IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 145

Criminal Case No 13 of 2017

Between

Public Prosecutor

… Public Prosecutor

And

GOBI a/l AVEDIAN

… Accused

GROUNDS OF DECISION

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

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v
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Lee Seiu Kin J

Introduction

1 The accused claimed trial to one charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). He was charged with importing two packets of diamorphine containing not less than 905.8g of granular substance, which were analysed and found to contain not less than 40.22g of diamorphine.

2 It was not disputed that the accused had brought in the two packets of diamorphine. The only issue before me was whether the accused had rebutted the presumption of knowledge under s 18(2) of the MDA. The accused testified that he thought the drugs were a form of mild controlled drug mixed with chocolate. The Prosecution submitted that the accused knew or was wilfully blind as to the nature of the drugs. After hearing the evidence and the parties'

submissions, I believed the accused's account. I therefore exercised my power under s 141(2) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to convict him on a reduced charge of attempted trafficking of a Class C controlled drug. I now give the reasons for my decision.

The charge

3 The accused was charged as follows:

> That you, GOBI A/L AVEDIAN, on 11 December 2014, at about 7.50 pm, at Woodlands Checkpoint, No.: 21 Woodlands Crossing, Singapore, on a motorcycle bearing Malaysian registration number JQL 3650, did import into Singapore a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), ***to wit***, by having in your possession for the purpose of trafficking, **two packets containing a total of not less than 905.8 of granular substance which was analysed and found to contain a total of not less than 40.22 grams of diamorphine**, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 7 of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed) and punishable under s 33(1) of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed).

Agreed facts

4 The following statement of facts was agreed by the parties:

> **Introduction**
>
> 1 The accused is one Gobi A/L Avedian, a 28 year old male Malaysian citizen (Date of Birth: 7 April 1988), bearing FIN No. [xxx] (the "**Accused**").
>
> **Facts pertaining to the arrest**
>
> 2 At about 7.50 pm on 11 December 2014, the Accused rode a motorcycle bearing Malaysian registration number JQL 3650 (the "**Motorcycle**") from Malaysia into Singapore via Woodlands Checkpoint at No. 21 Woodlands Crossing. Riding pillion with the Accused was one Chandra Mohan A/L Superamaniam ("**Chandra**").

3 Acting on intelligence received, officers from the Immigration and Checkpoint Authority (the "**ICA**") stopped the Accused when he tried to clear the immigration lane for motorcycles at the Primary Counter Area. This was because the Accused had been classified as a person of interest prior to his arrival in Singapore. Thereafter, a team of Central Narcotics Bureau ("**CNB**") officers were notified of the Accused's arrival and they proceeded to the Primary Counter Area to interview both the Accused and Chandra (collectively, the "**Accused Persons**").

4 Both Accused Persons were interviewed by CNB officer W/SSgt Ritar Diayalah ("**W/SSgt Ritar**") in the Tamil Language. They were then escorted into a nearby empty garage for a strip search by CNB officers, during which nothing incriminating was found on them. Thereafter, the CNB officers turned their attention to the Motorcycle. W/SSgt Ritar asked the Accused in Tamil if he had any contraband items in the Motorcycle to declare and he answered in the negative. A search was then conducted on the Motorcycle and halfway through the search, the Accused suddenly admitted to W/SSgt Ritar in Tamil that there were 'things' hidden inside the Motorcycle. The Accused directed the CNB officers' attention to the rear compartment underneath the seat of the Motorcycle, and after unscrewing a small flap covering the inner compartment of the Motorcycle, two black bundles were recovered inside the Motorcycle in the presence of the Accused Persons.

5 The two black bundles were then placed into individual polymer bags and marked as 'A1' and 'A2' respectively. CNB officer Senior Staff Sergeant Samir Bin Haroon ("**SSSgt Samir**") then took over custody of the two black bundles before passing them to Assistant Superintendent Victor Tan Jin Yuan ("**ASP Victor**"), who in turn handed over the two black bundles to Investigation Officer Inspector Tan Soo Kin ("**IO Tan**") when they had subsequently returned to the CNB Headquarters on 12 December 2014 at about 1.52 am.

6 In the meantime, inside interview room B308 at the CNB office at the Woodlands Checkpoint, W/SSgt Ritar recorded the following statements from the Accused voluntarily and without any threats, inducements or promises:

a. A Mandatory Death Penalty Notice statement dated 11 December 2014 at 10.20 pm.

b. The first contemporaneous statement dated 11 December 2014 at 10.35 pm.

c. The second contemporaneous statement dated 11 December 2014 at 10.55 pm.

Events inside the CNB Headquarters

7 Thereafter, the Accused Persons were escorted from Woodlands Checkpoint to the CNB Headquarters, arriving at about 1.52 am on 12 December 2014. Arrangements were then made for the seized exhibits to be photographed in the presence of the Accused Persons by officers of the CNB Forensic Response Team ("**FORT**").

8 At about 2.03 am, the first bundle (marked as 'A1') was placed on top of a piece of brown paper to be photographed. It was wrapped with black wrapping. A FORT officer proceeded to take photographs of it. Thereafter, another FORT officer cut open the black wrapping to reveal a clear plastic packet containing brown granular substance. The clear plastic packet was marked as 'A1A'. Further photographs were then taken of exhibit 'A1A' and another FORT officer then took DNA swabs off the black wrapping and outer layer of the clear plastic packet and handed these swabs to IO Tan, who sealed them individually in polymer bags.

9 The process was then repeated for the second bundle (marked as 'A2'). This exhibit was placed on top of a piece of brown paper to be photographed. It was wrapped with black wrapping. A FORT officer proceeded to take photographs of it. Thereafter, another FORT officer cut open the black wrapping to reveal a clear plastic packet containing brown granular substance. The clear plastic packet was marked as 'A2A'. Further photographs were then taken of exhibit 'A2A' and another FORT officer then took DNA swabs off the black wrapping and outer layer of the clear plastic packet and handed these swabs to IO Tan, who sealed them individually in polymer bags.

10 During this time, both Accused Persons were observing the photo-taking and DNA swabbing processes with facemasks over their faces to avoid potentially contaminating the abovementioned exhibits. Photographs taken of the said exhibits are set out as follows: …

11 At about 6.04 am, the Accused Persons were escorted to the exhibit management room at level 3 of the CNB Headquarters to witness the weighing of the exhibits. IO Tan weighed the exhibits in their presence, one bundle at a time. The Accused and Chandra were shown the weights of both the exhibits and they were asked to read out the readings from the weighing scale after each exhibit was weighed. After that, IO Tan would record the results in the exhibit management room log book and in his Investigation Diary. Thereafter, the Accused

Persons countersigned against the entries in the log book together with IO Tan.

12 Thereafter, the Accused was escorted to Interview Room 1 at the CNB Headquarters for his statement to be recorded by IO Tan. Assisting IO Tan with the interpretation was Tamil Interpreter Madam Malliga Anandha Krishnan ("**Mdm Malliga**"). A statement recorded pursuant to section 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) dated 12 December 2014 from 6.24 am to 6.47 am. was then taken from the Accused. It was recorded voluntarily from the Accused and without any threats, inducements or promises.

13 Two days later, on 14 December 2014, IO Tan recorded a statement pursuant to Section 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) from the Accused with the assistance of Mdm Malliga. The statement recording took place between 4.53 pm and 8.26 pm. It was recorded voluntarily from the Accused and without any threats, inducements or promises.

14 The next day, on 15 December 2014, IO Tan recorded a further statement pursuant to Section 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) from the Accused with the assistance of Mdm Malliga. The statement recording took place between 6.22 pm and 6.38 pm. It was recorded voluntarily from the Accused and without any threats, inducements or promises.

Forensic and DNA analysis

15 On 12 December 2014 at about 10.18 am, 10 Tan submitted two exhibits, which were sealed in a tamper-proof bag and marked "A1A" and "A2A" respectively, to the Health Sciences Authority (the "**HSA**") for analysis.

16 On 18 December 2014 at about 1.06 pm, 10 Tan submitted seven exhibits sealed "GOVERNMENT OF THE REPUBLIC OF SINGAPORE" and marked "A-SW", "A1", "A1-SW", "A1A-SW", "A2", "A2-SW" and "A2A-SW", to the HSA DNA Profiling Laboratory for analysis.

17 Hu Yuling Charmaine, an analyst with the Illicit Drugs Laboratory of the HSA, conducted the drug analysis while Dr. Lee Li Yen Candy, an analyst with the DNA Profiling Laboratory of the HSA, conducted the DNA analysis. The results of their analysis are set out in the following table: …

Further Investigations

18 IO Adam bin Ismail recorded a further statement pursuant to Section 22 of the Criminal Procedure Code (Cap 68,

2012 Rev Ed) from the Accused with the assistance of Mdm Malliga. The statement recording took place on 15 June 2015 between 11.00 am and 12.15 pm. It was recorded voluntarily from the Accused and without any threats, inducements or promises.

19 Further investigations also revealed that when the Accused took possession of the exhibits 'A1A' and 'A2A' whilst he was in Malaysia, he knew that both clear plastic packets contained drugs and he had assisted to wrap both clear plastic packets using material from a black rubbish bag, and both clear plastic packets then took the form of 'A1' and 'A2'. Thereafter, the Accused unscrewed a panel cover that was at the back of the Motorcycle's storage compartment located under the Motorcycle's seat. He then placed 'A1' and 'A2' behind the panel cover and rode the Motorcycle into Singapore on 11 December 2014.

20 In view of the foregoing, the Accused had therefore imported not less than 40.22 grams of diamorphine into Singapore, and he had the said 40.22 grams of diamorphine in his possession for the purposes of trafficking.

21 The accused is not authorized under the Misuse of Drugs Act (Cap. 185, 2008 Rev Ed) or the Regulations made thereunder to import into Singapore 40.22 grams diamorphine or to have the same in his possession for the purposes of trafficking.

22 The Prosecution and the Defence further agree for the conditioned statements and documentary exhibits in the Agreed Bundle along with all physical exhibits presently in the custody of the Investigating Officer (as set out in the annex hereto) are to be admitted as Prosecution exhibits without the need to call any witnesses to the stand to testify as to the same save for the following witnesses:

a. Dr. Alcantara Michelle Perez

b. W/SSGT Ritar Diayalah

c. SSSGT Samir Bin Haroon

d. Mdm Malliga Anandha Krishnan

e. INSP Tan Soo Kin

f. SSI Adam Bin Ismail

g. DSP Lim Wee Beng

> The above facts are not disputed and are agreed upon between the Prosecution and Defence pursuant to Section 267(1) of the Criminal Procedure Code (Cap. 68, 2012 Rev. Ed.).
>
> [emphasis in original]

Accused's evidence

5 The accused's evidence was that he had never heard of the word "diamorphine", "heroin", nor any of the street names for that drug before. He was told that the drug he was to bring into Singapore was called "chocolate". Although he knew that the items were illicit drugs, he only agreed to do it because his daughter had a growth in her jaw and required treatment. She had undergone an earlier operation but the growth grew back again. The accused said that he required the money for the operation because his salary was very low but the hospital bills were very high.

6 The accused gave evidence that he first approached his friend, Guru, who introduced him to Vinod. It was Vinod who told the accused about the delivery of the "chocolate". Both Vinod and Guru met the accused at a restaurant where the accused asked Vinod about this delivery. Vinod assured the accused that "it is only chocolate drugs and that it is an ordinary drug". Vinod further told the accused that if he were caught he would either be fined or given light punishment.

7 However, the accused said that he initially refused because he thought that delivering drugs would be a problem. However, as the date of his daughter's operation grew closer and he was unable to get the money, he asked a close friend, Jega, about it. The accused said that Jega frequented clubs and discos. He told Jega that the chocolate drugs would be used in discos, and asked whether it would be a problem. Jega replied that if the drugs were to be used in

discos, it would not be a very dangerous drug. Upon Jega's assurance, the accused agreed to deliver the drugs for Vinod. The accused said that he believed that Vinod would not lie to him in the presence of Guru, who knew that he was doing this due to his pressing financial need.

8 Vinod called the accused about the delivery of the chocolate drugs. They were to be passed to him by Vinod's younger brother at "Petronas" which was near the accused's house at "Taman". The accused waited at the location with his motorcycle. When he first received the packets, they were wrapped in newspaper; the accused repacked them in a black bag. In the process of unwrapping and re-wrapping the packet he saw that its contents were in the "colour of chocolate", which is what he was told it had been mixed with. Once the accused received the packets he was instructed to go to Admiralty Station after entering Singapore and to wait there for a call. He was later told to pass the items to a person with a hunch. He had transported such items into Singapore eight or nine times; each time on the same motorcycle belonging to his relative, one "Suresh". He did not use his own motorcycle as it was under repair.

9 On the day the accused was arrested, he went to pick up Chandra before entering Singapore together. Chandra worked at the same place as the accused. Upon entering Singapore, he was arrested and his motorcycle was searched. He initially denied that there was anything hidden in it. It was only later that he told a "Tamil female officer" that there was "*jaman*" in the motorcycle, which is Tamil slang for "thing". The accused was asked about the items inside the packets once they were uncovered and he referred to them as "chocolate". According to the accused, the officers never mentioned the words "heroin" or "diamorphine" to him, even while recording his statements.

10 Finally, the accused gave evidence that he never mentioned Jega in his statements to the Central Narcotics Bureau ("CNB") officers because the investigation officer ("IO") did not ask him about it. The accused also did not mention in his statements that Vinod had stated that the potential punishment was just a fine or a small punishment because he was not asked that question.

Issues

11 As noted earlier, the sole issue was whether the accused had rebutted the presumption of knowledge under s 18(2) of the MDA.

Prosecution's case

12 The Prosecution submitted that the presumption of knowledge in s 18(2) of the MDA had not been rebutted by the accused. The Prosecution's case was essentially that the accused should have known that the packets contained drugs attracting the death penalty. The accused knew that he was bringing drugs into Singapore, even though he claimed that they were "chocolate" drugs. He was paid RM500 for each packet that he brought into Singapore. This was a relatively large sum given that all he needed to do was to bring the packets through immigration. He could make, in two trips, what his wife would have taken a month to earn. This job was especially suspicious since the persons he dealt with – Guru, Vinod, and Vinod's brother – were not closely acquainted with him. The accused only knew Guru personally, and even then Guru only became interested in him after learning about his financial situation. The Prosecution submitted that these were signs of a "drug syndicate" which should have put the accused on notice. As the accused knew that certain drugs could attract the death penalty, this ought to have made him highly suspicious.

13 The Prosecution further submitted that the accused did not take

sufficient steps to satisfy himself that these were not drugs attracting the death penalty. Although the accused did ask Vinod about the nature of the drugs, this was insufficient. The accused had no basis to trust Vinod with his life, having only meet him once.

14 It was also insufficient for the accused to consult Jega. The Prosecution submitted that the accused's claim that he consulted Jega was an afterthought, given that he did not mention Jega during the investigations and also did not call Jega to court to testify. In any event, the accused also had no reason to believe Jega, given that Jega gave his opinion without looking physically at the "chocolate" drugs, and the accused knew that Jega was no expert on drugs.

15 Instead, the Prosecution submitted that he could have tried to probe more into the opinions that Jega, Guru, Vinod, or Vinod's brother gave him. This was especially so since this was not the first time he had brought such packets into Singapore for Vinod; there were eight or nine other chances where the accused could have done so. The accused could also have "[tasted] the contents" of the packets during the five hours or so that he was alone with the drugs, but he did not. In this regard, the Prosecution referred to the Court of Appeal's recent decision in *Obeng Comfort v PP* [2017] 1 SLR 633 ("*Obeng Comfort*"), where the CA noted at [39] that:

> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. Similarly, *he would not be able to rebut the presumption as to knowledge by merely*

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

16 The Prosecution submitted that the accused was unable to "properly account" for his assertion that the drugs were "chocolate" drugs, and as such, his testimony should not be accepted.

17 The Prosecution further submitted that there was no other reasonable explanation for the accused's behaviour when he was arrested other than the fact that he knew the packets contained diamorphine. After the accused was arrested by CNB officers, Guru called him on his mobile phone. The accused was directed to pick up the phone. After the conversation the accused started crying, despite the fact that at that time, none of the officers had suggested that the packets contained diamorphine. The Prosecution submitted that there was a strong inference to be drawn that the accused knew that the "game was up". And as to the accused's explanation that he cried because he was handcuffed, the Prosecution submitted that if the accused truly believed that his punishment would be light, there was no need to cry.

Accused's case

18 Mr Shashi Nathan ("Mr Nathan") submitted that the s 18(2) presumption was rebutted because the accused was under the belief that the drugs were "chocolate" drugs: drugs that were normally used in discos, but mixed with chocolate. This could be seen from the accused's constant use of the term "chocolate" to refer to what was inside the packets. Mr Nathan submitted that

this was also corroborated by the Prosecution's own witnesses, all of whom admitted under cross-examination that neither they nor the accused had used the words "diamorphine", "heroin", or any other street terms for diamorphine.

19 Mr Nathan urged the court to accept the accused's testimony as he was a credible witness. The accused exonerated his pillion rider, Chandra, in his various statements even after being served with the warning on the mandatory death penalty. The accused was candid in admitting that he brought the drugs into Singapore. He also admitted that he had done so on eight or nine occasions previously, even though these facts would not have helped his case in the slightest. The accused also had good reasons why he agreed to transport drugs but would not have transported drugs attracting the death penalty: the accused's daughter required a third operation for her illness, and the combined salary of the accused and his wife would not have been enough to pay for the high medical costs after factoring in their daily expenses like rent. The accused decided to take a risk as the operation date, January 2015, drew closer and closer. But he would not have taken the risk of being sentenced to death as his family would be worse off if he were caught.

20 Mr Nathan acknowledged that even if the accused had no subjective knowledge of the nature of the drugs, he would still have to take steps to assure himself that they were not drugs which attracted the death penalty. But he submitted that the accused had taken those steps by seeking assurances from Vinod and by getting the opinion of a third party, Jega, who was not known to Guru, Vinod, or Vinod's brother. Although the accused did not know Vinod before he took on the job, he accepted Vinod's assurances because the latter was upfront about the fact that he was asking the accused to bring in drugs.

21 Further, Mr Nathan submitted that the accused did not just accept Vinod's assurances. The accused went further and checked with Jega, who was the only person he knew who frequented discos. Jega confirmed that if the drugs were commonly used in discos, they were unlikely to be dangerous. The accused had no reason to distrust Jega because Jega was his close friend and was not related to Vinod in the slightest. If Jega did not know about the drugs, he would have simply told the accused rather than risking the life of his close friend.

22 Mr Nathan disagreed with the Prosecution that Jega was an afterthought. The accused did not mention Jega in his statements because the recording officers did not bring up the issue. The statements were recorded in a question-and-answer fashion and so the accused only thought to answer the questions he was being asked. Jega did not testify in court because he was fearful of being stopped by the Singapore Customs upon his arrival, as he did not pay his tax when he was previously in Singapore. But he had initially wanted to come to testify. Mr Nathan tendered WhatsApp messages to that effect.

23 Finally, the accused also physically checked the packets. The packets were given to him by Vinod's brother wrapped in newspaper. The accused had peeled back the newspaper and discovered that the substances in the plastic packets were brownish in colour. This satisfied the accused that the contents of the packets were disco drugs mixed with chocolate, since he thought that typical drugs were white in colour.

24 Accordingly, Mr Nathan submitted that just as in *PP v Phuthita Somchit and another* [2011] 3 SLR 719 ("*Somchit*"), where the evidence showed that the accused intended to traffic a Class C drug but not a Class A or B drug, the court should acquit the accused on the charge as framed, but convict him on an

amended charge of attempting to import a Class C drug.

My decision

The law

25 By operation of s 18(2) of the MDA, the accused is presumed to have knowledge of the nature of the drugs that he is found to be in possession of. The issue is whether, on the evidence before me, the accused has successfully rebutted that presumption. The following observations by the CA in *Obeng Comfort* are instructive:

> 37 … The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, *the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities*. … To rebut the presumption in s 18(2), he must lead evidence to prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug.
>
> …
>
> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, *he should be able to say what he thought or believed he was carrying,* particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. *It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs*. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. Similarly, *he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry*. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. The presumption under

> s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of and to rebut this, he must give an account of what he thought it was.
>
> 40 *Where the accused has stated what he thought he was carrying ("the purported item"), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item.* This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country of receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. *Ultimately, what the court is concerned with is the credibility and veracity of the accused's account* (*ie*, whether his assertion that he did not know the nature of the drugs is true). *This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.*
>
> [emphasis added]

26 What this means is that in order to rebut the presumption, an accused person must convince the court, on a balance of probabilities, that he believed the item concerned was something other than what it is. It is in the nature of cases such as the present one that the only evidence an accused person can give is his own account in addition to whatever corroborative evidence he can muster. The court would analyse that account and any corroborative evidence to see if it is an internally consistent narrative and also whether it is consistent with all the facts and circumstances of the case. It must be borne in mind that such evidence of an accused person would be subjected to the rigours of cross-examination by the Prosecution during which his veracity would be tested. It is only at the end of this exercise that the court would be able to assess whether the accused has shown, on a balance of probabilities, that he did not know the

nature of the drug that was found on him.

27 Therefore, there is no "fixed formula" as to how an accused may discharge this burden: see *Harven a/l Segar v PP* [2017] 1 SLR 771 at [2], where the CA continued to say that:

> … It is the overall picture that emerges to the court which is decisive as the court is here concerned not with a scientific matter, but with the state of a person's mind. A factor which is considered to be critical in one case may not be so in another.

28 Although such an exercise is fact-specific, previous cases illustrated how certain factors may illuminate the court's decision. Mr Nathan made submissions on several cases and I will address these cases below.

29 The first case was *Khor Soon Lee v PP* [2011] 3 SLR 201 ("*Khor Soon Lee*") where the accused succeeded in rebutting the s 18(2) presumption on appeal. The accused had a good relationship with one "Tony" and acceded to Tony's requests to transport drugs. Before his arrest, the accused assisted Tony on multiple occasions to transport drugs which did not attract the death penalty. Each time Tony told the accused that the transported items were drugs. On the occasion leading to his arrest, the accused asked Tony if the drugs attracted the death penalty and Tony replied that they did not. The CA found no circumstances that made the incident different from the prior occasions. Accordingly, although the accused did not open the packet to check for himself, the CA held that the presumption was rebutted as there were no circumstances which put the accused on notice. However the CA noted that given the finely balanced facts, the case should not be used as a precedent.

30 In *Somchit*, the first accused was also acquitted of a charge of conspiracy to traffic in diamorphine. She had assisted her lover, the second accused, Quek

Hock Lye ("Quek"), to transport drugs into Singapore. When she asked Quek what the drugs were, he replied that they were "not serious" drugs. The court found that she had no reason to distrust Quek, since the latter provided for the first accused when she needed it the most, and professed his love for her and his intention to marry her. Quek gave the first accused money but because of their relationship, he would have given her the money anyway. The court found that it was not a situation where the accused suspected that something was amiss but deliberately chose not to make further enquiries. The court accepted her account based on the consistency of her evidence and her demeanour and found that the s 18(2) presumption was rebutted.

31 In contrast, the accused failed to rebut the presumption on appeal in *Dinesh Pillai a/l K Raja Retnam v PP* [2012] 2 SLR 903 ("*Dinesh Pillai*"). The accused was instructed by one "Raja" to deliver "food" wrapped in brown packets into Singapore. The accused's own testimony was that he suspected that the brown packets contained something illegal. But he did not take the simple step of checking the contents of the brown packets. The CA found that he had no basis for his eventual belief that the brown packets contained food.

32 Similarly, the two accused persons failed to rebut the s 18(2) presumption in *PP v Khartik Jasudass and another* [2015] SGHC 199 ("*Khartik Jasudass*"). The High Court noted that the accused persons knew from their supplier, one "Raja", that they were transporting drugs. They should have suspected Raja's assurances since he refused to disclose the nature of the drugs and threatened to harm the accused persons and their families if they did not comply with his wishes. They had time to inquire and could have checked with their colleagues as to the nature of such drugs. They could also have opened the packets themselves to check. But they did not take any of those steps, and hence

the presumption was not rebutted.

33 These authorities buttress the CA's observations in *Obeng Comfort*. They show that there is no fixed formula in evaluating the evidence and that it turns on "*the credibility and veracity of the accused's account*" (*Obeng Comfort* at [40]). And in such evaluation the court would consider what an ordinary person would do in the circumstances.

Finding of fact

34 Having considered all the evidence before me, I accepted the accused's account and found that he has rebutted the presumption under s 18(2) of the MDA. I set out my reasons below.

Consistency of the accused's evidence

35 The accused's position from the time of his arrest and throughout the trial was that he did not know that the packets contained diamorphine. Although he knew that the packets contained drugs, the accused maintained that he thought they were "chocolate" drugs, or drugs normally used in discos mixed with chocolate. He had taken this position in all of his recorded statements. This was confirmed by the evidence of the Prosecution's witnesses. Under cross-examination, Woman Staff Sergeant Ritar Diayalah ("PW19") and Senior Staff Sergeant Samir Bin Haroon ("PW24") confirmed that when they arrested the accused and were searching his motorcycle, he had only used the term "dadah" which was the generic Malay term for drugs, or "bodeh porul" which is Tamil for illicit drugs. They also said he referred to the two packages as containing "chocolate". The same evidence came from PW19, Inspector Tan Soo Kin ("PW33"), and Senior Station Inspector Adam Bin Ismail ("PW34"), when they

recorded all of the accused's statements. Indeed, none of them used the term "diamorphine", "heroin", or any other slang word used for diamorphine.

36 The only hint otherwise was the testimony of Malliga Anandha Krishnan ("PW32"), the Tamil interpreter, which was conflicting. In cross-examination, Mr Nathan questioned PW32 about why the word "diamorphine" or its equivalent was never found in the accused's statements:

> Q: So, I'm going to ask you just the last question. It must follow that at no time did the IO pose any questions to the accused that these drugs could be heroin. Otherwise you s--- for you, you certainly would have used that word again in the statements.
>
> A: No, Sir, never used.
>
> Q: He never used that word?
>
> A: I think he never use, that's why I never use---
>
> Q: Okay.
>
> A: ---that's why I never use in the statement also.
>
> Q: Fair enough. That's good enough.

37 Although PW32 had given clear evidence during cross-examination that the IO had never used the word "heroin", she gave a slightly different account in re-examination:

> Q: So I take it that you had to interpret this part of the charge in Tamil to the accused?
>
> A: Yes.
>
> Q: And how did you interpret the word "diamorphine"? Can you tell us again?
>
> A: For---I use as "heroin", Sir.
>
> Q: Okay. So you used the English word---
>
> A: English word, the---
>
> Q: Heroin?

A: ---"heroin" in the---for diamorphine.

Q: I see. And when you used the term "heroin" to the accused, did he understand you?

A: Yes, Sir, he could understand.

Q: Did he ask you to clarify what is the meaning of the word "heroin"?

A: No, Sir, heroin is a very common term. They can und---er---

Court: He didn't ask you, is it?

A: ---he could understand, Sir.

Court: He didn't ask you?

Witness: He didn't ask.

38 When the Prosecution put PW32's evidence to the accused in cross-examination, the accused stated that to his knowledge, PW32 never used the word "heroin" when she was reading him the charge. The Prosecution did not push the accused further on this point in cross-examination. What is left is therefore the accused's word against that of PW32. As her evidence in cross-examination and re-examination had been somewhat inconsistent, I did not find this aspect of the evidence of PW32 to be a reliable indicator of any lack of veracity on the part of the accused when his evidence is considered in its entirety.

39 The Prosecution challenged the consistency of the accused's account on other grounds. The Prosecution submitted that the accused's behaviour after he was arrested could only have been consistent with the knowledge that the drugs attracted the death penalty. This was because the accused started crying even before any officer informed him that the drugs in the packets attracted this punishment indicating that he knew that the "game was up". In contrast, Mr Nathan submitted that the accused cried as he was afraid of being arrested.

40 While I can accept that the accused cried as he knew that the "game was up", this begs the question as to what the "game" was. It does not mean that an ordinary person in the place of the accused would not be afraid of the consequences of being caught in those circumstances, even when a non-capital drug was involved. In the accused's case, there was further pressure as he desperately needed money for his daughter's operation which would be jeopardised by his arrest. Moreover, he was composed initially and it was only after Guru's conversation with the accused that he began crying. The accused was cross-examined by the Prosecution on this point and he explained it as such:

> Q: So were you crying because you knew that you had been caught with carrying heroin into Singapore?
>
> A: No, Your Honour.
>
> Q: Or was it because at this time you knew you may be facing the death penalty?
>
> A: No, Your Honour.
>
> Q: So why were you crying?
>
> A: Your Honour, the first time, whatever was happening around me was awkward. I had been handcuffed. Two officers were holding me by my hands. And I think there were two to three officers standing right in front of me. They were all very close to me, listening to what I was talking. When I called the second time, I told Guru as I was instructed and he was talking to me as never before. *He spoke to me as if he did know what I was talking about. The proximity and the way he spoke to me made me realise that sometime was wrong, that is why I cried***.**
>
> …
>
> Q: I see. So maybe can you tell us … Or, you know, what did he say that made you cry?
>
> A: Your Honour, I do not remember what he said exactly. However, he was responding as if he did not know what I was saying. For example, I was saying about one thing and he was talking about something else.
>
> …

> Q: Okay. So because Guru didn't say "okay" to you, this had contributed to you crying?
>
> A: No, that is not why I cried. *It was because the officers had caught me, handcuffed me. All of that made me scared, that is why.*
>
> [emphasis added]

41 I believed the accused's account that he had cried because he had been arrested by the CNB officers and Guru had essentially abandoned him. This is especially so, considered against the backdrop of an impending operation on his daughter for which he needed money (see below at [42]) and agreed to bring drugs into Singapore. These were stresses that could have operated on the mind of the accused even if he did not know that he was importing a drug that would attract the death penalty. Accordingly, I found that the accused's account of events was consistent internally in that there was no contradiction within his narrative. I also found that it is consistent with the evidence of the Prosecution's witnesses.

Demeanour

42 The accused had set out the circumstances under which he committed the offence. He related that his daughter suffered from a lower lip haemangioma. She had undergone two operations but both were unsuccessful. She needed a third one but, having incurred the medical fees from the previous operations and needing to provide for the daily needs of his family, he did not have sufficient funds to pay for it. The accused's wife also testified that the third operation would cost some RM40,000 and she only earned a monthly salary of RM2,500. This was what prompted the accused to ask Guru for a job. Guru then referred him to Vinod. At first the accused refused but, as the date of the operation drew closer, he became desperate. Even then, the accused said that he would never risk being sentenced to death as it would burden his family further.

43 The accused underwent a full day of cross-examination. Throughout this, he remained essentially consistent in his evidence. He was quick to admit it when he could not recall certain portions of his testimony. The accused was also forthright about the fact that he had previously trafficked other drugs into Singapore for Vinod's brother. This was even though such an admission was detrimental to his case in this trial. More importantly, the testimony of the accused had the ring of truth when he said that he believed the drugs were a mild form of drugs mixed with chocolate for used in discos. From his demeanour in the witness box, I found him to be a truthful witness.

Prosecution's contentions on the weaknesses in the evidence of the accused

44 The Prosecution submitted that rebutting the presumption in s 18(2) of the MDA required more than simply asserting a lack of subjective knowledge; the accused must show that he had taken reasonable steps if the circumstances gave him reason to doubt any assurances given by the drug supplier. The Prosecution submitted that although the accused received assurances from Vinod that the drugs were "not dangerous" and that the punishment he would receive if he were caught would be "light", this was not enough.

45 The Prosecution submitted that the accused should not have trusted Vinod, a person whom he had only met once and had only gotten to know over the course of this transaction. This was especially so since the accused would have gotten a relatively large sum of RM500 per packet – or about a month of his wife's salary – for doing relatively little work. Under cross-examination, the accused admitted that he did not ask Vinod or Vinod's brother what they meant by "chocolate" drugs. The accused further agreed that he was receiving a lot of money for something which took relatively little effort. The accused's response

was that he had no reason to doubt Vinod's answer because the latter had told him upfront that the items were drugs.

46 Mr Nathan submitted that the accused had not relied simply on the words of Guru or Vinod but had checked with his friend, Jega, who was not acquainted with any of them. The accused had also physically checked the packets and found them to be consistent with his belief that they were "chocolate" drugs. The accused's evidence was that Jega was his close friend, and the only friend he had who frequented discos. He approached Jega to ask about "disco drugs". Jega told him that if the drugs were used in discos, then there "should not be a problem".

47 The Prosecution submitted that Jega was an afterthought because the accused never mentioned Jega in any of his statements to the CNB, and neither did Jega testify at trial. When the accused was cross-examined as to why he did not mention Jega in any of his statements, his response was that he could not remember, and that the best he could posit was because the officers never asked him about Jega. In any event, the Prosecution submitted that consulting with Jega was insufficient since the accused never queried Jega further on why such drugs were not dangerous and Jega himself had never physically seen the drugs that the accused was to transport. Consulting Jega could not qualify to assuage the accused's concerns.

48 I was satisfied, on the evidence before me that the accused had attempted to get Jega to give evidence. The accused's wife testified in court about the close relationship between the accused and Jega. She also gave evidence that she tried her best to contact Jega to appear for the trial. Jega had initially agreed but later backed out due to fear of being arrested for failing to pay his taxes. This

evidence was supported by WhatsApp messages which she tendered to the court. The Prosecution did not challenge the veracity of these messages.

49 From this evidence Jega was clearly not a fictitious person. I was also satisfied that the accused's wife had tried to get Jega to testify in his defence but was prevented by Jega's personal circumstances. This supports the part in the accused's narrative that he had checked with Jega about the nature of the drugs that he was asked to bring into Singapore.

50 The Prosecution's ultimate submission appears to be that "the [a]ccused had no basis to trust the opinions of either 'Vinod' or 'Jega'".

51 Mr Nathan submitted that the fact that the accused had physically checked the packets supported his position regarding knowledge. The accused testified that the packets were initially wrapped in newspaper when they were given to him by Vinod's brother. The accused had to peel off the newspaper wrapping and re-wrap them in black bags. As the accused tore off the newspaper, he saw the substances contained in plastic covers. He saw through the transparent plastic and saw that the substance within was "in the colour of chocolate", which Mr Nathan said corroborated his belief that the drugs were mixed with chocolate. This was especially so since his conception of drugs, as he testified during evidence-in-chief, was that they were white in colour.

52 The Prosecution did not contest the accused's testimony on this point, but instead chose to cross-examine the accused on his failure to taste the contents of the packets. The accused admitted that he did not do so. The Prosecution submitted that the accused would have realised that the drugs in the packets were not chocolate if he had bothered to taste the contents of the packets.

53 In the end, there may be various points that the Prosecution can raise to poke holes at the defence, and points that the accused can raise to support it. What is crucial is whether in weighing the totality of the evidence, the court finds on a balance of probabilities that the accused's story, that he believed the drugs were not diamorphine but a mild form of disco drug that was mixed with chocolate, is credible. I found the evidence of the accused to be sufficiently consistent internally and with the evidence of the other witnesses notwithstanding the weaknesses pointed out by the Prosecution. Combined with his demeanour in the witness box, I found that the accused has succeeded in rebutting the presumption of knowledge.

Conclusion on whether the presumption was rebutted

54 For the reasons set out above, I found that the s 18(2) presumption was rebutted.

55 As the accused had admitted that he had imported illegal drugs which he believed was of a nature that did not attract the death penalty, I exercised my power under s 141(2) of the CPC and convicted him of the following charge:

> That you, GOBI A/L AVEDIAN, on 11 December 2014, at about 7.50 pm, at Woodlands Checkpoint, No.: 21 Woodlands Crossing, Singapore, on a motorcycle bearing Malaysian registration number JQL 3650, did attempt to import into Singapore a controlled drug under Class 'C' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), without any authorisation under the said Act or the Regulations made thereunder, *to wit*, by having in your possession for the purpose of importation, two packets containing a total of not less than 40.22 grams of diamorphine, which you believed was a controlled drug under Class 'C' of the First Schedule of the said Act, and you have thereby committed an offence under s 7 read with s 12 of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed) and punishable under s 33(1) of the Misuse of Drugs Act, (Cap 185, 2008 Rev Ed).

Sentence

The parties' submissions

56 This case is a unique one. The Prosecution has made out all the elements of the charge save for *mens rea*, leading to the court amending the charge. Both parties accepted that the only previous case to this effect was *Somchit*, and therefore both parties based their submissions on *Somchit*. But they differed as to how *Somchit* was relevant.

57 The Prosecution asked for a sentence of 16 years' imprisonment and ten strokes of the cane. The Prosecution asked the court to look at the whole range of possible sentences in coming to its decision, following the CA's reasoning in *Suventher Shanmugam v PP* [2017] SGCA 25 (at [26]). The range here was three years' imprisonment and five strokes of the cane at a minimum, to a maximum of 20 years' imprisonment and 15 strokes of the cane. The Prosecution submitted that 16 years' imprisonment and ten strokes of the cane – which would be about 80% of the maximum – was appropriate given the culpability of the accused.

58 To establish the culpability of the accused relative to the maximum sentence, the Prosecution relied on *Somchit*. The accused in *Somchit* was sentenced to nine years' imprisonment out of a maximum of ten years (for drug trafficking), which was about 90% of the maximum. The accused was sentenced to the upper range of the possible sentence because of her role in the drug operation. Not only was she an active participant in the sense that she actively packed the drugs, but she did so over a period of one month, and she even recruited a third party for the operation and directed the third party in conducting the operation (at [43]).

59 The Prosecution submitted that the accused's culpability was higher than Somchit for the following reasons:

(a) The accused was involved for two months and admitted to importing drugs on eight previous occasions. Somchit was only involved for one month.

(b) The accused was more actively involved than Somchit given that he not only helped to pack the drugs but also brought back its proceeds.

(c) The accused was motivated by money. It was irrelevant that the money went to the accused's daughter's operation since the crux is that the accused received a monetary benefit for his participation.

(d) The Prosecution acknowledged that the weight of drugs here was lower than that in *Somchit*, but said that this was offset by the eight previous occasions that the accused had imported drugs into Singapore. The Prosecution extrapolated the total weight of drugs to be 200g based on the present 40.22g and 20g for each of the previous eight trips.

60 However, the Prosecution also recognised that the accused had been driven to desperation, which is why it asked for a sentence of about 80% of the maximum sentence, as opposed to the situation in *Somchit*, where the accused was sentenced to 90% of the maximum sentence possible.

61 Mr Nathan initially asked for a sentence of eight years' imprisonment and six strokes of the cane, but later also added that if the court were not minded to impose a sentence that was lower in absolute terms than in *Somchit*, then the court should impose no more than ten years' imprisonment and six strokes of the cane. The main thrust of his submissions were that the court should take a

holistic view of the facts. He urged the court to give weight to the specific mitigating factors in this case: that the accused was driven to desperation by the costs of his daughter's operation rather than personally benefitting from the money; and that he fully cooperated with the authorities once he was arrested.

62 As for *Somchit*, Mr Nathan said that the accused's culpability was lower than that of Somchit, and therefore should receive a lower sentence in absolute terms. He considered the fact that drug importation had double the maximum sentence of drug trafficking to be an "anomaly". Mr Nathan submitted that the accused's role was much more limited in this case given that he did not recruit any third parties; and that the weight of the drugs in this case was lower than that in *Somchit*. Finally, Mr Nathan noted that Somchit herself was a drug abuser whereas the only motivation of the accused in this case was desperation from the needs of his daughter's operation. Somchit received nine years' imprisonment taking into account the fact that she was not liable for caning as a female. Mr Nathan submitted that the accused should be sentenced to less.

My decision

63 After considering both parties' submissions, I sentenced the accused to 15 years' imprisonment and ten strokes of the cane. The imprisonment is to be backdated to the accused's date of arrest on 11 December 2014.

64 In coming to this decision I consider first that Parliament had legislated for a maximum sentence of 20 years' imprisonment and 15 strokes of the cane for drug importation (of Class C drugs). This is far above the maximum sentence for drug trafficking (of Class C drugs) in *Somchit*, which was ten years' imprisonment and five strokes of the cane. In doing so Parliament clearly assessed that the threat of cross-border movement of drugs, even Class C drugs,

needed strong deterrence (*Singapore Parliamentary Debates, Official Report* (12 November 2012) vol 89 (Teo Chee Hean, Deputy Prime Minister and Minister for Home Affairs)):

> We deal with the drug problem comprehensively by tackling both the demand and supply factors. …
>
> …
>
> On the supply side, our enforcement efforts against drug syndicates have inhibited drug supply and pushed up the street price of illicit drugs in Singapore. This is significant, especially given our close proximity to major source countries, and the fact that some 500,000 travellers enter or pass through Singapore every day. …

65 This was further elaborated by Minister for Law K Shanmugam (*Singapore Parliamentary Debates, Official Report* (12 November 2012) vol 89 (K Shanmugam, Minister for Law)):

> Drug labs are proliferating in the region – Deputy Prime Minister spoke on this. Drug syndicates are sophisticated MNCs - Well financed, international networks, very smart people at the helm, making huge profits, access to people who are willing to act as couriers.
>
> Singapore is a highly attractive destination. We are a rich country. People can pay for drugs. We are a transport and tourism hub – 500,000 persons pass through or enter Singapore each day; 182 million each year. It is logical to use Singapore as a drug hub.
>
> …
>
> We take comprehensive measures against both supply and demand as explained by the DPM. …
>
> The result: … Drug kingpins avoid Singapore; there is no substantive production here. Couriers think twice before trying their luck, and they try to keep below the capital threshold – we know this from intelligence. We are not a transshipment hub, despite our connectivity. Drug prices are comparatively high; purity levels comparatively low.

66 These extracts indicate that Parliament was cognisant of the possibility that drug syndicates from "major source countries" may attempt to use Singapore as a "drug hub". The heavy sentences deter couriers from "trying their luck" and cause drug kingpins to avoid Singapore as a transhipment hub.

67 The intention of Parliament in providing for a much higher maximum punishment is clear. It is to deter any importation of drugs into Singapore which is a greater evil than mere trafficking of drugs within Singapore. Parliament clearly intended that punishment for importation should be much more severe to serve as an effective deterrent. This means that even if the accused's circumstances were otherwise similar to that of Somchit (which I will discuss later), the accused's sentence should not be pegged to the *absolute* sentence that I imposed on Somchit. This would defeat Parliament's intent in essentially doubling the maximum sentence for drug importation as compared to drug trafficking. Rather, a more appropriate approach would be the Prosecution's approach: to assess the accused's culpability in the present case against the worst possible drug importer, who would presumably receive a sentence at the top of the range. However, in doing so, I am also mindful that the sentencing process is not a science and each case must be assessed on its own facts. There is no magical or mathematical formula and I do not assess the accused's culpability as such.

68 Given the approach I have outlined, *Somchit* is relevant insofar as Somchit's culpability can also be benchmarked to the maximum sentence in that case. I can then compare this relative culpability (of Somchit) to the accused's culpability in this case. I consider that the circumstances of the accused and Somchit are similar. Both were involved in the drug operation on more than one occasion. Both benefitted from the operation. There were slight differences in

the amount of time spent within the operation and the weight of drugs trafficked but I do not think that this makes one much more culpable than the other.

69 However, the mitigating factors in this case merit closer consideration. The accused was motivated not by personal gain or greed, but by desperation arising from the need to raise money for his daughter's operation. This does not justify importing drugs into Singapore; indeed, one might say that there is still a need to deter those who are desperate from turning to drug syndicates to make quick money and in the process allow themselves to be taken advantage of. But this does differentiate the accused from persons who import drugs merely for quick and easy money. The Prosecution also acknowledged that this was a mitigating factor. I therefore took this into account in sentencing the accused.

70 Accordingly, taking into account all the circumstances in this case, I sentenced the accused to 15 years' imprisonment and ten strokes of the cane. This is at the higher end of the possible sentencing range to reflect the accused's culpability. The imprisonment is to run from the date of the accused's arrest on 11 December 2014.

Lee Seiu Kin
Judge

Muhamad Imaduddien and Clement Yong (Attorney-General's Chambers) for the Public Prosecutor;
Shashi Nathan, Tania Chin, and Jeremy Pereira (Khattarwong LLP) for the Accused.
