

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

[2021] SGHC 284

Criminal Appeal No 12 of 2020

Between

Punithan a/l Genasan

... Appellant

And

Public Prosecutor

... Respondent

In the Matter of Criminal Case No 2 of 2018

Between

Public Prosecutor

And

Punithan a/l Genasan

FINDINGS ON REMITTAL

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

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Punithan a/l Genasan

v

Public Prosecutor

[2021] SGHC 284

High Court — Criminal Appeal No 12 of 2020

Chan Seng Onn J

30 July 2021, 14 September 2021

13 December 2021

Judgment reserved.

Chan Seng Onn J:

Introduction

1 On 15 May 2020, I convicted the accused, Punithan a/l Genasan, of the following charge (the “Charge”) under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and s 34 of the Penal Code (Cap 224, 2008 Rev Ed):¹

That you, PUNITHAN A/L GENASAN,

on 28 October 2011, in Singapore, together with one V Shanmugam a/l Veloo and Mohd Suief bin Ismail, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap. 185, 2008 Rev. Ed.) (“the Act”), *to wit*, that on 12 October 2011, at the West Coast McDonald’s carpark you had introduced the said V Shanmugam A/L Veloo to one

¹ ROP Vol 3 p 6.

Mohd Suief Bin Ismail to facilitate an impending drug transaction, and pursuant to this meeting between the three of you, on 28 October 2011, V Shanmugam A/L Veloo, acting under your direction, came into Singapore driving a motor vehicle JLT8467 and met up with Mohd Suief Bin Ismail, and V Shanmugam A/L Veloo did have in his possession, with your knowledge and consent, 10 packets of granular/powdery substance which were analysed and found to contain not less than 28.50g of diamorphine, which is a Class A controlled drug listed in the First Schedule to the Act, for the purposes of trafficking in the said controlled drug with Mohd Suief Bin Ismail, and the possession and intended transaction of the said controlled drug was without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Act read with section 5(2) of the Act and section 34 of the Penal Code (Cap 224, 2008 Rev Ed), and the offence is punishable under s 33(1) of the Act.

2 The accused filed an appeal against my decision, and in the process obtained leave to adduce fresh evidence. On hearing the appeal, the Court of Appeal remitted the matter to me to consider the following two questions:

(a) Whether the finding in my decision that there was a meeting (the “Alleged Introductory Meeting”) between the accused, one V Shanmugam a/l Veloo (“Shanmugam”) and one Mohd Suief bin Ismail (“Suief”) (in the morning of 12 October 2011) is affected by the new evidence?

(b) If so, would this affect the accused’s conviction?

3 Having reviewed the accused’s new evidence along with the evidence which was before me at trial, I answer the first question in the negative. Counsel for the accused acknowledged at the remittal hearing before me that such an outcome would render the second question moot.²

² Transcript, 30 July 2021, p 3 lines 19–21.

4 I set out my reasons below.

Background

5 The underlying facts of this matter are set out in my judgment. I summarise them briefly here.

6 On 28 October 2011, Shanmugam and Suief (collectively, the “Couriers”) trafficked in not less than 28.50g of diamorphine in furtherance of their common intention. After a joint trial in 2014 (the “2014 trial”), they were convicted; Shanmugam was sentenced to life imprisonment and 15 strokes of the cane, while Suief was sentenced to death. Their convictions and respective sentences were upheld on appeal.

7 In the course of investigations, Shanmugam implicated the accused as the mastermind behind the drug transaction on 28 October 2011. The accused was arrested in Malaysia and extradited to Singapore in 2016.

8 The accused was tried on the Charge in 2018. Following the trial (the “2018 trial”), I convicted him of the Charge. In my judgment, I found *inter alia* that the Prosecution had proven beyond a reasonable doubt that the accused had indeed introduced Shanmugam to Suief at West Coast McDonald’s on 12 October 2011 for the purpose of facilitating an impending drug transaction (at [111]–[112]). I considered that the Couriers’ accounts were consistent in all material aspects, including the timing and location of the meeting, the purpose of the meeting and how the introduction took place (at [89]).

The new evidence

9 The accused filed two criminal motions seeking leave to adduce fresh evidence for his appeal, which the Court of Appeal granted. The new evidence thus adduced consists of:³

- (a) Statements made by Suief in 2011, namely:
 - (i) A contemporaneous statement recorded on 28 October 2011;
 - (ii) A cautioned statement recorded on 28 October 2011;
 - (iii) A long statement recorded on 30 October 2011;
 - (iv) A long statement recorded on 31 October 2011; and
 - (v) A cautioned statement recorded on 20 December 2011;
- (b) Statements made by Shanmugam in 2011, namely:
 - (i) The contemporaneous statement recorded on 28 October 2011;
 - (ii) The long statement recorded on 31 October 2011;
 - (iii) The long statement recorded on 2 November 2011; and
 - (iv) The cautioned statement recorded on 20 December 2011;
- (c) The SingTel Call Trace Report for “B2-HP2” (*ie* Suief’s mobile phone 98944870) (the “Call Trace Report”); and

³ Defence’s submissions at para 17.

(d) Travel movement records from the Immigration Checkpoint Authority (“ICA”), for:

- (i) G Mathan Genasan from 1 January 2011 to 12 October 2011;
- (ii) Shanmugam from 1 January 2011 to 12 October 2011;
- (iii) Shanmugam’s mother for the month of October 2011;
and
- (iv) Shanmugam’s daughter for the month of October 2011.

10 At the appeal hearing before the Court of Appeal on 30 June 2021, the Court of Appeal remitted the matter to me to consider the two questions set out at [2] above.⁴

11 For the remittal, both the Defence and the Prosecution tendered substantially the same submissions that they had made to the Court of Appeal, notwithstanding that the questions posed by the Court of Appeal were specific and limited in scope. I heard oral submissions from the Defence and the Prosecution on 30 July 2021. To facilitate the evidential analysis and a comparison of the new evidence with the trial evidence, I requested the parties to prepare an agreed Excel spreadsheet based on a specific format containing all the evidence material to the questions to be answered. The parties’ Agreed Table of Evidence was submitted to me on 14 September 2021.

⁴ Minute Sheet dated 30 June 2021 for CA/CCA 12/2020.

Whether the new evidence affects my finding concerning the Alleged Introductory Meeting

12 Although the first question posed by the Court of Appeal asks me to evaluate whether the new evidence affects my finding concerning the Alleged Introductory Meeting, the Defence has woven that new evidence together with the trial evidence which was previously before me into a number of arguments against my finding. I will therefore consider each of these arguments in turn, taking into account both the previously available and the new evidence.

13 The arguments made by the Defence in relation to the Alleged Introductory Meeting may be summarised as follows:

(a) My finding that the Alleged Introductory Meeting had taken place on 12 October 2011 ran against the grain of the evidence, as both Suief and Shanmugam had testified that the Alleged Introductory Meeting had taken place in the afternoon or evening.⁵ Yet, in the afternoon and evening of 12 October 2011, the accused and Shanmugam were not even in Singapore.⁶ The Alleged Introductory Meeting could not have taken place then.

(b) Instead, the evidence indicates that the meeting at which the Couriers first met each other must have been around 24 October 2011 instead, a time when the accused was not in Singapore.⁷

(c) Further, it is extremely unlikely that the Alleged Introductory Meeting could have taken place on 12 October 2011 as recounted by the

⁵ Defence's submissions at para 61.

⁶ Defence's submissions at para 62.

⁷ Defence's submissions at paras 65–72.

Couriers, as Shanmugam was only in Singapore on that day for a relatively brief period (from 7.24am to 9.36am).⁸

The time of day at which the Alleged Introductory Meeting took place

14 The Defence points out that the Couriers had consistently stated that the Alleged Introductory Meeting took place in the afternoon or the evening. The Agreed Table of Evidence⁹ sets out the positive statements made by the Couriers in relation to the time of day at which the Alleged Introductory Meeting was said to have taken place. I set out below an extract from that table:

	Shanmugam’s evidence	Suief’s evidence
2011 statements	Between “1 plus in the afternoon” and “3 plus in the afternoon” ¹⁰	Around “5 plus in the evening” ¹¹
2014 trial	-	Around 4pm to 5pm ¹²
Additional statements before 2018 trial	Between “1 plus in the afternoon” and “sometimes at 3.00pm” ¹³	“in the evening” ¹⁴

⁸ Defence’s submissions at para 74.

⁹ Agreed Table of Evidence dated 14 September 2021.

¹⁰ ACB Vol I at p 169 paras 19–22.

¹¹ ACB Vol I at p 108 para 18.

¹² ACB Vol II at p 318 line 28 to p 319 line 1.

¹³ ACB Vol I at pp 207–208 paras 8–10.

¹⁴ ACB Vol I at p 143 para 6.

	Shanmugam’s evidence	Suief’s evidence
2018 trial	It was “[t]hereabout in the evening” when Shanmugam drove back to Malaysia ¹⁵	About 2pm to 3pm ¹⁶

15 The Defence places particular emphasis on the newly adduced 2011 statements from the Couriers. It argues that these statements were recorded within three weeks of the alleged 12 October 2011 meeting. At such close proximity, the time of day would have been fresh in the Couriers’ minds. There was also no reason at the time for Shanmugam and Suief to admit to the Alleged Introductory Meeting but lie about the timing.¹⁷

16 I do not think that these statements are as “extremely critical” and dispositive as the Defence makes them out to be in relation to the time of the Alleged Introductory Meeting.¹⁸ At the outset, I observe that the 2011 statements suffer from the same issues of credibility that I attributed to the Couriers’ evidence at the 2014 trial (see [71]–[73] of my judgment). In 2011, as in 2014, the Couriers would have been attempting to avoid incriminating themselves. These statements must be taken with the proverbial pinch of salt.

17 However, even if I were to take the 2011 statements at face value, I note that there is a considerable difference between Shanmugam’s evidence and Suief’s evidence in relation to the time of the Alleged Introductory Meeting. If the time of the Alleged Introductory Meeting were to be so fresh in their minds, I would have expected their evidence to be much more similar. Moreover,

¹⁵ Transcript, 11 July 2018, p 27 line 31 to p 28 line 1.

¹⁶ ACB Vol II at p 343 lines 30–32.

¹⁷ Defence’s submissions at para 61.

¹⁸ Defence’s submissions at para 62.

neither Suief nor Shanmugam were individually consistent in the times they gave, from their 2011 statements up to the 2018 trial.

18 Accordingly, I do not find Suief and Shanmugam's evidence in relation to the time of the Alleged Introductory Meeting to be reliable. What I do find to be entirely consistent and reliable is their evidence before me at the 2018 trial of a meeting sometime in October 2011 at the West Coast McDonald's carpark where the accused was present and had personally introduced Shanmugam to Suief. It is not surprising that the Couriers might have correctly remembered these facts while misremembering the time of the Alleged Introductory Meeting: memories of a meeting's location, participants and purposes are more likely to stay with a person and for far longer than the time and actual date of the meeting. Unless there was a particular reason for the date and time of the Alleged Introductory Meeting to be seared into the Couriers' memories, or unless they kept some form of documentary evidence, inconsistencies and inaccuracies in this respect are to be expected. As matters stand, the 2018 trial evidence of Suief and Shanmugam indicates that the Alleged Introductory Meeting did indeed take place between the two of them and the accused. Based on the ICA travel movement records of the accused and Shanmugam, the only possible time and date for that meeting was the morning of 12 October 2011. I therefore consider my finding that the Alleged Introductory Meeting took place then to be undisturbed by the Defence's argument, which was based on a certain apparent consistency concerning the time of day for the meeting (which, as explained above, is not in fact as consistent as made out to be).

19 I conclude my analysis of this issue with two observations.

Suief's credibility

20 The first relates to my reliance on the Couriers' evidence at the 2018 trial that the accused was the one who introduced the two of them. The Defence suggests that this is undermined by Suief's 30 October 2011 statement, in which he did not identify the accused as being present at the meeting between himself and Shanmugam.¹⁹

21 However, as stated at [16] above, the 2011 statements were made while the Couriers were fighting to avoid liability. The Prosecution rightly points out that Suief may have been attempting to obfuscate the truth to distance himself from both Shanmugam and the accused.²⁰ In all other instances, Suief was consistent in identifying "Puni" as having been present.²¹ I therefore give no weight to Suief's failure to identify the accused in his 30 October 2011 statement.

The Defence's false incrimination theory

22 The second observation I make is that if I were to accept the Defence's submissions on this time-of-day issue, that would entail finding that in truth, the Couriers were introduced at an afternoon or evening meeting, which could not have been on 12 October 2011 and which the accused could not have been part of, *but then* each Courier decided – for reasons unknown – to identify the accused as having been the person who was present at the meeting to introduce them.

¹⁹ Defence's submissions at para 37.

²⁰ Prosecution's submissions at para 30.

²¹ See Agreed Table of Evidence dated 14 September 2021.

23 To shore up this version of events, the Defence has put forth a theory for why Suief may have wanted to falsely incriminate the accused. It suggests that “[i]t is also possible that the [accused], being a debt collector, had offended someone in the drug syndicate who had placed pressure on Suief to set the [accused] up”.²² In support of this, the Defence cites the evidence of a prison inmate, Tamil Alagan a/l Gunasekaran (“Tamil”), who testified at the trial before me that Shanmugam had passed a message to him via an intermediary asking him to falsely incriminate the accused.

24 However, I specifically rejected Tamil’s testimony in my judgment, because he had no way of knowing whether the message had come from Shanmugam (at [81(c)]). There is little else the Defence has raised in support of this speculation. As the Prosecution notes, there was nothing from the accused himself during the trial to suggest that he had in the course of his debt collection offended someone to the point where that person might induce the Couriers to frame him.²³ I therefore do not accept this speculation.

25 Quite apart from *why* the Couriers might have framed the accused, there is also the need to examine the probability of the Defence’s false incrimination theory being true. The Defence’s false incrimination theory, if true, implies a number of highly unlikely coincidences. First, in his 31 October 2011 statement, five years before the accused’s arrest, Shanmugam identified the person who introduced him to Suief as “Puni”,²⁴ which happens coincidentally to correspond partially to the accused’s name, Punithan a/l Genasan.

²² Defence’s submissions at para 44(b).

²³ Prosecution’s submissions at para 38.

²⁴ ACB Vol I at p 169 para 20.

26 Second, neither Shanmugam nor the accused (both Malaysians living in Malaysia) spent much time in Singapore in the weeks leading up to Shanmugam's arrest. In the month of October 2011, Shanmugam entered Singapore six times²⁵ (being arrested on his sixth visit), while the accused entered Singapore twice.²⁶ A quick calculation from their travel records shows that Shanmugam was in Singapore for only about 3.21% of the time from the start of October 2011 to his arrest, while the accused was in Singapore for only about 1.95% of that time.²⁷ The sole period of overlap in their visits – the morning of 12 October 2011 – accounts for only a sliver of time. If the accused had indeed met Shanmugam and Suief (a Singaporean living in Singapore) in Singapore in October 2011, then the fact that there was an overlap comes as no surprise. If, however, there was in fact *no* arrangement whatsoever between Shanmugam and Suief on the one hand, and the accused on the other hand, for any meeting in Singapore at the West Coast McDonald's carpark in October 2011 (which is what the Defence's false incrimination theory is largely premised on), then the chance or probability for the two *independent* events (*ie* Shanmugam entering Singapore for his own purposes; and the accused entering Singapore for his own purposes unrelated to Shanmugam) to have an overlap is most unlikely. One can imagine spinning two separate roulette wheels, each with 28 numbered slots, one slot for each day in October up to the date of arrest of Shanmugam and Suief. But that metaphor *understates* how unlikely an overlap is, because they would have had to share not just a common date, but an overlapping time on that common date. This strongly suggests that it was not

²⁵ ACB Vol I at p 243.

²⁶ ACB Vol I at p 245.

²⁷ Shanmugam's arrest occurred around 12.33pm on 28 October 2011, or about 27.5 days into that month. In this period, the total duration of Shanmugam's visits to Singapore was approximately 21.2 hours, while the total duration of the accused's visits to Singapore was approximately 12.9 hours.

a mere coincidence but a pre-arrangement for both Shanmugam and the accused to meet Suief in Singapore.

27 Third, when Shanmugam and Suief were individually emphatic in their evidence or statements – dating back to the 2014 trial – that the accused was *present* at the West Coast McDonald’s carpark to introduce them sometime in October, they were, without first having any clear idea of what the ICA records might eventually reveal, indirectly predicting the certainty of an overlap in both the date and time of entry into Singapore of Shanmugam and the accused. This was in fact subsequently borne out by the ICA records. I do not believe it was a case of *both* Shanmugam and Suief being very lucky to have guessed it right. It was more a case that their “luck” came from their knowledge that they had in fact met the accused at the West Coast McDonald’s carpark. Were it to be the case of false evidence being given against the accused by both Shanmugam and Suief (*ie* the accused had not factually met Shanmugam and Suief at the West Coast McDonald’s carpark), then Shanmugam and Suief would each be playing a very risky game of roulette to predict with absolute confidence the existence of an overlap. In other words, if there was truly no such meeting with the accused, how would Shanmugam and Suief be so sure that the overlap existed?

28 It is worth reiterating at this point that the accused’s own case is that he had never known the Couriers. The accused’s own case *must* be premised on Shanmugam’s and the accused’s entries into Singapore being random independent events. They have to rely on sheer coincidence that there was an Overlap as shown by the ICA records. As explained, the chance of that happening is objectively remote for two independent events, but not if it is a case of a pre-arranged meeting. It also follows that Suief’s and Shanmugam’s foreknowledge of that very unlikely event of an overlap could not simply be explained as the framing of an acquaintance, but by actual knowledge of a

meeting that had taken place at the West Coast McDonald's carpark during which the accused, Shanmugam and Suief were present. In the absence of a plausible explanation as to why the Couriers would wish to frame the accused, I do not find the Defence's version of events to be credible in the least for the reasons stated.

Whether 24 October 2011 was the actual date of the introductory meeting

29 I turn now to the Defence's submission that any introductory meeting between Shanmugam and Suief was more likely to have taken place sometime from 24 October 2011 at 3.57pm to 25 October 2011 at 1.50am, when Shanmugam was in Singapore with his mother and daughter. However, during this time, the accused was not present in Singapore, and so could not have been part of any introductory meeting.

The 2011 statements

30 This submission as to the date of the introductory meeting rests on two planks. The first consists of certain statements from Shanmugam and Suief:

(a) In Shanmugam's statement recorded on 31 October 2011, Shanmugam appears to state that the meeting took place on 23 or 24 October 2011;²⁸

(b) In Suief's statement recorded on 30 October 2011, Suief stated that he first met Shanmugam on 27 October 2011;²⁹ and

²⁸ ACB Vol I at p 168 para 18.

²⁹ ACB Vol I at pp 107–108 paras 15 to 18.

(c) At the 2014 trial, Suief testified that he first met Shanmugam on 25 October 2011.³⁰

31 I do not accept that these statements indicate with any strength that the introductory meeting between Shanmugam and Suief took place during Shanmugam's visit from the afternoon of 24 October 2011 to the early hours of 25 October 2011. A closer inspection immediately reveals that Suief's statement recorded on 30 October 2011 could not possibly be accurate: Shanmugam was not in Singapore on 27 October 2011.³¹ Similarly, Suief's testimony in this respect at the 2014 trial cannot be relied on. Taking into account the time of day he attributed to the meeting (which the Defence has quite readily relied on for their earlier argument as to the time of day of the Alleged Introductory Meeting), Suief's evidence at the 2014 trial was that the first meeting between himself and Shanmugam was on 25 October 2011 at 4pm to 5pm. Again, Shanmugam was not in Singapore during this window: on 25 October 2011, he left Singapore at 1.52am, and came back at 9.53pm.³² All that is left, then, from this set of statements highlighted by the Defence is Shanmugam's statement of 31 October 2011, which stands alone and uncorroborated. In truth, the Defence's focus on these statements strikes me as less of a coherent argument and more of an opportunistic attempt to seize on a vague temporal similarity between the contents of those statements.

32 Even if I were to accept that I should regard these statements as collectively – albeit imprecisely – gesturing towards an introductory meeting having been held during Shanmugam's visit to Singapore from 24 October 2011

³⁰ ACB Vol II at p 317 lines 16–22.

³¹ ACB Vol I at p 243.

³² ACB Vol I at p 243.

to 25 October 2011, the question remains whether this version of events raises any reasonable doubt as to my finding that the Alleged Introductory Meeting took place on 12 October 2011. I am of the opinion that it does not. At the trial before me, Suief testified that the meeting occurred “2 to 3 weeks” prior to Deepavali (which fell on 26 October 2011), while Shanmugam said that this meeting took place “about 3 weeks before the arrest” on 28 October 2011 (see my judgment at [89(a)]). This was consistent with the additional police statements they had given during further police investigations, which took place after they had been sentenced at the 2014 trial (and the relevant appeals had been heard in 2016) but prior to the 2018 trial.

33 The Defence emphasises the fact that Suief’s further police statement was given just six days before the 2018 trial.³³ Pointing to his plea for a “lifer” sentence and his stated fear of death within that same statement,³⁴ the Defence suggests that Suief was a desperate man hoping to gain favour with the police and the Prosecution. Suief thus had to lie about the accused being present at the West Coast McDonald’s carpark to introduce him to Shanmugam. I do not agree. There is no evidence of any threat, inducement or promise of any kind made to Suief to falsely implicate the accused as being present at a meeting at West Coast McDonald’s carpark to introduce them. Whilst the spectre of death may lead one to craven falsehood to invent false facts to assist in investigations, it does not foreclose honesty on the part of Suief telling the true facts to assist in the investigations when he was giving his 2018 statement. As I noted at [74] of my judgment, Suief was a frank and forthright witness. I did not and do not believe that he was merely singing the Prosecution’s tune to falsely implicate the accused, in his own self-induced hope of mercy. If so, Suief would run the

³³ Defence’s submissions at para 35(c).

³⁴ ACB Vol I at p 146.

risk of displeasing the police and committing another serious criminal offence of falsely accusing the accused in a capital offence should he be found out later to be lying, which would surely extinguish any hope of mercy.

34 Consequently, I do not think that the 2011 statements relied upon by the Defence support a finding that the introductory meeting took place on 24 October 2011. Neither do they disturb my finding that the Alleged Introductory Meeting took place on 12 October 2011, which was based on the ICA travel records together with the reliable and consistent evidence of Shanmugam and Suief (which I accepted) that the accused was indeed physically present at the West Coast McDonald’s carpark sometime in October 2011 and had personally introduced Shanmugam to Suief.

The phone records

35 The second plank of the Defence’s argument on this issue consists of the phone records between Shanmugam’s mobile phone, Suief’s mobile phone and the number “+60164978192” (the “Mobile Phone Number”). However, to fully consider the significance of these phone records, I have to first deal with the related issue of the ownership of the Mobile Phone Number.

36 In my judgment, I found that the Mobile Phone Number belonged to the accused (at [56]–[59]). However, in its appeal, the Defence has challenged this finding. Its main substantive argument involves the newly adduced Call Trace Report. The Defence makes two points:³⁵

- (a) First, the Call Trace Report does not show any calls between Suief’s mobile phone and the Mobile Phone Number prior to 12 October

³⁵ Defence’s submissions at para 87.

2011 at 3.58pm. However, Suief's testimony was that he had received several calls from the accused via the Mobile Phone Number in connection with prior drug deliveries.

(b) Second, Suief testified that the next occasion on which the accused contacted him after 12 October 2011 was 28 October 2011. However, the Call Trace Report demonstrates that there were almost 40 calls between Suief's mobile phone and the Mobile Phone Number from 12 October 2011 and 28 October 2011.

37 These contradictions, the Defence argues, indicate that Suief's evidence that the Mobile Phone Number belonged to the accused cannot be trusted, and that the Mobile Phone Number did not in fact belong to the accused.

38 I do not think that the Defence's submissions serve to discredit Suief's testimony in this regard. In relation to its first point, the Call Trace Report was only for the period of 28 September 2011 to 28 October 2011.³⁶ It is not unknown for masterminds and co-ordinators for drug couriers to have several mobile phones and also to change their mobile phone numbers over a period of time to avoid detection. I further note that the Call Trace Report indicates about 1,000 calls from 28 September 2011 to 11 October 2011 to and from Suief's phone.³⁷ In particular, there were numerous calls between a Malaysian number (60194607771) and Suief's phone in that time, which ceased after the morning of 12 October 2011³⁸ (though no submissions were made in respect of this number). Given the massive number of calls in this time, it remains possible

³⁶ Applicant's Core Bundle (Vol I) in CA/CM 35/2020 at p 94.

³⁷ Applicant's Core Bundle (Vol I) in CA/CM 35/2020 at pp 150–198.

³⁸ Applicant's Core Bundle (Vol I) in CA/CM 35/2020 at pp 151, 152, 160, 162, 163, 165, 166, 173, 180, 185, 189, 191.

that any one of these could have been an alternate number used to contact Suief. As for the Defence's second point, it may be that Suief had forgotten about these intervening phone calls. The passage of years often wears memory down to its sharpest and most well-defined features. It would be understandable if Suief, in remembering his arrest on 28 October 2011 and the meeting on 12 October 2011 which led to that arrest, had elided the intervening days and events.

39 As I put it in my judgment (at [59]), the crux of the matter is that there must have been a common thread that pulled the Couriers together and coordinated their actions. The Mobile Phone Number was clearly one part of that, and both Shanmugam and Suief testified that the Mobile Phone Number belonged to the accused. I do not think that the new evidence raised by the Defence in the form of the Call Trace Report undermines that testimony in any significant manner.

40 I return to the main issue at hand, which is the Defence's submission that the phone records between Shanmugam's phone number, Suief's phone number and the Mobile Phone Number suggest that the introductory meeting between Suief and Shanmugam took place on 24 October 2011. The Defence points out that on that day, there was a flurry of exchanges between the three phone numbers:³⁹

- (a) Four calls and a text between Shanmugam and the Mobile Phone Number;⁴⁰

³⁹ Defence's submissions at paras 68–71; Agreed Table of Evidence dated 14 September 2021.

⁴⁰ ACB Vol II at p 249 s/n 24, p 252 s/n 19–21 and p 254 s/n 16.

(b) Twenty-one calls between Suief and the Mobile Phone Number;⁴¹ and

(c) Six calls between Shanmugam and Suief.⁴²

41 However, the Defence has not explained how this burst of activity over the phone suggests in any way a *physical* meeting between Shanmugam and Suief on this date. There might have been any number of reasons for these calls; for instance, as the Prosecution pointed out, they might have related to other drug transactions.⁴³ In any case, even if there was a meeting between Shanmugam and Suief on this date, that does not mean that Shanmugam and Suief had not been physically introduced to each other by the accused on 12 October 2011, at the West Coast McDonald’s carpark.

42 Put simply, bearing in mind my finding that (a) the Alleged Introductory Meeting took place on 12 October 2011 between the Couriers and the accused, and (b) the Mobile Phone Number belonged to the accused, there is nothing surprising or unexpected about this flurry of exchanges on 24 October 2011. In other words, this flurry of exchanges on 24 October 2011 does not in any discernible way challenge my finding. If anything, given my finding that the Mobile Phone Number belonged to the accused, the Call Trace Records appear to confirm that the accused was the common thread pulling the Couriers together.

43 My analysis above of the Defence’s case on the 2011 statements and the phone records suffices for me to reject the Defence’s theory that the

⁴¹ ACB Vol II at pp 272–276.

⁴² ACB Vol II at p 250 s/n 53–58.

⁴³ Transcript, 30 July 2021, p 58 at lines 13–25.

introductory meeting between Suief and Shanmugam, if there was one, actually took place on 24 October 2011.

Whether the Alleged Introductory Meeting could have taken place on 12 October 2011

44 Finally, the Defence argues that there was simply not enough time for the Alleged Introductory Meeting to have taken place during Shanmugam’s visit to Singapore in the morning of 12 October 2011, from 7.24am to 9.36am. The Defence suggests that it is implausible for the following sequence of events to have fitted in that window of time:⁴⁴

- (a) Extensive checks were conducted on Shanmugam’s car at Woodlands Checkpoint;
- (b) Shanmugam would then have had to drive from Woodlands Checkpoint to the Woodlands McDonald’s car park to meet the accused;
- (c) Shanmugam would then have had to drive to the West Coast McDonald’s car park during peak hour traffic;
- (d) The Alleged Introductory Meeting between Shanmugam, Suief and the accused would have had to take place;
- (e) Thereafter, Suief drove the car with license plate number JLT 8467 (the “Kenari car”) away for about 45 minutes; and
- (f) Shanmugam would finally have had to drive from the West Coast McDonald’s car park to Woodlands Checkpoint during peak hour traffic.

⁴⁴ Defence’s submissions at para 74.

45 I do not agree with the Defence that it was extremely unlikely for all of the above to have taken place during Shanmugam’s visit. It would be a mistake to focus too much on how tightly the above sequence of events had to fit in the two-hours-and-twelve-minutes window of Shanmugam’s visit. The better way to think about this would be from Shanmugam’s perspective: he came to Singapore specifically for this meeting and had no reason to tarry. It stands to reason that he would take precisely and only as much time as he needed at each step before making a speedy departure.

46 In any case, it is not at all clear that each and every one of the events listed above must have happened during the 7.24am to 9.36am window of Shanmugam’s visit:

(a) Although Shanmugam testified that immigration officers had performed a “thorough check” on his car at Woodlands Checkpoint,⁴⁵ he did not mention how long this check took. It is also not clear whether this check was performed before or after Shanmugam was registered as having entered Singapore at 7.24am.

(b) I considered the possibility that Shanmugam might have been telling the truth about Suief taking away the Kenari car for 45 minutes in my judgment at [113]–[115]. However, I did not make a finding on whether this had truly happened, because it was not necessary for the purposes of the Charge (at [90(b)]). In any event, even if the Kenari car had been taken away in this manner, it is possible that Shanmugam could have overestimated the period of time involved.

⁴⁵ Transcript, 10 July 2018, p 105 line 9 to p 110 line 13.

47 In short, I do not consider the Defence to have raised a reasonable doubt as to whether the Alleged Introductory Meeting could have taken place on 12 October 2011.

Conclusion

48 None of the Defence's arguments have raised a reasonable doubt as to whether the Alleged Introductory Meeting took place on 12 October 2011. My finding that this was indeed the case therefore remains unaffected. As such, there is no need for me to address whether a change in my finding would affect the accused's conviction.

Chan Seng Onn
Judge of the High Court

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