

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

[2021] SGHC 36

Criminal Case No 28 of 2020

Between

Public Prosecutor

And

Kannan s/o R Kumaran

GROUND OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act (Cap 185,
2008 Rev Ed)]

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Public Prosecutor
v
Kannan s/o R Kumaran

[2021] SGHC 36

General Division of the High Court — Criminal Case No 28 of 2020

See Kee Oon J

24–27 August, 2–3 September, 7, 16–18 September, 9, 23 November 2020, 1 February 2021

15 February 2021

See Kee Oon J:

1 The accused, Kannan s/o R Kumaran (“Kannan”), was charged under s 5(1)(a) read with s 12 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) for abetting by engaging in a conspiracy with one Ashvin s/o Ragupathy (“Ashvin”) and one Arun Raj s/o Chandran (“Arun”) for Arun to traffic drugs by delivering the said drugs to Ashvin. The controlled drug in question was not less than 829g of cannabis, which is a Class A controlled drug listed under the First Schedule to the MDA. The charge attracts the mandatory death penalty upon conviction.

2 Kannan, Ashvin and Arun were initially scheduled to be jointly tried in the High Court on similar capital charges. All three accused were subsequently offered reduced non-capital charges premised on similar facts should they elect to plead guilty. Ashvin and Arun have pleaded guilty to the reduced charges in

the District Court. For the charges related to the present facts, they were sentenced to 25 and 24 years' imprisonment with 15 strokes of the cane respectively.¹

3 At the conclusion of the trial, I was satisfied that the Prosecution had proved the charge beyond a reasonable doubt. Upon delivering brief grounds for my decision to find him guilty, the accused was convicted and sentenced on 1 February 2021. I now set out the grounds of my decision in full.

Events surrounding the arrests of Kannan and relevant persons

4 The Prosecution adduced evidence from officers of the Central Narcotics Bureau (“CNB”) who were involved in the surveillance and arrest operation on 2 and 3 June 2016. A Statement of Agreed Facts was also tendered pursuant to s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”). Most of the events surrounding the arrests of Kannan and the relevant persons were undisputed.

5 On 2 June 2016 at about 10.40pm, Staff Sergeant Goh Jun Xian (“SSgt Goh”) and Senior Staff Sergeant Chien Lik Seong Sunny (“SSSgt Chien”) were instructed to proceed to Block 261 Punggol Way to locate Arun. They reached the location at about 10.55pm and spotted a male Indian fitting the profile of Arun heading towards the direction of Block 256A. Arun was carrying a paper bag.² Minutes later, Woman Staff Sergeant Nurshila Binte Abdullah (“W/SSgt Nurshila”) spotted Arun walking towards the direction of Block 259B. At about

¹ Prosecution’s Opening Address at para 5

² Conditioned Statement of Goh Jun Xian (AB Vol 1 at p 349); Conditioned Statement of Chien Lik Seong Sunny (AB Vol 1 at p 380)

11.10pm, W/SSgt Nurshila saw Arun boarding a dark-coloured vehicle which travelled toward the direction of Punggol Field.³ At about 11.30pm, the vehicle turned into the car park of Block 330 Yishun Ring Road. The vehicle exited the car park shortly after and Arun was not seen in the vehicle. The CNB officers did not follow the vehicle.⁴

6 Sometime after 11.30pm, Station Inspector Wong Kah Hung Alwin (“SI Alwin”) was positioned at level four of Block 328 Yishun Ring Road to observe Block 327 Yishun Ring Road, apartment unit #03-1318 (the “Unit”). On 3 June 2016 at about 12.15am, SI Alwin saw a male Indian come out of the Unit and walk towards the direction of Block 329.⁵ Senior Station Inspector Ng Tze Chiang Tony (“SSI Ng”), who was also tasked to observe the Unit, reported that the male Indian subject fitted the profile of Kannan, which was shown to the CNB officers during a briefing conducted earlier on 2 June 2016. SSI Ng saw Kannan meeting up with two other male Indian subjects a short while later at the void deck of Block 330. At about 12.20am, SSI Ng saw Kannan and the said two male Indians part ways. The two male Indians boarded a vehicle with registration number SKA 1607H (“SKA 1607H”) and drove off, whereas Kannan walked back towards Block 327.⁶

7 SSgt Goh and SSSgt Chien followed SKA 1607H. At about 12.22am, SSSgt Chien saw the vehicle stop along the roadside near Block 413 Yishun Ring Road. Both male Indians alighted from the vehicle and walked towards the

³ Conditioned Statement of Nurshila Binte Abdullah (AB Vol 1 at pp 331–332)

⁴ Statement of Agreed Facts at p 3, para 9

⁵ Conditioned Statement of Wong Kah Hung Alwin (AB Vol 1 at p 435)

⁶ Conditioned Statement of Ng Tze Chiang Tony (AB Vol 1 at p 421)

7-Eleven store at Block 413. W/SSgt Nurshila, Senior Station Inspector Ng David and SSgt Goh arrested the driver of the vehicle outside the 7-Eleven store, while Staff Sergeant Tay Keng Chye (“SSgt Sunny Tay”) and SSSgt Chien arrested the passenger inside the 7-Eleven store. The driver was later ascertained to be Pravin s/o Palanivallu (“Pravin”) and the passenger to be Vinod s/o Pergasan (“Vinod”).⁷

8 At about 12.56am, Station Inspector Tay Cher Yeen and Station Inspector Tan Chee Hwee Jude conducted a search of SKA 1607H in the presence of Pravin and Vinod. A plastic wrapper with brown scotch tape containing some vegetable matter (subsequently marked as Exhibit “E1”) was recovered from the side pocket of the front passenger door.⁸ A search was conducted on Pravin and Vinod and nothing incriminating was found.⁹

9 Exhibit E1 was subsequently analysed by the Health Sciences Authority (“HSA”) and found to be one block wrapped with a plastic wrapper and brown tape containing a mixture which included not less than 54.56g of vegetable matter which was analysed and found to be cannabis.¹⁰

10 After parting ways with the two male Indians, Kannan boarded a taxi at about 12.30am.¹¹ SSgt Sunny Tay (who joined the other officers near Block 327

⁷ Conditioned Statement of Chien Lik Seong Sunny (AB Vol 1 at p 381–382)

⁸ Statement of Agreed Facts at p 4, para 12

⁹ Conditioned Statement of Tay Cher Yeen (AB Vol 1 at p 355)

¹⁰ Lab No ID-1632-01167-001 (AB Vol 2 at p 1218) – and not less than 52.75g of fragmented vegetable matter which was analysed and found to contain cannabinol and tetrahydrocannabinol

¹¹ Statement of Agreed Facts at pp 4–5, paras 13–14

after the arrest of Vinod)¹² and Staff Sergeant Au Yong Hong Mian tailed the taxi to Pasir Ris. Kannan was arrested at about 1.45am at the void deck of Block 759 Pasir Ris Street 71.

11 On 3 June 2016 at about 1.00am, Arun was spotted walking with another male Indian near the entrance of the car park of Block 330 Yishun Ring Road. The male Indian was later ascertained to be one Naveen Davarajan (“Naveen”). Naveen and Arun were arrested subsequently at around 1.40am at the void deck of Block 245 Yishun Avenue 9.¹³ Nothing incriminating was found on Arun.¹⁴

12 At about 2.10am, SSI Ng led a party of CNB officers including SSSgt Chien to enter the Unit. Senior Staff Sergeant Chew Thye Kwang, Sergeant Muhammad Hidayat bin Jasni (“Sgt Hidayat”) and SSSgt Chien placed Ashvin, who was in the bedroom under arrest.¹⁵ At about 2.25am, SSSgt Chien conducted a search of the bedroom in the presence of Ashvin and recovered, *inter alia*, the following items: from under the bed, one clear plastic wrapper (subsequently marked as Exhibit “B1”) and one block of vegetable matter wrapped in clear plastic (subsequently marked as Exhibit “B1A”), one empty plastic bag (subsequently marked as Exhibit “B2”) and one block of vegetable matter (subsequently marked as Exhibit “B2A”); from the floor in front of the cabinet near the bedroom window, one brown bag (subsequently marked as Exhibit “C1”), one brown cloth bag (subsequently marked as exhibit “C2”), one red plastic bag (subsequently marked as exhibit “C3”), one receipt

¹² Conditioned Statement of Tan Keng Chye (AB Vol 1 at p 372)

¹³ Statement of Agreed Facts at p 6, para 20

¹⁴ Statement of Agreed Facts at p 6, para 21

¹⁵ Statement of Agreed Facts at p 6, para 27

(subsequently marked as “C3A”), one paper box (subsequently marked as Exhibit “C4”), one digital weighing scale (subsequently marked as Exhibit “C4A”), one metal scissors (subsequently marked as Exhibit “C5”) and one roll of plastic bags (subsequently marked as Exhibit “C6”); from the bed, one packet of crystalline substance (subsequently marked as exhibit “A1”), and one improvised bottle (subsequently marked as exhibit “A2”); and from the bedroom window, one plastic bag containing trash (subsequently marked as Exhibit “D1”), one plastic wrapper (subsequently marked as Exhibit “D1B”) and one plastic wrapper (subsequently marked as Exhibit “D1C”).¹⁶

13 The subject matter of the charge is Exhibits B1A and B2A.¹⁷ Exhibit B1A was analysed by the HSA and was found to be one block containing a mixture which included not less than 444.4g of vegetable matter which was analysed and found to be cannabis.¹⁸ Exhibit B2A was analysed by the HSA and was found to be one block and some loose vegetable matter containing a mixture which included not less than 384.6g of vegetable matter which was analysed and found to be cannabis.¹⁹

14 The integrity and custody of exhibits seized by the CNB officers were not challenged by the accused.

¹⁶ Statement of Agreed Facts at pp 7–8, paras 27–28

¹⁷ Prosecution’s Opening Address at para 6

¹⁸ Lab No ID-1632-01163-002 (AB Vol 2 at p 1214) – as well as not less than 510.5g of fragmented vegetable matter which was analysed and found to contain cannabinol and tetrahydrocannabinol

¹⁹ Lab No ID-1632-01163-003 (AB Vol 2 at p 1216) – as well as not less than 424.1g of fragmented vegetable matter which was analysed and found to contain cannabinol and tetrahydrocannabinol

The Prosecution's case

15 The Prosecution's case was that Kannan had instructed Arun to collect the drugs (Exhibits B1A and B2A) and to hand them over to Ashvin at the Unit. Kannan had also instructed Ashvin to safekeep these drugs for him. Kannan later passed Exhibit E1 to Vinod. Exhibit E1, which was found in Pravin's car, had originated from Exhibit B2A, which was the block of cannabis which had been cut open and found under Ashvin's bed.²⁰ The case hinged primarily on the evidence of Ashvin and Arun, and was supported by communication records, as well as the evidence of Pravin and Vinod.

Ashvin's evidence

16 Ashvin testified that he had been close friends with Kannan since primary school.²¹ On 2 June 2016, at about 8.00pm, Kannan asked Ashvin over the phone whether he could leave some "stuff" at Ashvin's flat (*ie*, the Unit). Ashvin understood "stuff" to mean cannabis. Ashvin disagreed and said that he would call Kannan later.²² Kannan subsequently went to the Unit at about 9.00pm to 10.00pm. While in Ashvin's room, Kannan asked Ashvin again whether he could help to keep the "stuff". Although Ashvin was reluctant to help, he neither agreed nor disagreed to Kannan's request.²³ He was "almost agreeable" because the "pressure upon [him] was too much".²⁴ He testified that it was easy to reject Kannan's request over the phone, but when he saw Kannan

²⁰ Prosecution's Closing Submissions ("PCS") at para 18

²¹ NE (27 August 2020) at p 6 ln 32–33

²² NE (27 August 2020) at p 9 ln 8–17

²³ NE (27 August 2020) at p 9 ln 22 to p 10 ln 17

²⁴ NE (27 August 2020) at p 47 ln 20–27

in person, he felt “obliged” to do him a favour as a friend.²⁵ Arun then arrived at the Unit. When Ashvin went to open the gate of the Unit for Arun, Arun told Ashvin that Kannan had requested that Arun help him collect drugs, that Kannan was “very persistent” and that he had “no choice”. In Ashvin’s room, Kannan told Arun not to worry, that it would be a “fast pickup” and that the drugs only weighed 500g.²⁶ Arun was eventually agreeable to Kannan’s request. Kannan then took Ashvin’s phone to book a “Grab” car for Arun to collect the drugs.

17 After a while, Kannan and Arun left the Unit. Ashvin then received a phone call from his friend asking him to meet downstairs. Ashvin took this opportunity to leave the Unit to avoid having to help Kannan keep the drugs. He locked the bedroom window and window grilles so that Kannan would not be able to put the drugs through his window. Ashvin then went downstairs.²⁷ When Kannan subsequently saw Ashvin downstairs, he told Ashvin to wait for Arun to come back. Ashvin testified that he had “no choice” because Kannan was already there in person, and that “in person, the pressure was different”.²⁸ Sometime later, Kannan told Ashvin that Arun was already outside the Unit but was unable to slide the drugs through the window as the windows were locked. At this point, Ashvin also received a call from Arun. Ashvin then went up to the Unit and entered it to unlock the window, before coming out of the Unit. Ashvin received one brown paper bag from Arun, which he identified as exhibit C1. The bag contained two blocks of cannabis. He slid one block of cannabis through the window and placed it on his dressing table, and threw the other

²⁵ NE (27 August 2020) at p 48 ln 12–17

²⁶ NE (27 August 2020) at p 10 ln 20 to p 11 ln 7

²⁷ NE (27 August 2020) at p 11 ln 26 to p 12 ln 23

²⁸ NE (27 August 2020) at p 67 ln 16–31

block on the floor. Thereafter, he went downstairs with Arun. Ashvin joined his friends and Arun left.²⁹

18 While Ashvin was with his friends, Kannan went over to him again and told him that he needed to go up to the Unit to pack some drugs to pass to his customers. While Ashvin and Kannan were in the lift on the way up to the Unit, Ashvin told Kannan that the amount of drugs looked to be more than 500g, to which Kannan responded, “If I told you all it was more, you all wouldn’t do it”.³⁰ Ashvin testified that he felt “cheated” and wanted Kannan to clear all the drugs from the Unit.³¹

19 Ashvin then entered the Unit and Kannan passed a red plastic bag which contained a weighing scale (identified by Ashvin as Exhibit C4A)³² through the window to Ashvin. A few minutes later, Kannan went into Ashvin’s bedroom and asked for some plastic bags. Ashvin found a roll of plastic bags in his kitchen (identified by Ashvin as Exhibit C6),³³ which he passed to Kannan. Ashvin saw Kannan unpacking one block of cannabis and attempting to break it up. Kannan was sitting on the floor near the leg of Ashvin’s bed.³⁴ Kannan told Ashvin that he needed to pack 150g of the drugs for his customers. Kannan

²⁹ NE (27 August 2020) at p 12 ln 3 to p 14 ln 31

³⁰ NE (27 August 2020) at p 15 ln 1–8

³¹ NE (27 August 2020) at p 62 ln 7–12; p 63 ln 1–8

³² NE (27 August 2020) at p17 ln 1–4 – Ashvin identified P-68 in the photo bundle, which contains C4 (the box) and C4A (the weighing scale)

³³ NE (27 August 2020) at p 16 ln 27–31

³⁴ NE (27 August 2020) at p 16 ln 20–22

packed the cannabis and taped the package with tape found at Ashvin’s dressing table. Ashvin identified this package packed by Kannan as Exhibit E1.³⁵

20 After Kannan had completed packing Exhibit E1, he told Ashvin that he was going to pass the package to his customers. Ashvin told him to “clear...all the stuff and leave from [his] place”. Kannan told Ashvin to give him an hour as he needed to meet his girlfriend and that he would return to clear the “stuff” after.³⁶

21 Thereafter, Ashvin remained in the bedroom to smoke “Ice” before Arun arrived at the Unit with Naveen. Arun asked for some “weed”, which Ashvin took from the block of cannabis and gave to him. Arun and Naveen then left. Ashvin remained in the Unit till he was arrested.³⁷

Arun’s evidence

22 Arun and Kannan are distant cousins.³⁸ Arun testified that he could not recall what had happened on 2 and 3 June 2016 with regard to his arrest and the circumstances surrounding it. As such, the Prosecution applied to refresh his memory by showing him one contemporaneous statement recorded from him under s 22 of the CPC by Woman Sergeant Meenambikhai Arul on 3 June 2016 at about 2.20am (“Arun’s contemporaneous statement”).³⁹ After reading the statement, Arun still maintained that he was unable to recall any of the details

³⁵ NE (27 August 2020) at p 16 ln 15–22

³⁶ NE (27 August 2020) at p 15 ln 11 to p 16 ln 10

³⁷ NE (27 August 2020) at p 17 ln 26 to p 18 ln 8

³⁸ NE (2 September 2020) at p 5 ln 5

³⁹ NE (2 September 2020) at p 7 ln 24 to p 8 ln 14

of the events. As such, the Prosecution further applied to refresh his memory by showing him other statements recorded from him.⁴⁰ The statements shown to Arun were:

- (a) a long statement recorded under s 22 of the CPC by Senior Station Inspector Adam Ismail (“SSI Ismail”) on 7 June 2016 at about 8.45am (“Arun’s first long statement”);
- (b) a long statement recorded under s 22 of the CPC by SSI Ismail on 7 June 2016 at about 2.20pm (“Arun’s second long statement”); and
- (c) a long statement recorded under s 22 of the CPC by SSI Ismail on 13 October 2016 at about 9.30am (“Arun’s third long statement”).

23 Despite being shown the statements, Arun maintained that he could not recall the events leading to his arrest on 3 June 2016. The Prosecution thereafter applied to cross-examine Arun on these statements, as well as a cautioned statement recorded from Arun under s 23 of the CPC by SSI Ismail on 3 June 2016 (“Arun’s cautioned statement”), which was shown to him in the course of cross-examination. The Prosecution also applied to admit the four statements as substantive evidence under s 147(3) of the Evidence Act (Cap 97, 1997 Rev Ed) (“Evidence Act”). I set out the key details in the statements recorded from Arun below.

24 In Arun’s contemporaneous statement, he stated that Kannan had told him to collect a brown bag. He was told that there was “weed” inside the bag. With reference to his “Grab” car history, he stated that he collected the brown

⁴⁰ NE (2 September 2020) at p 9 ln 29 to p 10 ln 24

bag from Block 256 Punggol Way. Kannan had directed him over the phone to walk towards a block near 256 Punggol Way and to collect a bag that was near the electrical box. Kannan had told him to place the bag in Ashvin's Unit. Arun called Ashvin when he reached the Unit and Ashvin came up from the void deck to take the bag from him.

25 In Arun's cautioned statement, he stated that Kannan had been pestering him to collect some "stuff" over the past two weeks. He initially refused but relented as Kannan was persistent. He then collected the "stuff" beside the electrical box in an open field beside Block 256 Punggol. The "stuff" was inside a brown bag and covered by a red plastic bag. Kannan told him to take a cab and head to the Unit to pass the bag to Ashvin, which he did. Kannan had instructed Arun what to do over the phone when Arun was collecting the "stuff".⁴¹

26 Arun's first long statement was materially similar to his cautioned statement. He stated that Kannan had been asking him to help to collect "weed", which he understood to mean cannabis, for the past two weeks.⁴² Arun eventually agreed to his request. On 2 June 2016, Arun followed Kannan to the Unit. Arun subsequently left the Unit for Punggol in a "Grab" car that Ashvin booked with his phone. While on his way to Punggol, Kannan called Arun and told him that he was to pick up a small bag located at an electrical box and bring it to the Unit. After Arun had picked up the brown bag, he called a "Grab" car and proceeded to the Unit.

⁴¹ P200

⁴² P197 at para 2

27 Upon reaching the Unit, Arun called Kannan and told him that no one was inside the Unit. Kannan informed him that he would call Ashvin and told him to wait. A short while later, Ashvin came to the Unit and took the bag and slipped it through the window. They left the Unit thereafter.

28 On 3 June 2016 at about 12.30am, Arun returned to Block 327 Yishun to meet with Ashvin and Naveen. They went up to the Unit where Ashvin passed some “weed” wrapped in white paper to Naveen through his bedroom window.

29 In Arun’s second long statement, he identified the brown bag that he collected “beside the electrical box at Block 256 or 259 [Punggol]”. At the material time, he saw that there was a red plastic bag in the brown bag but did not check what was inside. He was anxious and had started to panic when he collected the bag. Kannan was “on the line pressuring [him] to come back faster”.⁴³ Kannan did not tell him how much “weed” he would be collecting and Arun did not know whom Kannan got the “weed” from.⁴⁴

30 In Arun’s third long statement, he stated that when he initially refused Kannan’s request to help him to collect the bag at Punggol, Kannan threatened to inform the CNB that Arun smoked cannabis. Arun was shown an extract of ‘WhatsApp’ messages from Kannan’s phone, which Arun identified as messages sent at the time when Kannan told him to collect the “things” for him. In particular, the message “822261 opposite the big field” sent to him from Kannan gave the “location that [he was] supposed to go to collect ‘Kannan’s’ things”.⁴⁵

⁴³ P198 at para 9

⁴⁴ P198 at para 14

⁴⁵ P199 at para 19

Pravin's evidence

31 Pravin testified that sometime after 10.00pm on 2 June 2016, Vinod called Kannan to ask if the cannabis which they had ordered from him a few days before was ready for collection. Pravin testified that they had purchased 125g of cannabis from Kannan, and that they each paid half of the cost of the cannabis, which was “[\$]350 divided by [two] or something like that”, *ie*, \$175 per person.⁴⁶ He testified that it was Vinod who had placed the order⁴⁷ and who told him that the order was placed with Kannan.⁴⁸

32 Later that night, on 3 June 2016,⁴⁹ Pravin and Vinod met Kannan at a void deck near Block 327 Yishun Ring Road. Kannan handed the cannabis to Vinod. Pravin testified that he was smoking while standing about a metre away from Vinod and Kannan, and did not “really see how that happened”.⁵⁰ However, even though he did not see Kannan handing Vinod the package of drugs, he knew that Vinod obtained a package from Kannan because Vinod was holding on to the package when he returned to the car.⁵¹ Pravin identified the package as Exhibit E1.⁵²

⁴⁶ NE (26 August 2020) at p 10 ln 16–27

⁴⁷ NE (26 August 2020) at p 9 ln 22–23

⁴⁸ NE (26 August 2020) at p 21 ln 29 to p 22 ln 8

⁴⁹ NE (26 August 2020) at p 11 ln 23

⁵⁰ NE (26 August 2020) at p 4 ln 29 to p 5 ln 5

⁵¹ NE (26 August 2020) at p 7 ln 22–29

⁵² NE (26 August 2020) at p 8 ln 1–6

33 When they returned to the car, Vinod placed the cannabis at the side compartment of the front passenger door of SKA 1607H. They then drove to a nearby 7-Eleven store and were arrested there.⁵³

Vinod's evidence

34 Vinod testified that a few days prior to 2 June 2016, Kannan had called him to give him a good offer for the purchase of cannabis as he had new stock coming in. Kannan offered him 125g of cannabis for \$350. Pravin and Vinod later decided to share the cannabis and split the cost.⁵⁴

35 On 3 June 2016, Pravin and Vinod met Kannan at one of the blocks in Yishun to collect the cannabis.⁵⁵ Kannan passed him the cannabis in a package wrapped in plastic and tape. When Vinod was meeting with Kannan, Pravin was about one to two metres away from him.⁵⁶ When Vinod returned to the car, he placed the cannabis into the side compartment of the front passenger door. Vinod identified Exhibit E1 as the cannabis which he purchased from Kannan.⁵⁷ Pravin then drove himself and Vinod to a nearby 7-Eleven store where they were subsequently arrested by the CNB.⁵⁸

⁵³ Conditioned Statement of Pravin s/o Palanivallu (AB Vol 1 at p 444)

⁵⁴ Conditioned Statement of Vinod s/o Pergasan (AB Vol 1 at p 446); NE (26 August 2020) at p 47 ln 18 to p 48 ln 15

⁵⁵ NE (26 August 2020) at p 51 ln 7–31

⁵⁶ NE (26 August 2020) at p 34 ln 3–4

⁵⁷ NE (26 August 2020) at p 32 ln 14–16

⁵⁸ Conditioned Statement of Vinod s/o Pergasan (AB Vol 1 at p 446)

Close of the Prosecution's case

36 At the close of the Prosecution's case, the Defence made no submission. I was satisfied that a *prima facie* case had been established to warrant calling the defence. After I administered the standard allocution, Kannan elected to give evidence in Tamil. He was one of three Defence witnesses, the other two being Suresh s/o Krishnan ("Oscar")⁵⁹ and Wong Wui Leong ("Wong"). Wong was only called after the Defence's case had initially closed (see [52] below).

The Defence

37 Kannan's primary defence was that he had been framed by Arun, Ashvin, Pravin and Vinod. In relation to Exhibits B1A and B2A, he denied having gone to Ashvin's bedroom on 2 June 2016 between 9.00 to 10.00pm. He also denied having instructed Arun to collect the drugs and to deliver them to Ashvin. In relation to Exhibit E1, he claimed that he had only met Vinod to pass him his gambling winnings⁶⁰ and that it was Ashvin who packed⁶¹ and passed Exhibit E1 to Vinod.⁶²

Kannan's evidence

38 Kannan testified that on 2 June 2016, his girlfriend had dropped him off with her rental car at his home at about 10.00pm.⁶³ Kannan's residential address was Block 329 Yishun Ring Road #06-1418,⁶⁴ which was situated near the Unit.

⁵⁹ NE (16 September 2020) at p 45 ln 18–21

⁶⁰ Defence's Closing Submissions ("DCS") at para 6

⁶¹ DCS at para 71

⁶² DCS at para 89

⁶³ NE (16 September 2020) at p 13 ln 22 to p 14 ln 3

39 Kannan testified that at about 10.09pm, he received a message with a postal code sent from one Dilip. Dilip also called and asked him where he, Ashvin and Arun were. Kannan told Dilip that Ashvin and Arun would be at the “pondok”, which Kannan described as a “small shelter with chairs and table”, or a “hut”.⁶⁵ Kannan further told Dilip that he was also reaching the “pondok” soon and would pass his phone to them so that Dilip could communicate with them. Dilip then told Kannan to send the postal code to Arun.⁶⁶

40 When he reached his block, he saw Ashvin, Arun and some other friends at the said “pondok”. Kannan told Ashvin and Arun that Dilip had called and wanted to speak to them. He then passed his phone to Ashvin and Arun, who called Dilip using Kannan’s phone. After using the phone, they left it on the table at the “pondok”.⁶⁷ Thereafter, Arun left. Kannan then lent his phone to Ashvin again as the latter asked for it, before going upstairs to his own flat. When he returned downstairs after about 15 minutes, he saw that Ashvin was standing outside the “pondok” speaking on the phone.⁶⁸

41 Thereafter, Vinod called Kannan saying that he was coming over to the shelter of a block, which was a separate location from the “pondok”, so that Kannan could give him his gambling winnings of \$100.⁶⁹ Arun then called Kannan and asked the latter to pass the phone to Ashvin, as he had tried to call Ashvin but the call did not go through. Ashvin then said he was going up to the

⁶⁴ NE (16 September 2020) at p 4 ln 11–13

⁶⁵ NE (16 September 2020) at p 4 ln 29–32

⁶⁶ NE (16 September 2020) at p 14 ln 16 to p 15 ln 13

⁶⁷ NE (16 September 2020) at p 15 ln 23–27

⁶⁸ NE (16 September 2020) at p 16 ln 4 to p 17 ln 20

⁶⁹ NE (16 September 2020) at p 18 ln 11 to p 19 ln 9

Unit to smoke “ice”. Kannan passed his phone to Ashvin and told Ashvin to charge his phone for him as its battery was running low.⁷⁰

42 Arun then came and said that he was going for a party and that he would return thereafter. About 10 to 15 minutes after Arun left, Kannan went up to the Unit as Ashvin had been “missing for a long time”. According to Kannan, he went up sometime near midnight. He went into the Unit and knocked on the door of Ashvin's bedroom. When Ashvin opened the door, he was holding onto the “instrument” used for consuming “ice” in his hand, and he looked panicky. He appeared to be “hyper” and was perspiring.⁷¹

43 Kannan saw his phone at the corner of Ashvin’s bed. As he was taking his phone, he “bumped” into a block on the floor. He then asked Ashvin, “You are still doing this?”, to which Ashvin responded by giggling and saying that it was just for casual smoking. Kannan testified that he shook his head and moved the block to the side as it was in his path. Kannan told Ashvin that he was going downstairs first to pass money to Vinod, and Ashvin said that he would go down to see Vinod later. Kannan was in Ashvin’s bedroom for about 5 to 10 minutes.

Alleged false implication by Vinod

44 Kannan testified that he met Vinod at a shelter, where he gave Vinod his gambling winnings of \$100, but Vinod only took \$50 and told him to transfer the balance \$50 to an account. Pravin was also present near the car.⁷² Kannan further testified that Vinod did not order any cannabis from him and denied

⁷⁰ NE (16 September 2020) at p 19 ln 12–27

⁷¹ NE (16 September 2020) at p 19 ln 30 to p 21 ln 13

⁷² NE (16 September 2020) at p 21 ln 28 to p 23 ln 24

handing Exhibit E1 to Vinod.⁷³ He alleged that Vinod was implicating him because of Vinod's friendship with Ashvin.⁷⁴

Alleged false implication by Ashvin and Arun

45 Kannan denied having gone to Ashvin's Unit between 9.00 to 10.00pm or asking Ashvin to help to keep drugs for him. He testified that he believed that Ashvin had chosen to implicate him instead of "[telling] the truth that it was Arun who gave [the drugs to him]". He stated that Ashvin and Arun consumed cannabis together and would "tend to protect their own community". Since Kannan was under urine supervision by the CNB, it would be "convenient for [Ashvin] to shift the blame" to Kannan. Kannan was also the last to leave Ashvin's Unit and he had seen the block of cannabis when he went up to the Unit to take his phone. Ashvin and Arun had also used his phone to make calls to Malaysia to contact Dilip. Ashvin had also consumed "ice" and might therefore have become "paranoid" and "overstretch[ed] [his] thinking".⁷⁵

46 Kannan also denied having directed Arun to an electrical box near Punggol field to collect a bag, or that he had directed Arun to pass the bag to Ashvin.⁷⁶ The message containing the postal code "822261" sent from Kannan's phone to Arun was forwarded from Dilip, who told Kannan to send the message to Arun.⁷⁷ Most of his calls made and messages sent between him and Arun on 31 May, 1, 2 and 3 June 2016 exhibited in the prosecution's summary table of

⁷³ NE (16 September 2020) at p 25 ln 8–20

⁷⁴ NE (16 September 2020) at p 26 ln 10–21

⁷⁵ NE (16 September 2020) at p 35 ln 31 to p 36 ln 27

⁷⁶ NE (16 September 2020) at p 39 ln 31–32; p 40 ln 26 to p 41 ln 8

⁷⁷ NE (16 September 2020) at p 42 ln 7–9; p 43 ln 21–24

telecommunication records were in relation to the collection of gambling money from Oscar.⁷⁸ He ventured various reasons as to why Arun would implicate him, including his belief that Arun and Ashvin belonged to one “team” and one “community” who consumed cannabis. He stated that Ashvin and Arun had a close relationship, whereas he was not close to Arun. He testified as follows:⁷⁹

What I think is before I---what I feel is that before I entered into their lives, they were very happy consuming cannabis. Arun has also sold cannabis. And they are using my phone to talk to Dilip. They are one community. We can say that they are one team. Except for the team itself, who else knows that they are having this cannabis? That’s what I can think of, I can’t think of anything else. Even the phone calls, they have used my phone to make calls to Malaysia. And when CNB was arresting Arun, they had shown my photo to Arun, they had shown both my photo and Ashvin’s photo to Arun. In the contemporaneous statement, Arun had used the word “they”, so who is he referring to? And after that, he had said that he’s referring to one cousin Kanna. This is what I feel, but I myself did not understand.

47 He further testified that Ashvin and Arun had “joined together” and “teamed up”, stating:⁸⁰

⁷⁸ NE (16 September 2020) at p 45 ln 18–21

⁷⁹ NE (16 September 2020) at p 49 ln 3–12

⁸⁰ NE (16 September 2020) at p 49 ln 19–32

I know that both of them consumed cannabis, but I do not know if they sell cannabis. That has got nothing to do with me. It's only after I saw the thing in Ashvin's room that I felt one kind. I think that both of them, Ashvin and Arun, are up to something, they are doing something. They have cannabis to consume every day, where are they getting it from? That's what I myself do not understand. This is a death penalty case. Both of them are always consuming cannabis and the journey is a very smooth journey. And I am not sure if they got arrested because of my phone, because they used my phone. I can't think of anything else, I do not know. Both of them have joined together, both of them have teamed up.

48 When asked by his counsel Mr Ram Goswami ("Mr Goswami") to elaborate as to what he meant by Ashvin and Arun having "teamed up", Kannan testified that although he was scared when he was shown the "notice saying that if you cooperate, you can be spared the death penalty", he told the CNB officers the truth. However, Ashvin and Arun had lied in their statements to the CNB.⁸¹ As to why Ashvin and Arun would "team up" against him, Kannan testified that they had done so "[f]or their lives to be spared [and to] escape the gallows", which was "why they [had] already been sentenced" and did not even go for trial.⁸²

49 Kannan testified that when he was brought to the CNB Headquarters after his arrest, he saw Arun, Ashvin, Pravin and Vinod in the room where he was taken to give his urine specimen. He testified that he did not hear them talk but saw them signalling to each other. However, he also testified that he asked Ashvin and Arun why his name was being mentioned, to which they shrugged their shoulders in response.⁸³

⁸¹ NE (16 September 2020) at p 50 ln 11–29

⁸² NE (16 September 2020) at p 51 ln 24–26

⁸³ NE (16 September 2020) at p 52 ln 19–29

50 Further, Kannan testified that a “Chinese guy” (later identified by the Prosecution as Wong), who was in the same cell as Kannan at the Police Cantonment Complex (“PCC”), had been brought for drug withdrawal assessment and back in the same van as Ashvin and Arun. This Chinese male told Kannan that Arun and Ashvin were talking to each other and that they had conspired to frame him.⁸⁴ Finally, Kannan claimed that after Vinod had given his testimony in court on 26 August 2020, Vinod and Pravin had told Ashvin and Arun about what they had testified in court in the lock-up.⁸⁵

Oscar’s evidence

51 The Defence called Oscar as the second Defence witness. Oscar testified that he placed bets with Kannan, and that Arun had collected money from him on behalf of Kannan. He testified that he owed Kannan about \$2000 at the time for “betting money” before Kannan was arrested.⁸⁶

Wong’s evidence

52 Following from Kannan’s evidence that one Chinese male had told him that he heard Ashvin and Arun conspire to falsely implicate him, further investigations were conducted by the CNB after the Defence case was closed. Wong’s identity was ascertained based on CNB’s records showing that he had shared the same van as Ashvin and Arun on the way to the Changi Medical Complex (“CMC”) and was placed in the same cell as Kannan at the PCC. A written statement was recorded from Wong and disclosed to the Defence. The

⁸⁴ NE (16 September 2020) at p 53 ln 10–20; NE (17 September 2020) at p 36 ln 18 to p 37 ln 22

⁸⁵ NE (16 September 2020) at p 57 ln 26 to p 58 ln 12

⁸⁶ NE (18 September 2020) at p 22 ln 22–27; p 23 ln 15 to p 24 ln 8

Prosecution then sought an urgent hearing date to hear an application under s 283(1) of the CPC as to whether Wong should be summoned as a witness.⁸⁷ The Prosecution's position was that it was not obliged to call Wong as a witness. During the case conference before me on 9 November 2020, Mr Goswami indicated that he intended to call Wong as a Defence witness but would only file the summons for Wong's attendance after having interviewed Wong. After this interview, the Defence confirmed their position that they would call Wong as a Defence witness.

53 Wong testified that he was in the same van as two Indian males on the way to the CMC. During the ride, he heard them say that they wanted to "push the blame to someone" and "push everything to...[someone]".⁸⁸ Wong was later placed in the same cell as Kannan at the PCC. When they were discussing their cases, Wong thought that Kannan's case sounded similar to the case that the two Indian males were speaking about in the van. Wong testified that he did not know who the two males were referring to when they said that they wanted to "push everything to him", but assumed that "him" referred to Kannan since they were apparently speaking about the same case as Kannan.⁸⁹

My decision

Elements of the charge

54 Kannan was charged with abetment by entering into a conspiracy with Arun and Ashvin for Arun to traffic 829g of cannabis to Ashvin by instructing

⁸⁷ Prosecution's Submissions dated 6 November 2020 at paras 4–8

⁸⁸ NE (23 November 2020) at p 4 ln 29 to p 5 ln 27

⁸⁹ NE (23 November 2020) at p 7 ln 10–32

Arun to deliver the drugs to Ashvin at the Unit on 2 June 2016 at about 9.00pm. The Prosecution would need to show that Kannan (a) had engaged in a conspiracy for Arun to deliver the drugs to Ashvin, and (b) that an act was committed in pursuance of the aforementioned conspiracy, *ie*, that Kannan had instructed Arun to deliver the drugs (*Public Prosecutor v Tangaraju s/o Suppiah* [2018] SGHC 279 at [49]).

55 The *mens rea* for abetment by conspiracy is that the abettor must have (a) intended to be party to an agreement to do an unlawful act; and (b) known the general purpose of the common design, and the fact that the act agreed to be committed is unlawful (*Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 (“*Bahashwan*”) at [34]). As such, the Prosecution would need to show that Kannan intended an unlawful act to take place pursuant to the conspiracy between him, Ashvin and Arun, that unlawful act being Arun’s trafficking of drugs to Ashvin. Further, the Prosecution would have to show that Kannan knew the nature of the intended drugs to be trafficked pursuant to that conspiracy (*Public Prosecutor v Chandroo Subramaniam and others* [2020] SGHC 206 at [40]).

56 An additional *mens rea* requirement would be applicable in this case, since the Prosecution’s case was that Kannan was the eventual intended recipient of the drugs which he had instructed Arun to traffic to Ashvin. As stated by the Court of Appeal in *Bahashwan* at [76], if there is evidence that the accused was the intended recipient of the drugs which form the subject matter of the charge, then the Prosecution has the burden to prove beyond reasonable doubt that he intended to traffic in the offending drugs.

57 The Prosecution submitted that if the court accepts the evidence of Ashvin and Arun, all the elements of the charge would be established as their

evidence showed that (a) Ashvin, Arun and Kannan entered into an agreement to traffic in cannabis; (b) Kannan had actual knowledge in respect of the nature of the drugs; (c) Kannan intended to traffic in the drugs by selling them to his customers; and (d) Kannan acted in pursuance of the conspiracy, by issuing instructions to Ashvin and Arun in relation to the collection and safekeeping of the drugs, which were complied with.⁹⁰

58 The Defence submitted in turn that there was insufficient evidence of a conspiracy as Ashvin did not testify to having an agreement with Arun that Arun would collect the cannabis and traffic it to Ashvin. Ashvin also did not have any agreement with Kannan that Arun would collect the cannabis and pass it to Ashvin.⁹¹ Ashvin and Arun were “accomplices in their own conspiracy” to traffic in the two blocks of cannabis and had framed Kannan in respect of the drugs.⁹²

Ashvin’s evidence

59 I agreed with the Prosecution’s submission that Ashvin was a credible witness. I accorded full weight to his evidence which withstood intense cross-examination.

60 The Defence pointed to various alleged illogical aspects and inconsistencies in Ashvin’s evidence. First, the Defence pointed to Ashvin’s contemporaneous statement taken under s 22 of the CPC on 3 June 2016,

⁹⁰ PCS at para 44

⁹¹ DCS at paras 214–215

⁹² DCS at para 23

wherein he stated that Kannan (instead of Arun) had passed the drugs to him,⁹³ which contradicted his evidence in court. Ashvin had however explained in re-examination that when this answer was recorded in his contemporaneous statement, he was in fact “thinking about Arun”, and that he had clarified this in his further statements to the CNB.⁹⁴ I accepted that this was a genuine mistake which Ashvin had clarified and that the core of his evidence remained consistent overall. Ashvin’s evidence was also corroborated by Arun’s statements.

61 It was strenuously argued by the Defence that Ashvin’s contemporaneous statement contained lies and was inconsistent with his testimony in court. Arun’s photograph was not part of the photograph board shown to Ashvin during the taking of his contemporaneous statement, whereas Kannan’s photograph was part of it. This fortified Ashvin’s plan to implicate Kannan. Ashvin’s response to question eight in his contemporaneous statement was also inconsistent with his testimony in court, which showed that he had lied to conceal Arun’s involvement in his attempt to implicate Kannan.

62 The relevant portions of Ashvin’s contemporaneous statement are reproduced below:

Q2. To whom does the weed belongs [sic] to?

A2. It belongs to ‘YKB’.

Q3. Who is ‘YKB’?

A3. My friend.

Q4. Can you point to me who is ‘YKB’? (Subject was shown a photo album of male Indians.)

⁹³ D1 at question and answer 8

⁹⁴ NE (27 August 2020) at p 104 ln 15–20

A4. YKB is number 8. (Recorder’s note: Number 8 in the photo album is one Kannan S/O R Kumaran...)

...

Q8. How did he pass the weed to you?

A8. I met him at level 3 of my blk at the staircase. We then walk together to the window of my bedroom. He then open the paper bag and I took out one block and put it through my window. The other block I put it through together with the paper bag.

63 Second, the Defence also highlighted inconsistencies between Ashvin’s long statement taken under s 22 of the CPC on 8 June 2016⁹⁵ and his testimony in court. In my assessment, the inconsistencies in Ashvin’s long statement were immaterial and did not detract from the core of his evidence. The alleged inconsistencies are as follows:⁹⁶

(a) First, in his long statement, he stated that “[o]n 2.6.2016 at about 5.30pm, “YKB” (*ie*, Kannan) called me on my handphone...and he told me that he might be getting some “Stuff”, which I understood to be “Weed”, and whether he can put it at my place”.⁹⁷ However, he testified that he had received a call from Kannan at about 8.00pm and returned the call thereafter. Ashvin sought to explain that there was a “typo error” on the long statement and that it should state “8.30”.⁹⁸

(b) Second, in his long statement, he stated that “[w]hile [he] was downstairs, ‘YKB’ called [him] at about 11 plus, telling [him] that

⁹⁵ D2

⁹⁶ DCS at pp 76–80

⁹⁷ D2 at para 7

⁹⁸ NE (27 August 2020) at p 91 ln 30 to p 92 ln 1

‘Arun’ reached already”.⁹⁹ However, there was no record of a phone call from Kannan to Ashvin at that time.¹⁰⁰ Ashvin explained that when he gave his statement, he was “confused [as to] whether [Kannan had] called [him] or [if] he came towards [him] and spoke to [him] in person”.¹⁰¹

(c) Third, in his long statement, he stated that “[a]t about 12 plus am on 3.6.2016, “YKB” called [him] and told [him] that he needed to go up and take the stuff to pass to his customers”.¹⁰² However, there was also no record of a phone call from Kannan to Ashvin at that time.¹⁰³ Ashvin explained that similarly, he was confused as to whether Kannan had called him or approached him in person, but “this conversation did happen”. Ashvin testified that his testimony in court was the accurate version of events and that he was “clear with [his] mind now”. According to Ashvin, “only the calling part should be false...the rest is the truth”.¹⁰⁴

(d) Fourth, Ashvin had allegedly stated in his long statement that Kannan handed him a red plastic bag containing a weighing scale while in Ashvin’s room.¹⁰⁵ However, Ashvin had testified that Kannan had passed the weighing scale to Ashvin through the window.

⁹⁹ D2 at para 7

¹⁰⁰ AM1 at p 10

¹⁰¹ NE (27 August 2020) at p 93 ln 15–30

¹⁰² D2 at para 7

¹⁰³ AM1 at p 10

¹⁰⁴ NE (27 August 2020) at p 94 ln 16 to p 95 ln 7

¹⁰⁵ D2 at para 8

64 The Defence submitted that Kannan did not ask Ashvin to keep the drugs in his Unit. The Defence further submitted that Ashvin would not have put his life or job at risk merely to do Kannan a favour, and his claim that he felt pressured or obligated to help Kannan out was improbable. In fact, Ashvin and Arun had sought to keep the said drugs in the Unit as part of their private stash for daily smoking, as they were cannabis consumers.¹⁰⁶ It was further asserted that Ashvin was the one who sold Exhibit E1 to Vinod and Pravin.

65 Ashvin's evidence was not perfectly consistent or flawless. Nonetheless, I concurred with the Prosecution that the various inconsistencies raised by the Defence were inconsequential and did not affect the crux of Ashvin's evidence. They involved relatively minor details (*eg*, whether communications were made in person or by a telephone call). In relation to how the weighing scale was handed to Ashvin, the Prosecution had also clarified that Ashvin's statement was merely silent as to whether the weighing scale had been passed to Ashvin through the window, and was not in fact contradictory to his testimony in court.¹⁰⁷ At its core, the substantive evidence Ashvin gave was coherent and complete in pointing to Kannan's role as the mastermind in the entire scheme.

66 Ashvin had mistakenly referred to Kannan in his answer to question 8 of his contemporaneous statement. He had explained that this was a genuine oversight on his part. He had in any case clarified the version of events in his long statement in due course. His oral testimony remained consistent with what he had stated in his long statement. If he had genuinely wanted to fabricate evidence to incriminate Kannan, he would not have given a different version of

¹⁰⁶ DCS at paras 135–139

¹⁰⁷ NE (27 August 2020) at p 95 ln 22 to p 96 ln 8; D2 at para 8

events in his subsequent long statement. I shall elaborate in due course on the reasons why I found that Ashvin had no reason to falsely implicate Kannan.

67 As for the Defence’s submission that Arun’s photograph was not part of the photograph board, and that Ashvin had been prompted by having seen Kannan’s photograph instead, hence fortifying his plan to implicate Kannan, this argument was illogical and without merit. While giving his contemporaneous statement, Ashvin had already identified ‘YKB’ (*ie*, Kannan)¹⁰⁸ as the person to whom the weed belonged in response to question two. In sequential terms, this took place before the photo board which contained Kannan’s photograph was even shown to him.

68 Both Ashvin and Arun gave evidence suggesting that Kannan had a forceful and assertive personality; he was not someone they could easily say “no” to. When Kannan insisted, Ashvin felt a sense of “helplessness” and felt that he was left with no choice but to agree to help Kannan. This was consistent with my observations of Kannan’s conduct and presentation in the courtroom. He was self-consciously relaxed while seated in the dock. He was loquacious and animated while on the witness stand, and uninhibited in his attempts to communicate with counsel in the midst of the proceedings. He exuded smugness and brashness. It was thus not at all surprising to hear Ashvin’s evidence that he felt pressured and obligated to accede to Kannan’s request for assistance when he saw Kannan in person (see [16] and [17] above).¹⁰⁹

¹⁰⁸ It is noted that Ashvin in his long statement (D2) continued to refer to Kannan as “YKB”. Arun in his second long statement at para 11 also saved Kannan’s contact as “YKB” in his phone records, stating that “YKB” means “Yishun Kanna Boy”.

¹⁰⁹ NE (27 August 2020) at p 65 ln 9–10; p 67 ln 18–27

69 The fact that Ashvin had agreed to assist Kannan despite being reluctant initially accorded with Ashvin's evidence of what transpired: Ashvin left the Unit to try to distance himself from helping Kannan to keep the drugs; he locked the windows and window grilles so that Kannan would not be able to put the drugs through his window; he protested (albeit weakly) about the weight of the drugs being more than 500g while with Kannan in the lift; and he also told Kannan to take all the drugs with him when he left.

70 Kannan was unable to assert that Ashvin and Arun were conspiring to traffic in the drugs, as he simply had no basis to make any such claims. In any event, Kannan's contention that the drugs were Ashvin and Arun's private stash meant for their private consumption was unbelievable. It was highly implausible that such a large quantity of drugs would be for their personal consumption.

71 The Defence also submitted that the results of the HSA analysis of the exhibits implicated Ashvin instead of Kannan. The DNA profile on four strands of hair found on the brown packaging tape attached to the packaging of Exhibit E1¹¹⁰ (Exhibit "E1(Packaging)-P1") matched the DNA profile of Ashvin.¹¹¹ Based on this DNA analysis result, the Defence submitted that it could be strongly inferred that Ashvin had packed Exhibit E1. It was also submitted that SSI Ismail, who was also the Investigation Officer, had erred in not sending the tape and only the strands of hair for analysis. Further, Ashvin's DNA was also purportedly found on Exhibits B1, D1B and D1C. Ashvin had however testified that he threw Exhibits D1B and D1C, which were the "remaining of the plastic",

¹¹⁰ AB Vol 1 at p 216

¹¹¹ AB Vol 1 at p 212; Statement of Agreed Facts at para 57

into the trash bag after Kannan had cut open one block of cannabis.¹¹² The Defence submitted that an inference could again be drawn that Ashvin had unwrapped one block of drugs and thrown the wrappers into his trash bag. Kannan's DNA was also not found on any of these exhibits. He asserted that he had sweaty palms and that therefore more of his DNA would have been left on the exhibits if he had in fact touched them. The Defence submitted that the results of the DNA analysis collectively showed that Ashvin was dealing with the drugs "as if they were his own", undermining his claim that they belonged to Kannan.¹¹³

72 With respect, the Defence had drawn incorrect inferences from its reading of the HSA results. Ashvin's hair was detected on Exhibit E1 but this was hardly a surprising or revelatory discovery. I have accepted Ashvin's evidence that Exhibit E1 was packed by Kannan in Ashvin's bedroom. Kannan had obviously taken precautions to avoid detection while packing the drugs, such as by using tape taken from the Unit. Ashvin had also testified that he had picked up D1B and D1C to dispose of them and this would readily explain why his DNA was found on them. Just because Kannan's DNA was not detected did not mean that he did not physically handle the exhibits, and whether any trace of an individual's DNA could be detected would depend on various factors including the individual's shedder status.¹¹⁴ As for Kannan's assertion that his sweaty palms would have resulted in a greater likelihood of DNA detection, this was entirely speculative. No scientific evidence was adduced by the Defence in support. Mr Goswami had attempted to cross-examine Ms Wong Hang Yee, a

¹¹² NE (27 August 2020) at p 58 ln 19 to p 59 ln 6

¹¹³ DCS at para 81

¹¹⁴ NE (25 August 2020) at p 34

forensic scientist from the HSA, on this point. Ms Wong's response was that a person might transfer or leave behind more DNA on an object "if the person is a high shedder and he has sweaty palms". There was however no evidence that having sweaty palms alone would lead to a greater likelihood of DNA detection.¹¹⁵ For completeness, Ashvin's DNA was not found on Exhibit B1.¹¹⁶

73 SSI Ismail did not send the tape used to wrap Exhibit E1 for HSA analysis. He testified that this was because DNA from Ashvin's hair would have already contaminated the tape.¹¹⁷ In any event, this did not cause added prejudice to the Defence. Even if Ashvin's DNA was found on the tape, this would not further strengthen the Defence's case (or conversely, weaken the Prosecution's case), given that Exhibit E1 was packed in Ashvin's bedroom and the tape was taken from Ashvin's Unit.

74 Fundamentally, Ashvin's evidence was largely consistent when viewed in totality. Ashvin came across as a forthright and candid witness, whose evidence was not shaken in cross-examination. He provided a detailed and consistent account of what had transpired on 2 and 3 June 2016 and offered clarifications and explanations based on what he could recall. I found no hint of evasiveness or ambivalence. There were no attempts to embellish his evidence or plaster over lapses or gaps. I was fully satisfied that he was a credible witness. I noted also that his evidence was corroborated by Arun's statements.

75 I shall explain in due course why I found no reason for Ashvin, Arun, Vinod and Pravin to falsely incriminate Kannan.

¹¹⁵ NE (25 August 2020) at p 37 ln 31 to p 38 ln 3

¹¹⁶ AB Vol 1 at p 206

¹¹⁷ NE (3 September 2020) at p 52 ln 1–16

Arun's evidence

76 Turning to Arun's evidence, I accepted the Prosecution's submission that Arun's testimony should be constituted by the collective contents of his statements to the CNB which were admitted as substantive evidence pursuant to s 147(3) of the Evidence Act. Arun's statements and Ashvin's evidence were consistent on the key issues, namely, that a meeting had occurred at the Unit on 2 June 2016 where Kannan had, in Ashvin's presence, instructed Arun to collect the drugs, and that Arun returned to the Unit after collecting the drugs and passed them to Ashvin, who stored them in the Unit. Moreover, Arun's statements should be given due weight as they were given voluntarily, recorded close in time to the alleged incident and were cogent and coherent.

77 Arun made no effort to conceal his unwillingness to testify in court for both the Prosecution and the Defence. His repeated claims in court that he could not remember what had happened on the day of the alleged incident were indications that he was unwilling to tell the truth in court. Having regard to s 147(6) Evidence Act, it was precisely because he was an uncooperative witness in court that recourse to his statements was necessary, and appropriate weight could be attached to the statements he had given to the CNB.

78 Arun insisted that he did not remember any details about the events of 2 and 3 June 2016. I found that he did so either out of fear or reluctance to implicate Kannan in open court, as Kannan was a distant cousin. There is no reason why the veracity of his CNB statements would be impugned due to his reticence in court, which was likely to have stemmed from his desire to adopt a neutral stance vis-à-vis Kannan.

79 The settled law is that even where a witness is found to have lied on a matter, it does not necessarily affect his credibility as a whole. A court is competent to accept one part of the witness' testimony and reject another (see *Ng Kwee Leong v Public Prosecutor* [1998] 3 SLR(R) 281 at [15]). Arun had testified that he had lied in his statement about Ashvin supplying cannabis to one "Babu" because his own cannabis supplier "was still outside at that point in time" and he did not want to implicate his supplier.¹¹⁸ This was a credible and believable reason.

80 The Defence further submitted that Arun had made calls to Dilip using Kannan's handphone and that Arun had collected the drugs on Ashvin's instructions from the location given by Dilip in the postal code.¹¹⁹ Arun had admitted that his phone did not have an auto-roaming function and therefore he could not call Dilip who was in Malaysia.¹²⁰ Arun was allegedly also "deeply involved in consuming and in sourcing for cannabis" and would have been involved in sourcing the drugs which were the subject matter of the present charge.¹²¹

81 Regarding Arun's purported admission that he could not call Dilip, the Defence had mischaracterised this point. This was not an admission that he had used Kannan's phone to call or otherwise contact Dilip, but that he believed that his phone, which did not have an auto-roaming function, could not be used to contact Dilip who was in Malaysia. It was undisputed that Arun was a drug

¹¹⁸ NE (2 September 2020) at p 63 ln 11–26; p 79 ln 20–23

¹¹⁹ DCS at para 23

¹²⁰ NE (2 September 2020) at p 47 ln 29 to p 48 ln 8

¹²¹ DCS at para 34

consumer, had helped “Babu” to obtain drugs and had drug suppliers.¹²² But all these did not mean that he was the source of the drugs that were the subject matter of the present charge.

Pravin and Vinod’s evidence

82 The Prosecution submitted that Kannan’s intention to traffic in the drugs could be inferred from the sheer quantity of drugs involved, as well as Pravin and Vinod’s evidence that Exhibit E1 was sold to them.¹²³

83 The Defence submitted that there were material inconsistencies in Vinod’s testimony. First, Vinod had initially stated in his conditioned statement that he had “transferred a sum of \$350 to ‘Kanna’s’ bank account”.¹²⁴ He later testified that he “[could not] remember exactly whether [he] passed Pravin \$175, because he made the transfer or whether [Pravin] passed [him] \$175 [and he] made the transfer, it was either or”.¹²⁵ He also testified that he “[did not] know whether that was Kannan’s bank account in particular...[i]t was an account number given by him”.¹²⁶

84 Second, Vinod allegedly changed his testimony multiple times in relation to where Kannan took Exhibit E1 out from before allegedly passing it to him. It was also incredible that Pravin, who was only standing a metre away, would not have seen Kannan pass Exhibit E1 to Vinod.

¹²² NE (2 September 2020) at p 43 ln 30 to p 44 ln 3

¹²³ PCS at paras 101–103

¹²⁴ AB Vol 1 at p 446 para 3

¹²⁵ NE (26 August 2020) at p 48 ln 17–19

¹²⁶ NE (26 August 2020) at p 50 ln 12–13

85 Despite the Defence’s contentions, in my view, Pravin and Vinod were consistent on the key elements regarding Vinod having obtained cannabis from Kannan on 3 June 2016. Pravin could not confirm whom Vinod had ordered Exhibit E1 from,¹²⁷ but was certain that they met Kannan on 3 June¹²⁸ and that Vinod had returned to the car with Exhibit E1. Vinod testified that Ashvin was not his dealer and that he had never bought cannabis from Ashvin.¹²⁹ He also testified that he did not meet Ashvin that day, but only saw Ashvin at the CNB Headquarters after they were arrested.¹³⁰

86 The alleged inconsistencies in relation to how the \$350 was paid to Kannan were immaterial. Vinod testified that he was the one who transferred the moneys, but he could not remember the precise details of the account transfer. Nevertheless, he was sure that the \$350 was transferred to an account given by Kannan.¹³¹ Vinod’s evidence that he could no longer remember how the \$350 was transferred to Kannan was believable and it also made sense that he did not know whether the account given to him necessarily belonged to Kannan.

87 There were some gaps in Vinod’s recollection in relation to how Exhibit E1 was passed to him. Vinod acknowledged that while he was certain that Kannan was “definitely not carrying [Exhibit E1] in his hand and walking around”, he did not remember where exactly Kannan took the drugs out from. However, Vinod was clear in his recollection that Kannan had passed Exhibit

¹²⁷ NE (26 August 2020) at p 21 ln 31 to p 22 ln 5

¹²⁸ NE (26 August 2020) at p 11 ln 23

¹²⁹ NE (26 August 2020) at p 41 ln 2–3

¹³⁰ NE (26 August 2020) at p 54 ln 27–30

¹³¹ NE (26 August 2020) at p 50 ln 25–27

E1 to him.¹³² Pravin had also testified clearly that Vinod returned to the car (SKA 1607H) with Exhibit E1.

88 The Defence further submitted that it was Ashvin who delivered Exhibit E1 to Vinod and not Kannan. Kannan did meet Vinod but the meeting was for the purpose of passing him \$100 which was his gambling winnings. Further, Vinod and Pravin drove off after meeting Kannan at about 12.20am,¹³³ and were arrested at about 12.22am on 3 June 2016. However, they could not possibly have taken only two minutes to travel from Block 330 Yishun Ring Road to the 7-Eleven store where they were arrested. According to the Defence, Vinod was also on the phone at 12.25am.¹³⁴ The Defence therefore submitted that the arrest could not have taken place at 12.22am and there was time for Ashvin to meet Vinod after Kannan and Vinod had parted ways, and that it was Ashvin who had passed Exhibit E1 to Vinod.¹³⁵

89 I was of the view that Kannan's claim to have met Vinod only to pass him his gambling winnings was not credible. It was after all undisputed that only \$13 was found on Vinod.¹³⁶ Kannan's claim was an afterthought which was crafted to bolster his defence that his only involvement revolved around illegal soccer betting. I shall address the mobile phone communication records more fully at [122] – [136] below.

¹³² NE (26 August 2020) at p 52 ln 21 to 53 ln 31

¹³³ Conditioned Statement of Ng Tze Chiang Tony (AB Vol 1 at p 421)

¹³⁴ AB Vol 1 at p 325; NE (26 August 2020) at p 37 ln 21 to p 38 ln 19 (in respect of 83106518 as Vinod's number)

¹³⁵ DCS at para 84

¹³⁶ NE (26 August 2020) at p 66 ln 5–8; p 71 ln 7–14

90 With regard to the issue of timing, it was reasonable to expect that some slight discrepancies in timing could have arisen. This was hardly a situation where events had allegedly occurred hours or days apart. Vinod and Pravin would have left Block 330 and would have been arrested at the 7-Eleven store around the stated times but the precise timings could have been recorded inaccurately. It bears noting that SSSgt Chien had testified that the distance between the blocks was only around 1km. SSSgt Chien (who was trailing SKA 1607H on a motorcycle as the rider¹³⁷)¹³⁸ as well as Pravin¹³⁹ and Vinod¹⁴⁰ all agreed that Block 330 was not far from the 7-Eleven store at Block 413 Yishun Ring Road. Either way it would have taken a short amount of time to travel within the Yishun neighbourhood when it was past midnight and traffic was light.¹⁴¹ I was satisfied that Pravin and Vinod would not have had the opportunity to meet Ashvin after their meeting with Kannan.

Kannan's defence

Kannan's version of events involving Exhibits B1A and B2A

91 As stated at [37] above, Kannan's case was that he had nothing to do with the drugs seized in Ashvin's unit, including Exhibits B1A and B2A. I have found the evidence of Ashvin and the statements of Arun to be compelling and accept the version of events that they have given implicating Kannan. I will

¹³⁷ NE (25 August 2020) at p 12 ln 26

¹³⁸ NE (25 August 2020) at p 9 ln 4–6; p 12 ln 11–17 (SSSgt Chien testified that it was possible to travel the 1 km distance within approximately 2 minutes)

¹³⁹ NE (26 August 2020) at p 14 ln 5 to p 15 ln 26

¹⁴⁰ NE (26 August 2020) at p 57 ln 21 to p 58 ln 17

¹⁴¹ NE (25 August 2020) at p 12 ln 11–17

elaborate further below regarding Kannan's allegation that he had been framed by Ashvin and Arun.

Kannan's version of events involving Exhibit E1

92 In relation to Exhibit E1, Kannan claimed that it was packed and passed to Vinod by Ashvin.

93 The Defence submitted that Ashvin could have left the Unit to pass Exhibit E1 to Vinod without having been recognised or detected by the CNB officers. SI Alwin, who was keeping observation of the Unit, had said that there were times when he did not fix his eyes on the Unit.¹⁴² He saw a male Indian subject (Kannan) coming out from the Unit at about 12.15am on 3 June 2016, but he did not see Ashvin and Arun in the corridor of the Unit after 11.30pm on 2 June 2016, trying to push things into the Unit.¹⁴³ SSI Ng testified that he saw Kannan meeting Pravin and Vinod, but also agreed with Mr Goswami that if Ashvin had met Pravin and Vinod, he would not have noticed him as he did not know what Ashvin looked like.¹⁴⁴

94 It was also contended that SSI Ismail's failure to seize the CCTV footage of the lifts in Block 327 had "left a serious lacuna in the prosecution's evidence". The Defence maintained that the footage would have shown who had gone up to the Unit and when they had done so.¹⁴⁵

¹⁴² NE (24 August 2020) at p 60 ln 18–20

¹⁴³ NE (24 August 2020) at p 61 ln 26 to p 62 ln 30

¹⁴⁴ NE (24 August 2020) at p 55 ln 24–32

¹⁴⁵ DCS at para 93

95 As for the CNB officers' evidence in relation to their observations of the Unit, it was not clear exactly when Ashvin and Arun were at the bedroom window of the Unit. But Ashvin testified that Arun had made a call to him on 2 June at 11.37pm.¹⁴⁶ Arun was outside the Unit and was unable to slip the drugs through the window as the windows were locked.¹⁴⁷ SI Alwin testified in re-examination that at 11.30pm he was still in his vehicle and that he would take about five minutes to position himself at level four of Block 328. As such, it was possible that he had missed out on observing Ashvin and Arun at the window of the Unit.¹⁴⁸ As for SSI Ng, his evidence was that he only saw two male Indians (later identified to be Vinod and Pravin) meet with Kannan.¹⁴⁹ Taking into account the totality of the evidence from the Prosecution's witnesses, Kannan's claim that Ashvin was the one who passed Exhibit E1 to Vinod did not withstand scrutiny. It was flatly contradicted by the evidence of Vinod and Pravin as well as all the available observation evidence.

96 Finally, in respect of the Prosecution's failure to adduce the CCTV footage of the lifts in Block 327, this was a neutral point. It did not adversely affect the Prosecution's case or cause material prejudice to Kannan. It was uncontroversial that Ashvin and Arun, but not Kannan, were present when the drugs were being sent to the Unit. It was also uncontroversial that Kannan subsequently did go up to the Unit and had met Ashvin in his bedroom.

¹⁴⁶ AM1 at p 14, s/n 27

¹⁴⁷ NE (27 August 2020) at p 20 ln 30–32

¹⁴⁸ NE (24 August 2020) at p 64

¹⁴⁹ Conditioned Statement of Ng Tze Chiang Tony (AB Vol 1 at p 421)

The alleged conspiracy between Ashvin, Arun, Vinod and Pravin to frame Kannan

97 A key plank of Kannan’s defence was that Ashvin, Arun, Vinod and Pravin had conspired to frame him. Kannan’s defence was that this conspiracy had been formed via communication on the following occasions:

- (a) amongst Ashvin, Arun, Vinod and Pravin at the CNB Headquarters;
- (b) amongst Ashvin, Arun, Vinod and Pravin in the lock-up after Vinod had testified; and
- (c) between Ashvin and Arun in the van on the way to the CMC, based on what Wong allegedly heard.

I was of the view however that his allegations were completely devoid of merit and address each in turn.

(1) Communication at the CNB Headquarters

98 The Prosecution submitted that Kannan’s claim that he had been falsely implicated was fabricated and tailored. Initially, his defence was that Ashvin had *spoken* to Arun and Vinod at the room in the CNB Headquarters where their urine samples were being procured and told them to implicate Kannan. Mr Goswami cross-examined Ashvin on the point that Ashvin had *told* Vinod to implicate Kannan:¹⁵⁰

¹⁵⁰ NE (27 August 2020) at p 24 ln 25–27

Q: Yes. So you told Vinod not to implicate you in respect of [Exhibit] E1 but to push the blame to Kannan, that Kannan handed him E1.

A: I disagree, Your Honour. There's no way we could speak at the station.

99 Mr Goswami thereafter cross-examined Ashvin on the point that Ashvin had conspired with Arun:¹⁵¹

Q: While in the CNB, inside the urine-taking room, you had also spoken to Arun and you had conspired with Arun to push the blame for the two blocks of cannabis seized from your bedroom to Kannan.

A: I disagree.

100 The Prosecution submitted that when Kannan took the stand, his evidence changed completely to that of Ashvin, Arun, Pravin and Vinod *signalling* to one another. This was of particular significance. In my view, it amply demonstrated that Kannan's evidence was internally inconsistent. When cross-examined on the inconsistency between the four of them speaking and signalling to each other, Kannan adroitly changed tack and attempted to argue that it was unimportant whether they had spoken or signalled to one another, since the "main purpose here [was that] they [had]communicated".¹⁵² Kannan initially indicated that this alleged signalling was done via a gesture across the mouth with a "zipping" motion. This "zipping" gesture appeared somewhat curious to me, as it seemed to be a signal to refrain from talking or to remain silent.¹⁵³ When cross-examined by the Prosecution as to how that gesture would indicate that they were signalling to pin the blame on him and not on anyone

¹⁵¹ NE (27 August 2020) at p 24 ln 14–17

¹⁵² NE (17 September 2020) at p 30 ln 21–24

¹⁵³ NE (17 September 2020) at p 33 ln 18–23

else, Kannan then testified that Ashvin signalled to put the blame on him with a “gesture pointing to [him]”.¹⁵⁴ All these reactive shifts in Kannan’s evidence were contrived and crafted on the fly, solely to bolster his allegations of a conspiracy to frame him. I was not persuaded that he was a witness of truth.

101 A further illustration would show how Kannan’s evidence of a conspiracy to frame him was also internally inconsistent. In his evidence-in-chief, he said that he did not hear them talk but had asked them why his name was being *mentioned*. This would necessarily have required conversation. The rapid changes and glib augmentations in his evidence tellingly revealed that he was making up his case as he went along, according to what suited his needs.

102 I agreed with the Prosecution’s submission that Kannan had displayed a propensity to tailor his evidence when deficiencies in his evidence were pointed out. As for external consistency, Ashvin,¹⁵⁵ Arun,¹⁵⁶ Pravin¹⁵⁷ and Vinod,¹⁵⁸ as well as the CNB officers,¹⁵⁹ had all denied that any such conversations had taken place in the room at the CNB Headquarters. Sgt Hidayat had also testified that there was no communication between Ashvin and the others.¹⁶⁰

¹⁵⁴ NE (17 September 2020) at p 33 ln 30–31

¹⁵⁵ NE (27 August 2020) at p 25

¹⁵⁶ NE (2 September 2020) p 71 ln 26–31

¹⁵⁷ NE (26 August 2020) at p 18 ln 8–10

¹⁵⁸ NE (26 August 2020) at p 54 ln 28 to p 56 ln 30

¹⁵⁹ NE (3 September 2020) at pp 5, 16

¹⁶⁰ NE (7 September 2020) at p 3

(2) Conversations between Ashvin, Arun, Pravin and Vinod in the court lock-up

103 The Defence submitted that Kannan had heard Vinod, Pravin, Arun and Ashvin talking to one another “with their voices raised” after Vinod had testified and had been taken down to the court lock-up.¹⁶¹ Ashvin testified that at the lock-up, Vinod and Pravin did speak to him even though he claimed that they were not telling him and Arun what evidence they had given in court. Instead, they had asked each other about their well-being, since it had been some time since they saw each other. It was however put to Ashvin that Vinod and Pravin had told him what evidence they had given so that he could tailor his evidence in court.¹⁶²

104 I found no reason to reject Ashvin’s evidence in this regard. Arun had also testified that Vinod was talking to Ashvin and Pravin in the court lock-up but that he had kept quiet during the conversation.¹⁶³ While there was indeed some communication between them in the lock-up, I accepted Ashvin and Pravin’s testimonies that the conversation was neither related to the case at hand involving Kannan nor about what Vinod and Pravin had testified in court. Even if it did relate to the case at hand, Pravin and Vinod had given evidence only in relation to Exhibit E1. They were in no position to offer any direct evidence about the events leading to Kannan’s arrest, of which they only had partial or hearsay knowledge at best. They would not have known about any other drugs Kannan might have dealt with.

¹⁶¹ DCS at para 202.1

¹⁶² NE (27 August 2020) at pp 108–109

¹⁶³ NE (2 September 2020) at pp 77–78

(3) Wong's evidence was unreliable

105 The Defence had called Wong as a witness in support of the allegation that Ashvin and Arun had conspired in the van to frame Kannan while on the way to the CMC on 4 June 2016. The Prosecution submitted that Wong's evidence was unreliable. First, Wong's evidence was contradicted by Ashvin and Arun, as well as the escorting officers present in the van. After Wong had testified for the Defence, the Prosecution applied to call three of the four CNB escorting officers, namely Station Inspector Ranjeet Ram Behari, Station Inspector Chiang Jianwei Kevin and Senior Staff Sergeant Cheng Boon Keong, as rebuttal witnesses. All the officers had testified that no such conversation had taken place between Ashvin and Arun, and it would be inherently incredible that all the officers would not have heard a "protracted and audible conversation" between Ashvin and Arun and if they did, to not have sought to intervene.

106 Second, Wong had acknowledged that he had a history of suffering from memory impairment issues, stemming from a brain infection due to meningoencephalitis. Further, it was unclear how Wong would have linked Kannan's case to that of Ashvin and Arun's, given that Kannan, Ashvin and Arun were all arrested in different circumstances and locations.

107 Third, Ashvin and Arun had consistently implicated Kannan in their respective contemporaneous statements which were taken before the trip to the CMC. Prior to their arrests, Ashvin and Arun would not have had an opportunity to come up with a plan to frame Kannan.

108 Conversely, the Defence submitted that the Prosecution was unable to show that Wong could not remember what had happened during the trip to the

CMC as a result of his illness. Wong had testified that he could not remember all the details about the trip, but he did remember two male Indians “talking about one packet of something...that’s the weed and then they want to push the blame to the other guy”.¹⁶⁴ There were similarities between what Wong allegedly heard in the van and what Kannan had told Wong about his case, and the Defence submitted that the Prosecution could have “probed Wong further” on this point but did not do so. The Defence argued that “maximum weight” should be given to Wong’s testimony as he was an independent witness with no personal interest in the case.¹⁶⁵ The Defence further argued that the rebuttal witnesses called by the Prosecution were unreliable witnesses who gave “standard answers” that they did not hear any conversations between Ashvin and Arun.¹⁶⁶ There was a doubt as to whether the officers sitting in the front of the van would have been able to hear Ashvin and Arun who were seated behind a partition. There were two seats at the back of the van but the escorting officers allegedly did not sit on those seats.

109 I note at the outset that it was not established that Wong’s history of memory impairment had affected his ability to recall the events. I saw no reason to reject his evidence on this basis alone. Kannan’s evidence about what Wong had told him was not a pure afterthought, since Wong’s oral testimony about having heard Ashvin and Arun talking to each other to “push the blame” was consistent with what Kannan had said he was told by Wong. That said, although I did not think that Wong was an interested witness or had any reason to lie, I had serious reservations about the reliability of his evidence. In all likelihood,

¹⁶⁴ NE (23 November 2020) at p 14 ln 15–18

¹⁶⁵ DCS at para 173

¹⁶⁶ DCS at para 177

he was mistaken on various aspects and had resorted to speculation and conjecture. To begin with, he conceded that he had *assumed*, after discussing with Kannan about their cases, that the two Indian males in the van must have been talking about pushing the blame to Kannan, even though no names were specifically mentioned. It was also likely that he was mistaken or confused about what he had heard in the van, if indeed any conversation had taken place at all. Having carefully considered the totality of the evidence, I noted that Wong was roundly contradicted by the CNB officers and also found that his evidence was inherently incredible.

110 In relation to the alleged conversation in the van, I agreed with the Prosecution that even if there had been a conversation, it would have been difficult for someone such as Wong who had no knowledge of the context of the case to link the conversation to Kannan specifically. In discussing their cases, Wong and Kannan appeared to have devised their own theory that Kannan was the person to whom Ashvin and Arun would purportedly “push the blame”. Wong had testified however that he did not know any actual details and had stated all he could remember when the Prosecution asked him to provide further details.¹⁶⁷

111 Even assuming that Wong had correctly heard Ashvin and Arun say that they would “push the blame” to someone, Wong appeared to have imputed his own understanding of what to “push the blame” may have really meant. This inevitably led to Kannan forming his own impressions as well. It could well have meant that both Ashvin and Arun felt, not unjustifiably, that Kannan ought to be blamed principally for his actions which led to all of them being arrested.

¹⁶⁷ NE (23 November 2020) p 14 ln 19-26

It did not necessarily reflect a conspiracy to frame Kannan and fabricate evidence against him. Ashvin and Arun did not seek to absolve themselves of any blame and they had accepted responsibility for their roles in the enterprise.

112 A striking indicator that Wong was an unreliable witness, though not necessarily an untruthful one, was his remarkable insistence under cross-examination that he would “never” have been mistaken in recalling events that might not have taken place.¹⁶⁸ To categorically profess an affirmative belief in his own infallibility speaks volumes of his credibility. He had in fact contradicted himself in this connection to some extent since he conceded at various points that he could not remember exactly what he claimed to have heard. Wong also candidly conceded that he had “selective memory”. There was thus every risk of confabulation even though Wong disagreed that he could possibly have erred in his recollection.

113 Wong’s evidence was inherently incredible. It was highly unlikely that Ashvin and Arun were allowed to engage in an extended conversation in the van without any intervention whatsoever by the CNB escorting officers. There were some gaps in the officers’ evidence in relation to where they were seated and what they had heard, but I did not think that there were material discrepancies in their evidence.

114 The Defence had only put to Ashvin that he could have spoken to Arun when they were being transported from the CMC back to the CNB.¹⁶⁹ I noted that initially, Kannan’s evidence was that he believed the “Chinese guy” had

¹⁶⁸ NE (23 November 2020) p 18 ln 1

¹⁶⁹ NE (27 August 2020) at p 29 ln 25 to p 30 ln 11

told him that Arun and Ashvin had spoken to each other while they were *on the way back* from the CMC.¹⁷⁰ Wong was identified by the Prosecution as the “Chinese guy” whom Kannan could have been referring to. Kannan did not object to this identification and called Wong as his Defence witness. Presumably, Kannan’s defence, which was based on what Wong had allegedly heard, was that Ashvin and Arun had conspired to frame him when they were in the same van *on the way to* the CMC. In any event, Ashvin’s evidence was that he did try to talk while in the van on the way back to the CNB, but the CNB officers had “shut [him] up”.

115 As for Arun, it was not directly put to him that he had spoken in the van. However, Arun did testify that he did not speak to Ashvin at the CMC, and that during family visits, he did not discuss the case with anybody.¹⁷¹ Arun had also testified that Ashvin might have told him about his version of events during family visits, but he would not have revealed his defence as he wanted to fight his case.¹⁷² In relation to family visits, Ashvin testified that he had opportunities to speak to Arun about their cases in their first year of remand.¹⁷³ While it was undoubtedly possible that Ashvin and Arun did have opportunities to speak to each other, this fell far short of constituting cogent evidence of any conspiracy. As the Prosecution had rightly pointed out, the contemporaneous statements taken were inculpatory and had also incriminated Kannan, and all these statements were given prior to any alleged “conspiracy” as postulated by the Defence.

¹⁷⁰ NE (16 September 2020) at p 53 ln 17–18

¹⁷¹ NE (2 September 2020) at p 72

¹⁷² NE (2 September 2020) at p 73

¹⁷³ NE (27 August 2020) at pp 25-27

No basis to find any motive to frame Kannan

116 As noted above, the cornerstone of Kannan’s defence was that he was an innocent third party who became the maligned victim of an elaborate set-up by others to “push the blame” to him. I rejected this defence. I found that Ashvin, Arun, Pravin or Vinod had no reason or motive whatsoever to frame Kannan, and that full weight therefore should be placed on their evidence.

117 Kannan’s allegations that the four of them had framed him because they were part of “one community” and that Ashvin and Arun had lied to escape a capital charge were wholly unconvincing. An attempt to frame Kannan would not have exonerated any of them from their own admitted culpability. All four of them had also been sentenced by the time they testified in court. They could not have been hoping for a lighter sentence. There was no conceivable benefit to them relative to Kannan’s situation.

118 The Defence submitted that the Prosecution had “given Ashvin’s life back as an alm” and that Ashvin would naturally testify in favour of the Prosecution. The lives of Ashvin and Arun had been spared because they had cooperated with the CNB by giving statements implicating Kannan and testifying against Kannan in court.¹⁷⁴ The Defence further submitted that Ashvin and Arun wanted to “complete what they had started” and that their conspiracy to implicate Kannan was “given momentum by their charges being reduced and their lives being spared”.

¹⁷⁴ DCS at paras 43, 46

119 It bears highlighting that Ashvin and Arun had implicated Kannan in their contemporaneous statements¹⁷⁵ even before any alleged conspiracy could have arisen in the van. Ashvin and Arun had voluntarily implicated themselves and Kannan right from the outset. There was nothing to suggest that there was any expectation of being given their lives back in return as an “alm” in exchange for their cooperation, which was self-initiated. The offer of reduced non-capital charges for Ashvin and Arun only came much later, some three years down the line. Crucially, Kannan had blithely sidestepped mentioning the fact that he was extended a similar offer in spite of his denial of involvement. These offers had nothing to do with any suggested reciprocity or quid pro quo. At any rate, there was no special advantage that Ashvin and Arun had obtained that Kannan was potentially deprived of. Hence the argument that the Prosecution had given them back their lives as “alms” is specious and flies in the face of logic. Kannan’s life would similarly have been “spared” as well if he had decided to accept the offer extended to him.

120 The Defence further submitted that Vinod had a reason to falsely implicate Kannan in respect of Exhibit E1 as Ashvin and Vinod were friends. Vinod however testified to being closer friends to Kannan than to Ashvin, having known Ashvin through Kannan.¹⁷⁶ Vinod and Pravin were also sentenced for a joint drug possession charge in relation to Exhibit E1.¹⁷⁷ The charges they faced were very different from what Kannan faced in the present trial.

¹⁷⁵ D1; P196

¹⁷⁶ NE (26 August 2020) at p 63 ln 10-11

¹⁷⁷ Prosecution’s Reply Submissions at para 13

121 Vinod and Pravin were only end users of drugs who had nothing to gain in implicating Kannan. Ashvin and Arun were in the same boat as Kannan; the trio had faced similar capital charges and were all offered reduced non-capital charges in a plea offer. Kannan chose not to accept the offer. Moreover, there was absolutely no evidence that any “conspiracy” had resulted in anyone securing a plea offer which otherwise would not have been extended to them. As for the Defence’s claim that Ashvin and Arun were paranoid as they had consumed drugs prior to their arrest, this was a purely speculative assertion without any evidential basis.

Mobile phone communication records

122 The Prosecution submitted that the mobile phone communication records corroborated Kannan’s guilt and showed that Kannan had intended to traffic in the drugs. I concurred entirely. The Prosecution first referred to a deleted iMessage retrieved from Kannan’s mobile phone, stating “822261” opposite the big field” which was sent by an unknown person and received by Kannan on 2 June 2016 at about 10.08pm.¹⁷⁸ Kannan then forwarded the message to Arun at about 10.11pm.¹⁷⁹ The Prosecution submitted that Kannan had received this message from his supplier and forwarded it to Arun, whom he had instructed to assist with the collection of the drugs. This postal code was that of Block 261 in Punggol in a cluster of HDB blocks, and there was a big field at the location.¹⁸⁰ In Arun’s third long statement, he also indicated that that was the “location that [he was] supposed to go to collect ‘Kannan’s’ things”.¹⁸¹

¹⁷⁸ AB Vol 2 at p 880

¹⁷⁹ AM1 at p 7; AB Vol 2 at p 1208

¹⁸⁰ NE (3 September 2020) at p 34 ln 24–29

¹⁸¹ P199 para 19

123 Kannan did not deny having forwarded this message to Arun but claimed that he was merely forwarding it on from Dilip and did not understand the significance of the message. Kannan claimed that Arun had to use his phone to call Dilip because his phone did not have an auto-roaming function.¹⁸² He also claimed that Dilip sent the postal code to his phone because Arun and Ashvin were communicating with Dilip using his phone.¹⁸³ The Prosecution submitted that it was illogical for Arun to have to use Kannan's phone on account of its auto-roaming function, since Arun's phone was installed with the WhatsApp application which he could have used to make overseas calls. Further, considering the frequency at which Ashvin and Arun were using their phones at the material time, Dilip could have contacted them without Kannan's assistance.

124 The Prosecution also referred to other messages sent by Kannan right after he became aware that Arun had successfully collected the drugs and was about to deliver them to the Unit. Kannan had sent messages to four contacts, "Ruben Michael", "David Sak", "Ismail Buddy" and "Vik Meesai" on 2 June 2016 at about 11.46pm or 11.47pm, stating "Bro it's in hand" and "Confirm how much you need can take anytime now".¹⁸⁴ Kannan did not deny sending these messages, but claimed that the messages were about him having to return his punters monies relating to soccer betting.¹⁸⁵ The Prosecution submitted that Kannan's explanation was unbelievable given the context of the messages,

¹⁸² NE (16 September 2020) at p 8 ln 17–22

¹⁸³ NE (16 September 2020) at p 14 ln 23–27

¹⁸⁴ AB Vol 2 at p 1258

¹⁸⁵ NE (17 September 2020) at p 43 ln 13 to p 46 ln 13

referring to a message sent from "Ruben Michael" to Kannan on 31 May 2016, where Ruben stated:¹⁸⁶

Bro next time don't ask me for order unless you have it with you in YOUR hands bro. Last time it was good and I could help you too. My fren fucking me up asking why I said can get by weekend and now delay again. I know it's not your fault that it's not in. But next time I don't wanna ask for orders till it's in already. If you think by today 9/10pm cannot get then cancel it bro.

125 At 11.03pm, "Ruben Michael" sent another WhatsApp message to Kannan stating "Bro I'm transferring back the cash all. Forget it la bro". The Prosecution submitted that these messages indicated that 'Ruben Michael' was awaiting a shipment of cannabis from Kannan, and that Kannan's message sent on 2 June 2016 was to inform his contacts that the drugs were "in hand".

126 The Defence contended that the evidence showed that Kannan was involved in illegal football gambling and 4D, and that the messages sent to these four contacts related to illegal football gambling and not to drugs. SSI Ismail testified that from his experience and understanding, these messages did not relate to soccer betting.¹⁸⁷ However, SSI Ismail was not an expert on soccer betting and had testified with the intent to bolster the Prosecution's case that the messages could relate to drugs. Kannan in turn denied that these four contacts were his potential clients for the sale of drugs.

127 From my reading of the WhatsApp messages, while being fully mindful that such messages can be abbreviated, ambiguous and liable to be read out of context, the irresistible inference was that these messages related to drug deals

¹⁸⁶ AM2 at p 1 (AB Vol 2 at p 1197)

¹⁸⁷ NE (3 September 2020) at p 35 ln 24 to p 37 ln 31

and not illegal soccer betting or 4D. The various messages Kannan had sent to these contacts gave rise in the circumstances to the compelling inference that Kannan was a drug trafficker. He was informing them that the drugs were “in hand” shortly after Arun had collected the brown bag from beside the electrical box in an open field beside Block 256 Punggol Way, in accordance with Kannan’s instructions. He was asking his clients, which included one “Ruben Michael”, to confirm how much drugs they needed, and they could “take anytime now”. Ruben Michael’s message in turn made it abundantly clear that he was disgruntled over Kannan’s unreliable timing with regard to the availability of the drugs he had ordered. The messages could not by any stretch of the imagination possibly be read as being about illegal betting.

128 Kannan had called Oscar as a Defence witness and it would be fair to accept that based on the evidence, Kannan did gamble and was a punter, and had also accepted illegal bets from others. However, his defence was highly contrived, and Oscar’s evidence did not aid his case. The meanings he sought to attribute to the WhatsApp messages were inordinately strained. His self-serving explanations relied on a highly unnatural and esoteric reading of the text messages. Understood in context, the messages instead suggested quite emphatically that he was a drug trafficker and showed that the drugs in question were meant for trafficking.

129 A critical WhatsApp message was the one stating the postal code “822261” and “opposite the big field” as it clearly related to the drugs which were the subject matter of the charge. It was received by Kannan and sent contemporaneously by Kannan to Arun. This message contained a very specific reference to the Punggol Way collection point for the drugs in question. The Defence’s contention that the postal code was being forwarded from Dilip to Kannan to pass on to Arun was unbelievable. If it was true that Dilip was

involved, there was simply no good reason why Dilip could not have contacted Ashvin or Arun directly. Indeed, this message containing the postal code and the location as well as the timing of the message corroborated the evidence of Ashvin and Arun, *ie*, that Arun was instructed by Kannan to collect the drugs. Even if Dilip was not a fictitious person, Kannan was grasping at straws in a desperate effort to find some connection, however tenuous, to explain away his messages.

130 In relation to Dilip, Kannan claimed in his defence that he had informed SSI Ismail about Dilip four years ago and had given him Dilip's name. However, SSI Ismail "did not investigate properly", such that he was now at trial and "facing this problem".¹⁸⁸ SSI Ismail testified in examination-in-chief that he had conducted investigations to ascertain who Dilip was, as he was informed by Kannan that Dilip had sent him a message to forward to Arun. However, he had checked through the messages and there were none sent from Dilip to Kannan.¹⁸⁹

131 The deleted iMessage relating to the postal code was later retrieved after forensic examination was conducted on Kannan's phone.¹⁹⁰ However, it did not reveal the number from which the message was sent.¹⁹¹ At trial, Kannan pointed to two numbers which he claimed were Dilip's numbers, and testified that Arun had also used his phone to call Dilip prior to 2 June.¹⁹² Kannan further claimed

¹⁸⁸ NE (16 September 2020) at p 50 ln 11–29

¹⁸⁹ NE (3 September 2020) at p 38 ln 15 to p 39 ln 5

¹⁹⁰ FORT/MF/2016/0191 (AB Vol 2 at p 630); AB Vol 2 at p 880

¹⁹¹ AB Vol 2 at 880

¹⁹² NE (16 September 2020) at p 8 ln 23 to p 10 ln 4

that Arun and Ashvin were communicating with Dilip using his phone on 2 June 2016.¹⁹³

132 Ashvin testified that he did know Dilip.¹⁹⁴ He disagreed that Kannan had told him that the calls and messages from Dilip to “pass messages” were “very irritating”,¹⁹⁵ and testified that he did not use Kannan’s handphone on 2 June.¹⁹⁶ As for Arun, he testified that he knew Dilip, and that he had met up with Dilip a few times.¹⁹⁷ When questioned about whether he had taken Kannan’s phone to speak to Dilip, he maintained that he could not remember.¹⁹⁸

133 The Prosecution suggested to Kannan that the communications between Kannan’s number and Dilip’s number related to Kannan contacting Dilip for a shipment of cannabis. Further, Kannan knew the message with the postal code referred to where the cannabis was to be collected from, because he had ordered it. Kannan disagreed with these suggestions.¹⁹⁹

134 The evidence relating to Dilip did not assist Kannan. To begin with, there was no evidence to establish that the two numbers which Kannan referred to belonged to Dilip. He had also not pointed out these numbers to SSI Ismail when his statements were taken, despite the alleged centrality of Dilip to his defence. He also did not call Dilip as a witness. In any event, as explained at

¹⁹³ NE (16 September 2020) at p 14 ln 16–27

¹⁹⁴ NE (27 August 2020) at p 78 ln 25–32

¹⁹⁵ NE (27 August 2020) at p 78 ln 6–10

¹⁹⁶ NE (27 August 2020) at p 82 ln 1 to p 83 ln 4

¹⁹⁷ NE (2 September 2020) at p 45 ln 2–18

¹⁹⁸ NE (2 September 2020) at p 69 ln 2–21

¹⁹⁹ NE (17 September 2020) at p 59 ln 3–12

[129] above, it was illogical that Dilip had to contact Arun and/or Ashvin through Kannan. Kannan was also unable to distance himself from the message relating to the postal code which he had received and deleted from his phone, and the fact that he had sent this message on to Arun contemporaneously.

135 Finally, the Defence sought to explain that communications between Kannan and Arun prior to and on 2 June were mostly related to collection of gambling moneys from Oscar.²⁰⁰ The Defence had called Oscar as a Defence witness to testify that Arun had collected gambling moneys from him on behalf of Kannan and that he owed Kannan about \$2000 (see [51] above). The Prosecution’s case was that the communications between them on 2 June were in relation to the collection of cannabis by Arun on Kannan’s behalf.²⁰¹ The Prosecution also relied on other messages, such as one sent from Kannan to Arun on 1 June, wherein he stated “All patients relying on you”. The Prosecution suggested to Kannan that this message related to customers who would be placing orders for cannabis with Kannan. Kannan testified that this was a typographical error and should have read as “all *punters* relying on you”.²⁰² This was plainly a desperate and unconvincing attempt to attribute these communications to matters relating to collection of gambling moneys.

136 Having accepted the version of events given by Ashvin and Arun, at least some of the communications between Arun and Kannan on 2 June had to be in relation to the collection of the drugs, in particular the message stating “822261 opposite the big field” which specifically related to the location that

²⁰⁰ NE (16 September 2020) at p 45 ln 18 to p 47 ln 15; p 55 ln 28 to p 56 ln 1

²⁰¹ NE (17 September 2020) at p 59 ln 13–16; AM1 pp 2–9, s/n 20–91

²⁰² NE (17 September 2020) at p 58 ln 25 to p 59 ln 2

Kannan had directed Arun to. Even if any of the communication records between Kannan and Arun were gambling-related, none of these would detract from the evidence adduced in Arun's statements and Ashvin's evidence, which clearly implicated Kannan in the trafficking of the drugs in question.

Demeanour and credibility

137 I turn next to make some brief observations pertaining to the Defence's submission that Kannan was a truthful and credible witness based on his demeanour. The defence submitted that Kannan was not evasive and his testimony was consistent with the statements he gave to the CNB in all material particulars. It was submitted that he was candid and forthright in his testimony, and had been consistent in denying any involvement with the drugs.²⁰³

138 A witness may project unflappable confidence and seemingly disarming candour while unflinchingly maintaining an account that appears to be largely consistent. Even so, he is not necessarily a truthful and credible witness on account of his demeanour and presentation alone. His testimony must be tested for plausibility and evaluated for internal and external consistencies. In the present case, given the cogency of the incriminating evidence from his co-conspirators as well as the cumulative weight of the objective evidence, Kannan's resolute disavowal of involvement and myriad allegations of false incrimination were wholly implausible. Moreover, as noted above, his evidence was shifting, inconsistent and unreliable. He was clearly tailoring his defence to suit his needs.

²⁰³ DCS at paras 219 to 225

139 On my evaluation of Kannan's defence, his testimony was dubious, given the near-forensic specificity with which he sought to link up the various events to the timings and contents of the various messages and phone calls. It was highly unlikely that he would be able to remember minutiae and timing details with so much clarity four years later. This strongly suggested that he had done so *post hoc* in order to shore up his claims. The inescapable inference was that he had contrived to make up a story to exculpate himself.

Evidence of conspiracy

140 In my assessment, the Prosecution had established beyond reasonable doubt that there was a conspiracy involving Kannan, Arun and Ashvin to traffic in the drugs. Having considered the evidence adduced in the round, I found that all three of them had agreed to participate in the conspiracy to engage in the unlawful activity. They were fully aware of the general purpose of the common design. The *mens rea* for abetment by conspiracy as outlined in *Bahashwan* at [34] was thus established.

141 I accepted that it was possible that Ashvin only joined in the conspiracy when Arun returned with the drugs and placed them in the bedroom of the Unit. Arguably, Ashvin might not have agreed at the earlier point when all three of them were in the bedroom, since he then went downstairs and locked the grilles in a feeble attempt to distance himself from the scheme. But he continued to stay in the area and remained contactable, and ultimately returned to the bedroom where the drugs were kept and remained inside the bedroom. Ashvin himself had pleaded guilty to a reduced charge on the same factual background and accepted that he was involved in the conspiracy.

142 As for the Defence's argument that Ashvin did not testify about any express agreement with Arun whereby Arun would collect the drugs and traffic it to Ashvin, this was misconceived. Having accepted the testimonies of Ashvin and Arun, I found it patently clear that both of them were aware of the plan as discussed in Ashvin's bedroom. Kannan orchestrated all arrangements. He gave instructions for collection and safekeeping of the drugs. Pursuant to the conspiracy, Arun collected the drugs on Kannan's instructions in order to pass them to Ashvin to be kept in the Unit. This handover which constituted the act of trafficking was eventually carried out and Ashvin had, together with Arun, personally placed the drugs in his room. An agreement to be part of this plan could be readily inferred from the actions of Ashvin and Arun. As the Prosecution rightly submitted, the sheer quantity of drugs and the transaction involving Exhibit E1 made it clear beyond reasonable doubt that Kannan had intended to traffic in the drugs.

Conclusion

143 Counsel had demonstrated appreciable diligence and their considerable endeavours to assist Kannan in mounting his defence were commendable. Nevertheless, I was satisfied beyond reasonable doubt that all the elements of the charge had been proven. The overall picture that emerged was one of Kannan attempting to push the blame to everyone else, when he was in fact the mastermind in respect of the collection and trafficking of the drugs through Arun's delivery of the drugs to Ashvin. Kannan himself had intended to traffic the drugs but he had schemed to exculpate himself from the time of the offence and after his arrest.

144 Accordingly, I found Kannan guilty as charged and sentenced him to the mandatory punishment of death.

See Kee Oon
Judge of the High Court

Lau Wing Yum, Kenneth Kee and Kevin Ho (Attorney-General's
Chambers) for the prosecution;
Ram Goswami (Ram Goswami) and Wong Li-Yen Dew (Dew
Chambers) for the accused.