IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 04

Criminal Appeal No 21 of 2015

Between

MUHAMMAD BIN ABDULLAH

… *Appellants*

And

PUBLIC PROSECUTOR

… *Respondent*

Criminal Appeals No 22 of 2015
(Criminal Motion No 53 of 2016)

Between

YU CHING THAI

… *Appellants*

And

PUBLIC PROSECUTOR

… *Respondent*

JUDGMENT

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

Muhammad bin Abdullah
v
Public Prosecutor and another appeal

[2017] SGCA 04

Court of Appeal — Criminal Appeals Nos 21 and 22 of 2015 (Criminal Motion No 53 of 2016)
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
17 August 2016

12 January 2017 Judgment reserved.

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

Introduction

1 In the early morning of 24 May 2012, Yu Ching Thai ("the Second Appellant"), a Malaysian, then 30 years of age, rode his motorcycle into Singapore. Four bundles weighing approximately half a pound each (ranging from 227.4g – 229.7g) were concealed in a secret compartment of the motorcycle (hereafter referred to collectively as "the Bundles").

2 That evening, after finishing work, the Second Appellant met with Muhammad bin Abdullah ("the First Appellant"), a Singaporean, then 40 years of age, in the car that the First Appellant was driving. The Second Appellant handed over the Bundles to the First Appellant in the car and received $9,800 in return. The Second Appellant was arrested by Central

Narcotics Bureau ("CNB") officers shortly after he alighted from the car but the First Appellant managed to evade arrest for some time before he was subsequently arrested at a block of flats in Woodlands. When the CNB officers approached the First Appellant at that location, they saw him throwing a white plastic bag containing the Bundles over the parapet wall of the third floor corridor. The Bundles, together with a red and black sling bag, were subsequently recovered from the ground floor of that block.

3 The Bundles, weighing 915.60g in total, were subsequently found to contain not less than 19.84g of diamorphine. The red and black sling bag was found to contain three small packets containing 0.70g of diamorphine. These formed the subject of a charge of possession which was not the subject of the joint trial in the High Court.

4 In the joint trial in the High Court, the Appellants claimed trial to their respective charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):[1]

> That you, **MUHAMMAD BIN ABDULLAH**,
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> on the 24th day of May 2012 at or about 7.15pm, at the third floor corridor near the lift lobby of Block 707 Woodlands Ave 4, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), to wit, by having in your possession for the purpose of trafficking, **four (04) packets containing 915.60 grams of granular/powdery substance which were analysed and found to contain not less than 19.84 grams of diamorphine**, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) of the MDA and punishable under s 33(1) of the MDA, and further, upon your conviction under section 5(1)(*a*) read with section 5(2) of the MDA, you may alternatively be liable to be punished under s 33B of the MDA.

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[1] ROP Vol 2, Exhibit A14, pp 7-8, 11.

> That you, **YU CHING THAI**,
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> on the 24th day of May 2012 at or about 6.17pm, at the carpark of Block 315 Woodlands Street 31, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the MDA, to wit, by giving **four (04) packets containing 915.60 grams of granular/powdery substance which were analysed and found to contain not less than 19.84 grams of diamorphine**, to one Muhammad bin Abdullah (NRIC: SXXXXXXXX), without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) punishable under s 33(1) of the MDA, and further, upon your conviction under section 5(1)(*a*) of the MDA, you may alternatively be liable to be punished under s 33B of the MDA.

5 On 14 July 2015, the trial judge ("the Judge") convicted the Appellants.[2] In so doing, the Judge disbelieved the First Appellant's account that he intended to keep one of the Bundles for his own consumption and rejected the Second Appellant's defence that he could not have intended to traffic the amount of diamorphine he was charged with because he was ignorant of the death penalty. However, the Judge accepted that the First Appellant had intended to keep approximately one-third of a bundle for his own consumption. After doing some calculations, the Judge ascertained the average weight of diamorphine in each of the Bundles (dividing the total weight of diamorphine in the Bundles by the total weight of the Bundles) and reduced the amount of diamorphine in the charge by the average diamorphine content of ten small packets (approximately one-third of a bundle). The Judge thereafter convicted the First Appellant on the following amended charge:[3]

> That you, **MUHAMMAD BIN ABDULLAH**,

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2 ROP Vol 1, NE, Day 10, 14 July 2015, p 4 line 28 – p 5 line 9.

3 ROP Vol 2, Exhibit G, p 28.

> on the 24th day of May 2012 at about 7.15pm, at the third floor corridor near the lift lobby of Block 707 Woodlands Drive 40, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), to wit, by having in your possession for the purpose of trafficking, **four (04) packets containing 840.6 grams of granular/powdery substance which were analysed and found to contain not less than 18.21 grams of diamorphine**, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) of the MDA and punishable under s 33(1) of the MDA, and further, upon your conviction under section 5(1)(*a*) read with section 5(2) of the MDA, you may alternatively be liable to be punished under s 33B of the MDA.

There was an error in the street name in this amended charge but that is immaterial in these appeals.

6 The Judge sentenced both Appellants to suffer the punishment of death under s 33 of the MDA. The sentences were mandatory as the Judge found that the First Appellant was not a mere courier of drugs within the meaning of s 33B(2)(*a*) of the MDA, as accepted by counsel for the First Appellant. In respect of the Second Appellant, it was accepted that he was a courier but the Public Prosecutor ("PP") decided not to issue a certificate under s 33B(2)(*b*) of the MDA ("the Certificate") as the Second Appellant had not rendered substantive assistance to the CNB. Counsel for the Second Appellant accepted that decision.

7 Both Appellants appealed against their respective conviction and sentence. Shortly before the hearing of their appeals, the Second Appellant filed Criminal Motion No 53 of 2016 ("CM 53/2016") for an order that the PP "direct the CNB to take a statement or statements from the [Second Appellant] to enable the [Second Appellant] to render substantive cooperation to the CNB in disrupting drug activities within and outside

Singapore under section 33B(2)(*b*) of the MDA". The Second Appellant also sought an order that "the PP do consider such statement or statements as may be given by the [Second Appellant] when deciding whether to issue a Certificate of Substantive Assistance to the [Second Appellant] under section 33B(2)(*b*) of the MDA". At the hearing of these appeals, we dismissed CM 53/2016 and reserved judgment in respect of the appeals. We now give our judgment on the appeals and elaborate on our reasons for dismissing CM 53/2016.

The background facts

8 As the facts of the case have been set out by the Judge in his Grounds of Decision ("GD") in *Public Prosecutor v Muhammad bin Abdullah and another* [2015] SGHC 231, we will state only the facts that are pertinent for these appeals. There was some ambiguity in the submissions on the use of the terms "bundle" and "packet". In this judgment, we will use "bundle" to refer to drugs that were packed in a similar manner as the Bundles which were the subject matter of the two charges at trial and "small packet" to refer to the 7.5–8g packets which the First Appellant would usually re-pack the drugs into where necessary.

9 Prior to the date of their arrest, the Second Appellant had delivered drugs to the First Appellant on three occasions. Therefore, between 9[4] and 24 May 2012 (the date of the arrest), the Second Appellant made four deliveries of bundles containing diamorphine to the First Appellant in a similar manner. The Second Appellant, who resided in Johor Baru, Malaysia,[5] would ride his motorcycle into Singapore in the early morning at 4-5am,[6] with the bundles

[4] ROP Vol 1, NE, Day 9, p 67 lines 1-7.

[5] ROP Vol 2, Exhibit P-66, para 2.

containing diamorphine concealed in a secret compartment in his motorcycle.[7] He would deliver the drugs to the First Appellant at the end of the working day. The Second Appellant had been working in Singapore since 2001[8] as an aluminium-grille installer[9] and every day, except Sundays,[10] he would ride into Singapore at about the same time, park his motorcycle in the same car park at Blocks 428 and 429 Woodlands Street 41 and wait to be picked up in a lorry for work in various residential and industrial buildings. During the time he was at work, the drugs would be left in his motorcycle.[11] After finishing work, he would be brought back to the same car park and on those four occasions, he would contact the First Appellant and thereafter meet him at a designated location to deliver the drugs to him.[12] In the course of the four deliveries, the number of bundles delivered by the Second Appellant to the First Appellant gradually increased – from two bundles on the first delivery to three bundles on the second delivery and finally to four bundles each on both the third and fourth deliveries.[13]

10 The Second Appellant testified that he had relapsed and started consuming diamorphine a few years prior to his arrest after his wife left him to return to Vietnam.[14] He would generally obtain his supply of drugs for his own consumption from an Indian man in Johor Baru, known to him as "Ah

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[6] ROP Vol 1, NE, Day 9, 24 April 2015, p 11 line 7.

[7] ROP Vol 1, NE, Day 9, 24 April 2015, pp 55-57.

[8] ROP Vol 1, NE, Day 8, 23 April 2015, p 21 line 21.

[9] ROP Vol 2, Exhibit P-66, para 2.

[10] ROP Vol 1, NE, Day 9, 24 April 2015, p 31 line 9.

[11] ROP Vol 1, NE, Day 9, 24 April 2015, p 31.

[12] ROP Vol 1, NE, Day 9, 24 April 2015, p 67 lines 18-20.

[13] ROP Vol 2, Exhibit P-68, para 10.

[14] ROP Vol 2, Exhibit P-66, para 2.

Zhor".[15] His evidence as to how long he knew "Ah Zhor" was inconsistent as he initially claimed he knew "Ah Zhor" for "four years"[16] but subsequently changed this at trial to "two".[17] In late April 2012,[18] the Second Appellant expressed to "Ah Zhor" his interest in delivering drugs because his monthly income of about S$2,000[19] was insufficient to feed his drug consumption habit.[20] For every bundle of drugs he delivered on behalf of "Ah Zhor", the Second Appellant would be paid RM500.[21] He would usually collect the drugs from a runner of "Ah Zhor" the night prior to the scheduled delivery. Without weighing or examining the content of the bundles, he would place them in the concealed compartment of his motorcycle overnight.[22] According to the Second Appellant, "Ah Zhor" reassured him that he would only be liable for an imprisonment term of about six to seven years (as initially claimed) or eight to ten years (as later claimed)[23] if he was arrested. The morning after collecting the drugs, the Second Appellant would ride his motorcycle into Singapore and he would deliver the drugs to the First Appellant in the evening.

11 After collecting the drugs from the Second Appellant, the First Appellant would sell the drugs to other traffickers who had pre-ordered diamorphine from him and this particular occasion on 24 May 2012 was no

[15] *Ibid*, para 5.

[16] *Ibid*.

[17] ROP Vol 1, NE, Day 8, 23 April 2015, p 39 line 15.

[18] ROP Vol 1, NE, Day 8, 23 April 2015, p 40 line 20.

[19] ROP Vol 2, Exhibit P-66, p 319 para 2.

[20] ROP Vol 2, Exhibit P-66, p 321 para 6.

[21] ROP Vol 1, NE, Day 8, 23 April 2015, pp 45-46.

[22] ROP Vol 1, NE, Day 9, 24 April 2015, pp 10-11.

[23] ROP Vol 1, NE, Day 9, 24 April 2015, p 23 lines 11-23.

exception.[24] The First Appellant started selling diamorphine around November or December 2011 as a middleman.[25] At the material time, he was evading arrest for another drug trafficking offence that he had committed and in respect of which he was on bail.[26] The First Appellant did not reside in one fixed place but would reside in a few different locations – his wife's flat at Upper Boon Keng Road, his father-in-law's flat at Tampines Street 22 and even in various hotels on a fairly long-term basis.[27] As a result of his circumstances, he was unable to find proper employment and did not have a regular source of income.[28] Drug trafficking became his source of income. When he started his operations, the First Appellant sold diamorphine in smaller quantities of about ten small packets weighing 8g each for S$1,400.[29] By the time of his arrest, the First Appellant had expanded his operations to selling half-pound bundles at approximately S$3,000 each (which was roughly equivalent to 30 small packets). He would purchase drugs not merely from local suppliers but also from a Malaysian supplier known to him as "Makel" in larger quantities. Even though the First Appellant was earning higher profits at the time of his arrest, he admitted that because of the needs of his family, his maintenance obligations to his ex-wife and children from his previous marriage and his drug consumption habits (of which diamorphine was one of the types of drugs he consumed), "money was usually tight".[30] The First Appellant had a long history of drug abuse since

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[24] ROP Vol 2, Exhibit P-72, paras 29-30.

[25] ROP Vol 2, Exhibit P-67, paras 3 and 4.

[26] ROP Vol 2, Exhibit P-49, para 7.

[27] ROP Vol 1, NE, Day 6, 21 April 2015, pp 83-84.

[28] ROP Vol 1, NE, Day 6, 21 April 2015, p 87 lines 5-7.

[29] ROP Vol 2, Exhibit P-67, para 4.

[30] ROP Vol 1, NE, Day 6, 21 April 2015, p 87 line 10.

his teenage years. He was admitted to the Drug Rehabilitation Centre on five occasions.[31] The extent of his drug addiction, in particular in respect of diamorphine, is a matter of dispute which we will explore later on in this judgment.

The Appellants' respective cases

12 The Appellants' defences in these appeals are similar to the defences that were raised in the High Court and dismissed by the Judge.

The First Appellant's defence

13 The First Appellant's defence is based on own consumption of part of the drugs in question. Essentially, the First Appellant claims that one of the Bundles in his possession, which was to be re-packed into about 28[32]-30[33] small packets, was intended for his own consumption.[34] If the First Appellant is to be believed, this would mean that the amount of diamorphine that he should be charged with would be reduced significantly and may fall below the threshold of 15g for capital offences. The respective weights of the Bundles are as follows:[35]

Bundle	Weight of granular/powdery substance	Diamorphine weight
1	229.7 grams	4.90 grams
2	227.4 grams	5.02 grams

[31] ROP Vol 1, NE, Day 6, 21 April 2015, p 86 lines 16-25.

[32] If calculated assuming that each packet is 8g.

[33] If calculated assuming that each packet is 7.5g.

[34] First Appellant's Skeletal Arguments dated 4 August 2016, p 7.

[35] ROP Vol 2, Exhibits P2-P5.

3	229.0 grams	4.19 grams
4	229.5 grams	5.73 grams

14 If we accept that the First Appellant intended to store either the whole of the first, second or fourth bundle for own consumption, the amount of diamorphine that the First Appellant would be charged with would fall below 15g and he would no longer be liable for the death penalty.

The Second Appellant's defence

15 The Second Appellant's defence appears to be that because he was ignorant about the consequences of his actions – *ie*, he did not know that the death penalty existed or that he may be liable for the death penalty as a result of his actions – he could not have had the requisite intention to traffic the quantity of diamorphine that he was charged with. Alternatively, the Second Appellant alleged that he had an existing agreement with "Ah Zhor" that he would only agree to deliver a non-capital amount of diamorphine ("the Agreement Defence"). However, his counsel informed us during the hearing of these appeals that the Second Appellant would not be relying on the Agreement Defence. He explained that it was inherently contradictory to assert ignorance of the existence of the death penalty and yet claim that an agreement had been entered into to traffic in a non-capital amount of diamorphine.

The Prosecution's case

16 The Prosecution's case in relation to the First Appellant is that his defence was inconsistent with his own evidence and his personal circumstances. The First Appellant had failed to raise his defence in his cautioned statement and instead admitted to possessing all the drugs found

on him for the purpose of trafficking. Even when the First Appellant subsequently claimed in a further statement that he intended to keep one bundle for own consumption, in that very same statement, he also stated that he would normally keep only ten small packets of diamorphine for own consumption and would not sell them.[36]

17 It was argued that stockpiling such a large quantity of diamorphine for own consumption was also inconsistent with the economic motivations underlying the First Appellant's drug business. The First Appellant's defence had to be viewed in the context of the financial pressures faced by him as a result of his costly drug consumption habits and his obligation to pay maintenance to his ex-wife.[37] As the First Appellant did not have a fixed place of abode, it was also inconvenient for him to carry around large quantities of diamorphine.[38]

18 In fact, the First Appellant admitted at trial that he had never retained one whole bundle of diamorphine for own consumption on any previous occasion.[39] He explained, however, that he intended to do so for the first time on this particular occasion because of an "experience" in which the Malaysian syndicate was arrested and there was a break in the supply of diamorphine from "Makel".

19 The Prosecution submitted that there was no evidence of this "experience" apart from the First Appellant's bare assertion. The First

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36 Respondent's submissions, para 24.

37 Respondent's submissions, para 34.

38 Respondent's submissions, para 37.

39 ROP Vol 1, NE, Day 8, 23 April 2015, p 11 lines 12-16.

Appellant did not call "Makel" to testify to support his assertion.[40] In addition, the frequency in which the First Appellant had been obtaining supplies of diamorphine from "Makel" in May 2012 indicated that if such an "experience" had in fact happened, it would have happened before May 2012. If that were so, it would not make sense for the First Appellant to decide to stockpile such a large quantity of diamorphine in relation to the fourth delivery in the month of May after a substantial period of time had elapsed since the "experience".

20 The Prosecution's case in relation to the Second Appellant focused on the Agreement Defence. The Prosecution submitted that the Second Appellant had admitted at trial that there was no such agreement with "Ah Zhor" to deliver only a non-capital amount of diamorphine. As mentioned above, counsel for the Second Appellant has stated that he would not be relying on the Agreement Defence.

The decision of the Judge

21 The Judge found that the First Appellant was "unable to maintain a consistent position" on the amount of diamorphine he intended to keep for own consumption out of the 19.84g of diamorphine he collected from the Second Appellant (GD at [19]). As the First Appellant had told Dr Winslow that he always kept about five small packets for his own consumption and stated in his investigation statement to CNB officers that he normally kept ten packets, "there would be no cause for him to keep 30 small packets out of the [Bundles] he was arrested for unless he intended to go on an unbridled binge." In this respect, the Judge found that there was no evidence that the

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40 Respondent's submissions, para 43.

First Appellant's appetite for diamorphine was "given to sharp fluctuations". In addition, the Judge found it inexplicable that the First Appellant would deprive himself of the profits from the re-sale of such a large quantity of diamorphine when that was his sole source of income. The First Appellant's professed anxiety over obtaining supplies was not borne out by the evidence which in fact demonstrated a regular supply of drugs from "Makel".

22 As such, the Judge found the First Appellant's claim that he intended to keep 30 small packets "unworthy of belief" (GD at [19]). He found that the First Appellant was more likely to keep five or ten small packets. The Judge accorded him the benefit of doubt and accepted the higher figure of ten small packets.

23 In calculating the amount of drugs that the First Appellant intended to traffic, however, the Judge did not deduct the diamorphine content of ten small packets from the bundle which had the highest diamorphine content. Instead, using a mathematical formula based on the total weight of the Bundles compared with the total weight after deducting the weight of ten small packets, multiplied by the total diamorphine content in the Bundles, the Judge derived a figure of 18.21g of diamorphine as the weight of drugs that the First Appellant should be charged with (GD at [21]).

24 In respect of the Second Appellant, the Judge found that he had not been mistaken or misled into thinking that the death penalty did not apply since he did not know about the death penalty. The Judge concluded that as he did not know about the death penalty, the quantity of diamorphine "would be of no significance to him" because he believed he would not be punished with death regardless of the amount of diamorphine he delivered (GD at [33]). On that basis, he dismissed the Second Appellant's claim that if he had

known about the death penalty, he would not have trafficked the Bundles and therefore could not have intended to traffic the quantity of diamorphine that he was charged with.

25 The result was that the Appellants failed to discharge their respective burden to rebut the statutory presumptions under ss 17(*c*) and 18 of the MDA. Consequently, the Judge convicted the Appellants on their respective charges.

Our decision on conviction and sentence

26 These appeals concern the question whether the Appellants have rebutted the presumptions under ss 17(*c*) and 18 of the MDA by proving on a balance of probabilities that they did not intend to possess 19.84g of diamorphine for the purpose of trafficking.

27 The presumptions read as follows:

> **Presumption concerning trafficking**
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> **17.** Any person who is proved to have had in his possession more than –
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> …
>
> (*c*) 2 grammes of diamorphine;
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> …
>
> 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.
>
> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control –

> (*a*) anything containing a controlled drug;
>
> …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) 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.

The First Appellant's defence

28 In our opinion, the Judge did not err in finding that the First Appellant's defence was contradicted by the evidence. Even if we take the First Appellant's case at the highest and accept that he was a heavy abuser of diamorphine consuming an average of one small packet a day, there remain significant inconsistencies in his evidence concerning the quantity of diamorphine he needed to keep from his supply of drugs. We are unable to accept the First Appellant's submission that these inconsistencies are "slight" and are "not material" to the case.[41] In any event, it is highly improbable that the First Appellant would keep 30 small packets of diamorphine for own consumption from this particular delivery in the light of his financial situation. He was also receiving frequent supplies of diamorphine and there was simply no need for him to keep so much.

The court's approach to examining the defence of consumption

29 When an accused relies on the defence of consumption to rebut the presumption of possession for the purpose of trafficking, the court considers the overall circumstances of the case. In particular, where the drugs have not been re-packed or apportioned in any particular manner to differentiate those intended to be sold from those intended to be consumed, the court has to look

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[41] First Appellant's Skeletal Arguments dated 4 August 2016, p 12.

at the totality of circumstances to determine on a balance of probabilities whether the accused has rebutted the presumption in s 17.

30 In *Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 2 SLR(R) 706 ("*Jusri*") at [62]-[63], the High Court made the following observations about an accused's defence of consumption raised in an attempt to rebut the statutory presumption in s 17 of the MDA:

> In conclusion, I was of the view that before any meaningful apportionment can be made, there must be credible evidence that part of the drugs found were meant for self-consumption. There must also be credible evidence of the *rate of consumption* as well as the *number of days the supply is meant for*. So far as the last item is concerned, as was noted by Rajendran J in *PP v Dahalan bin Ladaewa*, this should be looked at in connection with the *frequency of supply*.
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> In this respect, credible evidence does not mean the mere say-so of the accused. I appreciate that it is often difficult for an accused to adduce any other evidence apart from his own testimony. However, it seems to me that it must follow from the statutory presumption in s 17 of the Misuse of Drugs Act that an accused found in possession of a large quantity of drugs faces an uphill task. It cannot be right that the court is obliged to accept in all cases the bare allegation of the accused. That would make nonsense out of s 17.
>
> [Emphasis added]

31 In *Public Prosecutor v Kwek Seow Hock* [2009] SGHC 202, the High Court considered several factors in dealing with a defence of own consumption: (a) the rate of drug consumption; (b) the frequency of supply; (c) whether the accused had the financial means to purchase the drugs for himself; and (d) whether he had made a contrary admission in any of his statements that the whole quantity of drugs was for sale. The findings of fact made by the High Court in relation to these factors were upheld by this court in *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 ("*Kwek Seow Hock*"). This court rejected the accused's defence of own consumption as a

result of his admission that all of the drugs were for sale, his ready access to a supply of drugs and his inability to finance the purchase of 23 packets. Consequently, the accused in that case failed to rebut the presumption in s 17 of the MDA.

Significant inconsistencies relating to the amount of drugs the First Appellant needed to store for personal consumption

32 In the present case, the strongest evidence which supports the First Appellant's defence is his statement to CNB officers dated 31 May 2012 ("the Statement") in which he stated that "[t]he remaining half pound is for my own consumption which I will pack into smaller packets and keep with me."[42] Given that each Bundle weighed approximately half a pound, this was the first time the First Appellant raised his defence about one Bundle since his arrest. Although it was raised about a week after his arrest and was not in his cautioned statement, we are prepared to give due weight to the Statement in the light of the overall circumstances. There was, however, some inconsistency within the Statement as to the amount of drugs the First Appellant intended to keep for own consumption. The relevant parts of the Statement are reproduced:

> … I went back to smoking Heroin sometime in January this year. I started with one to two long straws of Heroin per day and moved on to the current one packet of Heroin per day as time went by. *Normally, I will keep ten packets of Heroin with me and I will not sell them. The reason is because there may be times whereby Heroin supply does not come into Singapore from my supplier. I would need these ten packets for my own consumption.*
>
> For these two pounds of Heroin that I am arrested with, I already have orders placed with me for one and a half pound of Heroin. The remaining half pound is for my own

[42] ROP Vol 2, Exhibit P72, p 373 para 29.

> consumption which I will pack into smaller packets and keep with me. …
>
> [Emphasis added.]

33 Based on the foregoing, the First Appellant's defence was inconsistent with his own evidence in the preceding paragraph. In that paragraph, he stated that he was in the habit of storing ten small packets of diamorphine for own consumption in case there was a break in the supply of drugs from his Malaysian supplier. The First Appellant did not provide any further explanation as to why, on this occasion, he chose to keep three times the usual amount for own consumption (as each Bundle could produce around 30 packets). At trial, he merely relied on the same explanation of the possibility of a break in supply from his Malaysian supplier, thereby using the reason for storing ten packets to now justify the storing of around 30 packets instead.[43]

34 As rightly noted by the Judge (at [19] of the GD), "[t]here was no suggestion that his heroin appetite was given to sharp fluctuations". On the First Appellant's own evidence of his consumption habits given to his doctor, Dr Ung Eng Khean ("Dr Ung"), he would consume a maximum of two small packets in one day but on some days he admitted that he would consume less than a packet.[44] Dr Ung thus recorded that the First Appellant would consume an average of one small packet a day. Such a description of his consumption habits was also accepted by the First Appellant at trial.[45] It was in fact never his case that his consumption habits would fluctuate

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[43] ROP Vol 1, NE, Day 8, 23 April 2015, p 11 lines 16-24.

[44] ROP Vol 2, Exhibit D1, p 420 para 12.

[45] ROP Vol 1, NE, Day 6, 21 April 2015, p 87 line 16.

sharply from day to day to the extent that it would necessitate the storage of more than three times his usual amount of diamorphine on this occasion.

35 This was not the only inconsistency in the First Appellant's evidence. In fact, the First Appellant was constantly prevaricating on his position as to how much he would usually keep for himself from his supply of drugs, a serious inconsistency that went to the heart of his defence. For example, he informed Dr Munidasa Winslow ("Dr Winslow") that he "always kept ~5 [small] packets as a reserve for his own consumption"[46] but stated at trial that he had previously kept 20 small packets for his consumption.[47] In addition, as noted above, the First Appellant had initially claimed in the Statement that he would "normally" keep ten small packets for consumption in the event of a break in his supply, which differed from his account to Dr Winslow as well as his version at trial.

36 These inconsistencies made the defence of consumption even more unbelievable when viewed in the light of the abovementioned evidence (at [34]) relating to the First Appellant's rate of consumption of diamorphine – which, as found by the Judge, was not given to sharp fluctuations. There was simply no explanation as to why the First Appellant would store such varying amounts of diamorphine if his rate of consumption remained fairly uniform, unless his access to a ready supply of diamorphine differed greatly from week to week. However, as will be seen later on in this judgment, the First Appellant had access to a regular and continual supply of drugs from his suppliers during the material time.

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[46] ROP Vol 2, Exhibit P49, para 7.

[47] ROP Vol 1, NE, Day 8, 23 April 2015, p 11 lines 16-17.

37 A further factor to consider in evaluating the credibility of an accused's defence of consumption is whether there is reliable evidence as to the number of days the supply is meant to last (see *Jusri*). The First Appellant claimed at trial that 30 small packets would last him more than a week to two weeks.[48] This would work out to slightly more than two small packets every day for two weeks. Seen in the light of his evidence relating to his consumption rate, this is simply not believable. As noted at [34], he had informed Dr Ung that his consumption rate was an average of one small packet a day as there were days when he consumed more and days when he consumed less. This is a far cry from an average of two small packets a day, essentially twice the dosage and for a continuous period of two weeks. Dr Ung opined that the First Appellant's average consumption of 7.5g was "compatible with reports in the medical literature citing use of up to 10g of heroin a day".[49] The First Appellant's alleged rate of consumption of two small packets a day based on 7.5g of diamorphine in each packet (gross weight) would far exceed even the reports in the medical literature. We therefore think that the alleged rate of consumption was highly improbable.

Unnecessary to store 30 small packets as the First Appellant had ready access to fresh supplies

38 In our view, however, there was simply no necessity for the First Appellant to store such a large quantity of diamorphine as he had access to a constant and ready supply through his suppliers both local and Malaysian during the material time. The evidence admitted to by both Appellants shows that within a span of three weeks (from 9 to 24 May), the First Appellant received four separate deliveries of at least one pound of diamorphine (about

[48] ROP Vol 1, NE, Day 8, 23 April 2015, p 15 lines 11-13.

[49] ROP Vol 2, Exhibit D1, p 437 para 44.

450g) on each occasion. In other words, the First Appellant was receiving a fresh supply of drugs every four to five days on average.[50] Both Appellants did accept, however, that the third and fourth deliveries were about a week apart,[51] which appeared to be the longest period of time between deliveries. Giving the First Appellant the benefit of the doubt and assuming that he intended to store sufficient diamorphine for a week, based on his average rate of consumption, he needed to store seven small packets. The Judge's finding of fact that the First Appellant intended to store ten small packets thus takes this into consideration and gives further allowance in respect of the First Appellant's claim that he was fearful of a possible break in supply. The Judge therefore accorded the First Appellant the full benefit of the doubt where the number of small packets was concerned by proceeding on the basis that he intended to store ten small packets for own consumption.

39 In any event, the First Appellant's concerns about the arrest of the Malaysian syndicate resulting in a break in supply were unfounded for two reasons: first, this was merely a bare allegation unsupported by any evidence and, in fact, was contrary to evidence of a regular and uninterrupted supply of drugs (of large quantities) for three weeks prior to the arrest; second, even if we accept that the First Appellant was fearful of the Malaysian syndicate being arrested, he had admitted at trial that at the time of his arrest, "Makel" was not his only supplier as he had other local suppliers as well.[52] His alleged fear of not being able to obtain diamorphine for own consumption if the Malaysian syndicate was arrested was thus unsubstantiated and without basis.

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[50] ROP Vol 1, NE, Day 7, 22 April 2015, p 42 lines 8-11.

[51] ROP Vol 1, NE, Day 9, 24 April 2015, p 69, line 28.

[52] ROP Vol 1, NE, Day 7, 22 April 2015, p 7, lines 22-25.

The personal circumstances of the First Appellant made it unlikely that he would hold onto 30 small packets

40 The First Appellant admitted at trial that he had limited financial means (above at [11]). He did not have a regular source of income apart from the profits he derived from drug trafficking and he had to meet the needs of his family and to finance his drug consumption. In fact, he further admitted in cross-examination that because of a "shortage of money", he was sometimes unable to pay the maintenance of S$430 every month to his ex-wife and children from his previous marriage. The market price of one small packet of diamorphine was about S$100 to S$150. Assuming the First Appellant intended to store 20 small packets in addition to the ten small packets that he said in the Statement he normally stored, he would be forgoing an income of S$2,000 to S$3,000 simply to ensure that he had a large surplus of drugs for own consumption. We do not think this was probable in the light of his limited finances and the availability of regular supplies of diamorphine at that time.

41 In addition, as mentioned at [11], the First Appellant did not have a fixed place of residence. He admitted at trial that it was inconvenient and dangerous for him to hold on to large amounts of diamorphine. In the light of his personal circumstances at the material time, we find it incredible that the First Appellant would have intended to stockpile 30 small packets of diamorphine for own consumption.

The Judge's calculation of the amount of diamorphine in the charge did not accord the First Appellant the full benefit of doubt

42 We therefore agree with the Judge that looking at all the circumstances of the present case, it was more probable than not that the First Appellant would have retained no more than ten small packets of diamorphine. The

First Appellant has therefore failed to prove that he intended to consume 30 small packets of diamorphine from the Bundles received and has failed to rebut the statutory presumption in s 17 of the MDA in respect of the remaining quantity of diamorphine after deducting the ten small packets he intended to store for consumption.

43 However, the method adopted by the Judge to calculate the weight of diamorphine that should be stated in the charge did not accord the full benefit of doubt to the First Appellant. The First Appellant would not be able to tell from the appearance of the Bundles the exact weight of diamorphine contained in each one. Giving the First Appellant the benefit of the doubt in these circumstances would mean that we assume he could have chosen the 229.5g gross weight Bundle with the highest diamorphine content (5.73g) and would have set aside ten small packets from that bundle for his own consumption. This is to be preferred over pooling the total weight of the Bundles together and the total diamorphine content of the Bundles to derive an average diamorphine content for each Bundle, which was the method that the Judge adopted. We further assume that out of the Bundle with the highest diamorphine content, the First Appellant would have apportioned the Bundle into 28 small packets weighing about 8.19g each and would have set aside ten packets as his reserved stock. Each small packet would have an average of 0.2046g of diamorphine (5.73g ÷ 28). Ten small packets would account for 2.046g of diamorphine. The remaining 3.684g of diamorphine (5.73g – 2.046g) in that Bundle would therefore have been for the purpose of trafficking. This amount added to the 14.11g of diamorphine in the other three Bundles would give a total of some 17.79g. Accordingly, the total diamorphine content that the First Appellant would have possessed for the purpose of trafficking would be 17.79g for all the Bundles. The gross weight

of the Bundles was 915.6g. Deducting ten small packets of 8.19g each would give a total gross weight of 833.7g (915.6g – 81.9g).

44 The amended charge should therefore read:

> That you, MUHAMMAD BIN ABDULLAH,
>
> on the 24th day of May 2012 at or about 7.15pm, at the third floor corridor near the lift lobby of Block 707 Woodlands Ave 4, Singapore, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), to wit, by having in your possession for the purpose of trafficking, **833.7 grams of granular/powdery substance which were analysed and found to contain not less than 17.79 grams of diamorphine**, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) of the MDA and punishable under s 33(1) of the MDA, and further, upon your conviction under section 5(1)(*a*) read with section 5(2) of the MDA, you may alternatively be liable to be punished under s 33B of the MDA.

45 We therefore convict the First Appellant on this amended charge. The legal outcome of this amendment, similarly with that of the charge as amended by the Judge, is still the same because the capital punishment threshold of 15g was crossed in all the instances. On the totality of the evidence, the Appellant has failed to rebut the presumption of possession for the purpose of trafficking under s 17 of the MDA except for ten small packets. The mandatory death sentence imposed by the Judge is also upheld as it was clear that the First Appellant's role in this drug transaction went much further than that of a mere courier within the meaning of s 33B(2)(*a*).

The Second Appellant's defence was no different from pleading ignorance of the law

46 The Second Appellant claimed that he did not know of the existence of the death penalty. His counsel, Mr Wong Siew Hong ("Mr Wong"),

explained that as a result of such ignorance, the Second Appellant could not have had the requisite intention to traffic in a quantity of drugs which attracted the death penalty. In other words, because the Second Appellant would not have committed the act of trafficking the Bundles if he had known he would be liable for the death penalty meant that he did not have the intention to do the act.

47 The above argument seems to conflate the concepts of "intention" and "consequence". The intention in committing a criminal act is not assessed by reference to the legal consequences of the act but by reference to the act itself. The inquiry is whether the Second Appellant intended to do a particular act (trafficking) rather than whether the Second Appellant would have done the act if he knew about the dire consequences. The Second Appellant appears to be saying that he was ignorant of the legal consequences that resulted from an act which he had intended to do. Ignorance of the law affords no defence in law. In the present case, the Second Appellant clearly intended to commit trafficking of the Bundles when he passed them to the First Appellant in exchange for S$9,800.

48 The Second Appellant's alternative defence at trial was based on the defence raised in *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16. In that case, this court dismissed the appeal against the High Court Judge's findings in favour of the accused that he had entered into an agreement with his supplier to deliver only amounts of methamphetamine which did not attract the death penalty and that he was not wilfully blind to the methamphetamine in his possession being more than the threshold amount.

49 Although his counsel had indicated that this alternative defence would not be pursued at the appeal, we would deal briefly with it for completeness. The Second Appellant's claim on this alternative defence was essentially a bare assertion. In his statements, he claimed that Ah Zhor, the supplier, had assured him that he would not let him do something that involved the death penalty. The supplier also allegedly told the Second Appellant that the punishment was at most imprisonment of six to seven years (this changed to eight to ten years during his testimony at trial). His evidence did not explain why he would trust a supplier of illicit drugs. Such a defence also implied that the Second Appellant possessed the bargaining power to strike such a deal with his supplier. This was highly unlikely as the Second Appellant was the one who approached the supplier for drug delivery jobs because he needed the additional income. In any event, these allegations contradicted the Second Appellant's claim in court that he did not know about the death penalty for drugs until after his arrest. Further, under cross-examination, he agreed that there was no real agreement between him and Ah Zhor that he would only be required to deliver amounts of diamorphine which did not attract the death penalty (see [28] of the GD).

50 Additionally, it is practically impossible in every case such as this to ascertain the exact diamorphine content in each bundle. The gross weight of each packet and the diamorphine content therein are invariably inconsistent. The packet with the lowest gross weight could contain the highest level of diamorphine. It would thus be pointless even if the Second Appellant had weighed the Bundles because it would not assist him in determining the diamorphine content in the Bundles. A trafficker of drugs bears the risks of the task that he has undertaken and must bear the legal consequences of doing the task even if he were ignorant of them.

51 On the totality of the evidence, we find that the Judge did not err in rejecting the Second Appellant's defence and in convicting him on the charge. Although the Second Appellant was found to be a courier, a finding accepted by the PP, the PP decided not to issue the Certificate under s 33B(2)(*b*) of the MDA to the Second Appellant. Accordingly, the mandatory death penalty was imposed correctly.

CM 53/2016

52 In CM 53/2016, which was heard together with these appeals, the Second Appellant sought the orders set out earlier at [7] above from this court.

53 Although the application was by way of a criminal motion, it was in substance an application for judicial review. This was acknowledged by Mr Wong at the hearing before us when he attempted to withdraw CM 53/2016 and indicated that he intended to file an originating summons for leave to commence judicial review proceedings instead. We were not inclined to allow CM 53/2016 to be withdrawn and proceeded to hear the application. After hearing submissions, we were of the view that CM 53/2016 was wholly unmeritorious and dismissed it accordingly. We now elaborate on the reasons for our decision.

54 As a matter of practice, an accused person receives a "mandatory death penalty notification" shortly after his arrest if the offence that he is alleged to have committed carries the death penalty under the MDA. This was stated by the Prosecution at the hearing before us and was not disputed by counsel for both appellants. This notification puts the accused on notice that if he wishes to obtain the Certificate, he has a duty to give evidence to the CNB to assist

in disrupting drug trafficking activities. In the present appeals, the Second Appellant did not allege that he was unaware of the need to provide assistance to the CNB. Several reminders about this were given by the Prosecution to him even up to the stage of sentencing. As explained in Mr Wong's affidavit filed in support of CM 53/2016 (at [6] of that affidavit):

> In May 2016, I interviewed the [Second Appellant] in Cluster A of Changi Prison and was instructed that he wished to make a statement to the CNB that he hopes would qualify for a Certificate of Assistance under s 33B(2) of the MDA ("the Certificate"). He explained to me that he had not offered assistance earlier because he was not aware of death penalty before he was arrested and that, until the learned Trial Judge pronounced his sentence on 14 July 2015, had not believed that he would be sentenced to death. He further informed me that when the sentence of death was passed on him, he was shocked and overwhelmed. Now, after long and sober reflection, he had decided that he wished to give his statement with CNB in the hope that he would be given the Certificate. I was instructed to convey his position to the Public Prosecutor and to request that the Public Prosecutor send the Investigating Officer to interview the [Second Appellant] in prison and take his statement.

55 The Prosecution replied to the above request stating that "[the Second Appellant] had every opportunity, prior to his conviction and sentence, to provide information for the purpose of substantively assisting the [CNB] in disrupting drug trafficking activities within or outside Singapore. If [the Second Appellant] has any further information that he wishes to provide, you may wish to obtain the same from him and then forward it to these Chambers for further consideration". Mr Wong replied to say that it was the CNB which should conduct the interview, not the Second Appellant's counsel.

56 During the trial, the Second Appellant confirmed that he had provided all the contact details of "Ah Zhor" and his runners to the CNB.[53] Moreover,

[53] ROP Vol 1, NE, Day 9, 24 April 2015, p 90 line 16.

although the PP's position was that the assistance provided by an accused would generally be assessed up to the conclusion of the trial, in the present case, a further statement was recorded from the Second Appellant after all the evidence had been led at trial and prior to sentencing.[54] According to the Prosecution at the trial, the decision not to issue the Certificate to the Second Appellant was made after taking into account all the information that had been provided up to the point at which his sentence was passed (including the further statement recorded prior to sentencing).[55] Counsel for the Second Appellant at the trial, Mr Low Cheong Yeow ("Mr Low"), further confirmed at the sentencing on 14 July 2015 that the Second Appellant had provided all the information that he possessed to the CNB and there was no further information he could provide.[56] It was therefore clear that the Second Appellant had ample opportunity to provide assistance to the CNB and in fact tried to do so.

57 Even after the sentencing, the PP did not deny the Second Appellant an opportunity to provide information to assist the CNB. About three months prior to the hearing of these appeals, Mr Wong wrote to the Prosecution to request that a further statement be recorded from the Second Appellant for the purposes of s 33B(2)(*a*) of the MDA.[57] As stated at [55] above, the Prosecution replied that if there was further information, Mr Wong should obtain it from the Second Appellant and forward it to the Prosecution for further consideration.[58] Mr Wong disagreed that he should do that and

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[54] ROP Vol 1, NE, Day 10, 14 July 2015, pp 9-10.

[55] *Ibid*.

[56] ROP Vol 1, NE, Day 10, 14 July 2015, pp 11 and 16.

[57] Mr Wong's Affidavit, p 7.

[58] Mr Wong's Affidavit, p 9.

therefore sought an order from us to compel the CNB to record the further statement.

58 It was thus clear that the Second Appellant had not been deprived of an opportunity to provide assistance. He was aware, by virtue of the mandatory death penalty notification, that he had to give relevant and useful information to the CNB if he hoped to obtain the Certificate. We reiterate that his counsel at the trial had even stated to the Judge prior to sentence being passed that the Second Appellant did not have any further information to give to the CNB. It is therefore surprising that he now believes at this very late stage that he has further information to give.

Assistance to the CNB in disrupting drug trafficking activities should be provided prior to the conclusion of trial

59 While an accused person has the freedom to decide whether he wishes to assist the CNB, he does not have the right to decide when he would provide information. From a practical perspective, if he chooses to assist the CNB, the latest time at which he could do so in order to avail himself of the alternative sentencing regime under s 33B of the MDA would be during the trial (*Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2014] 4 SLR 773 ("*Ridzuan (HC)*") at [70]). If he withholds all or some information before and/or during the trial, he cannot fault anybody if the PP decides not to issue the Certificate when the time comes for the trial court to consider the issue of sentence. It is also beneficial to the accused that he should furnish relevant and useful information as soon as possible because the longer he delays, the more likely the information would lose its usefulness.

60 We should not lose sight of the context in which the alternative sentencing regime under s 33B of the MDA came about. As stated by this

court in *Muhammad Ridzuan bin Mohd Ali v Attorney-General* [2015] 5 SLR 1222 ("*Ridzuan (CA)*") at [66]:

> We would also reiterate that we are, at this stage, not dealing with an accused (who is presumed innocent) but a person who is convicted, after due process, of drug trafficking and is, in the normal course, to be sentenced to suffer death. The statements in Parliament show quite clearly that the object of s 33B of the MDA is not to send the message that society has gone soft on drug traffickers; on the contrary, it is another string to our bow, perhaps in a different way, to combat drug trafficking – to get at the real kingpins behind the couriers. A convicted drug trafficker must "earn" [the Certificate]. It is not a matter of entitlement.

The Parliamentary debates leading to the enactment of s 33B of the MDA showed that the purpose of the amendments was to give an accused person the incentive to "come clean" (*Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 ("*Chum Tat Suan*") at [81]) at the earliest opportunity so that the operational effectiveness of the CNB may be enhanced and the accused may thereby "earn" the Certificate.

61 It is therefore incumbent on an accused person to make full and frank disclosure of all relevant and useful information as soon as possible. He should not withhold all or even some information as if he were in a poker game with the Prosecution. It is certainly not permissible for an accused person who wishes to obtain the Certificate to determine that he would feed the CNB information in such portions or at such times as he chooses. The Certificate would be issued only if the information provided by an accused person yields actual results in relation to the disruption of drug trafficking activities. Mere good faith cooperation is insufficient (*Ridzuan (CA)* at [45]). With the passage of time, the information withheld may become worthless as it may be outdated and the possible leads may have gone "cold", jeopardising

the chances of success in disrupting drug trafficking activities (*Ridzuan (HC)* at [69]).

62 A two-stage legal process which allows an accused person to withhold information at the trial stage and then to provide it thereafter if the defence at trial fails is undesirable and, in our view, certainly not intended by the amendments to the MDA. In *Chum Tat Suan* (at [77]–[79]), this court held (by a majority decision), in the context of proving that the accused in that case was a "courier" under s 33B(2)(*a*), that the evidence which the accused seeks to rely on to prove that he was a courier must be adduced during the trial and not separately at the sentencing stage. This principle against a dichotomous trial process applies equally to s 33B(2)(*b*). As we have emphasised above, the changes to the MDA are to encourage an accused to come clean at the earliest opportunity and not to play games of strategy in court with the Prosecution. The trial court does not adjourn after pronouncing on guilt in order to furnish the accused person an opportunity to provide information to the CNB.

63 This is consistent with the choice that an accused person faced prior to the amendments to the MDA on whether or not he wanted to cooperate and come clean with the CNB by providing information which may persuade the PP not to proceed with a capital charge against him (*Chum Tat Suan* at [80]). There was no suggestion that the amendments were intended to change the existing trial process and to allow an accused person to deliberately stifle evidence to gain an advantage and then to speak the truth when that strategy fails (*Chum Tat Suan* at [81]).

64 It would have to be a truly exceptional case for an accused person to be able to say that he was not able to provide relevant and useful information

before and even during the trial. This is particularly so because offences under the MDA often necessitate a fairly long period of investigation before they come to trial. On the facts here, it was clear that the Second Appellant had every opportunity to give to the CNB whatever information he possessed. His counsel at trial confirmed that. We were not even told what additional information the Second Appellant could possibly have some four years after the offence.

65 The Second Appellant does not have an enforceable right at law for this court to compel the PP to direct the CNB to take a further statement at a time of the Second Appellant's choosing. Further, the nature of the order sought in the present case is one that directs the PP to exercise his discretion in an operational matter in a particular way. This is a matter solely within the purview of the PP. In any event, the threshold for the court to interfere with the PP's discretion in s 33B of the MDA is bad faith or malice (see s 33B(4) of the MDA) or unconstitutionality, none of which was alleged here. Indeed, before us, Mr Wong confirmed that he was not alleging bad faith or malice but was only seeking to challenge the PP's decision not to interview the Second Appellant.

66 When evaluating any information given by an accused person, the CNB is entitled to take an operational perspective of how important the information is and whether it is likely to bear fruit, both of which are matters solely within its purview. For instance, the CNB cannot be expected to traverse the globe to investigate merely because an accused person mentions the names of different persons in different countries (*Prabagaran a/l Srivijayan v Public Prosecutor* [2015] SGCA 64 at [59]). The PP is not required to disclose his reasons every time an applicant challenges his decision not to issue the Certificate as this could result in information

relating to CNB's *modus operandi* ending up in the public domain. This would have severe detrimental effects on CNB's enforcement capabilities (*Ridzuan (CA)* at [39]).

67 Clearly, CM 53/2016 had nothing to stand on. We therefore dismissed it at the hearing of these appeals.

Conclusion

68 Under the MDA, the onus is on the Appellants to rebut the presumption that they possessed the drugs for the purpose of trafficking. The Appellants have failed to do so. Like the Judge, we have no doubt that the Appellants were guilty of trafficking in the respective quantities of drugs which attracted the death penalty. We therefore dismiss the appeals against conviction and uphold the mandatory death sentences. CM 53/2016 commenced by the Second Appellant was dismissed earlier as it was completely without merit.

Sundaresh Menon	Andrew Phang Boon Leong	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

Masih James Bahadur (James Masih & Company), Rajan Supramaniam (Hilborne Law LLC) and Chuang Wei Ping (WP Chuang & Co) for the first appellant;
Wong Siew Hong and Favian Kang Kok Boon (Eldan Law LLP) and Joseph Tan Chin Aik (Teo Keng Siang LLC) for the second

appellant; and
Francis Ng and Marcus Foo (Attorney-General's Chambers) for the respondent.
