IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 19

Criminal Appeal No 17 of 2016

Between

Mohammad Farid bin Batra

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 19 of 2016

Between

Ranjit Singh Gill Manjeet Singh

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 5 of 2017

Between

Ranjit Singh Gill Manjeet Singh

… *Applicant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 4 of 2018

Between

Mohammad Farid bin Batra

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

TABLE OF CONTENTS

Mohammad Farid bin Batra
v
Public Prosecutor and another appeal and other matters

[2020] SGCA 19

Court of Appeal — Criminal Appeals Nos 17 and 19 of 2016 and Criminal Motions No 5 of 2017 and No 4 of 2018
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
18 August 2017, 12 February 2018, 26 March 2018, 17 October 2019

26 March 2020 Judgment reserved.

Tay Yong Kwang JA (delivering the judgment of the court):

Introduction

1 The appellants are Mohammad Farid bin Batra ("Farid"), a 47-year-old male Singaporean, and Ranjit Singh Gill Manjeet Singh ("Ranjit"), a 46-year-old male Malaysian. They were found guilty and convicted of trafficking in not less than 35.21g of diamorphine (*ie*, heroin) in 2016 after a joint trial before a High Court Judge ("the Judge"), an offence which carries the death sentence.

2 The Judge found that Ranjit was a courier within the meaning of s 33B(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). As the Public Prosecutor had issued a certificate of substantive assistance to Ranjit, the Judge exercised her discretion not to impose the death penalty and sentenced Ranjit instead to life imprisonment and the mandatory 15 strokes of the cane. The Judge held that Farid was not a mere courier. In any event, Farid did not

receive a certificate of substantive assistance from the Public Prosecutor. Accordingly, the Judge imposed the mandatory death sentence on him.

3 Criminal Appeal No 17 of 2016 ("CCA 17/2016") and Criminal Appeal No 19 of 2016 ("CCA 19/2016") are, respectively, Farid's and Ranjit's appeals against conviction and sentence. Farid is appealing against his conviction on the ground that he did not have the intention of trafficking the drugs. For his appeal against sentence, he contended that the Judge was wrong to find that he was not a courier. Ranjit's argument on appeal was that he had no knowledge of the nature of the drugs that were in his possession. Ranjit also made several complaints against his former defence counsel alleging that they had not conducted his defence at trial according to his instructions and thereby deprived him of the opportunity to put across his intended defence. This allegation was the subject of a criminal motion before us to adduce further evidence which we discuss subsequently in this judgment.

4 On 17 October 2019, we reserved judgment in Farid's appeal and dismissed Ranjit's appeal. In this judgment, we uphold Farid's conviction but find that Farid was a courier for the drug transaction in question. However, since the Public Prosecutor did not issue Farid a certificate of substantive assistance, this finding has no effect on the sentence imposed. In Ranjit's appeal, apart from giving our reasons for dismissing his appeal, we also discuss the principles involved in determining allegations made by accused persons against their counsel pertaining to non-compliance with instructions and inadequate legal assistance.

Background

Facts of the arrest

5 The factual background was set out in a Statement of Agreed Facts. On 6 February 2014, at about 6.10pm, a party of officers from the Central Narcotics Bureau ("CNB") was despatched to conduct surveillance in the vicinity of Choa Chu Kang Way on Farid who was expected to be using a car bearing registration number SJK 5768J ("the Car"). The CNB officers were also told to look out for a Malaysian-registered bus which was suspected to be carrying a consignment of drugs.

6 At about 8.35pm, a Malaysian-registered bus bearing registration number JHD 5635 ("the Bus") was seen parked beside the multi-storey car park at Block 610A, Choa Chu Kang Way.

7 At about 9.20pm, the Car, whose driver was later identified as Farid, was seen travelling along Choa Chu Kang Way and making a U-turn. Shortly thereafter, the Car stopped in front of the Bus. A male Indian, later identified as Ranjit, alighted from the Bus. Ranjit was observed to be carrying a white plastic bag in one hand. Ranjit walked towards the Car. Through the open window at the front passenger side of the Car, Ranjit placed the said plastic bag on the front passenger seat. Farid then passed Ranjit a red and yellow package. Ranjit walked back to the Bus and boarded it. Thereafter, both of them went their separate ways in their respective vehicles.

8 The Car and the Bus were followed separately by two groups of CNB officers. At about 9.25pm, the CNB officers intercepted the Car at the slip road of Choa Chu Kang North 6 and Choa Chu Kang Drive, beside Yew Tee MRT station and placed Farid under arrest. At about 10.10pm, the CNB officers

intercepted the Bus along Seletar Expressway and arrested Ranjit. Inside the Bus, the CNB officers found two envelopes under the driver's seat containing $4,050 and $1,470 in cash.

9 Inside the Car, a white and black plastic bag with the word "ROBINSONS" was recovered ("the Robinsons Bag"). The Robinsons Bag contained a blue plastic bag containing another blue plastic bag containing three bundles wrapped in newspapers. One of the bundles contained one plastic packet containing a brownish granular/powdery substance. The other two bundles each contained two plastic packets containing a brownish granular/powdery substance. In total therefore, there were five such plastic packets.

10 The five plastic packets containing the brownish granular/powdery substance were sent to the Health Sciences Authority ("HSA") for analysis. The HSA found that the five packets collectively contained not less than 1,359.9g of granular/powdery substances which contained not less than 35.21g of diamorphine ("the drugs").[1]

11 After Farid's arrest, the CNB officers recorded his statement and then escorted him to his flat in Choa Chu Kang Street 52 which was his residential address on record. They did not find anything incriminating in his flat. Upon further questioning about whether there was anything else in Farid's unit at the Regent Grove Condominium ("the Unit"), Farid answered in English "Got balance. About half." This was recorded by a CNB officer. Farid was then

---

[1] ROP Vol 2 pp 18 – 19 (Statement of Agreed Facts). For future reference, ROP will refer to the Record of Proceedings of the main trial on conviction and sentence while ROP (Remittal Hearing) will refer to the Record of Proceedings of the remittal hearing.

escorted to the Unit. The CNB officers entered the Unit using the combination lock number given by Farid and his keys. Inside the Unit, Farid told the CNB officers where he kept the "balance" packet. Among other things, numerous empty plastic packets, two electronic weighing scales and a total of $13,888 in cash were found and seized.

The charges

12 Farid faced three charges under the MDA. The Prosecution stood down two of the charges at the start of the trial in the High Court and proceeded with the first charge, which was a capital charge. The first charge under s 5(1)(*a*) read with s 5(2) of the MDA was as follows:[2]

> That you, [MOHAMMAD FARID BIN BATRA] on 6 February 2014, at or about 9:25 p.m., inside a car bearing registration number SJK5768J, at the slip road of Choa Chu Kang North 6 and Choa Chu Kang Drive, beside Yew Tee MRT Station, Singapore, did traffic a Class A Controlled Drug listed in the First Schedule to Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "Act"), *to wit*, by having in your possession five (5) packets containing not less than 1,359.9 grams of granular/powdery substance which was analysed and found to contain not less than 35.21 grams of diamorphine for the purposes of trafficking, without any authorisation under the Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(a) read with Section 5(2) and punishable under Section 33(1) of the Act, and further upon your conviction under Section 5(1)(a) of the Act, you may alternatively be liable to be punished under Section 33B of the Act.

13 Ranjit faced one charge under s 5(1)(*a*) of the MDA. His charge reads as follows:[3]

---

2 ROP Vol 2 pp 2 – 3.

3 ROP Vol 2 p 2.

> That you, [RANJIT SINGH GILL MANJEET SINGH] on 6 February 2014, at or about 9.20 p.m., along Choa Chu Kang Way beside Block 610A multi-storey car park, Singapore, did traffic 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*, by giving five (5) packets containing not less than 1,359.9 grams of granular/powdery substance, which was analysed and found to contain not less than 35.21 grams of diamorphine, to one Mohammad Farid Bin Batra (NRIC No. S72XXXXXX), without any authorisation under the Act or the Regulations made thereunder and you have thereby committed an offence under Section 5(1)(*a*) and punishable under Section 33(1) of the Act, and further upon your conviction under Section 5(1)(a) of the Act, you may alternatively be liable to be punished under Section 33B of the Act.

Statements by Farid and Ranjit

14 The CNB recorded the following statements from Farid:

(a) Three contemporaneous statements on the night of the arrest. They were marked Exhibits P122[4], P123[5] and P124[6];

(b) One cautioned statement recorded on 7 February 2014 which was marked as Exhibit P125[7]; and

---

4 ROP Vol 2 p 247.

5 ROP Vol 2 pp 248 – 253.

6 ROP Vol 2 pp 254 – 258.

7 ROP Vol 2 pp 259 – 262.

(c) Five long statements recorded between 9 and 14 February 2014. These were marked Exhibits P128[8], P129[9], P131[10], P132[11] and P133.[12]

15 The pertinent portions of Farid's statements can be summarised as follows:

(a) Farid knew the Robinsons Bag contained heroin but he did not know its quantity.[13] He had collected it on the instructions of a person known to him as "Abang".[14]

(b) Farid had been working for Abang for about two weeks prior to his arrest. In those two weeks, he had collected three drug consignments, inclusive of the consignment on the day of his arrest (the Robinsons Bag). He would be paid a salary of $300 per pound of heroin that he helped to repack and/or deliver. However, he had not received any payments from Abang at the time of his arrest because he had not discussed payment terms with Abang yet.[15]

(c) Farid admitted that the empty plastic packets and two electronic weighing scales found in the Unit belonged to him and were used by him

---

8 ROP Vol 2 pp 271 – 273.

9 ROP Vol 2 pp 274 – 276.

10 ROP Vol 2 p 280.

11 ROP Vol 2 p 281 – 284.

12 ROP Vol 2 pp 285 – 287.

13 Exhibit P123 at ROP Vol 2 p 249 A6.

14 Exhibit P128 at ROP Vol 2 p 272 para 5.

15 Exhibit P129 at ROP Vol 2 p 274 paras 7 – 8.

to weigh and pack the heroin that he collected on Abang's instructions.[16] With one of the weighing scales found in the Unit, Farid would weigh the heroin so as to pack it into half or one-pound orders. With the other weighing scale, he would weigh the heroin so as to pack it into small packets of 7.7-7.9g.[17] Prior to his arrest, he had received two consignments of drugs from Abang.[18]

(d) Farid elaborated that on 4 February 2014, he received two pounds of heroin from a Chinese woman. On 5 February 2014, Abang contacted him and instructed him to pack the heroin into one one-pound packet and two half-pound packets. After doing so, he received instructions from Abang to pass one half-pound packet and one one-pound packet to his customers at Yio Chu Kang Stadium and at Bedok Stadium respectively.[19] After he made those deliveries, Abang telephoned him and asked him to collect and to find buyers for a consignment of "*Air Batu*" (which was methamphetamine) as the original customer was uncontactable. Farid agreed. Farid then collected the *Air Batu* from the same Chinese woman. The *Air Batu* was in a red and yellow plastic packet.[20] However, Farid was unable to find any buyers for the *Air Batu* and he informed Abang about this.[21]

---

16 Exhibit P124 at ROP Vol 2 pp 256 – 257 A24 – A25. Exhibit P129 at ROP Vol 2 p 275 para 9.

17 Exhibit P129 at ROP Vol 2 p 275 para 9.

18 Exhibit P 128 at ROP Vol 2 pp 271 – 272 paras 2 – 3.

19 Exhibit P132 at ROP Vol 2 pp 281 – 282 paras 14 – 18.

20 Exhibit P132 at ROP Vol 2 pp 283 – 284 paras 20 – 23.

21 Exhibit P132 at ROP Vol 2 p 284 para 24.

(e) On 5 February 2014, on the same evening that Farid received the call regarding the *Air Batu* above, Abang called Farid to inform him that a consignment of heroin would be coming in the next day, 6 February 2014, and asked Farid to collect it.[22]

(f) On 6 February 2014, when Farid met Abang, Abang wanted to discuss the terms of Farid's payment but Farid declined to have the discussion at that time as he was in a rush.[23]

(g) Farid identified Ranjit as Abang.[24]

16 The CNB recorded the following statements from Ranjit:

(a) One contemporaneous statement recorded on the night of the arrest on 6 February 2014. This was marked Exhibit P121[25];

(b) One cautioned statement recorded on 7 February 2014. This was marked Exhibit P126[26]; and

(c) Three long statements recorded between 9 and 14 February 2014. They are Exhibits P127[27], P130[28] and P134.[29]

---

22 Exhibit P132 at ROP Vol 2 p 283 para 21.

23 Exhibit P131 at ROP Vol 2 p 280 para 13.

24 Exhibit P128 at ROP Vol 2 p 271 para 1.

25 ROP Vol 2 pp 242 – 246.

26 Exhibit P129 at ROP Vol 2 pp 263 – 266.

27 ROP Vol 2 pp 267 – 270.

28 ROP Vol 2 pp 277 – 279.

29 ROP Vol 2 pp 288 – 291.

17 The pertinent portions of Ranjit's statements can be summarised as follows:

(a) Ranjit had been working for a person known as Siva for about two months.[30] His job was to deliver what he referred to as "*barang*" or "*makan*" into Singapore.[31] He knew that *makan* or *barang* referred to something illegal.[32]

(b) By way of background, Ranjit owned a bus business which he started about four years prior to his arrest.[33] He only started working for Siva because he was in financial difficulties. He explained that sometime in May 2013, he took a loan of RM6,000 from loan sharks to help one of his friends. At the start of August 2013, he started facing financial problems with his business and he had to sell some of his buses to sustain it. Eventually, he was unable to maintain the liquidity necessary to keep his business going. Siva then offered him a job to deliver *makan* into Singapore. He said that Siva did not know what these items were because they were all pre-packed. The frequency of his deliveries of *makan* increased when Farid started to place orders.[34]

(c) Whenever Ranjit was unable to make a delivery for Siva, he would ask a woman known as "Perl" to make the delivery instead. On 5

---

30 Exhibit P130 at ROP Vol 2 p 277 para 8.

31 Exhibit P130 at ROP Vol 2 p 277 para 8 and Exhibit P134 at ROP Vol 2 p 290 para 28.

32 Exhibit P130 at ROP Vol 2 p 277 para 8 and Exhibit P134 at ROP Vol 2 p 290 para 28.

33 Exhibit P130 at ROP Vol 2 p 277 para 9.

34 Exhibit P130 at ROV Vol 2 pp 277 – 278 paras 11 – 13.

February 2014, Ranjit informed Perl about Siva's instructions to pass 75g of *Air Batu* to a person known as Bro Choa Chu Kang and to collect $7,400 from him. Perl was to change the money into a different currency, keep RM1,000 for herself as payment for accepting the job and deposit the remainder into Ranjit's account. On the same day, Perl informed Ranjit that Bro Choa Chu Kang was uncontactable and he thus told her to pass the *Air Batu* to Bro Bukit Timah (identified as Farid) instead.[35]

(d) For the events on 6 February 2014 leading up to his arrest, Ranjit gave two different accounts:

(i) In his first long statement, Ranjit claimed that he delivered the Robinsons Bag at the request of a person known as Roy, who was Ranjit's friend. Roy had told him that a customer in Singapore had left the Robinsons Bag on the bus and asked Ranjit to help return that bag to the customer in Singapore.[36]

(ii) In his third long statement, Ranjit claimed instead that he delivered the Robinsons Bag after receiving a telephone call from Siva sometime between 2 and 3pm informing him that there was *barang* to be delivered into Singapore.[37]

(e) Ranjit did not know the contents of the Robinsons Bag. He only knew that it contained three packets.[38]

---

35 Exhibit P134 at ROP Vol 2 p 290 para 26.

36 Exhibit P127 at ROP Vol 2 p 267 para 1.

37 Exhibit P134 at ROP Vol 2 pp 290 – 291 para 28.

38 Exhibit P121 at ROP Vol 2 p 243 A4.

18 At the trial below, Farid and Ranjit did not challenge the voluntariness of their statements made to the CNB as set out above.

The trial

Prosecution's case

19 The Prosecution's case against Ranjit was that he was presumed under s 18(2) of the MDA to have had knowledge of the nature of the drugs in his possession. Section 18(2) of the MDA reads as follows:

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

20 Relying on the s 18(2) presumption, the Prosecution submitted that Ranjit had trafficked the diamorphine to Farid when he passed the Robinsons Bag to Farid, thereby committing an offence under s 5(1) of the MDA.

21 In Farid's case, the Prosecution submitted that the evidence showed that Farid admitted that the Robinsons Bag contained heroin and that his purpose in receiving the heroin was to distribute it.

Farid's case at trial

22 Farid did not dispute that he had possession of the Robinsons Bag or that he was aware of its contents. His counsel conceded expressly in the closing submissions that the elements of the charge against Farid were met. Farid only attempted to show that he had acted as a courier and co-operated with the CNB.[39]

Ranjit's case at trial

---

[39] GD at [32].

23 At the trial in the High Court, Ranjit was represented by Mr Singa Retnam ("Mr Retnam"), Mr Dhanaraj James Selvaraj ("Mr Selvaraj") and Mr Gino Hardial Singh ("Mr Singh") (collectively "Ranjit's trial counsel").

24 On the first day of trial, Ranjit's trial counsel made an application to exclude certain evidence ("Disputed Evidence"), namely:

(a) portions of Farid's statements to the CNB where he mentioned transactions with Abang (whom he claimed to be Ranjit) involving heroin;

(b) portions of Ranjit's statements to the CNB regarding transactions said to involve something illegal (which he referred to as *makan* or *barang*) and those transactions involving Farid, Perl and one Mohd Hafiz bin Mohamad Arifin ("Hafiz");

(c) portions of both Farid's and Ranjit's statements to the CNB involving the red and yellow package (which Ranjit referred to as the "Sotong Bag") which was later found to contain methamphetamine;

(d) Two HSA certificates relating to the methamphetamine in the red and yellow package;

(e) Three photographs of the red and yellow package and the methamphetamine; and

(f) A photograph of another quantity of drugs found in the Unit.[40]

---

40 GD at [12] – [13]. See also ROP Vol 1 NE 5 April 2016 p 30.

25 In Ranjit's defence, Ranjit's trial counsel argued that he had no knowledge that the Robinsons Bag contained heroin and at most, only knew that he was delivering something illegal or even drugs generally but not diamorphine. Ranjit testified that the man named Roy was employed by Siva as a tour coordinator and that Roy had asked Ranjit to deliver the Robinsons Bag to Farid.[41] When they met on 6 February 2014, Farid told Ranjit to call Siva about the red and yellow package. Thereafter, Ranjit received Hafiz's contact number from Siva and proceeded to deliver the red and yellow package to Hafiz.[42] Ranjit denied being Farid's boss and claimed that they had not met prior to 6 February 2014.[43]

The decision of the High Court

26 The Judge's grounds of decision can be found in *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2016] SGHC 217 ("the GD").

Farid's conviction and sentence

27 As Farid had admitted every element of the offence in his charge, the Judge convicted him. The Judge noted that Farid had consistently admitted in his various statements to the CNB that the Robinsons Bag was in his possession and that it contained heroin which he was meant to distribute.[44]

28 The Judge stated (at [63] of the GD) that Farid had not shown on a balance of probabilities that he was a mere courier within the meaning of s 33B

---

41 ROP Vol 1A NE 13 April 2016 pp 7 – 8.

42 ROP Vol 1A NE 13 April 2016 p 9.

43 ROP Vol 1A NE 13 April 2016 pp 11 and 15.

44 GD at [51].

of the MDA. The Judge found it clear that repacking drugs for the purpose of further distribution and sale was integral to Farid's role. Farid had admitted during cross-examination that he was going to use the weighing scales and plastic packets at the Unit to repack the heroin. The Judge was not convinced by the argument by Farid's counsel that the five packets of heroin in the Robinsons Bag were already in one-pound and half-pound packages and therefore did not require repacking. The Judge noted that Farid had admitted to having repacked heroin into smaller packets between 7.7 and 7.9g for the previous consignments. The Judge was of the view (at [64]), following *Public Prosecutor v Yogaras Poongavanam* [2015] SGHC 193 at [28], that Farid was "someone who packs drugs into bundles as a routine after ensuring that the right type and quantity of the drugs go into the right packaging" and therefore did not qualify as a courier under s 33B(2)(*a*) of the MDA. In any event, the Prosecution did not issue a certificate of substantive assistance to Farid. Accordingly, the Judge imposed the mandatory death penalty on Farid.

Ranjit's conviction and sentence

29 On the issue of the admissibility of the Disputed Evidence, the Judge followed the approach articulated by the Court of Appeal in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 at [41], [48] and [52] and considered three factors to determine whether the evidence was sufficiently probative to be admitted: (a) the cogency or reliability of the evidence; (b) the strength of inference provided by the evidence; and (c) the relevance of the evidence.[45]

30 Applying these factors, the Judge held that some of the Disputed Evidence were admissible (namely the portions of Farid's and Ranjit's

[45] GD at [17] and [19].

statements). These portions of the Disputed Evidence formed cogent evidence as they were contained in Ranjit's and in Farid's statements, which were not challenged on the ground of voluntariness. They provided relevant and sufficiently weighty evidence for the consideration of Ranjit's state of mind and, specifically, the merits of any potential defence that he did not know what the Robinsons Bag contained apart from "something illegal". The Judge added that Farid's counsel intended to rely on the entirety of Farid's statements for the purposes of Farid's defence and that therefore it would have been premature to exclude them at that fairly early stage of the trial when it was still unclear as to what Ranjit's defence would be. The Judge left it open for Ranjit's trial counsel to submit on the relevance and/or weight to be accorded to such evidence later in the proceedings.[46] The Judge also accepted the Prosecution's submission that the photographs of the red and yellow package and the methamphetamine found therein were admissible as a matter of completeness.

31 However, the Judge excluded the two HSA certificates from the evidence, as the evidence on the quantity and quality of methamphetamine was irrelevant to Ranjit's state of mind. The Judge also excluded the photograph of the drugs found subsequently in the Unit as that was irrelevant to the charge against Ranjit and appeared to have little or no relevance to the charge against Farid.[47]

32 The Judge found that it was undisputed that Ranjit had possession of the Robinsons Bag which contained the heroin and he was thereby presumed to have been in possession of the drugs pursuant to s 18(1) of the MDA. The Judge

---

46 GD at [19] – [20].

47 GD at [21] – [22].

found that Ranjit failed to rebut the presumption of knowledge of the nature of the drugs under s 18(2) of the MDA as three aspects of the transaction, taken together, made it so clearly suspicious that Ranjit's failure to check or enquire into the contents of the Robinsons Bag must have been deliberate (GD at [38]–[44]):

> (a) First, Ranjit had stated in his second long statement to the CNB that he knew that the *makan* he was delivering was something illegal and that Siva had given him an evasive answer when asked about the contents, such as claiming not to know as the items would have been packed already.
>
> (b) Second, Siva had tasked him to procure the delivery of *Air Batu* which Ranjit did through Perl. The Judge found it unbelievable that Ranjit understood *Air Batu* to refer to ice cubes and not methamphetamine when Perl had been asked to collect $7,400 upon delivery of the 75g of the substance.
>
> (c) Third, Ranjit had also admitted in his third long statement that he knew that the *barang* in the Robinsons Bag was something illegal but he did not know the contents. He conceded in cross-examination that Siva had contacted him to deliver *barang* to Singapore.

Further, the Judge noted Ranjit's overall low level of credibility demonstrated in his oral testimony and found that Ranjit had failed to provide any sensible explanation for his failure to check or enquire into the contents of the Robinsons Bag (GD at [46]–[49]). The Judge was not convinced by Ranjit's testimony that he was not at all curious or interested in the contents in the Robinsons Bag. As Ranjit could not prove that he had no knowledge of the nature of the contents in the Robinsons Bag, the Judge convicted him as charged.

33 For completeness, the Judge made clear (at [50]) that she did not rely on Farid's assertions that Ranjit was his boss Abang. Farid had claimed that he had not met Ranjit or Abang prior to 6 February 2014 and his conclusion that Ranjit was Abang was based on only two facts: that Abang had told Farid that he would be coming to Singapore and that Ranjit's voice sounded like that of Abang over the phone. On the stand, Farid testified that "Ranjit was possibly the person that [he had] talked to on the phone". The Judge considered this to be too tenuous a basis on which to find that Ranjit was Abang.

34 The Judge found that Ranjit's role in giving delivery instructions to Perl and collecting the two envelopes of cash did not disqualify him from being a courier as these acts were in respect of distinct and separate drug transactions (GD at [55]–[59]). The Judge held, on a balance of probabilities, that Ranjit's role in dealing with the drugs was merely to deliver them to Farid on Siva's instructions and that this fell squarely within the acts of a courier set out in s 33B(2)(*a*) of the MDA. As the Public Prosecutor issued a certificate of substantive assistance to Ranjit, both requirements in s 33B were satisfied. In the exercise of her discretion under s 33B(1)(*a*) of the MDA, the Judge saw no reason to impose the death penalty. Ranjit was therefore given the alternative mandatory sentence of life imprisonment and the mandatory minimum of 15 strokes of the cane (GD at [60]).

The criminal appeals

35 Farid and Ranjit appealed against the Judge's decision on their respective convictions and sentences.

Farid's appeal (CCA 17/2016)

36 Farid filed his notice of appeal against conviction and sentence on 1 July 2016 and his petition of appeal on 16 November 2016. Subsequently, he filed Criminal Motion No 4 of 2018 on 19 January 2018 for leave to amend his petition of appeal. The amendments were essentially to elaborate on the reasons supporting his contention that he had rebutted the presumption of trafficking in s 17 of the MDA and that, alternatively, he was a mere courier in the particular drug transaction before the court. We granted Farid's application to amend his petition of appeal on 12 February 2018.[48]

37 In the amended petition, Farid contended that he had provided sufficient evidence to rebut the presumption under s 17 of the MDA *(ie,* that the drugs he had in his possession were for the purpose of trafficking). Farid argued that he was acting on Abang's instructions when he collected the drugs. Given that Abang had not given any instructions on what to do with the drugs, the Judge erred in finding that Farid intended to traffic those drugs. Farid also argued that he had provided sufficient evidence to prove that he was a mere courier for the purposes of the alternative sentencing regime under s 33B(2) of the MDA. Relying again on the fact that Abang had not issued any instructions yet on what to do with the drugs in this particular transaction, Farid argued that he could not be said to have intended to repack the drugs, which would have enlarged his role to one beyond that of a mere courier.

---

48 Minute Sheet dd 12 February 2018.

Ranjit's appeal (CCA 19/2016)

38 Ranjit filed his appeal on 5 July 2016. In his appeal, he was represented by Mr Bachoo Mohan Singh and Mr Too Xing Ji ("Ranjit's counsel on appeal").

39 Ranjit's case on appeal was that the Judge was wrong to have found that Ranjit did not rebut the presumption in s 18(2) of the MDA (*ie*, that he had knowledge of the nature of the drugs in his possession) when he passed the Robinsons Bag containing the heroin to Farid on 6 February 2014. First, Ranjit's counsel on appeal argued that the Judge was wrong to have admitted the portions of the Disputed Evidence and to have relied on them (see above at [30] and [31]). Ranjit's counsel on appeal argued that such evidence was not cogent, did not raise a strong inference and was irrelevant.[49]

40 Second, Ranjit's counsel on appeal advanced the following main factual arguments:

(a) That it was implausible for Ranjit to risk his life for a mere RM100 when his net assets were worth RM377,824 at the time of his arrest;

(b) That it was improbable for Ranjit to risk the forfeiture of the Bus worth RM100,000 by driving it into Singapore while knowingly trafficking drugs;

(c) That Ranjit was consistent in his position that he was a businessman who did not know the contents of the Robinsons Bag that was left behind on the Bus by a customer;

---

[49] Ranjit's Written Submissions dd 5 February 2018 at paras 71 – 85.

(d) That if Ranjit knew that he was carrying drugs, he would not have (a) kept the Robinsons Bag at such an open and accessible place as the side pocket of the driver's seat while passing through the immigration checkpoints in Malaysia and Singapore; (b) agreed to meet Farid at such a public place like Yew Tee MRT station without fixing a meeting time beforehand; (c) left the drugs on the bus for some 20 to 30 minutes while he went to the toilet while waiting for Farid; and (d) approached a stranger to ask if the stranger was there to collect the Robinsons Bag; and

(e) That the sum of money found on Ranjit ($5,520) was inconsistent with the amount of drugs delivered by Ranjit to Farid. Based on reported decisions, the value of one pound of heroin when delivered by a courier to a drug trafficker is about $5,000. As such, Ranjit ought to have collected about $15,000 for the 1,359.9g of drugs (roughly equivalent to three pounds) that he delivered to Farid on the day of his arrest.[50]

41 Finally, Ranjit's counsel on appeal argued that the Prosecution had breached its obligations set out in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("the *Kadar* obligations") by failing to (a) call Siva as a witness and being slow in disclosing Siva's availability; (b) investigate Ranjit's financial situation at the material time when Ranjit had informed the investigators that he was a businessman; (c) disclose the fact that the CNB had returned Ranjit's ATM cards after the Royal Malaysian Police investigated his bank accounts and concluded that they were clean in that they did not contain

[50] Ranjit's Written Submissions dd 5 February 2018 at paras 29 – 30.

moneys obtained from drug or crime-related transactions; and (d) disclose the phone records of Ranjit's main phone which held no incriminating evidence.[51]

42 In an attempt to strengthen Ranjit's case on appeal, Ranjit's counsel on appeal filed Criminal Motion No 5 of 2017 ("CM 5/2017") seeking to adduce further evidence at the hearing of his main appeal and also to withdraw Ranjit's admission to the Statement of Agreed Facts. The further evidence comprised nine categories of documents and the oral testimony and/or affidavits of four persons ("Further Evidence"). The Further Evidence pertained to Ranjit's personal financial status as well as that of his business at the time leading up to his arrest on 6 February 2014.[52]

Ranjit's application to adduce further evidence (CM 5/2017)

43 CM 5/2017 was first heard before us on 18 August 2017. At that hearing, we rejected Ranjit's application to withdraw his consent to the Statement of Agreed Facts. We will explain our reasons later in this judgment. As for Ranjit's application to adduce further evidence, we ruled that the application should be heard together with Ranjit's main appeal. We stated the following:[53]

> We dismiss prayer 2 of the motion which is that part of the motion seeking leave to withdraw the statement of agreed facts. We adjourn prayer 1 of the motion to be heard at the same time as the substantive appeal. Mr Singh's case, at its highest, is this: He wishes to adduce the evidence in question in order to show that his client is a person of substantial financial means. He contends that this fact, if proved, could have had a material impact on the way the Judge viewed the probabilities when evaluating the applicant's defence. On this basis, Mr Singh will

---

51 Ranjit's Written Submissions dd 5 February 2018 at paras 104 – 111.

52 Notice of Motion dd 17 April 2017. See also Respondent's Written Submissions dd 4 August 2017 at paras 19 – 21.

53 Minute Sheet dd 18 August 2017.

> contend at the appeal that the conviction is unsafe and the matter should be retried. In our judgment, that argument is best dealt with when we evaluate the robustness of the conviction as a whole. That is why we are making these orders.

44 CCA 17/2016 and CCA 19/2016 came before us for hearing on 12 February 2018. In that hearing, we gave our preliminary view that the application to adduce the Further Evidence did not meet the criteria set out in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"). In response, Ranjit's counsel on appeal submitted that the Further Evidence was not adduced during the trial because Ranjit's trial counsel did not abide by Ranjit's instructions about his defence. We therefore gave Ranjit and his trial counsel the opportunity to file affidavits to explain what transpired during the trial.[54] We stated the following:

> In our judgment, the motion does not meet the criteria set out in *Ladd v Marshall* [1954] 1 WLR 1489 for the admission of new evidence at the hearing of the appeal. The evidence in question was certainly available at trial, as Mr Singh accepted. It also runs directly contrary to many of the assertions and the statements in the evidence that were made or given by the appellant below. This goes to the question of the reliability of this evidence.
>
> In our judgment, this leaves open two possibilities. Either the appellant is being opportunistic and lying before us, or the position he took below while he was represented by counsel was not the position he had instructed. Mr Singh has avoided going down the latter path and the furthest that his client has gone is to say that he left it all to his counsel. In our judgment, that is not good enough. If the appellant maintains that what he is saying now is true, then he has to explain how the case proceeded as it did below.
>
> To this end, we are prepared to grant the appellant a short adjournment of up to three weeks to do two things:
>
> (a) First, to set out in an affidavit exactly what his instructions were to Mr Singa Retnam on the points he is taking now, and

---

54 Minute Sheet dd 12 February 2018.

> how those instructions vary from the position that Mr Singa Retnam in fact took at trial.
>
> (b) Second, to make a copy of that affidavit available to Mr Singa Retnam with a waiver of privilege to the extent needed to enable Mr Singa Retnam to furnish a written statement to the court responding to those allegations.

45 CM 5/2017 and both the appeals therefore had to be adjourned.

Further affidavits

46 Pursuant to the above directions, Ranjit filed an affidavit. Mr Retnam and Mr Selvaraj then filed an affidavit each in response.

(1) Ranjit's affidavit

47 In Ranjit's affidavit, he claimed that he had given Mr Retnam three handwritten notes containing his instructions. These were dated 21 May 2015, 15 October 2015 and 3 December 2015.[55] Ranjit had also told his ex-wife, one Mahgeswari, to pass to Mr Retnam three diary log books containing the trip logs for his three buses. Subsequently, Mahgeswari informed Ranjit sometime in December 2015 that she had passed the log books to one Rani.[56] Rani visited Ranjit in prison at a later date to confirm that she had passed the log books to Mr Retnam.[57]

48 Ranjit also affirmed that he had given verbal instructions to Mr Retnam during his prison interviews.[58]

---

55 Ranjit Singh Gill Manjeet Singh's supplementary affidavit dd 12 March 2018 ("Ranjit's Supp Affidavit") at para 7.

56 Ranjit's Supp Affidavit at paras 14 – 16.

57 Ranjit's Supp Affidavit at para 17.

58 Ranjit's Supp Affidavit at para 26.

49 Ranjit's instructions to Mr Retnam which he alleged were not followed in the trial can be summarised as follows:

(a) to challenge the voluntariness of his statements (*ie*, to assert that they were made under threat, inducement or promise)[59]; and

(b) to challenge the accuracy of the contents of his long statements on the following points:

(i) that he knew *makan* and *barang* were illegal[60];

(ii) that he was in financial difficulties and thus failed to introduce evidence regarding his financial status[61]; and

(iii) that Sarr borrowed RM12,000 when it was actually only RM6,000[62]; and

(c) to challenge the accuracy of his contemporaneous statements.[63]

50 Ranjit alleged that his trial counsel's failure to follow his instructions could be seen from the way Mr Retnam: (a) failed to challenge the prosecution witnesses in these material aspects during cross-examination; (b) led Ranjit's evidence-in-chief in his defence; (c) failed to re-examine him on the points set out above; and (d) made submissions which were against his instructions.[64] Ranjit argued that he was therefore unable to put his true case before the Judge.

---

59 Ranjit's Supp Affidavit at para 22.8.

60 Ranjit's Supp Affidavit at para 22.2.

61 Ranjit's Supp Affidavit at paras 22.4 and 26.

62 Ranjit's Supp Affidavit at para 47.

63 Ranjit's Supp Affidavit at para 22.1

64 Ranjit's Supp Affidavit at paras 43 – 56.

51 Ranjit also claimed that his trial counsel (*ie*, Mr Retnam, Mr Selvaraj and Mr Singh) did not visit him frequently in prison before the trial.[65] He also complained that he was given the full committal bundle by his trial counsel only after the second day of trial.[66]

52 Finally, Ranjit claimed that he was not consulted on the Statement of Agreed Facts. In the Statement of Agreed Facts, it was stated that all of Ranjit's statements were given voluntarily without any threat, inducement or promise. Ranjit alleged that he came to know that such a statement was consented to when his counsel on appeal informed him about it. Had he been consulted on the Statement of Agreed Facts, he would not have agreed to this statement as it was not true.[67]

(2) Mr Retnam's affidavit

53 In Mr Retnam's affidavit, Mr Retnam stated that the instructions Ranjit was now claiming were the instructions given to him were not the instructions he received. Ranjit did not inform him that he was a "rich travel agent with houses [and] buses and so on". Ranjit also did not instruct him that he did not need to traffic in drugs.[68] Mr Retnam also affirmed that he did not receive any log books from Ranjit.[69]

---

65 Ranjit's Supp Affidavit at para 33.

66 Ranjit's Supp Affidavit at paras 37 – 42.

67 Ranjit's Supp Affidavit at paras 61 – 66.

68 Mr Singa Retnam's affidavit dd 20 March 2018 ("Mr Retnam's Affidavit") at para 5.

69 Mr Retnam's Affidavit at para 17.

54 According to Mr Retnam, Ranjit did not at any time say that his statements were involuntary and were made under inducement, threat or promise.[70]

55 As for the committal bundle, Mr Retnam said that he did pass the committal bundle to Ranjit and this was evidenced by a letter dated 28 September 2015 to the Prisons Superintendent showing that the committal documents were received by the prison.[71]

(3) Mr Selvaraj's affidavit

56 In Mr Selvaraj's Affidavit, Mr Selvaraj said that Ranjit's assertions that he was a successful businessman and about his wealth were never made known to him nor Mr Retnam. Mr Selvaraj also recalled informing Ranjit that his statements were inconsistent and pushing this at trial would have an adverse impact on Ranjit's credibility as a witness. We understood Mr Selvaraj as referring to Ranjit's case that he was not in financial difficulties.

57 Mr Selvaraj further attested that Ranjit had always confirmed that there were no threats, inducements or promises made to him and that his statements to the CNB were all voluntary.

Order for remittal

58 On 26 March 2018, the matter returned before us for hearing. Having considered the above-mentioned affidavits, we remitted this case to the Judge to take further evidence on Ranjit's allegations against his trial counsel.

---

70 Mr Retnam's Affidavit at para 20.

71 Mr Retnam's Affidavit at para 22.

59 We made the following orders[72]:

> Having regard to the gravity of the allegations that have been levelled by the appellant in CCA 19, Ranjit Singh Gill Manjeet Singh, against the lawyers who represented him at the trial, the central thrust of which is that his lawyers below did not represent him in accordance with his instructions, pursuant to s 392 of the Criminal Procedure Code ("CPC"), we remit the matter to the trial judge ("the Judge") to take additional evidence on the narrow question of whether the appellant's case at trial was presented in accordance with his instructions as set out in the affidavits he has filed in CM 5.
>
> The appellant in CCA 19 confirms that he is waiving his solicitor-client privilege in relation to the instructions given to his counsel below and in relation to the conduct of the defence at his trial.
>
> The Judge is also to afford the opportunity to the appellant's counsel in the proceedings below, inasmuch as they are interested persons, to give evidence as to whether they did or did not act in accordance with the appellant's instructions, and if not, why not. The appellant's counsel in the proceedings below may be represented by counsel for this purpose.
>
> The appellant in CCA 19 may be cross-examined by the prosecution and by his counsel in the trial below.
>
> The appellant's counsel in the trial below may be cross-examined by the appellant through his counsel in the appeal and by the prosecution.
>
> The appellant in CCA 17 may attend the hearing on a watching brief, but shall have no right to participate in those proceedings which concern dealings between the appellant in CCA 19 and his counsel at trial, unless permission to participate is sought from and granted by the Judge.
>
> Once the Judge has completed the taking of the evidence, the record is to be returned to the Court of Appeal in accordance with ss 392(3) and (4) of the CPC. …

60 As a result, CCA 17/2016, CCA 19/2016 and CM 5/2017 were adjourned.

---

72 Minute Sheet dd 26 March 2018.

61 For the purpose of this judgment and for easy reference, s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") provides:

> **Taking additional evidence**
>
> **392.**—(1) In dealing with any appeal under this Part, the appellate court may, if it thinks additional evidence is necessary, either take such evidence itself or direct it to be taken by the trial court.
>
> (2) Unless the appellate court directs otherwise, the accused or his advocate must be present when the additional evidence is taken.
>
> (3) When the trial court has taken the additional evidence, it must send the record of the proceedings duly certified by it to the appellate court for it to deal with in the appeal.
>
> (4) The trial court must also state what effect, if any, the additional evidence taken has on its earlier verdict.
>
> (5) Sections 233 and 285 to 289 shall apply, with the necessary modifications, to the taking of additional evidence under this section.

62 As the allegations made by Ranjit also involved allegations of inadequate legal assistance, we also directed his counsel on appeal to make further submissions on the following points when the matter returned to the Court of Appeal for decision ("Further Legal Questions"):

> (a) What should the applicable legal test be in situations where an accused person in a criminal case alleges inadequate assistance of counsel in the proceedings below as a ground of appeal? In particular:
>
> > (i) Must the accused person show that counsel's conduct of the defence below was deficient? If so, what should the exact legal threshold be (*eg,* "objective unreasonableness" or "flagrant incompetence")?
> >
> > (ii) Must the accused person show that counsel's performance caused actual prejudice to his defence at trial? If so,

what is the degree of certainty required for the accused person to succeed (*eg,* "reasonable possibility" or "on the balance of probabilities")?

(iii) Must the accused person show that the conviction is unsafe or unsatisfactory in all the circumstances, and/or that there has been a miscarriage of justice in the proceedings below? If so, are these requirements the same as the requirement of prejudice in (ii) above, or are they overarching requirements?

(iv) How closely should the Court of Appeal follow the legal tests articulated in the foreign case authorities, considering that these cases may have involved jury trials, and that the principles in these cases may have been based on the constitutional and statutory provisions of these jurisdictions? Which constitutional and/or statutory provisions in Singapore law are relevant to this issue?

(b) Do the facts of this case show that there was inadequate assistance of counsel in the proceedings below that would warrant the reliefs sought by Ranjit or some other relief?

63 Both the Prosecution and Ranjit's counsel on appeal made substantial submissions on the Further Legal Questions. We will discuss them later in this judgment when considering whether Ranjit's complaints against his trial counsel have any merit.

The Judge's findings on remittal

64 The remittal hearing was heard by the Judge over two days on 25 and 26 September 2018. Ranjit and his trial counsel gave evidence during the hearing.

The Judge gave her decision on 19 March 2019. Her grounds of decision can be found in *Ranjit Singh Gill Menjeet Singh v Public Prosecutor* [2019] SGHC 75 ("*Findings on Remittal*").

65 The Judge held that Ranjit failed to prove on a balance of probabilities that his trial counsel had failed to present his case in accordance with his instructions save for one limited aspect. This was Mr Retnam's failure to cross-examine the recording officer and the interpreter on the statement recording process and to dispute the accuracy of Ranjit's statement which mentioned that he knew *barang* to be illegal (*Findings on Remittal* at [72] and [79]).

66 On the alleged failure of Ranjit's trial counsel to challenge the admissibility of his statements on the basis that they were involuntarily made, the Judge found that there was no such instruction for the trial counsel to do so and that the agreed position was to the contrary. The Judge relied on the contemporaneous record of the prison visit on 29 December 2015 by Mr Retnam and Mr Selvaraj. The Judge gave full weight to this record because it was not alleged that it was fabricated and Ranjit was unable to challenge the accuracy of this record (*Findings on Remittal* at [51] to [54]).

67 The Judge was also of the view that it would be quite wrong to elevate each and every assertion made by Ranjit in his written notes to his trial counsel to the status of an "express instruction" to them. Ranjit's notes which Ranjit claimed were his instructions contained his narration of the events and his responses to the contents of his statements to CNB. The Judge held that it was for Ranjit's trial counsel to assess the information and to evaluate the strengths and weaknesses of the assertions made by Ranjit, to advise him on their merits and to agree on the position to be taken at trial. On this basis, the Judge found

that the position agreed with Ranjit was that there would not be any objection to the admissibility of the statements (see *Findings on Remittal* at [55] to [57]).

68 On the alleged failure to present evidence that Ranjit was not in financial difficulties and to dispute portions of his long statement dated 11 February 2014 which stated that he was in financial difficulties, the Judge rejected Ranjit's contention. The Judge held that while Ranjit had made such assertions, it remained for the previous lawyers to assess their merits and for parties to agree on the stance to be adopted at the trial. On this, the Judge accepted Mr Retnam's and Mr Selvaraj's explanation that raising Ranjit's assertion regarding his financial position would affect his credibility as a witness given that it was inconsistent with his previous statement and his interview with Dr Kenneth Koh ("Dr Koh"), a psychiatrist from the Institute of Mental Health. As such, disputing the portions of the long statement dated 11 February 2014 on this point carried some risk. The Judge found that in not dealing with this area, the trial counsel acted in accordance with the agreed approach to focus on the material aspects of the defence. Finally, the Judge also took note of the fact that in cross-examination, Ranjit admitted that he did not tell Mr Retnam or Mr Selvaraj that he wanted his financial status to be an important part of his defence (see *Findings on Remittal* ([64] *supra*) at [60] to [65]).

69 On the alleged failure to challenge other aspects of Ranjit's statements, the Judge noted that there were two main aspects to this allegation. The first pertained to the trial counsel's failure to dispute the accuracy of Ranjit's contemporaneous statement where he mentioned that there were three bundles in the Robinsons Bag. Ranjit's assertion was that he only saw the three bundles after the Robinsons Bag was placed in the Bus. On this, the Judge accepted Mr Retnam's position that he advised Ranjit not to challenge portions of his

statements to the CNB which were irrelevant to the defence and Ranjit agreed with this general approach (see *Findings on Remittal* at [68] and [69]).

70 The second aspect pertained to Ranjit's instructions to dispute the fact that he said *barang* meant something illegal. On this issue, the Judge found that under the general approach to Ranjit's defence, it would have been in order for Mr Retnam to cross-examine the recording officer and the interpreter on the statement recording process and to dispute whether they accurately recorded the point in para 28 of Exhibit P134 which stated that Ranjit said, "'Barang' to me is something which is illegal". It would also have been in order for Mr Retnam to adduce evidence from Ranjit on this matter. Mr Retnam did neither of these. As such, Mr Retnam did not act according to Ranjit's instructions on this limited aspect (see *Findings on Remittal* at [69] and [72]).

71 However, the Judge was of the view that the aforesaid failure on Mr Retnam's part had no effect on the verdict. Apart from the admission in the statement, there was overwhelming evidence that Ranjit knew he was delivering illegal items for Siva and that the Robinsons Bag contained something illegal (see *Findings on Remittal* at [74]).

72 Finally, on the allegation that Ranjit's trial counsel did not raise a full defence, the Judge rejected this contention (see *Findings on Remittal* ([64] *supra*) at [78]). The Judge found that at all times, the defence raised was that Ranjit did not know that the Robinsons Bag contained drugs.

73 In summary, the Judge found that Ranjit's trial counsel, in particular Mr Retnam, did present the defence case in accordance with Ranjit's instructions save for the one limited aspect mentioned above. The Judge also said that the failure on that limited aspect did not have any effect on her verdict at the trial.

She also held that the additional evidence adduced on the other issues had no effect on her verdict. She found no merit in Ranjit's complaint that his instructions were ignored (see *Findings on Remittal* at [79] to [82]).

Ranjit's further submissions

74 In the light of the Judge's decision in the *Findings on Remittal*, Ranjit's counsel on appeal filed further submissions addressing both the issue of inadequate legal assistance and Ranjit's application to adduce the further evidence.

75 It is pertinent to note that in Ranjit's further submissions, Ranjit's counsel on appeal did not challenge the Judge's findings in the *Findings on Remittal*.[73] In other words, Ranjit's counsel on appeal was no longer contending that Ranjit's trial counsel did not pursue Ranjit's defence according to Ranjit's instructions. Instead, Ranjit's counsel on appeal argued that the Further Evidence should be admitted because the availability criterion in the *Ladd v Marshall* test should not be held strictly against accused persons in criminal appeal cases. Ranjit's counsel on appeal relied on the case of *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544.[74] Ranjit's counsel on appeal also argued that the Further Evidence was credible and relevant in that it would undermine a key plank of the Prosecution's case at trial.[75]

76 As for the Further Legal Questions, Ranjit's counsel on appeal was in broad agreement with the Prosecution on the legal framework to be adopted,

---

73 Ranjit's Further Skeletal Submissions dd 17 October 2019 at paras 8 – 11.

74 Ranjit's Further Skeletal Submissions dd 17 October 2019 at paras 11 – 15.

75 Ranjit's Further Skeletal Submissions dd 17 October 2019 at paras 16 – 24.

which we will set out in greater detail below. Applying this legal framework, Ranjit's counsel on appeal argued that Ranjit had received inadequate legal assistance from his trial counsel and as a result, Ranjit was not able to advance his defence. There was therefore a miscarriage of justice.

The Prosecution's case in reply

77 In relation to Farid's appeal, the Prosecution argued that Farid had not given any evidence in the course of the trial below that could rebut the presumption of trafficking under s 17 of the MDA. On the contrary, in Farid's statements to the CNB (the accuracy of which he had confirmed in his testimony at trial), he consistently and candidly admitted that the Robinsons Bag was in his possession, that he knew or at least assumed it contained heroin and that his purpose in receiving those drugs was to distribute them according to Abang's instructions.[76] Further, Farid's evidence regarding his role in the previous consignments of heroin that he collected on Abang's instructions showed that he was expected to distribute those drugs for Abang. No evidence was tendered to show that Abang would want him to do otherwise.[77]

78 As for Farid's appeal against the Judge's finding that he was not a courier, the Prosecution argued that the Judge was correct to rely on the fact that Farid had drug paraphernalia such as weighing scales and empty plastic bags in his possession to infer that his role went beyond that of a mere courier. His role involved the weighing and repacking of the drugs that he collected for Abang.[78]

---

76 Respondent's Written Submissions dd 5 Feb 2018 ("Respondent's Written Submissions") at para 95.

77 Respondent's Written Submissions at para 97.

78 Respondent's Written Submissions at para 104.

Farid had also admitted in cross-examination that he intended to repack the drugs.[79] The Prosecution also argued that little weight should be placed on the fact that the drugs in the Robinsons Bag came pre-packed in half-pound packets and so Farid need not repack them. Based on his previous consignments of heroin, Farid had been asked by Abang to repack the drugs into packages of various weights such as one-pound, half-pound and 7.7-7.9g packets.[80]

79 As for Ranjit's appeal, the Prosecution's case can be summarised as follows:

(a) The Judge was correct to admit portions of the Disputed Evidence. This evidence demonstrated strongly that (i) Ranjit had carried out delivery of illegal items for Siva in the past; (ii) Ranjit knew that he was delivering something illegal to Farid; and (iii) Ranjit was simultaneously carrying out a suspicious transaction pertaining to 75g of *Air Batu* which was worth $7,400. Furthermore, this evidence was cogent because it was consistent with Ranjit's conduct and explained why Ranjit was in possession of the drugs. Finally, it was not disputed at trial that Ranjit gave his statements to the CNB voluntarily.[81]

(b) As for Ranjit's counsel on appeal's allegation that the Prosecution had breached its *Kadar* obligations, the Prosecution submitted that in relation to the phone records of Ranjit's main phone, these records would neither undermine the Prosecution's case nor strengthen Ranjit's defence. As to the Prosecution's failure to

---

79 Respondent's Written Submissions at para 104.

80 Respondent's Written Submissions at para 106.

81 Respondent's Written Submissions at paras 39 – 44.

investigate into Ranjit's financial status at the material time, the Prosecution submitted that its *Kadar* obligations did not extend to an obligation to search for additional materials. In any event, Ranjit admitted in his statement to the CNB and informed Dr Koh that he was in financial difficulties and that his business was not doing well. There was no reason for the Prosecution to pursue a line of inquiry to prove otherwise. Finally, on not calling Siva to the stand, the Prosecution submitted that it had offered Siva to the defence as a witness and it was always open for Ranjit's trial counsel to ask for time to interview Siva before deciding whether to take up the Prosecution's offer. Ranjit's counsel did not do so.[82]

(c) On CM 5/2017, the Prosecution submitted that the Further Evidence was available to Ranjit to adduce at his trial below. The Further Evidence was also not credible and ultimately not relevant because the Judge did not rely on Ranjit's financial circumstances as a basis for accepting the Prosecution's case or rejecting Ranjit's defence.[83]

(d) On Ranjit's main appeal, the Prosecution submitted that the evidence before the Judge showed clearly that Ranjit knew that the Robinsons Bag contained illegal items. Ranjit also failed to provide any sensible explanation for why he failed to check and enquire about the contents of the Robinsons Bag. Ranjit's failure to check was especially suspicious given that he did not know the intended recipient of the bag.

---

82 Respondent's Written Submissions at paras 48 – 64.

83 Respondent's Written Submissions at paras 69 – 72.

> Ranjit was also not credible in his defence. As such, Ranjit failed to rebut the presumption under s 18(2) of the MDA.[84]

80 In the result, the Prosecution submitted that CCA 17/2016, CCA 19/2016 and CM 5/2017 should be dismissed.

The Court of Appeal's decision

81 We dismiss Farid's appeal against conviction except that we hold that he has proved on a balance of probabilities that he was a courier within the meaning of s 33B of the MDA. As for Ranjit, we have dismissed both CM 5/2017 and his appeal.

82 We will first give our reasons for our decision in Farid's appeal before discussing Ranjit's appeal and his application to adduce the Further Evidence.

Farid's appeal (CCA 17/2016)

Appeal against conviction

83 It was not disputed that Farid was in possession of the drugs when he was arrested (see above at [9] and [10]). Given the amount of 35.21g of diamorphine found in Farid's possession, the presumption of trafficking under s 17 of the MDA applies:

> **Presumption concerning trafficking**
>
> **17.** Any person who is proved to have had in his possession more than —
>
> …
>
> (*c*) 2 grammes of diamorphine;

---

84 Respondent's Written Submissions at paras 73 – 89.

…

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

84 At the trial, Farid's evidence showed that he intended to traffic the drugs for Abang and would only await Abang's instructions to do so. In his contemporaneous statement at Exhibit P123, when asked whether the drugs in the Robinsons Bag belonged to him, Farid said that he would wait for Abang to call him to give him instructions to deliver the drugs to Abang's clients.[85] In his cautioned statement, Farid admitted that he would "just take, do and send".[86] Finally, in cross-examination, Farid admitted that for the heroin consignment he received on 6 February 2014, he would await instructions on repackaging and delivery.[87]

85 The definition of "traffic" under s 2 of the MDA includes the acts of offering to sell, give, administer, transport, send, deliver or distribute. Section 2 of the MDA reads:

> "traffic" means —
>
> > (*a*) to sell, give, administer, transport, send, deliver or distribute; or
> >
> > (*b*) to offer to do anything mentioned in paragraph (*a*),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning.

---

85 ROP Vol 2 p 252.

86 Exhibit P125 at ROP Vol 2 p 262.

87 ROP Vol 1A NE 15 April 2016 p 34 lines 17 – 19.

86 As Farid had admitted in his evidence that he had offered and was prepared to deliver or distribute the drugs to Abang's clients, it is beyond dispute that he intended to traffic the drugs.

87 Farid's counsel submitted that there was a possibility that Farid could be instructed by Abang to return the drugs to Abang. Farid's counsel relied on a previous consignment of methamphetamine (*ie*, the *Air Batu* consignment) to show that Abang had previously instructed Farid to return the drugs he had collected for Abang after receiving the consignment.

88 Farid stated in his statements that Abang had telephoned him on 5 February 2014 and asked him to collect the drugs and to find buyers for a consignment of *Air Batu* ("Ice" or methamphetamine) as the original customer was uncontactable. Farid told him he did not know who would want to buy it. Later that night, Farid collected the *Air Batu* which was in a red and yellow plastic packet from the same Chinese woman (see [15(d)] above).[88] However, Farid was not able to find any buyers for the *Air Batu* and he then informed Abang accordingly.[89]

89 From Farid's account of his role in relation to the methamphetamine consignment, Abang's instructions were not for Farid to merely hold on to the *Air Batu* so that he could return it to Abang the next day. Abang's instructions were for Farid to try to sell the methamphetamine and it was only when Farid could not find a buyer that he was instructed to return the drugs. There was therefore no basis for Farid's counsel to argue that this particular consignment supported the possibility that Farid's role might be to hold on to the drugs in

---

88 Exhibit P132 at ROP Vol 2 pp 283 – 284 paras 20 – 23.

89 Exhibit P132 at ROP Vol 2 p 284 para 24.

issue with the intention of returning them to Abang. In fact, this incident concerning the methamphetamine supports the Prosecution's case that Farid's role was to deliver and/or distribute controlled drugs for Abang.

90 We agree with the Prosecution that Farid did not adduce any evidence in the trial to establish that the drugs in his possession were for purposes other than delivery or distribution for Abang. In the light of Farid's evidence at trial, we find no merit in Farid's counsel's argument that Farid had not formed the intention to traffic the drugs when he was arrested because he had not received any instructions from Abang as to whether he should return the drugs to Abang or to deliver them to Abang's clients.[90] We therefore uphold Farid's conviction.

Appeal against finding on courier status

91 Farid's counsel argued that the following factors proved that Farid was a mere courier:

(a) First, Farid had no executive decision-making powers. He was consistent in stating that he only acted on Abang's instructions;

(b) Second, the drugs which formed the subject matter of the charge came pre-packed in a one-pound bundle and in half-pound bundles unlike previous consignments of heroin where Farid received a two-pound bundle and was asked to repack the drugs; and

(c) Third, evidence was adduced that Farid only stood to be paid $300 per consignment.[91]

---

90 Farid's Further Written Submissions dd 23 September 2019 at paras 18 – 21.

91 Farid's Further Written Submissions dd 23 September 2019 at para 22. See also Farid's Written Submissions dd 5 February 2018 at paras 29 – 33.

92 Farid's counsel argued further that the Judge erred in relying on Farid's conduct in previous heroin consignments to infer what he intended to do with the drugs when he was arrested. As Abang had not given him any instructions on what to do with the drugs, the Judge was wrong to infer that Farid's role was to do more such that he was not a mere courier. On this, Farid's counsel relied on the case of *Zamri bin Mohd Tahir v Public Prosecutor* [2019] 1 SLR 724 ("*Zamri*").[92]

93 The Prosecution submitted that the Judge did not err in her findings that Farid was not a mere courier in relation to the drugs. Farid was consistent in his evidence at the trial that he intended to repack the drugs and little weight should be given to the fact that the drugs came pre-packed in a one-pound bundle and in half-pound bundles.

94 Having considered the evidence and the parties' submissions, we agree with Farid's counsel's argument that given Farid's role in the transaction, which was to collect the drugs and await Abang's instructions and the fact that Abang had not given any instructions as to what Farid should do with the drugs as at the time of Farid's arrest, it would be wrong to infer that Farid's role in the drug transaction in question here was more than that of a mere courier. We therefore accept, on a balance of probabilities, that Farid was a mere courier. In our view, evidence of repacking drugs in previous transactions did not mean that the trafficker could not be a courier for the particular transaction that he is charged for.

95 The following paragraphs in *Zamri* are apposite for the present case:

---

92 Farid's Written Submissions dd 5 February 2018 at para 20.

> 15 While we accept that the burden of proof under s 33B(2)(*a*) is on the accused, in our judgment, the Judge, with respect, erred when he framed the relevant issue in terms of whether the appellant could prove that Abang would not have instructed the appellant to repack the drugs. The focus of the inquiry required by s 33B(2)(*a*) of the MDA is on *the accused's* acts in relation to the particular consignment of drugs which form the subject matter of the charge against him. Had he kept that focus, he might have realised, for reasons we elaborate on momentarily, that the appellant's intentions at the relevant time were inchoate in the sense that they depended entirely on what someone else might decide or do at a point in time when no such decision or action had been made or taken.
>
> 16 In the present case, on the evidence before the court, it was, in truth, unknown and unknowable what the accused would have done after he had taken delivery of the drugs. As we have just noted, the appellant's subsequent actions depended entirely on the decision and intentions of Abang, who was not before the court. Nor was there any basis for finding what Abang's intentions or decision would have been having regard to the preceding interactions between the parties. If the circumstances were such that the appellant eventually received the instructions of Abang, those instructions could have been either to deliver the bundles as they were or to repack them. There was just no basis at all, on the evidence in this case, for the court to make a finding as to what those instructions would on a balance of probabilities have been, making the inquiry into that question inappropriate in the circumstances. The appellant said he would do as instructed, and *if* he had been instructed to deliver the drugs and nothing more, then had he adhered to those instructions, he would have acted as a courier. This analysis does not change even if, subjectively, he was willing to do more had he been asked to do more. In the absence of evidence that he had in fact already resolved to do more, even in the absence of any further instructions, or that he was committed to doing more, unless he was otherwise instructed, there was simply no basis to find that he was *not* a courier.

96 Farid was consistent in his evidence that what he would do with the drugs in this case depended entirely on what Abang's instructions were and no instructions had been received at the time of his arrest. This was consistent with what had happened in the previous heroin consignments. We therefore find the present case to be similar to the situation in *Zamri* ([92] *supra*).

97 We agree with Farid's counsel that little weight should be given to Farid's conduct in previous heroin consignments. Abang's instructions for each of those consignments were different and so it was not possible to infer what Abang's instructions would be in relation to the drugs in the present case. For the heroin consignment on 4 February 2014 in which he received two pounds of heroin from a Chinese woman, Abang's instruction was to repack the drugs into one-pound and half-pound packets.[93] Farid also admitted that on another occasion, he repacked a portion of the heroin consignment into 7.7g packets in accordance with Abang's instructions.[94]

98 We mentioned earlier that Farid's counsel contended that since the drugs came pre-packed in a one-pound bundle and four half-pound bundles, it was unlikely that Farid would need to repack the drugs. As pointed out above, Abang's instructions to Farid in previous consignments were not consistent. It was therefore not possible, on this evidence alone, to infer what Abang's instructions on this particular occasion would be.

99 Applying the reasoning in *Zamri* at [16], the evidence here only showed that Farid would do as he was instructed. In the absence of evidence that Farid had already been instructed by Abang to repack the drugs or that his role in the drug transactions was to repack the drugs unless otherwise instructed by Abang, it could not be said that Farid had done or was committed to doing anything that would make him more than a mere courier and thereby take him outside the ambit of s 33B(2)(*a*) of the MDA.

---

93 Exhibit P132 at ROP Vol 2 pp 281 – 282 paras 14 – 18.

94 Exhibit P129 at ROP Vol 2 p 275 para 9.

100 We therefore allow Farid's appeal on this issue only and hold that, for this particular drug transaction, he was a mere courier within the meaning of s 33B(2)(*a*) of the MDA. However, as the Prosecution did not issue a certificate of substantive assistance under s 33B to Farid, this finding does not change the outcome of the case and the mandatory death penalty stands.

Ranjit's appeal (CCA 19/2016)

101 We dismissed Ranjit's application and his appeal on 17 October 2019. As noted earlier, Ranjit's counsel on appeal did not seek to challenge the Judge's findings in the *Findings on Remittal* and her conclusion that Ranjit's trial counsel presented his case in accordance with his instructions, save for the failure to cross-examine the recording officer and the interpreter as to whether they had recorded accurately that Ranjit knew that *barang* was something illegal.

CM 5/2017: Application to withdraw Statement of Agreed Facts and to adduce the Further Evidence

(1) Application to withdraw Statement of Agreed Facts

102 Ranjit's second prayer in CM 5/2017 was for leave to withdraw the Statement of Agreed Facts. The crux of Ranjit's complaint was that he agreed to admit to the matters set out in the Statement of Agreed Facts under a mistake or misunderstanding. Ranjit claimed in his affidavit in support of CM 5/2017 that he did not understand what the Statement of Agreed Facts was and that he saw the statement only during the trial. He spotted numerous errors in the Statement of Agreed Facts only after his counsel on appeal went through the statement with him. He also claimed that he could not confirm or agree with the

statement given that it contained admissions from Farid. Therefore, any admissions in the statement would tend to be misleading and prejudicial.[95]

103 The Prosecution argued that Ranjit's application for leave to withdraw the Statement of Agreed Facts should be dismissed because there was no basis to show that Ranjit did not understand the Statement of Agreed Facts when he agreed to it. He was represented by counsel at all times and on the first day of the trial, the Statement of Agreed Facts was read out in court and was interpreted to Ranjit in Malay. The Statement of Agreed Facts was also referred to no less than six times over the course of the trial. At no point in time did Ranjit make any objections to the statement. After Ranjit chose to give evidence through a Punjabi interpreter, he was asked by the Judge whether he was able to follow the proceedings and he confirmed that he could and that he understood what had transpired thus far in the proceedings.[96]

104 Having considered the evidence, we agreed with the Prosecution. Ranjit's allegations against the admission of the Statement of Agreed Facts were without basis. The Statement of Agreed Facts was read out in full on the first day of trial in the High Court and a Malay interpreter was present to assist both Farid and Ranjit (we say more about this at [142] below). It could not be the case that Ranjit did not understand or agree with the contents of the Statement of Agreed Facts since he made no complaints about it throughout the trial. As mentioned earlier, on 18 August 2017, we dismissed Ranjit's application to set aside the Statement of Agreed Facts (see [43] above). Now that we have the benefit of the Judge's findings in her *Findings on Remittal* issued in the remittal

---

95 Ranjit's Affidavit dd 13 April 2017 at paras 33 – 46.

96 Respondent's Written Submissions dd 4 August 2017.

hearing which took place after 18 August 2017, those findings fortify the correctness of our earlier decision to dismiss this prayer in CM 5/2017.

(2) Application to adduce the Further Evidence

105 On Ranjit's application to adduce the Further Evidence, as we had noted at the hearing on 12 February 2018, this application did not meet the criteria set out in *Ladd v Marshall*. We noted then as we also do now that the Further Evidence was available to Ranjit to adduce at trial. The Judge found in the *Findings on Remittal*, that Ranjit's instructions to his trial counsel were not to raise arguments on his financial status at the trial (see *Findings on Remittal* at [60] to [65]). As such, the Further Evidence was available at the trial but Ranjit chose not to adduce it. The Further Evidence was also not reliable in that it contradicted Ranjit's own evidence that he was in financial difficulties. It was therefore not open to Ranjit to seek to adduce the Further Evidence in an attempt to present a different case at the appeal stage. The Further Evidence would also not be material because the Judge's conclusion on Ranjit's guilt was based on the totality of the evidence and was not anchored on Ranjit's financial position. Accordingly, we dismissed CM 5/2017.

CCA 19/2016: Ranjit's appeal against conviction

106 The essence of Ranjit's appeal against conviction was that he had rebutted the presumption under s 18(2) of the MDA that he had knowledge of the nature of the drugs in his possession. To recapitulate, Ranjit brought the Robinsons Bag into Singapore in the Bus and passed it together with its contents to Farid on the night of 6 February 2014. As the Robinsons Bag was found to contain the drugs, s 18(2) of the MDA applied and it was presumed that Ranjit knew the nature of the drugs.

107 In our view, the Judge was justified in admitting the relevant Disputed Evidence (see [29] to [31] above). Ranjit's statements relating to his previous dealings with Siva on transporting *Air Batu*, *makan* and *barang* and his statements that he knew these were illegal things were made voluntarily. They were therefore cogent evidence and were highly relevant in that they provided the necessary context to Ranjit's relationship with Siva and his role in transporting items for Siva into Singapore. The evidence also allowed the court to draw the necessary inference on Ranjit's state of mind when he was asked to deliver items for Siva.

108 Ranjit's statements to the CNB indicated that he suspected the items he was asked to deliver for Siva, whether they were *barang* or *makan*, were illegal things. Ranjit attempted to disavow those portions of his statements by alleging that they were not accurately recorded.[97] Ranjit's assertion was that the recorder of the statements failed to translate the words *barang* and *makan* into their English equivalent of "things" and "food", thus giving the impression that these words in his statements had a different or a special meaning.[98]

109 On the evidence, we placed no weight on Ranjit's allegations against the recorder of the statements. The Judge dealt with this point in some detail (GD at [45]) and we agree with her reasoning. Ultimately, Ranjit conceded in cross-examination that he did say *barang* and *makan* referred to something illegal.[99]

---

97 Ranjit's Written Submissions dd 5 February 2018 at para 97.

98 ROP Vol 1A NE 13 April 2016 p 33 lines 20 – 23. See also Ranjit's Written Submissions dd 5 February 2018 at para 97.

99 ROP Vol 1A NE 14 April 2016 p 18 lines 2 – 28.

110 In addition, there was one transaction which showed clearly that Ranjit must have known that he was involved in delivering illegal items for Siva into Singapore. This was when he conveyed Siva's instructions to Perl to pass 75g of *Air Batu* to another person and to collect $7,400 in return. Ranjit tried to explain that he understood *Air Batu* to mean "ice cubes" literally in Malay.[100] The Judge found this to be unbelievable and we agree. It would not require a genius to know that 75g of ice cubes could not be worth that amount of money, never mind why someone needed this miniscule amount of ice cubes delivered.

111 Even if we place Ranjit's evidence at its highest in that he brought the Robinsons Bag into Singapore without knowing or seeing what it contained, we are of the view that Ranjit would still have failed to rebut the presumption of knowledge under s 18(2) of the MDA on a balance of probabilities if we apply the principles set out in this court's decision in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [39]. The judgment in *Obeng Comfort* was delivered on 15 February 2017 after the Judge's decision in the present appeal was made on 27 June 2016 and after the Judge's GD was delivered on 6 October 2016.

112 In *Obeng Comfort*, we said at [39]:

> In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. Similarly, he would not be able to rebut the

---

100 Exhibit P134 at ROP Vol 2 pp 289 – 290 para 24.

> presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of and to rebut this, he must give an account of what he thought it was.

At [40] of that decision, we set out some examples on the practical application of the above principles.

113 Applying the above principles to the facts of the present appeal, if Ranjit's case in rebutting the presumption was that he was carrying something innocuous, his evidence could not be believed because he stated to the contrary in his statements. Further, as discussed earlier, his credibility was severely affected when he asserted that he believed that the *Air Batu* delivered by Perl was literally ice cubes. However, if Ranjit's case in rebutting the presumption was that he knew he was delivering something illegal but did not turn his mind to what exactly it was, which appeared to be what he was asserting when he claimed that he was not at all interested or curious about the Robinsons Bag's contents (see [32] above), then again he has not rebutted the said presumption. This is because, first, for the reasons already stated, he was found not to be credible as a witness. Second, to avoid the presumption becoming all bark and no bite as we said in *Obeng Comfort*, it cannot be rebutted by merely saying that he did not know what the thing in the Robinsons Bag was without proving that he believed it was something else when that was the very thing being presumed. Otherwise, his case would amount to nothing more than an assertion that the presumption should not apply and that would be impermissible given its statutory force.

114 We therefore agreed with the Judge that Ranjit had not rebutted the presumption under s 18(2) of the MDA.

115 As for Ranjit's allegations that the Prosecution did not comply with its *Kadar* obligations (see above at [41]), we found these allegations to be without merit. We agreed with the Prosecution there was no reason for the CNB to investigate further into Ranjit's business and financial situation after he admitted that he was in financial difficulties. The fact that the Malaysian police looked into his bank accounts and could not find money tainted by illegality would make no material difference to the Judge's findings which were amply supported by the evidence. In relation to the allegation that the Prosecution was slow in disclosing Siva's availability as a witness for the Defence, the Prosecution did disclose about Siva to Ranjit's trial counsel and it was open to the counsel to ask for an adjournment if they really needed more time to interview Siva. There was no evidence on record of Ranjit's trial counsel applying for such adjournment. Finally, on the point that the Prosecution did not disclose the phone records of Ranjit's main phone which held no incriminating evidence, this evidence alone would not dispel doubts that he was not involved in drug transactions. People who carry more than one phone could dedicate one phone for normal daily activities while using another phone for illegal activities. Overall, all these matters did not prejudice Ranjit's defence given the other overwhelming evidence against him.

Ranjit's claim on inadequate legal assistance

116 Ranjit claimed that he received inadequate legal assistance from his trial counsel and that his defence was not properly and adequately put across during the trial. We shall first discuss the applicable legal principles when allegations of inadequate legal assistance during trial are raised in an appeal.

Singapore's jurisprudence

117 Our courts have recognised the possibility that inadequate legal assistance of counsel could be used as a ground of appeal in criminal appeals. For example, in *Juma'at bin Samad v Public Prosecutor* [1993] 2 SLR(R) 327,[101] Yong Pung How CJ considered the possible argument of inadequate legal assistance:

> 36 However, it is equally clear that the court will not allow the introduction of the additional evidence if it was actually considered by counsel at the trial but rejected because it was thought to be unnecessary or inappropriate or of doubtful assistance to the defence (see for example *R v Perry and Harvey* (1909) 2 Cr App R 89 and *R v Gatt*). As recently proclaimed by the Privy Council in *Rodolpho de los Santos v R* [1992] 2 HKLR 136, if defending counsel in the course of a case made a decision or took a course which later appeared to have been a mistake or unwise, that, generally speaking, has never been regarded as a proper ground of appeal. A conscious decision not to adduce evidence, unless it amounted to flagrantly incompetent advocacy, did not provide a reasonable explanation for the failure to call at the trial the evidence which is sought to be introduced at the appeal. In the present case, as is quite apparent from Leong's affidavit, the possibility of raising the defence of intoxication was considered but later rejected due to a perceived lack of evidence. It is also quite apparent that in adopting this course there was no professional conduct which could be termed 'flagrantly incompetent advocacy'.
>
> 37 Admittedly, there have been isolated instances where in an effort to correct glaring injustice, evidence which was in fact considered at the trial has been allowed to be introduced in an appeal. But this is warranted only by the most extenuating circumstances, which may include the fact that the offence is a serious one attracting grave consequences and the fact that the additional evidence sought to be adduced was highly cogent and pertinent and the strength of which rendered the conviction unsafe (see for example *Mohamed bin Jamal v PP* and *R v Lattimore*). The circumstances in the present case fall far short of that mark.

---

101 Tab 17 of Prosecution Bundle of Authorities Vol 1.

118 Another pronouncement on inadequate legal assistance of counsel as a ground of appeal can be found in *Zhou Tong and others v Public Prosecutor* [2010] 4 SLR 534. There, eight appellants appealed against their sentences for offences under the Common Gaming Houses Act (Cap 49, 1985 Rev Ed) on the basis that they were manifestly excessive. At [2], V K Rajah JA stated that "[i]f the matter proceeds to court, a solicitor's failure to assist the court adequately would also result in wastage of judicial time and resources, and could even, in some instances, result in miscarriages of justice". Rajah JA then made some observations on the conduct of the counsel at the trial below. At [11], Rajah JA found that "[i]t was clear from the outset that Mr Loo was dreadfully unprepared and had manifested a disturbingly careless attitude about the conduct of this matter even prior to the filing of the appeals". Nevertheless, Rajah JA found that the sentences were not manifestly excessive and so dismissed the appeal.

119 We will now consider how other common law jurisdictions have dealt with this issue before setting out the position which we think should be adopted in Singapore.

Other common law jurisdictions

(1) United Kingdom

120 In *Regina v Clinton* [1993] 1 WLR 1181 at 1187–1188 ("*Clinton*"), the English Court of Appeal (Criminal Division) held that "exceptionally, where it is shown that the decision was taken either in defiance of or without proper instructions, or when all the promptings of reason and good sense pointed the other way, it may be open to an appellate court to set aside the verdict by reason of the terms of section 2(1)(*a*) of the [Criminal Appeal Act 1968 (c 19) (UK)]". This statutory provision states that the court shall allow an appeal against conviction if it thinks that the conviction should be set aside on the ground that

under all the circumstances of the case, it is unsafe or unsatisfactory. The court noted (at 1187) previous case law which held that the court should intervene only when counsel's conduct of the case could be described as flagrantly incompetent advocacy and opined that such pronouncements were general guidelines on the approach to take rather than the legal standard.

121 After the United Kingdom adopted the European Convention of Human Rights and the passage of the Human Rights Act 1998 (c 42) (UK), the cases have generally echoed the position in *Clinton*.

122 In *Anderson v HM Advocate* 1996 SLT 155, the Scottish High Court of Justiciary reiterated the general rule that counsel have to follow their clients' instructions and opined that when counsel's conduct of the trial is raised as a ground of appeal, the conduct must be such as to have resulted in a miscarriage of justice. The court also noted that where allegations are made against counsel, they must be given a fair opportunity to respond in writing to such allegations although they are not obliged to do so.

(2) Malaysia

123 The Malaysian courts adopt the position of whether counsel's conduct of the case was flagrantly incompetent given the circumstances of the case and whether such conduct deprived the accused person of a fair trial, thereby occasioning a miscarriage of justice (see *Shamim Reza bin Abdul Samad v Public Prosecutor* [2011] 1 MLJ 471 at [6]).

(3) Hong Kong

124 In Hong Kong, the courts adopt the position in *Clinton* but with a focus on how decisive the effect of counsel's error on the trial was and whether the

appellant had a fair trial (see *R v Ho Ling & Anor* [1996] 1 HKC 733, *R v Cheung Wai Kwong & Anor* [1997] 3 HKC 496 and *Chong Ching Yuen v HKSAR* [2004] HKCU 464).

(4) Australia

125 In Australia, appeals based on inadequate assistance of counsel also focus on whether there was a miscarriage of justice although the standard is provided for in the individual state's or territory's statutes. In *R v Birks* (1990) 19 NSWLR 677 at 685, the New South Wales Court of Criminal Appeal summarised the relevant principles thus:

> 1. A Court of Criminal Appeal has a power and a duty to intervene in the case of a miscarriage of justice, but what amounts to a miscarriage of justice is something that has to be considered in the light of the way in which the system of criminal justice operates.
>
> 2. As a general rule an accused person is bound by the way the trial is conducted by counsel, regardless of whether that was in accordance with the wishes of the client, and it is not a ground for setting aside a conviction that decisions made by counsel were made without, or contrary to, instructions, or involve errors of judgment or even negligence.
>
> 3. However, there may arise cases where something has occurred in the running of a trial, perhaps as the result of 'flagrant incompetence' of counsel, or perhaps from some other cause, which will be recognised as involving, or causing, a miscarriage of justice. It is impossible, and undesirable, to attempt to define such cases with precision. When they arise they will attract appellate intervention.

126 In later cases, the High Court of Australia clarified that descriptions of counsel's conduct of a trial must not distract attention from the question whether there has been a miscarriage of justice, taking into consideration the totality of the evidence at the trial. The appellate court will uphold the conviction even though counsel's conduct was obviously inadequate if the evidence against the accused person was overwhelming (see *TKWJ v R* (2002) 212 CLR 124 and

Nudd v R (2006) 225 ALR 161). Counsel would be at liberty to make legitimate tactical choices in order to avoid other risks at trial.

(5) New Zealand

127 In New Zealand, appeals on the basis of inadequate assistance of counsel were originally based on s 385(1)(c) of the Crimes Act 1961 (NZ) which provided that the Court of Appeal or the Supreme Court must allow the appeal if it is of the opinion that there was a miscarriage of justice.

128 In *R v Sungsuwan* [2006] 1 NZLR 730, the majority of the Supreme Court of New Zealand held the following at [70]:

> In summary, while the ultimate question is whether justice has miscarried, consideration of whether there was in fact an error or irregularity on the part of counsel, and whether there is a real risk it affected the outcome, generally will be an appropriate approach. If the matter could not have affected the outcome any further scrutiny of counsel's conduct will be unnecessary. But whatever approach is taken, it must remain open for an appellate Court to ensure justice where there is real concern for the safety of a verdict as a result of the conduct of counsel even though, in the circumstances at the time, that conduct may have met the objectively reasonable standard of competence.

129 Tipping J opined that a "real risk arises if there is a reasonable possibility that a not guilty (or a more favourable) verdict might have been delivered if nothing had gone wrong" (at [110]).

130 The legal position is now set out in s 232 of the Criminal Procedure Act 2011 (NZ) which states that the court must allow an appeal in any case where a miscarriage of justice has occurred for any reason. A miscarriage of justice is defined as any error, irregularity or occurrence in or in relation to or affecting the trial that created a real risk that the outcome of the trial was affected or that has resulted in an unfair trial or a trial that was a nullity.

(6) United States and Canada

131 The United States Supreme Court's approach to appeals on ineffective assistance of counsel rests on the Sixth Amendment of the United States Constitution which provides for the right of an accused person to have the assistance of counsel for his defence.

132 The United States Supreme Court has held consistently that the assistance of counsel must be effective for this right to serve any purpose (see *McMann v Richardson*, 90 SCt 1441 (1970)). The standard for determining claims of ineffective assistance of counsel was laid down by the Supreme Court in *Strickland v Washington*, 466 US 668 (1984) ("*Strickland*"). This involves a two-pronged test which the court stated was applicable regardless of whether the proceedings involve the possibility of capital punishment (as was the case in *Strickland*):

> (a) The first limb of the test is that the accused person must show that his counsel's performance was deficient, *ie*, that it fell below an objective standard of reasonableness considering all the circumstances at the time. Judicial scrutiny of counsel's performance is "highly deferential", and there is a "strong presumption" that counsel's conduct falls within the wide range of reasonable professional assistance. Strategic choices made after thorough investigation of the law and facts are "virtually unchallengeable". The reasonableness of counsel's actions may be determined by the accused person's actions and statements as well as information supplied by the accused person.
>
> (b) The second limb of the test is that the accused person must show that counsel's deficient performance prejudiced his defence, *ie*, that counsel's errors were so serious as to deprive him of a fair trial. In other

> words, the accused person has to show affirmatively that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different (*Strickland* at 687–694).

133 The Canadian courts follow the United States' two-pronged *Strickland* test although claims of ineffective assistance of counsel are generally made directly on appeal rather than in collateral proceedings upon the exhaustion of appeals as is the practice in the United States (see the Supreme Court of Canada case of *R v GDB* [2000] 1 SCR 520 and the Ontario Court of Appeal case of *R v Garofoli* [1988] OJ No 35 (reversed by the Supreme Court of Canada on other grounds)).

Legal position to adopt in Singapore

134 In the light of the positions adopted in the major common law jurisdictions surveyed above, it is our opinion that the legal position to be adopted in Singapore should similarly be a two-step approach. The first step is to assess counsel's conduct of the case and the second is to assess whether that conduct affected the outcome of the case, in that it resulted in a miscarriage of justice. We note here in passing that in the CPC, "failure of justice" is the term used in s 391(1) in relation to an omission to frame a charge. Similarly, s 423 of the CPC provides that any judgment, sentence or order may not be reversed or altered on account of any error, omission, improper admission or rejection of evidence, irregularity or lack of consent unless these have caused a "failure of justice". However, the term "miscarriage of justice" appears in several sub-sections of s 394J concerning the exercise of the power to review an earlier decision of an appellate court. We do not think that there is material difference between these two terms.

135 An appellant seeking to overturn his conviction on the basis that he did not receive adequate legal assistance must show that the trial counsel's conduct of the case fell so clearly below an objective standard of what a reasonable counsel would have done or would not have done in the particular circumstances of the case that the conduct could be fairly described as flagrant or egregious incompetence or indifference. In other words, the incompetence must be stark and glaring. Certainly, it will not be enough to show that some other counsel, especially eminent or experienced ones, would have taken a different approach or perhaps would have been more combative towards the Prosecution's witnesses. As long as counsel, whether at trial or on appeal, are acting in accordance with their clients' instructions and in compliance with their duty to the court and their professional obligations, they must be given the deference and the latitude in deciding how to conduct the case after studying all the evidence and the applicable law. Legitimate and reasonable strategic or tactical decisions do not come within the very narrow class of cases where inadequate assistance of counsel can be said to have occurred.

136 These considerations apply equally to counsel's conduct in the entire spectrum of his professional duties to his client in a criminal case - advising a client on whether to plead guilty or to claim trial, whether to accept an offer made as part of plea bargaining, on matters prior to and during trial and also on whether to appeal and the grounds for doing so. It must be remembered that allegations made against previous counsel could subsequently also be made against present counsel if the present counsel are not able to secure the desired outcome for the client. In this manner, such collateral attacks against court decisions could go on almost indefinitely. They are collateral attacks because they do not engage the merits of the court decisions on the evidence or the submissions made but seek to impugn the decisions indirectly by alleging that the court did not have the full evidence before it or was given wrong information

because of inept counsel. The court must therefore be astute to ensure that its processes are not abused by incessant applications to retry or to re-open concluded matters by using such collateral attacks on court decisions through the device of complaints against previous counsel for alleged incompetence and/or indifference.

137 Natural justice applies to the previous counsel of course and so, like anyone else accused of some wrong, he must be given notice of the allegations made against him and must have a reasonable opportunity to respond in writing and, where necessary, to attend and make submissions at the hearing where his conduct as counsel is an issue. In some instances, as in the present case, the appellate court may exercise its power under s 392 of the CPC to direct the trial court to take additional evidence on the narrow question of whether the allegations about counsel's conduct of the case were justified and to state what effect, if any, the additional evidence has on its earlier decision. To ensure that counsel has a full opportunity to present his side of the story, the client must confirm that he is waiving his solicitor-client privilege in relation to the instructions, discussions and advice between him and that counsel. However, before the court considers such a course of action, it is incumbent on the client to particularise the alleged failure on the part of his former counsel and to persuade the court that there is a real point that warrants remittal to the trial court. If the court is satisfied that the client's allegation against his former counsel has no substance in fact or does not meet the high threshold set out at [134]–[136] above, there will be no reason at all to exercise its power under s 392 of the CPC.

138 If inadequate legal assistance from previous counsel is proved under the first step in the inquiry, the second step is to show that there is a nexus between the counsel's conduct of the case and the court's decision in the matter in order

to demonstrate a case of miscarriage of justice. The suggested standard required to show miscarriage of justice included "reasonable possibility" and "real possibility". We note that s 394J(6) of the CPC (on the exercise of the power of review of an earlier decision of an appellate court) uses the terms "real possibility" and "powerful probability" in the context of what amounts to an earlier decision being "demonstrably wrong" in s 394J(5):

> (5) For the purposes of subsection (2), the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made, only if —
>
> (*a*) the earlier decision (being a decision on conviction or sentence) is demonstrably wrong; or
>
> (*b*) the earlier decision is tainted by fraud or a breach of the rules of natural justice, such that the integrity of the judicial process is compromised.
>
> (6) For the purposes of subsection (5)(*a*), in order for an earlier decision on conviction to be "demonstrably wrong" —
>
> (*a*) it is not sufficient that there is a real possibility that the earlier decision is wrong; and
>
> (*b*) it must be apparent, based only on the evidence tendered in support of the review application and without any further inquiry, that there is a powerful probability that the earlier decision is wrong.

139 In our opinion, words of such qualitative nature naturally involve common-sense judgment calls which depend heavily on the particular situation presented to the court. However, in s 394J(6)(*b*), the standard of "powerful probability" would appear to be more stringent since it was used in the context of "real possibility" in s 394J(6)(*a*) being insufficient to show a miscarriage of justice. The higher threshold of "powerful probability" is warranted in that section because there would already have been a concluded appeal to the relevant appellate court which did not succeed. In those circumstances, there is

a very strong interest in the finality of criminal proceedings. Our present situation involves an appellant contending on appeal that his trial counsel had failed him. As set out at [134]–[136] above, an appellant making such allegations against his former counsel has a high threshold to cross. We think therefore that we only need to adopt the standard of "real possibility" in s 394J(6)(*a*) for such an appellant to meet in order to satisfy the court at the second step of the inquiry. An appellant who has established a case of inadequate legal assistance from his previous counsel must therefore also show that there is a real possibility that such inadequate assistance has caused a miscarriage of justice on the particular facts of the case.

Application to the present case

140 Ranjit's counsel on appeal argued that Ranjit's trial counsel's conduct was unreasonable in that:

(a) They signed the Statement of Agreed Facts without consulting Ranjit ("first allegation");

(b) Mr Retnam failed to provide Ranjit with the full committal bundle ("second allegation");

(c) Mr Retnam failed to share Ranjit's written instructions with his co-counsel ("third allegation");

(d) Ranjit's trial counsel disregarded Ranjit's instructions on his financial status ("fourth allegation"); and

(e) Mr Retnam failed to lead evidence on whether "*barang*" meant something illegal ("fifth allegation").

141 As we noted above at [75], Ranjit's counsel on appeal did not seek to challenge the Judge's *Findings on Remittal*. At the hearing before us on 17 October 2019, Ranjit's counsel on appeal confirmed Ranjit's position in that regard. Instead, Ranjit relied on the Judge's finding in the *Findings on Remittal* that Mr Retnam ought to have cross-examined the recording officer and the interpreter on the issue of whether the statement recorded accurately that Ranjit knew that *barang* meant something illegal. We therefore dealt with Ranjit's arguments on inadequate legal assistance of counsel bearing this in mind.

142 The first allegation concerned the Statement of Agreed Facts. We acknowledge that it would have been good practice for Ranjit's trial counsel to have shown him the Statement of Agreed Facts and to seek his consent to admit the matters set out in that statement. Nevertheless, we note that the Statement of Agreed Facts was read out in full in court by the Prosecution soon after the pleas to the respective charges were taken from the accused persons.[102] A Malay interpreter was in court to assist both Farid and Ranjit. At the conclusion of the reading, the Judge asked the respective trial counsel to confirm that the stated facts were not disputed and could be admitted. Both Farid's and Ranjit's trial counsel gave the confirmation. Ranjit was therefore aware of all this from the start of the trial in the High Court and, as mentioned earlier, did not raise any objection during the rest of the trial.

143 Before us, Ranjit did not highlight anything within the Statement of Agreed Facts that was not in keeping with his instructions. In other words, the contents of the Statement of Agreed Facts were consistent with the agreed approach to be taken for Ranjit's defence. The Judge found that there was an

---

102 ROP Vol 1 NE 5 April 2016 pp 6 – 15.

agreement between Ranjit and his trial counsel to focus on the defence of Ranjit's lack of knowledge of the contents of the Robinsons Bag. It was also agreed that they would not challenge the admissibility of his statements. Further, Ranjit also did not instruct his trial counsel that he need not traffic in drugs for money as he was financially sound. These findings were not appealed against and the trial counsel's failure to consult Ranjit before agreeing to the Statement of Agreed Facts must be seen in that context.

144 Following from the above findings, the fourth allegation is a non-starter since the Judge found that Ranjit did not instruct his trial counsel that he need not traffic in drugs because he was financially sound. In fact, if they had led evidence to try to show that he was financially sound, it would have affected Ranjit's credibility adversely as Ranjit had admitted in his psychiatric report that he was experiencing financial difficulties. The Judge also found that this was the reason Ranjit's trial counsel did not pursue this at the trial (see *Findings on Remittal* at [60] to [65]).

145 For the second allegation, Ranjit did not explain to the court how his trial counsel's failure to pass him the full committal bundle prejudiced his defence in any way. He did receive the full committal bundle during the trial.[103] Ranjit could have discussed with his trial counsel if he had any concerns regarding the case. He had ample time since this was relatively early in the trial. Even so, Ranjit did not elaborate on how his defence was compromised because of the late receipt of the full committal bundle and how the outcome of the trial would have been affected.

---

103 Ranjit's Supp Affidavit at paras 41 – 42.

146 For the third allegation, we agree with the Judge that it would have been good practice for Mr Retnam to have shared Ranjit's written instructions with co-counsel. However, as with the second allegation, Ranjit did not point to how this had, in any way, prejudiced his defence. There was therefore nothing to suggest that the outcome of the trial was affected to his detriment. In any event, Ranjit's trial counsel ultimately did conduct Ranjit's defence according to his instructions.

147 The fifth allegation relates to Mr Retnam's failure to lead evidence on whether *barang* meant something illegal. This finding by the Judge meant that trial counsel did not comply with Ranjit's instructions in this "one limited aspect" (*Findings on Remittal* at [79]). However the Judge said that this failure would have no effect on her decision (for the reasons given at *Findings on Remittal* at [73]–[77]). The Judge explained that quite apart from the admission in Ranjit's statement that he knew that *barang* was something illegal, there was "overwhelming evidence" to show that he knew he was delivering illegal items for Siva and that the Robinsons Bag contained something illegal. For good measure, the Judge also stated at [81] that the additional evidence in the remittal proceedings covering the other areas would have no effect on her earlier decision. As Ranjit did not appeal against the *Findings on Remittal*, which we think were entirely justified in any case, there was no basis to argue that this one failure on trial counsel's part affected the outcome of the trial.

148 For the reasons set out above, Ranjit's assertions about inadequate legal assistance from trial counsel have no merit. As we have indicated earlier, his appeal against conviction was dismissed.

Conclusion

149 We dismiss Farid's appeal against conviction and sentence. For this particular transaction, we hold that Farid was a mere courier within the meaning of s 33B of the MDA. However, since the Prosecution did not issue him a certificate of substantive assistance, this holding does not affect the outcome of Farid's case. The mandatory death penalty imposed by the Judge therefore stands.

150 For Ranjit's application to withdraw the Statement of Agreed Facts and to adduce the Further Evidence, we found that there was no merit in the application. We also found that there was no reason to disagree with the Judge's findings. We therefore dismissed CM 5/2017 and Ranjit's appeal against conviction and sentence at the earlier hearing.

151 We note that Ranjit's trial counsel did not keep notes of all the interviews they had with him. We think it is good practice for counsel and their assistants to record instructions from their clients and, where necessary, have the notes signed by them as confirmation. This will protect the lawyers against unwarranted allegations and help them present their side of the story especially when the allegations are made long after the trial and memory has become less reliable. We are conscious of the fact that some instructions may be given orally in court during cross-examination of witnesses or during a short recess during trial and that therefore recording and signing of notes of instructions would be impracticable.

152 There is presently no statutory procedure on how accused persons should raise inadequate legal assistance of previous counsel as a ground of appeal in criminal proceedings. As we have indicated above, such assertions are effectively a collateral attack against the trial court's decision rather than an

appeal on its merits. In its written submissions of 23 September 2019, the Prosecution set out its detailed recommendations for the procedure to be used in such cases. We do not propose to discuss these recommendations in this judgment as we think it would be much more useful to consider whether there is a need for criminal procedure rules to govern such applications and, if the decision is that there is such a need, then the relevant stakeholders can be consulted and the matter put forward to the relevant rule-making authority. In any case, we hope that such applications will be extremely rare as we believe that the vast majority of members of the criminal law Bar take their responsibilities seriously and always strive to do their best for their clients in conformity with the law, their duty to the court and their professional obligations.

Sundaresh Menon	Judith Prakash	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

Thangavelu (Thangavelu LLC), Eugene Thuraisingam and Syazana Yahya (Eugene Thuraisingam LLP) for the appellant in CA/CCA 17/2016 and applicant in CA/CM 4/2018;
Bachoo Mohan Singh and Too Xing Ji (BMS Law LLC) for the appellant in CA/CCA 19/2016 and applicant in CA/CM 5/2017;
Terence Chua, Jason Chua and Chong Yong (Attorney-General's Chambers) for the respondent in CA/CCA 17/2016, CA/CCA 19/2016, CA/CM 5/2017 and CA/CM 4/2018.