Prosecution's closing submissions, at paras 147–148.

the Court of Appeal put it in *Ilechukwu* at [61], there was “no acceptable explanation for the lies save for his realisation of his guilt”. Thus, apart from the finding that the accused was not creditworthy, the accused’s *Lucas* lies also amounted to corroboration of evidence of guilt.

The elements of the drug trafficking charges were made out

46 I found that the Prosecution had proven its case beyond a reasonable doubt and that the elements of both charges were made out. The weight of the evidence led by the Prosecution was overwhelmingly against the accused.

47 The accused had in his possession the diamorphine recovered from both his car and the Flat where he was the sole lessee and main occupant of the room where the drugs were recovered from. The DNA evidence in both instances clearly pointed to the accused’s possession of the drugs recovered. The accused’s DNA was found on the interior and exterior of the plastic bags containing the drug exhibits in the car and in the luggage bag in the Flat, as well as on several drug paraphernalia in the luggage bag. For the non-capital charge, the accused had failed to rebut the presumption of possession under s 21 of the MDA on a balance of probabilities, where any controlled drug found in any vehicle shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle. The accused’s allegations that the drugs were planted in his vehicle (by various different people that he had accused at different points of the trial) and in his Flat were unfounded, and were a desperate attempt to distance himself from the drugs recovered.

48 I also found that the accused had actual knowledge of the nature of the controlled drugs recovered with regard to both charges. For the non-capital charge, pages of the newspaper used to wrap the drugs in the ‘Choices’ plastic bag were part of a same newspaper as the other pages found in the luggage bag

in the accused's Flat which contained more drug exhibits. Further, the plastic packets that were sealed and found in the 'Choices' plastic bag were heat-sealed using the same heat sealer as those that were sealed and found in the luggage bag in the Flat, and the accused's DNA was found on the said heat-sealer. As for the capital charge, the DNA of the accused found on the plastic bags containing the drugs and on the drug paraphernalia in the luggage bag established that the accused had actual knowledge of the nature of the controlled drugs.

49 Lastly, the accused also failed to rebut the presumption in s 17(c) of the MDA that he had possessed the controlled drugs for the purposes of trafficking with respect to both charges. From the drug paraphernalia found in the luggage bag that included, among others, the heat-sealer, empty plastic bags, empty plastic sachets, I found, even without resorting to the presumption in s 17(c) of the MDA, that the accused had possessed the drugs for the purposes of trafficking.

50 The accused's defence rested on "theories" and spurious allegations that were unsupported by any convincing evidence. His *Lucas* lies (see above at [41]–[45]) also amounted to corroboration of the already-strong evidence against him. In any event, I must also add that even if the accused had not told all the lies that he did, the scenario he painted as part of his defence was hard to believe and unsupported by any evidence and that I would have found that the elements of both charges were made out anyway.

Sentencing

51 After I convicted the accused, the Prosecution confirmed that the Public Prosecutor would not issue a certificate under s 33B(2)(b) of the MDA to certify that the accused had substantively assisted the CNB. The accused also did not

claim that he was suffering from such abnormality of mind as would have substantially impaired his mental responsibility at the time of the offence. The facts and evidence led showed that the accused was not a mere courier of drugs; he had the intention and means of repacking the drugs, as evinced from the extensive drug paraphernalia found in the luggage bag (see above at [19]). The accused thus did not come under ss 33B(2) or 33B(3) of the MDA, and I imposed the mandatory death penalty on the accused for the capital charge.

52 As for the non-capital charge which involved not less than 3.56 grams of diamorphine, I imposed an imprisonment term of six years, with effect from the date of his remand on 9 October 2010. I noted that s 322(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) provides that a death sentence must be carried out despite a pending sentence of imprisonment. I also noted that the starting point for first-time offenders (which is broadly proportional to the quantity of diamorphine) as laid down by Sundaresh Menon CJ in his framework for appropriate benchmark sentences for trafficking in diamorphine in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [47] was 6–7 years’ imprisonment for 3–5 grams of diamorphine trafficked. No caning was imposed as the accused was more than 50 years of age: s 325(1)(b) of the CPC. The sentence of six years is on the lenient side as I did not adjust the sentence upwards for the fact that the accused would not be liable for caning.

53 I also ordered the exhibits to be disposed of after his appeal has been dealt with.

54 The accused has appealed to the Court of Appeal against his conviction and sentence.

Chan Seng Onn
Judge

Mohamed Faizal s/o Md Abdul Kadir, Shahla Iqbal, Wong Woon Kwong, N K Anitha and Shen Wanqin (Attorney-General's Chambers) for the prosecution;
Vinit Chhabra (Vinit Chhabra Partnership) (3 April–7 October 2013),
Lim Swee Tee (Lim Swee Tee & Co) (3 April–7 October 2013) for
the accused;
Joseph Tan Chin Aik (Atkins Law Corporation) (12 December 2013–
22 January 2014), Ramesh Chandr Tiwary (Ramesh Tiwary) (24
January 2014–5 October 2015) as McKenzie friend for the accused in
person;
The accused in person without any McKenzie friend after 5 October
2015.
