

Public Prosecutor v Kester Ng Wei Ren  
[2010] SGHC 28

**Case Number** : Criminal Case No 43 of 2009  
**Decision Date** : 22 January 2010  
**Tribunal/Court** : High Court  
**Coram** : Chan Seng Onn J  
**Counsel Name(s)** : Hay Hung Chun, Christopher Tan and Luke Tang (Attorney-General's Chambers) for the prosecution; Manoj Prakash Nandwani and Liew Hwee Tong Eric (Gabriel Law Corporation) for the accused.  
**Parties** : Public Prosecutor — Kester Ng Wei Ren

*Criminal Law – Misuse of Drugs*

22 January 2010

Judgment reserved.

**Chan Seng Onn J:**

**Introduction**

1 The accused is Kester Ng Wei Ren, now 49 years old. Of the seven charges against the accused, the prosecution stood down six charges and proceeded only with the second charge which reads as follows:

[O]n 12 August 2008, at about 9.30 pm., at 8 Lorong 42, Room 188, Geylang, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking, thirty-one (31) packets of granular substance containing 23.38 grams of diamorphine without any authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act and punishable under section 33 of the said Act.

**The background facts**

**(a) Events leading up to the arrest**

2 On 12 August 2008 at about 3 pm, officers from the Central Narcotics Bureau ("CNB") were deployed near a coffee shop at Lorong 40 of Geylang, Singapore, to look out for a Malaysian Chinese, one Tan Kim Looi ("Tan"). CNB intelligence received information that Tan would be making a delivery of drugs to an unidentified man in that area. At about 4.35 pm, the CNB officers identified Tan at the coffee shop. The accused was then seen entering the coffee shop and sitting down at the same table as Tan. The accused and Tan subsequently left the coffee shop and they were spotted walking towards Tan's motorcycle bearing license number JLC 3645. A while later at about 5.00 pm, the accused was seen carrying a white plastic bag along Lorong 40 Geylang. Instructions were given to arrest the accused. The accused was eventually arrested near the rear gate of Aston Mansion, which is a residential property located between Lorong 40 and Lorong 42 of Geylang.

3 The accused put up a violent struggle and he threw the white plastic bag into the air causing

two black bundles and one brown envelope to fall out of the plastic bag. After the accused was subdued, the CNB officers retrieved the white plastic bag and its contents, viz the two black bundles and one brown envelope. The two black bundles and the brown envelope contained controlled drugs that formed the subject matter of the first and fifth charges. Although these charges have been stood down, I will for the sake of completeness as well as to provide a clearer context to the present charge (viz the second charge), set out the drugs uncovered in the white plastic bag in the following table:

S/N	Description of exhibit	Charge	CNB Marking	Weight of exhibit	Quantity of Controlled Drugs
1	Fifteen (15) packets of granular substance	First Charge	J3A1	113.9 g	4.18 g of diamorphine
2	Fifteen (15) packets containing granular substance	First Charge	J4A1	114.6 g	4.02 g of diamorphine
3	One (1) packet containing crystalline substance	Fifth Charge	J2A	23.32 g	18.02 g of methamphetamine

4 When the accused was escorted back to the CNB, the accused revealed that his place of residence was at Summer View # 03-01, No. 5 Lorong 12 Geylang ("the Summer View apartment"). The police searched the Summer View apartment but nothing incriminating was found. Thereafter, the accused was brought back to the CNB. An instant urine test was performed on him. His urine was tested positive for amphetamine, benzodiazepines and opiates. A further two samples of the accused's urine were also sealed and deposited into a metal box in the accused's presence, for the purposes of further testing and analysis. Further analysis of the accused's urine confirmed that the accused had consumed morphine and methamphetamine.

5 A body search of the accused was also performed at the CNB, and the police found a bunch of three keys in the back pocket of the accused. It was then discovered that the accused had another two residential addresses at room 188 of No. 8 Lorong 42 Geylang ("the room 188 apartment") as well as at # 09-48 of Block 16, Marine Terrace ("the marine terrace apartment"). A search of the room 188 apartment uncovered some drugs, two weighing scales and cash (amounting to \$6,539.20) whereas a search of the marine terrace apartment did not turn up anything.

6 The drugs found in the room 188 apartment made up the second, third and fourth charges. The drugs uncovered for the third and fourth charges are as follows:

S/N	Description of exhibit	Charge	CNB Marking	Weight of exhibit	Quantity of Controlled Drugs
1	Four (4) packets containing white crystalline substance	Third Charge	B3	0.26 g	0.18 g of methamphetamine

	Two (2) packets containing 0.82 g of yellow crystalline substance			0.82 g	0.60 g of methamphetamine
2	One (1) packet containing 0.46 g of crystalline substance	Third Charge	G1B1	0.46 g	0.35 g of methamphetamine
3	Six (6) tablets marked "028" on one side and "5" on the other side	Fourth Charge	B4	N.A.	Six (6) tablets of Nimetazepam
4	Twenty (20) tablets marked "028" on one side and "5" on the other side	Fourth Charge	EIC	N.A.	Twenty (20) tablets of Nimetazepam
5	Twenty (2) tablets marked "028" on one side and "5" on the other side.	Fourth Charge	G1B2	N.A.	Twenty (20) tablets of Nimetazepam

7 As for the second charge before this court, the drugs found are as follows:

S/N	Description of exhibit	Location	CNB Marking	Weight of exhibit	Quantity of Diamorphine
1	One blue plastic bag containing:  Ten (10) sachets of granular substance	Under the bed.	A1A	73.65 g	4.10 g
2	One white plastic bag containing:  One (1) sachet of granular substance  One (1) Ziploc bag containing four (4) sachets of granular substance	Under the bed.	A2A  A2B1	6.08 g  29.02 g	0.41 g  1.15 g
3	One black plastic bag containing  Five (5) sachets of granular substance	Under the bed.	A3A	36.71 g	1.69 g

4	One red plastic bag containing three black bundles each containing one packet of granular substance	Under the bed.	A4A1 A4B1 A4C1	51.79 g 112.8 g 112.7 g	2.19 g 5.56 g 5.71 g
5	One envelope containing three (3) sachets of granular substances five (5) sachets of granular substance	From the white tray at the dressing table.	B1A B2	17.46 g 30.26 g	0.8 g 1.77 g
	Total: 28 sachets and 3 bundles			Total amount: 470.47 g	Total amount: 23.38 g

**(b) The various drug consignments**

8 Further investigations revealed another actor named 'Ah Man', who was a middle aged Singaporean man who had connections with Tan and who would also facilitate drug deliveries between Tan and several drug traffickers in Singapore. Statements recorded from the accused also revealed that there were six other consignments of drugs received by the accused and facilitated by Ah Man prior to the one leading to the accused's arrest on 12 August 2008. At the outset, I should point out that the accused did not challenge the voluntariness of all his statements. There were in total, five statements recorded from the accused under s 121 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"), set out as follows:

(a) Statement recorded on 12 August 2008 at 6.10 pm ("the first statement");

(b) Statement recorded on 12 August 2008 at 10.30 pm ("the second statement");

(c) Statement recorded on 18 August 2008 at 3.02 pm ("the third statement");

(d) Statement recorded on 19 August 2008 at 9.57 am ("the fourth statement");

(e) Statement recorded on 19 August 2008 at 2.46 pm (the fifth statement").

9 Before elaborating on the various drug consignments, some background on the accused's initiation into the drug business would be useful. The accused was originally in charge of a few prostitutes in Geylang and he provided these prostitutes with lodging as well as ensured that their

clients would pay them for their services. The prostitutes would charge the client about \$80 for half an hour of service and the accused would take a commission of about \$10. Sometime in June 2008, the accused's business in providing lodging to prostitutes deteriorated and a Chinese friend offered to introduce the accused to some contacts who could provide him with drugs for sale. The accused was introduced to 'Ah Man' and arrangements were made for the first consignment of heroin.

*(i) The first consignment*

10 The first consignment of drugs arrived sometime in June 2008 and in the first consignment, the accused was given 30 packets of heroin for sale. Of the 30 packets of heroin, the accused passed 15 packets back to 'Ah Man'; he sold 12 packets and consumed the remaining 3 packets himself. One week after the first consignment, the accused informed 'Ah Man' that he needed more heroin and one day after this conversation, 'Ah Man' informed the accused that someone would deliver the second consignment of heroin to him.

*(ii) The second consignment*

11 In the second consignment, the accused received 30 packets worth of heroin. He again passed 15 packets of heroin back to 'Ah Man'. Of the 15 remaining packets, the accused sold 12 packets, and kept 3 packets for self-consumption. When the accused finished selling the second consignment of drugs, he ordered a third consignment of drugs, which consisted of the same amount of heroin as per the first and second consignments.

*(iii) The third consignment*

12 The third consignment arrived in July 2008. However, the heroin came in 2 large bundles which required the accused to repack them into smaller packets for sale. The accused then purchased small plastic packets for this purpose as well as an electronic weighing scale to weigh the heroin. The accused repacked the heroin received into about 30 packets of about 8 g each. For the third consignment, 'Ah Man' only took 10 packets of heroin from the accused. Of the remaining 20 packets, the accused sold about 15 to 16 packets and he consumed the rest of them. In mid July 2008, 'Ah Man' contacted the accused asking him if he needed to replenish his supply of heroin. The accused then ordered more heroin as well as some 'Ice' (street name for crystal methamphetamine) for his own consumption.

*(iv) The fourth consignment*

13 The fourth consignment arrived sometime towards the end of July 2008 and consisted of two big bundles of heroin, one bundle being white in colour and another bundle being brown in colour. The accused repacked the two big bundles of heroin into about 30 small packets, of which 10 packets were passed to 'Ah Man'. After setting aside about 4 to 5 packets for consumption, the accused tried to sell the remaining 15 to 16 packets. However, he managed to sell only 6 to 7 packets of heroin leaving a balance of about 9 packets unsold. In the fourth consignment, the accused also purchased for the first time, 25 grams of 'Ice' from 'Ah Man'.

*(v) The fifth consignment*

14 Sometime in early August 2008, 'Ah Man' called the accused and asked the accused if he wanted to replenish his supply of heroin. The accused ordered more heroin and on about 5 or 6 August 2008, the accused received the fifth consignment of heroin. The fifth consignment consisted of two black taped bundles and the accused then repacked the drugs into 30 smaller packets of

about 8 g each. 'Ah Man' did not take any packets of heroin from the accused for this consignment and the accused consumed about 2 packets, while intending to sell the rest. The accused sold about 9 packets of heroin with about 19 packets remaining. Before the accused could sell off all the packets of heroin, 'Ah Man' called again on about 8 or 9 August 2008 and asked if the accused wanted to order more heroin. Although the accused still had unsold packets of heroin, he agreed to take the sixth consignment of heroin first and see how many packets he could repack them into.

*(vi) The sixth consignment*

15 After speaking to 'Ah Man', the sixth consignment arrived on the same day in the evening of 8 or 9 August 2008. The sixth consignment consisted of 3 bundles, and like the fifth consignment, they were sealed with black tape. These were the 3 bundles marked A4A1, A4B1 and A4C1 (see table at [\[7\]](#) above). Like the 5<sup>th</sup> consignment, the accused did not pass any packets of heroin to 'Ah Man'. On 12 August 2008, 'Ah Man' called again and the accused ordered more 'Ice'. The accused was informed that the seventh consignment would arrive on the same day and that he would be notified of its arrival.

*(vii) Seventh Assignment*

16 Although the accused only ordered 'Ice', he agreed nonetheless to take another 30 packets of heroin as well when the seventh consignment arrived. After taking the drugs, the accused was subsequently arrested by CNB officers (see "Events leading up to the arrest" at [\[2\]](#) to [\[7\]](#) above).

**Case for the prosecution**

17 It was the prosecution's case that unless otherwise rebutted, s 17(c) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") presumes that the 28 packets (containing 9.92 grams of diamorphine) together with the 3 bundles of heroin (containing 13.46 grams of diamorphine) found in the room 188 apartment were in the possession of the accused for the purpose of trafficking. The defence tried to rebut the presumption by claiming that the 3 bundles of heroin were for his own consumption, thereby bringing the quantity of drugs for trafficking below the 15 g threshold. Essentially, the accused's defence was that the accused was only trafficking in the 28 packets containing 9.92 grams of diamorphine and the prosecution should not have included the 3 bundles of heroin containing 13.46 grams of diamorphine into the amount trafficked by the accused as these were for his own consumption. The prosecution argued that the presumption was not rebutted for two main reasons. First, the prosecution relied on the accused's statements to prove that the accused had always intended to sell the heroin in his possession *i.e.* both the 28 packets and the 3 bundles of heroin. Second, the prosecution also argued that it was not believable that the accused would set aside or purchase such a large quantity of drugs (*i.e.* containing 13.46 grams of diamorphine) for his consumption. Not only did the accused not have the financial means of doing so, but his account of self-consumption was also unbelievable.

18 I will set out the first argument before turning to the second argument.

**(a) 28 packets and 3 bundles of heroin were for sale**

19 The prosecution's first argument was straightforward. The prosecution argued that it was apparent from the second statement that the accused had always intended to sell the 28 packets and 3 bundles of heroin:

Q 11: Whose does these belong to? (Recorder's note: pointing to 04 plastic bags containing granular substances under the bed).

A 11: Mine.

Q 12: What are they?

A 12: Heroin.

Q 13: What do you intend to do with them?

A 13: *Sell to people.*

[Emphasis added]

20 The 4 plastic bags (blue, white, black and red) referred to in Q11 of the second statement were with reference to the drugs found in the room 188 apartment and they included exhibits A4A1, A4B1 and A4C1, viz, the 3 bundles of granular substance alleged by the accused to be for his own consumption. During cross-examination, the accused's explanation for his answer to Q13 was that despite having told the recorder of the second statement (*i.e.* Staff Sergeant Wong Kum San Malvern ("Staff Sergeant Wong")) that the drugs found in the room 188 apartment were *partly for sale and partly for consumption*, this was not accurately recorded down. In reply, the prosecution argued that had this been true, "given the materiality of this... [argument to]...the accused's defence, one would expect that this would have been put to SSgt Malvern...when he took the stand". Since no such allegations were put to SSgt Wong on cross-examination, this must therefore mean that such allegations were merely a defence created as an afterthought by the accused. The prosecution further asserted that one could arrive at the same conclusion by looking at the fifth statement – recorded by Assistant Superintendent Gary Chan ("ASP Chan") – which clearly stated that the three bundles of granular substance (A4A1, A4B1 and A4C1) found under the bed were meant for sale:

27 On 8 or 9 of August this year in the afternoon, 'Ah Man' called me again and told me that someone will be bringing things to me. I knew that 'Ah Man' is referring to heroin...After meeting up with this man, he handed over to me a plastic bag. I then left the coffee shop for my room at 8 Geylang Lorong 42.

28 When I reached my room, when I open up the plastic bag, I saw three black taped bundles inside. I tear open all the three bundles to check what is the colour of the Heroin. I saw that all the three bundles are also white in colour. After that, I then taped them back and put them back in the plastic bag and left it under my bed. *For this three bundles, I intend to pack it after I finish selling off the already packed Heroin which is lying in my room. After I packed the Heroin from the bundles, **I will sell them off** or pass it to 'Ah Man' when he wants it.*

...

31 Those packets of Heroin and Ice which are found on the tray at the dressing table are for my own consumption and ***those under the bed are meant for selling*** and also if 'Ah Man' wants, I will pass it to him.

[emphasis added in italics and bold italics]

21 I will now turn to the prosecution's second argument.

~~(b) The accused could not have intended to consume the heroin~~

**(D) The accused could not have intended to consume the heroin**

22 Given the accused's evidence that each packet of heroin he sold weighed about 8 g and cost him about \$180 to \$200, the 3 bundles of heroin (with a gross weight of 277.29 g) would be equivalent to about 35 packets with a total cost of about \$ 6300 to \$7000. Since the accused consumed about 4 g of heroin a day, the 3 bundles of heroin would last him for about 70 days in total. Taking into account the total cost and total amount of heroin in the 3 bundles, the prosecution argued that the accused – an odd job worker – could not afford these drugs for his own consumption. The accused's change in position during cross-examination further undermined the accused's defence of consumption. Prior to being cross-examined, the accused apparently had instructed his own counsel that he was able to afford the 3 bundles of heroin because he had already made some money from selling previous consignments of drugs:

Counsel: My instructions are that by the time he had these 31 packets in the room 188, he could afford to consume this much of drugs.

Court: He could afford to buy A4A, A4B and A4C for his own consumption?

Counsel: Yes, your Honour.

Court: Do you agree or disagree?

PW15: Oh, this is not what he informed me.

...

Counsel: And my instructions are that he could, or rather the reason why he could afford it is because he had already sold five previous consignments and made money from that.

PW 15: This is not what he informed me, your Honour.

23 However, on cross-examination, the accused changed his position when he was being shown a few tables produced by the prosecution (Exhibits P 197 to P 198) to illustrate the breakdown of *inter alia*, (i) the cost of the drugs which the accused had purchased from 'Ah Man', (ii) the amount of money the accused would have collected from selling some of these drugs to his clients, (iii) the amount of money the accused had paid to 'Ah Man', and (iv) the amount of money that the accused owed 'Ah Man'. The tables essentially showed that the accused did not have a healthy cash position and that he still owed 'Ah Man' a lot of money. Confronted with these tables, the accused abandoned his position that he could afford the heroin for consumption and he instead claimed that the drugs could be purchased on credit from Tan and 'Ah Man':

DPP: But your defence in Court is that by the time you received the sixth consignment, you've already made enough money from the previous five consignments to be able to retain the sixth consignment for your consumption. So, how can you run this defence when you're not even clear as to the amounts that were paid, or if you can't remember the amounts that were owing?

Accused: But he did not press me for the debt.

...

DPP: [I]'m putting it to you that your income and whatever earnings that you obtained from selling drugs whether heroin or Ice would not have been sufficient to pay for the three bundles of heroin in A4A, A4B and A4C for your consumption.



Accused: I can take delivery of ...them first and then owe him the money.

24 The prosecution asserted that this change in position strongly suggested that the accused's defence – that the 3 bundles of heroin were for self-consumption – was “nothing more than an afterthought and cannot [therefore] be believed”.

25 Further, the prosecution also argued that the accused's account of having consumed the heroin from A4A1 was unconvincing and unpersuasive. A4A1 was one of 3 black bundles found in a red plastic bag in the room 188 apartment. The black bundle was held together with black tape and newspaper wrapping and to consume heroin from the black bundle, the accused had to undo the tape and wrapping before removing a Ziploc bag and then use a straw to scoop the desired amount that he wished to consume. The accused would go through this process of “*accessing and rewrapping A4A1*” (emphasis added) whenever he needed to consume the drugs. The prosecution argued that the accused's account defied logic because it did not seem physically possible for the accused to reuse the newspaper and black tape repeatedly and it was more likely that both the black tape and newspaper would not have been usable for the purposes of rewrapping, once they have been undone. A more logical process suggested by the prosecution was for the accused to ensure that the Ziploc bag in A4A1 was zipped up properly after use rather than going through the cumbersome process of rewrapping.

### **Case for the defence**

26 The case for the defence was also a straightforward one. As I have already alluded to earlier, the defence's case was that the 3 bundles of heroin (marked A4A, A4B and A4C) were meant for self-consumption *i.e.* the accused was only guilty of trafficking 9.92 grams of diamorphine, and hence, the mandatory death penalty for trafficking in amounts above 15 grams was inapplicable. I will now set out *in extenso* the material arguments for the defence of consumption.

(a) The 3 bundles of heroin were not packed for sale in smaller packets and the fact that the bundles were “opened and restored in a rough and ready” paper and black tape manner suggested that the bundles were not meant for trafficking. It was the “modus operandi” of the accused to “reduce the bundles into sachets whenever he received them from Ah Man”.

(b) Unlike previous consignments, where the accused would pass a certain quantity of heroin back to ‘Ah Man’ for the latter's use, there was no such agreement for the 6<sup>th</sup> consignment. This “lack of a record of any agreement” reflected that the 6<sup>th</sup> consignment was made in a “cavalier” fashion “for the simple reason that [the accused] had not intended to traffic the 3 bundles...but rather [had intended] to consume it”.

(c) Neither the accused nor ‘Ah Man’ was aware of the actual weight of the heroin in the three bundles. This suggested that the drugs were indeed intended for self-consumption. Further, the police did not find any empty packets in the room 188 apartment and the absence of packing materials further supported the defence of consumption.

(d) There were packets of heroin found on the white tray of the dressing table in the room 188 apartment. Since the accused had quantities of heroin left *unsold*, there was therefore no need for the accused to purchase additionally the 3 bundles of heroin for the purpose of trafficking. The fact that the accused only went to see Tan on 12 August 2008 for the purpose of obtaining ‘Ice’ was further reflective of the accused's intention to stop trafficking in heroin.

(e) The accused was also a heavy addict and took 4 g of heroin a day and he would suffer from withdrawal symptoms whenever he did not consume heroin. It was therefore believable that the 3 bundles of heroin were purchased for the sole purpose of consumption.

(f) There were consumption utensils, which were not recovered by the CNB officers from the room 188 apartment during their search and seizure of the flat. Had the consumption utensils been recovered, they would have provided credible support to the accused's claim that he was a heavy addict and that the 3 bundles were intended for his own consumption.

(g) As for the prosecution's case that the accused was in financial distress and had therefore no means to afford the 3 bundles of heroin, this was equally characteristic of a "haphazard [drug] user" who would accept delivery of the drugs without "considering the financial implication[s]". In any case, the prosecution did not take into account any revenue that was made by the accused in selling 'Ice', which could have otherwise financed the accused's own consumption. Further, the accused had more than \$6,500 in his possession and was therefore not in real financial desperation.

## **Decision of the court**

27 Trafficking in controlled drugs is an offence under s 5 of the MDA and a person commits the offence of trafficking in a controlled drug if he has in his possession that drug *for the purpose of trafficking*:

### **Trafficking in controlled drugs**

**5.** —(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

(b) to offer to traffic in a controlled drug; or

(c) to do or offer to do any act preparatory to or for the purpose of trafficking in a controlled drug.

*(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.*

[Emphasis added]

28 Section 17(c) of the MDA ("the s 17 presumption") further presumes that any person who has in his possession more than 2 grams of diamorphine is presumed to have had that drug in his possession *for the purpose of trafficking*:

### **Presumption concerning trafficking**

17. Any person who is proved to have had in his possession more than —

(c) 2 grammes of diamorphine;

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 proven that his possession of that drug was not for that purpose.*

[Emphasis added]

29 After considering the submissions of the prosecution and the defence, I find that the accused has not, on a balance of probabilities, rebutted the s 17 presumption. In rejecting the defence of consumption, I have taken into account the following considerations, *viz*, (i) the financial means of the accused; (ii) the accused's account of self-consumption; (iii) the accused's failure to raise the defence of consumption in his statements to CNB; (iv) the accused's ready access to heroin; and (v) the accused's change of position during the trial.

### ***Financial means of the accused***

30 First, I did not think that the accused had sufficient financial resources to purchase such a large amount of heroin contained in the 3 bundles for his self-consumption. In ascertaining his financial means, I looked at (i) the amount of money the accused owed 'Ah Man'; (ii) the accused's savings and assets; and (iii) the accused's earnings and expenses.

#### ***(i) Money owed to 'Ah Man'***

31 The heroin purchased from 'Ah Man' would cost the accused about \$180 to \$200 per packet and in return, the accused sold them for a price of \$230 to \$250 per packet. As submitted by the prosecution, the evidence showed that the accused owed 'Ah Man' a lot of money, making it less likely for him to have been able to afford the 3 bundles of heroin for his own consumption. The following table (P 198) was collated from the accused's fifth statement as well as his evidence in court. The accused was shown the table below and he confirmed the accuracy of it.

	<b>A</b>	<b>B</b>	<b>C</b>
<b>Consignment</b>	<b>Amount Purchased By Accused</b>	<b>Cost of Consignment</b>	<b>Amount Paid (as per cross-examination)</b>
1	15 sachets	\$3,000	0
2	15 sachets	\$3,000	\$3,000
3	20 sachets	\$3,600	\$4,500 to 5,000
4	20 sachets + 1 packet of ice	\$6,850	\$6,000
5	30 sachets (+ a bit left over after packing)	\$5,400	\$5,500
6	277.29 g	\$5,400	\$X (Cannot recall)
		\$27,250	\$19,000 to \$19,500 + X

32 The table above clearly shows that the cost of the six consignments totalled about \$27,250. However, the accused had paid only about \$19,000 to \$19,500, exclusive of the amount that the accused might have paid for the sixth consignment for which he could now no longer recall. In any event, the accused accepted that he owed 'Ah Man' a substantial sum of money:

Court: The point is, at the end of the day, you still owe him Ice plus heroin – a lot of money. Is that correct? For the drugs you take from him, you owe him a lot of money. You agree with that or you disagree?

Accused: Yes.

33 Apart from the table (Exhibit P198) produced above, the prosecution also adduced another table (Exhibit P197), which clearly demonstrated that the accused was having a poor cash position. The accused had purchased about \$24,000 (see column 'B' below) of heroin from 'Ah Man' of which the accused had managed to sell only \$14,000 worth of heroin (see column 'C' below). This meant that the accused was operating at a cash deficit of \$10,000 (see column 'E' below), despite him having some \$7,000 worth of unsold heroin at the point of arrest (see column 'G' below). The contents of Exhibit P 197 were also accepted by the accused:

	<b>Cost of Sachets Purchased by Accused</b>		<b>Maximum Revenue from Sale of Sachets</b>				
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>
<b>Consig't</b>	<b>Amount of Sachets Purchased</b>	<b>Cost of Sachets Purchased</b>	<b>Amount Sold by Accused</b>	<b>Maximum Revenue from Sales</b>	<b>Sales Minus Cost of Purchases (D – B)</b>	<b>Balance Sachets</b>	<b>Additional Revenue from Balance Sachets (if Sold)</b>
1	15 sachets	\$3,000	12 sachets	\$3,000	0	0	0
2	15 sachets	\$3,000	12 sachets	\$3,000	0	0	0
3	20 sachets	\$3,600	15 to 16 sachets	\$4,000	\$400	0	0
4	20 sachets	\$3,600	6 to 7 sachets	\$1,750	(\$1,850)	9 (brown)	\$2,250
5	30 sachets (+ a bit left over after packing)	\$5,400	9 sachets	\$2,250	(\$3,150)	19 (white)	\$4,750
6	277.29 g	\$5,400	NA	0	(\$5,400)	0	0
		\$24,000	54-56 sachets	\$14,000	(\$10,000)	28	\$7,000

34 While the accused might have had earnings from selling 'Ice', I placed less weight on this considering the fact that there was only one consignment (*i.e.* the fourth consignment) where the accused had purchased 'Ice'. Although the accused also purchased 'Ice' in the seventh consignment, this did not factor into my assessment because the drugs for the seventh consignment were seized when the accused was arrested on the 12<sup>th</sup> August 2008. While the accused claimed to have had

made profits from selling 'Ice' and he agreed that the profits could amount to some \$2,000 to \$2,200, he was somewhat reticent and evasive in replying to the prosecution's queries on these profits. In particular, the accused was unable to answer why if selling 'Ice' was so profitable, he had failed to mention this to the CNB officer who had seized the \$6,539.20 from the room 188 apartment:

Q Now Mr Ng, you mentioned earlier that the sale of Ice is a lot more profitable than, say, sale of heroin. Is that right?

A: Yes.

...

Q: So at the point of arrest, you had some money left in your possession. Some of that money would have been from your sale of heroin. And since it was so profitable, some would have been from the sale of Ice, yes?

A: I suppose you can put it that way but bear in mind that it also include the---my earnings from my employment---my work.

Q: Now I refer you to the answer to question 23 put to you in the recording of the contemporaneous and this is at page 331 of the bundle. I beg your pardon. It should be the answer to question 22. Now before that, question 21 asked, "Whom does this stack of money belong to (pointing to cash of \$6,539.20)?"...and you said "Mine". And when the question 22 was posed, "Where do you obtain it from?" Your answer was "from selling"---"from selling heroin and from my odd job." You only mention the sale of heroin, absolutely no mention of Ice sales was made. Why?

Court: Why you did not mention especially, when, according to you, sale of Ice is even more profitable than heroin? So the first thing in your mind to mention is the more profitable one, not the less profitable one.

A: Perhaps I did not say it because I wasn't asked but—

Court: What do you mean you weren't asked? You're asked where did you get the money from?

A: That I'm not sure. Perhaps he pointed to the Ice and asked, "What was that for?"

Court: He didn't point to the Ice, he pointed to the money. He didn't point to the Ice, neither did he point to heroin. He pointed to the money and asked you, "Where did this money come from?"

A: Well, perhaps I--I--I told him that the---the money was from sell---selling heroin and from my work. Perhaps I did not mention about Ice.

Court: Okay, this---

A: Yes, it was done in the--the--my room and the--I was asked what the language I want---wanted to speak and I said, "Hokkien" and I was explained---the---*question was explained but what was recorded, I do not know.*

Court: So now you're saying that he didn't record down your---your answer that you were also selling Ice? You mean you told him that and he didn't record or you never told him that, which is which?

A: Well, it is possible that I---perhaps I did not mention about this.

[Emphasis added]

35 Moreover, the financial means of the accused must be measured in a holistic manner, taking into account his savings, expenses and assets. Even if I were to give the benefit of the doubt to the accused (see [26 (g)] above), and accept that he had made some profit from selling 'Ice', I would still have to consider the *other* items which would affect his *entire* financial situation.

(ii) *Savings and assets*

36 Of the \$6,539.20 found in the room 188 apartment, the accused testified that this sum of money was intended to be used as working capital for his prostitution business, as well as to pay for his rental and meals. This sum was therefore not intended to be used for drug related purchases or repayments. The accused also clarified that of this sum, only about \$2,000 came from sources of income unrelated to drug sales. Apart from this, the accused had little savings. He essentially did not have much money:

Q: And you also had cash on your person quite apart from this \$ 6,539 at the time of arrest?

A: No.

Q: Now, apart from the cash in your room, *did you have any other sources of cash, for example in bank accounts and all that?*

A: I don't suppose so. Even if there was, it would probably be a few hundred dollars.

Q: A few hundred dollars. *So, essentially, this would comprise of all your worldly possessions insofar as cash is concerned, the 6,000 odd and the few hundred dollars in the bank, right?*

A: Yes.

[Emphasis added]

(iii) *Earnings and expenses*

37 Apart from the selling of drugs, the accused also worked as a part-time coffee shop assistant earning a salary of about \$600 to \$800 per month. However, his income as a coffee shop assistant was not fixed and it depended on the number of days he worked. Similarly, his business dealings with prostitutes did not generate a regular stream of income:

Q: So for assisting them [the prostitutes] in getting visas and securing accommodations, how much a month did you secure in terms of income?

A: I'm unable to give you a figure because as I've mentioned, the income varies, sometimes I got more, sometimes I got less, sometimes I didn't get anything....Sometimes, I got a few tens of dollars, sometimes, a few hundred dollars and it could go up as high as thousand odd,---thousand odd dollars though it didn't happen so often.

38 As for the accused's personal expenses, his daily expenses on meals and cigarettes came to about \$80 to \$90 and his heroin addiction cost him about \$100 a day. The accused therefore spent quite a substantial amount of at least \$180 to \$190 daily.

(iv) *Conclusion*

39 Taking into account the large sum of money the accused owed 'Ah Man', the accused's minimal savings, as well as his high expenses and irregular earnings, I concluded that the accused did not have the financial resources to purchase the 3 bundles of heroin for his own consumption. The accused intended to repack the heroin in the 3 bundles into smaller sachets and thereafter sell them. It did not appear logical for someone, as heavily in debt as the accused, to incur greater debt by purchasing 3 additional bundles of heroin for his self-consumption when he already had other unsold sachets of heroin that he could have easily taken for his own use. Therefore, despite the purported earnings from the accused's sale of 'Ice', I believed that the accused's *overall* financial situation made it very unlikely for him to buy the 3 bundles of heroin for his own consumption.

***Accused's account of consumption***

40 Second, I accepted the prosecution's submission that the accused's account of his consumption was not believable. Of the 3 bundles, the accused claimed that he only consumed from the bundle marked A4A and he would re-tape the bundle each time after removing a desired quantity of heroin from the bundle with a straw. As I have earlier already described, the heroin was packed in a Ziploc bag, wrapped in newspaper and held together by black tape. In explaining his process of consuming heroin from A4A, the accused said he would not use fresh black tape or newspaper, but old tape and old newspaper from the original packaging of the bundle. I found this explanation hard to accept. The accused gave evidence that in the two days prior to him being arrested, he had opened and repacked A4A about eight times. If the accused's account was to be believed, it was not possible for A4A to be repacked and reopened that many times without using new tapes or fresh newspapers because each time the bundle was opened, the packaging would be ruined as the newspaper stuck to the tape would have to be torn apart. The accused was unable to provide a satisfactory answer to this:

Court: Do you use a fresh newspaper everytime or you reuse the old newspaper? The same one that was used before, do you use back the same one?

A: The same one, Sir.

...

Court: You see the CNB opened up and tried to put it back, you see, all the newspaper is all torn, you see P 31. Can you see or not? How is it going to do so many times if the newspaper seems very good? And you tell me you never used any new newspaper, you use the old one. How does it work? So one time you take out it's like this already, It's all in a mess.

A: This is a smaller bundle, your Honour.

Court: I know. You see, they're all from there. You know you open up, there was this newspaper and---and...you can do it now and tell you if you open up, it's all gone. It's very difficult to...do it, you know. You going to re-wrap, wrap, re-wrap---yes?...How does it work? You tell me no newspaper, you just wrap around the plastic tape over the plastic tape itself, maybe you can reuse because the stickiness part of the tape is against the tape itself, you see. Maybe it can be used, but with the newspaper and all that, how do you seal it back? The stickiness will be gone because the newspaper is stuck to it.

A: Yes, your Honour, it's true that it may not be very sticky which is why I just wrap it up---wrap the newspaper around the bags and put it into the black plastic bag.

41 When the accused was pressed for a reason as to why he did not simply remove a small quantity of heroin from the 3 bundles for self-consumption and minimise the trouble of re-opening and re-packing every time he needed to consume heroin, the accused was equally unable to provide a logical explanation:

A: Perhaps I was lazy.

Court: You are lazy, all the more you should not be wrapping up, you use the Ziploc bag and just zip it back, that's the best...All the more so I don't understand you...

...

Court: That's why I been asking why don't you when you first open it up, take about 8 grams, put one side; yes the Ziploc bag? Every time, you need just zip and unzip and don't care about wrapping it up...So you minimise the opening and closing of the big bag. But that was not the system you used, you see. So I'm trying to understand why not.

42 In essence, the accused's account of how he went about consuming heroin from one of the 3 bundles did not appear to me to be a sensible or genuine one. If the accused truly wanted to consume the heroin from A4A, it would not be practical nor convenient for him to reseal the heroin every time. It would be much easier to take from the other packed heroin satchets he had with him. For the above reasons, I rejected the accused's account that the heroin in the 3 bundles were meant exclusively for his own consumption.

### ***Failure to raise defence of consumption in statements to CNB***

43 Third, the accused never once raised the defence of consumption (*i.e.* the 3 bundles of heroin A4A1, A4B1 and A4C1 were for his own consumption) in his five s 121 statements to CNB. Similarly, the accused had nothing to say or add in his s 122(6) cautioned statement. The defence of consumption was only mentioned during the cross-examination of ASP Chan. It was raised by counsel for the accused, on the latter's instructions:

Q: Okay. My instructions are that the drugs found under the bed were also for his consumption and not for trafficking purposes.

A: It was---this was what, er, what was told to me by him during the statement recording.

Q: Okay. Sorry, maybe I got to be a bit more precise. The---what I wanted to say is that my instructions are that some of it below the bed are meant for his own consumption, the ones found below the bed. Did he say that to you?

A: No, your Honour.

44 Under s 123(1) of the CPC, I may draw an adverse inference from the accused's failure to mention his defence in his s 122(6) statement. The purpose of s 123 is really to compel the accused to outline his defence immediately upon being charged to guard against defences raised at trial as afterthoughts (see *Yap Giau Beng Terrence v Public Prosecutor* [1998] 2 SLR(R) 855 ("*Yap Giau Beng Terrence*"). Similarly, adverse inferences may also be drawn for s 121 statements (see *Lim Lye Huat Benny v Public Prosecutor* [1995] 3 SLR(R) 689) ("*Lim Lye Huat Benny*").



45 Whether an adverse inference should be drawn depends on the totality of the evidence and it really is a matter of judgment for the trial judge (see *Lau Lee Peng v Public Prosecutor* [2000] 1 SLR(R) 448). However, as was noted by Yong CJ in *Yap Giau Beng Terrence*, it is not in every case that an adverse inference should be drawn. Be that as it may, there would be legitimate explanations which would be so evident to even lay persons facing a criminal charge that the omission to mention such defences would warrant the drawing of an adverse inference (at [38]):

[I]t is not in every case that an adverse inference is drawn against an accused who keeps silent upon being charged. *An adverse inference will be drawn only if he fails to mention facts which he could reasonably have been expected to mention upon being charged.* In the instant case, the appellant had failed to mention in his cautioned statement that he had thought Susan Goh was one of the victims of the accident, that he had offered her compensation and that he had later asked her to negotiate with the victims of the accident on his behalf. *It must have been evident to the appellant, even without the benefit of consultation with a lawyer, that these facts afforded a legitimate explanation for the offers of money he allegedly made, and that it would be in his interest to mention them. These were thus facts which the appellant could reasonably have been expected to mention upon being charged, and the trial judge was perfectly entitled to draw an adverse inference against the appellant under s 123 for failing to mention these material aspects of his defence in his cautioned statements.*

[Emphasis added]

46 Whether it is reasonable for an accused person to omit his defence would therefore ultimately depend on the facts of the case. In *Lim Lye Huat Benny*, the Court of Appeal placed little weight on the accused's omission to mention his defence in his s 122(6) statement because the s 122(6) statement was recorded "at the *unearthly time* between 4.25 am and 4.55 am and the [accused had] said that at that time he was too tired and hungry to think of his defence" (at [24]; emphasis added). In this case, while the s 122 (6) statement was recorded at 5.06 am on 13 August 2008, there were otherwise no recorded complaints made by the accused along the lines that he was unwell or that he was suffering from any withdrawal symptoms which might affect his ability to mention his defence.

47 In fact, the medical examination conducted by Dr Gavin Ong ("Dr Ong") at 2.42 am on 13 August 2008 – as part of pre-statement examination – recorded nothing apart from minor abrasions over the accused's right elbow, which the accused explained was sustained during a recent fall. The accused did not complain to Dr Ong that he was sick or unwell. The post-statement examination conducted also by Dr Ong at about 5.22 am on 13 August 2008 was similarly unremarkable, and once again the accused did not complain of any physical illness.

48 While I might add that the accused was referred to a doctor for withdrawal symptoms, this only took place in the *afternoon* of 13 August 2008 at 5.46 pm. The s 122(6) statement was therefore recorded *before* this at 5.06 am in the *morning* of 13 August 2008. The accused was admitted into the Complex Medical Centre at Changi Prison for medical treatment and only discharged on 17<sup>th</sup> August 2008. On his discharge, he was seen by Dr Choo Shiao Hoe, and it was noted that the accused "had no more medical complaints" and that there was also "no [further] signs of drug withdrawal".

49 As for the s 121 statements, they were recorded on 12 August 2008, 18 August 2008 and 19 August 2008. These statements, like the s 122 (6) cautioned statement, were therefore also not tainted by the accused's withdrawal symptoms in any way.

50 The accused was well aware that he was being charged for trafficking and it was evident to me that any reasonable lay person would be able to ascertain that a defence of consumption would be relevant information to such a charge. Even if I were to give the accused the benefit of a doubt for the s 122(6) cautioned statement because it was recorded in the early hours of the morning, the absence of any reference to the defence of consumption in *all* his s 121 statements was rather puzzling. Unlike the case of *Lim Lye Huat Benny*, the s 121 statements were all recorded in the afternoon and since the accused was in a healthy state of mind on these occasions, I drew an adverse inference against the accused for failing to mention the defence of consumption in any of these statements.

51 While the accused did explain in court that his s 121 statements were not recorded accurately by the CNB, I rejected this argument and I would now turn to analyse this allegation.

### ***Misrecording of statements and inconsistencies in evidence***

52 Fourth, the accused was inconsistent in the evidence given in both his recorded statements and in court. When SSgt Ng from the CNB asked the accused about the 3 bundles of heroin under his bed, the accused said in his second statement that he intended to sell the heroin to his customers:

Q 11: Whose does these belong to? (Recorder's note: pointing to 04 plastic bags containing granular substances under the bed).

A 11: Mine.

Q12. What are they?

A12: Heroin.

Q 13: What do you intend to do with them?

A 13: Sell to people.

53 However, in court, the accused changed his position and claimed that the 3 bundles of heroin were for self-consumption. In so doing, the accused alleged that SSgt Ng had deliberately misrecorded his statement:

Q: And there is absolutely no mention of consumption of any of these four packets of heroin, I beg your pardon, of these four bags of heroin, four plastic bags of heroin under the bed. So how does this tie in with your defence that one of those plastic bags, in other words, the red plastic bag containing A4A, A4B and A4C was meant entirely for your consumption?

...

A: They were for my own consumption, not all for trafficking.

Q: But if you look at question 11, the recorder was pointing to all---was recording---was pointing to four plastic bags and you gave the answer: To sell to people." Surely if the red plastic bag was entirely meant for your consumption, you would have pointed that out, yes?

...

A: I did not say that---I did not say that all were for sale.

Q: So you are saying that this statement is wrong?

A: For question 13, I replied that they were for consumption and for sale.

Q: So you are saying that this was a misrecording by SSgt Malvern Wong, yes?

A: With regards to this, he did not explain to me. I did not hear that.

Court: You mean you did not understand the question? You didn't understand the question he asked of you, is it? The question was: "What do you intend to do with them?" You did not understand this question? That he needs to explain the question to you?

A: He asked me what I intended to do with them. I said, "Part for sale and part for consumption."

Court: So therefore you understood the question, except that ...he did not record all you have said. Is that it?

A: Yes. *He did not record all that I had said.*

...

Q: So when it was read back to you, in other words, when reading questions and answers 11 and 13 back to you, SSgt Malvern Wong did not interpret the question and answers correctly. Is that what you are saying?

...

A: I think so.

...

Court: I see. So basically you are saying then, from what we see here, he would have done a very dishonest thing, purposely to misinterpret for you when he read back the statement to you? Because we see here...---what is written here is only for selling to people, nothing for your own consumption. So if you heard him interpret to you that it is for sale and also consumption, then he would have committed a grievous wrong.

A: Yes.

54 This was despite the accused having given the same answer – that the 3 bundles of heroin were for sale – to ASP Chan in the fifth statement. The relevant excerpts to the fifth statement are reproduced below:

28 When I reached my room, when I open up the plastic bag, I saw three black taped bundles inside. I tear open all the three bundles to check what is the colour of the Heroin. I saw that all the three bundles are also white in colour. After that, I then taped them back and put them back in the plastic bag and left it under my bed. For this three bundles, I intend to pack it after I finish selling off the already packed Heroin which is lying in my room. *After I packed the Heroin from the bundles, I will sell them off or pass it to 'Ah Man' when he wants it.*

...

31 Those packets of heroin and Ice which are found on the tray at the dressing table are for my own consumption and *those under the bed are meant for selling* and also if 'Ah Man' wants, I will pass it to him.

[Emphasis added]

55 On cross-examination, the accused similarly claimed that the fifth statement was recorded erroneously by the CNB:

Q Now you see the three packets---three bundles of heroin and photo P31, paragraph 28 of your long statement refers to these three bundles...Now, is this paragraph correct?

A: Incorrect.

Q: And what should have been the correct version?

A: When question was posed to me, I said that for those thing in the room, part of it were for consumption, and part of it were for sale.

Court: So before that, therefore again, at para 28, the IO did not faithfully record what you told him? He invented the story, put it in English and attribute to you as your statement, are you saying that again? It's a different IO. Another IO is committing another grievous wrong, according to you.

A: Yes.

...

Court: So when he read back to you, this second IO as---so this statement also read back, he also invented another story to read back to you and ---to read back to you an interpretation which was not exactly what he wrote? So this second IO committed two grievous wrong as you---as with the first IO? Two grievous wrongs against you?

A: Yes.

56 I did not accept the accused's version that the CNB officers had misrecorded the accused's statements deliberately or otherwise. Given the fact that the CNB recording officers would not have known the exact quantity of diamorphine in the 3 bundles under the bed at the time of the recording, there was therefore no basis or logic for me to accept the accused's version of events, which tended to suggest that the CNB officers had an incentive to amalgamate the heroin exhibits meant for sale so that the total quantity of diamorphine for trafficking would exceed 15 grams and the accused would then face a capital charge. The defence did not adduce anything during the course of the trial, which could remotely even suggest or explain the presence of such alleged misbehaviour.

57 Indeed, the allegations of misbehaviour by the accused was an incredible one not against one, but two separate CNB officers, committed in the course of recording the second and fifth statements. In the case of the fifth statement, I would further note that there was also an interpreter – Mr Wu Nan Yong – who acted as a translator. To allege that the fifth statement was wrongly recorded was to allege that not only the CNB officer – ASP Chan – was guilty of misbehaviour, but that the interpreter was similarly guilty of such collusion. In the absence of any credible evidence, I rejected this argument completely. In coming to my conclusion, I was supported by the fact that counsel for the accused did not challenge the accuracy of the records or put such misbehaviour to both SSgt Ng and ASP Chan when they took the stand. This was despite the accused's admission that he had known of these "errors" when he came to court. The irresistible conclusion must be that the statements were accurately recorded and interpreted to the accused. In my opinion, they reflected the truth, viz, the accused had intended to sell the 3 bundles of heroin found under his bed:

Q: I'm putting it to you that you knew of these errors when you came to Court.

A: *Yes, I knew the error.*

Q: And I'm putting it to you that the reason why the errors were neither put to SSgt Malvern Wong or ASP Gary Chan is because they were not errors but they reflected the truth---I beg your pardon---reflected what you told these officers.

A: I disagree.

[Emphasis added]

58 Fifth, the accused also testified that 'Ah Man' was a quick and ready source of heroin, and that he was always able to obtain any heroin he ordered from 'Ah Man' within a matter of days and sometimes on the same day of ordering:

Q: So to summarise the relationship, every week, its either him calling you or him trying to call you and when there is a request or an agreement to take heroin within a span of 1 day, the heroin will be delivered to you after the conversation. Is that right?

A: Yes. Usually I would get the drugs within the same day or the following day and contacts would be within probably 10 days instead—instead of every week.

Q: Yes. So Ah Man was in short, quite a quick and ready source of heroin supply, would you say?

A: But he did not make the delivery himself, somebody else did.

Q: okay.

Court: Whatever it is, the delivery was quite fast, within the most a day.

A: That's correct. Well, if you placed an order, yes.

59 If 'Ah Man' was a ready source of heroin, I found it curious that the accused would feel the need to stockpile about two month's worth of heroin for his own consumption. The accused was unable to provide any credible reason as to why he had to stockpile such a large quantify of drugs and in the absence of a persuasive explanation, this was a further pointer that the accused's defence of consumption was false. Indeed, I should also note that the accused admitted that he had never informed 'Ah Man' or Tan that he was not selling the 3 bundles of heroin, but was keeping them instead for his own consumption.

### ***Change of position during trial***

60 Sixth, as submitted by the prosecution, the accused's change of position during the trial strongly suggested that his defence of consumption was an afterthought. Prior to being cross-examined, the accused's position, as expressed through his counsel, was that he was able to afford the 3 bundles of heroin because he had already made some money from selling previous consignments of drugs. On cross-examination, the accused said that he was unable to afford the drugs but was nonetheless allowed to take the drugs on credit, and if the need arose, he could pawn his valuables for repayment as well. In explaining the discrepancy, the accused suggested that his counsel could have misheard his instructions:

Court: ...Your counsel told the investigating officer that you had earned enough money from the earlier sales to afford to buy the three bundles in the sixth consignments to which Gary Chan, the investigating officer, said that is not what you as the accused had told him. And today, this afternoon, your evidence is to the contrary. That is you cannot pay. It [sic] need be if pressed for money, you will pawn your Rolex watch, you will pawn your jewellery...that is the...gold chain. So basically you can't afford to pay and I'm not sure whether the two items are enough to pay even half of it. So what the counsel had told--- what your counsel had told Gary Chan is diametrically opposite from what you tell us now. Have you got any explanation?

A: Maybe my lawyer heard wrongly when I told him.

61 I found this explanation a strained and unconvincing one; and I therefore agreed with the prosecution that the accused's sudden change of position was an indication that his version of events was untrue.

### ***Other arguments raised by the defence***

62 For all the above five reasons (see [\[30\]](#) to [\[61\]](#)), I did not accept the accused's defence of consumption. These five areas aside, counsel for the accused also raised several other arguments, which I rejected as well. The arguments have been set out above (see [\[26\]](#) above) and I will now give my reasons.

63 First, I did not think that there was anything remarkable with the unpacked state that the 3 bundles of heroin were found in. I did not agree with the defence (see [\[26\(a\)\]](#) above) that this necessarily suggested that the accused had intended to consume the 3 bundles of heroin by himself. While it might be the accused's usual practice to reduce heroin into smaller packets, there were still *unsold* packets of heroin found in the accused's apartment, and one could equally infer that there was no pressing need for him to repack the 3 bundles of heroin for sale, unless a large purchase order for heroin had been received by the accused.

64 Second, I would also not read too much into the fact that 'Ah Man' did not arrange for the accused to pass him heroin from the sixth consignment. The lack of an arrangement, the defence suggested, meant that the 3 bundles of heroin were purchased in a "cavalier fashion" for the accused's own consumption (see [\[26\(b\)\]](#) above). In my view, this is mere speculation and I need only refer to the fifth consignment to show that the absence of such an arrangement is neither peculiar nor unique (see [\[14\]](#) above). In the fifth consignment, 'Ah Man' may not have asked the accused to pass him heroin, but it is not disputed that the accused had intended to sell away all the drugs from the fifth consignment.

65 Third, even if the accused was unaware of how heavy the 3 bundles of heroin weighed, this did not necessarily mean that they were not for sale (see [\[26\(c\)\]](#) above). In fact, only the first consignment of heroin was delivered in ready packed portions that were sellable (see [\[10\]](#) above). The third, fourth and fifth consignments were all delivered in rough amounts, after which the accused would try to repack them into smaller quantities of 8 g each (see [\[12\]](#) to [\[14\]](#) above). The accused was therefore accustomed to the taking of a rough amount of heroin without knowing its weight and then repacking them into smaller packets subsequently. While the CNB officers might not have found empty packets in the room, I did not agree with the defence that this implied that there were no packing materials, and that the 3 bundles were therefore for the accused's consumption. To the contrary, I need only point to the two weighing scales that were found in the room 188 apartment,

the only discernible purpose of which I could see was for the accused to weigh the amount of heroin for repacking into smaller packets for sale.

66 Fourth, just because the accused had unsold packets of heroin did not necessarily preclude him from obtaining more heroin for sale (see [26(d)] above). I would not agree with the defence that the accused must wait until he had depleted his supply of heroin before procuring more from 'Ah Man'. On at least two occasions, the accused had procured more drugs when he had yet to sell off his existing supply of heroin. In the first instance, the accused was unable to sell off the fifth consignment but had agreed nonetheless to take on the sixth consignment. In the second instance, the accused was also unable to sell off his fifth and sixth consignments but had nonetheless agreed to take on the 30 extra packets of heroin in the seventh consignment. Looking at the evidence collectively, the accused was not adverse to the taking on of more drugs for sale even if he had an outstanding supply of heroin unsold. For the same reasons, just because the accused went to see Tan on 12 August 2008 for the sole purpose of obtaining 'Ice', I did not think that this was necessarily reflective of his intention to stop trafficking in heroin (see [26(d)] above).

67 Fifth, I did not agree with the suggestion that the accused's heavy usage of heroin would necessarily make the defence of consumption a more believable one (see [26(e)] above). While the accused had suffered from withdrawal symptoms, the defence did not call on any expert witness to establish any possible correlation between the quantity of heroin consumed and the severity of withdrawal symptoms. Even if one assumed that there was indeed a correlation, I would note that a physical examination conducted on 13 August 2008 (one day after the accused's arrest) clearly showed that he only suffered from *mild* withdrawal symptoms. In the absence of any expert evidence to the contrary, I was not persuaded that the accused was so severe a drug addict that he would have ordered 3 *entire* bundles of heroin for the sole purpose of consumption. The relevant excerpts to the medical report dated 13 October 2008 by Dr Norkhalim Dalil is reproduced below:

1) The [accused] was seen by me on the 13<sup>th</sup> August 2008 at around 1746 hrs in Complex Medical Centre (CMC), Cluster A, Changi Prison Complex. He was referred to us for suspected drug trafficking and for observation of drug withdrawal.

...

3) At CMC, he claimed that he was currently "gian", had "chased" heroin for months, last puff was on the 12<sup>th</sup> August 2008. On clinical examination, he was found to be conscious. He was tired looking and yawning occasionally. His vital signs:

Blood pressure of 148/104 mmHg

Pulse rate of 85 per min

Temperature 36.8 degree Celsius

Pupils equal and reactive to lights. Piloerection and mild tremors of his upper limbs noted. Heart and lung examination unremarkable. Abdomen soft and non tender. Gait and straight line walking normal. There was no alcoholic breath or slurring of speech. There was no obvious injury seen.

4) He was admitted to CMC and stayed from 13<sup>th</sup> August 2008 until 17<sup>th</sup> August 2008. ...

5) On the 17<sup>th</sup> August 2008, he was seen by Dr Choo Shiao Hoe. He had no more medical

complaints, no signs of drug withdrawal and Dr Choo ordered him to be discharged from CMC the next day.

7) In summary, final diagnosis:

- *Mild drug withdrawal to heroin*

[Emphasis added]

68 In any case, it was noted by Yong CJ in *Fung Choon Kay v PP* [1997] 2 SLR(R) 547, that just because an accused was an addict was not in itself conclusive of the defence of consumption and much still depended on the totality of the evidence (at [17]):

*...Although the fact that the [accused] was an addict lent support to [his] defence of consumption that fact by itself was not conclusive. The trial judge had to look at the totality of the evidence and decide whether he was satisfied, on a balance of probabilities, that part of the heroin was for the [accused's] own consumption.*

[Emphasis added.]

Having considered the totality of the evidence (see [30] to [61]), I was not satisfied on a balance of probabilities that the defence of consumption was a genuine one.

69 Sixth, the defence's suggestion that there could be consumption utensils not recovered by the CNB officers was an incredible one (see [26(f)] above). There was absolutely nothing to suggest that the CNB officers were negligent in processing the crime scene or that they had acted in bad faith. I placed no weight at all on this line of argument and rejected it completely.

## Conclusion

70 For all the above reasons, I found that the accused had not rebutted the s 17 presumption on a balance of probabilities. I found that the accused was in financial distress and did not have the financial means to afford 3 bundles of heroin for his consumption. Moreover, the accused's account of consumption was an illogical and baffling one. His failure to mention the defence of consumption in all his statements to the CNB strongly suggested that the defence was an afterthought. Moreover, the accused's ready access to heroin from 'Ah Man' meant that there was simply no reason for him to stockpile on the drug. In fact, what was most damning to the accused were his voluntary statements to the CNB officers which indicated that the 3 bundles of heroin were for sale.

71 I also found that the accused's change of position during the trial and his replies in court did not lend themselves to establishing an impression that he was a credible witness. He was often evasive in his answers and was often not forthright to even some very straightforward questions. In all, the prosecution has therefore proven its case beyond a reasonable doubt that the accused had in his possession not less than 23.38 grams of diamorphine for the purpose of trafficking, thus committing an offence under s 5(1)(a) read with s 5(2) of the MDA. I therefore convict the accused and sentence him according to the law as stated in s 33 of the MDA.

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