

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

**[2017] SGHC 25**

Criminal Case No 48 of 2015

Between

Public Prosecutor

*... Public Prosecutor*

And

Sinnappan a/l Nadarajah

*... Accused*

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**JUDGMENT**

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

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**Public Prosecutor**  
**v**  
**Sinnappan a/l Nadarajah**

**[2017] SGHC 25**

High Court — Criminal Case No 48 of 2015

Chan Seng Onn J

22, 23, 30 September; 1, 2 October 2015; 28–30 June; 1 July; 1 November  
2016

10 February 2017

Judgment reserved.

**Chan Seng Onn J:**

**Introduction**

1 The accused claimed trial to a single charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”). In the morning of 16 May 2012, the accused drove a car into Singapore and was stopped at Singapore Customs for a routine inspection. A bundle in black tape was found within a tissue box behind the rear passenger seats of the car. The bundle contained four packets of crystalline substance which was later identified to comprise not less than 319.37 g of methamphetamine.

2 The accused's defence was essentially that his wife's cousin, one Ravindran, had planted the bundle of drugs in the car without the accused's

knowledge, after the accused had rejected Ravindran's request for him to bring the bundle into Singapore. The only reason why the accused wanted to enter Singapore was to apply for a personal loan at a bank in Woodlands. The defence points to the fact that at the time of arrest, the accused was found in possession of various documents – income statements, utilities bills and a letter confirming his employment – that were required for the application of such a loan. In turn, the Prosecution relied on mobile phone records that, in its submission, revealed a collaboration between the accused and Ravindran to import controlled drugs into Singapore.

3        Upon a careful consideration of all the material before me, I find that the accused has not produced evidence of the required strength and relevance in order to rebut the statutory presumption of knowledge. Section 18(2) of the MDA places that burden on him, and I do not consider that he has succeeded in discharging that burden. I also find that the elements of the offence under s 7 of the MDA have been satisfied.

4        I therefore find the accused guilty of the offence for which he has been charged. I will explain my reasons.

### **The charge**

5        The accused, Sinnappan A/L Nadarajah ("the Accused") claimed trial to a single charge against him ("the Charge") which states as follows:

That you, **SINNAPPAN A/L NADARAJAH**,

are charged that you, on the 16<sup>th</sup> day of May 2012, at or about 6.17 a.m., at the Woodlands Checkpoint, Singapore, in a Malaysian registered car JDH 7952, did import a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), to wit, four (4) packets of crystalline substance weighing 498.2 grams, which were analysed and found to contain not less than **319.37 grams of**

**methamphetamine**, without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the said Act, and further upon your conviction under section 7 of the said Act, you may alternatively be liable to be punished under section 33B of the said Act.

## Undisputed facts

### *The Accused*

6 The Accused is a Malaysian national who was 27 years old at the time of his arrest. He lived together with his wife, Vasagi A/P Madavan (“Vasagi”), and two children as well as his wife’s sister and parents at 44 Jalan Pulai 47 Taman Pulai Utama 81300 Skudai Johor.<sup>1</sup> The Accused had been working in Singapore for various employers since 2004. Since January 2012, he had been working for Keppel Logistics at Tuas, Singapore, as a forklift driver, earning an average monthly income of \$1,500.<sup>2</sup> The Accused owned a car and a motorcycle.

7 The Accused’s 55-year-old father-in-law, Madavan A/L Madavan (“Madavan”), was a cleaning services contractor.<sup>3</sup> Madavan owned a car bearing Malaysian registration number JDH 7952 (“the Car”) which he had purchased second-hand in 2004. At the material time, the Car had been used for a total of 18 years.<sup>4</sup>

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<sup>1</sup> AB 295 at [1].

<sup>2</sup> AB 297 at [8].

<sup>3</sup> AB 296 at [5].

<sup>4</sup> NE 30 June 2016 p28 lines 18 to 25.

***The arrest***

8 On 16 May 2012, at about 6.15am, the Accused entered Woodlands Checkpoint in Singapore, having driven the Car from Malaysia in Singapore alone. Staff Sergeant Xu Youguang Benjamin (“SSGT Xu”) directed the Accused to enter Lane 1 for a routine inspection. Sergeant Muhammad Hidayat Bin Jasni (“SGT Hidayat”) then conducted a search on the Car.<sup>5</sup>

9 While SGT Hidayat was checking the area behind the rear passenger seats, he noticed a tissue box with a cover draped over it. He lifted the tissue box and felt that it was unusually heavy. SGT Hidayat checked the inside of the tissue box and found a bundle wrapped in black tape. He then informed his party of officers about his discovery.<sup>6</sup> Senior Station Inspector Neo Han Siong (“SSI Neo”), who was the team leader for the Central Narcotics Bureau (“CNB”) on duty that day, instructed SSGT Xu to arrest the Accused.<sup>7</sup>

10 The CNB officers subsequently conducted a further search of the Car but did not find any other incriminating material.

***The evidence***

11 A large number of exhibits were seized by CNB officers in the course of their investigations. It suffices for present purposes to identify the more significant aspects of the evidence. Where necessary, I will describe other features of the evidence subsequently in this judgment.

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<sup>5</sup> AB 250 at [4].

<sup>6</sup> AB 251 at [5].

<sup>7</sup> AB 241 at [5].

*The drug exhibits*

12 On the same day, at about 11.20am, the black bundle and its contents were photographed by CNB officers in the presence of the Accused.<sup>8</sup> The bundle, which was found wrapped in black tape, was marked as “A1A”. A1A was then unwrapped. The tape itself was marked as “A1A-W”. Inside A1A were four re-sealable plastic packets, each containing crystalline substance. Three of these four plastic packets were each contained within exterior plastic packets. Those three exterior plastic packets were collectively marked as “A1A2”, and the three packets themselves were collectively marked as “A1A2A”. The remaining (fourth) plastic packet was marked as “A1A1”.<sup>9</sup>

13 Lim Jong Lee Wendy, an Analyst with the Illicit Drugs Laboratory of the Health Sciences Authority (“HSA”) conducted analysis of the exhibits A1A1 and A1A2A, and produced two certificates. She found that:<sup>10</sup>

A1A1 was one packet containing 120.8 g of crystalline substance, which was analysed and found to contain not less than 74.77 g of methamphetamine.

A1A2A consisted of three packets containing 377.4 g of crystalline substance, which was analysed and found to contain not less than 244.6 g of methamphetamine.

14 Accordingly, A1A1 and A1A2A contained a total of 498.2 g of crystalline substance, which was found to contain not less than 319.37 g of

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<sup>8</sup> AB 279 at [3].

<sup>9</sup> AB 280 at [5] to [7].

<sup>10</sup> AB 222 and 223.



methamphetamine. I will refer to A1A-W, A1A2, A1A2A and A1A1 collectively as “the Drug Exhibits”.

*Statements from the Accused*

15 A total of seven statements were taken from the Accused. This comprised one contemporaneous statement, one cautioned statement recorded under s 23 of the Criminal Procedure Code (Cap 68, 2010 Rev Ed) (“the CPC”) and five long statements recorded under s 22 of the CPC.

*The Accused’s mobile phones*

16 A total of three mobile phones were seized from the Accused:

The first is a “Sony Ericsson K800i” mobile phone, marked as “SN-HP1”, containing one “hi!” Universal Subscriber Identity Module (“SIM”) card and one “SanDisk” 2GB Micro SD card.<sup>11</sup>

The second is a “Sony Ericsson W100i” mobile phone, marked as “SN-HP2”, containing one “DiGi” SIM card and one 2GB Micro SD card.<sup>12</sup>

The third is a “Sony Ericsson K320i” mobile phone, marked as “SN-HP3”, containing one “DiGi” SIM card.<sup>13</sup>

17 For ease of reference, I will refer to the three mobile phones as “HP1”, “HP2” and “HP3” respectively. From the data found in the three mobile phones seized, reports were produced by the Technology Crime Forensic

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<sup>11</sup> AB 37 at [4].

<sup>12</sup> AB 59 at [4].

<sup>13</sup> AB 179 at [4].

Branch (“TCFB”) and the Forensic Response Team (“FORT”). The phone records – consisting of text messages and call records – that were obtained from CNB’s data extraction process form a key pillar of the Prosecution’s case and I will examine them in detail subsequently.

#### *DNA swabs*

18 Attempts were made by Ang Hwee Chen, Analyst of the HSA, to generate deoxyribonucleic acid (“DNA”) profiles from swabs of the exterior surface of the tissue box and the exterior and interior surfaces of the tissue box cover from which A1A was retrieved, but none were obtained. Similarly, efforts were made to generate DNA profiles from swabs of the Drug Exhibits but these were also unsuccessful.<sup>14</sup>

#### **The Prosecution’s case**

19 The Prosecution’s case is relatively straightforward. It relies first on s 21 of the MDA, which establishes that the owner or person in charge of a vehicle in which a controlled drug is found is presumed, until the contrary is proved, to have that drug in his possession. The Prosecution argues that given that the methamphetamine was found inside a tissue box that was placed inside the Car, the Accused is presumed under s 21 of the MDA to be in possession of the methamphetamine. The Prosecution further relies on s 18(2) of the MDA, under which 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 the drug. Given that the Accused is presumed to have had the methamphetamine in his possession, he is, under s

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<sup>14</sup> AB 228 and 229.

18(2), also presumed to have known its nature.<sup>15</sup> The operation of these presumptions is not contested by the Defence.

20 In essence, the Prosecution submits that the Accused entered into an arrangement with one “Ravindran” to bring controlled drugs into Singapore. When the Accused was arrested shortly after his entry into Singapore and was therefore unable to deliver the drugs at the appointed place and time, Ravindran became increasingly agitated and therefore sent the Accused a series of angry and threatening text messages, demanding to know why the Accused was late or had failed to turn up, and warning the Accused of the dire consequences that the Accused would face if he did not deliver as agreed.<sup>16</sup>

21 As I mentioned at [17] above, the Prosecution relies heavily on the content of these messages and phone records. I will describe this material in greater detail during my analysis of the parties’ submissions.

### **The Defence’s case**

22 The Defence called a total of four witnesses, including the Accused. The other three defence witnesses were the Accused’s wife Vasagi, his father-in-law Madavan, and his elder brother Subramaniam A/L Madarajah.

23 The Defence submits that the Accused had no knowledge that he was transporting the bundle containing the methamphetamine into Singapore, and that he is therefore able to rebut the presumptions of possession and knowledge under ss 21 and 18(2) of the MDA. In brief, Ravindran had planted the methamphetamine in the Car in Malaysia without the Accused’s

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<sup>15</sup> Prosecution’s submissions at [4] and [5].

<sup>16</sup> Prosecution’s submissions at [92].

knowledge. When the Accused left the Car to buy breakfast, Ravindran had taken the opportunity to open one of the doors of the Car – which had faulty door locks – and placed the bundle of methamphetamine within the tissue box behind the rear passenger seats. The Accused had then unwittingly driven the Car into Singapore, unaware that in so doing he was transporting methamphetamine into the country. I will elaborate on the Defence’s version of events.

### ***The Defence’s version of events***

#### *The Accused’s relationship with Ravindran*

24 The Accused gave evidence that Ravindran (whom the Accused referred to as “Ravi”) was his wife’s cousin. He first came to know Ravindran in 2005 through his wife, whom he was dating at the time.<sup>17</sup> He described Ravindran as a bald fair-skinned man with a big tattoo on his back near his shoulder area. The Accused often met Ravindran at functions with family and friends and would speak to him on these occasions.<sup>18</sup> Ravindran owned a mobile phone shop at Taman Universiti, Johor Bahru,<sup>19</sup> named “Theeran Telekomunikasi”.<sup>20</sup> The Accused worked as a part-timer in Ravindran’s shop.<sup>21</sup> In 2012, prior to his arrest on 16 May 2012, the Accused had worked five to six times in the shop.<sup>22</sup> As the shop did not have fixed opening hours, the Accused would go to the shop and do work for Ravindran only when

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<sup>17</sup> NE 1 October 2015 p40 lines 28 to 31.

<sup>18</sup> NE 1 October 2015 p40 lines 5 to 8.

<sup>19</sup> NE 1 October 2015 p41 lines 10 to 20.

<sup>20</sup> NE 1 October 2015 p43 lines 15 to 16.

<sup>21</sup> NE 1 October 2015 p43 lines 13 to 14.

<sup>22</sup> NE 1 October 2015 p43 lines 22 to 31.

Ravindran asked him to do so.<sup>23</sup> The Accused explained that his job was to take damaged or spoilt mobile phones to another shop for repairs to be carried out.<sup>24</sup> Ravindran would pay the Accused RM30 for each day of work.<sup>25</sup>

*Events on 14 May 2012*

25 Vasagi gave evidence that on 14 May 2012, after the Accused had left for work, their eldest son fell and began bleeding from his head. Vasagi removed the tissue box (with its cover) from the Accused's car and placed it in Madavan's car, *ie* the Car. She then asked Madavan to drive her and the Accused's son to a clinic.<sup>26</sup> During the journey, she used the tissue from the tissue box to stem the bleeding.<sup>27</sup> Vasagi explained that she left the tissue box behind the back passenger seat of the Car.<sup>28</sup> The Defence produced a memo from one Dr M. Ramanathan of Klinik Rama Dan Surgeri, located at 23 Jalan Harmoni 12, Taman Desa Skudai, 81300 Johor Bahru,<sup>29</sup> in support of Vasagi's account. The memo stated that the Accused's son, one Shuckran s/o Sinnappan, was seen on 14 May 2012 at 1.15pm for a lacerated wound on his forehead as a result of a fall at home, for which he was given six stitches.

26 The relevance of this evidence, of course, is to explain the presence of the tissue box and cover in the Car at the time of the Accused's arrest on 16 May 2012.

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<sup>23</sup> NE 1 October 2015 p44 lines 3 to 6.

<sup>24</sup> NE 1 October 2015 p44 lines 29 to 30.

<sup>25</sup> NE 1 October 2015 p44 lines 14 to 15.

<sup>26</sup> NE 29 June 2015 p78 line 30 to p79 line 14.

<sup>27</sup> NE 29 June 2015 p80 lines 13 to 17.

<sup>28</sup> NE 29 June 2015 p81 lines 22 to 26.

<sup>29</sup> D9.

*Intention to apply for a bank loan*

27 On 15 May 2012, the Accused applied for leave for 16 May 2012.<sup>30</sup> He informed the court that the reason for his leave application was to attend an appointment at a motorcycle shop in Johor Bahru on 16 May 2012 at 1pm. The Accused wanted to sell his old motorcycle as he had placed an order with the motorcycle shop for a new one on 13 May 2012, and had been told to return in two to three days' time to pay RM1,400 and sign an agreement for the new motorcycle.<sup>31</sup> The balance RM6,000 that he would have to pay for the motorcycle was covered by a loan from the motorcycle shop.<sup>32</sup>

28 The Accused also stated that he intended to apply for a loan with POSB Bank ("POSB") in Singapore on 16 May 2012, at a branch of POSB in Woodlands. He had visited that branch sometime in March or April that year and had enquired if he could obtain a loan of \$5,000. The bank had informed him, *inter alia*, that it would require confirmation that he was working at his company in Singapore, payslips showing his income for the past three months, as well as electricity, utilities and/or water bills to prove that he owned a house in Malaysia.<sup>33</sup> The Accused explained that he intended to use the loan money to pay off home and car loan instalments and other debts he owed.<sup>34</sup>

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<sup>30</sup> NE 1 October 2015 p67 lines 11 to 16.

<sup>31</sup> NE 1 October 2015 p68 line 6 to p69 line 27.

<sup>32</sup> NE 1 October 2015 p75 lines 13 to 16.

<sup>33</sup> NE 1 October 2015 p79 lines 2 to 17.

<sup>34</sup> NE 1 October 2015 p90 lines 14 to 19.

*Events on 15 May 2012*

29 On the night of 15 May 2012, the Accused gathered the documents that he would need for his application the next day. From his locker at his workplace in Singapore, he took his payslips for three months and a letter confirming his employment.<sup>35</sup> The electricity bill he required was taken from home.<sup>36</sup> It is undisputed that these documents, which were tendered as exhibits in court,<sup>37</sup> were seized from the Accused following his arrest.

30 That night, Madavan informed the Accused that he had to carry out cleaning at “U Mall”, a shopping centre in Johor Bahru, at 5am the next day. Hearing this, the Accused requested to use the Car on the morning of the next day because he wanted to visit the POSB branch in Woodlands. Madavan replied that the Accused could use the Car but told him that he should drop Madavan off at U Mall first, and return to U Mall by 11am as he had to work at another place thereafter.<sup>38</sup> The Defence submits that the Accused had no choice but to borrow the Car from Madavan because his motorcycle was damaged and the road tax for his own car had expired.<sup>39</sup> The Defence tendered a road tax certificate for the Accused’s car, showing that it had expired after 4 May 2012.<sup>40</sup>

31 The Accused testified that he sent a text message to Ravindran at 9pm that night, asking if Ravindran had work for the Accused the next day.

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<sup>35</sup> NE 1 October 2015 p95 lines 15 to 26.

<sup>36</sup> NE 1 October 2015 p96 lines 27 to 30.

<sup>37</sup> P69, D3 and D4.

<sup>38</sup> NE 1 October 2015 p99 line 21 to p100 line 2.

<sup>39</sup> Accused’s submissions at [51] and [52].

<sup>40</sup> D8.

Ravindran replied that he was unsure if he would have work for the Accused. The Accused explained that he wanted to avoid a “misunderstanding” between him and Ravindran that might occur the next day if the Accused was in Singapore but Ravindran then contacted him asking him to go to work. The Accused called Ravindran at about midnight, seeking confirmation on the matter. Ravindran told the Accused that there would not be work, and the Accused replied, “It is okay if there is no work. I have to go to Woodlands bank in the morning.” Ravindran asked him what time he was going to the bank and the Accused responded that he would leave between 5 to 5.30am on the morning of the next day, driving Madavan’s car as his motorcycle had broken down and the road tax for his own car had expired. Ravindran told the Accused, “If you want to go to Singapore, you carry on.” They then ended the phone conversation.<sup>41</sup>

*Events on 16 May 2012*

32 The Accused woke at about 4.30am on 16 May 2012 and left home with Madavan, driving the Car. When they reached U Mall, Madavan alighted, taking his cleaning equipment with him.<sup>42</sup> The Accused then decided to head towards a fire station located close to the Causeway where he could buy breakfast.<sup>43</sup>

33 On the way to the fire station, he received a call from Ravindran on HP2. Ravindran asked the Accused where he was and the Accused responded that he was on his way to the breakfast stall near the fire station. Ravindran told the Accused that he wanted to see him, and that the Accused should wait

<sup>41</sup> NE 1 October 2015 p100 line 15 to p101 line 19.

<sup>42</sup> NE 1 October 2015 p100 line 25 to p101 line 2.

<sup>43</sup> NE 1 October 2015 p112 lines 9 to 13.



at the breakfast stall for Ravindran. The Accused replied, “Okay, okay” and ended the conversation.<sup>44</sup> The Accused estimates that he arrived at the fire station at about 5.45am.<sup>45</sup> As he was parking the Car, he received a text message from Ravindran. The Accused testified that he could not remember the exact words of the message but he was essentially told to wait in the Car.

34 While he was still seated in the driver’s seat of the Car reading the message, Ravindran came to the Car.<sup>46</sup> According to the Accused, the driver’s window was wound down at this point.<sup>47</sup> Ravindran passed the Accused a bundle through the open window and said, “You give it in Woodlands, someone will collect it.”<sup>48</sup> The Accused held the bundle for only five to ten seconds before telling Ravindran that he could not do so and returning the bundle to him.<sup>49</sup> According to the Accused, he refused Ravindran’s request because he suspected that the bundle could be “ganja”.<sup>50</sup> Ravindran replied, “Okay. All right, Chinna [which the Accused explained was an abbreviated version of his name]”<sup>51</sup> and walked away.<sup>52</sup>

35 The Accused then wound up the driver’s window, switched off the engine and exited the Car. He locked the driver’s door of the Car and left to buy breakfast.<sup>53</sup> The Accused stated that he did not wind up the driver’s

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<sup>44</sup> NE 1 October 2015 p116 lines 1 to 13.

<sup>45</sup> NE 1 October 2015 p112 lines 28 to 29.

<sup>46</sup> NE 1 October 2015 p116 lines 14 to 18.

<sup>47</sup> NE 1 October 2015 p117 lines 1 to 2.

<sup>48</sup> NE 1 October 2015 p119 lines 21 to 22.

<sup>49</sup> NE 1 October 2015 p120 lines 10 to 11.

<sup>50</sup> NE 1 October 2015 p121 lines 12 to 13.

<sup>51</sup> NE 1 October 2015 p29 lines 17 to 25.

<sup>52</sup> NE 1 October 2015 p123 lines 5 to 9.

window completely, explaining that the air-conditioning of the Car was not working and he would again have had to manually wind down the window when he returned to the Car.<sup>54</sup> The Accused further explained that he had not attempted to lock the other doors of the Car because he expected the doors to be locked and, in any event, the Car was an old car and he had on previous occasions simply left the engine running with the doors unlocked while he went to buy things.<sup>55</sup> He also informed the court that Ravindran had borrowed the Car previously,<sup>56</sup> a claim which was subsequently corroborated by Madavan.<sup>57</sup>

36 When the Accused returned to the Car, he left his breakfast on the front passenger seat and drove towards Johor Bahru Customs, which he successfully cleared.

37 As the Accused was exiting Johor Bahru Customs, he received a call from Ravindran. The Accused answered the call and Ravindran asked him, “Chinna, where are you?” The Accused replied, “I am at the JB custom”. Ravindran then asked him whether he was going to Woodlands and the Accused responded, “Yes, I’m going to Woodlands POSB Bank.” Ravindran told him, “Chinna, when you reach Woodlands can you call me or give me a missed call. I wish to speak to you.” The Accused saw an officer approaching while he was driving and said, “Okay, okay”, and then ended the conversation. The Accused proceeded to enter Singapore Customs.<sup>58</sup>

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<sup>53</sup> NE 1 October 2015 p124 lines 7 to 17.

<sup>54</sup> NE 1 October 2015 p133 lines 10 to 13.

<sup>55</sup> NE 1 October 2015 p125 line 10 to p126 line 6.

<sup>56</sup> NE 1 October 2015 p126 line 27.

<sup>57</sup> NE 30 June 2016 p35 lines 6 to 9.

38 The Accused was then stopped by officers at Customs and subsequently arrested.

**Issues for determination**

39 As aforementioned, there is no dispute on the law. The parties agree that the presumptions under ss 21 and 18(2) of the MDA apply, such that the Accused is presumed to be in possession of the drugs and have knowledge of the nature of the drugs, *ie*, that they consisted of methamphetamine. The dispute between the parties is therefore an entirely factual one – *ie*, whether the Accused is able to rebut the presumption of knowledge, flowing from his assertion that he had not known that there were drugs in the Car when he entered Singapore.

40 In my view, the following key issues for determination arise in this case:

- (a) The proper inferences, if any, to be drawn from the mobile phone records of HP1, HP2 and HP3;
- (b) The credibility of the Accused's account of events and the Defence's supporting evidence; and
- (c) What inferences, if any, may be drawn from other aspects of the Prosecution's evidence.

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<sup>58</sup> NE 1 October 2015 p135 line 17 to p136 line 4.

### **The mobile phone records**

41 Having considered the text messages and call records of the mobile phones belonging to the Accused that were seized by officers following his arrest, I find that the records are highly incriminating and that the Accused is unable to proffer a convincing explanation for them. I will explain my reasons.

### ***The incriminating nature of the mobile phone records***

42 The Prosecution submits that the mobile phone records for HP1 and HP2 demonstrate that the Accused knew about the bundle of drugs in the Car and that he was on his way to deliver them when he was arrested.<sup>59</sup>

43 The Prosecution relies on a table of collated text messages and call records, which I reproduce here, in a slightly abbreviated format, for ease of reference:<sup>60</sup>

<b>S/No</b>	<b>Sender</b>	<b>Recipient</b>	<b>Time on 16 May 2012</b>	<b>Type/Text (with translation in italics)</b>	<b>Ref</b>
1	Accused	Ravindran	00:07	Pkl brp? ada brp  <i>What time? Have how many?</i>	HP2
2	Ravindran	Accused	00:42	Chinna ti I conform ok ada keja tak	HP2

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<sup>59</sup> Prosecution's submissions at [77].

<sup>60</sup> Prosecution's submissions at Annex 1.

				<i>Chinna later I confirm ok got keja or not</i>	
3	Accused	Ravindran	00:44	Cpt kasi confirm. I nak tdr  <i>Quickly give confirm. I want to sleep</i>	HP2
4	Accused	Ravindran	00:45	Cpt kasi confirm. I nak tdr  <i>Quickly give confirm. I want to sleep</i>	HP2
5	Ravindran	Accused	05:31	Col me	HP2
6	Accused	Ravindran	05:32	[Dialled call]	HP2
7	Ravindran	Accused	05:48	[Received call]	HP2
8	Ravindran	Accused	06:58	Pundek angkat china tauke tggu.  <i>Pundek pick up China tauke waiting</i>	HP2
9	Ravindran	Accused	07:17	Lu jawab ke,tau nak wa ajar skarang.  <i>Your answer or, want me to teach now.</i>	HP2

10	Ravindran	Accused	07:19	Anak u mau.  <i>Your child wants</i>	HP2
11	Ravindran	Accused	07:21	C	HP1
12	Ravindran	Accused	07:24	Ptndek pundek lu mau mati.  <i>Pundek pundek you want to die</i>	HP2
13	Ravindran	Accused	07:32	[Missed call]	HP2
14	Ravindran	Accused	07:41	Jangan macam bodnh tau chinna.  <i>“Don’t behave like stupid, Chinna (referring accused)”.</i>	HP1
15	Ravindran	Accused	07:42	Hoi apa lu bikin?  <i>“Ooi, what are you doing?”</i>	HP1
16	Ravindran	Accused	07:45	Lu mau tengok kana pa wa punya patern, tgu wa tunjuk.  <i>“You want to know what, right, what’s my pattern or what I’m able to do, you wait, I will show you.”</i>	HP1

17	Ravindran	Accused	07:49	C	HP1
18	Ravindran	Accused	07:52	Lu mau mati kan, tengok ok.  <i>“You want to die right? See, okay.”</i>	HP1
19	Ravindran	Accused	07:52	Otak pakai ok, kerja sudah lambat  <i>Use brain ok, kerja is already late</i>	HP2
20	Ravindran	Accused	07:52	[Missed call]	HP1
21	Ravindran	Accused	07:52	[Received call]	HP1
22	Ravindran	Accused	07:53	C	HP2
23	Ravindran	Accused	07:55	Cau cibe lu tengok  <i>“[An expletive], and you wait and see.”</i>	HP1
24	Ravindran	Accused	11:13	C	HP1

**Table 1: Text messages and call records**

44 As mentioned at [8] above, the Accused was stopped by officers at Singapore Customs at about 6.15am and subsequently arrested. This explains

why the Accused did not respond to Ravindran's text messages and calls after 6.15am. I make a number of observations regarding these records and the inferences that may be drawn from them.

*The Accused's text messages to Ravindran in the early hours of 16 May 2012*

45 First, I refer to the four text messages at S/Nos 1 to 4 of Table 1. I note that Norashikin Binte Bunyamin ("Ms Norashikin"), a Malay Language Officer of the CNB, testified that the term "*keja*" (which should have been correctly spelt as "*kerja*" in the Malay language) means "work".<sup>61</sup> Although the Defence contested Ms Norashikin's subsequent suggestion that "*keja*" "in this context ... could refer to 'drugs'",<sup>62</sup> the Defence did not dispute the literal translation of "*keja*" as "work", and I therefore accept the accuracy of the translation of this Malay word as "work".

46 Accordingly, it appears that in the very early hours of 16 May 2012, just after midnight, there was a conversation between the Accused and Ravindran about whether there was "work" for the Accused. The Accused made the inquiries "What time?" and "Have how many?" This suggests that the nature of the "work" that Ravindran might give him is time-specific. The reference to "how many" could either refer to the number of jobs or assignments from Ravindran, or could be a reference to something within the nature of the job given by Ravindran.

47 I also note that although the Accused testified that he had messaged Ravindran about whether there was work at Ravindran's mobile phone shop, he informed the court that he had done so at 9pm on 15 May 2012 and that

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<sup>61</sup> AB 213; NE 23 Sept 2015 p99 lines 21 to 32.

<sup>62</sup> AB 213; NE 23 Sept 2015 p100 line 1 to p102 line 20.



Ravindran had replied at about 9.05pm.<sup>63</sup> The text messages at S/Nos 1 to 4 in Table 1 therefore could not have been the text messages that he purported to have sent to and received from Ravindran. Indeed, the Accused simply denied that he had ever sent or received those four messages.<sup>64</sup> I find the Accused's denial difficult to accept. It is certainly not a satisfactory explanation for those messages, which were sent and received many hours before the Accused was arrested. His denial served only to dent his credibility in the eyes of the court.

48 During oral closing submissions, I sought confirmation from the Defence that it was the Accused's position that the Accused had never received or sent those messages, despite the fact that these text messages were forensically obtained from the Accused's mobile phones. Counsel for the Accused, Mr Mahmood Gaznavi s/o Bashir Muhammad ("Mr Gaznavi") took instructions from the Accused, who unequivocally confirmed that he was maintaining his stance on the matter.<sup>65</sup> This position, while consistent, is incoherent. It flies in the face of the forensic evidence and beggars belief.

*The escalating abusiveness and threats in Ravindran's messages*

49 I refer next to S/Nos 8 to 18 in Table 1. Between 6.58am and 7.52am, Ravindran sent the Accused a series of text messages that reflected Ravindran's increasingly agitated state. The first of those messages is "*Pundek pick up China tauke waiting*". According to Ms Norashikin, "*pundek*" is a derogatory and/or offensive Tamil term of reference.<sup>66</sup> She also explained that

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<sup>63</sup> NE 28 June 2016 p107 lines 3 to 12.

<sup>64</sup> NE 28 June 2016 p105 lines 14 to 29; p107 line 7 to p108 line 1.

<sup>65</sup> NE 1 November 2016 p5 line 22 to p6 line 26.

<sup>66</sup> AB at 213.

“*tauke*”, which should have been correctly spelled as “*towkay*”, is used as a form of address for “sir” or “master”.<sup>67</sup>

50 In this message, Ravindran referred to the Accused as “*pundek*”, and the reason he expressed was that the Accused was not “pick[ing] up” despite the fact that there was a “China *tauke* waiting”. Following the Accused’s failure to respond to Ravindran’s messages and calls, Ravindran proceeded to issue threats of increasing – and indeed shocking – severity. Ravindran began by asking the Accused if he “want[ed] [Ravindran] to teach now”, telling him “Don’t behave like stupid”, asking whether the Accused wanted to know “what’s [his] pattern or what [he was] able to do”, and even posing death threats such as “*Pundek pundek* you want to die” and “You want to die right? See, okay.” At S/No 10 is another text from Ravindran to the Accused, stating “*Anak u mau*”. Ms Norashikin translated this as “Your child wants”, but the Accused explained that he understood this to mean “Do you want your child?”<sup>68</sup> In light of the other messages Ravindran sent, this could be understood as a threat to the Accused’s child. Indeed, the Accused indicated that this was Ravindran’s threat that “he [would] kill [the Accused’s] child”.<sup>69</sup>

51 These messages indicated that Ravindran was not merely annoyed that the Accused did not respond to his messages. From a reasonable and objective reading of these messages, Ravindran was truly enraged, to such an extent that he felt justified in issuing serious threats of harm to the Accused and his child. All of this begged an explanation from the Accused as to why Ravindran was

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<sup>67</sup> AB at 213.

<sup>68</sup> NE 28 June 2016 p81 lines 10 to 13.

<sup>69</sup> NE 28 June 2016 p77 lines 14 to 15 and 21 to 22.

so upset, and many enquiries were made from him during the trial in this regard.

52 The Accused began by repeatedly asserting that he had never seen those messages and did not know why Ravindran had sent them to him.<sup>70</sup> Even leaving aside the messages at S/Nos 1 to 4, I can accept that the Accused had not seen those messages at the time they were sent to his mobile phones, given that the Accused had been otherwise occupied or arrested after 6.15am on 16 May 2012. But in my view he must furnish a plausible explanation for the messages that Ravindran sent to him, and such explanation must be consistent with his defence. The simple reason is that other than Ravindran himself, the Accused is best placed to understand why Ravindran sent him those messages. The Accused was the intended recipient, and it would be most unlikely that Ravindran would send him an entire string of text messages that the Accused somehow did not understand and could not explain. I therefore do not regard the Accused's assertions that he did not know why Ravindran sent him those messages as any good reply to the matter.

53 Subsequently, the Accused suggested that the reason why Ravindran appeared so angry was that the Accused had not answered Ravindran's call, at a time when the drugs remained in the Car without the Accused's knowledge.<sup>71</sup> I do not regard this as a satisfactory explanation. While Ravindran might have been anxious to contact the Accused so that he could somehow secretly retrieve the drugs that he had planted from the Car, it does not make sense that he would verbally abuse and threaten the Accused in the manner and to the

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<sup>70</sup> NE 28 June 2016 p50 lines 22 and 26; p51 line 24; p52 lines 2 to 3 and 32; p54 line 23; p75 line 1; p76 lines 2 and 17.

<sup>71</sup> NE 28 June 2016 p76 lines 28 to 30; p77 lines 12 to 23; p79 lines 23 to 24.

extent that he did, in light of the fact (as alleged by the Accused) that the Accused did not know what was in the Car and had made no arrangements to meet Ravindran or any of his representatives in Singapore. Simply put, if Ravindran and the Accused really had not made any pre-arranged plans that the Accused was responsible to carry out and had failed to do so, there seems to be little reason or basis for Ravindran to flare up at the Accused in the manner that he did, much less to threaten the well-being of the Accused and his child.

*Failure to explain aspects of Ravindran's text messages*

54 Equally significantly, the content of some of the messages that Ravindran sent to the Accused would make no sense at all if the Accused's explanation was accepted. I refer first to the message at S/No 8 of Table 1, *ie*, “*Pundek pick up China tauke waiting*”. This begs an explanation of who the “*China tauke*” was, and what exactly he was waiting for. The Accused's assertion that he did not know why Ravindran had sent the message provides absolutely no context for a reasonable explanation of why Ravindran thought the Accused to be an appropriate recipient of the message.

55 I also refer to the equally incriminating message at S/No 19, where Ravindran stated “Use brain ok, *keja* is already late”. This suggests that (i) there was “work” (or “*keja*”) to be carried out; (ii) the “work” was to be performed at or by a certain time; and (iii) the Accused was responsible for the lateness of the performance of the “work”. In this regard, I also observe that even going by the Accused's account, Ravindran had not instructed him to carry out any work for his mobile phone business – in fact, Ravindran had told the Accused that there was no work (see [31] above). If this was the case, and the Accused had consequently never agreed to carry out any work for

Ravindran, why would Ravindran communicate to the Accused that “*keja* is already late” and blame him for it, much less issue threats for the lateness of the “work”?

56 When pressed, the Accused simply reiterated his explanation that Ravindran was angry that the Accused had not picked up his phone or replied to the messages.<sup>72</sup> This does not explain either Ravindran’s aggressive, accusatory and censoring tone (as I have explained at [53] above) or Ravindran’s references to a “China *tauke*” and the lateness of the “*keja*”.

57 During oral closing submissions, I gave the Defence a final opportunity to offer the court a coherent explanation of the content of those messages. I explained that the Defence’s account of events must fit with the objective evidence. Counsel for the Accused, Mr Gaznavi, took instructions from the Accused, who maintained that he had never seen the messages, that no one had asked him about the messages and that the CNB had never questioned him about the messages. Mr Gaznavi said that the Accused’s position was that the messages simply did not make sense to him and that they were “nonsensical”.<sup>73</sup>

58 With respect, I do not find that a position that reduces objective forensic evidence to a nonsense is at all persuasive. The Accused was given full opportunity, both during trial and at oral closing submissions, to provide an explanation that cohered with the text messages that he sent to and received from Ravindran. He was unable to do so. I find that the Prosecution’s case – *ie*, that the Accused had colluded with Ravindran to import the bundle of

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<sup>72</sup> NE 28 June 2016 p88 line 28 to p89 line 1.

<sup>73</sup> NE 1 November 2016 p18 line 13 to p19 line 19.

methamphetamine into Singapore by placing it in the Car – is far more consistent with the text messages than the explanation provided by the Accused. It is far more plausible that given this arrangement between the two, and the Accused’s subsequent failure to communicate with Ravindran or to deliver the bundle as planned, Ravindran became very agitated and angry and he blamed the Accused for his failure to perform as agreed.

***The accuracy and reliability of the mobile phone records***

59 Separately, the Defence also attempted to cast doubt on the veracity of the mobile phone records. These records were obtained by Mohd Rozaili Bin Idris (“Mr Rozaili”), a Technology Crime Forensic Examiner of the TCFB of the Technology Crime Division, Criminal Investigation Department, and also by the CNB’s FORT (as mentioned at [17] above). The Defence sought to impugn the records for HP1, HP2 and the FORT records but did not address the records for HP3 as the Prosecution did not rely on the records for that phone.

***HP1***

60 The Defence pointed to several aspects of Mr Rozaili’s testimony.<sup>74</sup> First, Mr Rozaili stated that he could not verify the accuracy of the date and timestamps because after the extraction was done, he was “unable to power up the phone to verify the extracted data with the content in the phone”.<sup>75</sup> He similarly stated that in respect of data extracted from the SIM card, he was unable to verify the date and time stamps.<sup>76</sup> The Defence submits that “by his

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<sup>74</sup> Accused’s written submissions at [409] to [414].

<sup>75</sup> NE 23 Sept 2015 p4 lines 20 to 31.

<sup>76</sup> NE 23 Sept 2015 p5 lines 13 to 14 and 18.

own evidence, Mr [Rozaili] confirms that he is unable to verify the accuracy of the date and timestamp of SN-HP1 and its associated SIM card”, and therefore the report is “unreliable”.<sup>77</sup>

61 I do not accept the Defence’s submission. As Mr Rozaili explained, what he meant when he said that he was unable to “verify the accuracy of the date and timestamp” was that he was unable to compare the records extracted through the forensic software with the information seen on the mobile phone itself.<sup>78</sup> The reason why he could not do so was that HP1 could not be powered up after he had completed the extraction with the forensic software,<sup>79</sup> possibly due to a hardware fault.<sup>80</sup> But the Defence produced nothing to indicate that the records extracted from HP1 using the forensic software were either incomplete or inaccurate, either in relation to their content or the date and timestamps. Mr Rozaili confirmed that the mobile phone was kept alive throughout the extraction, such that the extraction was “100%” complete and the forensic software reported that the extraction was successful and complete.<sup>81</sup> Further, Mr Rozaili explained that in relation to the information extracted from the SIM card – such as the text messages – the date and timestamps were tied to the network date and time rather than the date and time set on the mobile phone itself, and would therefore be absolutely accurate.<sup>82</sup>

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<sup>77</sup> Accused’s written submissions at [414].

<sup>78</sup> NE 23 Sept 2015 p10 lines 4 to 13.

<sup>79</sup> NE 23 Sept 2015 p10 lines 31 to 32.

<sup>80</sup> NE 23 Sept 2015 p11 lines 2 to 3.

<sup>81</sup> NE 23 Sept 2015 p11 lines 15 to 26.

<sup>82</sup> NE 23 Sept 2015 p5 line 29 to p6 line 13.

62 In the circumstances, I do not think that there is any merit to the Defence’s submission that the records extracted from HP1 by Mr Rozaili were “unreliable”.

63 The Defence also challenges the accuracy of the timestamps shown on HP1. The records for HP1 appear to indicate that the Accused dialled a number at 7.51am and received a call at 7.52am on 16 May 2012, after the Accused had been arrested. The Defence claims that the Accused could not have had an opportunity to use his mobile phone after arrest. I do not think that this discrepancy assists the Defence in impugning either the content or the timestamps of the messages that the Prosecution relies on. The fact remains that these messages are on the record, found in the Accused’s mobile phone, and that the date and timestamps of the messages when arranged in chronological order form a narrative sequence that coheres with the Prosecution’s case.

#### *HP2*

64 The Defence also submits that the contents retrieved from HP2 are “inaccurate”.<sup>83</sup> Mr Rozaili explained that he was unable to extract records from HP2 using the forensic software, as the forensic tool did not support the particular mobile phone model at the time of extraction. Mr Rozaili had therefore taken photographs of the information reflected on the screen of HP2 in order to collect the information contained therein.<sup>84</sup>

65 The Defence claims that Mr Rozaili had admitted that taking photographs of the information on the mobile phone was “less accurate” than

<sup>83</sup> Accused’s submissions at [419].

<sup>84</sup> NE 23 Sept 2015 p16 lines 13 to 16.



the usage of a data cable, *ie*, extraction using the forensic software.<sup>85</sup> I do not think that this is an accurate summary of Mr Rozaili's view on the matter. Although Mr Rozaili stated that usage of a data cable was "in a way" more accurate than the method he utilised,<sup>86</sup> he explained that his method was "actually another way to retrieve information, not the best way but another way".<sup>87</sup> I also note that Mr Rozaili had explained, when giving evidence on his usual procedure for extracting data from mobile phones, that after the extraction of data using forensic software, he would compare that data with the information on the phone itself (see [61] above). In the circumstances, until and unless the Defence is able to demonstrate that the method Mr Rozaili used led to the extraction of inaccurate or unreliable data, I do not consider that there are sufficient grounds to impugn the method of data collection Mr Rozaili used.

66 The Defence points out that contact names are indicated on the text messages in HP2 as seen from Mr Rozaili's photographs, but the photograph of the contacts list in HP2 reveals that the contacts list is empty.<sup>88</sup> In my view, Mr Rozaili provided a reasonable explanation for this. He explained that the photograph of the contacts list showed only the contacts stored in the mobile phone itself, rather than in the SIM card, and the settings on HP2 were such that only contacts stored on the mobile phone were shown. Mr Rozaili further clarified that he had not changed the settings of HP2 to show the SIM card contacts list because in doing so he would be modifying certain aspects of the mobile phone and he did not wish to do that.<sup>89</sup> I find that this is a full and

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<sup>85</sup> Accused's submissions at [418].

<sup>86</sup> NE 23 Sept 2015 p38 line 23.

<sup>87</sup> NE 23 Sept 2015 p38 lines 14 to 15.

<sup>88</sup> Accused's submissions at [420] to [427].

persuasive explanation of the matter and do not consider that any further explication is necessary.

67 The Defence then takes issue with the date stamps of certain text messages received on HP2. It refers to a number of messages containing lottery results for lotteries drawn on particular days, and points out that the date stamps for those messages indicate that the messages were received earlier than the dates that the lotteries were drawn. For instance, one finds in a text message dated 18 August 2011 the winning lottery numbers for the lottery drawn on 25 April 2012.<sup>90</sup> I have reviewed the text messages containing lottery results that were received on HP2 (*ie*, in the inbox of HP2) and they are collated in the table below, sorted in chronological order according to the date stamps:

S/No	Date stamp on HP2	Date that lottery was drawn
1	25 July 2011	1 April
2	27 July 2011	3 April
3	28 July 2011	4 April
4	18 August 2011	25 April
5	18 April 2012	18 April

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<sup>89</sup> NE 23 Sept 2015 p45 line 25 to p46 line 2.

<sup>90</sup> Accused's submissions at [428] to [437].

6	22 April 2012	22 April
7	28 April 2012	28 April
8	2 May 2012	2 May
9	5 May 2012	5 May
10	6 May 2012	6 May
11	8 May 2012	8 May
12	9 May 2012	9 May
13	12 May 2012	12 May
14	13 May 2012	13 May

**Table 2: Text messages containing lottery results in HP2**

68 Notably, from S/No 5 in Table 2 onward (*ie*, from date stamp 18 April 2012 onward), there is *no discrepancy* between the date stamps and the date of the lottery results shown in the text messages. Indeed, this constitutes the bulk of the messages containing lottery results. Significantly, as the Prosecution pointed out,<sup>91</sup> the lack of any discrepancy persisted from 18 April 2012 *up to and including the crucial month of May 2012*, which was of course the month in which the Accused travelled into Singapore with the bundle of methamphetamine. I find that whatever discrepancies there were between the

<sup>91</sup> Prosecution's submissions at [85].

date stamps of the text messages on HP2 and the actual date, these discrepancies did not last beyond sometime in April 2012 and were accordingly no longer present in May 2012.

69 The Defence also points out that the earliest time indicated on HP2 as shown in the photographs is “23:21”, but Mr Rozaili stated in his report that when he first powered up HP2 the time indicated on HP2 was 7.09pm.<sup>92</sup> As I noted earlier at [63], I do not think that any of these discrepancies, to the extent that they do exist, assist the Defence in impugning either the content or the date and timestamps of the messages that the Prosecution relies on. The fact remains that those messages when arranged in chronological order form a narrative sequence that coheres with the Prosecution’s account that Ravindran grew increasingly unhappy with the Accused for reasons relating to the fact that a “China *tauke*” was waiting and the “*keja* [was] already late”.

#### *FORT reports*

70 The Defence criticises only the FORT report for HP1<sup>93</sup> and not those for the other two mobile phones. It advances two submissions before me, asserting that there are “issues of reliability” with the report.<sup>94</sup>

71 First, the Defence alleges that the Accused never had sight of the “actual text messages themselves”, but only the messages stated on the FORT reports as shown to him by Investigation Officer Mohaideen Abdul Kadir Bin Gose Ahmad Sha (“IO Mohaideen”). Consequently, the Accused was “placed

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<sup>92</sup> Accused’s submissions at [449] to [452].

<sup>93</sup> P70.

<sup>94</sup> Accused’s submissions at [472].

in a disadvantaged position in which he cannot confirm whether or not the text messages were indeed delivered to SN-HP1”.<sup>95</sup>

72 I do not think that there is any force or discernible direction to this submission. IO Mohaideen confirmed during cross-examination that the messages that he showed the Accused during investigations were obtained from CNB’s mobile preview reports.<sup>96</sup> The admissibility of the FORT reports was never challenged, nor was it ever put to IO Mohaideen that the FORT reports did not contain an accurate record of the text messages found on the mobile phones. Indeed, I find that the Defence has not even attempted to proffer any sort of explanation as to why the incriminating messages were found in the Accused’s mobile phones.

73 Second, the Defence points out that while “the portion [of the messages] that the Prosecution intends to rely on appears to have been neatly sorted out at page 21 of P70 [*ie*, the FORT report for HP1]”, “all the other messages extracted appear to be in no particular order”. The Defence then suggests that “[g]iven that the relevant portions of the incriminating text messages have been curiously sorted out from a mess of a 48 paged document, one cannot help but wonder if the said text messages are authentic and/or complete”.<sup>97</sup>

74 With respect, if the Defence is taking the position that the FORT report is not to be believed or relied upon as an accurate or faithful record, either because inauthentic messages have been included or the chronological order of

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<sup>95</sup> Accused’s submissions at [473] to [476].

<sup>96</sup> NE 30 September 2015 p108 line 31 to p109 line 1.

<sup>97</sup> Accused’s submissions at [477] to [480].

the messages has been tampered with, then it should have made this position clear and sought to prove it through evidence rather than assertion. Regarding the issue of chronology, IO Mohaideen offered the explanation during his examination-in-chief that the chronological disorder might be due to the forensic software that was used. Mr Gaznavi did not question IO Mohaideen on the basis of his explanation, much less put to him that this was not the reason for the disorder. In the circumstances, I reject the Defence's characterisation of the FORT reports as "questionable" and "dubious".<sup>98</sup>

### **Credibility of the Accused's account of events**

#### ***Claim that Ravindran planted the bundle without the Accused's knowledge***

75 The Prosecution argues that the Accused's account of how Ravindran planted the bundle of methamphetamine in the Car without the Accused's knowledge is an "unlikely" story which does not cohere with the evidence.<sup>99</sup>

76 The Prosecution submits that it is particularly unlikely that Ravindran would have proceeded to plant the bundle after (as the Accused claims) the Accused had turned down Ravindran's request to bring the bundle into Singapore. After learning that the Accused was unwilling to participate in his plan, why would Ravindran still choose to plant the bundle in the Car, with no convenient means of retrieval and no guarantee that the Accused would agree to hand the bundle over to Ravindran or his associate once the Accused had arrived in Singapore?<sup>100</sup>

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<sup>98</sup> Accused's submissions at [486].

<sup>99</sup> Prosecution's submissions at [52].

<sup>100</sup> Prosecution's submissions at [60].

77 In my view, there is considerable force in this submission. I observe that during cross-examination, the Accused *himself* took the position that he would *not* have handed the bundle over to Ravindran if he had successfully entered Singapore and subsequently discovered that the bundle had been planted in the Car. The following extract from the transcript contains an unequivocal statement of the Accused's view on the matter:<sup>101</sup>

Q Yes, correct. And you didn't---you don't think it's likely that Ravi would have contacted you directly to help pass the bundle to him or someone?

Interpreter: Pass to him or---

Ong: Or someone.

Interpreter: ---someone?

Q Pass to Ravi or someone else? You don't think it's likely that Ravi would have done that?

A Anything---you---we cannot say it cannot happen. Anything can happen.

Q Sure, sure.

A **If Ravi asked me to re---hand it over to him, definitely I will not give him. I will throw it away.**

Q Okay.

A **Because he has deceived me and cheated me by putting---**

Q Yes.

A **---it there.**

Q Yes, all right.

A **Because I earlier suspected it to be *ganja*. I've already told him, "Cannot". But he then put it in without my knowledge.**

Q Yes.

A **Then how could---could I give it back to him?**

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<sup>101</sup> NE 29 June 2016 p20 line 29 to p21 line 16.

[emphasis added in bold]

78 Put simply, the Accused would not have handed the bundle of methamphetamine to Ravindran but would instead have thrown it away, because he would have been outraged that Ravindran had proceeded to plant the bundle in the Car despite the Accused's earlier rejection of Ravindran's request. I agree with the Prosecution that Ravindran would have had to be taking a significant gamble by planting the bundle in the Car. As the Prosecution notes, given the obvious value of the drugs, it is difficult to believe that Ravindran would have taken such a risk. The Accused might simply have decided to throw the drugs away (as the Accused himself informed) or brought it to the police.<sup>102</sup>

79 In my view, it is also extremely unlikely that Ravindran would have been willing to plant the bundle with no convenient means of retrieval. Although the Accused did inform Ravindran (going by the Accused's account) that he was going to the Woodlands branch of POSB, there appears to be little means for Ravindran to ascertain exactly where the Accused would park the Car. From the text messages received on the Accused's mobile phones, it appears that Ravindran did not know where the Accused was as he entered Singapore Customs – he did not know, for instance, that the Accused had been stopped at Singapore Customs and arrested thereafter, or Ravindran would not have proceeded to send the Accused a barrage of text messages expressing his anger that the “*keja*” was late. Consequently, it is unlikely that the Accused was followed into Singapore. Ravindran or his associate would thus have had to search for the parking location of the Car near the Woodlands POSB branch if they wanted to retrieve the bundle. It is arguable that the improbability of

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<sup>102</sup> Prosecution's submissions at [59].



Ravindran accepting the risks involved in such a plan may not be a determinative consideration, particularly if taken alone. But I consider that this improbability does diminish the plausibility of the Accused's account of events.

***Other aspects of the Accused's narrative***

80 A considerable amount of time was spent at trial on various other aspects of the Accused's narrative by both the Defence and the Prosecution, perhaps in an effort either to buttress or to erode the credibility of the Accused, as the case may be. I will not attempt to enumerate all these aspects of the evidence, save for noting that they included the following:

- (a) the location of the motorcycle shop from which the Accused wanted to purchase a new motorcycle;
- (b) how the Accused was to pay for the new motorcycle;
- (c) whether the Accused had taken leave on 16 May 2012;
- (d) whether the Accused had previously enquired at POSB about the possibility of obtaining a loan;
- (e) whether the Accused met the requirements to obtain a loan; and
- (f) whether Vasagi and other members of the Accused's family could have done more to find Ravindran.

81 Upon a review of the evidence produced at the close of trial, I have formed the opinion that a lot of the evidence in this regard is either of peripheral relevance or would not make a difference to my determination of whether the Accused is guilty of the offence. I should say that the Defence *was* able to produce evidence to support certain aspects of the Accused's

account of events. For instance, it is undisputed that when the Accused was arrested, he was found to be in possession of a number of documents that would be required for an application for a bank loan, such as a letter confirming his employment, income statements and utilities bills. Those documents were produced before the court. In my view, the Accused's claim that he intended, during the time that he was in Singapore, to apply for a bank loan is a plausible claim and supported by evidence.

82 The difficulty for the Defence, however, is that while this evidence may go some way towards establishing the Accused's credibility and indeed towards supporting some aspects of the Accused's account, they are ultimately *not inconsistent with* and therefore *do not rebut* the Prosecution's case that the Accused intended to import the bundle of methamphetamine into Singapore. It is entirely possible that the Accused intended to apply for a bank loan in Singapore, and that this was one of the reasons for which he drove into Singapore in the morning of 16 May 2012. But this is not inconsistent with the possibility that the Accused *also intended*, either working on his own or in collaboration with Ravindran, to bring the bundle of methamphetamine into Singapore during the same trip, which would be a convenient thing to do. By bringing forth evidence of the Accused's intention to apply for a bank loan, the Defence does not thereby raise a logical conundrum for the Prosecution that defeats the Prosecution's case. What *is* inconsistent, in my view, is the Accused's version of events when seen alongside the text messages found in the Accused's mobile phones. *That* is an inconsistency which goes towards the heart of the alleged offence, given the incriminating nature of those messages as I have explained earlier.

**Remaining aspects of the submissions and evidence**

83 I will explain my view on some remaining aspects of the parties' evidence and submissions.

84 One of the issues raised by the Prosecution pertains to the Accused's behaviour at or around the time when he was stopped and the bundle was found. SSI Neo gave evidence that the Accused complained of stomach pain while the search of the Car was ongoing, but that the Accused did not continue to complain of such pain after the bundle was discovered.<sup>103</sup> The Prosecution suggests that the Accused had feigned a stomach ache in order to distract the CNB officers so that they might end the search of the Car quickly and let him go.<sup>104</sup> I do not think there is sufficient evidential basis for me to draw the inference that the Prosecution proposes.

85 According to SSI Neo's conditioned statement, when the Accused saw the black bundle, he kept saying "I don't know" and started crying.<sup>105</sup> During closing submissions, the Prosecution conceded that the evidence on whether the Accused had started crying and saying "I don't know" upon seeing the bundle or even before the bundle was produced was "unclear", and informed the court that it was no longer pursuing this submission.<sup>106</sup> I therefore need not address the point. For completeness, I add that even if the Prosecution had decided that this should remain a live issue, I do not think the evidence of SSI Neo is consistent in this regard and would not have placed any weight on it.

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<sup>103</sup> NE 23 September 2015 p113 line 29 to p114 line 24.

<sup>104</sup> Prosecution's submissions at [45].

<sup>105</sup> AB 241 at [5].

<sup>106</sup> NE 1 November 2016 p20 lines 28 to p21 line 8.

86 Further to this, SSGT Xu also testified that while he was keeping watch on the Accused shortly after the arrest, SSGT Xu heard the Accused repeat the Malay word “*mati*”.<sup>107</sup> The Prosecution submits that if the Accused were indeed unaware of the contents of the black bundle, there would be no reason for him to repeat the word “*mati*”. It argues that “[t]he **only** plausible reason why he had such a strong reaction to the discovery of the bundle and even before it was opened, is that he *already* knew the bundle contained illegal drugs which would attract very severe penalties” [emphasis in italics in original; emphasis added in bold].<sup>108</sup> I reject the Prosecution’s submission that it is the “only” inference that could possibly be drawn. According to the Accused, he had already seen the bundle before when Ravindran sought to pass it to him to bring into Singapore. The reason why the Accused rejected the request at that time was because, going by his explanation, he suspected that the bundle could contain “*ganja*” (see [34] above). In my view, it is reasonable to think that upon seeing the bundle uncovered by the officers, he therefore assumed that he was in trouble because the bundle – as he had earlier suspected – might contain “*ganja*”. The Accused therefore reacted in a manner that indicated anxiety, *ie*, by repeatedly uttering “*mati*”, given his belief that he had just been found in possession of a bundle containing “*ganja*”. In the circumstances, I find that it would be unsafe to draw an inference, from this fact alone, that the Accused knew what the bundle contained because he had agreed to bring it into Singapore.

87 As a final matter, I will address the fact that the HSA was unable to generate any DNA profiles from the swabs taken from the exhibits, *ie*, the tissue box, the tissue box cover and the Drug Exhibits (see [18] above). The

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<sup>107</sup> NE 23 September 2015 p137 lines 19 to 21.

<sup>108</sup> Prosecution’s submissions at [47].

Prosecution suggests that as the tissue box and its cover had been handled a number of times, for instance by Vasagi when she took the tissue box from the Accused's car to stem her son's bleeding, one would ordinarily expect that a person's DNA would be found. The Prosecution further submits that if the reason for the lack of DNA evidence is that someone had deliberately taken time to clean the tissue box and cover thoroughly, this does not sit well with the Defence's account of how Ravindran might have planted the bundle in the tissue box, because it is unlikely that Ravindran would have had enough time to open the Car, plant the bundle, wipe the tissue box and cover to remove DNA evidence, and leave the scene before the Accused returned. While there is some force in this submission, I ultimately do not think it appropriate to preclude the possibility that Ravindran *was* able to do so, given that (by the Accused's account) Ravindran was already within the vicinity of the Car at the time the Accused had left to buy his breakfast, which could also have taken some time depending on the busyness of the breakfast stall.

**Final assessment and decision**

88 In my final assessment, the Accused is unable to provide a satisfactory explanation for the text messages found in his mobile phones. I find that those messages provide strong support for the Prosecution's submission that the Accused had entered into some sort of arrangement with Ravindran for the Accused to bring drugs into Singapore and deliver them to an unknown person at a pre-appointed time. Indeed, it would not be inaccurate to say that the messages formed the centrepiece of the Prosecution's case. In the course of trial and during closing submissions, I provided the Accused and his counsel full opportunity to provide a convincing explanation for the messages, but none was ultimately forthcoming.

89 The Accused brought forth evidence to support and corroborate aspects of his account of events but, as I have explained, that evidence was peripheral and in the final analysis did not serve to cast doubt on the Prosecution's case. I reiterate that the burden remains on the Accused to rebut the presumption of knowledge under s 18(2) of the MDA. If the Accused is desirous of producing evidence, such evidence – if it is to be useful to his case – should go towards rebutting that presumption. Having reviewed the evidence in its entirety, I find that the Accused has failed to demonstrate that he did not know he was transporting methamphetamine into Singapore. The presumption under s 18(2) of the MDA has not been rebutted.

### **Conclusion**

90 For the above reasons, I find that the Prosecution has succeeded in proving all the elements of the Charge against the Accused beyond a reasonable doubt. The Accused is therefore guilty as charged and I convict him accordingly.

Chan Seng Onn  
Judge

Mahmood Gaznavi and S Skandarajah (Mahmood Gaznavi &  
Partners, S Skandarajah & Co) for the accused;  
Ong Luan Tze and Jason Chua (Attorney-General's Chambers) for  
the Public Prosecutor.

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