

Public Prosecutor v Purushothaman a/l Subramaniam
[2014] SGHC 215

Case Number : Criminal Case No 27 of 2014
Decision Date : 28 October 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye J
Counsel Name(s) : Lau Wing Yum and Seraphina Fong (Attorney-General's Chambers) for the Prosecution; Rengarajoo s/o Rengasamy (B Rengarajoo & Associates), and Ong Lip Cheng (Templars Law LLC) for the accused.
Parties : Public Prosecutor — Purushothaman a/l Subramaniam

Criminal Law – Statutory offences – Misuse of Drugs Act – Illegally importing controlled drug

28 October 2014

Judgment reserved.

Tan Siong Thye J:

Introduction

1 The accused, Purushothaman A/L Subramaniam, was charged with the importation of diamorphine into Singapore as follows: [\[note: 1\]](#)

You, Purushothaman A/L Subramaniam,

are charged that you, on the 26th day of March 2012 at or about 7.15 pm, at Bike Arrival Hall, Woodlands Checkpoint, Singapore, in motorcycle JLR 1838, did import a controlled drug specified in Class A of The First Schedule of the Misuse of Drugs Act, (CAP. 185), to wit, three (3) packets of granular substances believed to be Diamorphine, weighing approximately 1389.39 grams without authorisation under the said Act or the Regulations made thereunder and you have thereby committed an offence under section 7 and punishable under section 33 of the Misuse of Drugs Act (CAP. 185).

As the amount of diamorphine imported by the accused exceeds the statutory limit of 15g as prescribed under the Second Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), this offence is punishable with death.

2 The accused claims trial to the charge. His defence is that he did not know what was inside the black bundle that he was asked to carry into Singapore. [\[note: 2\]](#)

The Prosecution's case

3 The Prosecution adduced evidence that the accused is a 21-year-old male Malaysian who was staying in Johor Bahru. [\[note: 3\]](#) At the time of his arrest, he was a "vegetable lorry stacker". [\[note: 4\]](#)

At Woodlands Checkpoint Counter 43

4 On 26 March 2012, at about 7.13pm, [\[note: 5\]](#) the accused rode his Malaysian-registered motorcycle bearing registration number JLR 1838 into Singapore via Motorcycle Arrival Booth 47, Woodlands Checkpoint. [\[note: 6\]](#) He produced his passport to PW11, Corporal Muhammad Shafiq bin Mohamed, [\[note: 7\]](#) the Primary Screening Officer with the Immigration and Checkpoints Authority ("ICA"). PW11 then screened the accused's particulars using the ICA computer. He was alerted by a notification to stop the accused and refer him to an enforcement agency. [\[note: 8\]](#)

5 PW11 then told the accused to switch off his motorcycle engine and to hand over his motorcycle key. At the same time, the ICA Quick Response Team was activated. [\[note: 9\]](#) The accused, together with his passport and motorcycle key, was handed over to PW12, Corporal Lim Lian Chuan of the ICA Quick Response Team, who soon arrived at the scene. [\[note: 10\]](#)

At the ICA Arrival Car Secondary Team Office

6 The accused was asked by PW12 to push his motorcycle to the ICA Arrival Car Secondary Team Office. He parked his motorcycle at motorcycle lot A39, one of the parking lots located outside the office. [\[note: 11\]](#) In the meantime, officers from the Central Narcotics Bureau ("CNB") at the Woodlands Checkpoint were alerted and the accused was handed over to them for investigation. [\[note: 12\]](#)

The search

7 The accused was told by one of the CNB officers to push his motorcycle to the Police K9 (dog unit) garage. [\[note: 13\]](#) A physical search was conducted on the motorcycle. PW16, Corporal Vengedesh Raj Nainar s/o Nagarajan, recovered a black bundle from the motorcycle. [\[note: 14\]](#) Thereafter, the accused was immediately placed under arrest. When PW17, Staff Sergeant Chia Eu Foong, [\[note: 15\]](#) made a small cut on the black bundle in the accused's presence, a brownish granular substance was seen. A physical examination and a K9 search (using sniffer dog) of the accused revealed nothing on him. The backscatter scan performed on the motorcycle also revealed no other incriminating evidence. [\[note: 16\]](#)

Accused's first statement on the discovery of the six bundles in the motorcycle seat

8 In the CNB office at Woodlands Checkpoint, PW14, Staff Sergeant Marlina Binte Djumadi, asked the accused questions about the black bundle found on his motorcycle. [\[note: 17\]](#) PW16 acted as the interpreter as the accused chose to answer the questions in Tamil. The exchange was as follows: [\[note: 18\]](#)

- PW16. What is this? ([accused] was shown the exhibit recovered)
- A. I don't know.
- Q. Whose bike is this?
- A. Mine.
- Q. Who does the (exhibit) black bundle belong to?

A. I don't know. I came here (S'pore) to buy shoes.

The Prosecution admitted this statement as well as his other statements given to the investigation officer as the accused confirmed that they were voluntarily taken from him without any inducement, threat or promise.

Analysis of the six bundles

9 There were three packets of the brownish granular substance found inside the black bundle. These were sent to the Health Sciences Authority ("HSA") for analysis. They were labelled "A1A1", "A1B1" and "A1C1" respectively. The HSA analysis revealed the following:

- (a) A1A1: The gross weight of the granular/powdery substance was 460.2g and it contained no less than 24.97g of diamorphine at a confidence level of 99.9999%.
- (b) A1B1: The gross weight of the granular/powdery substance was 459.0g and it contained no less than 25.25g of diamorphine at a confidence level of 99.9999%.
- (c) A1C1: The gross weight of the granular/powdery substance was 456.0g and it contained no less than 25.19g of diamorphine at a confidence level of 99.9999%.

The presumption of possession and knowledge of the drug under s 18 of the Act

10 The Prosecution relies on the statutory presumptions under ss 18(1)(a) and 18(2) of the Act. [\[note: 19\]](#) Under s 18(1)(a), the accused is presumed to have been in possession of the diamorphine found in the motorcycle while under s 18(2), he is further presumed to have known of the nature of the diamorphine. This, combined with the fact that the accused physically brought the diamorphine hidden in the motorcycle into Singapore, establishes the offence of importation of a controlled drug with which he was charged. [\[note: 20\]](#)

The accused's case

11 The accused seeks to rebut both the presumptions of possession and knowledge under ss 18(1)(a) and 18(2) of the Act respectively. [\[note: 21\]](#) He alleged that he did not know that the black bundle concealed in his motorcycle contained diamorphine. His story is that a person called "Prabha" placed drugs in his motorcycle without his knowledge. Therefore, he is not wilfully blind. [\[note: 22\]](#) Prabha was later identified to be one Prabakaran a/l Srivijayan. He was arrested based on a telephone number given to the police by the accused. [\[note: 23\]](#)

The accused's background

12 The accused comes from a family of six. He has a mother, three elder sisters and an elder brother. His father is deceased. The accused has been the family's sole breadwinner since the age of 12, initially working in a job involving marriage decoration in Perak. [\[note: 24\]](#) He first started working in Singapore at a warehouse situated at Jalan Penjuru in January 2011, doing packing. He was paid about \$600 a month, out of which he would send RM500 back to his family. However, he ceased working as a packer around February or March 2011 as it was hard work and he felt that he was not

being paid sufficiently. [\[note: 25\]](#)

13 Subsequently, the accused found a job loading and unloading goods from lorries in Johor Bahru. For this, he was paid between RM50 to RM60 per day. He would send back between RM300 to RM400 per month to his family in Perak. [\[note: 26\]](#) From December 2011 to January 2012, he worked as a vegetable packer in Johor Bahru and was paid RM800 per month. He would send back RM500 to his family in Perak. [\[note: 27\]](#)

The meeting between the accused and Prabha

14 Around February 2012, the accused's mother needed a heart surgery. He did not have money to finance the operation. It was around this time that the accused went out for drinks with his colleague and met Prabha for the first time at a Chinese coffeeshop in Johor Bahru. [\[note: 28\]](#) Prabha had been drinking with three other friends at that time and the accused joined them. [\[note: 29\]](#) However, the accused did not drink with them as he was sad because he did not have the money to pay for his mother's operation. [\[note: 30\]](#) Prabha then asked the accused what was wrong and persisted in knowing what was troubling the accused. Eventually, the accused told Prabha that he needed money for his mother's operation. [\[note: 31\]](#) When they left, Prabha comforted the accused by telling him "The god will save your mother". [\[note: 32\]](#)

The RM10,000 loan

15 Two days later, the accused met Prabha in a Hindu temple. Prabha enquired whether the accused had obtained the money that he needed. The accused said that he had not.

16 Prabha then offered to help the accused and they exchanged contact details. [\[note: 33\]](#) Prabha told the accused that he would let him know in two days' time whether any help was forthcoming. However, the accused called him two days later instead. Prabha informed the accused that he could lend him the money but the accused would have to help him in return for the loan. [\[note: 34\]](#) Prabha wanted the accused to bring "stuff" into Singapore for him. [\[note: 35\]](#) However, Prabha was evasive when the accused asked him about what "stuff" was to be brought into Singapore. [\[note: 36\]](#) The accused did not agree immediately and only agreed after a few meetings with Prabha. The reason why the accused agreed to help Prabha was because the accused felt indebted to Prabha for the loan which financed his mother's operation. [\[note: 37\]](#)

17 According to the accused, he agreed to help Prabha only once. [\[note: 38\]](#) However, after the first time the accused did the job, he disclosed to Prabha that his mother needed RM500 a month for her post-operation medical expenses. [\[note: 39\]](#) Prabha then offered to pay the accused RM500 per job if he was willing to do the same job subsequently. The accused agreed as "there was no other way to save [his] mother." [\[note: 40\]](#)

The modus operandi for the importation of the "stuff" into Singapore

18 The accused's account of the modus operandi was as follows. First, the accused would pass the motorcycle to Prabha in Johor Bahru. Prabha would ride away with the motorcycle for about one to two hours before returning to the accused's place. The accused would then be informed to take back the motorcycle, no questions asked. [\[note: 41\]](#) When he asked Prabha about what he was

transporting, Prabha would refuse to tell him. [\[note: 42\]](#) He would then ride his motorcycle into Singapore, clear immigration within 30 minutes, and head towards Woodlands MRT station, [\[note: 43\]](#) where the accused would call Prabha.

19 After receiving the accused's call, Prabha would get a person to meet the accused. About an hour later, the person would either arrive in a car or a taxi. He would then ride away with the accused's motorcycle before returning it in about half an hour. Prabha would then give a call to the accused, to inform him about the whereabouts of the motorcycle. The motorcycle key would be left in the accused's motorcycle basket. The accused would then ride the motorcycle back to Johor Bahru [\[note: 44\]](#) and be paid RM500. The accused would send all the money back to his family in Perak because his mother needed about RM600 a month for her medical expenses. [\[note: 45\]](#)

The accused's lack of knowledge

20 The above went on for about a month until the accused was stopped by the police officers at Woodlands Checkpoint on 26 March 2012. It was then that he became worried as the officers discovered a black bundle in his motorcycle which he thought could be drugs. [\[note: 46\]](#) He suspected that Prabha might have used the screwdriver under his motorcycle seat to unscrew the plastic cover and placed the drugs inside a compartment of the motorcycle. [\[note: 47\]](#)

21 The accused also testified that he did not suspect anything amiss about the RM500 he received each time he sent "stuff" into Singapore or the RM10,000 loan that Prabha extended to him. This was because he was very concerned about his mother's surgery. [\[note: 48\]](#) Also, he would check his motorcycle each time after Prabha returned it to him and before he rode it into Singapore. He never noticed anything unusual, although he suspected that Prabha might have concealed cigarettes in his motorcycle.

22 Lastly, the accused denied ownership of the motorcycle when he was administered the Notice of Warning under s 23 of the CPC [\[note: 49\]](#) but later explained that it was a lie that he had made up as he was scared of being arrested. [\[note: 50\]](#) He did not call any witnesses in his defence.

The issue: Whether the accused knew of the drugs in his motorcycle

23 It is undisputed that the accused was arrested on 26 March 2012 and the black bundle was found concealed in the accused's motorcycle. He was caught red-handed. The accused also agree that all his statements given in the course of the investigations were voluntarily given without any inducement, threat or promise from the recording officers or any other persons. The *actus reus* of the offence is undisputed. What is disputed is the *mens rea* element of the offence. This is where the accused denies knowledge of the diamorphine hidden in his motorcycle.

Presumption of possession and knowledge of diamorphine hidden in the accused's motorcycle

24 The Prosecution relies on the presumption of possession and knowledge under s 18(2) of the Act to show the presence of *mens rea*, ie, that the accused was assumed to know that diamorphine was hidden in his motorcycle. Section 18(2) is as follows:

- (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.

25 In order for the accused to rebut this presumption, he has to show on a balance of probabilities that he did not know the nature of the controlled drug referred to in the charge: *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*") at [23]. This requires the court to evaluate the evidence to ascertain whether there was wilful blindness on the part of the accused. Thus, I shall first deal with the law on wilful blindness.

The law on wilful blindness

26 In *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*"), the court held that wilful blindness is equivalent to actual knowledge at law (at [104]):

... This is entirely understandable as well as logical and practical simply because the court cannot read a person's mind (see *per* Yong CJ in *Koo Pui Fong, supra*, as well as *per* Lord Esher MR in *Brunton* at [109] below). As we have just mentioned, a clear admission is going to be extremely rare. The proof of an actual situation of actual knowledge is, in the circumstances, going to be equally rare. This is *a fortiori* the case in so far as offences under the Act are concerned. Accused persons are hardly likely to admit to possessing actual knowledge and can (indeed, will) easily disavow such knowledge even if it existed, given the surreptitious nature inherent in drug offences as well as the draconian penalties that are imposed on conviction. In any event, as we have already noted, *wilful blindness has, in any event, always been treated, in law, as actual knowledge*. ... [emphasis added]

Wilful blindness is also a fact-sensitive enquiry. It should be premised on a strong factual basis and has to meet a high threshold: *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 at [20].

What are the suspicious circumstances that give rise to a duty to inquire?

27 The finding of wilful blindness must be based on a factual finding that gives rise to a suspicion that a certain state of affairs exists. It has been described as "an evidential matter to be taken into account when deciding if the necessary knowledge existed": Chan Wing Cheong, "Culpability in the Misuse of Drugs Act: Wilful Blindness, the Reasonable Person and a Duty to Check" (2013) 25 SAcLJ 110 ("Culpability in the Misuse of Drugs Act") at p 116.

28 A person is wilfully blind when the circumstances are such as to warrant his suspicion and give rise to a duty by him to make further enquiries. In *Tan Kiam Peng* at [125] and [127], it was stated that:

... [S]uspicion is legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye. ... However, the caveat is that a *low level* of suspicion premised on a factual matrix that would *not* lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness ... [T]hat level of suspicion *must then lead to a refusal to investigate further* ...

...

... [W]ilful blindness is a combination of suspicion *coupled with* a *deliberate* decision not to make further inquiries, whereas the recklessness that has been referred to by Prof Williams refers to recklessness in terms of the accused's conduct in the context of circumstances *which would not otherwise have aroused suspicion* on the part of the accused. We think that it is important to reiterate this point because it is possible, on another interpretation, to argue that the decision by the accused not to make further inquiries when faced with suspicious circumstances may be

characterised as reckless conduct. We do *not* agree with such an argument and characterisation. Such conduct is wilful blindness that entails a *deliberate* decision not to make further inquiries when faced with suspicious circumstances. ...

[emphasis in original]

29 However, not all facts will give rise to suspicion which necessitates a duty to inquire on the part of the accused. It is important to bear in mind that wilful blindness is distinct from recklessness. An accused is *only* wilfully blind if there is suspicion coupled with a deliberate decision not to make further inquiries. This is opposed to a situation where the accused was merely reckless and faced with circumstances which would not otherwise arouse suspicion on the part of the accused: *Tan Kiam Peng* at [127].

30 In Glanville Williams, *Criminal Law* (Stevens & Sons: 2nd Ed, 1961) at p 159, the learned author comments that in relation to wilful blindness, the accused's calculated steps must be so as to "cheat the administration of justice". Prof Chan Wing Cheong ("Prof Chan") in his article *Culpability in the Misuse of Drugs Act* at p 117 adds that:

The requirement of a "deliberate" decision not to make further inquiries shows that it is those who choose to avoid knowledge in order to escape punishment that are brought within the concept of wilful blindness. ...

31 Therefore, in order to ascertain whether the accused is wilfully blind, it is critical to inquire whether the accused by his conduct had chosen not to make enquiry to deliberately avoid knowledge and elude punishment. In the words of Yong Pung How CJ in *Chia Wai Onn v Public Prosecutor* [1997] 2 SLR(R) 233 at [45]:

[W]here the facts obviously point to one result, and the accused must have appreciated it but shuts his eyes to the truth, then together with the other evidence adduced, this can form a very compelling part of the evidence to infer the requisite guilty knowledge. Thus, if a man says to himself, "*Despite all that I have seen and heard, I refuse to accept what my brain tells me is obvious*", it is an absurdity to say that he does not have the relevant knowledge simply because he chooses to practise Nelsonian blindness and delude himself. [emphasis added]

Is the accused's wilful blindness assessed on an objective or subjective standard?

32 What must a person be taken to know before a duty to inquire will arise? The reasonable person in the circumstances "would have suspicions and would have made enquiries or take other steps to allay his suspicions. There must be suspicion and intention; carelessness or thoughtlessness will not suffice": *Public Prosecutor v Azman bin Mohamed Sanwan* [2010] SGHC 196 at [147].

33 In *Public Prosecutor v Sng Chun Heng and another* [2011] 3 SLR 437 at [75], the court held that the assessment of wilful blindness has to be on the basis of a person who has "average intelligence and honesty". However, the level of knowledge which the accused had is also relevant and is subjective as the Court of Appeal held in *Nagaenthiran* at [30]:

... [Wilful blindness] is a subjective concept, in that the extent of knowledge in question is the knowledge of the accused and not that which might be postulated of a hypothetical person in the position of the accused (although this last-mentioned point may not be an irrelevant consideration) (*ibid*). ...

Was there wilful blindness by the accused for the presence of the diamorphine hidden in his

motorcycle?

34 Do the circumstances in this case lead to the conclusion that the accused was wilfully blinded to the presence of the diamorphine hidden in his motorcycle?

The factors that pointed towards the accused's wilful blindness

(I) The modus operandi was highly suspicious to even the accused and that pointed to his wilful blindness

35 The accused was granted a loan of RM10,000 by Prabha for his mother's heart operation. In return, the accused had to bring things for Prabha to Singapore. For each successful delivery the accused was paid RM500. The delivery was done in highly suspicious circumstances as described by the accused in his statement to the IO: [\[note: 51\]](#)

... Each time before I enter into Singapore, I will pass my motorcycle to 'Prabha' and he will put the things inside. He will ride away on it and I will wait for about 1 to 2 hours for him at my place in Johor Bahru. He will call me to take back the motorcycle when he is done. I will then ride the motorcycle and go to Singapore. It takes me about 30 minutes to reach Woodlands Checkpoint.

I will then clear immigration and proceed to ride towards Woodlands MRT. When I reach Woodlands MRT, I will call 'Prabha' and then he will get someone to meet me. Each time the person will either drive a car or come in a taxi. Normally I will wait for about an hour before the person arrives. A Malay person will come to meet me but not always the same person. The person will then ride my motorcycle away before returning in about half an hour. If he came in a car he will park it and then ride off. Sometimes it is at a car park, sometimes it is at the vicinity of Woodlands MRT. When the Malay person returns me my motorcycle, 'Prabha' will call me to tell me where the motorcycle is. The keys will be left in the basket of my motorcycle for me. I will then ride off and go back to Johor Bahru. When I wait for my motorcycle, I will go shop around the Woodlands area.

36 This happened in the same manner on the day the accused was arrested where the accused stated in his statement that: [\[note: 52\]](#)

On 26 March 2012, 'Prabha' called me on my handphone at about 4pm and told me he wanted to talk to me. He will drive a car to my house in Johor Bahru to meet me. He took my motorcycle keys and tell me that he was borrowing my motorcycle for a while. That happened at about 5pm when he arrived. He came back after about an hour later. I then took over the keys after 6pm. I then enter Singapore after 7pm and was then stopped by the checkpoint officers.

37 The accused himself admitted to being suspicious about the above modus operandi. He alleged that he had asked Prabha repeatedly about what he was transporting. He said under cross-examination that "[h]e (Prabha) told me not to ask this question. 'Just help [him].'" [\[note: 53\]](#) He also admitted to being suspicious and searched his motorcycle each time the motorcycle was returned to him for him to make the delivery in Singapore although he ultimately found nothing suspicious. [\[note: 54\]](#)

38 Besides the accused's own suspicions being aroused, any reasonable person in the accused's shoes would have found the whole arrangement very suspicious. The accused did not deny that the manner in which he was asked to make delivery of things to Singapore subsequently caused him to be

suspicious of Prabha. [\[note: 55\]](#) This caused the accused to try to find out from Prabha, every time he was asked to make the delivery, the nature of the thing that he was transporting, although to no avail. In the circumstances, he must have known that Prabha was being evasive and had something to hide. Why else would Prabha not want to tell him what "stuff" he was bringing into Singapore and refuse to tell him what it was despite his persistence? In my view, a reasonable person in the accused's shoes would have found the arrangement very suspicious.

39 Next, I find it hard to believe that the accused checked his motorcycle each time Prabha returned it to him to bring the "stuff" into Singapore. When I inspected the motorcycle, I found that there were not many hidden places on the motorcycle in which the "stuff" could be concealed. It would also not take too much time to search for these places. Yet even though the accused did more than 20 runs for Prabha and even after he checked his motorcycle before each run was performed, he found nothing. I find this difficult to believe. If the accused really searched his motorcycle, he would have easily discovered the "stuff" that Prabha had asked him to deliver, especially since he believed that Prabha had asked him to smuggle cigarettes. It is incredible that he could not find the "stuff" on all those runs when he knew that Prabha had asked him to do the deliveries and paid him RM500 for each delivery. As such, I reject the accused's evidence that he checked his motorcycle each time before he made the trip.

(II) Only one of the screws for the plastic cover, Exhibit C, was used so as to facilitate easy retrieval of the drugs

40 The accused said he failed to discover the drugs because he did not remove the plastic cover under the basket as he said in his testimony that he did not know how to remove it. [\[note: 56\]](#)

41 I find that difficult to accept. The motorcycle is a small one and the accused had owned it for more than a year. Thus, it is reasonable to expect him to know every visible compartment on the motorcycle, which is not many to begin with. The drugs were found hidden in a compartment near the motorcycle engine under a black plastic cover, Exhibit C. This could be easily removed as it was only secured with a screw. It is usually secured with three screws which can be easily removed with a screwdriver that was kept in the compartment under the motorcycle seat. However, the evidence showed that on the day of the accused's arrest at the Woodlands Checkpoint, the two arms of the plastic cover were not secured with screws. The plastic cover was only secured by the centre screw. It appears that this was deliberate to facilitate the removal of the cover and the retrieval of the drugs.

42 I further note that photographs PH14 and PH15 show the locations for securing the two long arms of the plastic cover below the seat of the motorcycle. One of the locations was circled by the accused in photograph PH14. The other screw point is located opposite to that. This is in the foreground of the photograph. However, one of the long arms of the plastic cover could not be screwed to the motorcycle as the anchorage point had broken off. Therefore, although there are three places to screw Exhibit C to the motorcycle, there were only two screw anchorage points that were useable. The third anchorage point at one of the long arms of the plastic cover was damaged. Therefore, I find that the Exhibit C was secured in this way so as to facilitate the easy retrieval of the drugs.

(III) The arrangement of the metal structure that supported the basket of the motorcycle was set up for easy removal

43 Under normal circumstances, the motorcycle basket would be secured by three screws. The two sides of the basket would be secured to the motorcycle with a screw each. The bottom of the

basket would be supported at the centre by a metal structure which shared the same screw point as Exhibit C. However, I noticed that the metal support of the basket was not secured to the motorcycle. Instead, the screw hole of the metal support had a screw and nut, giving the impression that it was screwed to Exhibit C to the motorcycle. The arrangement seems to facilitate easy access to the engine compartment underneath Exhibit C, making it easy for one to retrieve the package hidden within by enabling easy removal of Exhibit C. At the same time, it would give the impression that Exhibit C and the basket were secured together. This would ensure that no suspicion would arise at the customs checkpoint.

44 The Defence submitted that it is unbelievable that an alleged drug trafficker riding a motorcycle from Johor Bahru into Singapore with drugs hidden in the engine compartment of the motorcycle would cross the Causeway without securing the cover which concealed the drugs. [\[note: 57\]](#) On that basis, he urged the court to take the Prosecution's evidence with a "pinch of salt". [\[note: 58\]](#) I disagree with the Defence. In my view, it is entirely logical from the accused's perspective to ride the motorcycle into Singapore with Exhibit C secured firmly with a screw so as to facilitate its easy removal to retrieve the drugs hidden therein. If all anchorage points were securely screwed, it would be troublesome to remove Exhibit C especially this was done on a regular basis for Prabha.

(IV) The accused's DNA present on Exhibit B2 pointed towards his wilful blindness

45 Fourth, the accused made strenuous attempts to distance himself from Exhibit C. This is obvious as the diamorphine was found hidden under it. He submits that he did not know how to remove Exhibit C.

46 I reject his submission. It was puzzling how the accused would not have known how to remove Exhibit C while at the same time testifying that he knew how to remove the basket above it. [\[note: 59\]](#) His submission also goes against the direct evidence present: his DNA was found on Exhibit B2, a screw which was used to secure one of the two long arms of the plastic cover. [\[note: 60\]](#) His explanation as to why his DNA was found on Exhibit B2 was inadequate; he merely said: "I don't know". [\[note: 61\]](#)

47 Why was the accused's DNA found on Exhibit B2? The accused must have come into contact with it or his DNA would not have been present. This screw was found together with the screwdriver in the same compartment under the motorcycle seat. It had been used to secure one of the two arms of the plastic cover that hid the drugs. From this, I infer that the accused was not telling the truth. He had said he did not know how to remove Exhibit C. However, if he could remove this screw, Exhibit B2, which was used to secure the plastic cover, why he did not check the engine compartment, unless he knew that the black bundle of diamorphine was hidden there? In my opinion, therefore, this pointed towards the accused's wilful blindness.

The factors that failed to rebut the presumption of wilful blindness

(I) The Defence's submission regarding the two screws allegedly unaccounted for was irrelevant and did not rebut the presumptions of possession and knowledge

48 First, the Defence submits that there were two screws besides Exhibits B2 and B3, which were unaccounted for and it was questionable what had happened to the two screws which were meant to secure the left and right side of the basket. [\[note: 62\]](#) His submission is that the Prosecution's evidence was inconsistent because:

(a) PW17, in his examination-in-chief, had stated that not all the screws were intact and two of them were not attached to the motorcycle. [\[note: 63\]](#) Under cross-examination, PW17 also agreed that he had not seen any screw attached to Exhibit C. [\[note: 64\]](#)

(b) PW17's testimony contradicted the evidence of PW24, Lee Tien Shiong Herman, which indicated that one of the exhibits was described as "A screw attached to exhibit C".

Therefore, in the circumstances, Exhibit B3 could not have any probative value with respect to the accused's knowledge of the hidden drugs in his motorcycle. [\[note: 65\]](#)

49 Those facts are immaterial to my findings given that the Defence's case does not dispute that the *actus reus* has been made out. In the Prosecution's submissions, the circumstances surrounding the handling of the exhibits were clear: Exhibits B1, B2 and B3 were seized by PW19, Staff Sergeant Low Kok Wee Wilson, on the instructions of the investigating officer, PW24. [\[note: 66\]](#) That was corroborated by PW19 and 24's statements. The Defence did not raise any objections to those statements. [\[note: 67\]](#) In my view, the issue about the screws is not relevant as the *actus reus* is not disputed: the accused was caught red-handed with the diamorphine. Therefore, this submission is unmeritorious and fails to rebut the presumption of knowledge.

(II) The lack of DNA profiling on two other screws did not rebut the presumptions of possession and knowledge

50 Second, the Defence submits that besides Exhibits B2 and B3, the Prosecution had chosen not to send two other screws for DNA analysis "for reasons best known to them". [\[note: 68\]](#) Since the Prosecution had chosen not to send those other screws for DNA profiling to establish Prabha's involvement, it would go some way to corroborating the accused's version of the story that it was Prabha who had hidden the drugs in the motorcycle without his knowledge. [\[note: 69\]](#) If DNA profiling had been done on those two other screws, the results might have been in favour of the Defence.

51 The submission is speculative. The burden of proof is on the Defence to rebut the presumption of knowledge. The Defence's submission was built on nothing more than mere speculation that the results of any DNA profiling test done would be favourable to the accused. That, however, cannot be the basis on which he can rebut the presumption of knowledge. Even if this speculation was true, it merely confirmed the accused's story that he was a courier for Prabha. It does not exonerate the accused from the offence.

(III) The accused's suspicions that he was transporting cigarettes failed to rebut the presumptions

52 The accused stated in his testimony in court that he had suspected that what he was transporting were cigarettes. This was because of the empty cigarette cartons that he had seen in Prabha's car. [\[note: 70\]](#) I am of the view that the accused's defence was unreliable and an afterthought.

(A) The accused had every opportunity to disclose his suspicions of transporting cigarettes during the investigation stage

53 The accused did not disclose in any of his statements to the CNB that he suspected that he was smuggling cigarettes for Prabha. [\[note: 71\]](#) When asked why he did not inform the Investigation Officer ("IO") of his suspicions, he said that the IO did not ask him and if he had been asked, he

would have told him. [\[note: 72\]](#) I am not convinced by the accused's explanation as he was confronted with the drugs found in his motorcycle and yet he neither informed the IO nor the CNB officers that he suspected it to be cigarettes and not drugs. When the charge was read to him in his cautioned statement, he also did not disclose his suspicions but instead lied to the CNB officer: [\[note: 73\]](#)

I do not know how it came to be in my motorcycle. It is my elder brother who uses the motorcycle. Only today I brought the motorcycle into Singapore. That is all.

54 The accused in his statement to the IO also said: [\[note: 74\]](#)

When the officers opened the black bundle and I was able to see what was inside, I became very scared. I knew I had done the wrong job. I did not know what it was but I thought that it could have been drugs.

55 The accused later told the court about his suspicions that the drugs were cigarettes when he was being cross-examined. The reason for his disclosure was because he had the opportunity to do so then. If it was opportunity that he was looking for, the sessions with the IO were excellent opportunities for the accused to inform the IO about his suspicion that the "stuff" that he was delivering for Prabha might be cigarettes. However, despite those opportunities, the accused only said that he suspected the "stuff" to be drugs. In the circumstances, I reject the accused's defence that he was suspicious that what he was transporting were cigarettes.

(B) The accused's evidence regarding his state of mind was hard to believe

56 Second, with respect to his state of mind, the accused was asked in cross-examination whether it occurred to him that he must have been bringing in very expensive goods since Prabha had loaned him RM10,000 and given him RM500 for each delivery. His reply was: "It did not occur [to] me because of my mother's operation". [\[note: 75\]](#)

57 I find the above hard to believe and have grave doubts about whether his suspicions that he was transporting cigarettes were genuine. When asked about how it was possible to squeeze cigarette cartons into the small compartment, the accused replied that he did "not have the ability to think". [\[note: 76\]](#) While the accused's concern for his mother's health condition and medical expenses is understandable, how could he suspect that he was smuggling cigarettes for Prabha when he was paid RM500 for each trip? The quantity of cigarettes would have to be very large in order to justify the trip and that consideration must have featured in the accused's mind at some point in time. That he was wilfully blind was clear when he told the IO that he was suspicious of Prabha one week before his arrest. [\[note: 77\]](#) The accused's statement is reproduced as follows: [\[note: 78\]](#)

A week before my arrest, I started to get suspicious that 'Prabha' was paying me RM500 for each trip into Singapore to deliver stuff. I got suspicious because he was sending me over to Singapore in the morning. I was also suspicious that 'Prabha' was taking my motorcycle and then returning it an hour later and the same thing happening here in Singapore by the Malay person. However, because of my mother's illness, I did not take it seriously.

58 For these reasons, I find that the facts irresistibly point towards the accused's wilful blindness and the presumption of knowledge has not been rebutted.

Similar fact evidence

59 In the course of the accused's cross-examination, the Prosecution enquired about his previous deliveries for Prabha which were referred to in his examination-in-chief. The Defence objected to the line of questioning on the basis that it was similar fact evidence and therefore prejudicial to the accused. I overruled the objection and my reasons are as follows.

60 The purpose for which the evidence is sought to be admitted is important. The Court of Appeal in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 explained at [37]–[42] when similar facts evidence can be used and held that:

37 It is important to establish the purpose for which the evidence was relied upon in order that we can discern its relevance under the Evidence Act and, therefore, its admissibility. ...

38 The Evidence Act, as envisaged by *Stephen*, admits such evidence under ss 14 and 15. Section 14 states:

Facts showing the existence of any state of mind, such as intention, knowledge, good faith, negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant when the existence of any such state of mind or body or bodily feeling is in issue or relevant.

39 And s 15 says:

When there is a question whether an act was accidental or intentional or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.

40 It will be noted that these sections identify a number of issues to which similar fact evidence is relevant. Since, in this case, the similar fact evidence has been used to support a finding as to the mental state of the appellant when he was engaged in the physical act of transporting, they are potentially relevant under these two sections. Whether it is possible for the law to accommodate the use of evidence going to the proof of a matter not identified in ss 14 and 15 is not in issue in the present case and we do not think it advisable to pronounce on that matter more than is necessary at the present time. What is in issue is whether the principles pertaining to similar fact evidence allow the use of the said evidence on the facts before us.

41 The underlying rationale for the rule excluding similar fact evidence is that to allow it in every instance is to risk the conviction of an accused not on the evidence relating to the facts but because of past behaviour or disposition towards crime. Such evidence without doubt has a prejudicial effect against the accused. *However, at times, similar facts can be so probative of guilt that to ignore it via the imposition of a blanket prohibition would unduly impair the interests of justice.*

[emphasis added]

61 Similar fact evidence was admitted in *Ng Beng Siang and Others v Public Prosecutor* [2003] SGCA 17 ("*Ng Beng Siang*") where the probative value of admitting the evidence outweighed its prejudicial value against the accused. The Court of Appeal held at [40]–[42] that:

41 In our judgment, it was clear that the previous incident had more probative value than its prejudicial effect for two reasons. First, the defence of Ng to the present charge was that he did not know the bundles contained drugs. Thus evidence on the previous occasion where Ng did a

similar errand for Ken, and the unusual manner in which the things were to be delivered, went to show that Ng could not be ignorant of what he was conveying for Ken. Second, Ng recognised Rosdi and Roseley because he had seen them on his first trip. This went to establish that Rosdi and Roseley were the two persons to whom Ng was to pass the haversack. The similar fact evidence was clearly connected with the issues before the court. We would also add that in the course of the trial, the judge had made it clear that he would not take into account the potentially prejudicial effect of this similar fact evidence as suggesting that Ng had the propensity to commit the offence of drug trafficking.

42 As regards the evidence relating to the five packages found in the red plastic bag in the boot of Ng's car, it seemed clear to us that this evidence was adduced as a matter of completeness. Ng stuffed twenty bundles into the haversack and the remaining five into the red plastic bag and put them into the boot. That was the complete story as to what happened when Ng returned to the car after buying the haversack. More importantly, in the course of the trial the judge expressly said that aside from the limited purpose of providing the court with a complete account of the facts, the evidence on the five bundles would be disregarded by him in considering the charges preferred against the three appellants.

62 The facts here are similar to *Ng Beng Siang* as the Prosecution did not adduce evidence to show that the accused had a propensity to commit the offence as charged but to ascertain whether the accused in this case had the necessary *mens rea* to import diamorphine into Singapore on 26 March 2012. This was because the accused's defence was that he was not wilfully blind since he checked his motorcycle every single time he performed a job for Prabha but found nothing. The accused also claimed that he thought that he was bringing cigarettes into Singapore. This was on the basis of cigarette cartons found in Prabha's car. I allowed the Prosecution to cross-examine the accused on facts and events that might appear to be similar fact evidence. However, I focused strictly on what the evidence was adduced for, *ie*, whether the accused was wilfully blind and thus had the *mens rea* to import diamorphine into Singapore on 26 March 2012 at Woodlands Checkpoint.

63 I wish to make it very clear that when I evaluated the evidence against the accused, I did not use it to show that the accused had also delivered drugs for Prabha on previous occasions, which would be deeply prejudicial to him. In any case, there is no evidence to prove those allegations. I also did not use the evidence of past deliveries or past conduct to conclude that the accused had the propensity to import drugs into Singapore on 26 March 2012.

Has the accused rebutted the presumptions under ss 18 and 21 of the Misuse of Drugs Act?

64 From the above reasons, I find that the presumption under s 18 has not been rebutted by the accused. Section 21 of the Act reads:

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.

65 Here, the accused admitted to ownership of the motorcycle and did not deny that a black bundle was found hidden in his motorcycle. [\[note: 79\]](#) The presumption of possession then gives rise to the presumption that the accused knew of the nature of the drug under s 18(2) of the Act. The presumption in s 18(2) imputes knowledge of the nature of the drug onto the accused when the drug is in his possession. The cumulative effect of the two presumptions in s 18(2) and s 21 is the establishment of the requisite *mens rea* for the offence of importation of a controlled drug.

66 On the evidence as explained above, I find that the accused has failed to rebut the presumption under s 18(2) and s 21 of the Act. I find that the accused was a drug mule for Prabha and was paid RM500 each time the delivery was successfully completed. His failure to check, despite these suspicious circumstances, amounts to wilful blindness which equates to actual knowledge. His defence that he thought he was being asked to smuggle in cigarettes cannot stand as it is based on his denial of knowledge that the black bundle contained diamorphine. His bare denial is insufficient to rebut the presumption of possession and knowledge of the diamorphine on a balance of probabilities. Accordingly, the presumption of knowledge under s 18(2) of the Act has not been rebutted on a balance of probabilities.

Conclusion

67 For the above reasons, I find that the Prosecution has proven its case against the accused beyond a reasonable doubt. Accordingly, I find the accused guilty and convict the accused for the offence of importation of 75.41g of diamorphine into Singapore under s 7 of the Act.

[\[note: 1\]](#) AB at p 166.

[\[note: 2\]](#) AB at p 173.

[\[note: 3\]](#) AB at p 174.

[\[note: 4\]](#) AB at pp 171 and 174, para 15.

[\[note: 5\]](#) AB at p 112.

[\[note: 6\]](#) AB at p 112.

[\[note: 7\]](#) AB at p 111.

[\[note: 8\]](#) AB at p 111.

[\[note: 9\]](#) AB at p 111.

[\[note: 10\]](#) AB at p 112.

[\[note: 11\]](#) AB at p 112.

[\[note: 12\]](#) AB at p 112.

[\[note: 13\]](#) AB at p 113 at para 5.

[\[note: 14\]](#) AB at p 113 at para 4.

[\[note: 15\]](#) AB at p 114 at para 5.

[\[note: 16\]](#) AB at p 114.

[\[note: 17\]](#) AB at p 115.

[\[note: 18\]](#) AB at p 116, A1; AB at p 117, A2; AB at p 118, A3.

[\[note: 19\]](#) Prosecution's closing submissions ("PCS") at [10].

[\[note: 20\]](#) PCS at [10].

[\[note: 21\]](#) Defence's closing submissions ("DCS") at [9].

[\[note: 22\]](#) DCS at [9].

[\[note: 23\]](#) PCS at [18]; DCS at [11].

[\[note: 24\]](#) AB at p 174, para 11.

[\[note: 25\]](#) AB at p 174, paras 12–13.

[\[note: 26\]](#) AB at p 174, para 13.

[\[note: 27\]](#) AB at p 174, para 15.

[\[note: 28\]](#) NE 8/8/2014 at p 12, lines 28–29 to p 13, lines 1–19.

[\[note: 29\]](#) NE 8/8/2014 at p 13, lines 7–19.

[\[note: 30\]](#) NE 8/8/2014 at p 13, lines 11–13.

[\[note: 31\]](#) NE 8/8/2014 at p 13, lines 16–17.

[\[note: 32\]](#) NE 8/8/2014 at p 13, lines 18–19.

[\[note: 33\]](#) NE 8/8/2014 at p 13, lines 21–29.

[\[note: 34\]](#) NE 8/8/2014 at p 14, lines 2–3.

[\[note: 35\]](#) NE 8/8/2014 at p 14, lines 7–8.

[\[note: 36\]](#) AB at p 172, lines 22–25, NE 8/8/2014 at p 14, lines 13–14.

[\[note: 37\]](#) AB at p 172.

[\[note: 38\]](#) NE 8/8/2014 at p 14, lines 22–23.

[\[note: 39\]](#) NE 8/8/2014 at p 15, lines 8–9.

[\[note: 40\]](#) NE 8/8/2014 at p 15, lines 20–25.

[\[note: 41\]](#) AB at p 176, para 24.

[\[note: 42\]](#) NE 8/8/2014 at p 22, lines 1–9.

[\[note: 43\]](#) AB at p 171.

[\[note: 44\]](#) AB at p 172.

[\[note: 45\]](#) AB at pp 174–175, lines 16–17.

[\[note: 46\]](#) AB at p 172.

[\[note: 47\]](#) AB at pp 172–173.

[\[note: 48\]](#) AB at p 175, para 18.

[\[note: 49\]](#) AB at p 167.

[\[note: 50\]](#) AB at p 172.

[\[note: 51\]](#) AB at pp 171–172, paras 2–3.

[\[note: 52\]](#) AB at p 172, para 5.

[\[note: 53\]](#) NE 8/8/2014 at p 22, lines 1–9.

[\[note: 54\]](#) NE 8/8/2014 at p 16, lines 10–11; NE 8/8/2014 at p 5, lines 26–29.

[\[note: 55\]](#) AB at p 176, para 22.

[\[note: 56\]](#) NE 8/8/2014 at p 18, lines 3–4.

[\[note: 57\]](#) DCS at [42].

[\[note: 58\]](#) DCS at [42].

[\[note: 59\]](#) NE 8/8/2014 at p 17, lines 31–32.

[\[note: 60\]](#) AB at p 47.

[\[note: 61\]](#) NE 8/8/2014 at p 43, lines 21–24.

[\[note: 62\]](#) DCS at [37].

[\[note: 63\]](#) DCS at [38].

[\[note: 64\]](#) DCS at [40].

[\[note: 65\]](#) DCS at [41].

[\[note: 66\]](#) PCS at [12].

[\[note: 67\]](#) AB at p 129, para 5; AB at p 155, para 9.

[\[note: 68\]](#) DCS at [28], [33] and [34].

[\[note: 69\]](#) DCS at [34].

[\[note: 70\]](#) NE 8/8/2014 at p 6, lines 1–4; 8/8/2014 at p 24, lines 9–22.

[\[note: 71\]](#) NE 8/8/2014 at p 30, lines 29–31, p 31, line 1.

[\[note: 72\]](#) NE 8/8/2014 at p 31, lines 14–16.

[\[note: 73\]](#) AB at p 169.

[\[note: 74\]](#) AB at p 173 para 10

[\[note: 75\]](#) NE 8/8/2014 at p 26, lines 14–17.

[\[note: 76\]](#) NE 8/8/2014 at p 26, lines 24–26.

[\[note: 77\]](#) AB at p 176, para 22.

[\[note: 78\]](#) AB p176 para 22

[\[note: 79\]](#) AB at p 117.

Copyright © Government of Singapore.