**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2021] SGCA 64**

Criminal Appeal No 38 of 2019

Between

Mohammad Reduan bin Mustaffar

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 39 of 2019

Between

Nazeeha binte Abu Hasan

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 34 of 2020

Between

Mohammad Reduan bin Mustaffar

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 3 of 2019

Between

Public Prosecutor

And

(1) Tan Swim Hong
(2) Mohammad Reduan bin Mustaffar
(3) Nazeeha binte Abu Hasan

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# JUDGMENT

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[Criminal Law] — [Appeal]
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**[2021] SGCA 64**

Court of Appeal — Criminal Appeals Nos 38 of 2019 and 39 of 2019 and Criminal Motion No 34 of 2020
Andrew Phang Boon Leong JCA, Steven Chong JCA and Chao Hick Tin SJ
24 February 2021

30 June 2021 Judgment reserved.

**Andrew Phang Boon Leong JCA (delivering the judgment of the court):**

## Introduction

1 The appellant in CA/CCA 38/2019 ("CCA 38"), Mohammad Reduan bin Mustaffar ("Reduan"), the appellant in CA/CCA 39/2019, Nazeeha binte Abu Hasan ("Nazeeha"), and one Tan Swim Hong ("Tan") were tried jointly in the court below for offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The offences related to their respective roles in trafficking a packet containing 978.3g of crystalline substance, which was analysed and found to contain not less than 661.2g of methamphetamine ("the Drugs").

2 The charges against Tan, Reduan and Nazeeha were as follows:

(a) Tan was charged with trafficking by delivering the Drugs to Nazeeha, an offence under s 5(1)(*a*) of the MDA.

(b) Reduan was charged with abetting by instigating Nazeeha to traffic in the Drugs, an offence under s 5(1)(*a*) read with s 12 of the MDA.

(c) Nazeeha was initially charged with trafficking by transporting the Drugs, an offence under s 5(1)(*a*) of the MDA. At the end of the trial, the Prosecution reduced the capital charge against Nazeeha to a non-capital charge of trafficking by transporting not less than 249.99g of methamphetamine. Nazeeha's plea was re-taken and she maintained that she wished to claim trial.

3 The High Court judge ("the Judge") found that the Prosecution had proven the charges against Tan, Reduan and Nazeeha beyond a reasonable doubt and convicted them accordingly (see *Public Prosecutor v Tan Swim Hong and others* [2019] SGHC 246 ("the GD") at [67], [82] and [102]). The Judge found that Tan's role in the offence was restricted to that of a courier and that he was suffering from an abnormality of mind that substantially impaired his mental responsibility within the meaning of s 33B(3) of the MDA. As such, the Judge imposed the mandatory sentence of life imprisonment on him (see the GD at [104]–[105]). There has been no appeal filed by Tan. The Judge imposed the mandatory death sentence on Reduan as he did not qualify for the alternative sentencing regime under s 33B of the MDA (see the GD at [107]–[109]). Nazeeha was sentenced to 24 years' imprisonment (see the GD at [112] and [113]). Both Reduan and Nazeeha have appealed against their convictions and sentences.

## The background facts

4 Reduan and Nazeeha were residing together at Reduan's flat at Rezi 26, Block 5A Lorong 26 Geylang #07-08 ("the Flat"). At the material time,

Nazeeha was Reduan's girlfriend and was pregnant with Reduan's child. Tan and Reduan were acquainted as they were ex-colleagues. Reduan and Nazeeha knew Tan as "Ong".

5 The events leading up to the arrest of Tan, Reduan and Nazeeha were largely undisputed at trial. On 23 September 2016 at about 6.05pm, Reduan received a phone call from Tan informing him (Reduan) that he was arriving in the vicinity of the Flat with a detergent box. Reduan, who was in the Flat at the time, instructed Nazeeha to collect something from Tan on his behalf. Although Reduan's evidence was that he had asked Nazeeha to collect "*sabun cuci baju*" (Malay for washing detergent) from Tan, Nazeeha claimed that Reduan had asked her to collect "*barang barang*", which she had understood to mean groceries. However, it was common ground that Reduan had also instructed Nazeeha to collect a white envelope ("the Envelope") from his car and to pass the Envelope to Tan.

6 Nazeeha complied with Reduan's instructions and retrieved the Envelope from his car. The words "Ong Salary for e Month September" were handwritten on the Envelope, which contained $950 in cash. Nazeeha then met Tan and handed him the Envelope. Tan pointed her to a purple paper bag ("the Paper Bag") on a nearby pavement and left. The Paper Bag contained a Daia washing powder box ("the Daia Box"), which in turn contained the Drugs. Nazeeha brought the Paper Bag back to the Flat.

7 Tan was arrested shortly after at about 6.25pm and the Envelope containing $950 in cash was seized from him. Reduan and Nazeeha were arrested in the Flat thereafter at about 6.40pm. The Daia Box, which was sealed, was seized in the living room of the Flat and was subsequently found to contain the Drugs.

8 Tan's testimony as to the events of 23 September 2016 prior to his transaction with Nazeeha that evening was as follows. At around 6.30am that morning, he received a call from one "Ahmad" asking him to collect money from Reduan and to pass the money to "Ahmad" in Johor Bahru. It was not disputed that "Ahmad" was Reduan's relative, Ahmad Ashikin bin Ahmad Sulaiman, who resided in Malaysia. Tan knew Ahmad as they used to be colleagues. It was also common ground that Tan proceeded to collect a package containing cash from Reduan after receiving Ahmad's call. Tan then headed to Johor Bahru at around noon and handed the package containing cash to Ahmad. At that meeting, Ahmad handed him the Daia Box and told him to pass it to Reduan. Tan testified that he had suspected that the sealed Daia Box contained something illegal but that he did not check its contents. He returned to Singapore that afternoon and subsequently met Nazeeha later that evening.

## The decision below

### *The decision in relation to Reduan*

9 Reduan admitted to knowing that the Daia Box contained methamphetamine. He and Ahmad were involved in trafficking methamphetamine and had an arrangement whereby drugs would be delivered from Malaysia to Singapore while the money earned from illicit drug activities would be couriered from Singapore to Malaysia. Reduan's sole defence at trial was that he and Ahmad had a longstanding arrangement that Ahmad would send him no more than 250g of methamphetamine for him to supply to his customers ("the 250g Arrangement"). In other words, they had an agreement that Reduan would only deal in non-capital amounts of methamphetamine. Pursuant to the 250g Arrangement, Reduan had only agreed to take 125g of methamphetamine from Ahmad on 23 September 2016 as he already had 125g of methamphetamine in his house at the time. According to Reduan, Ahmad had

assured him that the delivery would involve no more than 125g of methamphetamine. As Reduan did not check the contents of the Daia Box, he did not know that the Daia Box contained a capital amount of methamphetamine.

10 The Judge rejected Reduan's defence for three reasons. First, the existence of the 250g Arrangement and Reduan's purported agreement with Ahmad that the delivery on 23 September 2016 would involve no more than 125 of methamphetamine were unbelievable even on Reduan's own account. Reduan claimed that when he received methamphetamine from Ahmad on previous occasions, he would immediately check that the weight of the methamphetamine did not exceed 250g either by conducting a visual inspection of the drugs or by weighing them. On this occasion, however, he did not bother checking the weight of the Drugs even though he had ample time to do so, already had 125g of methamphetamine in the Flat, and knew that the capital threshold was 250g of methamphetamine (see the GD at [70]–[72]).

11 Second, the objective evidence contradicted the existence of the 250g Arrangement (see the GD at [74]). The various text messages sent by Reduan to Nazeeha and one "Ijai" illustrated that he did not have reservations about dealing in capital amounts of methamphetamine (see the GD at [75]–[77]). In addition, Reduan's counsel confirmed at trial that there were no messages between Reduan and Ahmad evincing the alleged 250g Arrangement (see the GD at [75]). The Judge also noted that Ahmad denied having assured Reduan that he would not send more than 125g of methamphetamine and instead dissociated himself completely from any drug transactions (see the GD at [74]).

12 Third, Reduan never once raised the 250g Arrangement in *any* of his statements. He initially denied all knowledge of the Drugs and contents of the Daia Box, and subsequently claimed that one "Jalal" had asked him to collect washing detergent on 23 September 2016. It was only in his ninth and final statement that he stated that the Drugs belonged to Ahmad who had told him to hold onto the Drugs for someone to collect (see the GD at [78]). However, Reduan made no mention of the 250g Arrangement even in his ninth statement, which was recorded on 24 January 2019 (see the GD at [79]). The 250g Arrangement was raised for the very first time at trial. The Judge thus concluded that the 250g Arrangement was nothing more than an afterthought (see the GD at [81]).

13 On the issue of sentence, the Judge held that the alternative sentencing regime under s 33B of MDA was not available to Reduan. Reduan had failed to prove on a balance of probabilities that he was a mere courier. The Judge disbelieved Reduan's assertion that he had been simply holding onto the Drugs for Ahmad's customers and found that he did not satisfactorily explain what he had intended to do with the Drugs, which were of a very large quantity (see the GD at [106]–[108]). In any event, the Prosecution did not issue a certificate of substantive assistance in Reduan's favour. Accordingly, the Judge imposed the mandatory death sentence on him (see the GD at [109]).

***The decision in relation to Nazeeha***

14 The Prosecution relied on the presumptions of possession and knowledge under ss 18(1) and 18(2) of the MDA, respectively, against Nazeeha. Nazeeha's counsel, Mr Dhillon Surinder Singh ("Mr Singh"), did not dispute that the presumptions were engaged. Nazeeha admitted to knowing that the Daia Box contained something but claimed to have believed that the Daia

Box contained groceries. The case against Nazeeha thus turned on whether she had rebutted the presumption of knowledge under s 18(2) of the MDA (see the GD at [83] and [84]).

15 The Judge found that Nazeeha had failed to rebut the s 18(2) presumption. The relevant findings of the Judge are as follows:

(a) Nazeeha had, since sometime in July 2016, suspected that Reduan was involved in drug trafficking. Reduan had sent her a text message informing her that he would be collecting 1kg of "ice" (*ie*, methamphetamine) from Tan (see the GD at [87]). From August 2016 onwards, Nazeeha not merely suspected but in fact *knew* of Reduan's involvement in drug trafficking. She saw huge amounts of methamphetamine in the Flat, helped Reduan to pack small packets of methamphetamine away and kept records of Reduan's drug transactions (see the GD at [86]).

(b) The Judge disbelieved Nazeeha's claim that she thought she was collecting groceries from Tan on 23 September 2016 (see the GD at [89]). Although she had collected groceries from Tan on previous occasions, she admitted that practically everything about the delivery of the Daia Box was unusual (see the GD at [90]):

(i) Nazeeha would usually inform Reduan if she needed groceries and what groceries she needed, and Reduan would then place an order with Tan. However, she had not asked Reduan to get Tan to purchase any groceries on or shortly before 23 September 2016 (see the GD at [90(a)]). Furthermore, the only kind of groceries that Tan had delivered in the past were

food items. His delivery of a box of washing powder on 23 September 2016 was thus suspicious (see the GD at [90(b)]).

(ii) The mode of delivery on 23 September 2016 was highly unusual. On Tan's previous deliveries of groceries, the groceries were placed in "normal plastic bags"; in contrast, the Daia Box was placed in the Paper Bag (see the GD at [90(b)]). Moreover, Tan had left the Paper Bag containing the Daia Box along a pavement for her to pick up instead of directly handing her the Paper Bag (see the GD at [90(d)]).

(iii) Instead of handing Tan cash for the "groceries" on 23 September 2016, Nazeeha gave Tan an envelope, the contents of which she claimed to be unaware of (see the GD at [90(c)]). That was the first time that Nazeeha had such an exchange with Tan.

(c) The delivery of the Daia Box on 23 September 2016 took place against the backdrop of Nazeeha's belief since August 2016 that Reduan was trafficking drugs. The evidence showed that Nazeeha had assisted Reduan by keeping track of his drug sales and by prompting him for sales updates (see the GD at [93]–[95]). Moreover, given the unusual circumstances of the transaction on 23 September 2016, she could not have genuinely believed that she was collecting groceries (see the GD at [91] and [102]).

(d) Nazeeha's claim that she did not know that the Envelope contained money was contradicted by Tan's and Reduan's evidence (see the GD at [96]–[99]). The Judge preferred Tan's account that during the transaction, Nazeeha had informed him that the Envelope contained

> $950, some of which was his "kopi" money (see the GD at [96]). Additionally, Nazeeha must have seen the words "Ong Salary for e Month September" on the Envelope and would thus have known that the Envelope contained money (see the GD at [101]).

16 Having convicted Nazeeha on the amended charge involving not less than 249.99g of methamphetamine, the Judge sentenced Nazeeha to 24 years' imprisonment (see the GD at [113]).

## The parties' arguments on appeal

### *Reduan*

17 On appeal, Reduan argues that the Judge erred in disbelieving his defence that he had no intention of dealing in more than 250g of methamphetamine at any one time, including on 23 September 2016. In this connection, Reduan makes the following arguments:

> (a) The Judge erred in placing undue weight on past unrelated transactions to determine whether Ahmad and Reduan had an agreement for Reduan to receive not more than 125g of methamphetamine on 23 September 201.
>
> (b) The Judge erred in preferring Ahmad's evidence that there was no 250g Arrangement over Reduan's.
>
> (c) The Judge failed to appreciate that Reduan had little reason to suspect that the weight of the Drugs exceeded 125g as he trusted Ahmad.
>
> (d) The Judge should not have rejected Reduan's explanation regarding certain incriminating text messages extracted from his phone.

(e) The Judge erred in disbelieving that Reduan did not have time to check or weigh the Drugs.

18 Reduan does not raise any grounds in either written or oral submissions in support of his appeal against his sentence.

19 Prior to the hearing of his appeal in CCA 38, Reduan applied to adduce fresh evidence by way of CA/CM 34/2020 ("CM 34"). We address CM 34 at [42]–[45] below.

***Nazeeha***

20 Nazeeha appeals against her conviction on the basis that the Judge erred in concluding that she had failed to rebut the presumption of knowledge under s 18(2) of the MDA. She maintains that she thought she was collecting groceries from Tan on 23 September 2016. In this regard, she disputes the significance of her prior knowledge of Reduan's drug trafficking activities, as well as the Judge's findings of her role in Reduan's drug transactions and her knowledge of the contents of the Envelope at the material time. She also contends that her sentence is manifestly excessive and submits that she should receive the mandatory minimum of 20 years' imprisonment instead.

**Issue 1: Reduan's appeal against conviction**

21 We first deal with Reduan's appeal against conviction. As mentioned, Reduan's sole defence was that, pursuant to the 250g Arrangement, he believed that he would receive not more than 125g of methamphetamine from Ahmad on 23 September 2016. We agree with the Judge that the 250g Arrangement was fabricated and that Reduan had no reason to believe that Tan would deliver not more than 125g of methamphetamine that day.

22 First, the fact that Reduan made no mention of the 250g Arrangement in any of his statements is very telling. As counsel for Reduan, Mr Daniel Chia ("Mr Chia"), acknowledged at the hearing before us, Reduan sought to distance himself from the drug transaction in question in his first eight statements. It was only in his ninth and final statement, which was made just five days before trial, that Reduan incriminated Ahmad for the very first time. Yet, even Reduan's ninth statement (in which he disavowed the "lies" in his previous statements and purported to be telling the truth) contained nary a hint of the 250g Arrangement, which was the very crux of his defence. Instead, Reduan claimed in his ninth statement that he did not know how much methamphetamine the Daia Box contained. The 250g Arrangement surfaced for the very first time in Reduan's testimony at trial.

23 As a seasoned drug trafficker, Reduan must have appreciated the significance of the 250g Arrangement to his defence. Indeed, Reduan testified that he was careful to deal in less than 250g of methamphetamine at any one time because he knew that any greater quantity of methamphetamine would attract the death penalty. His explanations for his failure to mention the 250g Arrangement in his statements were also wholly unconvincing. When queried as to why he had stated in his ninth statement that he did not know how much methamphetamine was in the Daia Box, rather than stating that he thought the Daia Box contained no more than 125g of methamphetamine, he feebly answered that "[t]hat idea didn't come to me". He then claimed that he had only incriminated Ahmad in his ninth statement and not earlier as he was afraid that Ahmad would harm his family. However, there were three problems with this assertion. First, he did not explain in his ninth statement that he was coming clean because Ahmad had been apprehended and so his family was no longer in danger. Instead, he had stated that "if CNB could not arrest 'Ahmad' as he was

in Malaysia, I would be dead. That was the reason why I lied in the previous statements". Second, his explanation failed to account for his neglecting to mention the 250g Arrangement in his ninth statement itself. Third, Ahmad could not have posed a threat to Reduan's family since October 2017 as he had been arrested by then. It was thus curious that Reduan only incriminated Ahmad in his ninth statement dated 24 January 2019, which was made at the doorstep of trial. In the circumstances, we agree with the Judge that the 250g Arrangement was belatedly fabricated by Reduan in a last-ditch attempt to reduce his culpability for the 23 September 2016 transaction.

24 Second, the 250g Arrangement was contradicted by the objective evidence. There were multiple incriminating text messages in Reduan's phone that showed that he routinely dealt in capital quantities of methamphetamine. Before considering some of these text messages, we first deal with Mr Chia's submission that the Judge erred in placing undue weight on "past unrelated transactions" to determine if Reduan had agreed to receive not more than 125g of methamphetamine on 23 September 2016 specifically. With respect, Mr Chia's submission is misplaced. The 250g Arrangement formed the entire basis for Reduan's claim to have agreed to receive not more than 125g of methamphetamine on 23 September 2016. If Reduan and Ahmad had a history of dealing in more than 250g of methamphetamine, that would mean that the 250g Arrangement was fictitious and, accordingly, Reduan would have had no reason to believe that he would receive no more than 125g of methamphetamine on 23 September 2016. In other words, the purpose of scrutinising Reduan's prior dealings was not to prove his propensity to traffic in drugs because he had *previously* trafficked in capital amounts of methamphetamine, but to evaluate *his* defence that he had historically been willing to collect no more than 250g of methamphetamine. Reduan himself

implicitly recognised the significance of his past dealings with Ahmad to his defence – at trial, he directed the court's attention to a message that he had sent to "Ijai" on 16 August 2016, stating "the most I can kick 250".

25 One particularly incriminating text message was sent by Reduan to Nazeeha on 14 July 2016:

> Plz pray for me….and forgive me for the sins that i do it to u…..Ong sounds different…but i try…*to take the 1kg frm him*…if happen i get caught…plz tell all my bro that u knew…it because of Ong.let him die [emphasis added]

26 Reduan admitted at trial that the above text message was meant to inform Nazeeha that he would be collecting 1kg of "ice" (*ie*, methamphetamine) from Tan. He claimed, however, that he had only sent Nazeeha that message in order to persuade her not to abort their baby. His account flies in the face of logic – quite apart from the fact that the message contained no reference to their relationship or their baby whatsoever, Reduan was unable to coherently explain how such a message would have persuaded Nazeeha not to abort their baby. Indeed, Reduan's explanation was unsupported by Nazeeha, who testified instead that she had not understood the meaning of Reduan's message at the time.

27 In addition, Reduan sent Nazeeha the following text message on 18 September 2016:

> tom: 5-$300
>
> yan: 12.5-$500 ($400 cash $100 debt)
>
> ***Ijal: 500- $12500***
>
> Mark Tony: 2 - $200
>
> Jepon: 25- $850 ( Cash $100 & Debt $750)
>
> Black: .5 ($70)

Ben: .5 $50

Homer: 5 $400

[emphasis added in bold italics]

28 Reduan accepted that "Ijal: 500- $12500" meant that "Ijal" had ordered 500g of "ice" at $12,500. However, he asserted that the customers listed in his 18 September 2016 message to Nazeeha were not his customers but "Mambo's" customers. The Judge found Reduan's claim to be thoroughly unpersuasive as his message was a response to Nazeeha's request to him for a "sales update", and there was no reason for Reduan and Nazeeha to discuss *Mambo's* customers (see the GD at [77(b)]). We see no reason to depart from the Judge's finding.

29 As mentioned at [24] above, Reduan relied on a text message stating "the most I can kick 250" that he had sent to "Ijai" on 16 August 2016, in support of the alleged 250g Arrangement. As the Judge noted, however, that message had to be read in its proper context:

| | |
|---|---|
| Reduan: | bro at night come in |
| Reduan: | how many to standby |
| Reduan: | *because many order* |
| Ijai: | Ok nice |
| Ijai: | I collect order ok |
| Reduan: | let me know how much |
| Reduan: | so can book for u |
| Ijai: | Can u pass me 500 pay u half den other half tmr cn? |
| Ijai: | If ok give gd price cn |
| Reduan: | the most I can kick 250 |
| Ijai: | Ok |
| Reduan: | *because 1 stick is another customer's* |
| Ijai: | I take 250 |

> Reduan: ok
>
> Ijai: Ok
>
> [emphasis added in italics]

30 Far from corroborating Reduan's account as to the existence of the 250g Arrangement, the text messages between Reduan and "Ijai" suggest that Reduan comfortably dealt in more than 250g of methamphetamine at once. Reduan agreed to supply "Ijai" with only 250g of methamphetamine not because he had a policy against dealing in more than 250g of methamphetamine, but because he had "many order[s]" and "1 stick is another customer's". The fact that Reduan agreed to sell "Ijai" 250g of methamphetamine despite having other customers points to the conclusion that Reduan routinely dealt in more than 250g of methamphetamine.

31 Third, Reduan claimed that on *every* prior occasion that he received drugs from Ahmad, he would *immediately* conduct a visual check or weigh the drugs to ensure that the quantity of methamphetamine did not exceed 250g, with Tan waiting outside his car to take away any excess methamphetamine. According to him, however, he did not have time to check the weight of the Drugs – he was sleeping when Nazeeha returned to the Flat with the Daia Box, and the Flat was raided by officers from the Central Narcotics Bureau ("the CNB") shortly thereafter.

32 In our judgment, the crucial point is that Reduan's conduct indicated that he *did not intend* to verify the weight of the Drugs immediately. Reduan testified that after instructing Nazeeha to collect the delivery from Tan, he had gone to the toilet before returning to bed. When Nazeeha returned to the Flat, she placed the Paper Bag (containing the Daia Box) in the living room and joined him in the bedroom. This lack of urgency on Reduan's part is inconsistent with his own

account of his *modus operandi*, and is inexplicable given that he was already in possession of half of his purported limit.

33 Furthermore, the unusual nature of the 23 September 2016 transaction should have made Reduan more, not less, eager to check the weight of the Drugs. Reduan testified that that transaction was the first time that he had taken delivery of drugs on behalf of *Ahmad's* customer instead of receiving drugs that he (Reduan) had ordered for *his own* customers. All of Reduan's previous drug deliveries from Ahmad had involved consignments of drugs meant for Reduan's own customers. If Reduan was already in the practice of scrupulously inspecting each drug delivery from Tan that was meant for his own customers (whose drug orders Reduan would have taken and therefore known), it beggars belief that Reduan was nonchalant as to the weight of the Drugs. One can only infer that the 250g Arrangement did not exist.

34 When confronted with the fact that he had gone back to sleep instead of verifying the weight of the Drugs, Reduan retreated to asserting that he did not check the weight of the methamphetamine as he trusted Ahmad. This assertion was of little assistance to his case – after all, he had allegedly taken pains to check the weight of every prior consignment of drugs from Ahmad *despite* trusting Ahmad. The unprecedented nature of the delivery on 23 September 2016 should certainly have made Reduan more anxious than usual about ensuring compliance with the purported 250g Arrangement. Reduan's own behaviour was thus inconsistent with the existence of the 250g Arrangement.

35 In this connection, Mr Chia referred us to the case of *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor*"). The appellant in that case was arrested with four wrapped bundles of drugs. Although he correctly identified that three of the four bundles contained erimin, ketamine and ecstasy

respectively, he claimed that he did not know that the fourth bundle contained diamorphine. His defence was that the bundles belonged to one "Tony"; that he had only ever assisted Tony in transporting controlled drugs that would not attract the death penalty; that Tony had assured him that the deliveries would not involve diamorphine; and that he trusted Tony. This court allowed the appellant's appeal against his conviction on the capital charge of importing diamorphine and convicted him on an amended non-capital charge (see *Khor* at [30]). Relying on *Khor*, Mr Chia submitted that the fact that Reduan trusted Ahmad supported the existence of the 250g Arrangement.

36 However, *Khor* can be distinguished from the present case in two respects. First, the Prosecution in *Khor* did not dispute that the appellant had assisted Tony in transporting only erimin, ketamine, "ice" and ecstasy on a significant number of prior occasions. Nor did it dispute that the appellant had sought assurances from Tony that the deliveries would not involve diamorphine as he was afraid of the death penalty (see *Khor* at [23]). The court thus found that the appellant had rebutted the s 18(2) presumption owing to "the ***cumulative*** effect of [his] *uncontroverted* evidence as to the *consistent pattern of conduct and his trust in Tony*" [emphasis in original in italics; emphasis added in bold italics] (see *Khor* at [27]; see also *Khor* at [29]). Clearly, the mere fact that the appellant trusted Tony *without more* would not have sufficed for the appellant to rebut the s 18(2) presumption. In contrast, Reduan and Ahmad had a consistent pattern of dealing in more than 250g of methamphetamine (see [25]–[30] above). In the absence of any explanation as to why the transaction on 23 September 2016 deviated from the purported 250g Arrangement, the fact that Reduan trusted Ahmad cannot negate the consistent pattern of conduct between both of them. Second, the appellant in *Khor* always adhered to Tony's instructions not to check the contents of the bundles as he trusted Tony (see

*Khor* at [6] and [25]). On the day of his arrest, he had likewise not opened the four bundles that he was arrested with. However, Reduan's alleged consistent practice, *despite* trusting Ahmad, was to immediately verify the weight of the drugs upon delivery. Unlike the appellant in *Khor*, who had acted in accordance with his usual practice, Reduan's behaviour in not checking the weight of the Drugs was an unexplained departure from his alleged *modus operandi*.

37 Fourth, if Ahmad and Reduan had in fact agreed that the latter would receive no more than 125g of methamphetamine on 23 September 2016, there was simply no reason for Ahmad to send Reduan *eight times* the amount of methamphetamine (in terms of gross weight) that Reduan had purportedly agreed to receive. Reduan did not provide any satisfactory explanation for this. Nor did he suggest that Ahmad had on previous occasions provided him with more methamphetamine than he had agreed to receive. Mr Chia contended that the 250g Arrangement was supported by Tan's statement of 4 October 2016, in which he stated that he had been informed by Ahmad, on the morning of 23 September 2016, that the Daia Box contained "only a small amount of *bing*" (*ie*, methamphetamine). However, what Ahmad told *Tan* provides relatively weak support (if at all) for the existence of the 250g Arrangement between Ahmad and *Reduan*. It seems to us that Ahmad had told Tan that the Daia Box contained "only a small amount of *bing*" to allay any fears he might have had about delivering the Drugs to Reduan. After all, Tan's evidence was that he had been reluctant to deliver the Daia Box to Reduan; although he had previously delivered drugs within Singapore, 23 September 2016 was the first time that he had brought drugs into Singapore from Malaysia. In the circumstances, we find that the 250g Arrangement was nothing but a mere concoction or fabrication by Reduan.

38 Finally, we deal with Mr Chia's submission that the Prosecution failed to cogently explain why Ahmad was neither called as a Prosecution witness nor charged alongside Reduan in respect of the transaction on 23 September 2016. As Ahmad simply made a blanket denial of any knowledge or involvement in any drug activities, his evidence was self-evidently unnecessary for the Prosecution to prove its case against Reduan. In any event, the Prosecution offered Ahmad as a witness to the Defence – Ahmad was called as a Defence witness and cross-examined. The allegation that the Prosecution should have called Ahmad as its *own* witness is therefore neither here nor there. Before us, Mr Chia argued that since Reduan had proffered the 250g Arrangement as his defence, the evidential burden had shifted to the Prosecution to call Ahmad as a witness. This appeared to be an oblique reference to the decision of this court in *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 ("*Beh*"), in which the court held that the Prosecution should have called the person under whose direction the appellant had trafficked drugs as a witness (see *Beh* at [64] and [71]). It should be noted, however, that the evidential burden shifted to the Prosecution *only* because the appellant in *Beh* had offered a defence that was "plausible" and "not inherently incredible" (see *Beh* at [80]). In contrast, Reduan's defence of the 250g Arrangement was implausible in the face of the objective evidence. The evidential burden thus remained squarely on him to rebut the Prosecution's case.

39 As for the claim that Ahmad was not charged for his role in the transaction on 23 September 2016, Deputy Public Prosecutor Terence Chua informed the Judge that Ahmad *had* been charged in relation to that transaction but that the Prosecution was proceeding on unrelated charges against Ahmad first. We add that any charging decisions in respect of Ahmad fall entirely within the purview of the Public Prosecutor, and that Mr Chia did not raise any

grounds to suggest an improper exercise of prosecutorial discretion as enshrined in Art 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint).

40 Although Reduan argued that the Judge accorded undue weight to Ahmad's denial of the existence of the 250g Arrangement and erred in preferring Ahmad's testimony to his, we do not think that the Judge in fact did so. She simply made the fair observation that the alleged 250g Arrangement was unsubstantiated by Ahmad and was mindful that Ahmad had disavowed any involvement in any drug transactions. Far from according "undue" weight to Ahmad's denial of the existence of the 250g Arrangement, it is clear to us that the Judge convicted Reduan primarily on the basis of his incriminating text messages, his failure to inspect the Drugs and his vacillating defence.

41 For the foregoing reasons, we find that the Judge rightly rejected the 250g Arrangement as an afterthought and accordingly dismiss Reduan's appeal against his conviction.

**Issue 2: Reduan's application to adduce further evidence**

42 We now turn to CM 34, which is Reduan's application to adduce fresh evidence in CCA 38. The fresh evidence in question are two police statements given by Ahmad on 14 October 2017 and 16 October 2017 ("the Statements"). In both of these statements, Ahmad denied involvement in any drug trafficking activities, including the transaction on 23 September 2016.

43 Mr Chia stated that the purpose of CM 34 was merely to place "the full picture in respect of [Ahmad's] … testimony" before the court. In our view, the Statements could not possibly have had any significant bearing on Reduan's conviction. First, there is no material difference between the contents of the

Statements and Ahmad's testimony at trial – he consistently maintained having never been involved in any drug trafficking activities. Given that the Statements do not alter the substance of Ahmad's evidence in any way, it is difficult to see how they assist Reduan in his appeal against his conviction. In other words, there is nothing in the Statements that is inconsistent with the non-existence of the 250g Arrangement.

44 Second, we consider the possible argument that the Statements show that Ahmad was not a credible witness and so no weight ought to be placed on his testimony that the 250g Arrangement did not exist. This argument was not raised in Reduan's written or oral submissions. Even if it had been raised, it would have gained little mileage. This was not a case where the Judge convicted Reduan on the basis of Ahmad's testimony or on an assessment of Reduan's and Ahmad's relative credibility. Instead, Reduan's conviction rests principally on his incriminating text messages, his failure to inspect the Drugs and the inconsistencies in his defence (see [40] above). Hence, even if Ahmad's testimony were disregarded entirely, Reduan's claim as to the existence of the 250g Arrangement would remain a bare assertion and the Judge would have been entitled to infer that the 250g Arrangement did not exist.

45 We therefore make no order on CM 34. We emphasise that nothing in the Statements would have made a difference to the outcome of CCA 38. Indeed, at the hearing before us, Mr Chia did not contend that the Statements were important or relevant to Reduan's conviction.

**Issue 3: Reduan's appeal against sentence**

46 Reduan does not challenge the Judge's finding that he was not a courier. In any event, the Prosecution did not tender a certificate of substantive

assistance in Reduan's favour. Accordingly, there is no scope for us to interfere with the mandatory death sentence imposed by the Judge. We therefore dismiss Reduan's appeal against sentence.

**Issue 4: Nazeeha's appeal against conviction**

47 Nazeeha's appeal against her conviction turns on the only element disputed at the trial below, *ie*, whether she had rebutted the presumption of knowledge under s 18(2) of the MDA. The Judge rejected Nazeeha's defence that she had believed she was collecting groceries from Tan. We uphold the Judge's finding that Nazeeha had failed to rebut the s 18(2) presumption.

48 Before turning to the delivery on 23 September 2016, we first consider Nazeeha's knowledge of Reduan's involvement in drug trafficking. In our view, there is more than ample evidence to indicate that, prior to 23 September 2016, Nazeeha not merely suspected but in fact *knew* that Reduan trafficked drugs. This forms the relevant backdrop against which the delivery on 23 September 2016 should be viewed. On appeal, Nazeeha does not dispute that she knew that Reduan was involved in drug trafficking.

49 Nazeeha admitted at the trial below to believing, from August 2016 onwards, that Reduan was trafficking drugs. She testified that she had seen "a lot of drug in the house" and that she had witnessed Reduan pasting sticker labels on empty sachets. She also knew that the amount of methamphetamine in the Flat greatly exceeded the amount that Reduan needed for his own consumption. Whenever she asked Reduan if he was selling "ice", he would either deny doing so or refuse to answer her. However, she did not believe Reduan's denials and maintained her belief that he sold "ice". Even prior to August 2016, Reduan had messaged her on 14 July 2016 to inform her that he

would be collecting 1kg of "ice" from Tan. Her response, which was sent one minute later, was "*amek katne*", which according to her meant "fetch where" or "take from where". At trial, she claimed that she had not understood Reduan's message and that she had sent that reply because Reduan was supposed to fetch her that day. However, her explanation crumbled in the face of her text message to Reduan about 15min later: "*Da amek dari ong lom?*", which meant "Have you taken from Ong or not?". There is, in our view, no question that she fully understood that Reduan intended to collect 1kg of "ice" from Tan on 14 July 2016.

50 The evidence showed that Nazeeha was not merely privy to Reduan's drug trafficking activities but actively assisted in them. She initially attested to her role in keeping records of Reduan's drug transactions and admitted that Reduan had sent her records of his collecting money for drugs. Her testimony was corroborated by her text messages to Reduan, in which she repeatedly chased him for "sales update" and "sales". She then changed her testimony, claiming that she had merely been reminding Reduan about "debts" that he was meant to collect and that he "[did not] handle the drugs".

51 In our view, the Judge correctly dismissed Nazeeha's subsequent testimony that she had been reminding Reduan about "debts" that he had to collect rather than keeping track of his drug sales. First, Nazeeha clearly knew that "sales is not debt … Sales is when you sell something and then you collect money for selling something". As such, her claim that she had merely reminded Reduan of "[s]ales … of the debt that he's supposed to collect" was incoherent. Second, and as mentioned, Nazeeha initially testified that Reduan had sent her records of his "drug transactions" for "drug trafficking". Her attempt to draw a distinction between "collecting money" and "selling drugs" appeared to be nothing more than reluctance on her part to state affirmatively that Reduan was

involved in drug trafficking. Third, when Nazeeha chased him for updates on his drug sales, Reduan obliged by sending her various names, quantities and figures. Nazeeha confirmed that she had understood that such information related to drug activities.

52 Nazeeha's collection of the Daia Box from Tan on Reduan's instructions thus has to be viewed in the context of her well-founded belief that Reduan was trafficking drugs. Given the extremely unusual circumstances of the transaction, the fact that her suspicions were not aroused and she did not check the contents of the Daia Box leads us to infer that she knew that the Daia Box contained not groceries but methamphetamine.

53 The delivery on 23 September 2016 was, on Nazeeha's own account, atypical for a whole host of reasons. First, Nazeeha testified that she would tell Reduan what groceries she needed and that Reduan would then convey her order to Tan. However, she did not ask Reduan to get Tan to purchase groceries on their behalf prior to the delivery on 23 September 2016 – indeed, her own evidence was that it was for this very reason that she was "quite surprised" when Reduan instructed her to collect groceries from Tan that day. Second, when Nazeeha pointed out to Reduan that she had not ordered groceries, he did not tell her what the "*barang*" was and instead replied, "[j]ust a little bit". Reduan's response did not make much sense: it is unbelievable that Tan would have travelled all the way from Malaysia to Singapore just to deliver "a little bit" of groceries. Third, Reduan would always collect the groceries from Tan by himself and would only ask Nazeeha to do so if he was not in the Flat. It was not disputed that Reduan was in the Flat at the material time (although he claimed to have sent Nazeeha to meet Tan because he had a stomachache). As Nazeeha acknowledged, it was the first time that Reduan had sent her to collect groceries from Tan even though he (Reduan) was in the Flat.

54 Fourth, Tan had purchased only food items on their behalf on previous occasions. In this regard, we agree with the Judge's observation that Nazeeha never once mentioned in her statements or oral testimony that Tan had previously delivered "soap detergent box" to her until Mr Singh asked her a leading question. The Judge thus did not err in rejecting Nazeeha's evidence that Tan had previously delivered detergent to her, particularly as Nazeeha subsequently confirmed that the delivery of detergent was a departure from Tan's usual deliveries of food items. Fifth, Nazeeha agreed that the collection of the Paper Bag containing the Daia Box was unusual because "normally there will be other groceries and they will be in normal plastic bags". She repeatedly confirmed that Tan would normally deliver "three to four plastic bags" worth of groceries. In contrast, the delivery on 23 September 2016 was "different" as it concerned only ***one*** *Paper* Bag which contained *only* the Daia Box.

55 Sixth, as far as grocery deliveries were concerned, Reduan would leave roughly $200 in cash on the table (without placing the money in an envelope) for Nazeeha to pass to Tan as payment. Nazeeha testified that, prior to 23 September 2016, Reduan had never handed her an envelope instead of cash for her to hand to Tan upon collecting groceries from him. If she did not know that the Envelope contained money, as she claimed, it is curious that on 23 September 2016, she did not ask Reduan for money to pay Tan for purchasing and delivering groceries to them. In our view, this omission on Nazeeha's part strongly suggests that she knew that the Envelope contained money *and* that she was collecting methamphetamine, not groceries, from Tan.

56 Seventh, Tan had left the Paper Bag containing the Daia Box along a pavement for Nazeeha to collect instead of passing her the Paper Bag directly. This must surely have alerted her to the fact that the Paper Bag did not contain groceries. Before us, Mr Singh highlighted that it was Tan and not Nazeeha who

had left the Paper Bag along the pavement. That is, however, quite beside the point. What is crucial is that no one – not even Tan – would have delivered groceries by leaving them along the pavement. The method in which the "groceries" were delivered to Nazeeha once again made it abundantly clear that she was not in fact collecting groceries from Tan.

57 As Nazeeha acknowledged, practically everything about the delivery on 23 September 2016 was unusual and suspicious. Even if she had no reason to suspect that Tan was involved in drug activities, as she claimed, she had been instructed to collect "groceries" by Reduan, whom she had believed since August 2016 to be involved in drug trafficking. It is in this context that her claim that she had "no reason to [suspect] any wrongdoing" rings hollow. Yet, upon collecting the Paper Bag, and even upon returning to the Flat, it never occurred to her to check what the "groceries" *which she had not ordered* were. The only plausible reason for this is that she did not need to check what was in the Daia Box: she already knew that it contained methamphetamine.

58 As for the Envelope, we agree with the Judge that Nazeeha knew that it contained money. Reduan initially claimed that he had told Nazeeha to pass Tan $950. Subsequently, he changed his evidence and asserted that he had only told Nazeeha that the Envelope contained money but without specifying the amount. As the Judge noted, Nazeeha would have known on either of Reduan's accounts that the Envelope contained money. Furthermore, Tan maintained, for the large part, that Nazeeha had informed him that the Envelope contained $950, some of which was his "kopi" money. It is true that Tan's statements contained several inconsistencies as to what the money in the Envelope was for as well as the amount that Nazeeha had informed him was in the Envelope. However, the fact that Nazeeha had informed Tan that the Envelope contained *some* amount of money was a thread that ran consistently through Tan's statements.

59 A fact that severely undermined her case consisted in the words "Ong Salary for e Month September" which were written on the Envelope. On the stand, Nazeeha proffered a contorted explanation for why she did not see those words on the Envelope. She claimed that when she was collecting groceries from Tan, her vision was blurry as she had slept with her contact lenses on. Yet, after waking up and before meeting Tan, she changed the password on Reduan's phone without difficulty and saw Tan's name appear on Reduan's phone when Reduan received Tan's call. Backed into a corner, she then asserted that she could not see the words on the Envelope at the material time as the handwriting was "faint". Her claim quickly fell apart when a photocopy of the Envelope was produced in court and the words written thereon were shown to be clearly visible, as she reluctantly conceded in court. It is clear to us that Nazeeha had fabricated various reasons in support of her claim that she did not see the words on the Envelope in order to disavow any knowledge of the Drugs. As she admitted, the words "Ong Salary" would have aroused suspicion on her part as they implied that Tan was working for Reduan. We are thus satisfied that Nazeeha knew that the Envelope contained money and that her claims to the contrary were simply attempts to distance herself from the delivery of the Drugs.

60 Mr Singh made several points in an effort to persuade us that Nazeeha did not know that the Daia Box contained drugs. He highlighted that Reduan had maintained that Nazeeha did not know that the Daia Box contained methamphetamine, that Tan did not know if Nazeeha had been aware of what the Daia Box contained, and that Nazeeha had consistently denied knowledge of the contents of the Daia Box. He further contended that if Nazeeha had known that she was collecting drugs from Tan, she would have acted more anxiously upon collecting the Paper Bag – instead, she proceeded to smoke a cigarette and checked Reduan's car for signs that he was having affairs with other women.

61 As against all of these contentions, it is important to bear in mind that Nazeeha was *presumed* to have knowledge of the nature of the Drugs under s 18(2) of the MDA. Accordingly, the burden was on Nazeeha to prove on a balance of probabilities that she did not know the nature of the Drugs. Her denial of any knowledge of the Drugs, as well as the fact that Tan and Reduan did not implicate her, are insufficient for her to discharge her burden of proof in the face of the overwhelming evidence that she was aware that the Daia Box contained methamphetamine. In the light of Nazeeha's knowledge of Reduan's drug trafficking activities and the highly suspicious circumstances of the 23 September 2016 transaction, the fact that Nazeeha appeared somewhat blasé about the collection speaks only to her belief that she would not be caught and not to her belief that the Daia Box contained groceries.

62 We deal with a final submission that was made by Mr Singh. He argued that Nazeeha's knowledge of Reduan's drug trafficking activities since August 2016 did not "inexorably" lead to the conclusion that Nazeeha knew that the Daia Box contained drugs. In this regard, he relied on the case of *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 ("*Gopu*"). In *Gopu*, the authorities discovered three bundles of drugs concealed in a space enclosed by the fenders of a motorcycle driven by the appellant through the Woodlands Checkpoint. The appellant appeared confused and lost when confronted with the drugs and denied ownership of the drug bundles. His defence at trial was that he did not know that there were drugs hidden in the motorcycle because they had been planted there without his knowledge. He claimed that he had borrowed the motorcycle from one "Ganesh" by collecting it from one of Ganesh's associates, "Ah Boy". Although the appellant admitted that he had delivered drugs for Ganesh on two previous occasions, he denied having any

knowledge of the drugs on this occasion. The appellant was convicted at trial but was eventually acquitted by a 2-1 majority of the Court of Appeal.

63 In our view, *Gopu* is ultimately of little assistance to Nazeeha's case for three reasons. First, the defence offered by the appellant in *Gopu* was not unbelievable. The majority of the Court of Appeal held that it was not implausible that the appellant had driven the motorcycle into Singapore on an impromptu basis hoping to meet his friend or his girlfriend (see *Gopu* at [90]). Furthermore, in a follow-up operation conducted by the CNB, the appellant was directed by the CNB officers to ask Ganesh why he had put the drugs in the motorcycle without informing him. In response, Ganesh *acknowledged* that the appellant did not know about the drugs, sought the appellant's forgiveness and asked the appellant to bring the motorcycle back to Malaysia (see *Gopu* at [62], [63] and [68]). Accordingly, the majority of the Court of Appeal was satisfied that the appellant had rebutted the presumption of possession under s 21 of the MDA by proving that he did not know that the drugs were hidden in the motorcycle to begin with. In contrast, Nazeeha's defence that she thought she was collecting groceries from Tan was wholly fanciful for the reasons set out at [53]–[59] above, and she hence failed to rebut the presumption of knowledge under s 18(2) of the MDA.

64 Second, Mr Singh cited [54] of *Gopu* where the court stated: "we do not think that it would be proper or fair to impute the requisite level of knowledge to the [a]ppellant on the basis of a phone call from Ganesh that made the [a]ppellant suspicious, when nothing was said to confirm the presence of drugs in the [m]otorcycle". It is, however, crucial to appreciate that the disputed presumption in *Gopu* was that of *possession* under s 21 of the MDA. The presumption of *possession* under s 21 of the MDA would be rebutted if the appellant proved, on a balance of probabilities, that he did not know that the

drugs were hidden in the motorcycle. In contrast, what is disputed in Nazeeha's case is the presumption of *knowledge* under s 18(2) of the MDA. Mr Singh submits that the Judge erred in concluding that Nazeeha knew that the Daia Box contained Drugs *simply because* she knew of Reduan's prior involvement in drug trafficking. With respect, Mr Singh's submission is inaccurate. Nazeeha's knowledge of the nature of the Drugs was *presumed* under s 18(2) of the MDA – the Judge merely found that the presumption was unrebutted as Nazeeha's defence that she believed she was collecting groceries from Tan was incredible.

65 Third, Mr Singh referred us to the conclusion of the majority of this court that the trial judge had erred in concluding that there was a prior arrangement among Ganesh, Ah Boy and the appellant to deliver the drugs on the day in question (see *Gopu* at [76]–[81]). As mentioned, however, what was in issue in *Gopu* was the s 21 presumption and not the s 18(2) presumption; the s 18(2) presumption clearly applies even when there is no evidence of a prior arrangement among the parties to traffic drugs. Given that Nazeeha's knowledge of the Drugs was presumed, as well as the highly suspicious circumstances of the transaction on 23 September 2016, the fact that there was no explicit, prior arrangement amongst Tan, Reduan and Nazeeha in respect of the Daia Box delivery is inadequate to rebut the s 18(2) presumption.

66 We thus find that the Judge rightly rejected Nazeeha's defence that she believed she was collecting groceries from Tan on 23 September 2016. It follows that Nazeeha has failed to rebut the presumption of knowledge under s 18(2) of the MDA and we therefore dismiss her appeal against conviction.

**Issue 5: Nazeeha's appeal against sentence**

67 Nazeeha contends that her sentence of 24 years' imprisonment is manifestly excessive. She argues that the Judge failed to give sufficient weight to the following factors: (a) she was not recruited by Reduan in his illegal drug activities; (b) she did not receive any monetary benefit for her role; (c) the Drugs were not transported in a sophisticated manner to avoid detection; and (d) she had no previous convictions and had co-operated with the authorities. Nazeeha submits that an appropriate sentence would be 20 years' imprisonment, which is the mandatory minimum.

68 In our view, all of the above factors were properly considered by the Judge (see the GD at [113]). Nazeeha's sentence of 24 years' imprisonment is also consistent with the sentencing precedents (see the GD at [112]). Given that the amount of methamphetamine reflected in the amended charge against Nazeeha fell just short of the capital threshold, and in the absence of any significant mitigating factors, it would not be appropriate to impose the mandatory minimum sentence of 20 years' imprisonment. Moreover, in the light of evidence indicating that Nazeeha had actively assisted Reduan in his drug trafficking by keeping records of his drug transactions and chasing him for sales updates, we agree with the Prosecution that the sentence of 24 years' imprisonment can, in fact, be said to be relatively lenient.

69 In the circumstances, Nazeeha has failed to show that the sentence of 24 years' imprisonment is manifestly excessive. We therefore dismiss her appeal against sentence.

**Conclusion**

70 For the reasons set out above, we dismiss Reduan's and Nazeeha's respective appeals against their convictions and sentences.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Chao Hick Tin
Senior Judge

Daniel Chia Hsiung Wen (Morgan Lewis Stamford LLC) and Ng Wai Keong Timothy (Timothy Ng LLC) for the appellant in CA/CCA 38/2019 and the applicant in CA/CM 34/2020;
Dhillon Surinder Singh and Suppiah Krishnamurthi (Dhillon & Panoo LLC) for the appellant in CA/CCA 39/2019;
Terence Chua, Jaime Pang, Shana Poon and Heershan Kaur (Attorney-General's Chambers) for the respondent in CA/CCA 38/2019, CA/CCA 39/2019 and CA/CM 34/2020.