

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 48

Criminal Case No 1 of 2019

Between

Public Prosecutor

... Plaintiff

And

- (1) Lokman bin Abdul Rahman
- (2) Mohamed Mubin bin Abdul Rahman

... Defendants

GROUND OF DECISION

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

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Public Prosecutor
v
Lokman bin Abdul Rahman and another

[2020] SGHC 48

High Court — Criminal Case No 1 of 2019

Valerie Thean J

10, 11, 15–18, 29–31 January, 1 February, 16, 17 July, 29–31 October, 1
November 2019, 3, 23, 29 January, 6, 21 February 2020

10 March 2020

Valerie Thean J:

1 Two brothers, Lokman bin Abdul Rahman (“Lokman”) and Mohamed Mubin bin Abdul Rahman (“Mubin”), claimed trial to their respective charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). Lokman’s evidence was that Mubin was a drug trafficker whom he was helping as a courier. Mubin’s evidence was that Lokman was a drug trafficker in whose activities Mubin had no role. I found that the facts reflected the former scenario and not the latter. In the result, after both accused were convicted on amended charges, Lokman was sentenced to life imprisonment and the mandatory death sentence was imposed for Mubin. I explain the grounds of my decision hereunder.

Agreed facts

2 On 8 September 2015, at around 10.30pm, officers from the Central Narcotics Bureau (“CNB”) arrested Lokman at the ground floor lift lobby of Katong Park Towers (“KPT”), 114A Arthur Road.¹ He was carrying a black bag that contained, *inter alia*, two bundles of diamorphine later marked A1E1A and A1F1A, which formed the subject matter of the charges. A1E1A contained not less than 19.88g of diamorphine² and A1F1A contained not less than 19.40g of diamorphine³. The drug analysis and the chain of custody of the diamorphine were not disputed in this case.

3 Other drugs were found, which informed the context of the case. The black bag on Lokman’s person had, in addition to A1E1A and A1F1A, five packets of diamorphine and 50 tablets (ethylone and methoxetamine). A further five packets of diamorphine and three packets of methamphetamine were recovered from a green and black bag also carried by Lokman. After his arrest, Lokman was brought to #08-06 South Tower at KPT (“the KPT Unit”), where he was residing. A search was conducted there and the following were recovered:⁴

- (a) From the bedroom of the centre sub-unit of the KPT Unit, one packet and one straw of diamorphine, one packet of methamphetamine, and a roll of black tape.

¹ Statement of Agreed Facts (“ASOF”) at para 5.

² See Health Sciences Authority (“HSA”) Certificate Lab No ID-1532-01705-001 dated 23 December 2015: Agreed Bundle (“AB”) at p 101; ASOF at para 6.

³ See HSA Certificate Lab No ID-1532-01705-002 dated 23 December 2015: AB at p 102; ASOF at para 6.

⁴ ASOF at para 7.

(b) From the living room of the same sub-unit, six packets of diamorphine, three rolls of black tape, and a clear plastic wrapped with black tape.

4 After Lokman’s arrest, and under the supervision of CNB officers, Lokman used his mobile phone to communicate with one “Edy” and Mubin. The CNB officers recorded these conversations. These recordings were later transcribed and translated.⁵

5 According to the tenancy documents, the KPT Unit was rented to Mubin and one Siti Rohani binte Mohamed Ali. Mubin’s girlfriend, Tihani binte Ibrahim (“Tihani”), had used Siti Rohani binte Mohamed Ali’s identity card for the purpose of securing the lease. The monthly rental of \$1,800 was paid by Mubin.⁶ Tihani and her infant son were at the KPT Unit on the night Lokman was arrested.

6 Mubin was subsequently arrested on 5 October 2015 at around 5.40pm at M28 Minimart, Blk 182A Rivervale Crescent.⁷ At the time of his arrest, two packets of methamphetamine, three packets of diamorphine, empty sachets, and a weighing scale were found on him.⁸

Charges and legal context

7 Lokman and Mubin were tried on the following charges:

⁵ ASOF at para 17.

⁶ ASOF at para 4.

⁷ ASOF at para 13.

⁸ ASOF at paras 13–14.

That you, **1. LOKMAN BIN ABDUL RAHMAN**, on 8 September 2015, at or about 10.30 pm, at the ground floor lift lobby of the South Tower at Katong Park Towers, 114A Arthur Road, Singapore, did traffic in a controlled drug, *to wit*, by having in your possession for the purpose of trafficking, **2 bundles of granular substances weighing a total of 913.6 grams, which was analysed and found to contain not less than 39.28 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the MDA, or you may alternatively be liable to be punished under s 33B of the MDA.

That you, **2. MOHAMED MUBIN BIN ABDUL RAHMAN**, on or about 8 September 2015, in Singapore, did abet by instigating one Lokman Bin Abdul Rahman (bearing Singaporean NRIC No. S[xxxxxxx]) to traffic in a controlled drug by giving instructions to the said Lokman Bin Abdul Rahman in relation to the packing and delivery of 2 bundles of heroin, and in furtherance to your instigation, on 8 September 2015, at or about 10.30 pm at the ground floor lift lobby of the South Tower at Katong Park Towers, 114A Arthur Road, Singapore, the said Lokman Bin Abdul Rahman did have in his possession for the purpose of trafficking **2 bundles of granular substances weighing a total of 913.6 grams, which was analysed and found to contain not less than 39.28 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) and s 12 and punishable under s 33(1) of the MDA, or you may alternatively be liable to be punished under s 33B of the MDA.

8 These charges against Lokman and Mubin were based on s 5(1)(a) read with s 5(2) of the MDA. Sections 5(1)(a) and 5(2) read as follows:

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

9 The term “traffic” is defined under s 2 of the MDA as follows:

“traffic” means —

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a),

otherwise than under the authority of this Act, and “trafficking” has a corresponding meaning.

10 The elements of a charge under s 5(1)(a) read with s 5(2) of the MDA are as follows (per *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]):

(a) possession of the controlled drug;

(b) knowledge of the nature of the controlled drug; and

(c) the possession of the drug was for the purpose of trafficking, which was not authorised.

11 As for Mubin, his charge was for abetment by instigation. Liability for abetment is provided for under s 12 of the MDA. Section 12 reads:

Abetments and attempts punishable as offences

12. Any person who abets the commission of or who attempts to commit or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

12 The term “abets” under s 12 of the MDA is given the same meaning as that under s 107 of the Penal Code (Cap 224, 2008 Rev Ed) (“Penal Code”):

Iwuchukwu Amara Tochi and another v Public Prosecutor [2006] 2 SLR(R) 503 at [8]. Hence, it is taken to include, *inter alia*, abetment by instigation, which is the mode of abetment alleged by the Prosecution in this case. In order to establish the charge of abetment by instigation, the Prosecution must prove the following:

(a) the *actus reus* of instigation, that is, “‘active suggestion, support, stimulation or encouragement’ of the primary offence”: *Chan Heng Kong and another v Public Prosecutor* [2012] SGCA 18 at [34]; and

(b) the *mens rea* of instigation, that is, the intention on the part of the abettor for the person abetted to perform the act abetted, and knowledge of the circumstances constituting the offence: *Balakrishnan S and another v Public Prosecutor* [2005] 4 SLR(R) 249 at [64]; *Public Prosecutor v Koh Peng Kiat* [2016] 1 SLR 753 at [24].

Overview of the Prosecution and Defence cases

The Prosecution’s case

13 The Prosecution’s case against Lokman was that he was in possession of A1E1A and A1F1A with actual knowledge of the nature of the drugs, and that he had possession of the drugs for the purpose of delivering one of the bundles to Edy and the other to Mubin at a flat in Holland Close (“the Holland Close Flat”). In the alternative, the Prosecution relied on s 17 of the MDA to establish by presumption that Lokman’s possession of the drugs was for the purpose of trafficking.⁹ The Prosecution’s case was that Lokman was acting under Mubin’s instructions in performing these various acts.¹⁰

⁹ Prosecution’s Closing Submissions (“PCS”) at para 26(a).

14 As against Mubin, the Prosecution sought to prove that he gave instructions to Lokman to retrieve the two bundles of diamorphine from the KPT Unit in order to deliver one bundle to Edy and to return the remaining bundle to Mubin. Their case was that Mubin was running a drug trafficking business and Lokman was assisting him. They alleged that Mubin received the two bundles from Mohd Zaini bin Zainutdin (“Zaini”) and Mohd Noor bin Ismail (“Noor”) in the week prior to Lokman’s arrest and stored them at the KPT Unit. On 8 September 2015, Lokman was carrying out Mubin’s instructions when he was arrested.

Lokman’s narrative

15 Lokman admitted to possession of A1E1A and A1F1A with the knowledge that they contained diamorphine. Lokman maintained throughout the investigations and the trial that he worked for Mubin, doing various tasks in exchange for accommodation, drugs, and money.¹¹ His response to the charge was essentially that he was a courier.

16 Lokman’s account of 8 September 2015 began with a telephone call from Mubin in the afternoon, asking him to return to the Holland Close Flat. When he did so, he received instructions from Mubin to retrieve all the drugs stored at the KPT Unit and bring them back to the Holland Close Flat. In particular, Lokman was instructed to retrieve two bundles of heroin, the street name for diamorphine, and any other drugs that remained at the KPT Unit.¹²

¹⁰ PCS at paras 32–33.

¹¹ NE 1 February 2019 at p 47, ln 20–32; p 48, ln 1–4. See also Lokman’s statements at AB at pp 379, 381–382, paras 17, 29–30; AB at p 396, paras 42–43.

¹² NE 29 January 2019 at p 11, ln 31–32.

Subsequently, when he arrived at the KPT Unit in the evening, Lokman received a telephone call from Mubin, instructing him to deliver one of the bundles to Edy.¹³ Lokman acted on these instructions, packing A1E1A and A1F1A into two separate bags, then placing them into his black bag.¹⁴ These were the bundles carried by Lokman in his black bag at the time of his arrest.

Mubin's narrative

17 Mubin, on the other hand, denied giving any instructions to Lokman. He denied any knowledge of the drugs found on Lokman or within the KPT Unit. He claimed that he was simply a moderate consumer of “ice” (methamphetamine) and Zaini supplied him only ice.¹⁵ Mubin contended that he was not living at the KPT Unit at the time of Lokman’s arrest and he did not leave any drugs there.¹⁶ He only stayed at the KPT Unit from around April to June 2015, after which he moved to Soho Life at Joo Chiat.¹⁷ In the middle of July 2015, Lokman moved into the KPT Unit on Mubin’s invitation.¹⁸ In late July, Mubin then moved into the Holland Close Flat.¹⁹ In August, Tihani and her son moved into the KPT Unit.²⁰ Mubin contended that Lokman falsely implicated him because of the brothers’ rivalry over the affections of his former

¹³ NE 29 January 2019 at p 14, ln 1–3. See also NE 29 January 2019 at p 16, ln 17–22.

¹⁴ NE 29 January 2019 at p 16, ln 17–20.

¹⁵ NE 17 July 2019 at p 19, ln 24–29.

¹⁶ NE 17 July 2019 at p 30, ln 14–16.

¹⁷ NE 17 July 2019 at p 20, ln 21–22, p 24, ln 21–22.

¹⁸ NE 17 July 2019 at p 25, ln 29–32.

¹⁹ NE 17 July 2019 at p 26, ln 22–31.

²⁰ NE 17 July 2019 at p 27.

wife Hasina Begum binte Glum Hussin Mullah (“Hasina”) and in order to escape the death penalty.²¹

Central factual issue

18 The two brothers’ defences, therefore, contradicted each other and were mutually exclusive. Lokman’s version of events dovetailed with the case advanced by the Prosecution. If Lokman’s version was accepted, Lokman would be a courier in possession of the bundles of diamorphine for the purpose of trafficking and Mubin would be the instigator of the act of trafficking. On the other hand, if Mubin’s version was accepted, Lokman would be the trafficker, and Mubin a mere consumer of ice. This factual dispute was the main issue of contention at trial and affected the case against both brothers. I therefore deal with this central factual issue first.

Who ran the drug business?

19 The Prosecution’s contention that Mubin was responsible for planning the drug movements and Lokman was his “runner” was based on the following:

- (a) the evidence of the drug suppliers and call logs involving Zaini;
- (b) recordings of telephone conversations between Lokman and Mubin and between Lokman and Edy, and call logs involving Mubin and Edy; and
- (c) Lokman’s testimony.

I deal with the evidence of the suppliers first.

²¹ NE 29 October 2019 at p 24, ln 22–27.

Supply of diamorphine

20 It was not disputed that the two bundles of diamorphine found on Lokman at the time of his arrest came from the KPT Unit. It was also not disputed by Lokman that the bundles were supplied by Zaini and Noor. Mubin, however, contended he had no knowledge of the source or existence of the diamorphine.

Did the two bundles of diamorphine come from Zaini?

21 Zaini and Noor, the alleged suppliers of the diamorphine to Mubin, were arrested in a separate operation by the CNB on 11 September 2015. They were dealt with earlier in a separate High Court trial.

22 In order to link Zaini and Noor to A1E1A and A1F1A, the Prosecution led forensic evidence in the form of an analysis conducted by Lim Shing Min, who prepared a report bearing Lab No FC-1541-00165-A under s 263 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) (marked as P248).²² According to the report, the physical characteristics of the four plastic bags used in A1E1A and A1F1A and those used for drugs seized during Zaini’s arrest showed that they were likely to have been manufactured by the same machine. The report also stated that the heat seals put onto the bags after the powdery substances were packed suggested they had been sealed by the same heat sealer. This was undisputed evidence but not definitive of the source of the drugs.

23 Zaini was called by the Prosecution to establish that he had supplied A1E1A and A1F1A to Mubin by driving them from Malaysia into Singapore

²² NE 16 January 2019 at pp 10-20; Supplementary Bundle (“SB”) at p 504.

using his car. He was accompanied on these trips by Noor, who was called as a witness by Mr Muzzamil on behalf of Lokman. Zaini identified the bundles as similar to those he supplied. When asked to identify the bundles that he delivered, Zaini pointed to the bundles photographed in P48 and P50 showing A1E1 and A1F1 respectively.²³ Further, these were wrapped in black tape as he usually wrapped them and secured with double-sided tape in a manner which enabled him to secure the bundles in the boot of his car when bringing them into Singapore. The marks of such tape were visually identifiable on A1F1 as shown in P50.²⁴ A1E1 and A1F1 were therefore typical of bundles delivered by Zaini.

When were the two bundles delivered?

24 Records from the Immigration and Checkpoints Authority (“ICA”) showed that Zaini entered Singapore on 1, 5 and 7 September 2015. Further, shortly after each entry, telephone calls were made first between Zaini and Mubin, then between Mubin and Lokman.²⁵ It was not disputed that Zaini and Noor went to the KPT Unit on 1, 5 and 7 September 2015.²⁶ What was unclear was the specific date on which these two particular bundles of diamorphine were supplied. I deal with each date in turn.

(1) 7 September 2015: the Marina Bay Sands (“MBS”) delivery

25 All parties accept that a delivery occurred on 7 September 2015. In summary, at around 12.18am, Zaini and Noor entered Singapore and called Mubin at around 12.24am. Two more telephone calls were made at 12.50am

²³ NE 17 January 2019 at p 15, ln 24–32.

²⁴ NE 17 January 2019 at p 23, ln 4–8.

²⁵ See exhibit C2.

²⁶ ASOF at para 22. See also SB at pp 361–363.

and 12.51am to inform Mubin that they had reached MBS. Mubin rode pillion on Lokman's motorcycle to meet them at MBS. At MBS, Mubin got off Lokman's motorcycle and boarded Zaini's car as Zaini drove out of the MBS carpark. Mubin sat in the rear passenger seat, while Zaini was in the driver's seat and Noor was in the front passenger seat. Two bundles wrapped in black tape were passed to Mubin in the car. On the way to the KPT Unit, Lokman's motorcycle ran out of petrol and he was stranded near Kallang Stadium. Zaini, Noor, and Mubin retrieved a container from the KPT carpark and went to purchase petrol for Lokman. After passing the petrol to Lokman, the three then went back to the KPT Unit while Lokman went to refuel at a petrol station. Zaini, Noor, and Mubin then consumed "ice" in the KPT Unit, after which they were joined by Lokman. Zaini, Noor, and Mubin then went to eat at Geylang Serai, and Lokman left the KPT Unit soon after to meet up with them.

26 The dispute arises as to the nature and quantity of the drugs that were in the two bundles supplied in the car that night. Zaini recounted that he delivered two 25g bundles of "ice" and passed the bundles to Mubin in the car on the way from MBS to KPT. Noor's evidence was that he heard Zaini tell Mubin that there were "two *batu*" which had been placed on the rear seat, but admitted that he did not know for a fact what drugs were delivered. As I will explain below at [45], "*batu*" is the street name for a pound of heroin, which is equivalent to approximately 440g to 450g. Mubin contended, instead, that he received two 25g bundles of "ice".

27 In Lokman's contemporaneous statement recorded on 9 September 2015, which he later sought to renege, Lokman was asked at Question 17, "When did you collect the two bundles of heroin?" Lokman replied, "On Monday, 7th September 2015". At Question 19, he was asked, "Who instructed you to collect the two bundles of heroin?" He replied, "My brother Mubin

instructed me on Monday night to collect the heroin from one male Malaysian and pass it to Edy.” In his statement recorded on 16 September 2015, however, Lokman said he only dropped Mubin off at the entrance of MBS on 7 September 2015.²⁷ In light of Zaini’s and Noor’s testimony, I decided not to give weight to Lokman’s contemporaneous statement that he collected the drugs instead of Mubin. Even on Mubin’s own case, he had met with Zaini and Noor and sat in Zaini’s car.

28 In addition, the witnesses gave differing accounts as to whether and, if so, how much money was given to Zaini by Mubin. Zaini claimed that he did not receive money from Mubin on any delivery.²⁸ By contrast, at trial Noor claimed to have seen Zaini receive \$5,000 from Mubin at the KPT Unit.²⁹ Mubin admitted that he passed Zaini money, but claimed that it was only \$3,500: \$2,800 was for the two bundles he received on 7 September 2015, while \$700 was the balance due for the bundle he received on 5 September 2015.

29 The Prosecution did not contend that the two bundles of diamorphine were delivered on 7 September 2015 but adopted Zaini’s version that they were delivered on 5 September 2015. Zaini was quite certain that he had only delivered bundles weighing around 25g of ice each on 7 September 2015 and the Prosecution was not able to elicit any explanation for this claim in re-examination.³⁰ Bundles each containing a *batu* of diamorphine would have been

²⁷ Lokman’s statement at para 31: AB at p 382.

²⁸ NE 16 January 2019 at p 63, ln 9–15.

²⁹ NE 16 July 2019 at p 47, ln 1–7.

³⁰ NE 17 January 2019 at p 43.

significantly heavier, weighing around 450g. I turn therefore to the evidence concerning the 5 September 2015 delivery.

(2) 5 September 2015: the carpark delivery

30 On 5 September 2015, Zaini and Noor arrived in Singapore at 2.48pm. Zaini made a series of calls and was instructed by Mubin to go to Meyer Road, where Lokman would meet him and bring him to KPT. There, Lokman met with Zaini and Noor and brought them to KPT, where they went to the carpark. At this point, the accounts diverged:

(a) Zaini claimed that he passed two bundles of heroin to Lokman at the carpark. However, under cross-examination, he admitted that he was not sure if he was the one who passed the bundles to Lokman, claiming that he could not remember the details but remembered that there were two bundles.³¹ He then claimed that he had passed the drugs to Noor who then passed them to Lokman.³² Zaini had brought some “ice” in a shoe bag for his own consumption and passed this shoe bag to Noor to carry. When they got to the KPT Unit, they met Mubin and smoked “ice” together. Lokman then went up to the KPT Unit and passed the two bundles to Mubin.

(b) Noor initially testified that Zaini had passed him a “shoe box” containing “ice” and drug-taking utensils to bring to the KPT Unit. There, he passed it to Zaini who then passed it to Mubin. However, after his memory was refreshed by his prior statement under s 161 of the

³¹ NE 16 January 2019 at p 53, ln 22.

³² NE 17 January 2019 at p 33, ln 27–30.

Evidence Act (Cap 97, 1997 Rev Ed) (“Evidence Act”), Noor confirmed that he saw Zaini take two bundles from his car and put it into a black shoe bag. Zaini then passed this black shoe bag to Noor, who carried it up to the KPT Unit.³³ There, Zaini took the bag back and passed it to Mubin. This statement was admitted into evidence under s 147(4) and s 147(5) of the Evidence Act and marked P299. Noor also said in the same statement that \$5,000 was handed to Zaini by Mubin on 5 September 2015.

(c) Lokman claimed that he did not see any bundles but saw Noor carrying a bag. On his account, he did not receive anything from Zaini or Noor. They went up the elevator to the KPT Unit first and he only went up after. When he entered, he saw them talking to each other and smoking “ice”.

(d) Mubin claimed that he only received 25g of “ice” from Zaini on this occasion, in the form of a small black bundle. Zaini passed him this bundle and then they smoked “ice” together.

31 In my judgment, the evidence was clear on the following facts. First, arrangements were made for Zaini to deliver two bundles to Mubin. Second, two bundles were delivered to Mubin. Although the testimonies were inconsistent on whether the bundles were first given to Lokman, it was clear that Lokman was not the final recipient of the drugs. Even if Lokman had taken the bundles, as in Zaini’s account, Lokman eventually handed them to Mubin in the KPT Unit. Furthermore, the inconsistencies could be explained by the inaccuracy of human recollection arising from the passage of time.

³³ Exhibit P299 at para 42.

32 Mubin's account that he only received a single 25g bundle of "ice" on this occasion is clearly contradicted by the evidence of Zaini and Noor. At no point in any other person's evidence was the possibility of only one bundle being delivered raised. The consistent evidence was that two bundles were given to Mubin, either through Lokman or directly. Therefore, I concluded that Zaini and Noor delivered two bundles to Mubin on 5 September 2015.

(3) 1 September 2015

33 ICA records showed that Zaini and Noor entered Singapore on 1 September 2015 at 7.40am. Subsequently, Zaini placed two telephone calls to Mubin at 8.52am and 8.54am. KPT's records showed Zaini's car entering at 9.12am. The car then exited at 11.10am.

34 In court, Zaini was unable to recall the events of 1 September 2015.³⁴ Similarly, neither could Noor.³⁵ Prosecution submitted in closing that there were three delivery occasions (1, 5 and 7 September 2015) and adopted Zaini's evidence concerning the events on 5 and 7 September 2015.³⁶ The other witnesses did not provide an account of what happened on 1 September 2015. Therefore, I did not find it appropriate to make any findings on events occurring on 1 September 2015.

³⁴ NE 17 January 2019 at p 46, ln 26–32.

³⁵ NE 17 July 2019 at p 9, ln 15–17.

³⁶ Prosecution's Closing Submissions at para 43.

Did Zaini deliver to Mubin or to Lokman?

35 Zaini and Noor consistently maintained that they only dealt with Mubin and not Lokman. Their only other customer was one Mutaleb,³⁷ who was tried with Zaini and Noor in their High Court trial. Lokman's phone number was not found on any of Zaini's phones, whereas Mubin's phone number was found on all three of Zaini's phones.³⁸ The pattern of calls surrounding each delivery showed clearly that it was only Mubin who dealt directly with Zaini and Noor. There was no basis for concluding that Lokman ordered the bundles and had them delivered by Zaini and Noor. Mubin himself did not assert that any bundles were delivered to Lokman nor did he contest the fact that he received deliveries from Zaini and Noor on 1, 5 and 7 September 2015. His claim was only that he had received methamphetamine, and the bundles of diamorphine were not his. It was clear that of the two brothers, Mubin was the recipient. It was also clear that he received at least two bundles of diamorphine.

Conclusion on the supply of diamorphine

36 There were three occasions on which drugs were supplied in this case. Taking into account that the trial was four years after the fact, truthful witnesses could be expected to experience some difficulty in recollecting details. On the evidence at hand, I found it beyond a reasonable doubt that the bundles containing A1E1A and A1F1A were supplied on 5 September 2015. Zaini identified the bundles as typical of shipments originating from him, was clear about the delivery occasion, and there was no other source of supply alleged or any facts raising a suspicion otherwise. Further, the only conclusion to be drawn

³⁷ NE 16 January 2019 at p 27, ln 7–8.

³⁸ NE 16 January 2019 at p 49, ln 6–11.

from the facts surrounding the supply of the diamorphine was that, consistent with Lokman's case, Mubin dealt with Zaini and made the arrangements for the drug supply and delivery. While Mr Goswami put his case to Lokman that he was running his own drug trafficking operation from the KPT Unit, this was simply an assertion without any explanation as to his processes or methods, and without any evidence to suggest that it was true. Conversely, the evidence indicated that Lokman was working under Mubin's instruction as his errand boy. I turn to this part of the evidence now.

The instructions for the delivery of diamorphine on 8 September 2015

Lokman's testimony about 8 September 2015

37 Lokman maintained throughout the investigations and the trial that he was acting on Mubin's instructions when he went to the KPT Unit to pick up the drugs. At trial, the gist of his account was as follows. On the afternoon of 8 September 2015, he received a call from Mubin asking him to return to the Holland Close Flat. When he did so, he received instructions from Mubin to retrieve the drugs from the KPT Unit, specifically, two bundles of heroin and any other drugs that remained.³⁹ Mubin then asked him to bring all the drugs back to the Holland Close Flat.⁴⁰ Later that day, when he arrived at the KPT Unit, Lokman received a telephone call from Mubin, instructing him to deliver one of the bundles to Edy.⁴¹ Lokman acted on these instructions, packing A1E1A and A1F1A into two separate bags, then placing them into his black

³⁹ NE 29 January 2019 at p 11, ln 17–22.

⁴⁰ NE 29 January 2019 at p 11, ln 31–32.

⁴¹ NE 29 January 2019 at p 14, ln 1–3. See also NE 29 January 2019 at p 16, ln 17–22.

bag, with the intention to first meet Edy to deliver one bundle, and then to return to the Holland Close flat with the remainder.⁴²

Mubin's account of 8 September 2015

38 Mubin gave the following account of the events of 8 September 2015. He and his former wife Hasina had gone out in the morning and returned to the Holland Close Flat at around 4pm in the afternoon. At that time, they saw Lokman sleeping in the living room. Mubin and Hasina then went to their room where they slept.⁴³ At around 6pm, Mubin woke up and saw that Lokman was awake and preparing to go out. He saw Hasina and Lokman in the living room and, while he was in the toilet showering, heard Lokman tell him that he was going out to meet his friend. Lokman then left at around 7.15pm. Hasina also told Mubin that Lokman was going to Beach Road. As he expected Lokman to return to the Holland Close Flat afterwards, Mubin called Lokman at around 9.15pm and asked him to buy some food.⁴⁴ For this, Mubin referred to the call logs for his phone number, and pointed to the call placed at 9.13pm.⁴⁵ Lokman agreed to do so. Mubin denied giving Lokman any instructions as to the bundles in the KPT Unit, claiming that he did not even know about the existence of those drugs.⁴⁶

39 That night, however, Lokman did not return to the Holland Close Flat. At around 11pm, Mubin called Lokman again but could not reach him. At

⁴² NE 29 January 2019 at p 16, ln 17–20.

⁴³ NE 29 October 2019 at p 5, ln 9–31.

⁴⁴ NE 29 October 2019 at p 6, ln 1–27.

⁴⁵ AB at p 190.

⁴⁶ NE 29 October 2019 at pp 9–10.

around 11.06pm, Mubin therefore called Edy to ask about Lokman's whereabouts.⁴⁷ Edy told Mubin that he was also waiting for Lokman to pass him something, which Mubin thought was a reference to contraband cigarettes.⁴⁸ He called Edy later again, and Edy said that he had not managed to find Lokman. Mubin explained that he was concerned to find Lokman "[b]ecause he had promised [him] that he'll come home and buy food for [them]".⁴⁹ Mubin claimed that he called Edy because he knew that Lokman had gone to Beach Road to meet a friend and he was introduced to Edy by Lokman at Beach Road.⁵⁰

Telephone calls after Lokman's arrest

40 Lokman's account is supported by the evidence of telephone calls and recordings after his arrest, which I now explain.

41 In the period when Lokman was uncontactable after arrest, there was a call from Mubin to Edy at 11.12pm,⁵¹ followed by numerous missed calls from Edy to Lokman between 11.12pm and 11.44pm on 8 September 2015.⁵² After that series of missed calls, Edy called Mubin at 11.45pm.⁵³ At 12.15am on 9 September 2015, Mubin called Edy.⁵⁴ These calls, which were not disputed, supported Lokman's evidence that Edy was waiting for a delivery, and that Edy sought Mubin's assistance when Lokman failed to turn up and return his calls.

⁴⁷ NE 29 October 2019 at p 11, ln 19–21.

⁴⁸ NE 29 October 2019 at p 12, ln 6–10.

⁴⁹ NE 29 October 2019 at p 13, ln 5.

⁵⁰ NE 30 October 2019 at p 65, ln 27–29.

⁵¹ P111: AB at p 190.

⁵² P72 at p 37: SB at p 69.

⁵³ P111: AB at p 190, showing an incoming call at 23:45:34 from [xxxx8701].

⁵⁴ P111: AB at p 190, showing an outgoing call at 0:15:11 to [xxxx8701].

42 After Lokman's arrest, he placed and received calls to and from Edy and Mubin between 12.25am and 4.20am on 9 September 2015. These recorded calls provide cogent evidence that Lokman was acting under Mubin's instructions to pass one bundle of drugs to Edy and to return the remaining bundle to Mubin. Of relevance were the following calls involving Edy:

(a) A call from Lokman to Edy at 12.29am.⁵⁵ From the conversation, it was clear that there had been a prior plan for them to meet up. Most of the conversation was an attempt by both sides to fix a meeting place and time.⁵⁶

(b) A second call made by Lokman to Edy at 12.46am.⁵⁷ Both parties continued to make efforts to meet with each other. Edy ended the conversation by saying that he was waiting for a friend and that he would contact Lokman when the friend arrived.⁵⁸

(c) A third call made by Lokman to Edy at 1.45am,⁵⁹ in which Lokman asked Edy where he was, and Edy replied that his friend "has taken from another place" as he had waited too long. Edy asked Lokman, "Can I take it tomorrow?" Both parties arranged to meet the next day.⁶⁰

(d) A call from Edy to Lokman at 1.47am, in which Lokman told Edy that he wanted to meet soon, but Edy said that he could only meet

⁵⁵ P72 at p 31, S/N 18: SB at p 63.

⁵⁶ P124A at pp 2–5.

⁵⁷ P72 at p 31, S/N 17: SB at p 63.

⁵⁸ P124A at pp 7–8.

⁵⁹ P72 at p 31, S/N 16: SB at p 63.

⁶⁰ P124A at p 9.

in the afternoon (referring to 9 September 2015). Lokman then said, “Ah, why, why cannot make it? Because I’ve already brought along this stuff. If not where I want to keep this stuff.”⁶¹ Edy mentioned that he did not have cash, even if he could take delivery that day.⁶² They continued to make arrangements for Edy to take delivery.

(e) A call made by Edy to Lokman at 2.28am.⁶³ Edy told Lokman that Mubin had called him asking if they had met up.⁶⁴ Edy relayed his conversation with Mubin, saying that he had told Mubin that his friend had left, and Mubin then asked Edy if Lokman was okay. Edy asked Lokman to call Mubin directly. Lokman asked Edy if he wanted to take “it”. Edy replied, “You should call your brother but for now I tell you frankly, my friend had taken it from another source.”⁶⁵ Edy ended the conversation by saying that Mubin appeared concerned for Lokman’s “safety”.⁶⁶

43 These interactions between the brothers and Edy supported the following conclusions:

(a) First, as between Lokman and Edy, there was a prior arrangement for them to meet up in order for Lokman to pass Edy a delivery. This delivery was sufficiently important for them to attempt to

⁶¹ P124A at p 10, S/N 13.

⁶² P124A at p 11, S/N 27.

⁶³ P72 at p 48, S/N 161: SB at p 80.

⁶⁴ P124A at p 15, S/Ns 5–7.

⁶⁵ P124A at p 19, S/N 29.

⁶⁶ P124A at p 21, S/N 40.

arrange delivery multiple times. This supported Lokman's evidence that he was to deliver a bundle of diamorphine to Edy.

(b) Second, as between Edy and Mubin, it was also clear that there was a prior arrangement between the two men. They sought each other out when Lokman was uncontactable, and again when Lokman became contactable. In his conversation with Lokman, Edy also referenced Mubin's concern regarding Lokman's safety. Based on Edy's account of his conversation with Mubin, it appeared that Mubin knew that Edy was supposed to receive a delivery from Lokman. This supported Lokman's evidence that his planned delivery to Edy was arranged by Mubin.

44 Lokman then called Mubin at 2.42am.⁶⁷ When Lokman reported that Edy could not make it, Mubin replied, "Han called me till they said cancelled already." Mubin then scolded Lokman for failing to meet the timings.⁶⁸ The transcript records a number of key comments made by Mubin. I note that Mubin testified that he knew Edy as "Rudy"/"Rudi"; references to "Rudi" below are references to Edy.⁶⁹ Mubin's pertinent statements were as follows:

(a) At S/N 7: "Ayi called me, I called Rudi, none had progressed. Why is that so? Why not carried out? That's why I tell you, you're difficult (inaudible)?"

⁶⁷ Exhibit P72 at p 31, S/N 13: SB at p 63.

⁶⁸ Exhibit P124A at p 23, S/N 6.

⁶⁹ NE 29 October 2019 at p 30, ln 15–20.

(b) At S/N 9: “I’m concerned that you’re carrying so much of the stuff.”⁷⁰

(c) At S/N 10: “Ayi had also called to ask whether you’re coming or not? Huh, you didn’t send it? Rudi called saying that you asked him to go to Buona Vista, what’s going on?”

(d) At S/N 12: “Then how? Do you want to work? How did it turn out like this? Do you know how it happened? You didn’t follow instructions.”

45 An exchange at S/N 13 was particularly relevant:

Mubin: Do you understand? If you had followed my instruction, if you had gone there, ‘pap’, you come to my place [inaudible] *one ‘batu’ would have safely been delivered.*

Lokman: I [inaudible] don’t know what to do about it.

Mubin: You deliver.

[emphasis added]

The emphasised phrase was translated from the Malay phrase, “*satu batu habis*”. Mubin attempted to explain that this phrase meant “hard-headed, meaning he’s stubborn”.⁷¹ He interpreted “*habis*” to mean “extreme”, while “*batu*” meant “stone”, referring to Lokman as “hard-headed”. There were several issues with such an interpretation. First, as Mubin acknowledged in cross-examination, the phrase for “hard-headed” was “*kepala batu*”.⁷² He did not explain why the use of “*batu*” on its own here would carry the same

⁷⁰ P124A at p 24, S/N 9.

⁷¹ NE 29 October 2019 at p 17, ln 27.

⁷² NE 30 October 2019 at p 70, ln 24–25.

meaning. Second, that interpretation did not fit the context. Prior to S/N 13, Mubin was castigating Lokman for not following instructions. Just after, Lokman said he did not know what to do, and Mubin replied, “You deliver.” Given the overall context in which this exchange took place, I find that “*batu*”, which is the street name for a pound of heroin, referred to the planned delivery to Edy. ASP Yang Rongluan gave evidence that “*batu*” is often used as a term of measurement for heroin, referring to approximately 440g to 450g of heroin.⁷³ Lokman similarly acknowledged that in his understanding, one “*batu*” was one bundle of heroin⁷⁴ and he had understood Mubin to be referring to heroin.⁷⁵

46 Mubin then alluded to his expectation that Lokman would return with the rest of the drugs to where Mubin was staying:

(a) At S/N 20: “You tell me frankly. I’m worried that you kept quiet. I’m worried about you, you promised to come home.”

(b) At S/N 21: “I also don’t want to be bothered, I’m not bothered about other things, I’m concerned about your safety, duh, waiting for stuff in the middle of the night (inaudible). We don’t know what’s going on. You didn’t want to answer our calls (inaudible).”

(c) At S/N 26: “I want to cover your safety and all. In the middle of the night you want to deliver it. I’m telling you that you had done it during the day, there won’t be any problems you know.”

⁷³ NE 18 January 2019 at p 88, ln 25–31.

⁷⁴ NE 29 January 2019 at p 18, ln 10–14.

⁷⁵ NE 16 July 2019 at p 3, ln 27–32.

47 The ensuing conversation was not material to the present case. Mubin appeared to understand from Lokman's answers that Lokman had been arrested. With the assistance of a court interpreter in the course of trial, it was clarified that at S/N 38 Mubin stated "*kau kena tangkap*", meaning "you were arrested".⁷⁶ The conversation tailed off meaninglessly thereafter. It appeared at trial that Staff Sergeant Rasshidy bin Roslan, who had charge of the telephone investigation, had not heard the comment by Mubin. Under his direction, Lokman telephoned Mubin again at 4.01am.⁷⁷ Most of this conversation was not material. Lokman's statements were rather aimless, and Mubin reiterated at S/N 54 "*Kau kena tang*", meaning "you were arrested" (*tang* being shorthand for *tangkap*).⁷⁸

48 Mubin's attempt to explain these telephone calls was not persuasive. Mubin contended that he called Edy multiple times because he associated Edy with Beach Road and thought that Lokman was going to Beach Road to meet a friend. This entirely failed to explain why, out of all of Lokman's friends, Mubin should single out Edy. This was also inconsistent with the recording where Mubin told Lokman, "Ayi called me, I called Rudi, none had progressed. Why is that so? Why not carried out?"⁷⁹ Clearly, his call to Edy was intended to check on the progress of the delivery. Edy said the same in his account to Lokman of his call with Mubin, where he alluded to Mubin's expectation that Edy would take delivery from Lokman.

⁷⁶ NE 15 January 2019 at pp 66–68.

⁷⁷ P72 at p 31, S/N 12: SB at 63.

⁷⁸ NE 15 January 2019 at pp 69–71.

⁷⁹ P124A at p 24, S/N 7.

49 Mubin’s conversation with Lokman entirely derailed Mubin’s evidence on the stand that he was simply waiting for Lokman to return home with food. There was no mention at all of food in the telephone conversations. Instead, it was plain from the conversations that Mubin had given Lokman instructions to make a delivery to Edy and then return to where Mubin was staying, which was the Holland Close Flat. He was clearly furious that Lokman had not been punctual and had thereby missed his delivery of a pound of heroin to Edy. According to Mubin, Lokman was always tardy and Mubin wanted to scold Lokman for being ill-disciplined.⁸⁰ He was aware that Lokman was carrying “stuff” and was concerned. Mubin claimed at trial that he was only referring to contraband cigarettes.⁸¹ However, the brothers did not deal in contraband cigarettes. Therefore, I concluded that the telephone call recordings significantly buttressed the Prosecution’s case against Mubin, and established that Mubin was in control and had given instructions to Lokman to retrieve the bundles and deliver one to Edy and bring the other to himself that night.

Reliability of Lokman’s testimony about 8 September 2015

50 I come to the issue of the reliability of Lokman’s evidence. In so doing, I note that his testimony was corroborated by several important independent witnesses and pieces of evidence. For example:

- (a) Lokman’s assertion that he had received a Samsung mobile phone (marked L-HP1) from Mubin to conduct drug-related activities⁸² was corroborated by Tihani.⁸³

⁸⁰ NE 29 October 2019 at p 15, ln 29–32; p 16, ln 1–3.

⁸¹ NE 29 October 2019 at p 16, ln 6–22.

⁸² AB at p 380.

(b) Zaini's and Noor's testimony corroborated Lokman's account of his role in Mubin's drug operation, and also largely corroborated Lokman's account of what happened during these deliveries. The call logs between Zaini and Mubin and between Mubin and Lokman were consistent with supply arrangements being made by Mubin with Zaini, with Lokman in a supporting role.

(c) The telephone call logs and recordings involving Edy corroborated Lokman's account that he was going to meet with Edy, and that he was acting under Mubin's instructions.

(d) The call logs showed that Lokman received a call from Mubin at around 9.13pm on 8 September 2015, corroborating his claim that Mubin called him when he was at the KPT Unit to give instructions. While Mubin attempted to explain this call as an instruction to buy food, I have explained why Mubin's account was not credible. The first conversation with Mubin confirmed Lokman's account.

51 I turn then to deal with various contentions made by Mr Goswami.

Alleged contradictions within Lokman's evidence

52 At trial, Mr Goswami on behalf of Mubin sought to admit Lokman's contemporaneous statement under s 258(1) of the CPC, largely in order to discredit Lokman. Lokman contested the voluntariness of the statement under s 258(3) of the CPC. An ancillary hearing was held on the issue of admissibility. Lokman argued that he suffered physical injury because of the arrest, he had

⁸³ NE 18 January 2019 at p 79, ln 2–19.

been experiencing the after-effects of consuming drugs before the arrest, and he was pestered and pressured into giving the statement. In Mr Muzzamil's submission, this amounted to oppression under s 258(3) of the CPC.⁸⁴

53 In my judgment, there was no evidence of any threat, inducement, or promise that would render the statement inadmissible. Further, there was no evidence that Lokman was suffering from withdrawal symptoms to such an extent that the statement should not be admitted. Indeed, the surrounding evidence of the recorded telephone calls (which I have dealt with above), the statement itself, and the testimony of other witnesses indicated that Lokman was lucid. Therefore, I found that the voluntariness of the statement was proved beyond a reasonable doubt and admitted the statement.

54 There were inconsistencies between the contemporaneous statement and Lokman's evidence at trial but these did not detract from the credibility of his evidence. First, his contemporaneous statement that he had collected the bundles on 7 September 2015 was contrary to his evidence at trial. However, his evidence at trial was supported by Zaini and Noor, whose accounts I believed. Second, there were also inconsistencies in relation to whether he knew that the bundles were under the sofa when Mubin gave him instructions to retrieve them. In my view, whether he knew the bundles were there was not significant; the important issue was whether he had been given directions about them and had acted on those directions. Third, there were inconsistencies in relation to whether it was him or Mubin who unwrapped another bundle which had been wrapped in black tape. This was in relation to drugs that were not part of the subject matter of the charge. Fourth, there were inconsistencies in relation

⁸⁴ NE at 1 February 2019 at pp 5–8.

to whether he had personally delivered drugs to Edy prior to 8 September 2015 or had simply driven Mubin to meet with Edy for Mubin to make the delivery. Again, this was in relation to drugs that were not part of the subject matter of the charge.

55 Further inconsistencies within Lokman's evidence were raised, which I deal with briefly:

(a) In Lokman's statement marked P128, he claimed that Mubin's instructions had been given while they were both at the Holland Close Flat.⁸⁵ At trial, he then claimed that he had received instructions from Mubin to collect the drugs from the KPT Unit while he was at the Holland Close Flat, and the instructions were supplemented with a direction to give one bundle of drugs to Edy by way of a telephone call when he was already at the KPT Unit.⁸⁶ This was minor as it pertained to *exactly when* the instructions were given and whether they were given in person by Mubin, but no doubt was raised as to *what* instructions were ultimately communicated by Mubin.

(b) Lokman initially said that a black pouch containing packets of diamorphine found in the KPT Unit (marked E1), belonged to Mubin⁸⁷ and that he had taken three packets out of E1 to repack them in clear plastic bags.⁸⁸ At trial, he then said that he did not know who owned E1⁸⁹

⁸⁵ AB at p 365.

⁸⁶ NE 29 January 2019 at p 14, ln 1–3; NE 30 January 2019 at p 20, ln 1–6.

⁸⁷ AB at p 379.

⁸⁸ AB at p 366.

⁸⁹ NE 30 January 2019 at p 32, ln 10–25.

and that he had not handled or removed anything from E1 on 8 September 2015.⁹⁰ This inconsistency is again not material as the drugs did not form the subject matter of the charge. Moreover, Lokman eventually revised his testimony in court and clarified that he had confused E1 with A1.⁹¹

(c) Lokman initially testified that Mubin packed drugs from another bundle into straws,⁹² but later claimed that Mubin packed them into packets.⁹³ This did not appear to be an inconsistency but was simply an ambiguity in his use of terms.

(d) Lokman apparently admitted to ownership of the two bundles of heroin to CNB officers when he was arrested. For this, Mr Goswami cited the police report bearing Report No D/20150909/2022,⁹⁴ which records:

Upon questioning by CNB officers, [Lokman] admitted ownership to all the drug exhibits ... recovered which were meant for either drug delivery to his client or for own consumption purpose.

However, it was not clear what exactly was said, specifically, what was asked of Lokman and what “owned” meant in that context. I did not find it appropriate to give weight to this alleged admission recorded in the police report.

⁹⁰ NE 30 January 2019 at p 33, ln 6–11; p 37, ln 8–15.

⁹¹ NE 30 January 2019 at p 33, ln 23–30; p 37, ln 8–18.

⁹² NE 30 January 2019 at p 41, ln 14–16.

⁹³ NE 30 January 2019 at p 41, ln 23–32; p 42, ln 1–4.

⁹⁴ AB at p 209.

(e) Lokman appeared to claim in his statement recorded on 15 September 2015 (marked P129) that Mubin owed him money.⁹⁵ However, in a subsequent statement recorded on 18 September 2015 (marked P131),⁹⁶ he said that Mubin did not owe him money. When asked for an explanation at trial, Lokman explained that it depended on whether he considered the discounts that Mubin had given him when he bought drugs from Mubin. Such discounts would offset any debt that Mubin had incurred.⁹⁷ This was a minor inconsistency and I found that Lokman provided a sufficiently reasonable explanation.

56 In my view, it was realistic to expect Lokman to attempt to distance himself from the drugs. This, together with a lack of precision in Lokman's recollection, accounted for the inconsistencies. He was, nevertheless, consistent throughout the various accounts regarding his relationship with Mubin, his actions on 8 September 2015, and Mubin's instructions to him:

(a) In Lokman's contemporaneous statement recorded on 9 September 2015 (exhibit 2D5), Lokman stated that Mubin instructed him to collect the bundles from the KPT Unit and pass them to Edy.

(b) In his statement recorded on 10 September 2015 (exhibit P127), Lokman stated that Mubin passed him two "*panas*" bundles (referring to heroin) "and asked [him] to deliver".⁹⁸

⁹⁵ AB at p 381.

⁹⁶ AB at p 401.

⁹⁷ NE 30 January 2019 at p 46, ln 11–13.

⁹⁸ AB at p 360.

(c) In his statement recorded on 15 September 2015 (exhibit P128), Lokman stated that Mubin asked him to go to the KPT Unit to retrieve the two heroin bundles and other drugs. He was also told to deliver one bundle to Edy and bring the remaining drugs to the Holland Close Flat.⁹⁹

(d) At trial, Lokman's testimony was consistent with the above accounts in stating that first, Mubin asked him to go to the KPT Unit to retrieve the drugs, and second, one of the bundles was (at some point) designated for Edy while the remaining drugs were to be brought to the Holland Close Flat.

Contradictions with other evidence

57 Three arguments regarding the consistency of Lokman's evidence with external events were raised. First, the call logs did not support Lokman's claim that he received a telephone call from Mubin at around 1pm, during which Mubin asked Lokman to meet him, as a result of which Lokman went to the Holland Close Flat.¹⁰⁰ While it was accepted that the call logs of Lokman's and Mubin's known phone numbers did not reflect a call from Mubin to Lokman at around 1pm on 8 September 2015, the evidence indicated that Mubin used several phones. It also appeared from their telephone conversation the night of Lokman's arrest that Mubin had given Lokman the instruction sometime before the evening. Mubin, after castigating Lokman about punctuality earlier in the conversation, stated, "I'm telling you that if you had done it during the day, there won't be any problems you know".¹⁰¹

⁹⁹ AB at p 365.

¹⁰⁰ NE 30 January 2019 at p 6, ln 18–32; p 7, ln 1–18.

¹⁰¹ P124A at p 27.

58 Second, the DNA evidence contradicted Lokman's account in relation to a piece of clear plastic wrapped in black tape found in the dustbin in the KPT Unit (exhibit C1). The DNA analysis showed that Lokman's DNA was found on the interior and exterior surfaces of the tape bundle, both the sticky and non-sticky sides of the tape, as well as the plastic bag of exhibit C1.¹⁰² This was coupled with inconsistencies in his evidence. In his long statement (P128), Lokman claimed that Mubin had cut open a bundle of drugs to repack them, and threw the wrapping (C1) into the dustbin. However, in his contemporaneous statement (2D5), Lokman said that *he* was the one who had unwrapped the bundle and repacked it. When cross-examined on this issue, Lokman claimed that his DNA was found on C1 because he had touched it when clearing the rubbish,¹⁰³ or because he had scraped some remnants of heroin off of C1.¹⁰⁴ However, he also acknowledged the possibility that he had helped Mubin repack those drugs.¹⁰⁵ As such, Lokman appeared to give different explanations for the fact that his DNA was on C1, and his statements differed as to who unpacked C1. When faced at trial with his contemporaneous statement, Lokman could only repeat that he rejected its contents because he was suffering from withdrawal symptoms at the time.¹⁰⁶

59 I accepted there was inconsistency on this issue, but found it was explained by Lokman's desire to distance himself from acts that would indicate he was anything other than a courier. This issue, further, related only to an

¹⁰² DNA Report bearing Lab No DN-1543-01909: AB at pp 139–140.

¹⁰³ NE 30 January 2019 at p 43, ln 7–31.

¹⁰⁴ NE 16 July 2019 at p 12, ln 31–32; p 13, ln 1–3.

¹⁰⁵ NE 1 February 2019 at p 67, ln 8–9.

¹⁰⁶ NE 1 February 2019 at p 26, ln 4–5.

exhibit, C1, which was not the subject matter of any of the charges. More importantly, even if Lokman *had* unpacked C1, this did not detract from the evidence on the central factual issue as I have defined it. Lokman himself admitted that he would pack drugs if Mubin asked him to.¹⁰⁷ It was not inconsistent with Lokman's account of their respective roles.

60 Third, Lokman claimed for the first time at trial that Tihani had told him in the CNB Exhibit Management Room that the drugs were Mubin's and that he should not "take the rap".¹⁰⁸ Tihani, called as a witness, denied having said that to Lokman.¹⁰⁹ Lokman himself previously claimed in P129 that Tihani did not know anything about the drugs from the KPT Unit.¹¹⁰ When asked to explain the inconsistency between his testimony at trial and his earlier assertion that Tihani had no knowledge of the drug activities, Lokman claimed that the latter had been his *assumption* which was dispelled when Tihani spoke to him in the CNB Exhibit Management Room.¹¹¹ When it was pointed out to Lokman that P129 was recorded *after* Lokman and Tihani were in the CNB Exhibit Management Room, he then claimed he only meant that Tihani did not know the quantities of the drugs involved.¹¹² This, however, was inconsistent with the language of P129, which stated, "I want to say that [Tihani] has got nothing to do with the drugs found in the flat."¹¹³

¹⁰⁷ NE 1 February 2019 at p 66, ln 30–32; p 67, ln 1.

¹⁰⁸ NE 29 January 2019 at p 26, ln 18–19.

¹⁰⁹ NE 18 January 2019 at p 74, ln 23–28.

¹¹⁰ AB at p 382.

¹¹¹ NE 30 January 2019 at p 48, ln 6–9.

¹¹² NE 1 February 2019 at p 34, ln 24–26.

¹¹³ AB at p 382.

61 This inconsistency was neither here nor there. I would expect that Lokman would try to distance himself from the drugs; at the same time, I would also expect that Tihani might be averse to giving evidence adverse to Mubin. This inconsistency was not relevant to any issue of significance and neither added to nor detracted from Lokman's evidence about the central factual issue.

Motives to falsely implicate Mubin

62 Mr Goswami argued that Lokman had two motives to falsely implicate Mubin. First, Lokman gave false evidence because he wanted to get back at Mubin over a sibling rivalry for Hasina's affections. Second, Lokman was vying for a Certificate of Substantive Assistance ("CSA") to avoid the mandatory death penalty.

63 Regarding Hasina, Mubin testified that his relationship with Hasina was getting better and they were "in the process of patching up".¹¹⁴ He alleged that Lokman had feelings for Hasina and treated her like his girlfriend. Because Mubin and Hasina were reconciling, Lokman was therefore jealous and had motive to implicate Mubin.¹¹⁵ However, Hasina was subpoenaed by the Prosecution and gave evidence that there were no plans for reconciliation,¹¹⁶ and neither was Lokman vying for her affections.¹¹⁷ Therefore, there was no factual basis for this alleged motive to lie.

¹¹⁴ NE 29 October 2019 at p 24, ln 23.

¹¹⁵ NE 29 October 2019 at p 24, ln 25–26.

¹¹⁶ NE 23 January 2020 at p 12, ln 7–31.

¹¹⁷ NE 23 January 2020 at p 13, ln 20–27.

64 As for the CSA, common sense dictates that the possibility of avoiding the mandatory death penalty through s 33B(2) of the MDA might motivate a co-accused to falsely implicate another. The Court of Appeal recognised this reality in *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 (“*Norasharee*”) at [68]. Contrary to the Prosecution’s submissions, I did not think it was necessary for an accused to *prove* that a co-accused who is implicating him is motivated by the desire to obtain a CSA. Nevertheless, the existence of that incentive does not necessarily lead to a conclusion that the witness is lying. A witness who has an incentive to lie may be telling the truth, just as a witness without any incentive may still be lying: *Norasharee* at [59]. Hence, if it can be shown that the testimony of a co-accused is consistent and corroborated by objective evidence, the court is entitled to give even full weight to that co-accused’s testimony: see *Public Prosecutor v Mohd Zaini bin Zainutdin and others* [2019] SGHC 162 at [49]. This was my conclusion in the case at hand.

Assessment of Mubin’s account of 8 September 2015

65 In contrast, I found Mubin’s account of what happened on 8 September 2015 to be unbelievable. First, he was unable to obtain any corroboration from Hasina, who denied being with Mubin on 8 September 2015.¹¹⁸ Second, Mubin’s account at trial directly contradicted his statement recorded on 20 October 2015. In his statement, Mubin stated, “I am now asked if I recall where I was on 8 September 2015. I can’t recall where I was. It was too long ago.”¹¹⁹ This was just over a month after the events of 8 September 2015. Yet, almost four years after this statement was recorded, Mubin was apparently able to provide a

¹¹⁸ NE 23 January 2020 at p 19, ln 12-32; p 20, ln 1-32; p 21, ln 1-4.

¹¹⁹ AB at p 410.

detailed account of what happened on 8 September 2015. Thus, I concluded that his account was not credible.

Conclusion on the central factual issue

66 The evidence above established that Mubin orchestrated the drug business, while Lokman acted under his instructions. In brief:

- (a) Mubin ordered the drugs, was notified when Zaini and Noor came to Singapore, co-ordinated the deliveries of drugs with Zaini and Noor, and received delivery from Zaini and Noor;
- (b) Mubin then kept the drugs in the KPT Unit;
- (c) Mubin instructed Lokman to retrieve the bundles of drugs from the KPT Unit; and
- (d) Mubin instructed Lokman to deliver one bundle to Edy and to return the remaining bundle to himself at the Holland Close Flat.

Charges against Lokman

Factual elements of trafficking

67 The elements of possession and knowledge were not contested by Lokman. As for the purpose of trafficking, Lokman accepted that he had possession of the drugs for the purpose of passing one of the bundles to Edy, and the other to Mubin.¹²⁰ This was also the Prosecution's case.¹²¹ Based on his

¹²⁰ Lokman's statement recorded on 15 September 2015 at para 7; NE 29 January 2019 at p 16, ln 18–22.

¹²¹ NE 1 February 2019 at p 85, ln 23–29.

admissions and the evidence, I found that Lokman had the intention to deliver one of the bundles of drugs to Edy and the other to Mubin when he was found in possession of the bundles. In so far as the case concerned Lokman's intended act of delivery to Edy, it was clear that this would fall within the definition of trafficking in s 2 of the MDA.

Alteration of charge and new charge

68 After closing submissions were received, I asked parties to submit on the case of *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*") in relation to the bundle of drugs intended for return to Mubin.

69 In *Ramesh*, one of the accused persons, Chander, had passed the drugs in question to the co-accused, Ramesh. The Court of Appeal accepted that, as a matter of fact, Ramesh only intended to return the drugs to Chander: *Ramesh* at [87]. Having analysed s 2 of the MDA which defines the word "traffic", the Court of Appeal held that the act of returning drugs to the person who entrusted them with the accused in the first place was not trafficking. The judgment in *Ramesh* was handed down after the Prosecution's case had closed. The Court of Appeal's holding at [110] was pertinent:

[I]n our judgment, **a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking". It follows that a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking"**. There is a fundamental difference in character between this type of possession and possession with a view to *passing the drugs onwards* to a third party. In the former situation, the returning of the drugs to a person who already was in possession of them to begin with cannot form part of the process of disseminating those drugs in

a particular direction – *ie*, from a source of supply towards the recipients to whom the drugs are to be supplied – because the act of returning the drugs runs counter to that very direction. On the other hand, in the latter situation, the intended transfer of the drugs to a third party is presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer.

[emphasis in original in italics; emphasis added in bold]

This was elaborated at [114]:

In the vast majority of cases, it can reasonably be assumed that the movement of drugs from one person to another, anywhere along the supply or distribution chain, was done to facilitate the movement of drugs towards their ultimate consumers. **It is clear, however, that this assumption does not hold true in the case of a person who merely holds the drugs as “bailee” with a view to returning them to the “bailor” who entrusted him with the drugs in the first place. Such a person cannot, *without more*, be liable for trafficking because the act of returning the drugs is not part of the process of supply or distribution of drugs.**[emphasis in original in italics; emphasis added in bold]

70 The issue was the act of return, which the Prosecution had put to the accused persons as the factual premise for Lokman’s act of trafficking. The Prosecution submitted that *Ramesh* did not apply for two key reasons, which I deal with in turn. First, they argued that there was no “entrustment” in the present case, as Mubin did not have physical possession and did not physically pass the drugs to Lokman, such that Lokman could be treated as a “bailee”.

71 In my view, physical possession was not critical to the concept of bailment as the Court of Appeal had defined it in *Ramesh*. The concept of possession in the context of drug offences was set out in *Tan Ah Tee and another v Public Prosecutor* [1979-1980] SLR(R) 311 at [25], where the Court of Appeal adopted Lord Pearce’s approach in the case of *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 (“*Warner*”). The following excerpt from Lord Pearce’s judgment is most relevant to the present case (*Warner* at 305):

For the same reason *I do not think that possession was intended to be limited by legal technicalities to one of two alternatives, namely, either to mere physical possession or to mere legal possession. Both are forbidden.* A man may not lawfully own the drugs of which his servant or his bailee has physical possession or control. Nor may he lawfully have physical possession or control as servant or bailee of drugs which are owned by others. By physical possession or control I include things in his pocket, in his car, in his room and so forth. That seems to me to accord with the general popular wide meaning of the word “possession” and to be in accordance with the intention of the Act. [emphasis added]

72 In this case, Mubin had purchased the drugs from Zaini. Given the illegal subject matter, he did not have a legal right to ownership (see *R v Maginnis* [1987] 2 WLR 765 at 771 per Lord Keith of Kinkel). Possession, as described by Lord Pearce in *Warner*, however, includes possession of items within one’s control. Mubin had left the drugs in premises leased by him, to which he had access and control, either personally or through Lokman. This was sufficient to establish possession. He subsequently gave instructions to Lokman to retrieve them. Lokman’s retrieval commenced the act of bailment as defined in this context. There was no onward distribution of the drugs in this act. In *Ramesh*, the Court of Appeal made clear in framing the issue at [100] that they were dealing with an accused who took custody of the drugs with the intention to return them to the person who initially entrusted him with the drugs.

73 *Moad Fadzir bin Mustaffa v Public Prosecutor and other appeals* [2019] SGCA 73 (“*Fadzir*”) is a case in point. An argument used by the Prosecution was that Moad Fadzir, the bailee, was in physical possession of the drugs all along, while Zuraimy, the bailor, had not had sole physical possession and therefore could not have “deposited” the drugs with Fadzir, and further, that Moad Fadzir was the one who had *first* received possession from an unknown male Indian, before he passed the drugs to Zuraimy, meaning that when Fadzir returned the drugs to Zuraimy, the overall direction of drugs was towards the

end-consumer: at [79]. The Court of Appeal, in rejecting the Prosecution's arguments, cautioned against "an overly restrictive view of the concept of 'bailment'" (*Fadzir* at [80]).

74 The Prosecution's second objection was that Lokman's involvement in Mubin's business went further than mere safekeeping; he assisted Mubin with the drug trafficking operations in so far as his actions were part of a larger scheme of operations that facilitated Mubin's business. As such, Lokman was not safekeeping the bundle but bringing the bundle back to Mubin for the purpose of onward distribution by Mubin.

75 The difficulty with the Prosecution's argument on these additional factors in the present case is that these did not change the nature of the act. Rather, they pointed to involvement not consonant with the offence for which Lokman was charged. The case put to the accused persons had a much simpler factual premise. The submission relied on a different characterisation of the offending act. While I recognised that a charge could be preferred for intentional aiding or for conspiracy in an appropriate case, I was of the view that it was not appropriate to frame such a fundamentally different charge against Lokman at such a late stage in the proceedings. Neither did the Prosecution seek to do so. Cross-examination of the accused persons and the taking of evidence had been conducted on the basis of the instruction to send a bundle of drugs to Edy and to return the other bundle to Mubin, with each characterised as an act of trafficking. Notwithstanding Lokman conceded to being Mubin's errand boy as part of the general context, he had not been given an opportunity to explain his state of mind in respect of his role in Mubin's wider dealings.

76 In my judgment, therefore, the charge against Lokman for possession for the purpose of trafficking was made out in respect of the bundle intended for

Edy, but not in respect of the other bundle intended for Mubin. I exercised my powers under s 128(1) of the CPC to alter the charge against Lokman and to frame a new charge. The altered charge read as follows:

That you, **LOKMAN BIN ABDUL RAHMAN**,

on 8 September 2015, at or about 10.30pm, at the ground floor lift lobby of the South Tower at Katong Park Towers, 114A Arthur Road, Singapore, did traffic in a controlled drug, *to wit*, by having in your possession one of the following bundles for the purpose of trafficking to one “Edy”:

- (1) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.88 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”); or
- (2) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.40 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the MDA;

without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33(1) of the MDA, or you may alternatively be liable to be punished under section 33B of the MDA.

77 As for the other bundle intended to be returned to Mubin, I decided that the most appropriate charge was under s 8(a) of the MDA, to mirror Ramesh’s charge in *Ramesh*. Mr Muzzamil also submitted that this should be the course of action. Therefore, the second charge against Lokman was framed as follows:

That you, **LOKMAN BIN ABDUL RAHMAN**,

on 8 September 2015, at or about 10.30pm, at the ground floor lift lobby of the South Tower at Katong Park Towers, 114A Arthur Road, Singapore, did have in your possession one of the following bundles of controlled drugs:

- (1) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.88 grams of diamorphine**, a

Class 'A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"); or

- (2) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.40 grams of diamorphine**, a Class 'A' controlled drug listed in the First Schedule to the MDA;

with the intention of returning possession of the said bundle to one Mohamed Mubin bin Abdul Rahman (bearing Singaporean NRIC No. S[xxxxxxx]), without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 8(a) of the MDA,

and further, that you, before the commission of the said offence, were on 27 December 1999 convicted in Subordinate Court 17, *vide* DAC 35584/1999, for an offence of possession of a controlled drug, *to wit*, diamorphine, under section 8(a) of the Misuse of Drugs Act (Cap 185, 1998 Rev Ed), and were sentenced to 15 months' imprisonment, which conviction and punishment have not been set aside to date, and you shall now be liable to enhanced punishment under section 33(1) of the MDA.

78 The charges were read and explained to Lokman on 6 February 2020: s 128(2) of the CPC. He claimed trial to the charges and confirmed that he was ready to proceed on the altered and new charges: s 129(1) of the CPC. Mr Muzzamil confirmed that he was not seeking to adduce any new evidence or to recall any witness: s 131 of the CPC. As I was of the view that proceeding immediately would not prejudice either the Prosecution or the Defence (s 129(3) of the CPC), I proceeded accordingly.

79 The elements of the two charges were proved beyond a reasonable doubt. Lokman was in possession of both bundles and knew that they contained diamorphine. As for the bundle he was intending to deliver to Edy, his possession of that bundle amounted to possession for the purpose of trafficking as defined in s 2 of the MDA. As for the second charge, he was in possession of the second bundle with knowledge of its content. Therefore, I found Lokman guilty and convicted him on both charges.

Mubin

Effect of finding on the central factual issue on Mubin

80 My earlier findings meant that the Prosecution’s assertions against Mubin on the charge were proven beyond a reasonable doubt. In particular, I found that:

- (a) Mubin gave instructions to Lokman to retrieve the bundles and to deliver one bundle to Edy and return the other bundle to himself at the Holland Close Flat; and
- (b) Mubin knew that the bundles contained diamorphine and he intended for Lokman to take possession of the bundles for the purpose of passing one to Edy and the other to himself.

Mubin’s lies

81 In addition, it is clear from earlier parts of these grounds of decision that I did not think Mubin a creditworthy witness. The Prosecution argued that three of Mubin’s lies, in particular, were corroborative of his guilt. The conditions to be met for a lie to be corroborative of guilt were set out in *R v Lucas (Ruth)* [1981] 1 QB 720, which were adopted in *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 at [33] and re-stated in *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [60] as follows: first, the lie must be deliberate; second, the lie must relate to a material issue; third, the motive for the lie must be a realisation of guilt and fear of the truth; and fourth, the statement must be shown to be a lie by independent evidence.

Not knowing Zaini and Noor

82 Mubin lied in his statement of 20 October 2015 when he stated at first that he did not know Zaini and Noor.¹²² After he was informed that there was CCTV footage that showed that this was a lie, he then appeared to say he met them because of Lokman. In the same statement, he said that he had not seen the red car bearing registration number JQR 6136 driven by Zaini.¹²³ At trial, when it became obvious from footage shown that he had gotten into the said car, he attempted to explain his statement away by saying he was only showed black-and-white photos of the car. This was plainly untrue as the same statement recorded that he was shown two photos “of a red car”. These were deliberate lies told in reaction to matters as they surfaced. These lies were material because Zaini was his supplier of heroin.

83 What was his motive? Mubin explained that he lied because he had drug transactions with Zaini, and did not want to reveal that he was buying “ice” from him.¹²⁴ This explanation was not cogent when seen in context. The denial was recorded in the statement dated 20 October 2015, after Mubin had been served the charges in respect of the two bundles of diamorphine. Further, it did not make sense that he would deny knowing Zaini and Noor because of his “ice” transactions, when he openly admitted in the same statement that the drugs found on him, including methamphetamine, were for his own consumption.¹²⁵ In my assessment, he was attempting to set up a façade of being an “ice” consumer only, and therefore it became necessary to distance himself from his

¹²² 2D4 at para 8; AB at p 410.

¹²³ 2D4 at para 17; AB at p 410.

¹²⁴ NE 30 October 2019 at p 30, ln 21–25.

¹²⁵ AB at p 412.

diamorphine suppliers. His motive was a realisation of guilt and a fear that his knowing the supplier of the diamorphine bundles would belie his bare denial in relation to the drugs found on Lokman.

Not a regular at the KPT Unit

84 Mubin also lied about the regularity of his visits to the KPT Unit. In his statement of 15 October 2015, he first stated, “Sometimes I go back there”.¹²⁶ When the statement was read back to him, he added that after he moved into the Holland Close flat in mid-July, “[he] never [went] back” to the KPT Unit. Later in his statement dated 20 October 2015, he stated that he had only been to the KPT Unit twice, once in the week before Lokman’s arrest, and one other time before that.¹²⁷ This was a lie. In contrast, Tihani’s evidence was that Mubin would visit her at the KPT Unit “once every 3 days or a week”.¹²⁸ The connection with the KPT Unit was material, because the diamorphine was stored there. In my view, Mubin’s lies in relation to the KPT Unit arose from a need to distance himself from the drugs stored there, and, in turn, to deny having given Lokman instructions and to declare he had no knowledge of any of the diamorphine found on Lokman.

Lokman’s phone L-HP1

85 L-HP1 was used by Lokman to get instructions from Mubin and arrange deliveries to parties such as Edy. It was an asset used in his work as Mubin’s runner. That L-HP1 came from Mubin was material to Lokman’s contention

¹²⁶ AB at p 407.

¹²⁷ 2D4 at para 9; AB at p 410.

¹²⁸ PS25 at para 2; AB at p 202.

that he took instructions from Mubin as Mubin's runner and liaised with Edy in that context. In his statement dated 20 October 2015, however, Mubin stated, "I have so many phones. I can't remember if I have given these phones to Lokman".¹²⁹ At trial, Mubin denied that he gave L-HP1 to Lokman.¹³⁰ Mubin's apparent failure to remember and subsequent denial that he gave the L-HP1 to Lokman were lies; Tihani testified that Mubin had instructed her to give Lokman L-HP1.¹³¹ Taken together with Lokman's own evidence that he was given L-HP1 by Mubin, I found that Mubin's claim was a lie. Again, Mubin knew the purpose for which L-HP1 was used, and he lied to distance himself from the delivery to Edy. His motive in lying was to shore up his defence that he knew nothing about Lokman's drug dealing.

86 I therefore agreed with the Prosecution that these lies were corroborative of Mubin's guilt.

Alteration of charge and new charge

87 The Prosecution submitted that the charge against Mubin could remain the same, despite the amendment of the charge against Lokman. In the absence of any precedent tendered, I was of the view that the more appropriate approach was to amend Mubin's charge as well. This was because the amendment of Lokman's charges meant that there was no act of trafficking that Mubin had abetted in respect of the bundle to be returned to him. In contrast, the import of *Ramesh* is that Mubin was the primary offender of trafficking in respect of that bundle, the act of trafficking being the act of passing the bundle to Lokman.

¹²⁹ 2D4 at para 16: AB at p 411.

¹³⁰ NE 29 October 2019 at p 32, ln 6–7.

¹³¹ NE 18 January 2019 at p 79, ln 5–12.

Therefore, I amended the charge against Mubin under s 128(1) of the CPC to refer only to one of the bundles which was intended to be delivered to Edy, as follows:

That you, **MOHAMED MUBIN BIN ABDUL RAHMAN**,

on or about 8 September 2015, in Singapore, did abet by instigating one Lokman bin Abdul Rahman (bearing Singaporean NRIC No.: S[xxxxxxx]) to traffic in a controlled drug, *to wit*, by giving instructions to the said Lokman bin Abdul Rahman in relation to the delivery of one of the following bundles to one “Edy”:

- (1) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.88 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”); or
- (2) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.40 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the MDA;

and in consequence of your abetment, on 8 September 2015, at or about 10.30pm, at the ground floor lift lobby of the South Tower at Katong Park Towers, 114A Arthur Road, Singapore, the said Lokman bin Abdul Rahman did have in his possession one of the above bundles of controlled drugs for the purpose of trafficking to the said “Edy”, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and section 12 and punishable under section 33(1) of the MDA, or you may alternatively be liable to be punished under section 33B of the MDA.

88 In respect of the other bundle, Mr Goswami submitted, and I agreed, that the appropriate charge was that of trafficking under s 5(1)(a) of the MDA. The Court of Appeal held in *Ramesh* that the act of putting the “bailee” in possession of the drugs would be considered trafficking as the “bailor” would have moved the drugs to another party, a new link in the chain of supply: *Ramesh* at [124]–[125]. Further, while the Court of Appeal suggested that the “bailor” may be able to argue that he was not trafficking by showing that the movement of drugs

to the “bailee” was not intended to facilitate onward dissemination of drugs (see *Ramesh* at [125]), no such defence was raised by Mubin in this case (who maintained throughout that he only consumed “ice”, not heroin). Mubin was the one who had possession of the drugs prior to Lokman’s retrieval of the drugs from the KPT Unit (see [72] above). In the present case, Mubin then put Lokman in possession of the bundles by directing him to retrieve the bundles from the KPT Unit. This act of putting Lokman in possession amounted to “giving”, which is an act of trafficking under s 2 of the MDA. A fresh charge was therefore preferred as follows:

That you, **MOHAMED MUBIN BIN ABDUL RAHMAN**,

on or about 8 September 2015, in Singapore, did traffic in a Class ‘A’ controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”) without authorisation under the MDA or the Regulations made thereunder, *to wit*, by giving to Lokman bin Abdul Rahman (bearing Singaporean NRIC No. S[xxxxxxx]) one of the following bundles of controlled drugs belonging to you at 114A Arthur Road, Katong Park Towers, #08-06, Singapore, which you intended for the said Lokman bin Abdul Rahman to return to you:

- (1) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.88 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the MDA; or
- (2) **1 bundle of powdery/granular substance weighing not less than 456.8 grams, which was analysed and found to contain not less than 19.40 grams of diamorphine**, a Class ‘A’ controlled drug listed in the First Schedule to the MDA;

and you have thereby committed an offence under section 5(1)(a) of the MDA and punishable under section 33(1) of the MDA, or you may alternatively be liable to be punished under section 33B of the MDA.

89 These charges were read and explained to Mubin at the hearing on 6 February 2020. He claimed trial to both charges and stated that he was ready to

proceed on those charges: s 129(1) of the CPC. Mr Goswami confirmed on Mubin's behalf that he was not going to recall any witnesses or adduce any new evidence: s 131 of the CPC. I considered that proceeding with the trial would not prejudice the accused's defence or the Prosecution's conduct of the case, and so proceeded.

90 I found that the elements of both charges were made out beyond a reasonable doubt and convicted Mubin accordingly.

Sentences

Sentence for Lokman

91 Regarding the first charge against Lokman, I found that he met the requirement under s 33B(2)(a) of the MDA as he acted as a courier. Although he put the bundles into their respective bags, that was merely an act that facilitated delivery: see *Public Prosecutor v Abdul Haleem bin Abdul Karim* [2013] 3 SLR 734 at [55]; *Zainudin bin Mohamed v Public Prosecutor* [2018] 1 SLR 449 at [83]. In this respect, the focus of the inquiry was “on the accused's acts in relation to the *particular consignment* of drugs which form the subject matter of the charge against him” [emphasis in original omitted; emphasis added in italics]: *Zamri bin Mohd Tahir v Public Prosecutor* [2019] 1 SLR 724 at [15]. The fact that there was a dispute as to whether Lokman or Mubin had unwrapped another unrelated bundle for distribution was not relevant to the inquiry. In addition, the Prosecution issued a CSA under s 33B(2)(b) of the MDA. As such, s 33B(1)(a) of the MDA applied and I exercised my discretion to impose a sentence of life imprisonment. As Lokman was above 50 years of age, caning was not imposed. In respect of the second charge, the amount of drugs involved, at not less than 19.40g of diamorphine, was significantly above the capital threshold. Further, Lokman had antecedents for drugs, specifically,

drug possession. This called for the enhanced punishment with a mandatory minimum of two years' imprisonment under s 33(1) of the MDA. The Prosecution submitted that a term of eight years' imprisonment was appropriate and I so ordered. Both imprisonment terms were ordered to run concurrently from 10 September 2015, Lokman's first date of remand.

Sentence for Mubin

92 In respect of both charges on which Mubin was convicted, the prescribed punishment under s 33(1) read with the Second Schedule to the MDA is death. The alternative sentencing regime in s 33B of the MDA did not apply to Mubin. Having ordered and given instructions for the drugs to be delivered to Edy and returned to himself for the purpose of onward trafficking, Mubin was not merely a courier. No CSA under s 33B(2)(b) was granted by the Prosecution, nor did any question that he was of unsound mind arise.

93 I therefore pronounced the mandatory sentence of death on Mubin.

Valerie Thean
Judge

April Phang and Soh Weiqi (Attorney-General's Chambers) for the
Prosecution;
Mohamed Muzammil bin Mohamed (Muzammil & Company) and
Lam Wai Seng (Lam WS & Co) for the first accused;
Ram Goswami (Ram Goswami) and Cheng Kim Kuan (K K Cheng
& Co) for the second accused.