IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 135

Criminal Case No 11 of 2017

Between

Public Prosecutor

And

Abd Helmi bin Ab Halim

GROUNDS OF DECISION

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

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Public Prosecutor
v
Abd Helmi bin Ab Halim

[2017] SGHC 135

High Court — Criminal Case No 11 of 2017
See Kee Oon J
7–9, 14 February; 13, 15, 24 March 2017

1 June 2017

See Kee Oon J:

Introduction

1 The accused was charged under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for having in his possession a controlled drug for the purpose of trafficking. The controlled drug in question was not less than 16.56 grams of diamorphine, which is a Class A controlled drug listed under the First Schedule to the MDA. Four other drug-related charges were stood down at the commencement of the trial.

2 At the conclusion of the trial, I was satisfied that the Prosecution had proved the charge beyond a reasonable doubt. After delivering brief grounds for my decision to find him guilty, the accused was convicted and sentenced on 24 March 2017. I now set out the grounds of my decision in full.

The Prosecution's case

3 The Prosecution led evidence from 31 witnesses by way of their respective conditioned statements pursuant to s 264 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). Fourteen of these witnesses testified at the trial. In addition, 85 exhibits were tendered and admitted as evidence.

Arrest, seizure of exhibits and analyses

4 The background of the case was uncontroversial. The accused was a Malaysian national who was 32 years old at the time of the offence. At about 6.35 am on 9 April 2015, the accused rode his motorcycle bearing licence plate number JPX 3771 ("the Motorcycle") into the open-air car park of Block 123 Teck Whye Lane. The accused parked the Motorcycle at motorcycle lot A5 ("the Lot") and walked off in the direction of the nearby Keat Hong LRT station. At about 6.45 am, after the accused walked back towards the Motorcycle and sat down on a curb near the Lot, officers from the Central Narcotics Bureau ("CNB") moved in to arrest him. The accused put up a struggle and necessary force was used to effect the arrest. The CNB officers then conducted a search of the Motorcycle in the accused's presence. Amongst other items, one packet of brown granular substance ("Exhibit A2") and cash amounting to S$1,000 were recovered from the front basket compartment of the Motorcycle.

5 At about the same time, CNB officers arrested one Chua Kian Yong ("Chua") at the ground floor lift lobby of Block 119 Teck Whye Lane. The following items, amongst others, were recovered during a search conducted on Chua: a red plastic bag ("Exhibit D1") containing a "Lexus" biscuit wrapper with an inner plastic tray ("Exhibit D1A"), which in turn contained a packet of brown granular substance ("Exhibit D1A1").

6 The chain of custody of all the exhibits was not disputed. It was common ground that analysis of Exhibit A2 by the Health Sciences Authority ("HSA") revealed that it contained not less than 452.0 grams of granular/powdery substance which was found to contain not less than 16.56 grams of diamorphine. The results of the HSA's DNA tests were also not challenged by the accused. The accused's DNA profile was found on the interior of Exhibit D1 (the red plastic bag recovered from Chua) and the plastic tray of Exhibit D1A (the biscuit wrapper with an inner plastic tray recovered from Chua). In addition, the CNB officers seized five handphones from the accused. Records of phone calls and text messages from two of his handphones were also retrieved and adduced in evidence without any objections by the Defence.

7 In summary, the evidence pertaining to the accused's arrest, the seizure of the exhibits, the HSA analyses and the analyses of the accused's handphone records were generally not disputed. While the accused sought initially to show through his cross-examination of the CNB officers that he did not resist arrest but was nonetheless injured in the course of the arrest, the arresting officers confirmed that necessary force had to be used, and no serious challenge ultimately emerged from this point.

Statements recorded from the accused

8 In his statements, the accused essentially admitted to being in possession of all the drug exhibits which were brought into Singapore on the Motorcycle from Johor Bahru, Malaysia, where he resides, in the early morning of 9 April 2015. These included the diamorphine stated in the charge (*ie*, Exhibit A2) and the diamorphine ultimately found on Chua (*ie*, Exhibit D1A1), both of which had been wrapped inside a biscuit wrapper and contained within a red plastic bag, as well as packets of "ice" (street name for methamphetamine) kept under

the seat of the Motorcycle and in the accused's sling bag. The accused was delivering Exhibit D1A1 that morning to a male Chinese (later established to be Chua) at the designated location (*ie*, the open-air car park of Block 123 Teck Whye Lane located near Keat Hong LRT station).

9 The accused's various statements comprised a contemporaneous statement, a cautioned statement recorded under s 23 of the CPC, as well as three "long" investigative statements recorded under s 22 of the CPC. The Defence accepted that these statements had been given voluntarily and did not challenge their admissibility.

10 SSgt Muhammad Fardlie bin Ramlie ("SSgt Fardlie") recorded the contemporaneous statement from the accused at about 7.32 am on 9 April 2015, the day of the accused's arrest, inside a CNB vehicle parked at the car park of Block 123 Teck Whye Lane. In his contemporaneous statement, the accused admitted that Exhibit A2 was "panas", that his role was to "only send" it, and that, at the material time of the arrest, he was to "wait for call".

11 On the same day, between 2.43 pm and 3.06 pm, a cautioned statement under s 23 of the CPC was recorded by Investigating Officer Adam bin Ismail ("IO Adam") with the assistance of a Malay interpreter, Mohammad Farhan bin Sani. In his cautioned statement, the accused stated:

> I do not traffick [*sic*] in the drugs as stated. I am only paid to send the drugs to someone. I was dismissed from work suddenly. I needed money to support my wife who is pregnant and my children. I would like to ask for a lighter sentence because this is the first time I did this stupid thing. My children and my wife need me.

12 Between 14 and 15 April 2015, three "long" investigative statements under s 22 of the CPC were recorded from the accused by IO Adam in the

presence of another Malay interpreter, Shaffiq bin Selamat. In these statements, the accused provided detailed information about how he came into possession of Exhibit A2, and the purpose of that possession.

13 In these statements, the accused stated, *inter alia*, that he had been working in Singapore as a bus captain with SBS Transit Ltd ("SBS") until March 2015 when his employment was terminated after he got into a traffic accident. The day after he was terminated by SBS, he met his friend, "Rafi", at a coffee shop in Johor Bahru. "Rafi" informed him that he had a "job opportunity" which involved delivering "panas". When he asked "Rafi" what "panas" was, "Rafi" told him that he "asked so much". The accused then asked "Rafi" "what was the payment like". "Rafi" informed that one packet would earn him RM1,000, and that the accused just had to bring "panas" into Singapore and "someone would collect it". The accused agreed.

14 On the same night, at about 9.45 pm, "Rafi" called someone. Sometime later, an Indian man met them at the coffee shop. The Indian man asked the accused if he "knew the way in Singapore" and whether he "can bring this item". The accused in turn asked the Indian man what "panas" was, and was told that it "was something that looked like Milo powder". At this juncture, "Rafi" interrupted, saying that the accused asked too much. The accused then agreed to the delivery, and the Indian man said that he would call the accused. The accused was to "deliver to Choa Chu Kang MRT" and wait for a call there. "Rafi" then gave the Indian man the accused's handphone number.

15 On 8 April 2015, at about 10.30 pm, the Indian man called the accused and arranged to meet him at a Kentucky Fried Chicken outlet beside Tesco Mutiara Rini Skudai. The accused reached the said location at about 10.40 pm. Shortly after, the Indian man arrived in a grey car, handed the accused a red

plastic bag and immediately left. The accused took the red plastic bag and returned home.

16 While at home, the accused opened the red plastic bag and saw that the "panas" "looked like a packet of Milo". There were two packets of "panas". In addition, there was one big packet of "ice" and one smaller packet of "ice". When the accused collected the red plastic bag from the Indian man, he had been told that there was "panas" and two packets of "ice" in different sizes. The items were to be brought to the open-air car park of Choa Chu Kang MRT station and the accused was to "wait there until somebody call[ed] [him]". If no one called him, the accused was to call the Indian man. The accused saved the Indian man's number under the name "Selesa" in his blue Samsung handphone ("Exhibit HP5") when the Indian man "called [him] in the night". The accused stated that after he collected the items from the Indian man, he received another call from a caller who asked if he had "collected all the things". The accused asked the caller who he was and the caller said that he was "a friend of the guy who passed [him] the things". The caller also told the accused to "bring over the things" at 6.00 am. The accused saved the caller's number as "Selesa 2".

17 The accused placed the big packet of "ice" inside a used McDonald's cup and kept it in the under-seat storage compartment of the Motorcycle. When he opened the red plastic bag, the "panas" was inside a biscuit wrapper which was not sealed. The accused "took out the contents and inside was two packets of '[p]anas'". The accused also noticed that there "was no biscuit inside". The accused then placed the "panas" back into the biscuit wrapper, which he placed into the red plastic bag, and then placed into the front basket of the Motorcycle. Thereafter, he went back into his house and placed the smaller packet of "ice" inside his sling bag. The accused subsequently "contemplated whether to send

the stuff or not". The accused then "decided to do it" since he had "already been terminated".

18 At about 5.45 am the next morning (*ie*, on 9 April 2015), the accused left on the Motorcycle for Singapore from his home in Johor Bahru. After clearing customs at the Woodlands Checkpoint, he rode to Choa Chu Kang MRT station, reaching at about 6.25 am. The accused then parked the Motorcycle at an open-air car park beside the said MRT station. After about 3 minutes, he called "Selesa" and informed him that he had reached, as he "was nervous". "Selesa" informed the accused that he would "call the person". He also told the accused to take out one "batu" to "standby to give it to the man". The accused then took out one packet of "panas" from the biscuit wrapper and placed it at the front basket of the Motorcycle. He then walked to the MRT station to smoke a cigarette.

19 As he was smoking, the accused saw Chua walk to the Motorcycle, take the red plastic bag and leave a stack of S$50 notes in the front basket. The accused assumed that Chua was the "intended person" who was supposed to take the "panas" or "batu". The accused did not approach Chua as he was "afraid being caught read [*sic*] handed".

20 The accused claimed that he "didn't suspect the brown substance was drugs" because he had "never seen brown drugs before". He "thought the two packets of '[p]anas' to be packets of [Milo]". Although he found it "odd" that he would be paid RM1,000 for delivering each packet of Milo powder, he "did not suspect that it was drugs or something against the law".

21 The Prosecution submitted that the accused had possession, custody and control of Exhibit A2, and that he knew that Exhibit A2 was diamorphine. In

the alternative, the Prosecution relied on the presumption of knowledge in s 18(2) of the MDA and submitted that the accused had not proved on a balance of probabilities that he did not know (or could not reasonably be expected to have known) the nature of Exhibit A2.

22 At the close of the Prosecution's case, the Defence made no submission. I was satisfied that a *prima facie* case had been established to warrant calling for the Defence. After I administered the standard allocution, the accused elected to give evidence in the Malay language. He was the sole Defence witness.

The Defence's case

23 The accused testified that on 9 April 2015, he had come to Singapore to find employment and had for that purpose brought his certificates with him.

24 The accused did not dispute that he had physical possession of Exhibit A2. He was told that Exhibit A2 was called "panas", which he knew "could be a contraband item, but … not a drug". He explained that he was tasked to deliver Exhibit A2 to some place in Choa Chu Kang, and that he would be paid RM1,000 per delivery. He initially claimed that it was "Selesa 2" and not "Selesa" who had handed him the red plastic bag containing Exhibit A2, but later said that he had "forgotten".

25 The accused said that, at the time he was offered the job by "Rafi", he was "stressed" because he had just been terminated from his employment as a SBS bus captain and desperately needed money to support his family. As such, he "did not think much" and just "grabbed" the job opportunity.

26 When the accused was told that he would be delivering "panas", he was suspicious. He knew that "panas" was an illegal item but thought that it had "nothing to do with drugs". Further, he was suspicious as he would be paid an unduly large amount of RM1,000 to deliver it. As far as he was concerned, only the "ice" which he brought into Singapore was illegal drugs. He felt nervous when no one initially came to collect the items because of the "ice", and not because of the "panas". He did not know what one "batu" meant when he was told to standby one "batu" by "Selesa", but he took out one packet of "panas" from the biscuit wrapper "just in case".

27 The accused maintained that to his knowledge, diamorphine, or heroin (for the purpose of these grounds of decision, no distinction needs to be drawn between the two terms and I will use the former term), was not brown but white-coloured. This was based on what he had seen at a Malaysian exhibition on drugs six years before he was arrested, as well as on television. He reiterated that the "panas" looked like Milo powder to him, and added that it also looked like "jamu" (a Malay traditional medication powder). He also said that based on his understanding, the street term for diamorphine was "fit".

28 Ultimately, the Defence's case was premised on two main contentions: first, that the Prosecution had not proved that the accused knew that he was in possession of diamorphine and, second, that the accused was not wilfully blind as to the nature of Exhibit A2.

My Decision

29 The accused was charged with having the drugs in Exhibit A2 in his possession for the purpose of trafficking, an offence under s 5(1)(*a*) read with s 5(2) of the MDA. The two sub-sections provide as follows:

> **Trafficking in controlled drugs**
>
> **5.**—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —
>
> (*a*) to traffic in a controlled drug;
>
> …
>
> (2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

30 Section 2 of the MDA provides that the term "traffic" means "to sell, give, administer, transport, send, deliver or distribute", or to offer to do any of these acts. Having examined the totality of the evidence, I was satisfied that the Prosecution had proved the charge against the accused beyond a reasonable doubt.

Possession of Exhibit A2 for the purpose of trafficking

31 The accused was in physical possession and custody of Exhibit A2 at all material times until his arrest. In his investigative statements as well as his oral testimony, he admitted that he had taken over the two packets of "panas" (*ie*, Exhibits A2 and D1A1) from "Selesa" (or "Selesa 2") before the delivery to Singapore. Thereafter, he placed the two packets of "panas" in the front basket of the Motorcycle, where one packet (*ie*, Exhibit A2) remained until the arrest. Although he stepped away for a smoke while Chua collected the other packet of "panas" (*ie*, Exhibit D1A1), it was clear that the Motorcycle was never out of the accused's sight or supervision.

32 Alternatively, the presumption in s 21 of the MDA was operative and the accused was deemed to be in possession of Exhibit A2. This provision states as follows:

> **Presumption relating to vehicle**
>
> **21.** If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

33 As Exhibit A2 was found in the Motorcycle, the accused was presumed to have been in possession of it by virtue of s 21 of the MDA. The accused did not attempt to rebut the presumption. He admitted that he was delivering Exhibit A2 and that he would be paid RM1,000 for doing so. From the evidence adduced as well as the accused's own admission, it was not disputed that he was in possession of Exhibit A2 for the purpose of trafficking.

Knowledge of the nature of Exhibit A2

34 The primary issue for my consideration was whether the Prosecution had proved beyond a reasonable doubt that the accused knew that Exhibit A2 was diamorphine. In his investigative statements and at trial, the accused had repeatedly stated that he was delivering "panas". The Prosecution submitted that the accused knew that Exhibit A2 was "panas" and that "panas" was in fact diamorphine.

35 In the alternative, the Prosecution sought to rely on the presumption in s 18 of the MDA to establish that the accused knew the nature of the drug

contained in Exhibit A2 (*ie*, diamorphine). The relevant portions of s 18 of the MDA state as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (*a*) anything containing a controlled drug;
>
> …
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

36 Section 18(2) of the MDA shifts the burden onto the accused to prove on a balance of probabilities that he did not know or could not reasonably be expected to have known the nature of the drug in his possession.

37 The Defence centred on the accused's ostensible ignorance of what Exhibit A2 actually was. The accused maintained that whatever Exhibit A2 might have been, it was not drugs. Moreover, he had asked "Rafi" and "Selesa" what "panas" was and had actually checked the items after receiving them, and thus he was not wilfully blind. He had reasonably believed that "panas" was merely Milo powder or "jamu" and not drugs.

Findings on the accused's credibility

38 I found that all the statements were accurately recorded from the accused and due weight should be accorded to these statements. I found that his attempts to exculpate himself were wholly incapable of belief, primarily because of the evasive and shifting nature of his evidence. Adopting the observations of Yong Pung How CJ in *Farida Begam d/o Mohd Artham v Public Prosecutor*

[2001] 3 SLR(R) 592 (at [9]), the evidence of the accused revealed several material inconsistencies, both internally and externally, which amply supported the finding that he was not a credible witness. It will suffice for me to highlight a few key aspects where such inconsistencies emerged.

39 First, I noted the shifting nature of the accused's evidence regarding his belief as to the legality of the "panas" in question. In this regard, he had no qualms furnishing different accounts. While he claimed in the course of investigations that he never suspected that the "panas" was something illegal, he eventually conceded while testifying in court that he had in fact suspected or known that it was illegal. Indeed, in his evidence-in-chief, he admitted that he knew that "panas" could be a contraband item; in cross-examination, he admitted that he knew that "panas" was an illegal item.

40 More fundamentally, the accused was materially inconsistent on what he thought "panas" actually was. In his statements, he stated that he assumed that "panas" *was* Milo powder. At trial, he stated that the brown granular substance *looked like* Milo powder and said, for the very first time, that it also looked like "jamu". Under cross-examination, the accused also suggested, again for the first time, that he thought "panas" referred to a stolen item.

41 The accused's claim that the "panas" could also be "jamu" only emerged on the fifth day of trial (*ie*, on 13 March 2017), nearly two years after his arrest on 9 April 2015. The accused had furnished a total of five statements (one contemporaneous statement, one cautioned statement, and three "long" investigative statements) in relation to the present offence. Raising only at the eleventh hour that "panas" could be "jamu" clearly revealed the accused's propensity to embellish his evidence with afterthoughts.

42 Second, the accused was materially inconsistent both as to the reason he had carried out such deliveries, and in respect of the number of deliveries he had undertaken. In his statements, the accused ran the story that he had carried out the present delivery of "panas" because he had just been terminated from his job as a bus captain with SBS. He sought to portray himself as an unfortunate victim of circumstances who was forced to turn to desperate measures in order to financially support his pregnant wife and children. He averred that the delivery on 9 April 2015 was the "first time" he had done "this stupid thing". He then went on to state that he had in fact carried out two deliveries for "Selesa". The accused maintained this story in his evidence-in-chief.

43 Under cross-examination, it emerged that the accused had carried out various other previous deliveries for "Rafi" and "Selesa", and that he had performed these deliveries not solely to support his family, but also to earn pocket money so that he could go out with his girlfriends (or "scandals" as he called them). He was compelled to acknowledge these further deliveries in order to explain the messages found in one of his handphones ("Exhibit HP2"). Whilst he had stated in his statements that he only communicated with "Selesa" using Exhibit HP5, a review of the handphone messages found in Exhibit HP2 plainly indicated that this was untrue. Contrary to his assertions, the messages showed that the accused had been involved in other previous deliveries for "Selesa".

44 Upon being cross-examined and further confronted with the messages in Exhibit HP2, the accused had no choice but to come up with some explanation as to the number of deliveries and the occasion for such deliveries. The explanations proffered by the accused were strained and unconvincing, suggesting that they were devised as convenient afterthoughts.

45 Third, and on a related point, the accused was materially inconsistent as to what he had actually delivered for "Rafi" and "Selesa" on previous occasions. In his statements, the accused claimed that he had only delivered items on "Selesa's" instruction twice and that both these instances involved "panas". In cross-examination, however, he claimed, for the first time, that he had on previous occasions delivered cough syrup and sex pills.

46 This was again indicative of the accused's attempt to cover up the true nature of his dealings with "Selesa" and "Rafi". The accused's assertions that the previous deliveries were for cough syrup and sex pills were incapable of belief. As the accused accepted, there was no reference in his statements or the handphone messages to cough syrup or sex pills. In contrast, express references were made in the accused's handphone messages to "sejuk" (*ie*, "ice").

47 Fourth, the handphone records pertaining to previous deliveries exhibited a deeper involvement and knowledge than the accused was prepared to admit. The accused failed to give any satisfactory explanation for the suspicious text messages on his handphones with persons saved as "Balaci", "Rafi" and "Selesa". Further, under cross-examination, the accused agreed that based on the handphone records, he had met with Chua a total of six times more than what he had indicated in his statements. Whilst initially maintaining that he had only met Chua twice, the accused, when confronted with the handphone records, attempted to say that Chua may have communicated with him but he did not know Chua. Faced with the string of records which affirmatively revealed his prior communications with Chua, the accused then attempted to downplay the level of his interaction with Chua, including claiming that while he did know Chua, Chua was not his "close friend". All this was completely at odds with what he had stated in his statements, in which he initially claimed that he did not know Chua at all, before saying that he had encountered Chua once

prior to 9 April 2015. I noted in particular that when undergoing cross-examination on this aspect of the evidence pertaining to his interactions with Chua, the accused was visibly and extremely nervous and agitated and was constantly fidgeting in his seat in the witness box.

48 Finally, the accused's claim that "Selesa" did not pass him the red plastic bag supported the inference that he was concealing the true nature of his dealings and relationship with "Selesa". The accused prevaricated in his accounts in his statements, evidence-in-chief and cross-examination about whether it was "Selesa" or "Selesa 2" who had passed him the "panas" for delivery on the night before his arrest:

(a) In his statements to the CNB, the accused stated that it was "Selesa" who had passed him the "panas" and the "ice" and that he had saved "Selesa's" number in Exhibit HP5. After he was handed the red plastic bag containing the "panas" and the "ice", he received a call from someone who was a "friend of the guy who passed [him] the things". He saved the number of this caller as "Selesa 2".

(b) In his examination-in-chief, the accused claimed that it was "Selesa 2" who had passed him the red plastic bag.

(c) In cross-examination, the accused was confronted with his statements in which he had indicated that it was "Selesa" who had passed him the red plastic bag. The accused then conveniently claimed that he had "forgotten".

49 The Prosecution submitted that this vacillation was the accused's attempt to distance himself from "Selesa". I agreed that this was indeed nothing more than an attempt on the part of the accused to throw up further obfuscatory

smoke screens. While the accused initially claimed that he had made only two deliveries for "Selesa" in his statements, the evidence before the court in the form of his handphone records clearly showed that he had many previous dealings with "Selesa" and was in a familiar relationship with both "Rafi" and "Selesa". The accused's repeated attempts to lie and distance himself from "Selesa" led me to the inference that he was hiding the true nature of his dealings and relationship with "Selesa".

Knowledge that Exhibit A2 was diamorphine

50 There was undisputed evidence adduced by the Prosecution that "panas" is the street name for diamorphine. The Prosecution submitted that the accused knew that "panas" was diamorphine. In his contemporaneous statement, the accused stated that Exhibit A2 was "panas" without any qualification. As testified by the recorder of that statement, SSgt Fardlie, the accused's answers following his assertion that Exhibit A2 was "panas" supported the fact that the accused knew that "panas" was diamorphine. It was only in his subsequent statements to IO Adam and in his oral testimony that the accused sought to put forward alternative explanations as to what he understood "panas" to be. I found no basis whatsoever to accept these later assertions.

(1) The accused's explanations of what the "panas" was

51 First, as noted above at [39]–[41], the accused's explanations of what he thought the "panas" was were unsatisfactory. There were perceptible shifts in his explanations during the course of the proceedings. In his statements, he stated that he assumed that "panas" *was* Milo powder. At trial, he stated that the brown granular substance *looked like* Milo powder and said, for the very first time, that it also looked like "jamu". Under cross-examination, the accused also

suggested, again for the first time, that he thought "panas" referred to a stolen item.

52 Plainly, if the accused genuinely and honestly believed that "panas" was Milo powder, there would be no need for him to come up with alternatives for what "panas" was (to him) as the proceedings continued. The only inference that could be drawn was that he felt compelled to do so because he was strenuously attempting to conceal the fact that he knew that "panas" was diamorphine. Recognising the absurdity of maintaining that he would be paid RM1,000 just to bring Milo powder into Singapore, the accused then attempted to offer alternative explanations.

53 In *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302, the Court of Appeal accepted (at [33]–[34]) that an accused person's lies can in certain circumstances amount to corroboration because it indicates a consciousness of guilt. In that case, the Court of Appeal held that the lies of the respondent were a deliberate attempt on his part to dissociate himself from his conspirators as well as to maintain ignorance of the drugs in his car.

54 In the present case, the accused's vacillating versions on what he thought "panas" to be, and whether he thought it to be of an illegal nature, underscored his knowledge from the outset that "panas" was illegal and reflected his attempts to distance himself from the drugs and to disavow knowledge. I found that the accused was clearly lying and his shifting evidence on this issue could only have arisen from his guilty knowledge that the Exhibit A2 was diamorphine.

(2) The accused's prior dealings in controlled drugs

55 The accused, by his own admission, was an abuser of "ice". The accused admitted to having purchased and consumed "ice", and also to having brought

"ice" into Singapore on 9 April 2015 in the Motorcycle and his sling bag. Moreover, he conceded that he had previously carried out a similar delivery of "panas" on the instructions of "Rafi" and "Selesa".

56 The Prosecution also highlighted the messages extracted from Exhibit HP2. The accused had attempted to conceal the nature of his relationship with "Rafi" and "Selesa", the number of occasions he had made deliveries for them, the type of items he delivered and the reason he carried out the deliveries. Be that as it may, there was one message showing that the accused communicated with "Balaci" (who the accused claimed was "Rafi") about orders for "sejuk", which the accused knew to be "ice".

57 From his actions, the accused must also have known that one "batu" referred to one packet of "panas". This revealed his familiarity with drugs and such dealings. In his statements, the accused stated that after "Selesa" had told him to take one "batu" to standby for delivery to Chua, he proceeded to take out one packet of "panas" from the biscuit wrapper. He knew that this instruction was not in relation to the "ice". This could not have been entirely fortuitous or unconscious; his conduct showed that he knew that "batu" referred to the "panas". Recognising that this was incriminating, the accused attempted a feeble explanation in cross-examination. He claimed that he "was thinking to [himself] what is 'batu' because [he did] not carry any rock or stone with [him]", so he "just assume[d] that it could be just one packet of the brown item". When pressed on this matter in cross-examination, the accused made the even more outlandish claim that "[w]hatever item were there, [he will] just place it there" and "[i]f it's wrong, it's wrong".

58 The accused further claimed that "panas" could not be diamorphine because it was brown and not white in colour, contrary to what he had allegedly

seen in an exhibition six years prior to his arrest, as well as on television. The accused did not adduce any evidence to support this claim and it remained a mere assertion on his part.

(3) The accused's expressed thoughts in relation to the "panas"

59 The accused's expressed thoughts prior to the delivery of the "panas" to Chua buttressed the fact that he knew that the "panas" was diamorphine.

60 First, in his statements, the accused stated that after collecting the "panas" and bringing it home, he "contemplated whether to send the stuff or not". The accused alleged in cross-examination that he was contemplating what to do in relation to the "ice" and not the "panas", but I could not accept this. The term "stuff" that he used was unqualified, and the accused knew that he would be receiving the same sum for delivery of "ice" as he would for the "panas". Notably, there was no challenge made to the accuracy of the translation of this part of the accused's statement. In these circumstances, the only logical inference was that the "stuff" that was the subject of his contemplation referred to all that he was handed and tasked to deliver, *ie*, both the "ice" and the "panas". I saw no basis for his claim that the "stuff" referred only to the "ice".

61 Second, the accused made a deliberate choice to remain some distance away when Chua was collecting Exhibit D1A1 from the Motorcycle. The accused stated in his statements that prior to the collection by Chua, he "felt a bit nervous" and "did not quickly approached [*sic*] the Chinese man as [he] was afraid being caught read [*sic*] handed". Even though the accused claimed in cross-examination that he was nervous because of the presence of the "ice" in the Motorcycle, this was unbelievable considering that the accused was also carrying "ice" on his person in his sling bag. If the accused was genuinely afraid

of being caught red-handed for dealing with "ice", he would not have risked being found with "ice" on his person at all. He was clearly conscious that the "panas" was drugs which carried a severe consequence if he were to be caught trafficking in them.

(4) The accused's claim at trial that the street name in Malaysia for diamorphine was "fit"

62 It was suggested during the accused's evidence-in-chief that "panas" was merely the Malay word for "hot". He did not associate it with drugs. In an attempt to further explain that he did not understand "panas" to be diamorphine, the accused claimed that in Malaysia, the street name for diamorphine was "fit". I rejected this claim. The prosecution witnesses had testified that in their experience, "fit" had never been used to refer to diamorphine. The accused's claim, which emerged only at trial, was yet another afterthought. Moreover, even if it could be accepted that the word "fit" may have been one euphemism for diamorphine used in Malaysia, it did not inexorably follow that the accused did not know that "panas" was the street name for diamorphine.

(5) The accused's explanation of his text message to "Rafi" regarding wrapping

63 It bears noting that Exhibit A2 was concealed in a biscuit wrapper. In cross-examination, the accused was asked about his text messages to "Rafi" where he instructed "Rafi" not to wrap a "thing" and to "buy biscuits". The accused was queried on the following message to "Rafi" on 26 March 2015 at about 1.16 am:

> I'm at home now. Are you late again? *Der*, that thing you don't need to wrap. Later I *ejas* (?). If you wrap, that thing will become hard, difficult for me to *setting*. *Call* me now

64 The accused claimed that he was referring to delivery of cough syrup in this message. His evidence was incoherent and confused. It appeared that this had to do either with "wrapping" cough syrup or "setting" two bottles of cough syrup (each about the size of a 600 ml mineral water bottle) which were packed by "Rafi" into a box (about the size of a tissue paper box). The accused initially claimed when cross-examined that he would "do the wrapping [himself] later on". He subsequently said that this was for delivery of cough syrup and the "whole thing will become hard" if the cough syrup was packed in a box. He maintained that he was referring to the fact that the box would "make the packaging hard". This series of questions and answers revealed further blatant prevarications by the accused. He resorted to suggesting that it would "become hard" for him to "package" or "store" (*ie*, "setting") the cough syrup upon realising that by conceding that he would "do the wrapping" himself as he originally said, that would link him to the wrapping of the "panas". It was telling that when further questioned, he made no mention of "wrapping" the items himself again.

65 The accused further claimed that the word "setting" was just his "street language" for how he would purportedly "store" the package (it appeared that this was done by taping the two bottles onto the fairings of the Motorcycle). He also explained that "ejas" meant "adjust". In other words, he would remove the bottles from the box and "adjust" them himself in order to hide them in the Motorcycle. Elsewhere, however, the accused seemed to suggest that he did not use any wrapping as that was only used for the sex pills and the "panas".

66 The accused's evidence was a series of random improvisations and obvious fabrications. It was more believable that he had carried out deliveries of "panas" for "Rafi" previously and this text message was referring to a delivery of "panas". Hence, if the "panas" came to him pre-wrapped, it would

make it more difficult for him to "ejas" and "setting" the "panas". In other words, the accused was expressing his preference that the "panas" should come to him unwrapped so that he could make the necessary adjustments and wrap them himself.

67 The crucial question, however, was why the accused felt the need to lie about this message in court. Undoubtedly, the accused was trying to distance himself from the truth that he had been delivering "panas" for "Rafi" for some time prior to his arrest. Moreover, his experience would have buttressed the fact that he knew the nature of "panas" and what he needed to do to "ejas" it for the purpose of concealing and fitting it within the biscuit wrapper, and not for the purported "setting" of the bottles of cough syrup on the Motorcycle, as he had claimed.

(6) The location of Exhibit A2

68 In re-examination, the accused stated that he did not place Exhibit A2 under the seat of the Motorcycle as he did not think it was a drug which had to be hidden. This was in contrast with the "ice" which was hidden under the seat of the Motorcycle.

69 The Prosecution further cross-examined the accused on this and suggested that he had placed Exhibit A2 in the front basket to facilitate delivery and not because he was unafraid, as he had no knowledge of what "panas" was. I accepted that this was more consistent with the truth of the matter. Even though the accused claimed that he believed "ice" was "more illegal" than "panas", he nevertheless kept the "ice" in a transparent plastic bag in the sling bag he was carrying. His conduct was inherently contradictory. If he had intended to hide the "ice" he was delivering under the seat of the Motorcycle because he knew it

was a drug and was afraid of being caught with it, there would be no reason for him to also carry "ice" on his person and risk being caught red-handed.

70 Despite the accused's seemingly innocent explanation for not hiding Exhibit A2 under the seat of the Motorcycle, it bears repeating that Exhibit A2 was originally hidden within a biscuit wrapper. This was not a case where the "panas" was brought across the Causeway in full and open view to all. The concealment of the "panas" in the biscuit wrapper was motivated by the need to prevent its detection. In fact, other than the mere say-so of the accused, it was equally plausible, if not far more likely, that the "panas" was actually safely kept out of sight when he first journeyed into Singapore on the morning of the delivery. Evidently, the accused only removed Exhibit A2 after he had arrived at the intended destination and was ready for Chua to collect it, while he kept a watchful distance. I did not think that this pointed to an innocent state of mind in any way.

(7) Summary of findings

71 Having considered the evidence in its totality, I was satisfied that the Prosecution had established beyond a reasonable doubt that the accused knew that "panas" was in fact diamorphine.

72 Insofar as there was evidence of past activities of a similar nature, *Poon Soh Har and another v Public Prosecutor* [1977] 2 MLJ 126 could be distinguished on its facts. Unlike the situation in that case, the Prosecution's case against the accused did not depend solely on similar fact evidence to establish guilt. The evidence of these past activities was relevant to his credibility as well as his state of mind, and its considerable probative value outweighed any prejudicial effect.

73 Against the backdrop of inconsistencies and outright lies in the evidence of the accused, the totality of the evidence revealed unambiguously that the accused was reasonably well-acquainted with drug-related activities. He was familiar with "Rafi" and "Selesa" from previous delivery arrangements. On his own admission, he had delivered "panas" to Chua twice, the first time being just two days before his arrest. His delivery on 9 April 2015 was not his first time, as claimed in his cautioned statement. He admitted to being a drug abuser himself but claimed to have only consumed "ice". His initial claim was that he had met Chua only once and that he did not know Chua. He was eventually compelled to concede in cross-examination that he had in fact met Chua *six times* more than what he had indicated in his statements and that he *did* know him.

74 The evidence of the accused's handphone communications affirmatively revealed the true extent of his prior involvement in drug activities. These communications disclosed a number of prior deliveries or other activities which he tried in vain to explain away. His explanations bordered on the absurd. For instance, he maintained that he was only dabbling in illegal deliveries of cough syrup or sex pills, but in communicating with "Rafi", he claimed that the items (according to him, bottles of cough syrup which came in a box) would "become hard" if they were wrapped. He then offered a different explanation in court suggesting that it was the "packaging" or "setting" that would "become hard". He said in the message that he had to "ejas" (*ie*, adjust) the items, but when asked to explain exactly what there was to adjust, he was unable to provide any satisfactory explanation.

75 As for his connection to "Rafi", "Selesa" and "Selesa 2", his disclosures were highly selective at best. In all likelihood, "Selesa" and "Selesa 2" were one and the same person, with two different contact numbers. Indeed, by the

accused's own admission, this same naming convention was used with respect to "Rafi", whose numbers were saved under the names "Rafi" and "Rafi 2", amongst others.

76 Turning to the timing of his delivery on 9 April 2015, the accused tried to show that he was driven to desperation due to his dismissal by SBS over a traffic accident that he had gotten into. But the objective evidence demonstrated that his delivery activities had very little to do with his loss of employment as a SBS bus captain. The accident in question occurred in December 2014, and he was informed by SBS by a letter dated 26 March 2015 that he would be dismissed from service with effect from 31 March 2015. Yet, his deliveries for "Rafi" and "Selesa", as disclosed by his handphone records and as he conceded in cross-examination, began in February 2015, which was before his dismissal and his being informed of the same. In other words, the accused was already drawing income from illicit activities well before he was dismissed by SBS.

77 I agreed with the Prosecution's submissions and found that the accused was an unreliable and evasive witness. He had blatantly lied and given inconsistent accounts and shifting explanations to suit his purposes. Numerous new assertions emerged only in the course of the trial. These were clear afterthoughts. These included his claims that the "panas" could have been "jamu", that the street name in Malaysia for diamorphine was "fit", and that, apart from one prior delivery of "panas", he had only delivered cough syrup and sex pills in the past.

78 I found that the Defence was wholly unworthy of credit. It was clear that the accused was an untruthful and unreliable witness. His strenuous efforts to disavow knowledge of the nature of the drugs and to downplay his involvement and distance himself from "Rafi" and "Selesa" were unconvincing. His claim

that the "panas" was just Milo powder was patently incredible and could not reasonably be believed. When viewed together with his assertion that "panas" referred to something that was stolen, he would have wanted the court to believe that he was being paid RM1,000 to deliver a packet of stolen Milo powder. This was leaving aside the fact that the granular substance in Exhibit A2 did not even appear to be of the same dark chocolate hue or consistency or granularity that one would normally associate with Milo powder.

79 Even more so, I was unable to accept the accused's belated claim at trial that he thought that "panas" was "jamu". Unless he was familiar with the term "batu" in the drug trade, there was no reason why would he have known that one "batu" referred to one packet of "panas" and to have deftly removed one packet of "panas" from within the biscuit wrapper for Chua's collection. The irresistible inference was that this could not have been pure coincidence as he had claimed.

Presumption in s 18(2) of the MDA not rebutted

80 I was satisfied that the Prosecution had proved that the accused had actual knowledge of the nature of Exhibit A2. Nevertheless, I also accepted, in the alternative, that the accused had failed to rebut the operative presumption in s 18(2) of the MDA on a balance of probabilities. In other words, he had failed to show, to this standard, that he did not know or could not reasonably be expected to have known the nature of Exhibit A2. For completeness, I shall explain my reasons for concluding thus.

81 Having regard to the observations of the Court of Appeal in *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 ("*Dinesh Pillai*") (at [18] and [21]), the accused had to prove, on a balance of

probabilities, that he did not know or could not reasonably be expected to have known that the Exhibit A2 contained diamorphine. In *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156, the Court of Appeal held (at [24]) that the words "the nature of that drug" in s 18(2) of the MDA were simply a reference to the actual controlled drug found in the "thing" which was proved or presumed to be in the possession of the accused at the material time. In this case, this would be diamorphine.

82 In *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257, the Court of Appeal reiterated (at [55]–[56]) that knowledge in s 18(2) of the MDA encompassed both actual knowledge and wilful blindness, the latter of which would be established when the accused had the appropriate level of suspicion and refused to investigate further. When the presumption under s 18(2) of the MDA was triggered, it obviated the need for the Prosecution to prove actual knowledge or wilful blindness. However, if the Prosecution nevertheless established actual knowledge or wilful blindness, an accused would not be able to rebut the presumption under s 18(2) of the MDA. In assessing whether the presumption had been rebutted, the subjective knowledge of the accused had to be evaluated against the objective circumstances surrounding the offence. In this regard, the reasonable person's perspective provided a useful evidential proxy by which the court could assess the *true* subjective state of knowledge of the accused.

83 The accused had failed to show on a balance of probabilities that he did not know or could not reasonably be expected to have known the nature of Exhibit A2 for the following reasons:

(a) The accused felt suspicious about why so much was being paid for the relatively straightforward delivery task (purportedly involving

either Milo powder or "jamu") but chose not ask further questions, even when he knew that he was being paid the same amount to deliver "ice", which he knew was a drug.

(b) The accused had no reason to trust "Rafi" or "Selesa" or their instructions. Yet, he chose not to query further on the nature of the "panas" simply because he was chided for asking too much.

(c) In cross-examination, the accused admitted that neither "Rafi" nor "Selesa" gave him any assurance that the "panas" was not drugs. On his own admission, he had to perform a similar errand for "Rafi" and "Selesa" on one prior occasion. Yet, he made no effort to reasonably satisfy himself that these errands were lawful.

(d) The handphone messages between the accused, "Rafi" and "Selesa" in Exhibit HP2 contained references to drug transactions, buyers and customers.

(e) The accused knew that the "panas" was illegal but decided to take the risk. He had ample time and opportunity to ascertain the nature of the "panas" but he did not do so.

84 The accused had agreed to perform the delivery of Exhibit A2 for substantial payment. He was carrying what was essentially bulky packets of brown granular substance which he claimed to be either Milo power or "jamu". In *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633, the Court of Appeal provided useful guidance on the relevant considerations in ascertaining whether an accused has proved on a balance of probabilities that he did not know the nature of the drug. Among other observations, the Court of Appeal indicated (at [40]) that:

> … [T]he 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.

85 Milo powder and "jamu" are hardly particularly exotic items. They are readily available in Singapore. There was no reason why the cost of transporting the "panas", if it was indeed either of these innocuous items, should come up to RM1,000. There was even less reason why it was necessary for the accused to be paid to transport these items from Johor Bahru to Singapore. The accused was alive to the risks when delivering the "panas" and he chose to assume these risks. Coupled with his lies about his relationship and past dealings with "Rafi" and "Selesa", as well as his knowledge that both of them dealt with drugs, the accused's ready acceptance of "Rafi" and "Selesa's" instructions showed that he had turned a blind eye (in the sense described in *Dinesh Pillai* at [21]) to what Exhibit A2 was despite his suspicions. He was content to ask no questions. This was because the answers were obvious to him all along.

86 Given the overwhelmingly suspicious nature of the transaction, if there had been any innocent explanation for what Exhibit A2 was, "Rafi" or "Selesa" would not have had any reason to refrain from disclosing them to the accused. From all of the above circumstances, the accused must have known that he was engaged in an illicit business with them. His bare denials and fanciful explanations were insufficient to rebut the presumption of knowledge in s 18(2)

of the MDA. I found that he had not proved on a balance of probabilities that he did not know or could not reasonably be expected to have known the nature of Exhibit A2.

Conclusion

87 The evidence established that the accused had 16.56 grams of diamorphine in his possession for the purpose of trafficking. I was further satisfied that the accused knew the nature of Exhibit A2. The Prosecution had proved the charge beyond a reasonable doubt. I therefore found the accused guilty as charged and convicted him accordingly.

88 In his submissions on sentence, counsel for the accused submitted that the accused should be treated as a courier. The Prosecution stated that it had considered whether the accused had provided substantive assistance to the CNB and ultimately determined that he had not. As such, the Prosecution declined to issue a certificate of substantive assistance. Consequently, the requirement set out in s 33B(2)(*b*) of the MDA was not satisfied, and I sentenced the accused to the mandatory death penalty.

89 Four other drug-related charges were stood down at the commencement of the trial and the Prosecution applied pursuant to s 147 of the CPC to withdraw them. I granted the application and ordered a discharge amounting to an acquittal for these four charges.

90 As for the disposal of the exhibits, the accused raised no objections apart from a request that the Malaysian cash currency seized from him be returned to

his family. I made no order in respect of the Malaysian cash currency seized, but ordered that the other exhibits be forfeited for disposal.

See Kee Oon
Judge

Jasmine Chin-Sabado and Christine Liu (Attorney-General's Chambers) for the Public Prosecutor;
Mohamed Muzammil bin Mohamed (Muzammil & Company) and Wong Li-Yen Dew (Dew Chambers) for the accused.