IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 226

Criminal Case No 16 of 2017

Between

Public Prosecutor

And

Parthiban Kanapathy

JUDGMENT

[Criminal Procedure and Sentencing] — [Statements] — [Error in translation]

[Criminal Procedure and Sentencing] — [Statements] — [Accuracy of statements] — [Ancillary hearings]

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

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Public Prosecutor
v
Parthiban Kanapathy

[2019] SGHC 226

High Court — Criminal Case No 16 of 2017
Chan Seng Onn J
14-15, 21-23 February 2017, 26, 28 February 2019, 14 May 2019, 5 August 2019; 23 August 2019

24 September 2019 Judgment reserved.

Chan Seng Onn J:

Introduction

1 Parthiban Kanapathy ("the accused"), is a 28 year-old Malaysian male. In the first tranche of hearings before me in February 2017, the accused, together with one Muneeshwar Subramaniam ("Muneeshwar"), faced capital charges relating to the importation of not less than 24.95g of diamorphine on 4 February 2012 at or about 2.29 pm, at Woodlands Checkpoint, Singapore.[1]

2 Prior to the second tranche of hearings in February 2019, the Prosecution applied for, and the court granted, a Discharge Not Amounting to an Acquittal for Muneeshwar.[2]

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1 Charge Sheet (8 February 2017); Prosecution's Opening Address at paras 2 to 3.

2 Minute Sheet (23 November 2018, 9.45am).

3 At the commencement of the second tranche of hearings in February 2019, the Prosecution unconditionally reduced the accused's capital charge to a non-capital one involving the importation of not less than 14.99g of diamorphine ("the amended charge"), an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), punishable under s 33(1) read with the Second Schedule of the MDA. The amended charge reads as follows:

> … on 4th February 2012 at or about 2.29 p.m., at Woodlands Checkpoint, Singapore, on a Malaysia[n] registered motorcycle bearing registration no. WUQ4810, did import a controlled dug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, four (4) packets of granular/powdery substance weighing 916.6 grams which was analysed and found to contain not less than 14.99 grams of diamorphine, at the said place, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) punishable under section 33(1) read with the Second Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).[3]

4 Apart from the reduction in the amount of diamorphine, the subject matter of the charge remained unchanged. A further fresh charge relating to the accused's attempt to obstruct the course of justice was tendered,[4] and stood down.[5]

5 The accused elected to claim trial to the amended charge. While the accused chose to remain silent at the close of the Prosecution's case and after his defence was called,[6] the central crux of his defence was that the four packets of drugs analysed by the Health and Sciences Authority ("HSA") were not the

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3 Charge sheet (amended) at p 1.

4 Charge sheet (amended) at p 2.

5 Notes of Evidence ("NEs") (26 Feb 2019), p 1, lines 18 to 20 (Transcripts p 450).

6 NEs (28 Feb 2019), p 27, lines 25 to 28 (Transcripts p 547).

same packets which he had been arrested with. In other words, the accused disputed the integrity of the chain of custody of the packets of drugs.

The accused's statements

6 Before turning to the chain of custody, it is however appropriate to consider the three statements proffered by the accused, which admissibility and contents are significant for making out the elements of the amended charge against him. If the charge against the accused is not proven beyond a reasonable doubt, the accused will not be convicted in any event, and it will no longer be necessary to consider questions relating to the chain of custody of the drug exhibits.

The 4 February 2012 statement

7 On 4 February 2012 at about 4.00pm, shortly after the accused had been detained at Woodlands Checkpoint for being found with four packets which were suspected to contain drugs, Staff Sergeant S V Thilakanand[7] ("SSgt Thilakanand") recorded a contemporaneous statement of the accused ("the 4 February 2012 statement"), in which the accused chose to speak in Tamil.[8]

8 In the 4 February 2012 statement, SSgt Thilakanand, who spoke to the accused in Tamil,[9] recorded that the accused had identified the four packets as "[d]rugs", and that the drugs belonged to one "Gandu", who told him to place the four packets "at a grass patch near the Woodlands Mosque" for some person

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7 For full name, see Agreed Bundle ("AB") p 346.

8 AB p 173.

9 NEs (15 Feb 2017) at p 4 line 18.

unknown to the accused to collect.[10] The accused claimed that he would be paid RM200 for delivering the drugs, and that it was his second time making such a delivery.[11]

9 The 4 February 2012 statement, which was recorded in English, was then read over by SSgt Thilakanand to the accused in Tamil, and the accused was invited to make corrections, additions or deletions, if any, to the statement. The accused declined the offer.[12]

The cautioned statement

10 On 4 February 2012, at about 11.40pm, the accused was served with a charge of importing approximately 913.98g of granular substances, which were believed to contain diamorphine.[13]

11 On 5 February 2012, at about 12.12am, after the charge and the notice of warning pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") were read in Tamil to the accused by his interpreter,[14] Mr V I Ramanathan ("Mr Ramanathan"), the accused gave his statement in relation to the charge ("the cautioned statement").

12 In the cautioned statement, the accused stated that he was formerly working in McDonald's Singapore, and that he had lost his job in December 2011. Thereafter, he was influenced by his friends that he could "make great

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10 AB p 173, Q1 to A4.

11 AB p 173, Q5 to A7.

12 AB p 174.

13 AB p 296.

14 AB pp 297 – 298.

money by importing drugs into Singapore", and he was thus tempted to do so. He was later "told by the giver that [he] was bringing in drugs but [the giver] did not specify what the drugs were."[15]

13 The accused then pleaded for leniency, and the statement was then read back to him in Tamil by Mr Ramanathan. The accused once again declined to make any corrections, alterations or additions to the statement.[16]

The 5 February 2012 statement

14 After the cautioned statement was recorded, on 5 February 2012, at about 2.05pm, Inspector Ong Wee Kwang ("Insp Ong") recorded a further statement from the accused ("the 5 February 2012 statement"), with Mr Ramanathan again serving as his Tamil interpreter since he elected to give his statement in the Tamil language.[17]

15 In the 5 February 2012 statement, the accused gave further details of his delivery for Gandu, as alluded to in his 4 February 2012 statement.

16 In December 2011, after the accused had lost his job with McDonald's Singapore, he met Gandu, whom he had previously befriended at a Deepavali function, at a food stall in Johor, Malaysia. The accused asked Gandu if he could help him find a job.[18]

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15 AB p 299.

16 AB p 300.

17 AB p 301.

18 AB p 302, para 6.

17 Around the third week of January 2012, Gandu called the accused and told him "to deliver Milo into Singapore and throw it near a mosque at Woodlands". For the job, the accused would be paid RM200.[19] While the accused wondered why Gandu could not do the delivery himself as "Woodlands is so close by from Johor", he did not ask any questions given the remuneration offered.[20]

18 The accused then met Gandu at Pelangi, Johor, and Gandu passed the accused four small packets wrapped with newspapers and cellophane tape. Gandu informed the accused that the "four packets [were] drugs but in Singapore it is known as 'Milo'". The accused then hid the four packets in the air filter box of his motorcycle.[21]

19 Subsequently, the accused rode his motorcycle into Singapore through the Woodlands Checkpoint to the mosque which he had been directed to. He then found a secluded bus stop. There, he "quickly took out the drugs that were hidden in the air filter box", put the four packets into a plastic bag, tied up the plastic bag, and then threw it on the grass near the mosque. After returning to Johor, the accused called Gandu, who met him and gave him RM200 for the job done.[22]

20 On 4 February 2012, being the day of his arrest, the accused again received a call from Gandu at about 11am. Gandu told him that there were similar items which had to be delivered to Singapore, and that the accused

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19 AB p 302, para 7.

20 AB p 303, para 7.

21 AB p 303, para 8.

22 AB p 303, para 9.

would again be paid RM200 to make the delivery "just like what [he] did the last time".[23] The accused subsequently met Gandu in an old unoccupied house in Pelangi, Johor. Inside the house, Gandu handed four packets to the accused.[24]

21 The accused then hid the four packets in the air filter box of his motorcycle, as he had done in the previous delivery for Gandu.[25] At about 2.15pm, the accused entered the Woodlands Checkpoint on his motorcycle. After the Immigration and Checkpoints Authority ("ICA") officer checked his passport, she asked him to park his motorcycle on one side, and he "became tensed and upset but [he] did not show it". The officer also asked for his motorcycle key, and he passed it to her.[26]

22 While nothing incriminating was initially found on his motorcycle,[27] the fender to his motorcycle was eventually opened, revealing the four packets which were hidden in the air filter compartment of the motorcycle. All this was done in the accused's presence. One officer then asked the accused if the four packets were drugs, to which he responded "[y]es that's drugs but I do not know what kind of drugs they are" in English.[28]

23 After that, one officer took a statement from the accused in Tamil.[29] Later, after Insp Ong arrived, the four packets were opened in the accused's presence, and photographs of the packets were taken. The accused was then

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23 AB p 303, para 10.

24 AB p 303, para 11.

25 AB p 304, para 12.

26 AB p 304, para 13.

27 AB p 304, para 14.

28 AB p 304, para 15.

29 AB p 304, para 16.

shown the drug exhibits which were inside the four packets, and he again stated that while he knew they were drugs, he did not know what type of drugs they were.[30]

24 Finally, the accused stated that he was sorry and remorseful, and that he wished to be sent back to Malaysia as early as possible.[31] The entire 5 February 2012 statement was then read back to the accused in Tamil, and he once again declined to make any further changes or deletions.[32]

Marked consistency in the statements

25 Reading the 4 February 2012 statement, the cautioned statement, and the 5 February 2012 statement collectively ("the three statements"), the accused clearly admitted to having previously delivered packets of drugs for Gandu. On the fateful day of his arrest, the accused again attempted to repeat his *modus operandi* of delivering the drugs for Gandu by hiding the four packets in the air filter box of his motorcycle. However, he could not complete his delivery as he had been stopped while crossing the Woodlands Checkpoint. Notably, the accused consistently stated that while he knew that the packets which he was delivering were drugs, he did not know what type of drugs they were.

26 The accused's statements were markedly consistent, even in relation to aspects which did not relate to the drug delivery. For example, in both his 4 February 2012 and 5 February 2012 statements, the accused stated that he had lost his job with McDonald's Singapore sometime in December 2012. In both statements, he also stated that he would be paid RM200 for each delivery of the

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30 AB p 304, para 17.

31 AB p 307, para 21.

32 AB p 307.

packets of drugs, and that 4 February 2012 was the second time he was making such a delivery for Gandu.

Accuracy of all the three statements and voluntariness of the cautioned statement are challenged

27 During the first tranche of hearings before me, the accused challenged the accuracy of all three statements. In substance, he claimed that he had never said that the four packets which he had been arrested with were drugs. Rather, he had used the Tamil term for pills, "*mathirei*", and the interpreters had misunderstood him and taken it to mean drugs instead.[33] The three statements were given in Tamil, and interpreted by two people: the 4 February 2012 statement was taken and interpreted by SSgt Thilakanand, while the cautioned statement and the 5 February 2012 statement were interpreted by Mr Ramanathan.

28 Apart from the accuracy of the interpretation provided by SSgt Thilakanand and Mr Ramanathan, the accused also alleged that he had been threatened by Mr Ramanathan prior to the taking of his cautioned statement.

Calling of ancillary hearing when accuracy of statement is challenged

29 Before considering the accuracy and admissibility of the statements, I make a few observations about the calling of an ancillary hearing when the *accuracy*, but not the *admissibility* of a statement is challenged during the course of a criminal proceeding.

30 Section 279(1) of the CPC provides that:

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[33] AB p 329, para 7.

> Subject to this Code and any other written law relating to the admissibility of evidence, where any party objects to the admissibility of any statement made by that party or any other evidence which the other party to the case intends to tender at any stage of the trial, the court must determine it separately at an ancillary hearing before continuing with the trial.

31 This section of the CPC is often utilised to hold an ancillary hearing when an accused "alleges that the statement was given involuntarily as a result of a threat, inducement or promise" (Illustration (*c*) to s 279(1) of the CPC). In a similar vein, Illustration (*d*) to s 279(1) of the CPC states that where an accused "denies that he made" a statement sought to be admitted, "[n]o ancillary hearing is necessary as this does not relate to the voluntariness of the statement". Read together with Illustration (*c*), it appears that s 279(1) of the CPC ought to be invoked only when the voluntariness of a statement sought to be admitted is challenged.

32 However, Illustration (*a*) to s 279(1) of the CPC shows that when it is suggested that a tape recording sought to be admitted has been tampered with, an ancillary hearing must first be held to determine if the tape had in fact been tampered with. A tape recording is one of the possible modes which may be utilised to record an accused's statement. Nonetheless, in reality, most accused statements (if not all of them) are not tape recorded, but are instead signed written statements obtained from the accused. Be that as it may, by way of an analogy with Illustration (a), if the accused disputes that (i) his written statement sought to be admitted by the Prosecution has been wrongly or erroneously translated or recorded; or (ii) the written statement as recorded is not his statement but a statement that, unknown to him at the time of penning down his signatures on various parts of the statement, has been fabricated by the recording officer, then an ancillary hearing must be held to determine if the statement has in fact been so tampered with. In other words, an ancillary hearing must be held

to ascertain the accuracy and/or authenticity of the recorded statement that is purported to be the accused's statement. If what is recorded as a written statement is determined during the ancillary hearing to be inaccurate or fabricated, then it should not be admitted into evidence.

33 It makes good sense that an ancillary hearing ought to be called when the accuracy and/or authenticity of a statement is being challenged, even if the accused does not explicitly challenge the voluntariness and/or admissibility of the said statement. In *Haw Tua Tau and others v Public Prosecutor* [1981–1982] SLR(R) 133 at [17], it was held that the following principles apply to determine if an accused ought to be called upon to give his defence (see also s 230 of the CPC):

> … At the conclusion of the Prosecution's case …, the judge must consider whether there is some evidence (not inherently incredible) which, if he were to accept it as accurate, would establish each essential element in the alleged offence. If such evidence as respects any of those essential elements is lacking, then, and then only, is he justified in finding "that no case against the accused has been made out which if unrebutted would warrant his conviction", within the meaning of s 188(1). Where he has not so found, he must call upon the accused to enter upon his defence …

34 Considering the above principles, unless and until the part of the recorded statement alleged to be inaccurate or inauthentic is determined to be accurate and authentic at the conclusion of an ancillary hearing, it is obvious that it ought not to be considered as part of the Prosecution's evidence from which the court will decide whether the accused is to be called upon to enter his defence. Otherwise, an inaccurate statement could erroneously form the basis for a judge to call upon an accused to enter his defence.

35 More importantly, having an ancillary hearing allows the accused to step into the witness box to give evidence on oath and challenge the accuracy and/or

authenticity of the recorded statements purported to be his statements before the close of the Prosecution's case, without sacrificing his right to remain silent should the court later decide to call for his defence at the close of the Prosecution's case.

36 The difference here is not simply academic. If issues of accuracy and/or authenticity of the accused's statement are treated strictly as a part of the main trial (*ie,* no ancillary hearing is to be held to determine these issues first because they do not involve the question of the voluntariness of the accused's statement), then the accused will not have the opportunity to give evidence on oath in the witness box to challenge the accuracy and/or authenticity of the statements until after his defence is called and he decides to testify on oath. What if he chooses to remain silent? By choosing to remain silent after his defence is called, the accused will have lost the opportunity to dispute the accuracy and/or authenticity of the accused's statement tendered as part of the Prosecution's case.

37 A straightforward reply may be that the accused ought therefore to elect to give his defence should he wish to challenge the accuracy of the statements utilised against him. However, the moment he steps into the witness box, the accused will be liable to cross-examination even on matters unrelated to the accuracy of the statements, even if his original intention is to remain silent and not give any evidence on matters in relation to the commission of the alleged offence after his defence is called by the court. As such, if there is no prior ancillary hearing to determine the accuracy or authenticity of the accused's statements which are tendered by the Prosecution as part of its case, the accused's right to elect to remain silent is to that extent constrained. Section 230(1)(*m*) of the CPC, which contains the caution to be given to an accused when the court considers that the Prosecution has made out a case against the

accused based on "some evidence, not inherently incredible" merely proscribes that the accused could be subject to adverse inferences should he elect not to give evidence in his own defence for the main trial proper. There is no prescription that he will also lose the right to challenge the accuracy and/or authenticity of the statements. In fact, disputed evidence on the accuracy, authenticity and voluntariness of statements are satellite matters that have no bearing on the main trial proper, which serves to determine whether the ingredients of the offence have been proven beyond a reasonable doubt. Logically, any statement (or part thereof) of the accused that is involuntarily made, inaccurately recorded or not an authentic statement should not be admitted and the Prosecution cannot rely on its contents to establish its case. The only way to achieve this is to allow the accused to testify to these satellite matters in a separate standalone ancillary hearing.

38 In my view, s 279(1) of the CPC thus addresses this procedural problem by requiring an ancillary hearing to be held to determine any disputed issues concerning the accuracy and/or authenticity of the statements recorded from the accused *before* the case for the Prosecution is completed. In this regard, I note that Illustration (*d*) to s 279(1) of the CPC merely states that "[n]o ancillary hearing is *necessary*" [emphasis added] when the challenge does not relate to the voluntariness of the statement. While it is not *necessary*, I find that it would be good practice to call for an ancillary hearing to determine the accuracy and/or authenticity of any statement, in particular as the liberty of the accused may very well depend on whether those parts of the statement disputed by the accused as being accurate or authentic are admitted and relied on by the Prosecution after their admission.

39 For these reasons, I heard all the evidence in relation to the accuracy and voluntariness of the statements from *both* the Prosecution's witnesses and the

accused in an ancillary hearing, which took place before the conclusion of the Prosecution's case. The accused was given every opportunity to give evidence in the witness box while on oath to challenge both the accuracy *and* voluntariness of the recorded statements during the ancillary hearing.

40 Having heard the evidence in the ancillary hearing, I found the accused's allegations regarding the accuracy and voluntariness of the statements to be wholly unfounded. Accordingly, I accepted that the interpretations provided by SSgt Thilakanand and Mr Ramanathan were not erroneous and that the statements were accurately recorded in English. I also admitted the cautioned statement, which voluntariness was challenged, into evidence.

41 I turn first to consider the accused's allegations in relation to the accuracy of the recording of the three statements before I consider the involuntariness of the cautioned statement.

The accuracy of the interpretation and the recording of the statements in English

42 As explained above, the accused's main gripe with the three statements was that the interpreters (namely SSgt Thilakanand and Mr Ramanathan) had misinterpreted his use of the Tamil term for pills as drugs.

(1) Means of recording the statements

(A) THE 4 FEBRUARY 2012 STATEMENT

43 SSgt Thilakanand, a proficient Tamil speaker who studied the Tamil language up to the "O" Levels and conversed in Tamil in his daily life,[34] was

[34] NEs (15 Feb 2017) at p 10, lines 8 – 20.

the recorder of the statement given by the accused on 4 February 2012. In giving the statement, the accused chose to speak in Tamil, which SSgt Thilakanand recorded in English. The statement was recorded in the presence of SSgt Kum Chin Siang ("SSgt Kum"), although SSgt Kum did not understand Tamil.[35]

44 When recording the statement, SSgt Thilakanand would first write the question to be asked on paper in English. Thereafter, he would ask the accused the question in Tamil, before recording in English on the same piece of paper the answers given by the accused in Tamil as was understood by him. SSgt Thilakanand repeated this process for each of the eight questions he asked the accused. After recording the eight questions and answers in English, SSgt Thilakanand then read all the questions and answers back to the accused in Tamil, who then appended his signature next to each answer.[36]

(B) THE CAUTIONED STATEMENT AND 5 FEBRUARY 2012 STATEMENT

45 The cautioned statement and 5 February 2012 statement were recorded by Insp Ong, with Mr Ramanathan, a freelance Tamil interpreter with about 40 years' experience,[37] serving as the interpreter as the accused again elected to give his statements in Tamil.

46 Prior to recording both statements, Insp Ong introduced Mr Ramanathan as the accused's interpreter; on both occasions, the accused had no objections to Mr Ramanathan serving as his interpreter.[38]

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35 AB p 173; NEs (15 Feb 2017) at p 48 lines 1 – 10.

36 NEs (15 Feb 2017) at p 3 line 29 to p 4 line 18 and p 60 at lines 3 – 9; AB p 173.

37 NEs (21 Feb 2017) at p 91, lines 22 – 29 and p 95, lines 24 – 25.

38 AB p 353, para 3, p 347, para 3 and p 349, para 13.

47 In relation to the cautioned statement, Insp Ong first read out and explained the charge under s 7 of the MDA to the accused in English, which Mr Ramanathan then interpreted to the accused in Tamil. The accused confirmed his understanding of the nature and consequences of the charge, and signed below the charge.[39] Thereafter, Insp Ong read the notice of warning to the accused in English, and Mr Ramanathan then interpreted the notice of warning to the accused in Tamil. The accused again confirmed his understanding of the notice of warning, and appended his signature below the notice of warning.[40] The accused then gave his cautioned statement in Tamil, which Mr Ramanathan interpreted to Insp Ong in English. The cautioned statement was recorded in English, and Mr Ramanathan interpreted the recorded cautioned statement back to the accused. The accused declined to make any changes to the recorded cautioned statement, and instead appended his signature below the statement.[41]

48 As for the 5 February 2012 statement, the accused volunteered his version of events (see [14]–[24] above) "in a mix of Tamil and English".[42] Insp Ong then read the statement to the accused in English, before Mr Ramanathan interpreted the same statement to the accused in Tamil. The accused then declined to make any amendments to the statement, and instead signed at the bottom of each page of the statement.[43]

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39 AB p 353, para 4, pp 347 – 348, para 4 and pp 297 – 298.

40 AB p 354, para 6, p 348, para 5 and p 298.

41 AB p 354, paras 8 – 9, p 349, paras 8 – 9 and pp 299 – 300.

42 AB p 350, para 14.

43 AB p 355, para 14, p 350, para 14 and pp 301 – 307.

(2) Alleged inaccuracy

49 Clearly, there was ample opportunity for the accused to dispute the accuracy of the interpretation when the statements were being recorded. Instead of disputing their accuracy, the accused appended his signature below the statements after they had been read back to him for his confirmation.

50 Yet, much was made of the fact during the cross-examination of the Prosecution's witnesses at the ancillary hearing that the accused had said "*mathirei*", which means pills in Tamil,[44] instead of "*bothai porul*", which means drugs in Tamil,[45] when describing the packets containing the drugs to the respective officers who recorded his statements.

51 When questioned on the stand, SSgt Thilakanand was firm that, in giving his 4 February 2012 statement, the accused had described the four packets with the English word "drugs".[46] This appears to contradict the line in the 4 February 2012 statement, whereby it was recorded that the "[a]ccused chose to speak in Tamil."[47] Faced with this apparent contradiction during cross-examination, SSgt Thilakanand explained:

> Q But why didn't you in this case, with respect to your conditioned statement and your evidence, say that this statement was recorded in a mixture of Tamil and English.
>
> A Your Honour---
>
> Q He used the English word, the main English word, right, "drugs". Why?
>
> A Because I asked him what language he wants to speak, Your Honour, he said Tamil. So our conversation was---was in Tamil,

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44 NEs (15 Feb 2017) at p 22, lines 23 – 32; NEs (22 Feb 2017) at p 10, line 10.

45 NEs (22 Feb 2017) at p 11, lines 30 – 31.

46 NEs (15 Feb 2017) at p 8, line 11 and p 21, lines 14 – 20.

47 See AB p 173.

> Your Honour. But one word he actually used, er, which is quite common, he used was "drugs". So it is like, you know, quite easy to use "drugs" whether in Tamil you want to use like "*bothai porul*". So I took it as it is, Your Honour.

52 Hence, SSgt Thilakanand's evidence was that while the accused's 4 February 2012 statement was predominantly given in Tamil, the accused had used the English word "drugs" when describing the four packets of drugs.

53 In contrast, Mr Ramanathan said that the accused had specifically used the Tamil words "*bothai porul*" when describing the four packets of drugs in his cautioned statement and 5 February 2012 statement.[48]

54 The contradiction between SSgt Thilakanand's and Mr Ramanathan's evidence appears to lend some credence to the accused's evidence that he had in fact described the packets as "*mathirei*". However, viewing the evidence given at the ancillary hearing in its totality, I am satisfied beyond a reasonable doubt that the accused had himself used the English word "drugs" and the Tamil words "*bothai porul*" during the recording of his respective statements and there had thus been no inaccuracy in translation as he had never used the Tamil word "*mathirei*" to describe the four packets.

(3) No inaccuracy in translation

55 Preliminarily, it is highly plausible for the accused to have vacillated between the English and Tamil words for drugs. The accused himself gave evidence that while he spoke Tamil at home,[49] he understood a little bit of English at the time of his arrest.[50] Significantly, in his 5 February 2012 statement

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48 NEs (22 Feb 2017) p 17 at line 18.

49 NEs (22 Feb 2017) at p 34, line 2.

50 NEs (22 Feb 2017) at p 34, line 14.

(interpreted by Mr Ramanathan), the accused explicitly said that the following exchange occurred between himself and the officers who had discovered the drugs hidden inside the air filter compartment of the motorcycle on 4 February 2012:[51]

> After that three ICA officers in uniform then opened up the fender with my screwdriver and their own screwdriver and then they found the packets which I had hidden inside the air filter compartment. It was all done in my presence and I could see what they were doing. Once the officers saw this, I was immediately handcuffed and one of the officers, I cannot remember who, asked me if the packets were drugs. I said "*Yes that's drugs but I do not know what kind of drugs they are". I said this to the officers in* ***English****. These were my exact words.* After that they did further search on the motorcycle but did not find anything else incriminating … [emphasis added]

56 The dispute in relation to the alleged misinterpretation did not arise until 25 November 2013, when the accused's counsel at that time wrote to Insp Ong saying that the accused had informed them that "some portions in our client's statements … were incorrect".[52] There is nothing to suggest that *after* Insp Ong was informed by the accused's counsel of inaccuracies in the accused's statements, the much *earlier* 5 February 2012 statement was in any way physically tampered with or altered to lend support to SSgt Thilakanand's account that the accused had in fact described the packets by using the English word "drugs" in his 4 February 2012 statement. Accordingly, that SSgt Thilakanand testified that the accused had used the English word "drugs" while Mr Ramanathan testified that the accused had used the Tamil words "*bothai porul*" (each corroborating the other in the sense that both words used by the accused as heard by them did not relate to any "pills") does not lend any

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51 AB p 305, para 15.

52 Exhibit D1, para 3a.

credence to the accused's account that they had both misinterpreted him when he had in fact said "*mathirei*" to both of them.

57 With the issue of the differing languages used by the accused to describe the drugs disposed of, I turn to my reasons as to why there were no inaccuracies in both SSgt Thilakanand and Mr Ramanathan's translations, contrary to the accused's allegation.

58 First, I do not think that it is at all likely for SSgt Thilakanand to have misheard the English word "drugs" if the accused had in fact said "pills" or "*mathirei*" to him. The pronunciation of "pills" and even more so "*mathirei*" sound so audibly different from "drugs" that it is most unlikely that SSgt Thilakanand could have misheard what the accused had said. There is also no allegation that SSgt Thilakanand's Tamil is so poor that he had wrongly understood the word "*mathirei*" to mean "drugs" such that when he allegedly heard the accused mention "*mathirei*", he wrote down in English the word "drugs" instead. Neither is there any allegation that SSgt Thilakanand had been dishonest in that he had in fact heard the accused say "*mathirei*" or "pills" but had deliberately inserted "drugs" in the 4 February 2012 statement recorded by him. If SSgt Thilakanand had done that, it would amount to a fabrication of this part of the accused's statement recorded in English by him.

59 Second, although Mr Ramanathan is an elderly gentleman, I note that he did not exhibit any difficulty with hearing when he appeared as a witness wearing his hearing aids. Furthermore, the pronunciations in Tamil of "*bothai porul*" for drugs and "*mathirei*" for pills are so distinctly and audibly dissimilar that I do not think that Mr Ramanathan could have misheard one for the other. Neither do I think that Mr Ramanathan, a very experienced Tamil interpreter, could have been confused as to what "*mathirei*" in fact means. The accused

alleged that although he had used "*mathirei*" before Mr Ramanathan, Mr Ramanathan had assured him during the recording of the statement that it had the same meaning as "*bothai porul*".[53] Yet, during cross-examination, Mr Ramanthan, who was but a freelance interpreter and thus had no vested interest in securing a conviction against the accused, clearly explained that while "pills" could be used to describe both drugs and medicine in English, the words for "pills" and "drugs" in Tamil are very different and not interchangeable.[54] I do not believe the accused's allegation that Mr Ramanthan had sought to mislead him in any way by telling him that "*mathirei*" and "*bothai porul*" meant the same thing when it was clear to Mr Ramanthan that they did not. In fact, far from being prejudiced against the accused, Mr Ramanathan said that he sometimes polished the accused's language. For example, when the accused stated that he wanted "to be a good man after this. I want to be a perfect man", Mr Ramanathan translated the accused's words to the English idiom "to turn over a new leaf".[55]

60 For the reasons stated, I do not see how the alleged misinterpretation could have arisen in this case. If Mr Ramanathan had heard the accused say "*mathirei*", he would have interpreted it to be "pills" and not "drugs" to the recording officer, who would have accordingly recorded it down as "pills". I accept the evidence of Mr Ramanathan that the accused had in fact used the Tamil words "*bothai porul*", and that explains how the word "drugs" and not "pills" appears in the accused's cautioned statement and 5 February 2012 statement.

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53 NEs (22 Feb 2017) at p 38, lines 2 – 4.

54 NEs (22 Feb 2017) at p 10, lines 3 – 14.

55 NEs (21 Feb 2017) at p 98, lines 22 – 25.

61 Third, the three statements, which were separately and independently interpreted by SSgt Thilakanand and Mr Ramanathan, are consistent even with respect to matters which do not relate to the drugs, such as the accused having lost his McDonald's job in December 2011, and that the accused would be paid RM200 per delivery for Gandu. This suggests that the interpretation provided by SSgt Thilakanand and Mr Ramanathan were at least broadly accurate. It would therefore be highly fortuitous if both interpreters then made the exact same error in mistranslating the Tamil word "*mathirei*" used by the accused as "drugs" in English.

62 In other words, if the accused had in fact used *"mathirei*" when all three statements were recorded, it begs the question as to why *both* SSgt Thilakanand and Mr Ramanathan, who had no contact with each other during the short span of time when the three statements were recorded (from 4 February 2012 to 5 February 2012), would have consistently mistranslated "*mathirei*" as meaning "drugs" in English. No reasonable explanation is proffered in this regard.

63 Fourth, the alleged inaccuracy in translation is evidently an afterthought. The accused testified during the ancillary hearing that he knew that there was a "big difference"[56] between "*bothai porul*" and "*mathirei*". Yet, he declined to make any alterations when all three statements were read back to him, even though the word "drugs" features many times in the three statements. This suggests that there was in fact no dispute in relation to the word "drugs" when both SSgt Thilakanand and Mr Ramanathan were interpreting the accused's statements back to him from English to Tamil for him to verify the accuracy of what was recorded from the accused in Tamil and translated into English.

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[56] NEs (22 Feb 2017) at p 51, lines 2 – 4.

64 Finally, if there had in fact been a misinterpretation, certain statements provided by the accused would have made little sense. For example, in his 5 February 2012 statement (interpreted by Mr Ramanathan), the accused was shown the drug exhibits, and he made the following observations:

> They look like Milo powder. I know they are *drugs* but I do not know what type of *drugs* they are. I still do not know what type of *drugs* they are. When the charge was read to be last night, I was told that it was diamorphine. However, I do not know what diamorphine is … (Recorder's note: I now informed the accused that "diamorphine" is known as "heroin"). I have heard about heroin but I have never tried it. I do not know and I was not aware that by bringing *drugs* into Singapore I will face [the] death penalty. I know that bringing *drugs* into Singapore is illegal but I do not know I will face the death penalty.[57] [emphasis added]

Patently, if the italicised "drugs" in the above passage are replaced by "pills" (which the accused allegedly said was the meaning of the Tamil word "*mathirei*" that he had allegedly used during the recording of his statement), the passage above would make little sense, especially as the drug exhibits shown to the accused were brown granular/powdery substances that were not in pill form.[58]

65 In totality, I therefore found that the statements were not misinterpreted, and they properly and accurately record what the accused had said.

Voluntariness and admissibility of the cautioned statement

66 Turning to the admissibility of the cautioned statement, the accused alleged during the ancillary hearing that Mr Ramanathan had threatened him prior to him giving his cautioned statement.

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57 AB p 306, para 17.

58 See Exhibit CH-PH 30.

67 According to the accused, Mr Ramanathan had first read to the accused the capital charge which he was then facing, and explained to him that he was liable to being sentenced to death if convicted on the charge.[59] Thereafter, Mr Ramanathan threatened him by telling him that he had to agree with everything that the Central Narcotics Bureau ("CNB") said.[60] Otherwise, the accused would suffer the death penalty.[61] The shock of this threat caused the accused to cry.[62] After issuing the alleged threat, Mr Ramanathan then administered the notice of warning to the accused, in accordance with s 23 of the CPC, imploring the accused to state any fact material to his defence.[63] The accused then gave his cautioned statement, admitting that he had brought the drugs in the hope of making "great money".[64]

68 I found that the allegation of a threat was a mere afterthought that was not borne out by the evidence.[65] Accordingly, I admitted the cautioned statement.

69 First, while the accused had allegedly cried after he was threatened by Mr Ramanathan, Insp Ong, who was asking the questions which were translated by Mr Ramanathan, testified that he did not see any crying throughout the course of the recording of the cautioned statement.[66] This is likely to be the case. If Insp Ong had observed that Mr Ramanathan had uttered words that made the

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59 NEs (22 Feb 2017), p 39 at lines 22 – 27.

60 NEs (22 Feb 2017), p 39 line 31 – p 40 line 3.

61 NEs (22 Feb 2017), p 52 at lines 6 – 10.

62 NEs (22 Feb 2017), p 44 lines 16 – 18 and p 46 at lines 11 – 13.

63 NEs (22 Feb 2017), p 40 at lines 12 – 25; AB p 298.

64 AB p 299.

65 NEs (22 Feb 2017), p 67 at lines 3 – 6.

66 NEs (26 Feb 2019), p 27 at line 28.

accused cry, it would make little sense for Insp Ong to again ask Mr Ramanathan to be the accused's interpreter the very next day when his 5 February 2012 statement was being taken.[67]

70 Second, the accused's account of the series of events is highly implausible. On the one hand, he alleged that Mr Ramanathan had threatened him by telling him to simply agree to everything the CNB said. On the other hand, the accused then agreed that Mr Ramanathan had implored him, through the notice of warning, to state whatever that was material to his defence. As the essence of the notice of warning is that the accused is free to say whatever he wishes in his defence, it would have directly contradicted the alleged threat that Mr Ramanathan had just administered. Despite this apparent contradiction, and given that the notice of warning may have allayed whatever fear the accused was operating under after he had been allegedly threatened by Mr Ramanathan, the accused did not clarify the apparent inconsistency with Mr Ramanathan. This suggests that no threat was made in the first place,[68] which is much more likely as no reason was given as to why Mr Ramanathan, being a freelance interpreter, would have wanted the accused to agree with whatever the CNB said.

71 Third, the accused testified that when it came to interpreting the word "drugs", he had corrected Mr Ramanathan, clarifying that he meant "*mathirei*" (meaning pills) and not "*bothai porul*" (meaning drugs).[69] This contradicts the accused's allegation that he had been compelled by Mr Ramanathan's threat to say whatever the CNB wanted him to say.

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67 See AB p 301, para 1.

68 NEs (22 Feb 2017), p 42 at lines 6 – 10.

69 NEs (22 Feb 2017), p 50 at lines 19 – 22.

72 Fourth, despite the alleged threat being issued from as early as 4 February 2012 when the accused's cautioned statement was being recorded, the accused failed to raise the matter of the threat until the trial. In fact, the first indication raised by the accused that some portions in his statements had been incorrectly interpreted only appeared some one and a half years after the cautioned statement was taken, in a letter sent to Insp Ong by the accused's counsel in November 2013.[70] Even though the letter clearly related to the statements that were interpreted by Mr Ramanathan (which would include the cautioned statement), no mention was made of the alleged threat.

73 For the reasons stated above, I did not believe the accused's allegation of a threat, and accordingly admitted the cautioned statement after the *voir dire*.

74 Given that the voluntariness of the 4 February 2012 and 5 February 2012 statements was not disputed, all three statements were admitted into evidence. Further, as I have found that they were also not misinterpreted as alleged and had in fact been accurately recorded, I give full weight to the contents in the three statements.

Elements of an importation charge

75 Turning to the elements of the importation charge against the accused, the Court of Appeal recently stated in *Adili Chibuike Ejike v Public Prosecutor* [2019] SGCA 38 ("*Adili*") at [27] that, to make out a charge under s 7 MDA, three elements must be proven beyond reasonable doubt:

(a) first, the accused person was in possession of the drugs;

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70 Exhibit D1, para 3.

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

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

76 In relation to the first element, "possession, for the purposes of the MDA, has been interpreted to mean not just physical possession or custody but also to incorporate an element of knowledge" (*Adili* at [31]); the inquiry with regard to the knowledge limb of the first element of s 7 MDA is solely to establish whether the accused "knew of the existence of the thing in question that turns out to be a drug" (the "knowledge limb of the first element"). This is separate and distinct from the accused's knowledge of the *nature* of the drugs in question, which is properly to be considered under the second element (*Adili* at [32]) of s 7 MDA.

Elements of the charge are made out

77 Having considered all the relevant evidence at the conclusion of the trial, I am satisfied that the elements of the s 7 MDA charge against the accused are clearly made out.

Possession of the drugs

78 With respect to the first element of possession, the accused was clearly caught with physical possession of the drugs, which were found in the air filter compartment of the motorcycle he was attempting to ride into Singapore.

79 As for his knowledge of the existence of the things (in this case, the four packets) hidden in his motorcycle's air filter compartment that turned out to be drugs, the accused willingly admitted in all three statements that he knew that

the four packets contained drugs.[71] This unequivocally implies that he also knew of the existence of the hidden items in his motorcycle's air filter compartment (the "implication"), which is a necessary prior fact before he could even say that he knew that the four packets contained drugs. More significantly, the accused even admitted in his 5 February 2012 statement that he had personally hidden the four packets in the air filter compartment of his motorcycle in the same way as he had done in the previous delivery for Gandu.[72] The accused's knowledge of the existence of the hidden items is thus convincingly established for the purpose of proving the knowledge limb of the first element of s 7 MDA.

80 As the accused elected not to give his defence nor call any other witnesses after the conclusion of the Prosecution's case, there is no evidence to rebut the clear admissions of his knowledge of the drugs hidden in his motorcycle in his three statements, or to create a reasonable doubt in the Prosecution's case on the question of his legal possession of the drugs. Hence, both aspects of the first element of possession are clearly made out beyond a reasonable doubt.

Knowledge of the nature of the drugs

81 I turn now to consider the second element of knowledge of the nature of the drugs. Given that the accused has been proved to have had the drugs in his possession, he is presumed to have known the nature of the drugs (*ie,* diamorphine) in his possession: s 18(2) MDA.

82 In this regard, merely stating that he did not know of the nature of drugs is plainly insufficient to rebut the s 18(2) MDA presumption. As the Court of

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71 AB p 173, A1; p 299; p 306, para 17.

72 AB p 304, para 12.

Appeal stated in *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 at [35]:

> In order to rebut the presumption in s 18(2), which vests the respondent with the knowledge that the drugs imported were diamorphine, *it is not enough for the respondent, who knew that he was transporting illegal drugs, to state merely that he did not know what sort of drugs they were or that he had never heard of diamorphine or heroin.* If he did not know what diamorphine was, he could not possibly claim that the drugs he was carrying were not diamorphine… The presumption in s 18(2) is placed in the MDA precisely to address the difficulty of proving an accused person's subjective state of knowledge with regard to any specific type of drug. It also takes care of the case of a trafficker or an importer of drugs who simply does not bother or does not want to know what drugs or even what goods he is going to carry. Allowing the respondent in these circumstances to rebut the presumption of knowledge by merely stating that he did not know what drugs he was carrying save that they were not dangerous drugs and therefore could not be diamorphine would, as we mentioned in *Obeng* (at [39]), make the presumption of knowledge all bark and no bite… [emphasis added]

83 In the cautioned statement and 5 February 2012 statement, the accused consistently alleged that he did not know what *kind* of drugs he had been carrying.[73] Further, the accused claimed that he did not know what diamorphine was, and when informed that it was also known as heroin, he simply stated that he had heard about heroin before but he had never tried it.[74]

84 Later, in a statement given on 28 July 2016, the accused alleged that he had been told by Gandu that the four packets that he was arrested with contained "Milo sex pills" (the "28 July 2016 statement").[75]

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73 AB p 299, p 305, para 15; p 306, para 17.

74 AB p 306, para 17.

75 AB p 328, para 4.

85 However, considering that the accused did not testify nor provide any evidence to support his allegations that he did not know the true nature of the drugs proved to be in his possession, the s 18(2) MDA presumption is evidently unrebutted. For completeness, I do not believe the accused's belated claim in his 28 July 2016 statement that he thought the four packets contained "Milo sex pills", given that this claim directly contradicts his consistent position in his earlier statements that he had never been told, nor did he know, what kind of drugs he was carrying.[76]

86 Therefore, by virtue of the unrebutted s 18(2) MDA presumption, the accused is presumed to have knowledge of the actual nature of the drugs, being diamorphine.

Drugs intentionally brought into Singapore without prior authorisation

87 Finally, the three statements reveal that the drugs were intentionally brought into Singapore without prior authorisation in the hope of remuneration from Gandu.

88 Therefore, all three elements of the s 7 MDA charge are proved beyond a reasonable doubt.

Chain of custody

Applicable principles

89 However, that is not the end of the matter. As alluded to in the introduction, the key dispute in this case relates to the chain of custody of the drugs.

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[76] AB p 299; p 306, para 16.

90 The applicable principles in relation to the chain of custody were recently elaborated on by the Court of Appeal in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Mohamed Affandi*"). There, Sundaresh Menon CJ stated that "[i]t is well established that the Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits analysed by the HSA are the very ones that were initially seized by the CNB officers from the accused" (*Mohamed Affandi* at [39]).

91 In this regard, it is "*first incumbent on the Prosecution to establish the chain*. This requires the Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis" [emphasis in original] (*Mohamed Affandi* at [39]).

92 Furthermore (*Mohamed Affandi* at [39]),

> the defence may also seek to suggest that there is a break in the chain of custody. This refers not necessarily to challenging the Prosecution's overall account but to showing that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken. Where this is shown to be the case and a reasonable doubt is raised as to the identity of the drug exhibits, then the Prosecution has not discharged its burden… To put it another way, the Prosecution must show an *unbroken chain*. There cannot be a single moment that is not accounted for if this might give rise to a reasonable doubt as to the identity of the exhibits: *Public Prosecutor v Chen Mingjian* [2009] 4 SLR(R) 946 ("*Chen Mingjian*") at [4]. [emphasis in original]

93 With these principles in mind, I turn to consider the chain of custody of the drug exhibits in this case.

The Prosecution's case in relation to the chain of custody

The accused's arrest

94 The facts relating to the accused's arrest, as well as the discovery of the drugs in his motorcycle by the officers at Woodlands Checkpoint, Singapore, are not disputed.

95 On 4 February 2012, at or about 2.29pm, the accused rode a motorcycle bearing the Malaysian registration number WUQ 4810 ("the motorcycle") into Woodlands Checkpoint, Singapore.[77] Upon screening by an ICA officer, the accused was detained for further checks, and his passport as well as the keys to the motorcycle were seized from him.[78]

96 The accused, together with his passport and the keys to his motorcycle, were then handed to one Corporal Mohamed Ridzuan Shah bin Sapii ("CPL Ridzuan"), who escorted the accused to park his motorcycle at lot A32 of the ICA Secondary Team Office.[79] Thereafter, CPL Ridzuan handed custody of the accused, along with his passport and the keys, to Assistant Superintendent Irene Chong ("ASP Chong"), an officer with the ICA.[80]

97 At about 2.40pm, ASP Chong handed the accused, his passport, and the keys to officers from the Central Narcotics Bureau ("CNB").[81] At about 2.42pm, SSgt Kum searched the motorcycle in the presence of the accused but found

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77 AB p 156, para 2.

78 AB p 156, paras 3 – 4.

79 AB p 159, para 3.

80 AB p 157, para 4; AB p 159, para 4.

81 AB p 158, para 5; AB p 177, para 3.

nothing incriminating. He then instructed the accused to push the motorcycle to the K9 garage.[82]

98 At about 2.45pm, at the K9 garage, Special Constable Chen Guo Hao conducted a search on the motorcycle in the accused's presence, and again found nothing incriminating.[83] SSgt Kum, along with three other officers, then escorted the accused as he pushed the motorcycle to the ICA vehicle detention yard for further searches to be conducted.[84]

99 At about 3.21pm, further searches were conducted on the motorcycle by other ICA officers. At about 3.26pm, SSgt Aminur Rashid bin Abdol Talip unscrewed the fender of the motorcycle, and found four plastic wrappers in the form of "Oriental Cheese Balls" packets ("the four packets") hidden in the air filter compartment.[85]

100 At about 3.31pm, in the accused's presence, SSgt Kum retrieved the four packets from the air filter compartment of the motorcycle.[86] The four packets were sealed with white masking tape.[87] SSgt Kum then placed each of the four packets into separate zip-lock bags. He then placed the four zip-lock bags into one bigger zip-lock bag, which he held onto.[88]

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82 AB p 177 para 4.

83 AB p 160, para 3; AB p 177, para 4.

84 AB p 177 para 5.

85 AB p 178, paras 7–8; AB p 162, para 4; AB p 161, para 4; Exhibits CH-PH 24 – 29.

86 AB p 178, para 8; AB p 165, para 9.

87 AB p 178, para 8; Exhibit CH-PH 29.

88 AB p 178, para 9.

101 The accused was then subject to a strip search, and nothing incriminating was found on him.[89]

Photo-taking of exhibits

102 At about 6.05pm, Insp Ong arrived at the CNB Woodlands Checkpoint office with the Forensic Management Branch ("FMB") officers from the Criminal Investigation Department.[90] At about 7.45pm, Insp Ong directed the FMB officers to take photographs of the packets. The accused was escorted by SSgt Chew Wei Ping, SSgt Wakif bin Mehamed Sharif, and Sergeant Muhammad Izree bin Ahmad during the photo-taking.[91]

103 During the photo-taking, the four packets were marked "A1", "A2", "A3" and "A4" respectively. They were then opened in the accused's presence, each revealing brown granular substances in a transparent plastic bag ("the drug exhibits"). The drug exhibits were labelled "A1A", "A2A", "A3A" and "A4A" respectively, in accordance with the respective packets that they originated from.[92]

104 The photo-taking of the drug exhibits and their attendant packets ended at about 8.25pm.[93] The four packets, along with the drug exhibits therein, were then handed by SSgt Kum to Insp Ong.[94]

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89 AB p 178, para 12.

90 AB p 179, para 16.

91 AB p 179, para 18; AB p 189, para 5.

92 AB p 306, para 17, Exhibit CH-PH 30.

93 AB p 179, para 18; AB p 187, para 6.

94 AB p 179, para 18; AB p 290, para 11.

Weighing of exhibits

105 After the photo-taking and handover of exhibits, Insp Ong returned to the CNB Headquarters.[95] The accused was also escorted to the CNB Headquarters in a car.[96] At about 9.25pm, Insp Ong weighed each drug exhibit (*ie,* A1A to A4A) in the accused's presence.[97] Separately, they were each found to weigh:[98]

(a) A1A: 227.84g;

(b) A2A: 229.44g;

(c) A3A: 228.08g;

(d) A4A: 228.62g.

106 After each drug exhibit was weighed, Insp Ong placed them back in their respective zip-lock bags.[99]

107 According to Insp Ong, after the weighing was complete, he immediately carried all the zip-lock bags containing the drug exhibits and locked it in the safe in his office.[100]

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95 AB p 290, para 12.

96 AB p 306, para 19.

97 AB p 306, para 19.

98 Exhibit P56; NEs (26 Feb 2019), p 10 at lines 26 – 32.

99 NEs (26 Feb 2019), p 12 at lines 2 – 7.

100 NEs (26 Feb 2019), p 12 at lines 17 – 20.

Transfer of exhibits from CNB to HSA

108 On 6 February 2012, two days after receiving the drug exhibits, Insp Ong removed the drug exhibits from his safe. He then printed a non-sticky label containing a brief description of each exhibit (the "exhibit label"), and placed them in the respective zip-lock bags containing the drug exhibits.[101] Thereafter, he heat-sealed each zip-lock bag across the middle-section (but above the drug exhibits), and pasted a security seal over the heat-seal, appending his signature above each security seal.[102]

109 After labelling and heat-sealing all four zip-lock bags, Insp Ong then personally brought the zip-lock bags containing the drug exhibits, along with four submission forms pertaining to each bag, to Dr Yap Tiong Whei Angeline ("Dr Yap") in HSA for her analysis.[103]

Weighing and analysis at HSA

110 Upon receiving the drug exhibits, Dr Yap confirmed that the information on the exhibit labels and the stickers on each zip-lock bag corresponded with their respective submission forms.[104]

111 After confirming the above, Dr Yap logged into the laboratory information management system to accept the four drug exhibits in the HSA system.[105] In the system, Dr Yap counter-checked that the four zip-lock bags and

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101 NEs (26 Feb 2019), p 14 at line 3 to p 15 at line 2;

102 NEs (26 Feb 2019), p 19 at lines 26 – 30; p 20 at lines 11 – 12; see Exhibit P54, last four pages.

103 NEs (26 Feb 2019), p 21 at lines 11 – 17; NEs (28 Feb 2019), p 3 at lines 24 – 29.

104 NEs (28 Feb 2019), p 5 at lines 2 – 10.

105 NEs (28 Feb 2019), p 7 at lines 14 – 16.

their attendant information corresponded with the data of the exhibits as interfaced over from CNB.[106]

112 Having done the above, Dr Yap took over the drug exhibits and their respective zip-lock bags from Insp Ong, and kept them all in her personal cabinet in the strong room.[107] Only Dr Yap had the keys to this personal cabinet.[108]

113 Thereafter, Dr Yap would take out the zip-lock bags from her personal cabinet to analyse the drug exhibits therein. Each zip-lock bag was taken out, and each drug exhibit therein was analysed at a different time and separately from the other drug exhibits pertaining to the accused.[109]

114 Before analysing each drug exhibit, Dr Yap would take a photograph of the front and back of the particular zip-lock bag.[110] After taking the photograph, Dr Yap would then cut open the zip-lock bag from the bottom.[111] By doing so, Dr Yap extracted the respective drug exhibits without disturbing the heat-seals which were done by Insp Ong prior to delivering the zip-lock bags to Dr Yap. The security seals above the heat-seals were also accordingly undisturbed.[112]

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106 NEs (28 Feb 2019), p 8 at lines 1 – 2.

107 NEs (28 Feb 2019), p 8 at lines 30 – 31.

108 NEs (28 Feb 2019), p 12 at lines 26 – 27.

109 NEs (28 Feb 2019), p 14 at lines 2 – 23.

110 NEs (28 Feb 2019), p 13 at lines 10 – 11; Exhibit P54, last four pages.

111 NEs (28 Feb 2019), p 13 at lines 17 – 18.

112 NEs (28 Feb 2019), p 13 at lines 20 – 27.

115 After taking out the drug exhibits, Dr Yap would then weigh the particular drug exhibit.[113] Dr Yap then analysed the drug exhibits, which she certified to contain:

(a) A1A: 228.6g of granular/powdery substance which was analysed and found to contain not less than 7.09g of diamorphine;[114]

(b) A2A: 230.0g of granular/powdery substance which was analysed and found to contain not less than 7.52g of diamorphine;[115]

(c) A3A: 228.6g of granular/powdery substance which was analysed and found to contain not less than 4.10g of diamorphine;[116]

(d) A4A: 229.4g of granular/powdery substance which was analysed and found to contain not less than 6.24g of diamorphine.[117]

Difference in weight at CNB and HSA

116 As detailed at [95] to [115] above, the Prosecution had gone to great pains to establish an unbroken chain of custody of the drug exhibits. This involved four main stages: (a) the discovery of the four packets containing the drugs, (b) the unpacking of the four packets and the weighing of the drug exhibits contained therein in the accused's presence, (c) the storage of the drug exhibits in Insp Ong's personal cabinet after the weighing process, and (d) the

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113 NEs (28 Feb 2019), p 15 at lines 11 – 14.

114 AB p 137.

115 AB p 138.

116 AB p 139.

117 AB p 140.

transfer of the drug exhibits from Insp Ong's personal cabinet to Dr Yap for her analysis.

117 Nonetheless, the accused's counsel raises two arguments to suggest a break in the chain of custody:

(a) first, there are discernible differences between the photographs of the drug exhibits taken by the CNB and HSA;

(b) secondly, there is a discrepancy in the weight of each of the drug exhibits as weighed at CNB and at HSA.

118 Reviewing the evidence in totality, I am satisfied that there are reasonable inferences which may be drawn from the facts that prove beyond a reasonable doubt that there was an unbroken chain of custody in this case.

Photographs of drug exhibits taken by CNB and HSA

119 Turning to the first argument, it is pointed out in the accused's reply submissions that the back view of the drug exhibits, as seen in photographs taken by Dr Yap, reveals a flap over each transparent plastic bag which contained the drugs.[118] In contrast, the CNB photographs only show the front view of the drug exhibits, and do not reveal any such flap in all four drug exhibits.[119] The alleged disparity in the photographs taken by CNB and Dr Yap, it is submitted, "adds further strength to the possibility that the exhibits which were recovered and photographed at Woodlands are not the exhibits which were handed to Dr Yap and photographed by her."[120]

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118 Reply Submissions for the Accused at para 19; Exhibit P54, last four pages.

119 Exhibit CH-PH 30.

120 Reply Submissions for the Accused at para 19.

120 Accordingly, I called parties, along with Dr Yap and Insp Ong, back for a physical examination of the exhibits in my Chambers on 14 May 2019 and subsequently, evidence was led in open court on the same matter by the Prosecution on 5 August 2019. Dr Yap explained that the transparent plastic bags which contained the drugs have since been emptied, as the drugs had to be removed for analysis. Nonetheless, the original transparent plastic bags for each drug exhibit (A1A to A4A) were retained. To check if they were the same plastic bags which contained the drugs (and which were photographed by CNB and Dr Yap respectively), Dr Yap filled each transparent plastic bag with gloves to mimic the shape of exhibits A1A to A4A as captured in the CNB's photograph[121] when they were filled with the drugs.

121 Apart from being able to mimic the shapes of exhibit A1A to A4A, Dr Yap pointed out that a random horizontal double crease observable in the CNB's photograph of exhibit A2A persists in the actual transparent plastic bag of exhibit A2A today.[122] This horizontal double crease in the actual transparent plastic bag is also in the same position as in the CNB's photograph of the exhibit, being at about the one-quarter mark from the bottom of the exhibit.[123]

122 During cross-examination, Dr Yap was queried about a triangular opaque area which appears larger in size in Dr Yap's photograph of exhibit A2A than in the CNB's photograph of the same exhibit.[124] To explain, each transparent plastic bag was almost fully filled with brown granular substances, such that little free space were present in the transparent plastic bags to exhibits

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121 See Exhibit CH-PH 30.

122 Transcripts (5 August 2019) p 24 lines 22 – 32; p 51 lines 19 – 21.

123 Transcripts (5 August 2019) p 24 lines 29 – 30; compare with Exhibit CH-PH30 and Exhibit P54.

124 Transcripts (5 August 2019) p 58 lines 19 – 23.

A1A to A4A when they were photographed by the CNB.[125] Any free space, however, would have revealed an opaque area in the photographs. This can be perceived from the tiny opaque area observable at the bottom left hand corner of exhibit A2A in the CNB's photograph.[126] Clearly, during transportation of the drug exhibits from CNB to HSA, the granular substances could have moved within their packaging,[127] thereby creating a larger triangular opaque area at the top left hand corner of the transparent plastic bag for exhibit A2A when it was eventually photographed by Dr Yap. In my view, this enlarged opaque area is in no way probative of a break in chain of custody, especially as the random horizontal double crease observable on the CNB's photograph of exhibit A2A persists in the actual physical exhibit today.

123 Significantly, the photographs were taken many years before any dispute in relation to the observable flap in the photographs taken by Dr Yap had even surfaced. Indeed, the dispute about the flaps was not raised in both tranches of hearings, and is only raised in the accused's reply submissions, after closing submissions had already been tendered. Accordingly, the horizontal double crease which supports the finding that the transparent plastic bags containing the drugs examined by HSA were the same plastic bags captured in the CNB photograph could not have been fabricated for the purposes of this trial.

124 Furthermore, the handwriting for the exhibit labels "A1A" to "A4A", which were written by Insp Ong,[128] appear identical in both the photographs

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125 Exhibit CH-PH 30.

126 Exhibit CH-PH 30.

127 Transcripts (5 August 2019) p 59 lines 29 – 31.

128 Transcripts (5 August 2019) p 134 lines 4 – 7.

taken by CNB and Dr Yap.[129] The consistency in handwriting in the photographs was confirmed by Dr Yap during the hearing on 5 August 2019.[130] For instance, the horizontal stroke for the second "A" to exhibit label "A3A" extends out of the downward diagonal stroke of the same letter "A" in both the CNB's and Dr Yap's photographs.[131] This bolsters the finding that the exhibits photographed by CNB were the same exhibits that were sent to Dr Yap for analysis, and which were subsequently produced in court for examination. While Dr Yap is not a handwriting expert, her observation about the similarity in handwriting was not challenged by the defence, even though counsel for the accused was given an opportunity to physically examine the exhibits and their labels during the hearing. This reinforces the conclusion that the exhibits photographed by CNB and that were analysed by Dr Yap were the same drug exhibits.

125 To put any doubts to rest, the transparent plastic bags of exhibits A1A to A4A were measured by Dr Yap, revealing the following dimensions:[132]

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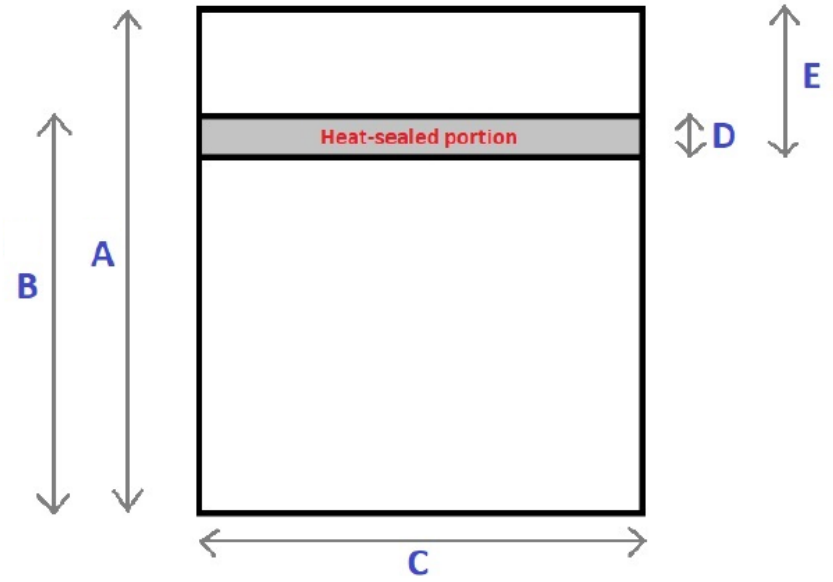
129 Compare CH-PH30 with Exhibit P54.

130 Transcripts (5 August 2019) p 25 line 29 – p 26 line 14.

131 Compare CH-PH30 with Exhibit P54.

132 Transcripts (5 August 2019) p 34 line 24 – p 43 line 15.



		A1A (sealed portion is slanted, giving two lengths) (cm)	**A2A (sealed portion is horizontal) (cm)**	**A3A (sealed portion is slanted, giving two lengths) (cm)**	**A4A (sealed portion is horizontal) (cm)**
A	**Length of the plastic packaging after unfolding the flap**	19.0/18.7	19.0	16.0/16.9	19.2
B	**Length of the plastic packaging**	14.5/14.2	14.6	14.8/14.2	14.8

	before unfolding the flap (including the heat-sealed portion)				
C	**Width of the package**	12.8	12.9	12.8	12.9
D	**Thickness of the heat-sealed portion**	0.9/0.7	0.9	2.2/1.7	0.9
E	**Length of the flap (including the heat-sealed portion)**	6.3/6.0	6.4	5.8/6.4	6.1
A+2D	**Length of the plastic packaging prior to heat sealing**	20.8/20.1	20.8	20.4/20.3	21.0

126 Since the heat-sealed portions of the transparent plastic bags extend outward from the transparent plastic bags (when laid flat) and fold over themselves, adding the length of the heat-sealed portion twice over (2D) to the length of the plastic bags after the flap is unfolded (A) would reveal the rough length of the plastic bags prior to them being heat-sealed. As can be seen, both the rough lengths of the plastic bags prior to being heat-sealed (A+2D) and the width of each plastic packaging (C) are broadly similarly across exhibits A1A to A4A. The similar lengths and widths of the plastic packaging reinforces the conclusion that Insp Ong did not mix up any of the drug exhibits from the accused's drug arrest with drug exhibits from other arrests, as it would be highly

fortuitous for drug exhibits from a separate arrest to be kept in a packaging of the same length and width.

127 Considering the totality of the evidence, I do not find that the flaps, which are observable only in Dr Yap's photographs, furnishes any reasonable doubt in relation to the integrity of the chain of custody.

Weight discrepancy

128 I turn now to the second argument of the accused's counsel in relation to the following differences in the gross weights of each drug exhibit when weighed at CNB and HSA:

Exhibit	**Gross weight by CNB (with wrapping)**[133]	**Gross weight by HSA (with wrapping)**[134]	**Difference in gross weights**
A1A	227.84g	230.242g	+2.402g (+1.05%)
A2A	229.44g	231.707g	+2.267g (+0.99%)
A3A	228.08g	230.298g	+2.218g (+0.97%)
A4A	228.62g	231.077g	+2.457g (+1.07%)
Total	913.98g	923.324g	+9.344g (+1.02%)

133 Exhibit P56; NEs (26 Feb 2019), p 10 at lines 26 – 32.

134 Evidence given by Dr Yap during cross-examination, after adding the weight of the wrappings which were excluded in her certificates: NEs (21 Feb 2017), p 63 at lines 16 – 28.

129 The discrepancy in weight, according to the accused's counsel, gives rise to a reasonable doubt as to the integrity of the chain of custody.

130 In *Lim Swee Seng v Public Prosecutor* [1995] 1 SLR(R) 32, the court was faced with a significant discrepancy as the CNB officer measured the bundles of drugs as weighing 474.11g, while the scientific officer measured them as weighing 395.98g. While the majority held that it was safe to convict the accused notwithstanding the substantial discrepancy in weight suggesting a break in the chain of custody, Chao Hick Tin J (as he then was) observed in his dissenting judgment at [70]:

> In percentage terms, 78.13g over 474.11g represents a margin of error of about 16.49%. With this margin of discrepancy I do not think the court should dismiss it by saying there must be some error somewhere. It behoves the Prosecution to explain the discrepancy. Chew would have known that *in a charge of trafficking in drugs, every gramme counts; it could make a difference between life and death*. In my respectful opinion there was no basis for the trial judge to postulate those two reasons to explain the discrepancy. I *accept that a court can draw reasonable inferences from facts which are before the court. But the inferences drawn must be warranted by the evidence*. [emphasis added]

131 In the present case, the discrepancy between the gross weight is far less significant, at only about 1% per drug exhibit (and 1.02% overall). Nonetheless, given the severe penalties that flow from a drug trafficking conviction, I put the Prosecution to task to explain the discrepancy.

132 In this regard, Dr Yap testified that while she "w[ould] not be able to conclusively say what is the exact cause of this difference",[135] there were several possible explanations for the differences in weight in each exhibit:

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135 NEs (28 Feb 2019), p 18 at lines 31 – 32.

(a) first, the accuracy of the balance could have contributed to the discrepancy. The accuracy of each balance depended on, among others, "the location of where it's placed, whether it is in a level platform, … whether the balance has been regularly maintained and sent for external calibration";[136]

(b) secondly, the operator's practice could also contribute to the discrepancy. This included whether the operator had properly zeroed the balance before a new item was placed on the balance or whether the item was placed centrally and not off-centre such that part of the exhibit is on the side of the balance;[137]

(c) thirdly, the fact that diamorphine is hygroscopic could contribute to a weight discrepancy. Given its hygroscopic nature, diamorphine can absorb moisture through time, causing its weight to increase. However, Dr Yap further opined that, given that the drug exhibits were heat-sealed prior to their submission to HSA and that they were stored in a strong room that was air-conditioned 24 hours a day, she did not think that the weight discrepancy would be greatly affected by the hygroscopic nature of diamorphine.[138]

133 While it is not possible to conclusively determine the exact reason for the very small weight discrepancy, the facts reveal that the weight of each of the drug exhibits was *consistently about 1% heavier* at HSA than at CNB.

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136 NEs (28 Feb 2019) p 19 at lines 3 – 9.

137 NEs (28 Feb 2019) p 19 at lines 10 – 16.

138 NEs (28 Feb 2019) p 19 line 30 – p 20 line 9.

134 Considered with Dr Yap's unchallenged testimony as to the possible causes for the weight discrepancy, the consistent weight difference leads to the strong inference that whatever the reason for the weight discrepancy, it was not caused by a break in the chain of custody, but rather by differences in the accuracy of the balances used by CNB and HSA or in the way the drug exhibits were weighed by Insp Ong and Dr Yap respectively.

135 I am fortified in my view as I find that the drug exhibits were the only drug exhibits in Insp Ong's locker at the material time. As explained above, after weighing the drug exhibits in the accused's presence on 4 February 2012, Insp Ong placed them in his safe.[139] The safe was secured by a number lock which only Insp Ong had the combination number to.[140] At the material time, the drug exhibits were also the only drug exhibits in Insp Ong's safe[141] as the drug exhibits were "kept very briefly for live cases", and there were sufficient investigating officers to ensure that they would not be assigned two live drug cases at the same time:[142]

> Q And you had mentioned because drug exhibits are kept very briefly for live cases.
>
> A Yes.
>
> Q Can you elaborate on what you mean by this?
>
> A We will---we will not---we will try not to hold on to the drug exhibits longer than we should be and by the time a new case comes in, we would have cleared all our drug exhibits from our hands already. The drug exhibits will have been sent to the various drug lab---labs for processing, for analysis. The other case exhibits will have been sent to the other labs or to the CNB store by the time a new case comes in. *I have never in my career with CNB had overlapping cases before*. Yah.

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139 NEs (26 Feb 2019), p 12 at lines 17 – 20.

140 NEs (26 Feb 2019), p 12 at lines 19 – 20, p 57 at lines 15 – 20.

141 NEs (26 Feb 2019), p 12 at lines 15 – 32.

142 NEs (26 Feb 2019), p 57 at lines 1 – 31.

> Court: So CNB has many safes. Each officer, IO one safe.
>
> Witness: Yes.
>
> Court: How many safes are there?
>
> Witness: Each---each of the senior team, senior officers get is under the special investigation team will have their own safe and at---during my time there were about 12 officers with our own rooms and our own safes.
>
> Court: Oh, each one their own room?
>
> Witness: Yes.
>
> Court: So at that time you were investigating, under you were there two investigations going on? There will be 200 things.
>
> Witness: I---I was holding on a lot of IPs but only---that was my only so called ongoing case.
>
> Court: What happens if bad luck, the two cases going on at the same time?
>
> Witness: That's---*that's why we have 12. It has never happened before. We will rotate*.
>
> Court: Oh, you mean, if you investigate one case, you won't be assigned another case at the same time?
>
> Witness: Yah.
>
> [emphasis added]

136 Insp Ong's account that the drug exhibits were the only ones in his locker at the material time was confirmed by Station Inspector Fathli bin Mohd Yusof ("SI Fathli"). SI Fathli extracted information relating to all capital drug case files created on the Integrated Drug Enforcement Administration System ("IDEAS") of the CNB from 1 December 2011 to 6 February 2012.[143] The information presented shows that from 1 December 2011 to 6 February 2012, there were 13 capital drug cases, and no investigation officer was assigned to more than one case at any one time.[144] During this period, Insp Ong was assigned

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143 Exhibit PS37, paras 2 – 4.

144 Exhibit PS37, para 6 and Exhibit PS38, Annex A.

two capital drug cases. The first was assigned on 14 January 2012, and the exhibits for that case were sent to HSA on 17 January 2012. Insp Ong did not receive any other capital drug cases until he was assigned a second capital drug case on 4 February 2012, when he received the drug exhibits for the accused, which he sent to HSA on 6 February 2012.[145] The information generated by IDEAS was confirmed by the Registration Log Report that was independently produced by HSA's system. HSA's Registration Log Report reflected that between 1 December 2011 to 28 February 2012, Insp Ong submitted drug exhibits for two cases only, on 17 January 2012 and 6 February 2012 respectively.[146] The two dates of submission of drug exhibits to HSA were identical under both CNB and HSA's system, corroborating Insp Ong's account that the drug exhibits were the only ones in his locker between 4 February 2012 and 6 February 2012.

137 Therefore, I find on the totality of the evidence that the minute weight discrepancy is insufficient to cast a reasonable doubt on the unbroken chain of custody of the drug exhibits.

138 The accused's counsel further raised the fact that while Insp Ong had been "puzzled" by the weight discrepancy from as early as 2012 when the HSA reports were returned by Dr Yap, he failed to retrieve and submit the weighing scale he had used for weighing the drug exhibits to determine the cause of the discrepancy.[147] Furthermore, when tendering an amended charge to the accused to include the analysed diamorphine content as revealed in Dr Yap's report, Insp

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145 Exhibit PS38, Annex A and Annex B.

146 Exhibit PS36, P57 (attached), pp 1 – 3.

147 NEs (26 Feb 2019), p 40 line 31 – p 41 line 8; Closing Submissions for the Accused at paras 22 – 24.

Ong did not state the gross weight of the drug exhibits even though it was in his habit to do so.[148] I do not think that these facts are sufficient to cast a reasonable doubt in relation to the chain of custody of the drug exhibits.

139 In relation to Insp Ong's failure to retrieve the weighing scale which he had used for examination, it is important to note that the issue relating to the weight of the exhibits was not even raised until the second tranche of hearings in February 2019, some seven years after the drug exhibits had been weighed by CNB. Given that the weight discrepancy was not in issue, it was entirely reasonable for Insp Ong to have proceeded on the assumption that the CNB's "weighing scale gave an indicative weight" only,[149] and that the weighing scale which he had used did not have to be examined. This was especially as the "indicative weight" obtained by the CNB weighing scale was consistently about 1% lighter than the weight obtained by Dr Yap at HSA, suggesting that the "indicative weight" was, as the term suggests, broadly indicative (but not conclusive) of the weight of the drug exhibits. Accordingly, it was entirely reasonable for Insp Ong not to have recalled the weighing scale for examination as he had "no reason" to believe that the weighing scale he had used to weigh the drug exhibits was not working correctly (*ie,* to give an indicative weight of the drug exhibits).[150]

140 As regards Insp Ong's failure to state the gross weight of the drug exhibits in the amended charge, I find that this amounts to a mere speculation about the possibility of contamination of the drug exhibits resulting in the drug

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148 NEs (26 Feb 2019), p 46 at lines 11 – 16; Closing Submissions for the Accused at para 27.

149 NEs (26 Feb 2019), p 41 at lines 22 – 23.

150 NEs (26 Feb 2019), p 53 at lines 17 – 20.

exhibits being heavier when they were sent to HSA, which will not be entertained: *Mohamed Affandi* at [41] and [55]. While Insp Ong candidly admitted that his omission was contrary to his usual habit, the key purpose of the amended charge was to inform the accused of the analysed weight of diamorphine in the drug exhibits,[151] which exceeded the capital amount of 15g. Accordingly, the analysed diamorphine content was key, and the omission of the gross weight of the drug exhibits was not fatal to the purpose of tendering an amended charge to the accused. Given that no further evidence is furnished to show how Insp Ong's failure to state the gross weight of the drug exhibits in the amended charge has broken the chain of custody, I find that this point does not support the accused's contention at all.

Conclusion

141 In conclusion, given that the weight of each of the drug exhibits is *consistently about 1% heavier* at HSA than at CNB, and as no further evidence has been presented to suggest a break in the chain of custody that has been extensively detailed by the Prosecution, I find that the Prosecution has proven an unbroken chain of custody beyond a reasonable doubt.

142 Accordingly, I convict the accused of the amended charge of importing not less than 14.99g of diamorphine, in contravention of s 7 of the MDA.

143 I will now hear parties on the sentence.

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151 NEs (26 Feb 2019), p 58 at lines 19 – 21.

Chan Seng Onn
Judge

For 14-15, 21-23 February 2017
Andrew Tan and Prakash Otharam (Attorney-General's Chambers) for the Prosecution.

For 26, 28 February 2019, 14 May 2019, 5 August 2019
Peggy Pao-Keerthi Pei Yu and Zhou Yihong (Attorney-General's Chambers) for the Prosecution.

For 14-15, 21-23 February 2017
N K Rajarh (Straits Law Practice LLC) and Sureshan s/o T Kulasingam (M/S Sureshan LLC) for the accused.

For 26, 28 February 2019, 14 May 2019, 5 August 2019
Ramesh Tiwary (M/S Ramesh Tiwary) for the accused.
