

Public Prosecutor v Ilechukwu Uchechukwu Chukwudi
[2015] SGCA 33

Case Number : Criminal Appeal No 10 of 2014
Decision Date : 29 June 2015
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; Tay Yong Kwang J
Counsel Name(s) : Ng Cheng Thiam and Chee Min Ping (Attorney-General's Chambers) for the appellant; Eugene Thuraisingam and Jerrie Tan (Eugene Thuraisingam LLP) for the respondent.
Parties : Public Prosecutor — Ilechukwu Uchechukwu Chukwudi

Criminal Law – Statutory Offences – Misuse of Drugs Act

[LawNet Editorial Note: The criminal motion arising from this decision in Criminal Motion No 4 of 2017 was allowed in part by the Court of Appeal on 2 August 2017. See [\[2017\] SGCA 44.](#)]

29 June 2015

Judgment reserved.

Chao Hick Tin JA (delivering the judgment of the court):

Introduction

1 This is an appeal by the Prosecution against the acquittal of Ilechukwu Uchechukwu Chukwudi ("the Respondent"), a 29-year-old Nigerian national on a drug trafficking charge. He had brought into Singapore from Nigeria a black luggage bag ("the Black Luggage") which he later transferred to one Hamidah Binte Awang ("Hamidah"), a 49-year-old Singaporean. Hamidah sought to bring the Black Luggage into Malaysia through the Causeway at Woodlands Checkpoint but it was intercepted by the authorities. The sides of the Black Luggage were cut open and two packets of crystalline substance wrapped in brown packaging ("the two brown packets") were discovered within the lining. After analysis by the Health Sciences Authority, it was found that the two brown packets contained not less than 1963.3g of methamphetamine ("the Drugs").

2 The Respondent was charged with trafficking not less than 1,963.3g of methamphetamine under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The charge against him reads as follows:

That you, **ILECHUKWU UCHECHUKWU CHUKWUDI**,

on the 13th day of November 2011, sometime between 10.16 p.m. and 11.34 p.m., along River Valley Road, Singapore, did traffic in a 'Class A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed), to wit, by giving to one Hamidah Binte Awang (NRIC No. [redacted]) a trolley bag which contained two packets containing 2,496 grams of crystalline substance, which was analysed and found to contain **not less than 1,963.3 grams of methamphetamine**, without any authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) and punishable under section 33 of the said Act, and further upon your conviction under section 5(1) of the said Act, you may alternatively be liable to be punished under section 33B of the said Act. [emphasis

in bold in original]

3 Hamidah was also charged with attempting to export not less than 1,963.3g of methamphetamine, an offence under s 7 read with s 12 of the MDA, and punishable under s 33 or s 33B of the MDA.

4 Both the Respondent and Hamidah claimed trial. Both denied knowledge of the Drugs in the Black Luggage. On 5 November 2014, the trial judge ("the Judge") acquitted the Respondent and convicted Hamidah. His written grounds of decision are reported at *Public Prosecutor v Hamidah Binte Awang and another* [2015] SGHC 4 ("the GD").

5 In determining that the Respondent was not guilty of the charge against him, the Judge found that the Respondent had rebutted the presumption of knowledge of the nature of the Drugs under s 18(2) of the MDA. The Judge accepted the Respondent's defence that he had come to Singapore on business and he did not know that the Black Luggage, which had only been handed to him at the airport in Lagos, Nigeria, contained drugs. This was despite numerous untruths in the Respondent's statements to officers from the Central Narcotics Bureau ("CNB").

6 The Prosecution appealed the acquittal of the Respondent. That is the only matter that is now under consideration before this court. The matter of Hamidah's conviction was not before us.

Background

7 The story begins in Nigeria, but there is no objective evidence of what took place there, save for the Respondent's account. According to him, his purpose for coming to Singapore was to purchase used laptops for sale back home, where he ran a business of selling second-hand electronic goods. He says that a childhood friend, one Izuchukwu, had introduced him to one Kingsley, who had contacts in Singapore. He did not know Kingsley very well, but he relied on Kingsley to provide him with a Singaporean contact upon arrival. It is the Respondent's evidence that on the day of his departure from Nigeria (12 November 2011), the Respondent had only brought a laptop bag containing his belongings to the airport in Lagos, where he met Kingsley and Izuchukwu. Kingsley passed the Respondent the Black Luggage with a request to hand it over to the contact in Singapore, who would then help the Respondent source for second-hand electronic goods. The Respondent was informed that the Black Luggage contained clothes belonging to the contact in Singapore. However, Kingsley declined to give the Respondent any details of the contact in Singapore, even when he (the Respondent) requested for them. The Respondent proceeded to inspect the Black Luggage, not because he was suspicious, but because, as he said, it was customary to do so. He found nothing amiss. The Respondent also says that the Black Luggage underwent a physical check as well as an X-ray scan at the immigration counter in the Lagos airport prior to check-in without incident.

8 On 13 November 2011, the Respondent arrived in Singapore. It is not disputed that, after arrival, the Respondent was delayed at immigration at Changi Airport. During this time, he received a number of SMS messages from a Nigerian number showing concern about the hold up (these are set out at [49] of the GD). The Respondent's evidence is that the messages were sent by Izuchukwu, who was a travel agent and had helped the Respondent deal with his travel arrangements. One of the SMS messages referred to a bag, stating: "Go nd cary ur bag Delet". The Respondent said it meant "go and carry your bag" but claimed not to know what "Delet" meant. Another text told him to inform the officers to call "ESP" if he encountered delays or problems at Changi Airport. ESP refers to ESP Lines (S) Pte Ltd, a Singaporean freight forwarding company. Kervinn Leng Seng Yau ("Kervinn"), the director of ESP, had made the necessary arrangements to sponsor both the Respondent's and another person, Adili's, visit to Singapore.

9 We should add that the Respondent was also told to look out for Adili, or Diley (and was so referred to in the transcript of the trial), who was on the same flight with him. Izuchukwu had informed the Respondent that Izuchukwu had also arranged for the visa to be issued to Adili for his trip to Singapore. The Respondent and Adili eventually met in a room pending immigration clearance. [\[note: 1\]](#)

10 After clearing immigration, the Respondent and Adili approached the Baggage Claim counter. The Respondent collected the Black Luggage. Subsequently, the Black Luggage was subjected to both an X-ray scan and a physical search. As nothing was found, the Respondent was allowed to leave Changi Airport.

11 According to the Respondent, he had first gone to Kim Tian Hotel in Geylang. When he reached that hotel, Kingsley called him and told him to go to Hotel 81, Chinatown ("Hotel 81") instead. The Respondent obliged. CCTV footage showed the Respondent arriving at Hotel 81 at about 8.36 pm. The Respondent was seen speaking to the staff at the Hotel 81 lobby. He then left Hotel 81 after depositing the Black Luggage at the hotel lobby, and returned 12 minutes later. The Respondent says that he went out to find a moneychanger as he did not have enough Singapore dollars on him to pay for the room in the hotel. When he returned, he paid for only one night's stay on the premise that he was going to be meeting Kingsley's contact the following day.

12 Shortly after, the Respondent received a call from Kingsley's contact who told the Respondent that a woman (presumably he meant Hamidah) would be collecting the Black Luggage from the Respondent. Hamidah later contacted the Respondent. As Hamidah did not know the way to Hotel 81, it was decided that the Respondent would take a taxi and meet her at Clarke Quay instead. The Respondent alighted when the taxi stopped at a bus stop. While it is not disputed that the Respondent and Hamidah did meet, there is no objective evidence as to what took place beyond their respective testimonies.

13 According to the Respondent, he placed the Black Luggage at the interior of the bus stop. As Hamidah was unable to find the Respondent and he was unable to describe his location, he left the Black Luggage where it was and walked towards a Caucasian male near the bus stop, and asked him to give directions to Hamidah, who was on the other end of the line. When Hamidah arrived, she alighted from the car, and thanked the Caucasian male. Hamidah introduced herself to the Respondent as "Maria". [\[note: 2\]](#) While Hamidah had testified that the Respondent looked nervous, the Respondent argued that she might have misinterpreted his reaction and that, even if the Respondent appeared worried, it was because he was a first-timer in Singapore in an unfamiliar location.

14 It was the evidence of both Hamidah and the Respondent that they did not part immediately after the Black Luggage was handed over. Hamidah apparently invited him to enter the car where they made small talk. The Respondent informed Hamidah that he was hungry and she drove him to an African restaurant. However, as the restaurant was closed, she gave him two 100-plus can drinks from her boot instead. Sometime while they were in the car together, the Respondent dropped his handphone in Hamidah's drink. Hamidah said it was because he seemed nervous. The Respondent said it was because he was cold. She later dropped him off at a taxi stand in Clarke Quay. The Respondent then made his way back to Hotel 81. CCTV footage showed him going up to his room without the Black Luggage at 11.34pm.

15 After Hamidah dropped the Respondent off, she drove towards the Woodlands Checkpoint. It was around 11.55pm when she was stopped at Woodlands Checkpoint for a search. The Drugs were then found in the Black Luggage and Hamidah was arrested.

16 The Respondent was arrested in Hotel 81 the next morning (14 November 2011). Subsequently, he gave a number of statements to CNB officers containing numerous untruths, as well as omissions about facts he only raised in his defence at trial. The statements are as follows:

(a) The First Statement: the contemporaneous statement taken from the Respondent after his arrest in Hotel 81, where he said he only brought one luggage into Singapore (when he in fact brought two). This statement was recorded on 14 November 2011 at 1pm. [\[note: 3\]](#)

(b) The cautioned statement: after the charge and caution was read to him, the Respondent said he “did not give anything to anybody” and that he was in his hotel room when the police came in. He also maintained that he had only gone out to “change money and look around”. This statement was recorded on 14 November 2011 at 9.41pm. [\[note: 4\]](#)

(c) The long statements: In these statements the Respondent gave details of his background, including his assertion that he came to Singapore on business. In all the statements, he maintained that he only carried one bag to the airport, and that was the bag found inside the hotel room at Hotel 81. He maintained that he did not go out except to change cash and denied having gone to Clarke Quay. He claimed that he had dropped his handphone in a toilet bowl. When shown pictures of Hamidah and Adili, he claimed never to have seen them before. He did not mention Kingsley. The various long statements were recorded between 21 November 2011 and 24 November 2011. [\[note: 5\]](#)

17 The Respondent’s evidence is that he did not lie in the First Statement. He claims to have only answered in that way because he did not think that the laptop bag was a “luggage” (even though it is recorded that the officer had pointed to the laptop bag to confirm that that was what he meant). As for the untruths in his subsequent statements, the Respondent’s explanation (in a nutshell) is that he had decided to withhold the truth, not because he was aware that the Black Luggage contained the Drugs, but because he was not informed about the full facts surrounding his arrest and was fearful for his life after hearing that the offence carried the death penalty.

The decision below

18 The Judge found that the Respondent had rebutted the presumption under s 18(2) of the MDA because:

(a) The Respondent’s evidence is consistent with the position that he had come to Singapore as a trader and had carried the Black Luggage as a favour for a friend, with no reason to suspect that it contained drugs; and

(b) His defensive stance after he was arrested and charged is not sufficient to show that he knew about the drugs in the Black Luggage before the arrest.

19 In coming to his decision, the Judge made a number of key findings, which we summarise below:

(a) Although it was imprudent for the Respondent to come to Singapore without any details of Kingsley’s contact, it was not implausible given the context of “a young man with an ambition to succeed in business presented with an opportunity”. The Respondent’s assertion that he came to Singapore on business is corroborated by the following facts:

(i) he entered Singapore with the equivalent of US\$5,000;

- (ii) Kervinn gave evidence that many Nigerians had come to Singapore to buy electronic goods and ship them back to Nigeria and that he had been informed by his Lagos office that the Respondent was a trader coming to Singapore to make purchases.
- (b) The numerous SMS messages the Respondent received from Izuchukwu about the delay at immigration at Changi Airport may only be indicative of Izuchukwu's concern as a friend. There was only one message with reference to a bag (namely the message saying "Go nd carry ur bag Delet") in the various texts and the Judge declined to draw any inferences based on it.
- (c) From the CCTV footage, the Respondent appeared composed in collecting the Black Luggage and in going through the X-ray machine and during physical checks at Changi Airport. Such behaviour is inconsistent with that of someone who knew that the bag contained drugs.
- (d) At Hotel 81, the Respondent left the Black Luggage unattended for 12 minutes which suggested that he had no knowledge of the Drugs, because he would have known of the severe consequences if he had lost it.
- (e) The Respondent had booked the room at Hotel 81 for only one night because he did not know whether Kingsley and/or his contact might want to relocate him to a cheaper hotel when they met up. This is consistent with the Respondent's evidence that Kingsley's contact would be meeting him the following day.
- (f) The Respondent's seemingly worried appearance at the bus stop when he met Hamidah is understandable because it was his first time in a foreign country and he was left in an unfamiliar place by a taxi. Similarly, he might also have left the Black Luggage at the rear of the bus stop in order to approach the Caucasian man and not to put a distance between himself and the Black Luggage.
- (g) The fact that the Respondent got into the car with Hamidah instead of leaving immediately to return to Hotel 81 is inconsistent with the natural instinct of a person with knowledge that the Black Luggage contained illegal drugs.

20 As for the various untruths in the statements, the Judge's findings were as follows:

- (a) In relation to the Respondent's untruth in the First Statement regarding the number of luggage he brought to Singapore, the Judge disbelieved the Respondent's explanation in his testimony. However, he accepted the Respondent's alternative defence that the Respondent had lied because he realised that there was an arrest on the night before and a luggage with two packets of drugs were found and/or that he was arrested for drug trafficking, on the basis that none of the arresting officers could "rule out the possibility" that someone might have told the Respondent about it and that, even if no mention was made to the Respondent, "it was possible" that he might have overheard the conversations among the officers. The Judge remarked that the Respondent might also have figured it out on his own after being told that the arrest was related to a drug offence.
- (b) As for the various lies in the cautioned statement and all his long statements, the Judge stated that while the Respondent might have been excessively defensive, it does not show "unequivocally" that the Respondent must have known that the Black Luggage contained the Drugs before he was arrested. Moreover, the Respondent considered himself a victim of circumstances and viewed the investigating officer, ASP Deng Kaile ("ASP Deng"), with absolute suspicion.

- (c) Despite the various lies, the Judge still found that the Respondent's evidence at the trial to be generally credible and supported by objective evidence.

The parties' contentions on appeal

The Prosecution's submissions

21 The Prosecution submits that the lies in the statements indicate guilt on the part of the Respondent. It submits that the Judge erred in the following aspects:

- (a) Disregarding the probative value of the lies told by the Respondent and failing to draw an adverse inference against the Respondent for failing to state his defence in his statements, as the Respondent's lies were deliberately told to dissociate himself from the Black Luggage and Hamidah;
- (b) Requiring the Prosecution to prove that the *only possibility* for the Respondent's lies in his statements was a realisation of guilt prior to his arrest;
- (c) Finding against the weight of the evidence that the Respondent had probably lied in his statements to the CNB because he had been informed subsequent to his arrest that his arrest was for a drug trafficking offence that was related to the arrest of Hamidah at the Woodlands Checkpoint the previous night; and
- (d) Failing to attribute any or sufficient weight to the fact that the Respondent's explanations for his lies have evolved and shifted to suit his purposes as the trial progressed.

22 Further, the Prosecution also submits that the Judge had erred in the following respects:

- (a) It is not plausible that the Respondent was a *bona fide* business man given his inability to account satisfactorily for his highly suspicious travel plans, *ie*, his coming to Singapore without a plan or contact, and making a hotel booking for only one night;
- (b) The Judge has failed to accord sufficient weight to the suspicious circumstances surrounding the Respondent's travel to Singapore, and some extraordinary circumstances, including:
 - (i) the numerous suspicious texts received by the Respondent on his arrival at Changi Airport, and
 - (ii) the fact that the Respondent was taking directions from Nigerian parties as to his movements, as shown by mobile phone records.
- (c) The Judge erred in finding that the following facts are indicative of a lack of knowledge of the Drugs in the Black Luggage:
 - (i) the Respondent's decision to board Hamidah's car and accept her offer to buy him a meal even though Hamidah's evidence was that he behaved nervously and suspiciously;
 - (ii) the fact that the Respondent proceeded to collect the Black Luggage at Changi Airport instead of simply walking away after being delayed at Immigration; and

- (iii) The Respondent's leaving of the Black Luggage at the lobby of Hotel 81 for 12 minutes while he went out of the hotel to change money.

23 Finally, the Prosecution contends that the Judge's inference that the Respondent did not know about the illicit contents of the Black Luggage and his finding that the Respondent has rebutted the presumption under s 18(2) of the MDA are clearly against the weight of the evidence.

The Respondent's Submissions

24 The Respondent's submissions broadly go towards the argument that the Judge had not erred in his findings. This appeal deals primarily with facts and the question is whether this court should depart from the Judge's findings of primary facts and inferences drawn, or not drawn, therefrom. The Respondent underscores that the Judge is better placed than the appellate court to make such findings of facts, for the following reasons:

- (a) The findings were made at the conclusion of an eight-day trial involving two accused persons;
- (b) The findings hinge on a question of credibility;
- (c) The Judge's inferences were based on a particular characterisation of the primary facts for which he was better placed to make.

25 The Respondent also submits that there are innocent explanations for the Respondent's lies. In particular, the Judge did not err in assessing the alternative case regarding the untruth in the First Statement that was put forth by the Respondent's counsel, Mr Eugene Thuraisingam ("Mr Thuraisingam"), and the Judge was well aware that the legal burden of proving a lack of knowledge of the Drugs rests on the Respondent.

26 It is also argued that the suspicious circumstances alleged by the Prosecution regarding the Respondent's travel to Singapore do not go towards proving the Respondent's guilt. The Judge is also right to infer that the Respondent's behaviour at Changi Airport, as well as after leaving Changi Airport, is inconsistent with someone who knew that he was in possession of the Drugs. The Judge's inference that the Respondent was a *bona fide* trader is a correct one.

Our decision

27 The only issue before us is whether, given the circumstances of the case, the Respondent has rebutted the presumption under s 18(2) of the MDA by proving on a balance of probabilities that he had no knowledge that the Black Luggage contained the Drugs.

Burden of proof

28 Section 18 of the MDA provides as follows:

Presumption of possession and knowledge of controlled drugs

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

- (a) anything containing a controlled drug;

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

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

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

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

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

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

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

29 In the present case, the Respondent was in physical possession of the Black Luggage before he transferred it over to Hamidah at Clarke Quay. Accordingly, the Drugs are presumed to be in his possession at the material time pursuant to s 18(1) of the MDA. As the Respondent is presumed to have had the controlled drugs in his possession, he shall, until the contrary is proved, be presumed to have known the nature of that drug: see s 18(2) of the MDA.

30 The effect of s 18(2) of the MDA was recently explained by the Court of Appeal in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 ("*Muhammad Ridzuan*") at [75]:

In order to rebut the presumption of knowledge under s 18(2) of the MDA, an accused person has to adduce sufficient evidence to demonstrate, on a balance of probabilities, that he or she did not know the nature of the drug, *ie*, the actual controlled drug proven or presumed to be in the accused person's possession: see *Nagaenthran* (at [31]). In *Dinesh Pillai*, this court further refined the principles applicable to the rebuttal of the presumption of knowledge (at [18]):

... As s 18(2) has been triggered in the present case, the appellant bears the burden of proving on a balance of probabilities that he did not know *or could not reasonably be expected to have known* the nature of the controlled drug that was found inside the Brown Packet. ... [emphasis added]

The court in *Dinesh Pillai* accepted that an accused (here, Ridzuan) would also not be able to rebut the presumption by a mere assertion of his lack of knowledge had he been wilfully blind as to the nature of the drugs.

[emphasis in italics in original]

31 The following statements by Yong Pung How CJ in *Van Damme Johannes v Public Prosecutor* [1993] 3 SLR(R) 694 (also a case concerning controlled drugs concealed in a suitcase that was handed to the accused person) are also apposite (at [22]):

... It is accepted that the onus is always on the Prosecution to prove its case beyond a reasonable doubt but, in the context of the Act, the law has provided the Prosecution with presumptions and the court must have regard to them. Once the presumptions were triggered in this case the onus was on the accused to discharge the presumptions. It would then be up to the court to decide whether or not to believe him; to assess his credibility and veracity; to observe his demeanour; to listen to what he had to say; to go through the evidence and determine whether his story was consistent; and finally to make a judicial decision. ...

32 Since s 18(2) of the MDA has been triggered, the legal burden has shifted to the Respondent. It is not sufficient for the Respondent to merely raise a "reasonable doubt" *vis-à-vis* the issue of knowledge (see *eg, Iwuchukwu Amara Tochi v PP* [2006] 2 SLR(R) 503 at [9]). Further, as Chan Sek Keong CJ pointed out in *Nagaenthiran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 (at [23]), "[t]he material issue in s 18(2) of the MDA is *not* the *existence* of the accused's knowledge of the controlled drug, *but* the *non-existence* of such knowledge on his part" (emphasis in original).

Analysis of the evidence

The Respondent's lies and omissions in his statements

33 In determining whether the Judge had erred in accepting the Respondent's defence, the key dispute centres on the probative effect of the numerous lies and omissions made by the Respondent in his statements to the CNB, and the Judge's treatment of the Respondent's explanations for those lies and omissions. To narrow the point down even further, the critical question to be answered is whether the Respondent had lied for innocent reasons, or whether he had intentionally lied because he *knew* that telling the truth would link him to the crime.

(1) The First Statement

34 We shall begin our examination with the First Statement, which was recorded shortly after the Respondent's arrest in Hotel 81 and the material part is:

Q: When you arrive at airport in Singapore, how many luggage did you bring?

A: One.

Q: Is that the luggage? (Recorder's note: accused was pointed to a black bag on the floor in the room)

A: Yes.

35 The Respondent's evidence at trial is that *he did not lie* in the First Statement because he considered that the laptop bag was not a luggage, and that when the statement was taken, everything including his laptop bag had been taken out of the hotel room and the officer did not point to any bag when the statement was taken. Even the Judge did not believe the Respondent's proffered explanations. We agree with the Judge in this respect, for the reasons that he gave (at [64] of the GD).

36 Nevertheless, the Judge went on to deal with the Respondent's *alternative* case, which is that, he had *lied* in the statement because he had been told that there was an arrest on the previous night and two packets of drugs were found in a bag brought by him. The Judge concluded that he could not "rule out the possibility that [the Respondent] had lied because he realised that there was an arrest

on the night before and a luggage with two packets of drugs were found and/or that he was arrested for drug trafficking" (the GD at [66]).

37 It is not disputed that an accused person is entitled to run alternative cases, even if they are inconsistent. As stated by this court in *Public Prosecutor v Mas Swan bin Adnan and another appeal* [2012] 3 SLR 527 ("*Mas Swan*") (at [68]), "the trial judge should not shut his mind to any alternative defence that is reasonably available on the evidence even though it may be inconsistent with the accused's primary defence". However, the Prosecution contends that the Judge had erred in his assessment of the alternative explanation for the lie.

38 To begin, the evidential basis for the alternative case is threadbare. None of the CNB officers testified that they had said anything regarding Hamidah's arrest or that two packets of drugs were found in a bag, or that he was being arrested for drug trafficking, although SI Mohamed Affendi Bin Ideris ("SI Affendi") did inform the Respondent that he was being arrested for "suspected drug offences". [\[note: 6\]](#) While a number of the members of the arresting party (namely, SI Affendi, ASP Edmund Lim Changwei ("ASP Lim") and DSP Xavier Lek Lai Ann) said they could *not* rule out the possibility that "someone might have told [the Respondent] about it" or that "he might have overheard the conversations between the officers and surmise that his arrest must have something to do with the Black Luggage before the statement was taken", we do not see how else they could have responded to such a question since none of them could speak with conviction as to what the other persons *might* have said or done.

39 For example, the relevant portion of ASP Lim's testimony is as follows:

Q Now, witness, I just remind you, when I---when I first asked you whether you heard the other officers talking to the accused about him being involved in trafficking, your answer was you could not remember. Correct?

A Yes.

Q So, witness, I put to you that it is entirely possible that the other officers were talking to the accused about drug trafficking, correct? "Entirely possible", I'm not saying that it definitely happened.

A Yes, Your Honour.

40 We also set out the portion of SI Affendi's testimony that the Judge had relied on in saying that SI Affendi "could not remember and therefore could not rule out the possibility that [the Respondent] might have been told":

Q Between 11.00am and 1.00pm, your earlier answer was that you cannot recall---

A Mm.

Q ---who spoke to the accused. Correct?

A Yes, Your Honour.

Q So you cannot rule out that he was told that there was an arrest the previous night and a luggage bag with two packets of drugs were found. You can't rule that out, correct, because you can't remember?

A Yes, I couldn't rule it out. It's---I couldn't recall, Your Honour.

41 Finally, it must be underscored that the key point – that the Respondent might have heard it – *was never stated by the Respondent in the evidence.*

42 Given the flimsy evidentiary basis for the alternative case, Mr Thuraisingam relies on the Judge's remark at [66] of the GD that "it would not have been too difficult for [the Respondent] to surmise, after being told that the arrest was related to a drug offence, that the arrest could have something to do with the Black Luggage". This is wholly speculative. For example, it was pointed out to Mr Thuraisingam at the oral hearing before us that it is odd that the Respondent would immediately decide to deny knowledge of the Black Luggage when he could have instead said that someone must have planted something in his hotel room or his laptop bag. Mr Thuraisingam's reply was that it would not be surprising that he would be alerted to that fact since one of the first questions asked of him was the number of luggage bags he brought to Singapore, especially given that the arrest took place in the morning after he had passed the Black Luggage to Hamidah. It seems to us that the Respondent would have been remarkably adroit to have come immediately to that conclusion upon being asked about his luggage.

43 Furthermore, *even if we assume it is true that this conclusion was figured out by the Respondent himself, he contradicted that by his own evidence at trial, which is that the first time he had any inkling that the charge against him had any relation to the Black Luggage was when his counsel visited him:*

... I only hear that they found something, drug, that I was charge of because my---my lawyer tell me when he come. He say, "They are charging you because the bag you give contains drugs, that the bag you give to the"--- that is first time I have a knowledge that bag have the part to play with my arrest...

44 It appears to us that that the Respondent has a habit of fashioning his own defence as he goes along, depending on how the winds of evidence are blowing. Not only had he lied in the First Statement, he had also not been truthful about why he lied. To add on to this, there are also no good reasons for his inconsistent explanations. In *Mas Swan*, one of the appellants (one Roshamima) was facing a charge of importation of diamorphine. Her primary defence was that she had no knowledge of the drugs that were in her possession. Her alternative (and inconsistent) defence was that she believed that the drugs were ecstasy. This court found that it was not unreasonable that she had chosen not to rely on her alternative defence at trial because it might have impacted on the cogency or strength of her primary defence, *which might have acquitted her (Mas Swan at [68])*. Thus the court set aside Roshamima's conviction of importing diamorphine and convicted her on the amended charge of attempting to import ecstasy instead. In the present case there was no such similar option available to the Respondent, except that he appears to have taken a particular position based on what seemed to him most believable at the time. This is not the behaviour of a credible witness.

45 Indeed, the Judge himself did *not* find that it was more likely than not that the Respondent had lied on the basis of a realisation that there was an arrest on the night before and a luggage with two packets of drugs were found and/or that he was arrested for drug trafficking, and decided that the best way forward was to lie about the Black Luggage. It appears that the Judge himself was *not* convinced that the Respondent had an innocent explanation for this lie. Nevertheless, the Judge was willing to give him the benefit of the doubt. Taken in isolation, it is indeed *possible* that the Respondent had lied in the First Statement even though he did not know before he was arrested that the Black Luggage contained drugs. We might not have held this lie against the Respondent if he had come clean afterwards. However, the Respondent did not stop here.

(2) The cautioned statement and long statements

46 The cautioned statement was recorded from the Respondent several hours after his arrest. The charge that was read to him (which is not exactly the same as the final charge) informed him that he was facing a drug trafficking offence, and that the basis of the charge was that he had given two packets of crystallized substance believed to contain methamphetamine to Hamidah at 3 River Valley Road, Clarke Quay. He was also informed that a conviction could result in a death sentence. The caution under s 23 of the Criminal Procedure Code 2010 (Cap 61, 2010 Rev Ed) ("the s 23 caution") that was read to him states:

Do you want to say anything about the charge that was just read to you? If you keep quiet now about any fact or matter in your defence and you reveal this fact or matter in your defence only at your trial, the judge may be less likely to believe you. This may have a bad effect on your case in court. Therefore it may be better for you to mention such fact or matter now. If you wish to do so, what you say will be written down, read back to you for any mistakes to be corrected and then signed by you.

47 This was what the Respondent said in the cautioned statement:

I did not pass anything to anybody. I was in my hotel room and there was a knock and they said Police and I opened the door. They came in and asked me where my luggage. I told them this is all I have. They asked me if I go out. I told them I only go to change money and look around. They searched the place and they found nothing. [emphasis added in italics]

48 In his examination-in-chief, the Respondent explained that he said what he did because he was "full of confusion". He did not know who Hamidah was, he did not know anything about two packets of drugs, and he did not pass any packets of drugs to anyone. He was scared so he said nothing about it. [\[note: 7\]](#)

49 During cross-examination by the Deputy Public Prosecutor, Mr Ng Cheng Thiam ("Mr Ng"), the Respondent tried to explain the specific untruths as follows:

(a) In clarification as to why he said he did not give *anything to anybody*, the Respondent said that the charge talked about drugs and not a luggage. [\[note: 8\]](#)

(b) As regards his statement that "this is all I have" (which meant that he only had what was in the hotel room) in response to the question as to where his luggage was, the Respondent said he only wanted to refer "to him the particular thing – the question which was already also written there" before going on to talk about how he was scared for his life and in pain the whole day. [\[note: 9\]](#)

(c) As regards why he only said he had gone out to "change money and look around", the Respondent explained that he said nothing about handing a luggage bag over to Hamidah "because it have [*sic*] no part to play here" and said nothing about meeting a lady because "[the CNB] never asked me for that". [\[note: 10\]](#)

50 As for the reason why the Respondent kept mum even though the s 23 caution read out to him was in broad terms, the Respondent's answer was long and winding but the gist of it is that he blamed the investigating officer for not being specific and not being "open" about the circumstances of the offence. When asked by Mr Ng whether the Respondent had said whatever he wanted to say in

the cautioned statement, the Respondent said he did not “want to be open of everything because now I didn’t have... the heart of the problem”. He also said he couldn’t “open [his] heart that moment because... [he] was in high tension”. [\[note: 11\]](#)

51 It seems to us clear that the Respondent’s explanations are no more than convenient excuses. By the time the cautioned statement was recorded, he would have undoubtedly surmised that the offence had something to do with the Black Luggage and the transfer to Hamidah. Indeed on the alternative case which he has advanced, he had already, on giving the First Statement, guessed that this was so, and that was based on even far less information. By the time the s 23 caution was read to him, the Respondent could not have been under any illusions as to the nature or the consequences of the charge. He also said he understood the caution perfectly. [\[note: 12\]](#) He knew that the matter was very serious and that this was his opportunity to state his defence.

52 At this point, *ie*, the obtaining of the cautioned statement, it is incumbent on an accused person, if he was in fact innocent, to come clean with any facts or matter in his defence. If he fails to do so, the court may draw an adverse inference against him. Under s 261 of the Criminal Procedure Code 2012 (Cap 68, 2012 Rev Ed) (“CPC 2012”), the court is expressly empowered to draw appropriate inferences on the failure of accused persons, upon being charged with an offence, to state facts which he could reasonably be expected to mention when so questioned. As a matter of reason and logic, the consequences of omissions must apply with equal (if not greater) force to the utterances of deliberate untruths. Furthermore, the adverse inference drawn may include the fact that the accused person’s omission to state the truth arose from a realisation of guilt (*Pang Siew Fum and another v Public Prosecutor* [2011] 2 SLR 635 at [71] and [72], citing for illustrative purposes *Lee Lye Hoe v Public Prosecutor* [2000] SGCA 55 and *Lai Chaw Won v Public Prosecutor* [1999] SGCA 29).

53 Section 261(1) of the CPC 2012 states:

Inferences from accused’s silence

261. —(1) Where in any criminal proceeding evidence is given that the accused on being charged with an offence, or informed by a police officer or any other person charged with the duty of investigating offences that he may be prosecuted for an offence, failed to mention any fact which he subsequently relies on in his defence, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so questioned, charged or informed, as the case may be, the court may in determining —

(a) whether to commit the accused for trial;

(b) whether there is a case to answer; and

(c) whether the accused is guilty of the offence charged,

draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

54 As we have alluded to earlier, the Respondent’s misstatement in the First Statement might not have been held against him if he had corrected himself when giving the cautioned statement, as by then he had been informed of and given clear warning as to the consequences of continued deception. He did not change his ways. He lied in the cautioned statement and continued to lie in all

the long statements.

55 The long statements were recorded between 21 November 2011 and 24 November 2011, which was about a week after the cautioned statement was made. By this stage, the Respondent could no longer allege any misunderstanding of what was being asked of him. The questions were precise and clear. The lies and omissions included:

- (a) He said he only carried one bag and that was the bag found in the room in Hotel 81. He said he only checked in the laptop bag at the Lagos airport. [\[note: 13\]](#) He said the bag he left at the hotel counter was the laptop bag. [\[note: 14\]](#)
- (b) He said he accidentally dropped his handphone in the toilet bowl in Hotel 81. [\[note: 15\]](#)
- (c) He said he did not go to the Clarke Quay area. [\[note: 16\]](#)
- (d) He said he did not know and had never seen the person when he was shown a *photo* of Hamidah [\[note: 17\]](#) (even if admittedly the Respondent might not have known the name of the lady to whom he had passed the Black Luggage, he certainly would have known how she looked like.)
- (e) Similarly, he denied having met Adili before his arrest, when shown a photo. [\[note: 18\]](#)
- (f) Furthermore, there was no mention of Kingsley anywhere in his various statements.

56 The Respondent's explanations for the lies, in summary, is that he had decided to lie out of fear because his life was at stake, and that ASP Deng was the "shepherd" who had led him to say the things that he wanted the Respondent to say. Essentially, his point is that, because he did not know the full facts of what had happened, he decided to deny anything that was not in his possession as he felt that was the safer course to take. We note that the Judge seemed to have considered that the latter reason was applicable even to the cautioned statement. However, for accuracy we ought to mention that there is some ambiguity regarding this as the Respondent gave this particular reason while answering questions posed to him regarding the long statements [\[note: 19\]](#) (at which point he could no longer claim that confusion was a reason for his stating the untruths).

57 In *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 ("*Kwek Seow Hock*"), this court considered the question of when it is appropriate for a court to draw an adverse inference against an accused person for failing to state his defence in his long statements. A court is not always entitled to draw an adverse inference for failure to disclose a material fact in long statements as an accused person is allowed to withhold mentioning any fact or circumstance which, if disclosed, may incriminate him by the effect of s 121 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed), which is similar to the present s 22 of the CPC. Nevertheless, this court went on to explain as follows (at [19]):

If, however, the fact or circumstance that is withheld will exculpate the accused from an offence, a court may justifiably infer that it is an afterthought and untrue, unless the court is persuaded that there are good reasons for the omission to mention that exculpatory fact or circumstance. This accords with common sense – if an accused believes he is not guilty of an offence that he might be charged with, he would be expected to disclose why he has such a belief. For a self-confessed trafficker like the Appellant, consumption would be an exculpatory fact. Furthermore, an exculpatory fact or circumstance has more credibility if disclosed to an investigating officer at the earliest opportunity after arrest. Thus, in *Chou Kooi Pang v PP* [1998]

3 SLR(R) 205, this court (without referring to *Lim Lye Huat Benny* ([10] *supra*)) held, in regard to one of the appellants, that his “failure to mention a material part of his defence at an earlier stage meant that it was less likely to be believed” (at [30]). [emphasis added in italics]

58 In the premises, there is a strong basis for finding that the Respondent’s case at trial is an afterthought and untrue, as the Respondent has failed to provide any good reasons for his omission to mention key exculpatory facts or circumstances. In particular, we are unable to see why the Respondent failed to mention Kingsley, whose existence is crucial to his defence, at any stage during the taking of the statements, when he was quite willing to volunteer other details of his background in coming to Singapore. After all, he could have mentioned that he came to Singapore to purchase used electronics with the assistance of Kingsley, without having to say anything about the Black Luggage. When questioned on this point, the Respondent’s answer was that ASP Deng had laid a “foundation of lies” in the sense that ASP Deng never mentioned the issue of him being given a bag. When Mr Ng pointed out to the Respondent that ASP Deng was only asking how he came to Singapore, the Respondent fell back on the assertion that he was afraid for his life. [\[note: 20\]](#) It is obvious that the Respondent had no answer for this omission. It would have been proper for the Judge to draw an adverse inference in this regard.

59 The Judge also erred in another respect. He said he did not think that the Respondent’s “defensive” behaviour showed “*unequivocally*” that before the Respondent was arrested he had the requisite guilty knowledge as to what was concealed in the Black Luggage (the GD at [67]). It seems that the Judge might have overlooked the fact that it is the Respondent, not the Prosecution, who bears the legal burden of proof as to his non-knowledge. Nevertheless, even though the Prosecution does not have to rely on the lies in the statements as corroborative proof of guilt in order to succeed at trial, it is our view that the lies in the statements are more consistent with the Respondent having knowledge of the Drugs in the Black Luggage before the arrest.

60 To amount to corroboration of evidence of guilt the lies must fulfil the following requirements laid down by the English Court of Appeal in *Regina v Lucas (Ruth)* [1981] QB 720 at 724 (which was accepted by this court in *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [33] and recently endorsed in *Kamrul Hasan Abdul Quddus v Public Prosecutor* [2011] SGCA 52 at [18]):

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

61 In the present case, the Respondent’s lies were deliberate ones relating to material issues and which have been independently proven to be untrue. The essential question, as we have said earlier, is whether the Respondent had lied for innocent reasons, or whether he had intentionally lied because he knew that telling the truth would link him to the crime. The Respondent’s excuses for the lies were wholly unsatisfactory and unbelievable. It is clear to us that he had deliberately lied to distance himself from the drugs in the Black Luggage, the existence of which he knew. Quite simply, there is no acceptable explanation for the lies save for his realisation of his guilt. To suggest that the Respondent was justified to lie as a defensive move would be to turn reason and logic on its head.

62 Finally, a lie that is not corroborative of guilt can still be relied upon to make a finding that an accused person is not creditworthy. The evidence of a witness who is demonstrably economical with

the truth *without any good reason* ought to be treated with a healthy level of caution, *a fortiori*, if it indicates a propensity to change his evidence as the trial proceeded. In fact, lies can be taken into account when assessing the creditworthiness of an accused person even if he has a valid reason for lying, as was held in *Heng Aik Peng v Public Prosecutor* [2002] 3 SLR 469 at [27]:

27 The distinction between relying on an accused's lies as evidence of guilt and forming a view that his evidence is not creditworthy because of certain lies is an extremely important one. As pointed out by the court in *R v Lucas* ([24] *supra*), an accused person may lie for a variety of reasons not connected with guilt of the offences. As such, it is dangerous to convict an accused person based on the fact that he lied, unless the criteria in *Er Joo Nguang v PP* ([24] *supra*) are satisfied. *On the other hand, there can be no objection to a court's reliance on such lies to reach a finding that an accused person's evidence lacks creditworthiness, since the lack of credibility does not automatically lead to his conviction. I found Heng's submission, that Er Joo Nguang v PP (supra) should be construed to stand for the proposition that so long as an accused person had a **valid explanation** for lying in court, a judge should never find him to be evasive and untruthful, to be totally without merit.* Such a proposition, which does not appreciate the distinction mentioned above, would cripple the legal process as it would effectively handicap judges, who have always relied on the veracity and accuracy of witness's statements and oral evidence in considering the weight to be placed on their evidence. I should also add that none of the numerous cases that have dealt with the treatment of an accused person's lies, such as *R v Lucas* ([25] *supra*), *PP v Yeo Choon Poh* [1994] 2 SLR 867 and *R v Goodway* [1993] 4 All ER 894, give any credence to such a proposition. In fact, they clearly state that a court need only treat an accused person's lies with caution when they are being relied on as corroborative evidence. [emphasis added in italics and bold italics]

63 It is thus incumbent on a trier of fact to give careful consideration to such lies and omissions, as well as to an accused person's explanations (or lack thereof) for those lies and omissions, in determining the creditworthiness of the accused. Here, the Judge appears to have given insufficient regard to this factor when he concluded that the Respondent's evidence at trial was generally credible, when the fact that the Respondent raised exculpatory facts for the first time at such a late stage is itself a reason to consider it as less credible (*Kwek Seow Hock* at [19]).

(3) Conclusion on the lies and omissions

64 For the above reasons, with respect to the Respondent's lies and omissions, we find that the Judge had plainly erred in (a) failing to draw an adverse inference against the Respondent and (b) in failing to properly consider that the Respondent is not a creditworthy witness when assessing the credibility of his evidence at trial. With respect, we think that the Judge did not examine the explanation offered by the respondent for each lie or omission with the requisite rigour.

65 In any event, we must also add that even if the Respondent had not told all the lies that he did, the scenario which he painted at trial is also hard to believe. It is to this perspective that we will now consider.

The Respondent's version of the facts at trial

(1) The Respondent's reasons for coming to Singapore

66 To briefly recap, the Respondent claims to be a *bona fide* trader who had come to Singapore to buy used laptops to sell back home. The Judge found that this assertion is corroborated by the evidence of Kervinn and the fact that the Respondent had entered Singapore with the equivalent of

US\$5,000.

67 In our view, Kervinn's evidence is, at best, weak corroboration of the Respondent's case. First, Kervinn had never spoken with the Respondent before the latter came to Singapore. He was only told by his Lagos office that the Respondent was a trader coming to Singapore. Secondly, Kervinn is the person who applied for the Respondent's entry visa into Singapore. A drug trafficker or someone associated with a drug trafficker is hardly going to state the truth regarding the purpose of the visit to the person filing his visa application, especially since, as Kervinn says, the Immigrations & Checkpoints Authority would have Kervinn's contact details when he makes the visa applications. It goes without saying that a drug trafficker entering Singapore will create some kind of a cover story, if only to have a plausible thing to say at the immigration counter when asked. Thirdly, Kervinn also said that he has encountered many Nigerians who have come to Singapore to buy electronic goods. It is hard to see how far that helps the Respondent. For example, the fact that many Japanese people come to Singapore as tourists is hardly proof that a Japanese person who is caught with drugs *only* came to Singapore for tourism purposes. Furthermore, one would expect a drug trafficker to use some common reason for entering Singapore as his cover story.

68 As for the amount of money found on the Respondent, we accept that it is a point in his favour, but only a small one. For a trader in electronic goods, coming from such a long distance, US\$5,000 is a very small amount. There was no evidence as to the estimated number of second-hand laptops which he intended to buy, what he had ascertained to be their likely cost, or what were his specific plans. What we have is no more than a bare assertion that he came here for making purchases.

69 Thus, there is little objective evidence that supports the Respondent's case in this regard. Moreover, there are a number of suspicious circumstances which undermine the Respondent's claim to be a *bona fide* trader. Those circumstances are enumerated below.

(2) Suspicious circumstances in the Respondent's case

70 On the Respondent's evidence, he was only carrying his laptop bag when he met Izuchukwu and Kingsley at Lagos Airport (although there was no arrangement to meet Kingsley [\[note: 21\]](#)). It was Kingsley who asked him to bring the Black Luggage to the contact in Singapore, who would then help him after he had done so. Kingsley then made a call in the Respondent's presence to tell the person in Singapore that the Respondent is going to Singapore with the Black Luggage. The Respondent had asked Kingsley for the details of the contact in Singapore but Kingsley refused to give it to him. He regarded bringing the Black Luggage to Singapore as a return favour to Kingsley. Nevertheless, he checked its contents and found only clothes. He therefore agreed to help and checked in the Black Luggage. All of this only came up for the first time at trial.

71 There are a number of elements in this story that required explanation. We do not intend to go through each and every part of the Respondent's case that we found to be improbable, but we shall highlight a few points for the purposes of illustration.

72 First, this was the Respondent's first time travelling out of Nigeria [\[note: 22\]](#) and it was to be a serious business trip. The idea that he would do so without the contact's *name* or any contact details, or even a clear itinerary, is hard to believe. This is especially so considering his own description of being a careful and particular man. [\[note: 23\]](#) Furthermore, no good reason was provided as to *why* Kingsley would even have declined to give such details to the Respondent. When asked why didn't he press Kingsley for *any* detail, the Respondent's answer was difficult to understand but

the Judge interpreted it to mean that the Respondent had gone along with Kingsley's arrangement because he felt that once he was able to meet up with the contact in Singapore, he could then conduct future transactions through that contact. The Judge did not mention that the Respondent also said that he was confident that there was in fact a contact in Singapore because he had heard Kingsley call that person from Lagos Airport. [\[note: 24\]](#) However, we see a problem with that explanation: the Respondent's own case is that he had not known that Kingsley would turn up at Lagos Airport in the first place. There was simply no explanation why he did not insist on having the contact details of the contact or even some kind of assurance that someone was waiting for him *before he made the decision to come to Singapore*. He was perfectly happy to leave it in Kingsley's hands all along. Indeed, even the Judge himself noted that going along with Kingsley's approach was "not the most prudent course to take".

73 In a related vein, the key plank of the Respondent's defence is that he had been asked by a third party to carry an additional luggage out of the blue. He said that he believed the Black Luggage contained nothing but clothes. We find it hard to accept that the Respondent would meekly accept this task without even knowing to *whom* Kingsley wanted him to pass the Black Luggage. Even Hamidah's counsel at trial observed during cross-examination that the Respondent is a careful man. [\[note: 25\]](#) Yet in his version of the facts the Respondent seemed completely nonchalant about all the secrecy surrounding the person to whom the Respondent was supposed to meet and pass the Black Luggage, especially when it ostensibly contained nothing of value. All these sound very mysterious. Any reasonably prudent person, acting in good faith, would have probed further yet he seemed to be completely non-concerned.

74 It is also the Respondent's evidence that he had gone to Kim Tian Hotel before he received a call from Kingsley, telling him to go to Hotel 81 instead because Kim Tian Hotel is too far for the person who is supposed to help him. [\[note: 26\]](#) He then went to Hotel 81, where he paid for *only* one night's stay (even though he said he was to be in Singapore for three days). The Prosecution submits that it is very suspicious that the Respondent had come all the way from Lagos to Singapore, with just a hotel booking for one night. The Respondent explained that he made the booking for only one night because Kingsley's contact was to meet him the following day. However, he only received the call from the contact *after* paying just for one night. This is the relevant extract of the Respondent's testimony: [\[note: 27\]](#)

Q Okay. But based on what I understand you paid only for one night.

A Yes.

Q But the call came later.

A I say. Yes, I say I paid already, checked in before the call come. When the call come, my arrangement is that they is[sic] coming, and I don't know their arrangement, possible if they come they change my position of stay. The place I pay is too costly. They can change my position of stay because here is costly. They can give me a cheaper place to stay.

75 The Judge recognised that the Respondent might be prevaricating but nevertheless accepted the inconsistency as follows (the GD at [55]):

... However, Ilechukwu's consistent evidence had been that Kingsley's contact would meet him on the day after his arrival in Singapore. This was why, according to Ilechukwu, he decided to only pay for one night's stay in Hotel 81, Chinatown. I noted that Ilechukwu had earlier testified that

Kingsley had called him when he was at Kim Tian Hotel. Besides telling Ilechukwu to go Hotel 81. Chinatown, Kingsley had also told Ilechukwu that his contact would meet Ilechukwu on the next day. This was before the call from Kingsley's contact that the prosecution had pointed out to Ilechukwu. In other words, Ilechukwu knew that he was meeting Kingsley's contact on the next day even before he reached Hotel 81.

76 In the first place, the Respondent's willingness to obey Kingsley's instructions and change plans at the drop of a hat is strange. The Respondent's reasons for listening to Kingsley in the first place are as follows:

A When I was in that Kim's Hotel, they---Kingsley call me on phone again. He said that his arrangement change, that this Kim's Hotel---Hotel is not the right place I supposed to stay. Er, I supposed that---that here is going to be too far from his friend going to help me. And it's---here is too---too---too far for them, have to go to another place. I---I---I the---I can't---can't get from there.

...

Q So what hotel is this that you were supposed to go to?

A So on the process I tell him that, "You know that I come here with my money and you didn't give me any money. My money is my money." He say that, "Don't worry about that." That he going to give me any money---any expenses I do because this is their mistake. If they come to collect the bag, tomorrow when the guy who are going to help me, is going to pay me, going to give me all the expenses about the new hotel I'm going to go, because this is their fault and give me a ride. Then he text to me---erm, he text to me and then he say, "Chinatown." Understand? Then he text in my phone, "Chinatown." Then he call me say, "That's Hotel 81 in Chinatown. But you just tell the---the---the taxi man." I show him the---I show the taxi man this hotel in Chinatown.

77 So the reason why he changed hotels at Kingsley's behest is that he was assured that he would be refunded for his expenses at Hotel 81. As far as he was concerned someone else was picking up the tab (although, again, it is odd that a stranger like Kingsley's contact would be willing to foot the bill simply because Chinatown is nearer than Geylang to the contact). His concern with the costliness of Hotel 81 is, at least on its face, not entirely consistent with his belief that he would be reimbursed.

78 One other circumstance which we ought to mention is the numerous text messages which the Respondent received on arriving at Changi Airport. If the Respondent was indeed on a *bona fide* business trip to Singapore, why would the person in Nigeria who arranged his trip be so concerned about whether the Respondent had cleared Immigration and Customs? We could understand it if there is a single text message telling the Respondent to call back if the latter really did encounter difficulties. However, what we see here seems to suggest it to be anything else other than a *bona fide* trip.

(3) Whether there were objective facts which showed the Respondent's lack of knowledge of the Drugs

79 We now turn to the facts that the Judge considered to be inconsistent with the Respondent having knowledge of the Drugs. We begin with the Judge's findings in respect of two incidents involving the Black Luggage. The first is the finding that someone with knowledge of the Drugs would

have abandoned the Black Luggage after the delay at immigration at Changi Airport. The second is the finding that it would have been unusual for a person with the knowledge that a bag contained drugs destined for a drug syndicate to leave the Black Luggage at the lobby of Hotel 81 for 12 minutes, since such a person would know that severe consequences would follow if the bag were to have been lost.

80 The Prosecution submits that the Judge's perception of the Respondent's acts in both those situations is inconsistent. We agree. Any concern about reprisal from drug syndicates that may have existed is something that would operate on a drug trafficker's mind at all times, so it would be incorrect to account for this possibility only with respect to the Respondent's actions at Hotel 81 and not at Changi Airport. A drug trafficker who is concerned about the repercussions of misplacing his cargo would be extremely reluctant to abandon the Drugs at the airport, for by so doing he *ensures* that the Drugs will be lost. He might prefer the possibility of legal sanction to the certainty of whatever punishment may await him from criminal drug lords. Even if he did not appear to be flustered on the CCTV footage or nervous enough to be stopped by a customs officer when the Black Luggage was being inspected, that is neither here nor there. There is nothing surprising about a drug trafficker being adept enough to evade checks or to appear composed at customs and immigration; undoubtedly there are strong and determined individuals involved in the drug trade. That is how drugs managed to enter Singapore in the first place.

81 In comparison, at Hotel 81, it is the Respondent's own evidence that the reception staff at Hotel 81 had asked him to keep his bag beside the hotel counter. [\[note: 281\]](#) It can be inferred that the Respondent was reasonably confident that the Black Luggage would be safe with that employee of the hotel. Leaving the Black Luggage under the eye of a responsible third party is a minuscule risk in the Singapore context. Moreover, we see no reason to think that a drug trafficker will want to keep his drugs with him at all times. Indeed, there is another angle to this issue. If he were to insist upon dragging the Black Luggage along it could also have caused the staff to wonder what was in it that was so valuable or important that the Respondent would trust nobody else with it; this would only draw attention. By accepting the helpful gesture from the reception staff, no one would think anything more about the bag. Truly, in that situation, there was really not much of a choice for him. We would not have viewed those circumstances as indicating a lack of knowledge as to what was hidden in the bag.

82 Another aspect which the Judge considered to be inconsistent with guilty knowledge on the Respondent's part is the fact that the Respondent got into the car with Hamidah after he had handed the Black Luggage to her. The Judge reasoned that that if the Respondent had known of the Drugs in the Black Luggage, "it would be highly unusual for him to agree to continue to be associated with it and prolong the risk of being caught" and that the "natural instinct of any person with such knowledge would be to go off immediately" (GD at [60]). We accept that this is by far the strongest point in the Respondent's favour. However, people do not always act in ways that we expect of them. As the Prosecution points out, the same argument might also be applied to Hamidah, who was convicted. After all, Hamidah too was prolonging the risk of getting caught by inviting the Respondent into her car in search of a meal. The Respondent may have had his own reasons for going into Hamidah's car despite his knowledge that the Black Luggage contained the Drugs. Interestingly, Hamidah even said that the Respondent appeared nervous. Yet Hamidah received the bag and offered the Respondent a lift. Therefore, there must be more than what meets the eye. An individual happenstance (*ie*, the Respondent going into the car of Hamidah) must be viewed against the entire objective facts. The Judge, with respect, placed too much weight on this single factor when assessing the evidence.

Whether the threshold for appellate intervention had been crossed

83 From the foregoing, it is evident that the appeal turns primarily on questions of fact, and it is a well-established principle that an appellate court is usually slow to overturn the factual findings of a trial judge. The key principles in this regard were summarised in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16] as follows:

16 Before I deal with the appeal on the convictions, I ought to perhaps reiterate that an appellate court has a limited role when it is asked to assess findings of fact made by the trial court. In summary, the role is circumscribed as follows:

(a) Where the finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses based on the demeanour of the witness, the appellate court will interfere only if the finding of fact can be shown to be plainly wrong or against the weight of evidence: see *PP v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [32] and *Yap Giau Beng Terence v PP* [1998] 2 SLR(R) 855 ("*Yap Giau Beng Terrence*") at [24]. An appellate court may also intervene, if, after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and therefore unreasonable: *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR(R) 45 ("*Jagatheesan*") at [43].

(b) Where the finding of fact by the trial judge is based on the inferences drawn from the internal consistency (or lack thereof) in the content of witnesses' testimony or the external consistency between the content of their testimony and the extrinsic evidence, an appellate court is in as good a position as the trial court to assess the veracity of the witness's evidence. The real tests are how consistent the story is within itself, how it stands the test of cross-examination, and how it fits in with the rest of the evidence and the circumstances of the case: see *Jagatheesan* at [40]. If a decision is inconsistent with the material objective evidence on record, appellate intervention will usually be warranted.

(c) An appellate court is as competent as any trial judge to draw any necessary inferences of fact from the circumstances of the case: see *Yap Giau Beng Terence* at [24].

84 In *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] SGCA 12 ("*Farid*"), after emphasising that the factual conclusions of a trial judge, including those centring on the accused person's credibility, are *not* immune from appellate scrutiny (at [50]), this court proceeded to clarify the approaches towards findings of fact based on the credibility of witnesses and inferences of fact (at [53] and [54]):

53 As alluded to in the passage above, we have now come to recognise a difference between findings of fact based on the veracity or credibility of witnesses and inferences of fact. Going one step further, it has also been accepted by this court (see *Thorben Langvad Linneberg v Leong Mei Kuen* [2013] 1 SLR 207 at [13], affirming the decision of the Singapore High Court in *Public Prosecutor v Wang Ziyi Able* [2008] 2 SLR(R) 61) that an appellate court is in as good a position as a trial judge to assess a witness's credibility if his assessment is based on inferences drawn from:

(a) the internal consistency in the content of the witness's testimony; and

(b) the external consistency between the content of the witness's evidence and the extrinsic evidence.

54 In view of the principles set out above, when faced with an appeal against a judge's findings of fact, an appellate court should first seek to discern whether the finding of fact appealed against is one based on the credibility of the witness, or an inference of fact based on objective evidence. In the latter scenario, an appellate court should look at the objective evidence before the court and then question whether the trial judge's assessment was *plainly against the weight of the objective evidence*. In the former scenario, the appellate court should assess whether the trial judge's findings on the credibility of the witness, and hence any acceptance of that particular witness's evidence, are *plainly wrong*. This can be done by examining the internal and external consistency of the witness's evidence as mentioned in the two categories above. [emphasis in italics in original]

85 *Farid* is an example of the sparing manner in which an appellate court will exercise its discretion to review a trial judge's findings of fact. In that case, this court expressed its reservations about the veracity of the defence, which is that the respondent had an agreement not to deliver a quantity of methamphetamine beyond 250g as that would attract the death penalty. Nevertheless, this court was not satisfied that the trial judge's decision to accept the respondent's defence, that the latter thought the drugs which were delivered to him would not exceed 250g, was plainly wrong and dismissed the Prosecution's appeal.

86 Another illustrative case is that of *Public Prosecutor v Hla Win* [1995] 2 SLR(R) 104 ("*Hla Win*") where the majority of the Court of Appeal (with Yong Pung How CJ dissenting) upheld the acquittal of the respondent, who had been found in possession of diamorphine in his bag after his arrest upon his arrival at Changi Airport. The respondent's defence was, essentially, that he believed the bag he carried contained gems and that he had been asked by one Maung Maung whom he met in Bangkok to smuggle gems. The majority, while recognising that the circumstances were indeed suspicious, declined to interfere with the judge's findings. While a key plank of the respondent's evidence was not corroborated, the trial judge had found that what the respondent said was on the balance of probabilities credible after considering all the evidence, including the suspicious circumstances raised by the Prosecution in that case.

87 In the present case, the Respondent's version of the facts is quite improbable. There was also no corroborating evidence for various key aspects of the Respondent's case. That said, we would still have hesitated to think that the Respondent's version of the facts is so incredible that it would *ipso facto* justify appellate interference. Had the case *merely* turned on the Judge's assessment on the credibility of the Respondent's oral testimony at trial (and nothing more), we might have declined to interfere.

88 What tipped the scales are the numerous lies and omissions made by the Respondent in his statements, for which there is no innocent explanation. This is an important distinguishing factor from *Farid* and the majority judgment in *Hla Win*. In those cases, the evidence of the respective respondents at trial was consistent with their statements, and this lent credibility to their evidence at trial (see eg, *Farid* at [28] and *Hla Win* at [42] and [43]). Indeed, even Yong CJ in his dissenting judgment in *Hla Win* said that the respondent "had been a very consistent witness" (*Hla Win* at [61]). Unfortunately, the Judge erred in failing to draw an adverse inference against the Respondent for his lies and omissions, and also in failing to properly consider the impact of the lies and omissions in these statements on the credibility of the Respondent's evidence at the trial. At times, the Judge also seemed to have lost sight of the fact that, where the statutory presumptions under s 18 of the MDA operate, the burden of proof is on the accused. We could not see how the Respondent could be considered to have rebutted the presumption of knowledge on a balance of probabilities when the objective facts are all stacked against him, including all the lies he uttered as well as the material facts he deliberately suppressed in all his statements, and when the sole objective fact which is in his

favour (going into the car of Hamidah) is really of limited value. The lies were told by the Respondent obviously to distance himself from the Black Luggage and the Drugs concealed therein.

Conclusion

89 In the result, and having regard to the totality of the evidence as discussed above, we are convinced and find that the Respondent has not rebutted the presumption of knowledge in s 18(2) of the MDA. While we are mindful of the advantages that the Judge as a trier of fact has, we are driven to the conclusion that the Judge ought to have rejected the Respondent's defence, which is in the final analysis an unlikely account from an unreliable source. The Judge's acquittal of the Respondent is wrong and against the weight of the evidence. Accordingly, we allow the appeal, and convict the Respondent on the charge preferred against him.

[\[note: 1\]](#) NE day 6 p 19.

[\[note: 2\]](#) NE day 5 p 15 and day 6 p 112.

[\[note: 3\]](#) RoP vol 2 p 197 to 200.

[\[note: 4\]](#) RoP vol 2 p 207 to 211.

[\[note: 5\]](#) RoP vol 2 pp 229 to 247.

[\[note: 6\]](#) NE, day 2, p 5 lines 13 to 23.

[\[note: 7\]](#) NE day 6 pp 57 to 58.

[\[note: 8\]](#) NE day 6 p 107.

[\[note: 9\]](#) NE day 6 pp 108 to 109.

[\[note: 10\]](#) NE day 6 p 109.

[\[note: 11\]](#) NE day 6 p 110.

[\[note: 12\]](#) NE Day 6 p 106.

[\[note: 13\]](#) RoP vol 2 p 231.

[\[note: 14\]](#) RoP vol 2 p 236.

[\[note: 15\]](#) RoP vol 2 p 238.

[\[note: 16\]](#) RoP vol 2 p 238.

[\[note: 17\]](#) RoP vol 2 p 246.

[\[note: 18\]](#) RoP 2 p 246.

[\[note: 19\]](#) NE day 6 pp 59 to 61; although see also re-examination at pp 139 to 140.

[\[note: 20\]](#) NE day 6 pp 88 to 89.

[\[note: 21\]](#) NE day 6 p 82.

[\[note: 22\]](#) NE day 6 p 15.

[\[note: 23\]](#) RoP Vol 1A NE day 6 p 64.

[\[note: 24\]](#) NE day 6 p 84.

[\[note: 25\]](#) RoP Vol 1A NE day 6 p 63.

[\[note: 26\]](#) NE day 6 p 28.

[\[note: 27\]](#) NE day 6 pp 136 to 137.

[\[note: 28\]](#) RoP Vol 2 p 236 (para 15).

Copyright © Government of Singapore.