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

**[2020] SGHC 33**

Criminal Case No 30 of 2019

Between

Public Prosecutor

And

Beh Chew Boo

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# GROUNDS OF DECISION

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

## TABLE OF CONTENTS

# Public Prosecutor
# v
# Beh Chew Boo

**[2020] SGHC 33**

High Court — Criminal Case No 30 of 2019
Kannan Ramesh J
16–19, 24, 25 July 2019; 18 September 2019, 20, 24 January 2020

17 February 2020

**Kannan Ramesh J:**

1 The accused, Beh Chew Boo, claimed trial to a charge of importing into Singapore not less than 499.97g of methamphetamine under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), punishable under ss 33(1) or 33B of the same Act. Four other drug-related charges were stood down.

2 The Prosecution relied on the presumptions of possession and knowledge in ss 21 and 18(2) respectively of the MDA. The defence accepted that the presumptions applied and that the burden was on the accused to rebut the same on a balance of probabilities. The parties were in agreement that the sole issue I had to consider was whether the accused was in possession of the drugs, specifically whether he knew that the items which were later found to be drugs were in the storage compartment of the motorcycle he used when entering Singapore. Having considered the evidence and the submissions of the parties, I convicted the accused of the charge and passed the mandatory death penalty

on him. I gave brief oral grounds then. The accused has appealed against my decision. I now set out the full reasons for my decision.

**The facts**

3 On 26 October 2016, at about 5.20am, the accused entered Singapore from Malaysia via Woodlands Checkpoint on a motorcycle bearing the registration number JRN177 ("the motorcycle"). The registered owner of the motorcycle was one Lew Shyang Huei ("Lew"). Lew was a friend of the accused, and they had been colleagues at one point. The accused's girlfriend, Ting Swee Ling ("Ting"), was riding pillion at the material time.

4 The accused was stopped at the checkpoint for a routine check by Police Constable Israel Rajan ("PC Rajan"). He was instructed by PC Rajan to lift up the motorcycle seat for the compartment beneath to be examined. A blue plastic bag ("A1"), stored underneath a black jacket, raincoat and rain trousers, was found in the compartment. A power bank and a set of car keys were also found. It is undisputed that the power bank belonged to one Yeo Kim Huat Mervin ("Ah Huat"), an acquaintance of the accused, and the car keys were that of the accused's Malaysian registered car. The accused and Ting were told to hand over their passports and to push the motorcycle to the parking space at the motorcycle checking bay. The accused complied. PC Rajan opened the blue plastic bag and found that it contained several bundles. He then requested the Immigration and Checkpoints Authority ("ICA") Task Force to be activated as he suspected the bundles contained contraband.

5 Sergeant Dave Ong Kah Huat ("Sgt Ong") from the ICA Task Force, as well as Staff Sergeant Ganesh s/o Amarthalingam ("SSgt Ganesh"), Senior Staff Sergeant Muhammad Khairul bin Khairudin ("SSSgt Khairul") and Staff

Sergeant Razif bin Rahim ("SSgt Razif") from the Central Narcotics Bureau ("CNB") arrived at the motorcycle checking bay to conduct the investigation. SSSgt Khairul retrieved the blue plastic bag from the compartment and ascertained that it contained four bundles.

6 SSSgt Khairul and SSgt Razif opened and examined the contents of the four bundles in the presence of the accused and Ting. The biggest bundle ("A1A") was wrapped in a white and purple plastic bag. In A1A, SSSgt Khairul found three packets containing several light brown tablets ("A1A1") and another three black bundles. One of the three black bundles ("A1A2") contained 19 silver packets ("A1A2A" to "A1A2U"), another ("A1A3") 20 silver packets ("A1A3A" to "A1A3V"), and the last bundle ("A1A4") several blister packages containing Erimin-5 tablets ("A1A4A" to "A1A4D"). Two silver packets from A1A2 and one silver packet from A1A3 were cut open and found to contain a crystalline substance.

7 SSgt Razif then opened the second of the four bundles ("A1B"), which was wrapped in white and purple plastic ("A1E"), and found that it contained 20 silver packages ("A1B1" to "A1B20"). The third of the four bundles ("A1C") contained a black bundle ("A1C1") which in turn contained ten silver packages ("A1C1A" to "A1C1K"). The last of the four bundles ("A1D") contained two packets which in turn contained several pink tablets ("A1D1"), three silver packages ("A1D2" to "A1D4") and two black bundles ("A1D5" and "A1D6" respectively). SSgt Razif opened one of the three silver packages and found that it contained one packet of crystalline substance. He also opened one of the two black bundles, which was found to contain several silver packages.

8 An analyst from the Health Sciences Authority ("HSA") DNA Profiling Laboratory later found another silver packet ("A1A3W") within the packaging

material of A1A3 (see [6] above). The officers had not discovered it earlier as it had been taped in between the black tape that had been used to secure the bundle. The chain of custody of the various drug exhibits was not disputed.

9 Upon analysis, the seized drug exhibits were found to contain, *inter alia*, 102 packets containing not less than 742.82g of crystalline substance, which was analysed and found to contain not less than 499.97g of methamphetamine. The analysis of the drug exhibits and the results thereof were not disputed at trial. The accused's DNA was not on any of the exhibits submitted for analysis. Instead, Lew's DNA was found on the following exhibits:

(a) the interior surface of the plastic bag marked "A1";

(b) the exterior surface of the taped bundle marked "A1A4";

(c) the exterior surface of the plastic bag and cling wrap marked "A1D";

(d) the swabs taken from the exterior of the taped bundle marked "A1D5";

(e) the swabs taken from the cling wrap marked "A1E"; and

(f) the interior and exterior surfaces of the plastic bags which were marked "A1F".

**Relevance of WeChat and text messages**

10 In the course of the trial, the defence objected to the Prosecution's use of certain WeChat and text messages ("the Messages") in the cross-examination of the accused. The Messages had been admitted into evidence as one part of the report containing the results of a forensic examination conducted on the

accused's phone (the "FORT report") and the translation thereof. The disputed messages were:

(a) messages sent by the accused to one Lee Wei Jye (also known as "Ah Fei") on 13 and 19 October 2016 ("the first category of messages");

(b) messages sent by the accused to an unknown person on 1 October 2016 ("the second category of messages"); and

(c) messages on 23 October 2016 between the accused and an unknown person referred to as "Boss" in the messages ("the third category of messages").

11 The defence's objection was twofold: first, that the Messages were similar fact evidence used to establish propensity, and second, that relying on them would be an impermissible back-door attempt by the Prosecution to introduce "wilful blindness" into the equation. On the other hand, the Prosecution's position was that the Messages would assist the court in determining whether the accused had rebutted the statutory presumptions. It was clear that the defence's second objection was unmeritorious as the Prosecution had said several times that it was not relying on wilful blindness. The Prosecution's case was that the accused had *actual* knowledge of the items and that it was relying on the ss 21 and 18(2) presumptions to establish possession and the accused's knowledge of the nature of the drugs. This meant that the only point of substance was the defence's first objection, which I accepted in part.

12 I allowed the Prosecution to cross-examine the accused on the first category of messages – the messages between the accused and Ah Fei on 13 and 19 October 2016. I noted that there were messages exchanged between the accused and Ah Fei shortly before his arrest on 26 October 2016, which the

defence rightly accepted were relevant. Specifically, the messages on 26 October 2016 were relevant in assessing the credibility of the accused's evidence that the purpose of Ah Fei's visit to Singapore on 26 October 2016 was to meet Ah Huat for a moving job on 27 October 2016 ("the upcoming job"). The first category of messages suggested that the arrangement between the accused and Ah Fei on 26 October 2016 was similar to the arrangements between them on 13 and 19 October 2016. The messages therefore provided context for the court to make the assessment as regards the real nature of the arrangement on 26 October 2016.

13 In contrast, the connection between the second category of messages (the 1 October 2016 messages) and the alleged offence on 26 October 2016 was unclear. These messages, which as noted earlier were sent by the accused, read:

> Today at the Singapore customs, are there police bringing (dog emoticon) dogs to smell if there are people bring things across the custom? We reached the custom but turned back to Johor Bahru! So there is no income today, most importantly keeping ourselves alive.
>
> Boss say: No matter what, the things must be delivered tomorrow, personally I feel very stressed.

14 The Prosecution had argued, extrapolating from the case of *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 ("*Harven*"), that "the court should take into account *any* incriminating messages found in [the accused's] mobile phone in considering whether he could rebut the presumptions [as to possession and knowledge]" [emphasis added]. I held that this could not be correct as a matter of general principle. Following s 14 of the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act"), merely asserting that the Messages were potentially incriminating and therefore relevant to the accused's state of mind was insufficient. The Prosecution had to show that the evidence was probative of the

*relevant* state of mind, *ie*, the state of mind related to the transaction that was the subject matter of the charge.

15 In *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 ("*Ranjit*"), the disputed portions of the statements held to be admissible pertained to previous transactions which also involved Ranjit and Farid, the co-accused persons (at [12]). Similarly, the Court of Appeal in *Ng Beng Siang and others v Public Prosecutor* [2003] SGCA 17 ("*Ng Beng Siang*"), in finding that the previous incident of drug trafficking alluded to in a statement recorded from one of the appellants, Ng, had more probative value than prejudicial effect, observed that, *inter alia*, the previous incident involved "a similar errand" for the same person (at [41]). This showed that Ng could not have been ignorant of what he had been conveying.

16 When evaluating the admissibility and use of similar fact evidence, a balance has to be struck between its probative value and the prejudicial effect it carries. In making that assessment, the cogency, strength of inference it provides and relevance of the evidence should be considered: see *Ng Beng Siang* at [40]–[42]; *Ranjit* at [17]–[19]. Where there is no discernible connection between the past communication and the transaction which is the subject matter of the charge, the three touchstones cannot be said to be satisfied. Allowing the evidence to be used in such a case would primarily be to show propensity, which is impermissible.

17 The Prosecution had not led evidence to make any connection between the second category of messages (on 1 October 2016) and the events surrounding the alleged offence on 26 October 2016. Its case was not that the unknown person the messages had been sent to was any of the individuals who might have a connection to the events of 26 October 2016, such as Lew, Ah Fei

or Ah Huat. While the Prosecution made vague references to the second category of messages being suggestive of the accused "transporting some kind of illegal substance … [which] is something that the Court should consider", I did not understand the Prosecution's case to be that, on the date of his arrest, he had been transporting drugs for this unknown person or even "Boss", who was referred to in these messages. In fact, the Prosecution's main argument was that the references to "Boss" indicated that the accused had lied when he asserted that he had no source of income other than his work in a pub in Johor Bahru. However, this was a point already addressed by the third category of messages, which the defence initially did not object to, and which were more proximate to the date of the offences for which he was charged. This meant that there was barely any probative value in the second category of messages.

18 Finally, in assessing the probative value of this category of messages, I also took into account the fact that they did not clearly speak to drug importation. For these reasons, I did not allow the Prosecution to cross-examine the accused on the second category of messages.

19 The defence initially did not raise any objections to the third category of messages (on 23 October 2016). In the course of oral submissions, and in response to a question I posed, the defence then asserted that its objection extended to this category as well. The third category of messages was relevant in addressing the accused's claim that his sole source of income in October 2016 was his salary as a waiter in a pub in Johor Bahru. It was thus relevant to his credibility. However, I did not allow the Prosecution to rely on these messages to imply an ongoing business of drug importation that included the offences for which he was charged, or to assess the state of mind of the accused in relation to the same for reasons similar to those I have stated for the second category of

messages. I allowed the Prosecution to cross-examine the accused on the third category of messages only on this limited basis.

**The Prosecution's case**

20 As noted earlier, the Prosecution relied on the presumptions under ss 21 and 18(2) of the MDA. As the accused was in charge of the motorcycle in which the controlled drugs were found, it was presumed under s 21 MDA that they were in his possession. Under s 18(2), it was further presumed that the accused knew of the nature of the drugs. The Prosecution noted that the accused led no evidence to rebut the presumption under s 18(2) on a balance of probabilities. However, the accused also contended that the Prosecution had to separately prove that he intended to import the drugs into Singapore. I address this point in [37] below.

21 The Prosecution made two main submissions: first, that it was highly improbable that Lew would have left the drugs in the motorcycle compartment without the accused's knowledge, and second, that the accused was not a credible witness.

22 On the first point, the accused did not suggest that a third party could have interfered with the motorcycle compartment after he had borrowed the motorcycle from Lew. The Prosecution appeared to accept that the drugs could have been placed in the motorcycle compartment before the motorcycle was lent to the accused. However, the Prosecution suggested that this could only have been with the accused's knowledge as none of the possible explanations for why Lew would have done so without the accused's knowledge were plausible. Three possible scenarios were outlined by the Prosecution and asserted to be implausible. First, that the accused was an unwitting courier for Lew. Second,

that Lew had forgotten that the drugs were in the motorcycle compartment when he allowed the accused to use the motorcycle. Third, that Lew had deliberately placed the drugs in the motorcycle compartment to "set up" the accused; in other words, that it was an act of sabotage.

23 On the first scenario, it was unlikely that the accused had been used as an unwitting courier. The plastic bag containing the drugs was easily accessible: this only required a person to lift up the jacket, raincoat and trousers. The bag was also bright blue in colour, and was therefore "rather eye-catching". If the accused had been an unwitting courier, Lew would either have secured the plastic bag in a sealed compartment of the motorcycle, or given him instructions not to interfere with the contents of the motorcycle compartment on some pretext. There would otherwise have been a serious risk that the plastic bag would have been discovered.

24 On the second scenario, Lew could not have inadvertently left the drugs in the motorcycle compartment: the street value of the drugs was about S$89,000, and the drugs had been carefully packed into 102 packets, and then placed in four bundles. Given that Lew had been aware that the accused intended to borrow the motorcycle, it was ludicrous to suggest that Lew simply forgot that he had left the drugs in the motorcycle compartment.

25 Finally, on the third scenario, the accused testified that Lew was a good friend, and gave no reason why Lew would want to sabotage or frame him by leaving the drugs in the motorcycle compartment without his knowledge. In this regard, there had also been no tip-off to the ICA, and the check conducted on the motorcycle by PC Rajan was a routine one.

26 The Prosecution's second main submission was on credibility. It was contended that the accused was a dishonest witness. Following *Harven* at [2], the court was invited to consider the "overall picture that emerges to [it]". The accused's explanations for his actions on the days leading up to the offence and the reasons he provided for having sent various phone messages were either plainly untrue, or inconsistent with his previous statements and the objective evidence. The falsehoods revealed the accused to be without credit. The accused was not a naïve or simple person who had been duped into importing drugs, but instead a dishonest person who repeatedly lied in his testimony. His claim that he did not know about the presence of the drugs in the motorcycle compartment should therefore be disbelieved. The various inconsistencies highlighted by the Prosecution will be discussed in more detail in my analysis below.

27 Finally, while there had been some suggestion in the Prosecution's case that the accused had been in the "business of transporting drugs", this point was not pursued in its closing submissions.

**The defence's case**

28 The accused accepted that the presumptions in ss 21 and 18(2) applied. His primary contention was that he did not have legal possession as he did not know that the drugs were in the motorcycle compartment when he entered Singapore on 26 October 2016. According to the accused, the drugs had been stored in the motorcycle compartment by Lew without his knowledge.

29 A key aspect of the accused's defence was that he had legitimate reasons for visiting Singapore on 26 October 2016. These reasons largely concerned Ah Huat. Ah Huat and the accused had been co-workers at a moving company called "KNT" until July or August 2016. When Ah Huat invited the accused to

join a new moving company that he was starting, the accused agreed and resigned from KNT. Ah Huat resigned later and joined a moving company named VS Movers & Logistics Private Limited ("VS Movers"). It transpired that this company was not in fact owned by Ah Huat, even though the accused claimed to have been under the impression that it was. They remained in regular contact, and the accused visited Singapore regularly to try to recruit other workers from KNT to join VS Movers. However, Ah Huat was not as yet able to offer permanent employment to the accused: it would seem that the accused, being a Malaysian, needed a work permit to be employed in Singapore, and VS Movers, being a new company, was not yet able to secure work permits for foreign workers. This was a source of frustration for the accused as he had left KNT in the hope of securing employment with the new company that Ah Huat was starting. On 23 October 2016, Ah Huat messaged the accused and offered him employment on a three-day job from 27 to 29 October 2016, *ie*, the upcoming job. Ah Huat suggested that he (the accused) could work on the upcoming job as a "casual worker" using somebody else's NRIC. Ah Huat then told the accused to contact him on 26 October 2016 so that he could inform the accused of the location of the upcoming job.

30 The accused also met Ah Huat in Singapore on 24 October 2016. At this meeting, the accused borrowed Ah Huat's power bank ("the power bank") to charge his mobile phone but did not return it that day. He left for Johor Bahru with the power bank. Later that morning, Ah Huat sent the accused a WhatsApp message to ask why he had not returned the power bank as promised.

31 The accused planned to come into Singapore on 26 October 2016 for four reasons. First, he intended to meet Ah Huat to return the power bank. It was not disputed that the accused had the power bank with him when he entered Singapore (see [4] above). Second, he intended to discuss the upcoming job with

Ah Huat. Third, he wanted to spend a day in Singapore with Ting. Fourth, he planned to introduce Ah Fei and a Malay gentleman to Ah Huat for the upcoming job.

32 For these reasons, the accused intended to enter Singapore on 26 October 2016. He asked Lew whether he could use the motorcycle as his own motorcycle had broken down. The request was made over the phone at around 1.00am on 26 October 2016. As it was raining when the accused left his house in Johor Bahru at around 3.40am, he decided to enter Singapore using his car instead of the motorcycle. However, as it later stopped raining, Ting suggested that they use the motorcycle instead. The accused then drove to Lew's house in his car, borrowed the motorcycle and a motorcycle helmet, and left for Singapore. He did not see the blue plastic bag containing the drugs in the motorcycle compartment and did not look under the raincoat, jacket or trousers that were placed on top of it.

33 The defence's position was therefore that the accused had legitimate reasons for entering Singapore on 26 October 2016 and had not been aware of the presence of the blue plastic bag and the drugs therein. The statements recorded from him showed that he had consistently maintained he had not known that the drugs were there. There was no objective evidence that the accused was involved in drug-related activities, or that there was an arrangement for him to import drugs into Singapore on 26 October 2016.

34 The accused asserted that he had asked the officers to contact Lew when he was arrested. It should be noted that this was not recorded in his two contemporaneous statements or the statement recorded after he was served with a notice under s 33B of the MDA ("the MDP statement").

35 Finally, the defence emphasised the fact that the Prosecution had not charged Lew for any offences despite (1) his DNA being found on the drug-related exhibits, and (2) the possibility of the presumption under s 21 being invoked against him given that the motorcycle was registered in his name. The defence submitted that if there had been evidence that the accused had imported the drugs on the instructions of Lew, as had been put to the accused in cross-examination, Lew would have been charged. The reasonable inference to draw from the failure to charge Lew was that there was no evidence of any conspiracy or common intention between Lew and the accused to import the drugs. On the totality of the evidence, it was more likely that Lew was the owner of the drugs, had intended to distribute them in Malaysia, and had simply forgotten to take the drugs out of the motorcycle compartment when the accused had borrowed it.

## My decision on conviction

### *The applicable principles*

36 The elements of the charge of importation under s 7 MDA are (*Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [27]):

(a) the accused was in possession of the drugs;

(b) the accused had knowledge of the nature of the drugs; and

(c) the drugs were intentionally brought into Singapore without prior authorisation.

37 As I noted earlier, the Prosecution relied on the presumptions under ss 21 and 18(2) MDA to establish the elements stated above in [36(a)] and [36(b)] respectively. I agreed with the Prosecution that it was not required to

separately prove that the accused intended to import the drugs into Singapore. The word "import" in s 7 MDA should be accorded its ordinary meaning of bringing an object into the country (*Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052 at [6] and [67]). In the present case, there was no suggestion that the accused had not intended to enter Singapore. Instead, his defence was primarily that he had not been aware of the presence of the drugs in the motorcycle compartment. This was an effort to rebut the presumption under s 21 MDA. If the accused intentionally entered Singapore in knowing possession of the drugs, and with knowledge of their nature, it would follow that he intended to import the drugs. I was thus satisfied that the charge would be made out *if* the accused failed to rebut the presumptions of possession and knowledge.

38 It was common ground that the primary question I had to determine was whether the accused had rebutted the s 21 MDA presumption by proving on a balance of probabilities that he did not know of the presence of the drugs. As the Prosecution noted, the accused's claim that he did not know the drugs were in the motorcycle component was a bare assertion, and there was no direct evidence either way. Therefore, in determining whether the accused had rebutted the presumption under s 21 MDA, I had to consider his credibility. It was a key plank of the accused's case that he had good reasons for visiting Singapore on the day of his arrest, *ie*, 26 October 2016. As such, a key question was whether the reasons provided were credible. At the same time, it was important to weigh any possible explanation as to why Lew would have placed or left the drugs in the motorcycle compartment without the accused's knowledge. This was particularly since it was the accused's position under cross-examination that that was exactly what Lew did (see [28] above). The determination of these questions fed into my assessment of his claim that he did

not know of the presence of the drugs and whether he had discharged his burden of proof on a balance of probabilities.

39 As I explain below, having considered the evidence of the accused and witnesses such as Ah Huat, as well as the phone records adduced in evidence, I did not find the accused to be a credible witness. I also did not accept that there was any plausible explanation for the drugs being placed in the motorcycle compartment without the accused's knowledge. In doing so, I was conscious of the guidance provided by the Court of Appeal in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR499 ("*Gopu*") at [25], in particular, that the evidence must be evaluated neutrally in determining whether the presumption has been rebutted, with no predilection for either conclusion. I set out my reasons below.

***The accused's credibility***

40 I should state at the outset that I was conscious the accused consistently maintained that he did not know that the drugs were in the motorcycle compartment, and that they were not his. This was reflected in various investigative statements:

(a) in the MDP statement, he stated that he "[did] not know anything regarding the contents [of] the [motorcycle]";

(b) in the first contemporaneous statement recorded at 7.34am on 26 October 2016 ("the first contemporaneous statement"), he said that he did not know what the plastic bag was, who it belonged to, or that it was "in the motorbike as [he] did not check it";

(c) in the long statement recorded on 1 November 2016 ("the 1 November statement"), the accused stated that he did not see anything

else inside the motorcycle compartment except for a black jacket and that he did not check what was underneath it; and

(d) in the long statement recorded on 2 November 2016 ("the 2 November statement"), the accused stated that the drugs were not his, and that he had never seen them or known what was in the packages prior to being arrested. He asserted that he did not know who they belonged to or why they were in the motorcycle, and that he had never come into contact with them.

41 This was consistent with his oral testimony where he maintained that he did not look underneath the jacket that was placed in the motorcycle compartment, and that he did not know the blue plastic bag containing the drugs was there.

42 I turn now to explain why I did not accept his evidence.

*Reason(s) for entering Singapore on 26 October 2016*

43 As I indicated above at [38], a key question in this case was whether the reasons provided by the accused for entering Singapore at the material time were credible. The accused claimed that he entered Singapore on 26 October 2016 for four reasons (see [31] above). Besides his intention to have a meal with Ting in Singapore, the other reasons he provided involved meeting Ah Huat. These were to return the power bank, introduce Ah Fei and a Malay gentleman for the upcoming job, and to discuss the upcoming job.

44 It was pertinent that the last two reasons – introducing Ah Fei and the Malay gentleman, and discussing the upcoming job – were not mentioned by the accused in any of his investigative statements. The field diary kept by the

officers recorded that they had been told that the accused borrowed the motorcycle to return the power bank to Ah Huat. In the MDP statement, the accused similarly *only* referred to returning the power bank to Ah Huat. This was reiterated in the first contemporaneous statement recorded from him on 26 October 2016:

> Q: Why were you riding the [motorcycle] into Singapore?
>
> A: To return a power bank to my friend "Ah Huat" …

45 The accused did not provide any other reasons in his 1 November statement. In the 2 November statement, the accused again stated that his "intention of coming into Singapore was *solely* to return the [power bank] to Ah Huat" [emphasis added]. This time he added that "[a]fter meeting Ah Huat, [he intended] to bring [Ting] to eat some nice food before going back to Malaysia". No other reasons were provided. The accused was not able to offer an acceptable explanation for the omission of the other two reasons in the investigative statements. I do not think that these other reasons were "minor details", as his counsel attempted to argue in closing submissions, particularly since the accused saw fit to specifically state in his statements that he intended to meet Ah Huat *for the purpose of returning the power bank*. If indeed these were minor reasons, it was surprising that they played such a significant part in the accused's testimony. It must be noted that the accused did not assert that he had informed the recorders of these other reasons and that they had failed to record them. The absence of a satisfactory explanation for these reasons not being mentioned in the investigative statements suggested to me that they were not genuine. I was therefore of the view that the accused was seeking to embellish his reasons for coming into Singapore on 26 October 2016. It would follow that the arrangement between the accused and Ah Fei on 26 October 2016 was not

to meet Ah Huat to discuss the upcoming job as the accused alleged. This reason will be explored in greater detail below (see [47] below).

(1) Whether there was a prior arrangement to meet Ah Huat

46 The accused asserted that he and Ah Huat had agreed to meet on 26 October 2016. It is common ground that the accused and Ah Huat met in Singapore on 24 October 2016 to discuss the upcoming job. The accused testified that they had agreed then to meet again on 26 October 2016 to discuss the upcoming job. Further, in his 2 November statement, the accused stated that he had promised Ah Huat on either 24 or 25 October that he would return the power bank on 26 October. I was not persuaded that there was in fact a prior arrangement between Ah Huat and the accused to meet on 26 October 2016 for either of these two reasons.

47 I shall first address the first reason – that they had agreed to meet again on 26 October 2016 to discuss the upcoming job. The meeting on 24 October 2016 took place after Ah Huat's messages on 23 October 2016 to the accused, notifying him that the upcoming job was on the cards. However, I note that there was no objective evidence, *eg*, messages exchanged with Ah Huat, corroborating the accused's claim that he and Ah Huat had agreed at that meeting to meet again on 26 October 2016. It is pertinent that when asked, Ah Huat testified that he could not remember whether he and the accused had arranged on 24 October 2016 to meet again on 26 October 2016.

48 Significantly, the intention to discuss the upcoming job with Ah Huat on 26 October 2016 at a meeting which had been pre-arranged on 24 October 2016 was not mentioned in any of the investigative statements. If the accused had indeed made arrangements on 24 October 2016 to meet Ah Huat on 26 October

2016 to discuss the upcoming job, there would have been no reason to omit this given its significance to his defence. For example, the accused clearly stated in the 2 November statement that he met Ah Huat on 24 October 2016 to speak about the upcoming job. He could very well have also said that there was an agreement to meet again on 26 October 2016 for the same reason. It was pertinent that when Ah Huat messaged the accused on 24 October 2016 to ask why the accused had not returned the power bank, the accused did not respond to assert that he would return it on 26 October as they had agreed on 24 October 2016 to meet then. It was also relevant that there were no messages from the accused to Ah Huat on either 25 or 26 October 2016 to set the time for the meeting or, at the very least, to inform Ah Huat that the accused was on his way.

49 I struggled with why the accused and Ah Huat would need or want to meet again on 26 October 2016 when they had met just two days before on 24 October 2016 and the upcoming job was to start the very next day. In this respect, the Prosecution observed that the message sent by Ah Huat to the accused on 23 October 2016 at 11.57am suggested that the plan was for the accused *to call* Ah Huat to obtain the address for the upcoming job: "…you give me a call on Wednesday, I give you the address." Here, "Wednesday" was 26 October 2016. It is clear from the message on 23 October 2016 that the plan was for the accused to *call* Ah Huat on 26 October 2016 to find out the address for the upcoming job. Thus, there was no need for the accused to meet Ah Huat on 26 October 2016 to obtain the address for the upcoming job or indeed for any other purpose related to the upcoming job. Under cross-examination, the accused testified that the plan was for them to "talk about questions relating to the job, for example, who was joining in, where we were supposed to meet, where we were going to get up the lorry et cetera" on 26 October 2016. However, the 2 November statement indicated that they had already agreed at

the meeting on 24 October 2016 that they would meet near Ah Huat's home on 27 October 2016:

> Ah Huat and I discussed when I can start work and the arrangement was that I will start work on 27 October 2016. *On my first day of work, I am supposed to meet him at his block and he will fetch me in his company's lorry for the first location for work.* This meeting with Ah Huat lasted about 2 hours. It was during this meeting when I borrowed the [power bank] from Ah Huat.
>
> [emphasis added]

50 I therefore could not understand why there would have been a need to meet again on 26 October 2016 to revisit the question of where they would meet to board the lorry. In any event, if there had in fact been a need for further discussion, there was no apparent reason why this could not have taken place over the phone as Ah Huat had suggested.

51 In these circumstances, it is difficult to understand what purpose would have been served by a second meeting between Ah Huat and the accused on 26 October 2016 to discuss the upcoming job. Indeed, if a day out with Ting had been planned for 26 October 2016, it is difficult to see why there was a need to meet on that day to discuss a matter which had just been discussed two days earlier.

52 I turn to the second reason, *ie*, that the accused had entered Singapore pursuant to an *arrangement* to meet Ah Huat to return his power bank. He asserted in the 2 November statement that this arrangement had been agreed to on 24 or 25 October 2017. It is unclear whether this arrangement was a reference to the pre-arrangement to meet on 26 October 2016 that was made at the meeting on 24 October 2016. While the accused consistently maintained that he entered Singapore to return the power bank to Ah Huat, his evidence on this

arrangement was similarly problematic. Ah Huat testified that the accused had said, when he borrowed the power bank, that he would return it to him at around 10.00am on 24 October 2016. This was also implied in the accused's statement, where he said that he had told Ah Huat that he would return the power bank "later" at the latter's workplace. The accused did not keep his word, and Ah Huat messaged him at 11.21am the same day, asking if the accused had "run away" with the power bank. It would follow that the arrangement to return the power bank would have been made after the meeting on 24 October 2016. The evidence before me, including the phone records, did not indicate that the accused had promised Ah Huat on either 24 or 25 October 2016 that he would return the power bank on 26 October 2016. In the text messages that were sent on 24 and 25 October 2016, the power bank was not mentioned at all, let alone a meeting on 26 October 2016 to return the same. According to the accused, he called Ah Huat to "give him an answer" after returning to Malaysia. However, the phone records did not indicate that such a call was made after the accused left Singapore at 9:47am on 24 October 2016. This was in line with Ah Huat's testimony that he did not think the accused had responded to his message asking whether he had "run away" with the power bank. Collectively, these cast doubt on whether there had in fact been an arrangement that had been made to return the power bank on 26 October 2016, as claimed by the accused in the 2 November statement.

53 In any case, if the accused was going to turn up for the upcoming job on 27 October 2016, there was really no reason why there would have been a need to meet Ah Huat on 26 October 2016 to return the power bank. There was no urgency for the power bank to be returned on 26 October 2016. This could very well have been done on 27 October 2016. In fact, Ah Huat did not press for the

return of the power bank after his message at 11.21am on 24 October 2016 (see [52] above).

54 For the above reasons, I did not accept that there was a prior arrangement for the accused to meet Ah Huat on 26 October 2016 to either discuss the upcoming job or to return the power bank. In its closing submissions, the defence placed some emphasis on the fact that Ah Huat had testified that it would not have been surprising for the accused to have turned up near his house at around 5.00am on 26 October 2016. However, to my mind, this was to an extent beside the point since the accused's position was that the meeting with Ah Huat on 26 October 2016 was pre-arranged. The fact that the evidence showed his testimony on this point to be false therefore gave rise to serious questions about the accused's credibility and truthfulness. In any event, Ah Huat's testimony in this regard did not resolve the doubts I had as to why there was a need for the accused to meet Ah Huat on 26 October 2016, as I have explained above.

55 While I accept that the power bank was in motorcycle compartment at the time of the arrest, it did not necessarily follow that there was a plan to meet Ah Huat to return the power bank on 26 October 2016. I therefore did not accept that a meeting with Ah Huat on 26 October 2016 was intended for the two reasons offered by the accused.

56 More fundamentally, the accused's evidence that he had also intended to introduce Ah Fei and the Malay gentleman to Ah Huat for the upcoming job was inconsistent and problematic. The question that arose from this was why the accused had to embellish his evidence in this manner if he had genuinely come into Singapore to discuss the upcoming job and to return the power bank to Ah Huat. I now turn to consider these reasons.

(2) Whether the accused had the intention of introducing the Malay gentleman or Ah Fei to Ah Huat

57 As noted earlier, there was no mention in any of the accused's investigative statements of an intention to introduce Ah Fei or the Malay gentleman to Ah Huat. Even in the defence's opening statement, there was no mention of this Malay gentleman, and it appeared as though the only person the accused intended to introduce to Ah Huat on 26 October 2016 was Ah Fei. I address his claim in respect of the Malay gentleman and Ah Fei in turn.

(A) THE MALAY GENTLEMAN

58 The Malay gentleman was allegedly interviewed by the accused following the meeting with Ah Huat on 24 October 2016 for the purpose of the upcoming job. It is telling that the accused was not able to even offer the name of the alleged Malay gentleman. Under cross-examination, the accused mentioned for the first time that he intended to introduce the Malay gentleman to Ah Huat on 26 October 2016:

> Q: Now, if you had met this Malay man and you were supposed to have another meeting on the 26th, wouldn't it have been logical for you to have sent a message to Ah Huat to confirm that this was going to happen on 26th?
>
> A: I disagree.
>
> Q: And why do you disagree?
>
> A: I wanted to link the Malay man directly with Ah Huat.
>
> Q: Okay. But I think you haven't answered my question. My question is: Wouldn't it have been logical for you to have sent a message to Ah Huat to confirm that on 26th you would be meeting---you would be linking Ah Huat with the Malay man?
>
> A I wanted to take the opportunity to return him the power bank. And also take the opportunity to introduce this Malay man as a one-off job.
>
> …

> Q: So what you are saying is that you would just bring the Malay man and meet [Ah Huat] without any prior arrangement?
>
> A: Yes. That's my contact---frequent mode of contact with Ah Huat. I will only contact him after I come into Singapore. …

59 It was unclear why there was a need to introduce the Malay gentleman to Ah Huat for the upcoming job particularly when the former had not yet confirmed that he was keen on working on the job. It is also unclear why the accused would want to make the introduction without first giving Ah Huat notice of his intention to do so. Further, no evidence which corroborated the accused's account was brought to my attention, *eg*, phone records showing that arrangements had been made with the Malay gentleman to meet with Ah Huat on 26 October 2016 at a particular time. Despite the emphasis the defence placed on the "legitimate" reasons the accused had for visiting Singapore on 26 October 2016, as noted earlier the Malay gentleman was not featured in the defence's opening statement. In the accused's examination-in-chief, he similarly did not suggest that he would be bringing the Malay man to meet Ah Huat on 26 October 2016. The accused's evidence to the effect that he planned on introducing this unknown Malay person to Ah Huat was therefore suspect at best, and appeared to be something the accused conjured up on the spot in the heat of cross-examination.

(B) AH FEI

60 The same might be said of the accused's intention to introduce Ah Fei to Ah Huat for the upcoming job. The messages exchanged between the accused and Ah Fei on 26 October 2016 did in fact indicate that there was a plan for them to enter Singapore at approximately the same time. The question was whether this was to introduce Ah Fei to Ah Huat for the upcoming job. In

answering this question, I considered the following: (1) the accused's evidence on his previous meetings with Ah Fei, which had been arranged in a similar manner, and (2) the absence of any objective evidence to corroborate the alleged plan to introduce Ah Fei to Ah Huat for the upcoming job.

61 The phone records showed that the accused and Ah Fei had coordinated their entry into Singapore on three occasions: 13 October 2016, 19 October 2016 and 26 October 2016. Under cross-examination, the accused testified that his meeting with Ah Fei on 13 October 2016 was "normal", and that they had planned to meet the day before. According to the accused, they would stop for a cigarette after crossing the customs, and talk about where they would eat together. I found that this was not in fact a casual meeting as the accused had suggested. It appeared from the messages that this meeting was urgent or important: the accused messaged Ah Fei at 5.21am that morning asking Ah Fei to let him know when he reached the immigration or "stamping" area. In the messages that followed, the accused reminded Ah Fei to let him know when he was crossing the border and asked for updates as to where Ah Fei was more than once. The accused accepted that the messages showed he was "very concerned" about whether Ah Fei would be on time. He explained that he had sent these messages because he did not want to wait for Ah Fei for too long. Allegedly, he needed to rush over to KNT to recruit workers to join VS Movers with him and Ah Huat. I found this explanation difficult to accept.

62 Nothing about this meeting appeared to be casual. First, the number of messages that the accused sent to Ah Fei asking where he was and how long he would take to get to the immigration area suggested that there was something quite important about this meeting. Otherwise, as the Prosecution suggested, the two of them could have met at any time in Johor Bahru. If indeed the accused was in a rush to recruit workers to join Ah Huat at VS Movers, it was difficult

to understand why there was a need to meet casually after Singapore immigrations had been cleared to have a cigarette and discuss where they would have lunch, particularly as, according to the accused, Ah Fei was often not punctual. Lunch was a matter that could have been coordinated over the phone, and the accused could have simply informed Ah Fei that he was in a rush and would go ahead without Ah Fei instead of waiting. Furthermore, the accused characterised Ah Fei as a mere acquaintance whom he had only regained contact with approximately two weeks before the 2 November statement was recorded. In the circumstances, it was therefore difficult to understand why the accused would have wanted to meet Ah Fei casually on 13 October 2016.

63 Second, the evidence suggested that the meeting was not one that was set up simply because they were entering Singapore at about the same time. The ICA records suggested that the accused arrived in Singapore at around 5.07am on 13 October 2016. From the messages, it appears that as at 6.25am, Ah Fei still had not crossed the border. The evidence therefore suggested that the meeting was not merely one of convenience.

64 Third, and more pertinently, the accused sent two messages to Ah Fei telling him to delete information from his phone: "[p]hone number and WeChat delete first then rush" and "[r]emember to delete your phone first then cross the checkpoint". The accused's evidence was that he had been asking Ah Fei to delete messages relating to illegal money lending activities from his phone. He pointed specifically to a message sent by Ah Fei on 13 October 2016 at 6.15am, which he claimed was related to illegal moneylending. It was suggested to the accused that this could not have been the case as his message to Ah Fei – asking him to delete his phone records – was sent before Ah Fei's message on the alleged illegal moneylending activities was received. In response, the accused claimed that this was because Ah Fei first sent a similar message to Ting, which

the accused had seen. This was all very convenient. In any event, the accused's explanation was not very logical. As the Prosecution rightly submitted, if the accused had not been involved in the alleged moneylending activities, the natural response would have been to tell Ah Fei to stop sending him those messages, rather than to tell Ah Fei to delete his phone records. Indeed, if the accused had been so concerned that the Singapore authorities would see this particular message, I would have expected that the accused himself would have deleted the message considering the frequency with which he visited Singapore.

65 I was therefore not convinced that the accused's meeting with Ah Fei on 13 October 2016 was a casual one. The phone records demonstrated that the same could be said of their meeting on 19 October 2016, where the messages sent by the accused to Ah Fei again indicated that there was some importance to their meeting, which the accused denied on the stand. These conclusions were relevant to my decision in two ways. First, it undermined the accused's credibility and demonstrated that his evidence was selective and dishonest, at least at certain points. Second, it was relevant context for assessing whether the accused's arrangement to meet Ah Fei on 26 October 2016 was truly to meet Ah Huat for the upcoming job. In the same vein as 13 October 2016 and 19 October 2016, the two of them coordinated their entry into Singapore on 26 October 2016, with the accused again asking Ah Fei whether he had reached the "stamping area", and saying that he would follow Ah Fei after the latter crossed the border.

66 I turn next to the absence of objective evidence. There was no evidence of the accused's plan to introduce Ah Fei to Ah Huat other than the accused's oral testimony. As the accused himself agreed, there were no messages exchanged with Ah Huat which corroborated his claim that he had been planning to introduce potential workers to Ah Huat on 26 October 2016. In fact,

there were no messages exchanged between Ah Huat and the accused about any potential worker, or between the accused and Ah Fei about the upcoming job.

67 The accused's explanation appeared to be two-fold. First, as already alluded to above at [54], it was customary for the accused to contact Ah Huat only after entering Singapore. However, as noted above, the accused's position was that there was a plan for him to meet Ah Huat on 26 October 2016 (even if the plan did not expressly include Ah Fei or the Malay gentleman). There was therefore little reason why the accused would not have communicated to Ah Huat his intention to bring potential workers to meet him. I found it difficult to believe that Ah Huat, who was in charge of a job that was due to start very shortly, would not have been kept updated on how many workers the accused would be bringing to work on it. The manpower needs for the job would surely have had to be discussed. Further, it was difficult to understand why there would have been a need for Ah Huat to interview Ah Fei for a one-off moving job the next day, particularly as the accused also testified that "Ah Huat said that he had no issues as long as the person was able to work well" with him. No explanation was provided by the accused in this regard. In any event, I note that the accused's position was that the meeting had been arranged with Ah Fei in advance. Yet, there were no messages with Ah Fei that suggested there had been a plan to meet Ah Huat. Indeed, this begs the question of why Ah Fei was not introduced to Ah Huat at the meeting on 24 October 2016.

68 There is a further difficulty with the accused's evidence. The alleged arrangement for Ah Fei to meet Ah Huat was never mentioned in any of his investigative statements. This was despite the fact that he had been specifically shown a photograph of Ah Fei by Investigating Officer Quah Yong Sen ("IO Quah") when the 2 November statement was recorded. In this statement, he told IO Quah that they were mere acquaintances. He made no mention of his

plan to get Ah Fei to work on the upcoming job with him and that one of the purposes of the visit on 26 October 2016 was to introduce him to Ah Huat. The accused also did not give evidence at trial to the effect that he had in fact made mention of this plan to IO Quah during his statement recording, and that IO Quah had failed to record this in the investigative statements.

69 In the circumstances, it was more likely than not that the accused did not intend to introduce Ah Fei to Ah Huat on 26 October 2016. If he had, this would surely have been mentioned in one of his investigative statements, or at least in one of the many messages he sent to Ah Fei and Ah Huat in the preceding days. Rather, it appeared to be another instance in which Ah Fei and the accused coordinated their entry into Singapore for some other purpose that had been important to them. There was insufficient evidence for me to determine what that was, but I was persuaded that it was not to meet Ah Huat.

(3) Whether the accused had the intention of spending the day with Ting

70 Finally, I turn to the accused's suggestion that he had come to Singapore in part to spend a day here with Ting. The defence argued that the fact that a discharge not amounting to an acquittal ("DNATA") had been ordered in respect of Ting indicated that the Prosecution was satisfied that she was not involved in any drug activity. Ting had been with the accused from the time she got into his car and it was "quite clear" that neither of them had checked to see what was in the motorcycle compartment under the jacket or knew that the drugs were there. According to the defence, Ting would otherwise be facing criminal charges along with the accused. This line of reasoning was fundamentally misconceived. First, the DNATA ordered did not necessarily mean that Ting had not been involved in the alleged importation, or that the Prosecution took this view. Second, even if Ting was not involved, or did not know that the drugs

were there, that did not necessarily mean the same could be said of the accused. The accused was the one who borrowed the motorcycle from Lew. In short, there was no basis for me to make any findings or inferences on her involvement, much less to factor that into my assessment of the accused's credibility or state of mind.

71 For completeness, I should state that the mere fact that the accused might have had an additional reason for entering Singapore did not detract from the fact that he could have, at the same time, entered Singapore with the intention of importing the drugs. In this sense, this additional reason provided by the accused was irrelevant.

*Using the motorcycle to enter Singapore*

72 The accused attempted to characterise his request to borrow the motorcycle from Lew on 26 October 2016 as opportunistic. He stated in cross-examination that: "[Lew] called me first and asked me to top up his prepaid card, and after he called me, I took the opportunity to ask him if I could borrow [the motorcycle] from him." This was contrary to the 1 November statement, which indicated that he had called Lew and asked to borrow the motorcycle before the latter asked him to top-up his prepaid card. Faced with this difficulty, the accused asserted that the statement was inaccurate in this respect. This was put to the interpreter of the statement, Mr Wong Png Leong, who disagreed. The accused claimed he had not noticed the inaccuracy when the statement was read to him as he was not in "the mood to listen" given that he was facing the death penalty. He allegedly only wanted to make a phone call after the statement was recorded, as he was afraid that he would be given the death penalty the next day. It is farcical and contrived to suggest that the accused did not pay attention as the statement was read back to him *because he thought the death penalty would*

*be given the next day*. Instead, it seemed to me that he did not ask for the statement to be corrected because it was in fact accurate.

73 The accused's own motorcycle had allegedly been undergoing repair, and the ICA records clearly showed that the accused had used a motorcycle on every one of his numerous trips into and out of Singapore from 1 September 2016 to the date of his arrest. On many of these occasions, he had in fact borrowed the motorcycle from Lew. It would therefore have been natural for him to have contacted Lew to do this in the early morning of 26 October 2016.

74 Pertinently, the phone records show that the accused had in fact messaged Lew at 1.03am asking Lew to call him: "Xiang, call me Xiang, I cannot get through your phone *leh*" [original emphasis in bold omitted]. It was therefore the accused who had *first* tried to call Lew, who returned the accused's call afterwards. Thus, in so far as the 1 November statement had stated that the accused had called Lew on his mobile phone to ask to borrow his motorcycle, this was in *substance* correct as it was the accused who had initiated contact with Lew in order to borrow it. In this regard, the accused later agreed that he was the one who had wanted to call Lew to borrow the motorcycle, and that Lew had called him in response to the message he sent at 1.03am. His evidence on this point was therefore inconsistent: to the extent that he had initially tried to characterise his request as opportunistic, this was, even by his own evidence, untruthful.

75 After the conversation with Lew, the accused drove to a 7-Eleven store that was 200m away from his home to top-up the phone cards as requested by Lew. According to the accused, it was raining at that time. He then went home to sleep for about two hours. Ting messaged him at 3.25am to ask whether he was awake. He replied at around 3.40am to ask her to fill in the immigration

cards, giving her the registration number of the motorcycle, JRN177. In his examination-in-chief, he was asked by defence counsel why he had sent Ting the registration number JRN177:

> Q: Right. Why do you send her the motorcycle number?
>
> A: The night before I had already borrowed the motorcycle from [Lew].
>
> Q: So you were intending to ride the motorcycle in?
>
> A: Yes.

76 His response was essentially that he did so as he had already asked to borrow the motorcycle from Lew and that he had intended to ride the motorcycle into Singapore. However, this answer posed a problem.

77 The accused confirmed that it had been raining when he drove to the 7-Eleven to top up the phone card after he had spoken to Lew. When I asked how this affected his plans to use the motorcycle, he testified that he became worried that it would continue raining the next morning, and therefore changed his mind about using the motorcycle and instead planned to drive his car to Singapore. The accused testified that he even put his "car card" into the car, and made preparations to get his auto-pass. I found his evidence not credible. If indeed he had changed his mind about using the motorcycle, there would have been no reason for him to ask Ting at 3.40am to fill in JRN177 (the motorcycle's number) on the immigration card. The accused's evidence was that he had not checked to see if it was raining before sending Ting the message at 3.40am as he had just woken up. If this was the case, he would presumably have maintained his plan to drive into Singapore instead of using the motorcycle. This would explain why he had asked Ting to fill in JRN177 into the immigration card. When it was suggested to him that if he had planned on using the car, he would have given Ting his car's vehicle registration number at

3.40am, he then baldly stated that "perhaps [he] had sent the wrong message". This was implausible and also at odds with his earlier evidence that he had sent the message with "JRN177" because he intended to use the motorcycle to enter Singapore. To my mind, this pointed to the conclusion that the accused had always intended to use the motorcycle to enter Singapore notwithstanding the rain. The rain was not a factor at all.

78 This conclusion is fortified by the fact that the accused never communicated to Lew any change of plans as regards the use of the motorcycle on account of the rain. When asked why he did not tell Lew that he had changed his mind and planned on using the car, the accused testified that:

> A: It was a very quick decision. I think it's very normal. I don't think there's anything extraordinary about this. I borrowed the [motorcycle] and by the time I went downstairs, it was raining. 10 minutes' journey and then the rain stops, so I went to take the motorbike. There's nothing extraordinary out of this unless you are saying that the rain continued on. Right.
>
> …
>
> Q: So if I understand you correctly, you are saying it's quite normal that you asked your friend at 1.00am in the morning to borrow his bike, then you change your mind and you decide to use the car because it is raining, but you don't tell him anything about that and you said that that is quite normal. Is that your answer?
>
> A: Yes. We are very good friends.

79 The accused's description of his decision to use his car as having been made very quickly was at odds with his evidence that he had planned to use his car when he saw that it was raining on his way to the 7-Eleven (see [77] above). More fundamentally, I found it difficult to believe that the accused felt it unnecessary to call Lew to tell the latter that he would not be borrowing the motorcycle after all. This was particularly since Lew had to hand the keys to the motorcycle to the accused in the wee hours of the morning and would therefore

have had to be disturbed for this purpose. As such, I found his purportedly cavalier attitude not credible.

80 For the above reasons, it was clear to me that the accused was not truthful when he characterised the request to use the motorcycle as opportunistic, or when he claimed that he had decided to use the car as a result of the rain. Instead, it seemed to me that he had planned to use the motorcycle all along regardless of the inclement weather, and that Lew had agreed to the use of the motorcycle.

*Events upon arrest*

(1) Whether the accused told the officers that the drugs belonged to Lew

81 I did not accept that the accused had expressly told the officers the drugs belonged to Lew, as he claimed to have done. This was not recorded in any of the investigative statements, in which the accused maintained that he did not know whom the drugs belonged to. For example, the first contemporaneous statement records as follows:

> Q2: Who do [the drugs] belong to?
>
> A2: I don't know.

82 According to the accused, this was inaccurate. Instead, he claimed that his answer had been "I don't know. This was left behind by the vehicle owner." He allegedly told Sgt Ong that the answer recorded was not complete or accurate, but had been told by Sgt Ong that he was not a CNB officer and did not have the authority to amend the statement. This was difficult to accept. There was no reason why Sgt Ong would not have relayed this request to SSSgt Khairul. This is consistent with the accused's understanding that Sgt Ong as the interpreter would have had to relay the request to SSSgt Khairul:

> Q: In that case, did you ask---the statement is actually recorded by Mr Khairul. You are correct that Mr Dave Ong is not a CNB officer. So did you ask Mr Khairul to change Answer 2?
>
> A: Dave Ong was the interpreter. I think it should be right that he had to relay that to Khairul.

83 There was also no reasonable explanation for the accused's failure to ask SSSgt Khairul to amend the statement. The accused initially claimed that he did not do so as he did not know who the relevant person to ask was, and later that SSSgt Khairul was in a rush when recording the statement. Neither of these reasons were convincing. There was no evidence SSSgt Khairul was in a rush. Further, it would have been clear to the accused that SSSgt Khairul was the person recording down his answers. The accused could have easily spoken to SSSgt Khairul in Malay to make the request to amend the statement. It is difficult to fathom why the request to amend the statement was never made to SSSgt Khairul and why the accused would sign the statements despite this. This was particularly since the accused testified at least once that he thought that Lew's ownership of the drugs was an "important" point.

84 It is therefore unsurprising that the defence did not seek to persuade me in its closing submissions that the accused had *affirmatively* told the officers that the drugs belonged to Lew (in contrast with his alleged requests for them to contact Lew (see [87] below), which the defence emphasised in its submissions).

85 For completeness, I note that the accused also initially claimed that he had told IO Quah during the recording of the 2 November statement that Lew had left the drugs in the motorcycle compartment. This was an assertion he repeated more than once. On this account, the 2 November statement was wrong in so far as it recorded him as saying that he was "not sure whether the drugs in

the motorcycle [had] anything to do with [Lew].” His evidence on this later shifted, and he agreed that the statement had been correctly recorded.

86 The factors above to some extent put paid to a point that the accused had been quite strident in asserting in his testimony, *ie*, that the drugs were Lew’s and had been placed by him in the motorcycle compartment. To be clear, it was not the *fact* that the accused did not ascribe ownership of the drugs to Lew that was significant, but rather his questionable claim to have done so, which cast doubt on his credibility.

(2) Whether the accused asked the officers to follow-up with Lew

87 One of the key planks of the accused’s case was that he had informed the CNB officers, when the MDP statement and the first contemporaneous statement were recorded, that he had borrowed the motorcycle from Lew, and that he had given the officers Lew’s phone number. He also claimed to have asked them to call Lew to prove that he had not been aware of the drugs and suggested that they “return to Malaysia to crack the case”. The accused claimed that some of the officers responded by saying that they did not have the authority to do so, and others told him to be quiet for the moment.

88 Again, I did not accept his claim to have asked the officers to contact Lew. The accused’s request that they call Lew, and Lew’s phone number, were not recorded in the field diary, the MDP statement or the contemporaneous statements. The accused’s version of events was put to SSSgt Khairul, SSgt Razif and Sgt Ong. None of these officers testified that the accused had provided them with Lew’s number, although Sgt Ong stated that he remembered the accused telling SSSgt Khairul that the motorcycle belonged to Lew, and that he

should call him. This was in contrast with SSSgt Khairul's evidence, which was that the accused had not asked him to call Lew.

89 I found the accused's evidence difficult to accept because there was no credible reason why his requests would have been left out from all of the documents above if they had in fact been made. What he purportedly told the officers clearly would have been exculpatory. Yet, it was not recorded. On the other hand, details concerning Ah Huat, such as his phone number and address, were recorded in the MDP statement, the first contemporaneous statement and the statement recorded at 10.15am the same morning ("the second contemporaneous statement"). There was no plausible reason why the same officers would not record assertions by the accused that were either exculpatory or would go towards demonstrating substantive assistance. This was particularly since one of the primary purposes of the MDP statement was to inform the accused person that his substantive assistance *might* result in the alternative sentencing regime applying *if* he were to be convicted.

90 Recognising this difficulty, the defence suggested that the omission was a result of the officers being more concerned about who the drugs were to be delivered to, and the identity of the accused's Singapore contact, rather than where the drugs came from. The defence was careful not to suggest that the officers deliberately censored information provided by the accused or that they had acted irresponsibly. However, the defence argued that the officers' interest in persons in Singapore was indicated by the fact that the second contemporaneous statement required the accused to identify Ah Huat from a photo line-up. I did not accept the defence's submission.

91 *Even if* the focus of the officers was on persons in Singapore, this would not have precluded them from recording information on Lew provided by the

accused. There was no reason to think that the officers focused solely on where the drugs were going to the *exclusion of* where they came from, such that the officers would not have recorded express requests to contact Lew. It was difficult to imagine why they would do that. The MDP statement indicated clearly that the Public Prosecutor might take into account assistance from the accused in disrupting drug trafficking activities within or *outside Singapore*. There was no evidence that the CNB was *not* interested in the identity of Lew or in following up on that lead, or that this had resulted in the officers failing to record information provided by the accused. This was also not put to officers such as SSSgt Khairul by the defence. In any case, it was implausible that SSSgt Khairul, as a processing officer, would have made the decision to exclude significant information. In fact, when the phone number of Lew's pre-paid card had been provided by the accused on 1 November 2016, this was recorded by the officers.

92 It was telling that this allegation only surfaced at trial. The accused did not convey the requests concerning Lew (or the fact that they had been made and not recorded) to IO Quah when the three long statements were recorded. This was despite the detailed recounting of the events on the day of his arrest being recorded, beginning with the inspection by PC Rajan. I therefore did not accept the accused's claim that he had provided the officers with Lew's number asking them to call Lew and to undertake investigations in Malaysia. This again raised questions as to the accused's credibility.

*Events of 24 October 2016*

93 The accused's evidence was also inconsistent in respect of the events on 24 October 2016. These were tangentially relevant to the events on 26 October 2016 in so far as there was a suggestion that he had agreed with Ah Huat on

24 October 2016 to meet him again two days later. More significantly, his shifting accounts of what had transpired on this day indicated that he was not a truthful witness.

94 As I indicated above at [46], it was common ground that the accused met Ah Huat on 24 October 2016 to discuss the upcoming job. In the 2 November statement, the accused claimed that the meeting with Ah Huat lasted approximately two hours, and that after Ah Huat left, he remained at the coffee shop for a while before heading back to Malaysia. The impression given in this statement was that the only thing the accused did in Singapore on 24 October 2016 was to meet Ah Huat at the coffee shop. In his oral evidence, this position shifted materially. He testified in his examination-in-chief that after meeting Ah Huat, he met a Malay gentleman at Tan Tock Seng Hospital to recruit him to work with him and Ah Huat on 27 October 2016 (see [58] above). He claimed to have returned to Malaysia thereafter.

95 It transpired in the course of cross-examination that the accused had apparently also run some form of errand for Lew on that day. This had not been raised in either his statements or in his examination-in-chief. This only came to light because of messages that were extracted from the accused's mobile phone and set out in the FORT report. Numerous messages were exchanged between Lew and the accused on that day, and the Prosecution cross-examined the accused on a number of them. I found his responses on these messages to be deliberately unhelpful and even deceptive. In particular, there was a series of messages in which the accused told Lew that he had handed an Indian person "the wrong thing". Lew responded by essentially asking the accused what had happened, and why he had handed over the "wrong thing". This appeared to be a mistake that the accused took seriously, as evidenced by the messages he sent thereafter:

> Xiang '*ah*' Xiang '*ah*', this is my "words not clear". This is my mistake this is my mistake '*hor*'. There will not be a next time there will not be a next time as my eyes were blurry when I saw what you sent me just now so I "words not clear" Sorry '*ah*' sorry sorry sorry.
>
> I will give you all an explanation later, I will give you all an explanation later. This is my mistake.
>
> [original emphasis in bold omitted]

96 Under cross-examination, the accused was asked who this Indian person he handed the "wrong thing" to was. His response was that he could not remember who this person was, or what he had handed to this person. Despite this, the accused was apparently still able to testify that he did not break the law, that the incident was unrelated to the events on the day of his arrest, and later that Lew had not been unhappy when they met in Malaysia subsequently. He did not provide any explanation for his ability to recall these specific details, but nothing else. More troublingly, when pressed on how he could remember that the incident with the Indian man was not related to the events of 26 October 2016, he then said that he could remember "a bit", but that "[it was] not important". When asked to relate what he could recall, he immediately reverted to asserting that he could not remember. It seemed to me that the accused was intentionally being uncooperative. This was also illustrated by his evidence that he could not remember who he had referred to as "Boss" in his messages with Lew. This too was difficult to accept. By his own account, he had stopped working with Lew by this point, which was merely three years ago. There must have been a limited group of people that both of them would have referred to as "Boss", and his alleged inability to identify this person was therefore puzzling.

97 Finally, the accused's deliberate evasiveness was also evidenced by his testimony that this errand for Lew was not one of the reasons he entered

Singapore on 24 October 2016. From the messages exchanged between the accused and Lew, it was clear to me that the accused had been doing something for Lew that involved passing an item to an Indian person. This was also indicated by the updates the accused provided Lew, such as telling Lew that he would be done after waiting for "one more Malay person". This unknown Malay person was clearly known to Lew, since the accused referred to him as "[t]hat new person the new one [*sic*]". The fact that the errand for Lew had not been mentioned in the accused's statements casts further doubt on his credibility.

98 To be clear, while the Prosecution suggested to the accused that he had been passing an illegal substance to the Indian person on 24 October 2016, there was no evidence of any association between these messages and the transaction that is the subject matter of the charge. The Prosecution did not attempt to argue otherwise in its closing submissions. As such, the relevance of the accused's testimony on this was limited to the fact that it gave rise to doubts as to his credibility and truthfulness as a witness. It in fact indicated that he was a witness who was evasive and less than forthright.

99 It was clear from the foregoing that the accused was not a credible witness. The difficulties in his evidence was not merely confined to his alleged reasons for entering Singapore, but also systemically plagued his testimony in other significant areas, such as his request to borrow the motorcycle from Lew, the events upon his arrest and his responses to the messages exchanged with Lew on 24 October 2016, demonstrating that he was not in fact a truthful witness whose bare assertion that he did not know of the presence of the drugs in the motorcycle compartment could be believed.

***Whether the accused was in possession of the drugs***

100 As I explained above, in considering whether it was more likely than not that the accused did not know the drugs were in the motorcycle compartment, I considered the accused's credibility and the veracity of the reasons he offered for visiting Singapore on 26 October 2016. Against this, I also considered the plausibility of the various scenarios that could explain how and why the drugs came to be in the motorcycle compartment at the material time, *ie*, when the accused entered Singapore, without the accused's knowledge. In this connection, I agreed with the Prosecution that the various scenarios were implausible. The defence's position on this was that it was more likely than not that Lew had intended to distribute the drugs in Malaysia and simply forgot to take them out of the motorcycle compartment before lending it to the accused. In oral submissions, it described this as a "hypothesis" and said that it was not central to, or part of, its case, which was confined to the accused's lack of knowledge that the bag containing the drugs was in the motorcycle compartment. Presumably, this was to address any argument that the accused ought to have called Lew. Indeed, it was difficult to see how this could be anything but central to the accused's case.

101 Neither party argued that the drugs had been placed in the motorcycle compartment by a person other than the accused or Lew. The accused testified that the motorcycle compartment had been locked when he took possession of it from Lew, and that the motorcycle had been parked in the compound of Lew's house, albeit with the gate closed but unlocked. Investigation Officer Yang Rongluan also testified that it was not possible to open the seat compartment without the motorcycle key. The key to the motorcycle had been with Lew who had handed it over to the accused when he picked up the motorcycle. I therefore had no reason to doubt that the drugs had been placed in the motorcycle

compartment by either or both of them, even though the DNA evidence suggested that only Lew had been involved.

102 The first possibility, as identified by the Prosecution, was that Lew had intentionally planted the drugs in the motorcycle to *set the accused up*. The accused had been specifically asked whether he believed Lew had done so, and testified that he did not think Lew did. He was unable to suggest any reasons why Lew would leave the drugs in the motorcycle and thereafter lend it to him. Indeed, it is inconceivable that Lew would have done this intentionally as that would be a sure way of implicating himself and simultaneously losing S$89,000 worth of drugs. As to the former, the motorcycle was, after all, registered in his name, and his DNA was all over the drugs. There was absolutely no conceivable reason why Lew would want to set up the accused and in the process set himself up as well.

103 There was also no motive for Lew to frame the accused in this manner. The accused described Lew as a "very good friend" and as a senior employee who provided guidance when the two of them worked at KNT movers. Lew was apparently a generous friend who would lend the accused the motorcycle when the latter asked; indeed, the ICA records suggested that Lew lent the accused the motorcycle 22 times between 1 September and 5 October 2016. Lew had in fact also agreed to lend the accused the motorcycle, allegedly on short notice, on 26 October 2016. There was no indication of any animosity, or any reason why Lew would have wanted to set the accused up. As the Prosecution pointed out, there was also no tip-off given to the Singapore authorities with respect to the motorcycle and the accused. It was therefore unlikely that Lew had intentionally left the drugs in the motorcycle compartment with the objective of getting the accused into trouble. The defence rightly accepted that this was not a possible explanation.

104 Another possibility was that Lew had intended to use the accused as an unwitting courier. This had been the case in *Gopu* (see [39] above), where the majority in the Court of Appeal found at [91] and [92] that while there was a plan to transport the drugs in question into Singapore, the accused person, who rode a motorcycle containing the said drugs into Singapore, was not part of this plan. The court found that the drugs in question had been placed in the said motorcycle without his knowledge, and therefore that they were not in his possession. In contrast, on the facts of the present case, this was implausible: again, there was no reason to suppose that Lew, as a good friend of the accused, would do so, particularly since this exposed the accused to the risk of being arrested on a capital charge. It also exposed Lew to criminal liability for the same reasons as stated above at [102]. One would have thought that if Lew had intended to use the accused as an unwitting courier, he would have chosen a motorcycle that had no connection with him and ensured that his DNA was not on the drugs. Moreover, Lew would have also ensured that the drugs could not be easily discovered by the accused. I therefore found it implausible that Lew intended to use the accused as an unwitting courier.

105 The defence's "hypothesis" was instead that Lew had the drugs for purposes of distribution in Malaysia, and that he had forgotten to take the drugs out of the motorcycle compartment. I did not find this to be plausible. The drugs had a street value of approximately S$89,000. It was implausible that Lew would have simply left the drugs unattended in the motorcycle compartment or have forgotten to take them out when he lent the accused the motorcycle. Further, the accused had arranged to borrow the motorcycle at approximately 1.00am; Lew would have had ample opportunity to remove the drugs from the motorcycle compartment prior to the accused collecting it, or to alert the accused before he entered Singapore at 5.20am if he had indeed forgotten about

the drugs when the accused collected the motorcycle. On the accused's testimony, he had even called Lew again to tell him to "be prepared" while he made his way to Lew's house. I found it difficult to accept that Lew would have simply forgotten that the drugs were in the motorcycle compartment given their nature and the implications for the accused and himself if the drugs had been discovered by the authorities.

106 I have examined these possibilities to test the veracity of the accused's evidence that he was not aware that the drugs were in the motorcycle compartment, on a balance of probabilities. The implausibility of the permutations which could exculpate the accused was another factor that I weighed together with the conclusions I reached above on the accused's credibility in assessing whether the accused had discharged his burden of proof.

*Failure to call Lew as a witness*

107 For completeness, I should state that I did not draw any inference from the decision of both parties not to call Lew to give evidence. Lew was the owner of the motorcycle. Lew's DNA was found on the drugs, and the Prosecution accepted this suggested that Lew was the person who had packed the drugs. In a similar vein, the accused's position was that the drugs had been left behind by Lew. Despite the central role Lew appeared to play in the alleged offence, he was not called as a witness by either the Prosecution or the defence. He had been offered by the Prosecution to the defence, who had interviewed him and issued a subpoena for his attendance. However, following the accused's testimony, the defence indicated that it would not be calling Lew.

108 On 26 August 2019, the Prosecution extended the investigative statement recorded from Lew to the defence. During the oral closings, the

Prosecution confirmed that disclosure was not made on the basis of the principle in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205. The defence did not challenge this or make any application to re-open evidence.

109 The Prosecution argued that the defence's decision not to call Lew as a witness should give rise to an inference that Lew's evidence would not have assisted the accused in discharging his burden of proof in rebutting the presumptions under ss 21 and 18(2) MDA. It sought to distinguish this from an *adverse* inference. In doing so, the Prosecution relied on the Court of Appeal's decision in *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16, which considered the application of illustration (g) to s 116 of the Evidence Act (at [43] to [47]). Essentially, illustration (g) to s 116 of the Evidence Act provides that the court may, in *certain* circumstances, infer that the evidence which could have been adduced but was not would have been unfavourable to the defendant.

110 There was no need for me to consider whether it was appropriate to draw the inference suggested by the Prosecution in this case since I was satisfied, even without drawing this inference, that the defence had not met its burden of proof on a balance of probabilities. In any event, I do not think illustration (g) advances or assists the Prosecution's submission. I observe, however, in *obiter*, that Lew was clearly a material witness whose evidence *could* have corroborated the defence's "hypothesis" that the drugs had been intended by Lew for distribution in Malaysia and mistakenly left in the motorcycle when it was lent to the accused. This was also a situation in which the accused bore the burden of showing that he did not have the requisite knowledge given the presumptions against him.

111 The defence described the offer of Lew as a witness as a "poisoned chalice". Given my conclusions above, there is no need for me to express a view on this. Further, as there was no need for me to consider whether this was an appropriate case to infer that Lew's evidence would not have supported the defence's case, I say no more on this point.

112 While I did not need to draw any inference with regard to the failure to call Lew, I was conscious of the fact that the burden is on the accused to offer sufficient evidence to persuade the court that he was not aware of the existence of the drugs. He did not discharge this burden. The indelible scars on his credibility as outlined above meant that his assertion that he did not know the drugs were in the motorcycle compartment could not be taken at face value. This, coupled with the implausibility of the various alternative explanations for the presence of the drugs in the motorcycle compartment without the accused's knowledge, as well as the inconsistent accounts he gave for entering Singapore at the material time, led me to convict him of the charge he faced.

***Conclusion***

113 For the reasons above, I found that the accused did not prove, on a balance of probabilities, that he did not know of the existence of the drugs in the motorcycle compartment. Consequently, I also found that he did have possession of the drugs. Given that possession, or the absence thereof, was the central premise of the defence, I convicted the accused of the charge.

**My decision on sentence**

114 Turning to my decision on sentence, the punishment prescribed under s 33(1) read with the Second Schedule of the MDA is death. Under s 33B(1)(*a*) read with s 33B(2) MDA, the court has discretion to sentence the offender to

life imprisonment and 15 strokes of the cane if (1) the offender proves that, on a balance of probabilities, his involvement was restricted to the acts in ss 33B(2)(*a*)(i)-(iv) MDA; and (2) the Public Prosecutor certifies that the person has substantively assisted the CNB in disrupting drug trafficking activities within or outside Singapore.

115 Under s 33B(2)(*a*), the burden of proof is on the accused to show on a balance of probabilities that he was a mere courier. In doing so, the accused may only rely on evidence that had been adduced at trial – the majority in the Court of Appeal decision of *Public Prosecutor v Chum Tat Suan and another* [2015] 1 SLR 834 made it clear that no further evidence may be introduced at the sentencing stage in support of the courier argument (at [77]–[84]).

116 The defence submitted on sentence that the evidence adduced demonstrated that the accused's involvement was restricted to that of a mere courier, and that there was no evidence adduced suggesting that the accused's involvement went further than that. The Prosecution was in agreement with the defence on this point, and stated on record that it had no objections to the position that the accused was a mere courier.

117 I concurred with parties and found that the accused was a mere courier. His role was limited to transportation of the drugs that were the subject matter of the charge into Singapore. Based on the evidence adduced at trial, the only fact before me in relation to the accused's drug-related activities was that of *transportation*. There was no evidence suggesting that the accused played a greater role in the drug operation. Indeed, on this point, the Prosecution rightly conceded that no evidence had been led suggesting further involvement on the part of the accused. The accused was not found with any drug weighing or packing equipment; nor was there any evidence of phone records or email

correspondence which suggested that the accused had a greater role to play such as coordinating the entire operation.

118 However, although I found that the accused was a mere courier, the Prosecution did not issue a certificate of substantive assistance under s 33B(2)(*b*) of the MDA. Accordingly, as the two elements under s 33B(2) MDA are cumulative, the alternative sentencing regime under s 33B(1)(*a*) MDA was not available to the accused.

119 I thus imposed the mandatory death penalty on the accused.

Kannan Ramesh
Judge

Mark Jayaratnam, Sunil Nair and Samuel Yap (Attorney-General's Chambers) for the Prosecution;
Wong Siew Hong and Andy Yeo Kian Wee (Eldan Law LLP) for the accused.