

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 236

Criminal Case No 5 of 2022

Between

Public Prosecutor

And

Mohamed Ansari bin
Mohamed Abdul Aziz

GROUND OF DECISION

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

TABLE OF CONTENTS

| | |
|--|-----------|
| UNDISPUTED FACTS..... | 2 |
| CONTEXT | 5 |
| ADMISSIBILITY OF THE CHALLENGED STATEMENTS | 7 |
| THE 31 MARCH AND 4 APRIL STATEMENTS | 10 |
| THE 9 DECEMBER STATEMENT..... | 15 |
| CONCLUSION ON ADMISSIBILITY OF CHALLENGED STATEMENTS | 16 |
| FINDINGS ON THE CHARGE | 16 |
| (1) KNOWLEDGE..... | 17 |
| (2) POSSESSION..... | 18 |
| (A) CHAIN OF CUSTODY..... | 19 |
| <i>The Prosecution's case.....</i> | <i>19</i> |
| <i>Defence's case.....</i> | <i>19</i> |
| <i>Analysis</i> | <i>21</i> |
| (B) POSSESSION OF THE DRUGS..... | 28 |
| (i) <i>The accused's statements</i> | <i>31</i> |
| (ii) <i>The accused's evidence in court</i> | <i>33</i> |
| (iii) <i>DNA evidence.....</i> | <i>39</i> |
| (iv) <i>Bella's evidence</i> | <i>41</i> |
| (v) <i>Close connection</i> | <i>43</i> |
| <i>Conclusion on possession.....</i> | <i>44</i> |
| (3) PURPOSE OF TRAFFICKING..... | 44 |
| CONCLUSION ON THE CHARGE..... | 46 |

| | |
|-----------------------|-----------|
| SENTENCE | 47 |
|-----------------------|-----------|

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Public Prosecutor
v
Mohamed Ansari bin Mohamed Abdul Aziz

[2022] SGHC 236

General Division of the High Court — Criminal Case No 5 of 2022

Valerie Thean J

13, 14, 18–20, 27, 28 January, 17–20 May, 22 July, 19 September 2022

3 October 2022

Valerie Thean J:

1 The accused, a 49-year-old Singaporean male, was arrested on 24 March 2016. Officers who searched the apartment where he stayed seized substances that contained not less than 30.23g of diamorphine. The accused claimed trial to the following charge (“the Charge”):¹

...

That you, MOHAMED ANSARI BIN MOHAMED ABDUL AZIZ,

...

on 24 March 2016 at about 2.30 pm, at unit #03-27 of Vibes @ East Coast, located at Lorong N Telok Kurau, 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 having in your possession for the purpose of trafficking 77 packets containing not less than 763.2 g of granular/powdery substance which was analysed and found to contain not less

¹ Charge sheet, 2nd Charge.

than 30.23 g of diamorphine, without authorisation under the said Act 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(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under section 33B of the said Act.

2 After trial, on 22 July 2022, I convicted the accused on the Charge. On 19 September 2022, I heard parties’ submissions on sentence and found that the accused did not meet the requirements of s 33B(2)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). I therefore imposed the death penalty. These are my written grounds of decision.

Undisputed facts

3 On 24 March 2016, at about 12.20pm, the accused went to Lengkong Tiga to collect a consignment of drugs.² He was driven there by one Jufri bin Mohd Alif (“Jufri”)³ and accompanied by his girlfriend, Bella Fadila (“Bella”), a 26-year-old Indonesian female.⁴

4 At Lengkong Tiga, the accused collected two *batu* of drugs from one Murugesan a/l Arumugam (“Murugesan”).⁵ At this juncture, Jufri, Bella, Murugesan, and the accused were arrested by Central Narcotics Bureau (“CNB”) officers.⁶

² Notes of Evidence (“NE”) (19 May 2022), p 12 lines 12–22; Agreed Bundle (“AB”) 652.

³ NE (19 May 2022), p 12 line 30 to p 13 line 3.

⁴ NE (19 May 2022), p 12 lines 12–19.

⁵ NE (18 May 2022), p 32 lines 15–21.

⁶ NE (18 May 2022), p 22 lines 19–21.

5 At about 2.25pm, the accused and Bella were escorted by the CNB officers to their rental apartment at unit #03-27 of Vibes @ East Coast, located at Lorong N Telok Kurau, Singapore (“the Unit”).⁷ A search was conducted of the master bedroom of the Unit and the following exhibits which were the subject matter of the Charge were seized:

(a) Hanging behind the master bedroom door (“Location A”),⁸ a bag which contained several packets of granular substance. The drugs found at this location were marked as exhibits A1A1A2A, A1A1A3A1, A1A1A4A1, A1A1A5A1A, A1A1A6A1, A1A1A6B1 and A1A1A7A.⁹

(b) In the wardrobe of the master bedroom (“Location B”),¹⁰ a box of tissue paper which contained one packet of granular substance, as well as a separate packet of granular substance lying next to it. The drugs containing diamorphine found at this location were marked as exhibits B1A1A1 and B1D2.¹¹

(c) On the floor beside the window (“Location C”),¹² a paper bag containing several packets of granular substance, two pouches (each containing several packets of granular substance) and two weighing scales. The drugs found at this location were marked as exhibits

⁷ NE (18 May 2022), p 22 lines 24–26; AB 654.

⁸ NE (18 May 2022), p 22 line 33 to p 23 line 5; AB 664.

⁹ Prosecution’s Written Submissions dated 4 July 2022 (“PWS”) at para 11 and Annex B.

¹⁰ NE (18 May 2022), p 30 lines 10–11; NE (19 May 2022), p 9 lines 6–8; AB 664–665.

¹¹ PWS at para 11 and Annex B.

¹² NE (18 May 2022), p 24 lines 13–19; AB 665.

C1A1A1, C1A1B1A, C1A1C1A, C1A2A1A, C1A2B1A, C1A2C1A, C1A3A1A, C1A3B1A and C1A3C1A.¹³

6 In total, 77 packets containing a total of not less than 763.2g of granular substance were found in the Unit. The granular substance was analysed and found to contain not less than 30.23g of diamorphine (“the Drugs”).¹⁴ Health Sciences Authority (“HSA”) analysis also revealed that the accused and Bella’s DNAs were present on numerous exhibits seized from the Unit.¹⁵

7 The accused was charged with nine charges, two of which are of relevance. The first of these concerned the accused’s possession of the drugs that were found in the car at Lengkong Tiga for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA (“the First Charge”). The second charge is the Charge under present consideration, for having in his possession the Drugs for the purpose of trafficking under s 5(1)(a) read with s 5(2) of the MDA.

8 The Prosecution initially proceeded on the First Charge against the accused and stood down the remaining charges. Joint trial commenced against Murugesan and the accused. Subsequently, Murugesan pleaded guilty to a reduced charge and the accused was granted a discharge amounting to an acquittal on 24 July 2020.¹⁶ I mention the joint trial in Criminal Case No 37 of 2019 (“CC 37/2019”) as background as I will return to contentions made there in the course of these grounds of decision.

¹³ PWS at para 11 and Annex B.

¹⁴ PWS at Annex B.

¹⁵ Defence’s Written Submissions filed on 11 July 2022 (“DWS”) at paras 20 and 23.

¹⁶ NE in CC 37/2019 (24 July 2020), p 2 line 3.

Context

9 The Charge concerned ss 5(1)(a) and 5(2) of the MDA, which read as follows:

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

10 The term “traffic” is defined under s 2 of the MDA as follows:

“traffic” means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning.

11 The Prosecution contended that the accused was in possession of the Drugs for the purpose of selling the same. In fulfilling its burden of proof, the Prosecution sought to use the following ten statements from the accused:¹⁷

(a) a statement recorded on 31 March 2016 at about 10.36am, under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (the “CPC”) (the “31 March Statement”);

(b) a statement recorded on 4 April 2016 at about 2.40pm under s 22 of the CPC (the “4 April Statement”);

¹⁷ Accused’s Statements (Volume 1) (“ASv1”) and Accused’s Statements (Volume 2) (“ASv2”).

- (c) a cautioned statement recorded on 9 December 2016 at about 10.26am under s 23 of the CPC in relation to the original version of the Charge which was a joint charge involving Bella and him (the “9 December Statement”);
- (d) a cautioned statement recorded on 9 December 2016 at about 10.42am under s 23 of the CPC;
- (e) a cautioned statement recorded on 9 December 2016 at about 10.53am under s 23 of the CPC;
- (f) a cautioned statement recorded on 9 December 2016 at about 11.01am under s 23 of the CPC;
- (g) a cautioned statement recorded on 9 December 2016 at about 11.09am under s 23 of the CPC;
- (h) a cautioned statement recorded on 9 December 2016 at about 11.18am under s 23 of the CPC;
- (i) a cautioned statement recorded on 23 January 2017 at about 10.01am under s 23 of the CPC; and
- (j) a cautioned statement recorded on 23 January 2017 at about 10.16am under s 23 of the CPC.

12 The accused disputed the admissibility of three of these statements: the 31 March Statement, the 4 April Statement and the 9 December Statement (collectively, the “Challenged Statements”).¹⁸ While the accused did not dispute the other cautioned statements recorded on 9 December 2016, these related to

¹⁸ NE (27 January 2022), p 13 lines 9–23.

the third to ninth charges. The Challenged Statements were pivotal to the case and I deal first with their admissibility.

Admissibility of the Challenged Statements

13 The Challenged Statements were given by the accused to one Station Inspector Fathli bin Mohd Yusof (“SI Fathli”) in the course of investigations. The accused’s case was that he had been induced by SI Fathli to make the Challenged Statements.¹⁹

14 In CC 37/2019, the accused challenged the voluntariness of six statements adduced by the Prosecution. These included the 31 March and 4 April Statements. The six statements were:

- (a) two contemporaneous statements, one recorded on 24 March 2016 at about 1.20pm in the CNB operational vehicle and another at about 3.32pm in the bedroom of the Unit;
- (b) a cautioned statement recorded on 25 March 2016 at about 3.08am under s 23 of the CPC (“25 March Statement”);
- (c) a long statement recorded on 30 March 2016 at about 2.59pm under s 22 of the CPC (“30 March Statement”); and
- (d) the 31 March and 4 April Statements.

15 The accused’s version of events is recounted in *Public Prosecutor v Mohamed Ansari bin Mohamed Abdul Aziz and another* [2019] SGHC 268 (“*Ansari (No 1)*”) at [6]–[7]. In brief, the accused alleged that, on 24 March

¹⁹ Defence’s Written Submissions in the Ancillary Hearing dated 12 March 2022 (“DWS (AH)”) at para 1.

2016 in the CNB operational vehicle, he had begged Staff Sergeant Muhammad Helmi bin Abdul Jalal (“SSGT Helmi”) to “let Bella go because she’s not involved in the case”. SSGT Helmi responded, “It depends on what you say”. This induced him to make the two contemporaneous statements referred to at [14(a)] above. Further, on 25 March 2016, at about 3.00am, he was taken to an interview room at the Police Cantonment Complex Lock-up and was alone with SI Fathli in the room for a brief moment. The accused testified that he had begged SI Fathli “to let Bella go, Bella my girlfriend, because she’s not involved in this”. The accused alleged that SI Fathli then said “[s]o far you have been [cooperative]. So if you continue cooperating, we will let Bella go” (“SI Fathli’s Inducement”). This induced the accused to make the rest of the statements at [14(b)]–[14(d)] above.

16 After an ancillary hearing, Chan J found that the Prosecution had not met its burden of proof for the statements at [14(a)]–[14(c)] above. Chan J was not satisfied beyond reasonable doubt that the inducements had not been made and, if so made, had not operated on the accused’s mind. In respect of the 31 March and 4 April Statements, on the other hand, Chan J held that these were voluntarily made: *Ansari (No 1)* at [39] and [61]. In contrast to the earlier statements where he maintained Bella was not involved, the accused had incriminated Bella in these two statements. He further admitted that he had given the information which incriminated Bella in his bid to obtain a Certificate of Substantive Assistance (“CSA”). Chan J held that his motive of self-preservation had, by this time, overcome his motive to protect Bella, and SI Fathli’s Inducement, made six and ten days prior, had dissipated: *Ansari (No 1)* at [59].

17 In this trial, the Prosecution did not seek to re-open the issue of whether an inducement occurred nor to admit the four statements that Chan J had ruled

to be involuntary. They sought to adduce the 31 March and 4 April Statements which Chan J had admitted in the earlier proceedings. The accused, on the other hand, challenged once again the admissibility of both these statements. He also challenged the 9 December Statement which was not considered in *Ansari (No 1)*. The Prosecution initially adopted the position that the accused was not able to re-open the already-determined issue of whether SI Fathli's Inducement had dissipated when the Challenged Statements were made, but subsequently decided that the accused should not be precluded from challenging admissibility by raising new evidence in the present proceedings.

18 In considering the new evidence, I took into account *Beh Chew Boo v Public Prosecutor* [2021] 2 SLR 180 ("*Beh Chew Boo*"), where the Court of Appeal held that the court had the inherent power to prevent the use of its procedure which would be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people: *Beh Chew Boo* at [82(a)]. The administration of justice could potentially be brought into disrepute where manifest inconsistency arises between the court's findings in two separate sets of proceedings. However, whether this amounts to an abuse of process remains a fact-sensitive inquiry: *Beh Chew Boo* at [82(f)], [82(g)] and [83]. The Court of Appeal observed that the existence of the risk of manifest inconsistency between earlier and pending proceedings "may not, in and of itself, amount to an abuse of process", and that the ultimate consideration remained whether it was "unfair and unjust to the accused person or otherwise inconsistent with the fair administration of justice to permit the pending or intended proceedings to continue": *Beh Chew Boo* at [84].

19 In the present case, while the voluntariness of the 31 March and 4 April Statements was the very issue Chan J had ruled on in *Ansari (No 1)*, the issue I

considered was whether the new evidence adduced by the accused raised a reasonable doubt as to the voluntariness of the Challenged Statements. The burden remained on the Prosecution to prove beyond a reasonable doubt that the Challenged Statements were made voluntarily: *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 (“*Chai Chien Wei Kelvin*”) at [53].

The 31 March and 4 April Statements

20 The accused sought to show that, despite his incrimination of Bella, SI Fathli’s inducement was still operating on his mind. In *Ansari (No 1)*, the court had not been provided with the statements during the ancillary hearing, an approach which Chan J criticised: see [10]–[21] of *Ansari (No 1)*. In the ancillary hearing in this case, the court and parties referred to the text of the Challenged Statements and the accused was also cross-examined on the same. The text of the Challenged Statements was relevant to, and formed part of, the consideration as to voluntariness. This approach is in keeping with the Court of Appeal’s views in *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 (“*Sulaiman*”), where the Court of Appeal held at [85] that it would be artificial and against common sense to determine the reliability of statements without examining the language and nature of the responses of the accused.

21 The portions of the Challenged Statements where the accused incriminated Bella were the following:

- (a) In the 31 March Statement, the accused communicated that Bella helped to pack some of the Drugs. In addition, he mentioned that Bella called the drugs she was packing “Narkoba” and explained therein that “[i]t means heroin in Indonesian language”.²⁰

²⁰ ASv1, p 895–896.

(b) In the subsequent 4 April Statement, when shown a metal spoon and two digital scales found in the Unit, the accused further stated that Bella had used the spoon to scoop the drugs into smaller packets.²¹

22 In the present ancillary hearing, the accused's explanation comprised two strands:

(a) First, he incriminated Bella in the 31 March Statement by revealing her involvement in packing the Drugs as, by that point, he had realised Bella's DNA would be found on those drugs, and thought that his answers would help explain the presence of her DNA.²² This was also his explanation in relation to the inculpatory nature of the 4 April Statement.²³ Thus, the accused explained that that these statements were in fact still exculpatory of Bella, since his position is that Bella had *done more* than what he stated ("Strand 1").²⁴

(b) Second, that he had "accidentally told the truth" in relation to revealing that Bella called the drugs "Narkoba". He had not intended to inculcate Bella ("Strand 2").²⁵

In other words, he sought to show that, contrary to Chan J's finding, he was attempting to exculpate Bella in the statements given on and after 31 March. As such, SI Fathli's Inducement remained operative.

²¹ AB at 923.

²² NE (28 January 2022), p 7 lines 1–22.

²³ NE (28 January 2022), p 9 lines 11–12.

²⁴ NE (28 January 2022), p 6 lines 11–31.

²⁵ NE (28 January 2022), p 23 lines 1–8.

23 Strand 1 of the accused's evidence was not convincing due to vacillations in his own account on why he gave answers that inculpated Bella. As summarised above, his case on the ancillary matter was that the content of the 31 March Statement was still exculpatory because Bella had in fact done more than what was stated therein. Thus, the accused's evidence was that he *obscured the full extent* of Bella's involvement with the drugs in order to exonerate her.²⁶ Essentially, his position was that he had lied in the 31 March Statement as to Bella's full involvement. However, at numerous occasions at the ancillary hearing, the accused stated he had *told the truth* about Bella's involvement with the view of "cooperating with" SI Fathli:²⁷

Q No but on the 31st of March, so why didn't you continue, if your idea was to protect her, why didn't you continue saying she wasn't involved with---you see, because she wasn't involved in any of this, because your answer says, "Heroin in the car, Bella no involved but heroin in the unit, she helped me pack". So there is some form of involvement. So if your idea was to protect her, why didn't you simply say she's not involved in the car drugs, she's also not involved in the unit drugs?

A Your Honour, on the 31st of March when I gave [Answer 6] I already knew that Bella DNA could be found on the drugs at home, Your Honour. And because IO *was asking me about whether---about Bella's involvement* in either the drugs in the car or at home, *I have to tell IO the truth, Your Honour, because I was cooperating with him, Your Honour, at that point of time.*

Q But according to you, *you didn't tell him the truth, right, because you didn't tell him the full extent of Bella's involvement?*

A Because the IO didn't ask me that.

Q IO didn't ask you what?

A Okay, we focus on the 31st of March.

Q Yes, that's what I would like to.

²⁶ NE (28 January 2022), p 6 lines 11–31; p 7 lines 1–22; DWS (AH) at para 11.

²⁷ NE (28 January 2022), p 16 lines 16–31 to p 17 lines 1–7.

A Your Honour, when I gave my answer for question number 6, Your Honour, I aware that Bella's DNA could be found on those drugs, Your Honour. Your Honour, I have already informed the IO that I will *cooperate with him and tell him the truth*. As such, I have to give *such an answer*, Your Honour. If not, the IO wouldn't believe me, and *maybe wouldn't release Bella*, Your Honour.

[emphasis added]

In the same vein, he also maintained that his account that Bella helped to pack about 15 packets of drugs was the truth:²⁸

Q I am putting to you that your answer doesn't make sense, because if you were trying to create a---concoct a story that was plausible, you wouldn't have been so specific, because at that time, you already knew there were so many packets, much more than 15.

A Your Honour, *as far as I knew*, at location C, there was about a total of 45 packets there, and Bella assisted me to pack 15 packets, Your Honour. Which is why I said 15 packets, Your Honour.

...

Q Why did you specify only 15, if you had seen the full extent of it? Yes, and if your intention was to exonerate her for all.

A Now, as I explained earlier, Your Honour, it was at location C and *she assisted me to pack 15 packets at location C*.

[emphasis added]

24 It appeared from the foregoing that the accused had subjectively understood SI Fathli's Inducement to "continue cooperating" as an invitation to tell the truth, and by that measure, aid in the CNB's investigative efforts. Based on this vein of the accused's evidence, he was therefore being forthright about Bella's involvement with the Drugs in the hope that the CNB would release Bella *in spite of* her being incriminated, having honoured his end of the *quid pro*

²⁸ NE (28 January 2022), p 19 lines 5–12, 31 to p 20 line 3.

quo. While this explanation, taken alone, could at least have been a plausible account for why the accused believed the incriminatory statements served an ultimately exculpatory end, it represented a contradiction of his earlier evidence that he had lied and inculpated Bella to a limited degree in order to *hide* her true (and larger) involvement. This contradiction cast doubt on the accused's account.

25 Strand 2 of the accused's evidence was also not believable. As pointed out by the Prosecution, it was unlikely that the accused would commit such an error or exhibit such a lack of care if SI Fathli's Inducement was truly operative on his mind. Even if it were accepted that the use of the word "Narkoba" was a slip of the tongue, it was curious that he did not retract his statement at that point nor amend it when invited to do so on subsequent occasions.²⁹ Instead, he even went on to explain what the term "Narkoba" meant in Indonesian. Put in the context of the accused's previous inculpatory statements about Bella merely helping to *pack* the drugs, this presented a further implication of Bella in so far as it suggested that Bella had *knowledge* of what the drugs were.³⁰ This went far beyond accounting for the presence of Bella's DNA, which was the nub of the accused's case in the present ancillary hearing.

26 The accused also explained that he did not amend his statement as he feared that SI Fathli would not believe him if he had changed it.³¹ To this, it may be relevant to consider that the accused had *previously* changed his position with SI Fathli: his initial representation was that Bella was not involved "in any of

²⁹ Prosecution's Written Submissions in the Ancillary Hearing dated 11 March 2022 at para 9.

³⁰ NE (28 January 2022), p 22 lines 20–30.

³¹ NE (28 January 2022), p 32 lines 4–12.

this” (referring both to the drugs in the car and the Unit), but this had changed by the time the 31 March Statement was given. This risk of being disbelieved did not stop the accused from changing his position when giving the 31 March Statement. When this is considered together with the accused’s evidence that he gave the 31 March Statement in hope of receiving a CSA, the more convincing inference was that the accused did not amend this answer as he had voluntarily given it, driven by self-preservation. The accused’s other answer in cross-examination as to why he did not amend this answer, that he “[did not] see the need to” do so, must also be viewed in this light.³²

27 For these reasons, the accused’s further evidence regarding the 31 March and 4 April Statements did not raise a reasonable doubt that SI Fathli’s Inducement operated on the accused’s mind at the time they were recorded. It must also be remembered that six and ten days respectively had passed from the time of SI Fathli’s Inducement to the making of the 31 March and 4 April Statements. Chan J’s findings remained pertinent.

The 9 December Statement

28 The 9 December Statement was a cautioned statement under s 23 of the CPC given in response to a joint charge with Bella that pertained to the Drugs. The accused’s evidence was that there were no additional inducements made after SI Fathli’s Inducement on 25 March 2016. Following from my finding that any inducement made had dissipated by the 31 March Statement, no inducement could have been in play on 9 December 2016. By this time, more than eight months had passed since SI Fathli’s Inducement was made.

³² NE (28 January 2022), p 22 lines 17–19.

29 The circumstances of the 9 December Statement reinforce this finding. Prior to giving the 9 December Statement, the accused was informed that both he and Bella faced a joint charge for trafficking the Drugs. Bella's circumstances could not have been bleaker since she was now also facing a capital charge. There was absolutely no reason for the accused to persist in any belief that SI Fathli would follow through with the promise that the police would "let Bella go".³³ When questioned during re-examination about why he still held that belief, the accused could only maintain that "it was promised ...by [SI Fathli]".³⁴ Nor did he query why SI Fathli had not delivered on his inducement. The accused reasoned that he could not bring up the arrangement between SI Fathli and himself because the interpreter was present in the room.³⁵ Neither rationalisation was credible.

30 I therefore held that there was no reasonable doubt that the 9 December Statement was voluntary.

Conclusion on admissibility of Challenged Statements

31 Therefore, the three Challenged Statements were admitted.

Findings on the Charge

32 I come then to the Charge. The elements of a charge under s 5(1)(a) read with s 5(2) of the MDA are as follows (per *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

³³ NE (28 January 2022), p 29, lines 16–19.

³⁴ NE (28 January 2022), p 31 lines 8–13.

³⁵ NE (28 January 2022), p 26 lines 16–24.

- (a) possession of the controlled drug (on a related note, the Prosecution must prove the chain of custody of the drugs said to have been in the accused's possession: see *Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [39]);
- (b) knowledge of the nature of the controlled drug; and
- (c) possession of the drug for the purpose of trafficking, which was not authorised.

I deal with each element in turn.

(1) Knowledge

33 The accused did not dispute that he had knowledge of the Drugs and what they were.

34 In his statements he said:

- (a) He knew that the packets of drugs in his brown sling bag at location A contained heroin.³⁶
- (b) He knew that the packets of drugs in the grey compartment at location B contained heroin as well as "Ice".³⁷
- (c) He knew that the packets of drugs on the floor at location C contained heroin.³⁸

³⁶ ASv1 at p 922, P197 at Photo 23, Photos 43–47.

³⁷ ASv1 at p 922, P197 at Photo 25, Photos 49–52.

³⁸ ASv1 at p 922, P197 at Photo 26, Photos 55–61.

- (d) He knew that there was “heroin at home” and had asked Bella for her help to “pack the heroin into the small ziplock bags” and Bella did so.³⁹ He also repacked heroin into smaller packets by himself.⁴⁰
- (e) He had procured the heroin which was found in the Unit. He obtained his “heroin supply” from a drug dealer called “Joie” in Malaysia. Before that, he obtained his “heroin supply” from another drug dealer called “Eddie”.⁴¹

35 At trial, no dispute was raised as to the accused’s knowledge that the Drugs were heroin; this was implicit in his examination-in-chief and re-examination.⁴²

(2) Possession

36 The accused made two contentions regarding the element of possession:

- (a) First, there was no intact chain of custody between the exhibits seized from the Unit and the exhibits that were analysed and found to contain 30.23g of diamorphine.⁴³
- (b) Second, most of the Drugs were in Bella’s possession rather than his.⁴⁴

³⁹ ASv1 at p 895, P195 at Answer 6; p 896, P195 at Answer 9; p 923, P197 at Photo 63.

⁴⁰ ASv1 at p 896, P195 at Answer 7, Answer 8; p 923, P197 at Photos 62–63.

⁴¹ ASv1 at pp 919–921, P197 at Answer 24, Answer 29.

⁴² NE (18 May 2022) at p 26, lines 23–24.

⁴³ DWS at paras 66–78.

⁴⁴ DWS at paras 10–65.

I deal with these in turn.

(A) Chain of custody

The Prosecution's case

37 The Prosecution contended that there was an intact chain of custody of the Drugs from their seizure in the Unit to their analysis at the Illicit Drugs Laboratory of the HSA.⁴⁵

Defence's case

38 The defence raised the following concerns with the chain of custody:

(a) The Drugs were first recovered by SSGT Helmi. He then passed them to Station Inspector Eng Chien Loong Eugene (“SI Eng”).⁴⁶ Later, during recording of a contemporaneous statement from the accused, SSGT Helmi had the Drugs in his custody again. However, he did not know who handed him the Drugs. In court, he said that a CNB officer handed him the Drugs but he could not remember who it was. Also, SSGT Helmi testified that after recording the contemporaneous statement, he handed the Drugs to SI Eng. However, in SI Eng’s statement, he said that SSGT Helmi passed the Drugs to Station Inspector Wong Kah Hung, Alwin (“SI Wong”) who then passed them to him. SI Wong also said in his statement that SSGT Helmi passed the Drugs to him, before he then passed them on to SI Eng.⁴⁷

⁴⁵ PWS at para 5.

⁴⁶ NE (13 January), p 62 lines 8–12.

⁴⁷ DWS at paras 67–71.

(b) In SI Wong's statement, he said that the Drugs were placed in a green duffel bag. However, in court he changed his evidence and said that the duffel bag was black.⁴⁸ This change in his evidence raised concerns, especially when considered together with evidence he had given in *Ansari (No 1)*.⁴⁹

(c) SSGT Helmi initially testified that the Drugs were unwrapped and placed in separate polymer bags at the Unit. However, when it was pointed out to him that the photographs of the exhibits were taken much later, and in some of the photographs the exhibits were still wrapped, he changed his evidence.⁵⁰

(d) SSGT Helmi initially identified the exhibits marked as C1A2 and C1A3 as each containing ziplock bags which in turn each contained three small packets of brown granular substance. However, when the exhibits were photographed, C1A2 and C1A3 were shown to only contain three small packets of brown granular substance (*ie*, there were no two ziplock bags).⁵¹

(e) Finally, the field diary was not recorded chronologically, and records were inserted after they had allegedly occurred.⁵²

⁴⁸ DWS at para 73.

⁴⁹ DWS at para 74.

⁵⁰ DWS at para 75.

⁵¹ DWS at para 76.

⁵² DWS at para 78.

Analysis

39 The following chain was adduced through various witnesses at trial, which showed that the Drugs were first seized by SSGT Helmi, and then passed to various officers and then onward to analysis at the HSA. I found that the Prosecution established this chain beyond reasonable doubt:

| | From | To | Description |
|---|------------|------------|---|
| 1 | SSGT Helmi | | Exhibits at Locations A, B and C seized. ⁵³ |
| 2 | SSGT Helmi | SI Eng | Exhibits passed to SI Eng who packed and sealed them and placed them in black duffel bag. ⁵⁴ |
| 3 | SI Eng | SI Wong | Duffel bag passed to SI Wong in the Unit. ⁵⁵ |
| 4 | SI Wong | SSGT Helmi | Duffel bag passed to SSGT Helmi in the master bedroom. ⁵⁶ SSGT Helmi had custody of the duffel bag while he recorded a contemporaneous statement from the accused. ⁵⁷ |

⁵³ NE (13 January), p 61 lines 15–20, p 62 lines 3–8, 13–14.

⁵⁴ NE (13 January), p 62 lines 8–12.

⁵⁵ NE (14 January), p 6 line 32 to p 7 line 8.

⁵⁶ NE (13 January), p 63 lines 21–29; NE (18 January 2022), p 25 lines 15–17.

⁵⁷ NE (13 January), p 63 lines 16–19.

| | | | |
|---|------------|-----------|--|
| 5 | SSGT Helmi | SI Wong | After the statement was recorded by SSGT Helmi, duffel bag passed to SI Wong in the Unit. ⁵⁸ |
| 6 | SI Wong | SI Eng | Duffel bag passed to SI Eng in the Unit. ⁵⁹ |
| 7 | SI Eng | SI Fathli | At all times between leaving the Unit and arriving at CNB Headquarters, SI Eng had custody of the duffel bag. ⁶⁰ The exhibits were handed individually to SI Fathli at the exhibit management room at CNB. ⁶¹ The accused witnessed the processing and weighing of the exhibits. ⁶² SI Fathli retained custody of the exhibits. ⁶³ |
| 8 | SI Fathli | Dr Ong | On 28 March 2016, 24 exhibits which included the Drugs were handed to an analyst with the Illicit Drugs |

⁵⁸ NE (18 January), p 26 lines 4–9.

⁵⁹ NE (18 January), p 26 lines 4–9.

⁶⁰ NE (14 January), p 9 lines 4–9.

⁶¹ NE (14 January), p 9 lines 10–16.

⁶² AB at p 656, PS28 at paras 15–16; AB at pp 854–857, PS57 at paras 15–18.

⁶³ NE (17 May 2022), p 17, lines 7–32.

| | | | |
|--|--|--|---|
| | | | Laboratory of the HSA, each sealed in a tamper proof bag. ⁶⁴ |
|--|--|--|---|

40 In coming to the above conclusion, I bore two points in mind. First, the arrest of the accused and the events in the chain of custody occurred in March 2016. The trial was conducted between January and May 2022, some six years later. This was a considerable amount of time. Yong Pung How CJ held in *Md Anverdeen Basheer Ahmed and others v Public Prosecutor* [2004] SGHC 233 at [20] that some minor inconsistencies in the evidence of two witnesses was likely where there was a lapse of time between the incident and the hearing. As per the oft-cited passage from *Chean Siong Guat v Public Prosecutor* [1969] 2 MLJ 63:

Absolute truth is, I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common occurrence. In weighing the testimony of witnesses, human fallibility in observation, retention and recollection are often recognised by the court.

41 Second, the Court of Appeal in *Affandi* made clear at [41] and [56] that speculative arguments about the possibility of a break in the chain of custody will not be entertained. What must be raised is a reasonable doubt that there was such a break in the chain. A fanciful notion of a theoretical possibility will not suffice.

42 I also considered the specific issues raised at [38] by the accused:

(a) These inconsistencies at [38(a)] concerned minor details. While SSGT Helmi could not remember which officer passed him the duffel bag before he recorded the contemporaneous statement, SI Wong

⁶⁴ AB at p 858–859, PS57 at para 27; AB at pp 336–359, P100–123.

testified that it was him who passed it to SSGT Helmi.⁶⁵ As for who SSGT Helmi passed the Drugs to after he recorded the statement, there were admittedly inconsistencies in the evidence. SI Eng and SI Wong mirrored each other in their statements in saying that the duffel bag was passed to SI Wong first who then passed it to SI Eng. SSGT Helmi omitted the intervening detail of SI Wong, and SI Eng omitted this intervening detail in his testimony in court as well.⁶⁶ However, in all accounts, the Drugs went to SI Eng. Also, SI Wong, SI Eng and SSGT Helmi remained in the Unit at all times, along with the duffel bag.⁶⁷ The inconsistency did not detract from the key aspects of the chain of custody: SSGT Helmi held the duffel bag while recording the statement; the duffel bag remained in the Unit, attended to at all times; and the duffel bag was passed to SI Eng before he left the Unit with it.

(b) SI Wong's recollection of the colour at [38(b)] was also a minor inconsistency. This was not a case where there were multiple duffel bags of different colours in the Unit. Instead, the evidence was clear that there was only one duffel bag in the Unit, and that duffel bag was in the custody of SI Eng who handed over the exhibits within to SI Fathli at CNB Headquarters.⁶⁸ SSGT Helmi, SI Eng and SI Wong were all consistent in their testimony in this regard.⁶⁹ In any case, SSGT Helmi

⁶⁵ NE (13 January), p 63 lines 16–19; NE (18 January 2022), p 32 lines 10–23.

⁶⁶ NE (14 January), p 7 line 28 to p 8 line 12.

⁶⁷ NE (14 January), p 7 lines 11–21.

⁶⁸ PWS [5].

⁶⁹ NE (13 January 2022), p 65 lines 9–11 and 21–24; NE (14 January 2022), p 8 lines 20–26; p 31 line 25 to p 32, line 5; NE (18 January 2022), p 26 lines 26–29; p 27 lines 1–3.

was clear in his testimony that the duffel bag was black.⁷⁰ I therefore accepted SI Wong's explanation that his description of the bag as green in his conditioned statement was a mistake. The defence drew my attention to SI Wong's testimony in *Ansari (No 1)* to cast doubt on SI Wong's testimony in the present trial. The submission was that SI Wong's evidence should be looked at with caution, because he was prepared for the defence's questions in this trial after having heard the same in *Ansari (No 1)*.⁷¹ While SI Wong may have realised the mistake in the first trial, it remained a mistake in the conditioned statement and did not detract from the rest of the evidence that the black duffel bag was properly retained within a secure chain of custody.

(c) On [38(c)], after it was pointed out to SSGT Helmi that A1A was put together in photographs that were taken after the exhibits were seized at the Unit, he accepted that he did not unwrap A1A.⁷² He explained that the procedure for a recovery officer at the scene was that they were not supposed to open up the exhibits to prevent contamination.⁷³ He was able to give markings such as B1A1A1 to the numerous packets of granular substance contained in exhibit B1A1 (a partially wrapped plastic with black tape) because that is what he observed without opening exhibit B1A1 fully.⁷⁴ I accepted this explanation.

(d) On [38(d)], SSGT Helmi eventually explained that he had incorrectly described exhibits C1A2 and C1A3 as having contained

⁷⁰ NE (13 January 2022), p 62 lines 10–12.

⁷¹ NE (22 July 2022), p 7 lines 13–24.

⁷² NE (13 January 2022), p 72 lines 1–4.

⁷³ NE (13 January 2022), p 73 lines 10–14.

⁷⁴ NE (13 January 2022), p 72 line 24 to p 73 line 22.

Ziploc bags.⁷⁵ The Prosecution submitted that it was essentially a “guess”, given that he did not open up the exhibits fully. In light of SSGT Helmi’s evidence that the protocol was not to open up exhibits, it was reasonable that this was the case.

(e) On [38(e)], entering records into the field diary at different times did not demonstrate a break in the chain of custody, but rather a differing standard of punctiliousness in officers involved in updating it.

43 The facts of *Affandi* are a useful counterpoint to the case at hand. In *Affandi*, the majority of the Court of Appeal found that the Prosecution had failed to prove an unbroken chain of custody due to several inconsistencies in the witnesses’ evidence that could not be reconciled. These were listed at [48]:

... the following inconsistencies in particular stood out:

- (a) The exhibits could have either been on the front passenger seat of the CNB vehicle or locked in the boot at the time the vehicle was on the move between MBS, Affandi’s flat and the Woodlands Checkpoint.
- (b) When the arresting party were searching Affandi’s flat, the exhibits were either held by SSI David Ng or SSShasAlwin Wong.
- (c) When backscatter and K-9 searches were being conducted on Affandi’s car, the exhibits were either inside the CNB vehicle or held by SSSgt Alwin Wong.
- (d) At 10.47pm, the exhibits were either handed over to SSSgt Jenny Woo by SSI David Ng, or they were still held by SSSgt Alwin Wong as Affandi was participating in the live ID.

These four dichotomies could not be reconciled. In each case, each version was supported by the robust evidence of a senior law enforcement officer. But both could not possibly be true. *Nor was any plausible explanation put forward by the*

⁷⁵ NE (13 January 2022), p 79 lines 7–12.

Prosecution as to how these inconsistencies were to be reconciled.

[emphasis added]

44 The Prosecution is required to establish a chain of custody “to account for the movement of the exhibits from the point of seizure to the point of analysis”: *Affandi* at [39]. As can be seen from the above, the inconsistencies identified by the Court of Appeal in *Affandi* all related to the fundamental issue of where the exhibits were at a particular point in time. The inconsistency in the colour of the duffel bag did not. The inconsistency regarding who SSGT Helmi passed the exhibit to after recording the statement might have; however, it could be reconciled because the duffel bag was only passed to SI Wong for a brief intervening moment, and this could have slipped SSGT Helmi’s mind.

45 In the present case, the issues raised at [38] related to the care of the duffel bag containing the exhibits at the point of arrest. The fact remains that these individual exhibits were shown to the accused on the day of arrest, and then subsequently identified as such by the accused in the 4 April Statement, after the exhibits were processed and weighed at the CNB Exhibit Management Room. When shown photographs of the exhibits, the accused identified them as heroin, and described where they came from:

(a) When shown photographs of A1A1A2A, A1A1A3A1, A1A1A4A1, A1A1A5A1A, A1A1A6A1, A1A1A6B1 and A1A1A7A, the accused described them as “packets of heroin I had packed inside A1A”.⁷⁶

⁷⁶ ASv1 p 922, Photos 44–47.

(b) When shown a photograph of B1A1A1 and other exhibits, the accused described them as “packets of heroin and “Ice” which I had kept inside the grey compartment in my wardrobe”. He described a photograph of B1D2 as also showing “packets of heroin and “Ice” kept inside the grey compartment”.⁷⁷

(c) When shown photographs of C1A1A1, C1A1B1A, C1A1C1A, C1A2A1A, C1A2B1A, C1A2C1A, C1A3A1A, C1A3B1A and C1A3C1A, the accused described them as “packets of heroin found on the floor beside my bed”.⁷⁸

46 It was therefore beyond reasonable doubt that the exhibits which were photographed in the CNB Exhibition Management Room and subsequently analysed by the HSA to contain not less than 30.23g of diamorphine were the same exhibits seized from the Unit.

(B) Possession of the Drugs

47 The Prosecution’s case was that the accused was in possession of the entirety of the Drugs. They were recovered from the master bedroom which the accused resided in. He was fully aware of the Drugs and therefore could explain how they came to be in their respective locations in his statements.⁷⁹

48 The accused’s defence rested on an allegation that some of the Drugs were in the possession of Bella, and not himself. Both Bella and the accused had keys to the Unit. At Location A, all the drugs were Bella’s. At Location B,

⁷⁷ ASv1 p 922–923, Photos 49 and 52.

⁷⁸ ASv1 p 923, Photos 57, 59 and 61.

⁷⁹ PWS at para 4.

exhibit B1A1A1 was Bella's. Exhibit B1D2 was his but for consumption. He conceded that the drugs at Location C were his. The amounts relevant to these contentions may be simplified by this representation:

| Exhibit | Gross Weight | Net Weight (of diamorphine) |
|---|---------------------|------------------------------------|
| Accused denied possession and claimed belonged to Bella | | |
| A1A1A2A | 38.50g | 1.58g |
| A1A1A3A1 | 38.50g | 1.60g |
| A1A1A4A1 | 38.52g | 1.57g |
| A1A1A5A1A | 38.48g | 1.57g |
| A1A1A7A | 38.52g | 1.45g |
| A1A1A6A1 | 15.43g | 0.58g |
| A1A1A6B1 | 23.34g | 0.90g |
| B1A1A1 | 175.1g | 7.26g |
| TOTAL (A) | | 16.51g |
| Accused accepted possession for purpose of consumption | | |
| B1D2 | 7.61g | 0.27g |

| Accused accepted possession for purpose of trafficking | | |
|--|--------|--|
| C1A1A1 | 38.50g | 1.36g |
| C1A1B1A | 38.65g | 1.50g |
| C1A1C1A | 39.12g | 1.51g |
| C1A2A1A | 38.90g | 1.51g |
| C1A2B1A | 38.94g | 1.52g |
| C1A2C1A | 38.85g | 1.54g |
| C1A3A1A | 38.50g | 1.52g |
| C1A3B1A | 38.74g | 1.48g |
| C1A3C1A | 39.00g | 1.51g |
| TOTAL (B) | | 13.72g (13.45g not for consumption) |

49 I summarise the effect of the accused's contentions. Exhibit B1D2 only contained 0.27g of diamorphine and was of no significance to the case as a whole. The drugs at Locations A and B1A1A1 contained 16.51g of diamorphine, which was above the threshold applicable for capital punishment. The drugs at Location C contained a total of 13.45g of diamorphine, which was under the threshold applicable for capital punishment. In effect, therefore, the

accused admitted to trafficking in diamorphine, but in respect of 13.45g. With this frame in mind, I turn to the evidence on this dispute.

(i) *The accused's statements*

50 The 31 March and 4 April Statements were key to the Prosecution's evidence against the accused on the issue of possession. Two points were clear from the accused's statements.

51 First, the accused's statements showed that he was in possession of all the Drugs. The following are relevant extracts from his statement on 4 April 2016:

(a) When shown a photograph of Location A, the accused identified it as showing "the place where some of my heroin was found inside my brown sling bag".⁸⁰ The accused again referred to the bag within which the exhibits from Location A were found as "my brown sling bag which I hung behind my master bedroom door".⁸¹

(b) When shown photographs of the exhibits found at Location A, the accused identified it as showing "the packets of heroin I had packed...".⁸²

(c) When shown a photograph of Location B, the accused stated "I had kept the heroin and "Ice" packets in it".⁸³

⁸⁰ ASv1 p 921, Photo 23.

⁸¹ ASv1 p 922, Photo 43.

⁸² ASv1 p 922, Photos 44–47.

⁸³ ASv1 p 922, Photo 25.

(d) When shown a photograph containing exhibit B1A1A1, the accused described it as “the packets of heroin and “Ice” which I had kept inside the grey compartment in my wardrobe”.⁸⁴ He also stated that exhibit B1D2 was one of the “packets of heroin and “Ice” kept inside the grey compartment”.⁸⁵

(e) When shown a photograph of Location C, the accused described it as the place “where more packets of heroin were found. I had left them there”.⁸⁶

(f) When shown photographs of the exhibits found at Location C, the accused described them as “packets of heroin found on the floor beside my bed”.⁸⁷

52 Second, the accused’s statements also made clear that none of the Drugs belonged to Bella. Bella’s role in relation to the Drugs was restricted to that of packing. The following is an extract from the 31 March Statement:⁸⁸

Question 5: Is Bella involved in your drug trafficking activities?

Answer 5: No.

Question 6: Did you ask her to do anything involving the drugs found in the car or at home?

Answer 6: As for the heroin in the car, Bella had no idea about it. For the heroin at home, I had asked her to help me pack the

⁸⁴ ASv1 p 922, Photos 49–50.

⁸⁵ ASv1 p 923, Photos 51–52.

⁸⁶ ASv1 p 922, Photo 26.

⁸⁷ ASv1 p 923, Photos 55–61.

⁸⁸ ASv1 p 895–896.

heroin into the small ziplock bags. I think she had only packed less than 15 packets of heroin. The rest, I did it on my own.

Question 7: Can you elaborate on what you mean by “the rest” in your earlier answer?

Answer 7: Firstly, after getting a fresh heroin shipment, I would open up the plastic packet. I would then pour it into a small container. I then opened up the small ziplock bags and use a metal spoon to pour the heroin into them. After that, I weigh each heroin packet to make sure they weigh about 7.6 grams. From 1 batu of heroin, I can make about 60 of these small heroin packets. I would then put 5 of these small heroin packets into a slightly bigger ziplock bag. Because of the poor quality of the ziplock bags, I had to double the layer. After that, I would use a black wire tape to seal the whole packet.

Question 8: Does Bella know what the thing she was packing is?

Answer 8: She calls it “Narkoba”. It means heroin in Indonesian language. However, she does not smoke it. She did try to advise me to go back to a normal life. The reason why she offered to help me pack was because she saw that I did not have enough rest due to the packing and selling of the heroin. Sometimes, I would not sleep the whole night to repack the heroin.

Question 9: How long has Bella been helping you pack the heroin?

Answer 9: I think it is around 2 weeks. However, it was not often. It was once in a while. She did not help me out for every shipment.

53 Thus, the only conclusion that could be drawn from the accused’s statements was that he was in possession of all the Drugs. It was clear from his statements that none of the Drugs belonged to Bella.

(ii) *The accused’s evidence in court*

54 The accused’s defence was that he was not telling the truth in the 31 March and 4 April Statements. The accused explained that the answers in his statements above were part of his effort to try to help his girlfriend, such that he

downplayed her full role and took full responsibility even though not all the drugs belonged to him.⁸⁹ This argument closely resembled the argument that was made during the ancillary hearing, which I rejected in finding the 31 March and 4 April Statements voluntary. To this, the defence submitted that “the statements may be voluntary, but that does not make the statements the truth”.⁹⁰

55 Notwithstanding this, the accused’s evidence on the stand was not credible. During the ancillary hearing and the main trial, the accused tried to explain one of his answers to a question in the 31 March Statement (“Answer 6”). Answer 6 was:⁹¹

Question 6: Did you ask her to do anything involving the drugs found in the car or at home?

Answer 6: As for the heroin in the car, Bella had no idea about it. For the heroin at home, I had asked her to help me pack the heroin into the small ziplock bags. I think she had only packed less than 15 packets of heroin. The rest, I did it on my own.

56 On its face, Answer 6 was an admission that the accused possessed all the Drugs. “The heroin at home” must have referred to all the Drugs given that the accused did not specify any location. He stated that Bella’s involvement was restricted to packing fewer than 15 packets of heroin. Implicit in this is that the all the Drugs did not belong to Bella. Instead, they belonged to the accused who asked Bella to help him pack some, and packed the rest on his own. When trying to explain Answer 6, the accused vacillated between two inconsistent positions:

⁸⁹ DWS at para 80.

⁹⁰ NE (22 July 2022), p 10 lines 10–11.

⁹¹ ASv1 at p 895.

- (a) first, accepting that Answer 6 referred to all the Drugs to remain consistent with his overall defence that he was trying to protect Bella when he gave his statements; and
- (b) second, stating that Answer 6 only referred to the drugs at Location C to distance himself from the drugs at Location A and B.

57 The accused adopted the first position in his examination-in-chief in both the ancillary hearing and the main trial. In the ancillary hearing, the accused testified that:⁹²

- Q ...why did you say that she did what you say she did in answer 6? You understand my question first? Because question 6 says she did certain things with respect to drugs. Why did you say, if you are trying to help her, why did you say that?
- A Your Honour, because her DNA could be found there, Your Honour.
- Q “Found there”, referring to the drugs in the house or the car?
- A The drugs in the house, Your Honour.
- ...
- Q You see, you said that you are trying to help Bella. You say that at that time when you gave the statements, you knew that her DNA would be found there.
- A Yes.
- Q How does your answer 6 help to explain her DNA being there? You can look at answer 6, if you want.
- A Your Honour, because her DNA can be found in location C, Your Honour.
- Q What about A and B?
- A Yes, some of it.

⁹² NE (28 January 2022), p 7 lines 1–22.

Q *Okay. So her DNA would be in A, B and C, and you were giving this answer to try to explain it?*

A Yes.

[emphasis added]

58 Similarly, in his examination-in-chief in the main trial, the accused offered the following explanation:⁹³

... the drugs at location A belongs to Bella. The drugs at location C belong to me, and Bella had helped me to pack them. With regard to the drugs at location B for Bravo, Your Honour, some of it belong to myself and some of it belong to Bella, *which is why I gave the statement, Your Honour, because Bella’s DNA will be found on those drugs ...*

He later clarified that by “those drugs” in this answer, he meant the drugs at Locations A, B and C.⁹⁴ This evidence was therefore consistent with his overall defence, that he had understated Bella’s involvement with the drugs and lied in his statements to protect her.

59 However, under cross-examination in both the main trial and ancillary hearing, the accused’s position was the opposite. He adopted the second position – that when he gave Answer 6, he was only referring to the drugs in Location C. First, in the ancillary hearing, the accused gave the following evidence:⁹⁵

Q I am putting to you that your answer doesn’t make sense, because if you were trying to create a---concoct a story that was plausible, you wouldn’t have been so specific, because at that time, you already knew there were so many packets, much more than 15.

A Your Honour, as far as I knew, at location C, there was about a total of 45 packets there, and Bella assisted me to pack 15 packets, Your Honour. And then she became

⁹³ NE (18 May 2022), p 35 lines 14–18.

⁹⁴ NE (20 May 2022), p 1 lines 13–26.

⁹⁵ NE (28 January 2022), p 19 lines 5–18.

tired and she went to sleep, Your Honour. Which is why I said 15 packets, Your Honour.

Q But you had already seen there were packets at A, there were packets at B, you had seen the number of packets there. So you know that 15 doesn't---even you estimate only the ones in location C, that doesn't account for A and B.

A Yes. Your Honour, but Your Honour, the thing is, Your Honour, location A and B, those drugs there don't belong to me, Your Honour. Why would I be so concerned about them, Your Honour?

[emphasis added]

60 At the end of his cross-examination in the main trial, he returned to this position. The accused was asked to explain his inconsistent positions. The accused said that:⁹⁶

... the reason as to why I answered as such in my ancillary hearing is true that Bella helped me pack those drug at location C and her DNA would be found there. *Why I zoom in on location C because it's tied with question 6 of my statement, Your Honour. It's not tied with location A and B as well, as such I answer only focusing on location C.*

[emphasis added]

While it may not be fully clear what the accused meant by this, his answers in re-examination shed some light:⁹⁷

Q Okay. Okay. You were also asked about question 6 and answer 6, and we keep coming back to this, but just for the last time. In your statement, you have said what you have said and it has been read a number of times. Now, first and foremost, in relation to location C, in location--in relation to location C, did you know how many of those packets Bella had helped you packed? When you gave this statement, did you know that, exactly, how many?

A (No interpretation)

⁹⁶ NE (20 May 2022), p 8 lines 8–20.

⁹⁷ NE (20 May 2022), p 16 line 23 to p 17 line 15.

- Q C. Exactly, how many? Were you counting when she was helping you?
- A Your Honour, I didn't count exactly, but it was quite a lot.
- Q Okay. More or less than 15 in your mind?
- A More than 15.
- Q Why did you say less than 15 in your statement?
- A Your Honour, that was my estimation at that point of time. And, Your Honour, what was going through my mind at that point of time was to save Bella.
- Q *Now, when you answered this question in this way, were you also taking into account what was at A and B or was your mind focused only on what was at C when you were answering the question?*
- A *Focusing on only location C.*
- Q But now when you are giving evidence, and even then when you were being investigated and your statements were being recorded, you said you knew that Bella's DNA would be there, right? You have said that.
- A (In English) Yes.
- Q And thinking back, where do you think Bella's DNA would be? On which drugs? A, B, C or all or some?
- A All. A, B and C.

[emphasis added]

61 With this second position, by saying that he was not referring to the drugs in Locations A and B in Answer 6, the accused sought to distance himself from them. As mentioned at [56] above, the Answer 6 on its face meant that the accused possessed all the drugs it referred to. However, the import of this testimony was that the accused did not care to exonerate Bella with regard to the drugs in Locations A and B when he gave Answer 6, even though he knew that her DNA could be found on them.⁹⁸ Instead, he chose to *inculpate* Bella for

⁹⁸ NE (28 January 2022), p 7 lines 17–22.

the drugs at Location C, that were not hers. Thus, this was clearly inconsistent with his position taken at [57]–[58] above, and with his overall defence regarding the statements.

62 This inconsistency went to the core of the accused’s defence and fortified my view that his explanation that he was trying to protect Bella when he gave the statements was an afterthought. In cross-examination, he sought to reduce the inculpatory effect of the 31 March Statement by explaining that it did not refer to the drugs which he now claimed were Bella’s. However, this undermined his overall defence and diminished the veracity of his evidence. Given that this was the case, there was no reason to disregard the information provided by the accused in his statements.

(iii) *DNA evidence*

63 The accused relied on the undisputed fact that, for the exhibits found at Location A and exhibit B1A1A1, the accused’s DNA was relatively absent as compared to Bella’s, which was found more frequently.⁹⁹

64 Ms Wong Hang Yee, a forensic scientist from the DNA Profiling Lab at HSA (“Ms Wong”), testified that one could not tell who handled an exhibit more based on the amount of DNA left behind. This was because the amount of DNA left behind depended on a variety of factors, some of which were specific to a person.¹⁰⁰ As held by the Court of Appeal in *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 at [62], there could be a variety of reasons for the absence of a subject’s DNA from an exhibit, including degradation of the DNA samples by intentional or unintentional means. The absence of DNA is therefore neither

⁹⁹ DWS at para 23.

¹⁰⁰ NE (19 January 2022), p 34 line 18 to p 35 line 10.

conclusive nor necessarily probative. Nevertheless, the presence of DNA is generally probative because it suggests that the subject did in fact come into contact with the surface on which his DNA was found.

65 Thus, all that this aspect of the DNA evidence established was that Bella touched the exhibits on which her DNA was found. This did not assist the accused, because it was also consistent with the Prosecution's case and Bella's evidence that she had helped to pack the drugs which belonged to the accused.¹⁰¹ The comparative absence of the accused's DNA was neither conclusive nor probative on the issue of whether the drugs at Location A and exhibit B1A1A1 belonged to him or Bella. As the Prosecution rightly pointed out, Bella's DNA was also found frequently on the drugs at Location C and exhibit B1D2, which the accused admitted to possessing.¹⁰² This reinforced the fact that it was entirely possible for Bella's DNA to be present on drugs which belonged to the accused.

66 Conversely, while the accused denied possession of the drugs found at Location A, his DNA was found on exhibits A1A1A5A and A1A1A7.¹⁰³ The accused's explanation for this was that his DNA was on these exhibits despite them not belonging to him because he returned home one day, had found Bella packing heroin, and may have touched some of the drugs.¹⁰⁴

67 Thus, the DNA evidence, on its own, was inconclusive.

¹⁰¹ NE (18 January 2022), p 48 line 8 to p 49 line 3.

¹⁰² NE (22 July 2022), p 13 lines 1–10.

¹⁰³ DWS at para 20.

¹⁰⁴ DWS at paras 21–22.

(iv) Bella's evidence

68 Bella had, on 6 August 2018, pleaded guilty to a related charge of possessing the Drugs with the common intention of trafficking the Drugs with the accused under ss 5(1)(a) and 5(2) of the MDA. She had been sentenced to 26 years' imprisonment.¹⁰⁵ Bella was called as a witness for the Prosecution. Her evidence was that all the Drugs belonged to the accused, and that she had helped to pack them at his request.¹⁰⁶

69 The defence challenged various aspects of Bella's evidence. First, they pointed out that the DNA evidence was inconsistent with her version of events.¹⁰⁷ Second, they argued that she had a propensity to lie to save herself, and that her testimony should be given less weight accordingly.¹⁰⁸

70 On the first argument, the defence submitted that the DNA evidence was inconsistent with Bella's purported limited role of packing the drugs. For example, there would be no reason for her DNA to be found on the sticky tape which was used to wrap all the packed drugs found in the bag from Location A because she had testified that all she did was take brown substances from a container and put them into small plastic bags.¹⁰⁹ In response, the Prosecution referred to the evidence of Ms Wong. She gave evidence that DNA could transfer from one object to another when the two objects in question came into mutual contact. She also testified that certain things picked up and retained

¹⁰⁵ NE (18 January 2022), p 46 lines 23–25.

¹⁰⁶ NE (18 January 2022), p 48 line 8 to p 49 line 3.

¹⁰⁷ DWS at paras 24–25.

¹⁰⁸ DWS at para 43.

¹⁰⁹ DWS at para 29.

DNA more easily than others, such as the sticky side of tape.¹¹⁰ In the face of this evidence, the defence's submission lost its force. Given that the exhibits were packed closely together, it was possible that Bella's DNA transferred from surfaces which she did in fact touch to surfaces which she did not. This was especially the case for the sticky side of the tape used to pack the Drugs. In any case, even if Bella was more involved in packing the Drugs than she let on, this did not necessarily raise reasonable doubt regarding the accused's possession of the same.

71 The defence also sought to cast doubt on the veracity and credibility of Bella's testimony by highlighting that she was prepared to lie to save herself. However, by the time of trial, Bella had already been charged, convicted and sentenced to 26 years' imprisonment.¹¹¹ Even if she was prepared to lie to save herself, that was no longer of relevance at the time she gave evidence in these proceedings.

72 The defence also focused on Bella's claim that the accused had told her "not to say anything" after they had been arrested.¹¹² Bella maintained this when she was cross-examined. The defence argued that this was clearly a lie because no CNB officer would have allowed Bella and the accused to speak in private once they had been arrested, and there was no evidence from any CNB officer that this had in fact happened.¹¹³ This point was not of real relevance because it did not relate to any material aspect of the charge against the accused. It is settled law that there is no rule that the testimony of a witness must be believed

¹¹⁰ NE (19 January 2022), p 38 line 28 to p 39 line 6.

¹¹¹ NE (22 July 2022), p 13 lines 17–25.

¹¹² NE (19 January 2022), p 11 lines 19–28.

¹¹³ NE (22 July 2022), p 2 lines 15–22.

in its entirety or not at all. It is open to the court to accept a witness's evidence on key facts in issue despite inconsistencies in his evidence: *Govindaraj Perumalsamy and others v Public Prosecutor and other appeals* [2004] SGHC 16 at [31].

73 Bella's evidence that her role was limited to packing the accused's drugs was, on the whole, credible. In the 31 March Statement, the accused himself indicated that Bella had no knowledge of the heroin trade.¹¹⁴ Neither did the accused raise any evidence in these proceedings that Bella had any clients, suppliers or handlers. Nor were any questions put to her about any such associated persons when she was on the stand.

(v) *Close connection*

74 Finally, the accused's close connection with the location in which the Drugs were found was sufficient to infer possession.

75 First, the Drugs were found in the accused's master bedroom. In *Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541 ("*Sharom bin Ahmad*"), the accused ("*Sharom*") was found with keys to a flat belonging to one "*Boksenang*", where he had been staying. His personal belongings and a haversack were found containing drugs. At trial, Sharom claimed that he had only visited the flat a few times, and that the drugs belonged to Boksenang. The Court of Appeal held that his close connection with the flat was a factor showing his possession of the drugs: at [34] and [38].

¹¹⁴ ASv1 at p 896.

76 Second, the drugs the accused disputed possessing were in close proximity to drugs which the accused admitted to possessing.¹¹⁵ In *Sulaiman* at [106], one of the reasons cited by the Court of Appeal in rejecting a defence that drugs were planted by someone else was that “the drugs in question were not concealed but were found with the other drugs which the appellant admitted possession of in the unlocked second drawer of the wardrobe”. Here, exhibit B1A1A1 was found in the same cupboard as exhibit B1D2, to which the accused admitted possessing.

77 Bella and the accused were the only persons with the keys. It followed that once it was proven that none of the Drugs were Bella’s, the Drugs could only be his.

Conclusion on possession

78 In conclusion, the accused’s statements clearly indicated that he was in possession of all of the Drugs. His contradictory narrative in the courtroom was not credible. I accepted Bella’s evidence that her only role was to assist with packing the Drugs. In light of his close connection to the flat, the inference that the accused was in possession of the Drugs was ineluctable. Drawing together the various strands, I found that the Prosecution had proven beyond reasonable doubt that the accused was in possession of all the Drugs.

(3) Purpose of trafficking

79 There was no dispute that the trafficking, if any, was not authorised.

¹¹⁵ NE (20 May 2022), p 9 lines 8–10.

80 The Prosecution relied on the presumption of possession for the purposes of trafficking under s 17 of the MDA. Section 17 reads:

17. Any person who is proved to have had in his or her possession more than —

...

(c) 2 grammes of diamorphine;

...

whether or not contained in any substance, extract, preparation or mixture, is presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his or her possession of that drug was not for that purpose.

81 At trial, the accused did not dispute that he possessed the drugs at Location C, containing 13.45g of diamorphine, for the purpose of trafficking.¹¹⁶ For the drugs at Location A and exhibit B1A1A1, his defence was that they belonged to Bella. As explained at [78] above, I did not accept this defence. No defence was raised to rebut the presumption under s 17 of the MDA in relation to the 16.51g of diamorphine in the exhibits found at Location A and in exhibit B1A1A1. Therefore, in respect of a total of 29.96g of diamorphine, there was no evidence to rebut the presumption under s 17 of the MDA.

82 The only issue raised by the defence pertained to exhibit B1D2 being for the accused's own consumption.¹¹⁷ This did not make a material difference to the case, as that component only contained 0.27g of diamorphine. In any event, I did not find this credible for two reasons. First, it was a change from what the accused said in his statements. In the 4 April Statement, the accused spoke of his consumption of heroin generally, saying he would “randomly take the heroin

¹¹⁶ DWS at para 80.

¹¹⁷ NE (20 May 2022), p 16 lines 8–21.

from any of the packets”.¹¹⁸ In his 9 December Statement, he stated that some of the Drugs were for consumption and some for sale, and that “they were all put together”.¹¹⁹ When shown a photograph of exhibit B1D2 in the 4 April Statement, the accused did not say that it was meant for his consumption.¹²⁰ In contrast, when shown photographs of the exhibits containing Ice and Erimin, he explained that he intended to consume those.¹²¹ Second, the accused admitted in his statement that he would sell the drugs in “half sets”, which consisted of five small packets of heroin each weighing around 7.6g.¹²² Exhibit B1D2 weighed 7.61g, which suggested that it could be easily grouped with four other packets and sold as a “half set”.¹²³ Regarding the possibility raised in his statements that the accused intended to take drugs for consumption randomly from any of the packets, this was not a contention advanced at trial nor did any evidence reflect the same.

83 In the circumstances, I was of the view that the presumption under s 17 of the MDA had not been rebutted in respect of the entirety of the Drugs. The Drugs, containing not less than 30.23g of diamorphine, were in the accused’s possession for the purposes of trafficking.

Conclusion on the charge

84 In conclusion, the elements of the charge as set out at [32] above were made out. I convicted the accused as charged.

¹¹⁸ ASv1, p 925.

¹¹⁹ ASv2, p 972.

¹²⁰ ASv1, p 923, Photo 52.

¹²¹ ASv1, p 918 (at Answers 18 and 19).

¹²² ASv1 p 896 and 918.

¹²³ PWS at para 35.

Sentence

85 Under s 33(1) of the MDA read with the Second Schedule to the MDA, an offence under s 5(1) involving more than 15g of diamorphine was punishable by death.

86 I heard submissions in respect of the alternative sentencing regime provided by s 33B of the MDA on 19 September 2022. To rely on this sentencing regime, the accused had to prove, on a balance of probabilities, that his involvement in the offence was restricted to:

- (a) transporting, sending or delivering a controlled drug;
- (b) offering to transport, send or deliver a controlled drug;
- (c) doing or offering to do any act preparatory or for the purpose of his or her transporting, sending or delivering a controlled drug;
or
- (d) any combination of the above.

87 The evidence did not permit for any such finding. In his statements, the accused admitted to selling the heroin in half-sets containing five small packets of about eight grams each for about \$350 to \$400.¹²⁴ He named his clients and pointed out their contract numbers in his contact list.¹²⁵ He provided detailed information concerning his suppliers as well.¹²⁶ At trial, he confirmed, in respect of the drugs at Location C, that he intended to sell them.¹²⁷ Thus, the weight of

¹²⁴ ASv1 p 918.

¹²⁵ ASv1 p 920.

¹²⁶ ASv1 p 919.

¹²⁷ NE (18 May 2022), p 30 lines 28–31.

the evidence militated against a finding that the accused's role was limited to any of the above in respect of the Drugs.

88 In the circumstances, the death penalty was mandatory and I so ordered.

Valerie Thean
Judge of the High Court

Terence Chua and Regina Lim (Attorney-General's Chambers) for
the Prosecution;
Ramesh Chandr Tiwary (Ramesh Tiwary) and Chenthil Kumar
Kumarasingam (Withers KhattarWong LLP) for the accused.
