Public Prosecutor *v* Devendran A/L Supramaniam
[2014] SGHC 140

Case Number : Criminal Case No 4 of 2014

Decision Date : 14 July 2014

Tribunal/Court : High Court

Coram : Tan Siong Thye J

Counsel Name(s) : Ma Hanfeng and Bagchi Anamika (Attorney-General's Chambers) for the prosecution; Pratap Kishan (M/s Kishan LLC) and Ramachandran Shiever Subramaniam (M/s Grays LLC) for the accused.

Parties : Public Prosecutor — Devendran A/L Supramaniam

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

14 July 2014 Judgment reserved.

Tan Siong Thye J:

1 The accused, Devendran A/L Supramaniam, was charged with importing diamorphine into Singapore as follows:

> That you, Devendran A/L Supramaniam,
>
> are charged that you, on the 12th day of May 2011 at or about 5.48 am, at Woodlands Checkpoint, Singapore ("the said place"), while riding a Malaysian registered motorcycle bearing registration no JMV4571, did import into the said place a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185 ("the said Act"), to wit, six (6) packets of granular/powdery substances weighing 2728.1 grams which was analysed and found to contain not less than 83.36 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 and punishable under section 33 of the said Act, and further upon your conviction under section 7 of the said Act, you may alternatively be liable to be punished under section 33B of the said Act.

The amount of diamorphine imported by the accused exceeds the statutory limit of 15 grammes as prescribed under the Second Schedule of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"). Hence this offence is punishable with death unless he is liable to be punished under s 33B of the Act. The accused claims trial to the charge. His defence is that he did not know that the diamorphine was concealed in his motorcycle seat.

The prosecution's case

2 The prosecution adduced evidence that the accused is a 29-year-old male Malaysian. At the time of his arrest he was working as a part-time lorry attendant in Malaysia.

At Woodlands Checkpoint Counter 43

3 On 12 May 2011, at about 4.45 am, the accused rode his Malaysian-registered motorcycle bearing registration number JMV4571 into Singapore at the Woodlands Checkpoint. He went to

Counter 43. He produced his passport to PW1, Corporal Muhammad Khatib bin Sani, the Primary Screening Officer with the Immigration and Checkpoints Authority ("ICA"). PW1 then screened the accused's particulars using the ICA computer. He was alerted by a notification that the accused was on the blacklist. PW1 told the accused to switch off his motorcycle engine and to hand over his motorcycle key. At the same time the ICA Quick Response Team was activated. The accused, together with his passport and motorcycle key, was then handed over to PW2, Corporal Mohamad Raime bin Hashim of the ICA Quick Response Team, who soon arrived at the scene.

At the ICA Arrival Car Secondary Team Office

4 The accused was asked by PW2 to push his motorcycle to the ICA Arrival Car Secondary Team Office. He parked his motorcycle at one of the parking lots located outside this office. In the meantime, officers from the Central Narcotics Bureau ("CNB") were alerted. They arrived shortly after and the accused was handed over to them for investigation.

Physical and dog search

5 The accused was then told by one of the CNB Officers to push his motorcycle to the Police K9 (dog unit) garage. A physical search was conducted on the motorcycle but nothing incriminating was found. However, during the search, PW4, Staff Sergeant Karathigayan s/o Jayabalan, felt the motorcycle seat was "unusually hard and bulging". [note: 1] Later, a police dog search was also conducted. There was no reaction from the dog.

Backscatter search

6 Thereafter, the accused was asked to push his motorcycle to the ICA Detention Yard. The ICA Backscatter Team arrived and did a backscatter scan on the motorcycle. The scan revealed some black background on the motorcycle seat. In the presence of the accused, PW5, Sergeant Mohamad Suffian bin Salleh, then proceeded to dismantle the motorcycle seat. Six bundles wrapped in newspaper were found concealed in the motorcycle seat. The accused was immediately placed under arrest for the importation of a controlled drug.

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

7 Subsequently, at the CNB office in Woodlands Checkpoint, PW4 asked the accused about the six bundles wrapped in newspaper. The accused replied: "I don't know." [note: 2] The accused was also asked who these bundles belonged to and again his reply was: "I don't know." [note: 3] When he was asked whether he knew that there was something stuffed inside his motorcycle seat, he replied: "Yes." [note: 4] When he was further asked about how he knew that something was stuffed inside his motorcycle seat, he replied: "I felt something hard, when I sat on my motorbike seat." [note: 5]

All the accused's statements were voluntarily given

8 The prosecution admitted all the statements of the accused as he confirmed that they were voluntarily taken from him without any inducement, threat or promise.

Analysis of the six bundles

9 The six bundles contained a granular substance and were sent to the Health Sciences Authority ("HSA") for analysis. The gross weight of the granular substance is 2,728.1 grammes. Upon analysis,

the granular substance was found to contain 83.36 grammes of diamorphine.

Presumption of possession and knowledge of drug

10 The prosecution relies on the statutory presumptions under ss 18(1)(*a*) and 18(2) of the Act. Under s 18(1)(*a*), the accused is presumed to have been in the possession of the diamorphine found in the motorcycle and, under s 18(2), he is further presumed to have known of the nature of the diamorphine. This, combined with the fact that the accused physically brought the diamorphine hidden in the motorcycle seat into Singapore, establishes the offence of importation of a controlled drug with which he is charged.

The accused's case

11 The accused seeks to rebut the presumptions of possession and knowledge under ss 18(1)(*a*) and 18(2) of the Act respectively. He alleged that he did not know that the six bundles concealed in his motorcycle seat contained diamorphine. He admits that he felt hardness in his motorcycle seat when he rode over humps, potholes and bumps. However, he alleged that the six bundles of diamorphine were planted inside the seat of his motorcycle without his knowledge when he rode into Singapore. His version of the events prior to his arrest and the discovery of the drug in his possession are summarised below.

Accused needed a loan to bail out his younger brother

12 The accused claims that on 9 May 2011, he was informed by Susila, his younger brother's wife, that his younger brother, Rajeswaran, was arrested in Kedah, Malaysia. Bail of RM2,000 was required to secure his release. The accused managed to borrow RM500 from his friend, Agilan but he was still short of RM1,500. He met a friend, Suria, whom he had previously worked with at a shipyard in Pasir Gudang from February 2007 to October 2007. The accused told Suria that he needed a loan of RM1,500 to bail out his younger brother. Suria told the accused that he could refer the accused to someone who would be willing to grant him a loan with interest. Suria and the accused then agreed to meet the following day.

Meeting with Kumar and tele-conversation with Gobi regarding the loan

13 On 10 May 2011, at about 6 pm, the accused met Suria at a coffeeshop. They then proceeded to Ulu Tiram in Johor Bahru. Upon arrival, Suria made a phone call. Later, a person known to the accused as Kumar arrived. The accused knew Kumar as they had previously worked together at the shipyard in Pasir Gudang. The accused told Kumar that his younger brother was arrested by the police in Kedah and that he needed RM1,500 to bail him out. The accused thus requested for a loan of RM1,500 from Kumar. Kumar said he would talk to a person who could give the accused a loan of RM1,500 with interest. After talking to that person on his mobile phone, Kumar passed the mobile phone to the accused. The latter recognised the caller as a person known to him as Gobi. Gobi asked the accused for his name and age. Gobi also asked the accused whether he had a Singapore passport, whether he had been to Singapore before and whether he had been working in Singapore. The accused told him that he had been to Singapore and was looking for a job in Singapore. Gobi also asked the accused whether he owned any property. The accused responded that he owned the motorcycle.

14 Gobi then told the accused that he would lend the accused RM1,500 if the accused was willing to pledge the motorcycle as security. The accused agreed and he was then instructed to meet Kumar the next day, 11 May 2011, at 10 pm.

Accused lent his motorcycle to Alagendran

15 On 11 May 2011, at about 5 to 6 pm, the accused's friend Alagendran came to the accused's house to borrow the motorcycle for a short while. When Alagendran returned at about 6.30 pm, he told the accused that he had fought with someone who was armed with a parang and caused the motorcycle to be damaged in the process. There was a cut on the front cover near the handle bar. The seat of the motorcycle was also cut. Alagendran said he would repair the motorcycle on the same day. He then took the motorcycle, repaired it and returned it to the accused on the same night at about 8.30 pm.

Accused handed his motorcycle to Kumar at 10 pm on 11 May 2011

16 The accused met Kumar at 10 pm on 11 May 2011 at Ulu Tiram. Kumar told the accused that Gobi wanted to see the motorcycle to check whether it was stolen before granting the accused a loan of RM1,500. Kumar then took the motorcycle from the accused and rode it away. Kumar returned the motorcycle to the accused sometime around midnight.

Instruction to meet Kumar and another person upon entry into Singapore

17 Kumar then instructed the accused to ride the motorcycle into Singapore at around 4.30 to 5 am on 12 May 2011. The accused was told that, after entering Singapore, he was to meet Kumar and a Chinese man at a Caltex petrol kiosk located along Kranji Road where they would take the motorcycle from him. The accused was informed that the motorcycle would be returned to him at the bus stop near the Caltex petrol kiosk at around noon on 12 May 2011. The loan would only be given to him after he had returned to Johor Bahru on 12 May 2011.

Accused knew about the hardness of his motorcycle seat

18 After receiving Kumar's instructions, the accused then rode his motorcycle back home. When he rode the motorcycle over some bumps, he felt that the motorcycle seat was harder than usual. However, he did not check the motorcycle seat.

Entry into Singapore via Woodlands Checkpoint

19 After resting at home for a while, the accused proceeded to ride the motorcycle into Singapore in the early morning of 12 May 2011. When he arrived at Woodlands Checkpoint, Singapore, he was arrested for the importation of the diamorphine found concealed in his motorcycle seat.

20 The accused testified that he did not know of the diamorphine concealed in the seat of the motorcycle. He alleged that it could have been planted there by either Kumar or Gobi after Kumar took the motorcycle away from the accused for a while at about 10 pm on 11 May 2011. The accused further alleged that the diamorphine could also have been planted in his motorcycle seat by Alagendran when the latter took the motorcycle for repairs in the earlier part of the same day. These incidents all occurred before the accused's entry into Singapore.

21 The accused did not call any other witness to testify in his defence.

22 Before I deal with the various issues, it is important to recapitulate the undisputed facts.

The agreed facts

23 On 12 May 2011, the accused rode into Woodland Checkpoint on his Malaysian-registered motorcycle bearing registration number JMV4571 of which he is the registered owner. The accused was then stopped by officers from the ICA and referred to officers from the CNB for checks to be conducted.

24 The ICA officers then conducted a backscatter scan on the motorcycle and discovered anomalies in the seat of the motorcycle. CNB officers then proceeded to dismantle the seat and found six bundles wrapped in newspaper hidden within the seat. Each bundle contained a packet of granular substance and the total weight of all six bundles was 2728.1 grammes. Upon analysis by the HSA, the granular substance in all the packets was found to contain 83.36 grammes of diamorphine. Diamorphine is a controlled drug specified in Class A of the First Schedule of the Act. The accused is not authorised under the Act or the Misuse of Drugs Regulations (S 234/1973) promulgated thereunder to import the said drug into Singapore.

25 It was also agreed that all statements given by the accused in the course of the investigations were voluntarily given without any inducement, threat or promise from the recording officers or any other persons.

The issues

26 The facts surrounding the arrest on 12 May 2011 and the discovery of the bundles of substance concealed in the accused's motorcycle seat are not disputed by the accused. The accused was caught red-handed with the diamorphine found in his motorcycle seat. Thus, the *actus reus* of the offence charged, *ie* the physical carrying of the diamorphine from Malaysia to Woodlands Checkpoint, Singapore is not denied. However, the accused denied that he had the requisite knowledge that the substance found in his motorcycle seat was diamorphine.

27 To establish the *mens rea*, the Prosecution relies on the presumptions under ss 18(1)(*a*) and 18(2) of the Act. Under s 18(1)(*a*), the accused is presumed to have been in the possession of the diamorphine found in the motorcycle seat and, under s 18(2), he is further presumed to have known of the nature of the diamorphine.

28 The accused, however, argues that he lacked the requisite *mens rea* for establishing the commission of the offence. His defence is that he had no knowledge of the six bundles wrapped in newspaper that were found stuffed in his motorcycle seat contained diamorphine. This is premised on his assertions that the six bundles of diamorphine were planted in his motorcycle seat by Kumar, Gobi or Alagendran without his knowledge. If the accused is able to prove on a balance of probabilities that he had no knowledge that the hidden bundles were diamorphine then he successfully rebuts the presumption of possession of the diamorphine: see *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*") at [25]. This would mean that the presumption of knowledge of the nature of the drug under s 18(2) of the Act does not even arise since the element of possession required to give rise to the presumption is not established. The *mens rea* for importation of a controlled drug would consequently not be established and I would have to acquit the accused.

29 I shall analyse the accused's version of events surrounding Kumar, Gobi and Alagendran to ascertain whether the accused has proven on a balance of probabilities that he had no knowledge of the six bundles of diamorphine.

The version of events surrounding Alagendran

The accused's version of events surrounding Alagendran is an afterthought

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30 The events relating to Alagendran were not disclosed by the accused contemporaneously. The accused only disclosed the events surrounding Alagendran on 15 November 2011 even though he was arrested on 12 May 2011. Therefore, it had taken the accused about 6 months before he decided to inform the investigation officer about Alagendran. When asked during cross-examination why he had failed to mention this earlier, the accused gave the following response:

> Q. I put it to you that … if what you say about Alagendran is true, you would have stated so in your earlier statement.
>
> …
>
> A. IO did ask me why I did not tell about this earlier. When I was arrested, I could not remember this. Only when I went to prison I could---I sat down and could recollect what happened. Whenever I was brought to the Subordinate Courts, I would ask to see the IO via the video link. The IO only saw me in November. Via the video link, I've requested to see the IO---I've requested to see the IO two to three times but he only---but the IO saw me only in November, and that's when I informed the IO about this. [note: 6]

31 I am unable to accept the accused's explanation. There were many opportunities for the accused to mention Alagendran before he actually recounted the story to the investigation officer on 15 November 2011. After his arrest on 12 May 2011, statements were recorded from the accused from 14 May 2011 to 17 May 2011. [note: 7] The accused, therefore, had a total of six days from 12 May 2011, the day he gave his defence in his cautioned statement, to 17 May 2011 to think about matters and raise the version of events surrounding Alagendran. Furthermore, the version of events surrounding Alagendran happened on 11 May 2011, only a day before his arrest. It must have been fresh in the accused's mind, thus I cannot see why he would not raise this matter immediately after his arrest when statements were being taken from him. The accused had not provided a satisfactory explanation *vis-à-vis* his omission of Alagendran in his cautioned statement taken on 12 May 2011. The accused further failed to mention Alagendran on the next few occasions when statements were taken from him from 14 May 2011 to 17 May 2011. Such omissions are difficult to understand unless this "defence" regarding Alagendran is nothing more than an afterthought.

That Alagendran could have planted the drugs in the motorcycle is inherently unbelievable

32 My finding that the accused's version of events about Alagendran is an afterthought is sufficient to discredit this defence. However, I further find that the story of Alagendran being involved in a fight which resulted in damage to the accused's motorcycle seat and then sending it for repairs to replace the seat on the same night is far-fetched. Why was there a hurry to repair the damage to the motorcycle the same night? Even with those damage the motorcycle could still be used. The accused tried to insinuate that Alagendran could have planted the drugs in the motorcycle seat. I find such an insinuation entirely unbelievable.

33 According to the accused's allegations, he was instructed to meet Kumar and a Chinese man in Singapore immediately after clearing the Singapore checkpoint. He never arranged to meet Alagendran after the latter returned the motorcycle to him. Therefore, Alagendran could not have been making use of the accused to transport the drugs into Singapore. If that is so, then the only other possible explanation for Alagendran planting the drugs in the accused's motorcycle is that he wanted to unjustly frame the accused. The accused, however, did not give the court any reason or motive for Alagendran wanting to set him up. On the contrary, the accused in his statement on 15 November

2011 said that his relationship with Alagendran was amicable:

> I have known Alagendran for the past 7 years. He stays with his elder brother Agilan and their parents in Tampoi. I am staying in a different house away from them and it is about 3 or 4 blocks away. I am very close with their family and have stayed overnight at their house before. I have also stayed with them before. That was in March or April 2011 before I moved to stay alone in a rented room about 3 or 4 blocks away from them. [note: 8]

34 The accused also alleged that he lent the motorcycle to Alagendran on previous occasions. There is no evidence of any bad blood between Alagendran and the accused. Therefore, I find it incredible that Alagendran would have wanted to frame the accused by planting the drugs in the motorcycle. The accused's defence based on his version of the events about Alagendran does not stand up to scrutiny and must fail. I now proceed to examine the version of events surrounding Kumar and Gobi which forms the main part of the accused's defence.

The version of events surrounding Kumar and Gobi

Significant omissions in the accused's statements regarding Kumar and Gobi

35 I find the accused's version of the events regarding Kumar and Gobi difficult to believe. These people are key characters in the accused's defence. Yet he made no mention of them in his cautioned statement which was recorded on the day of his arrest.

36 The accused's cautioned statement and long statements contain significant omissions in relation to Kumar and Gobi. In the accused's cautioned statement recorded on 12 May 2011, the accused stated that:

> Currently, my younger brother is serving his jail term in prison. I needed money to take him out on bail. I am earning very little. All these while, my brother and I had been looking after our family. As such, I approached a friend of mine to help me to get me some money. He gave me 500 ringgits. As this was not enough, he told me he can bring me to another friend who can loan me money with interest. I needed about 2000 ringgits to bail my brother out from prison. This friend took me to see a man. The man promised me that he will help me. He further asked me whether I have a motorcycle. When I said yes, he asked me to bring the bike to him. He also asked me whether I had been to Singapore. I told him I had ever been there. So at about 10pm yesterday, I rode my bike to a coffeeshop. The man told me to come back 2 hours later. So at about 12 midnight, I returned to the coffeeshop.
>
> The man told me that I had to ride my motor into Singapore and told me to wait at a bus stop just before a Caltex petrol kiosk. He told me that someone would come and take my bike away. He told me to leave the place and to return to the same place at about 12 in the afternoon. The person who took away my bike will then return my bike. I did what he told me to do. He said that he would pay me when I go back to see him in the evening. He paid me 1500 ringgits. I did not know that there were drugs in my bike. I did not do this knowingly and intentionally. It was because of my financial difficulties that I asked for help from my friend. That's all. [note: 9]

37 In the accused's cautioned statement, there are three unidentified individuals. The first relates to "a friend of mine" who is Agilan. There is also "another friend" and this person is Suria. Then there is "a man". This man was not identified by the accused. I assume that the accused must mean for this man to be Kumar since he was described to have interacted face to face with the accused in the cautioned statement. This "man", Kumar, was the one who offered to give the accused the loan and

asked the accused if he had been to Singapore before. There is no mention of any other individual. Therefore, in the accused's cautioned statement there is no mention of Gobi at all.

38 However, in a subsequent long statement taken on 14 May 2011, the accused introduced into his version of events an unknown character whom Kumar had spoken to over the phone. In this statement, Kumar had passed the accused the phone so that the accused could speak to this unknown character. It was this unknown character that offered to lend the accused the money and asked the accused whether he had been to Singapore before. Kumar was merely a middle man. According to the accused in this statement, he did not know of the identity of this character. As stated by the accused in the statement, "[b]efore I could ask him for his name and contact number, he would not allow me to talk much and asked me to give back the phone to Kumar." [note: 10] The recording of the long statement continued on 15 May 2011 and the accused still made reference to this unknown character whom he claimed he did not know of.

39 It was only during the taking of a further statement on 16 May 2011 that the accused mentioned Gobi in his version of events. He stated that the unknown character was Gobi. According to the accused, when he was speaking to the unknown character over the phone, "I knew the person is Gobi when I spoke to him because he told me his name and I had mentioned my name to him." [note: 11] He had first met Gobi on 2 May 2011 and met Gobi another time before his arrest on 12 May 2011. He had only met Gobi on two occasions and had only known Gobi for only about a week before he was arrested.

40 The accused explained in the further statement on 16 May 2011 that his reason for leaving Gobi out of the picture was because he "did not want to implicate [Gobi] in this case." [note: 12] This is despite the fact that he only knew Gobi for a mere 10 days before being arrested. [note: 13] The accused knew Kumar for almost 4 years and "trusted" Kumar. [note: 14] Yet he willingly volunteered Kumar's name on 14 May 2011 and instead left Gobi, someone whom he did not know as well, out of the picture.

41 I find it difficult to accept the accused's explanation that he did not want to implicate Gobi. The failure to mention Gobi is a significant omission in the version of events described by the accused in his cautioned statement. There is no reason why the accused could have left out a character as important as Gobi in its entirety in his cautioned statement. Such an important omission causes me to disbelieve the accused's version of events regarding Kumar and Gobi: see *Govindarajulu Murali and another v Public Prosecutor* [1994] 2 SLR(R) 398 at [32]–[33].

42 The accused also gave the contact details of Gobi to the investigation officer from CNB. Subsequently, CNB managed to locate the owner of those contact details. A photograph of the owner was obtained. The accused was asked to identify Gobi from a series of photographs which included Gobi. The accused was unable to identify Gobi. I find the accused's account of the events surrounding Kumar and Gobi highly suspicious.

43 Even assuming that the accused's defence regarding Kumar and Gobi was true, it is incapable of exonerating the accused. There are suspicious circumstances contained within his version of events that give rise to a finding of wilful blindness on the part of the accused.

The suspicious circumstances

44 The accused's defence is premised on a RM1,500 loan which was supposed to be given by Gobi to the accused. The accused had intended to put up the motorcycle, which was purportedly worth

RM2,500, as security for the loan. The window of opportunity for Kumar or Gobi to plant the drugs in the motorcycle was when Kumar took the motorcycle away from the accused late in the night of 11 May 2011 to allegedly check if the motorcycle was a stolen vehicle. This check itself was very suspicious as the accused simply allowed Kumar to take his motorcycle away for about 2 hours in the night without any assurance that it would be returned.

45 Nonetheless, the most suspicious aspect of the accused's version of the events that night concern the instructions given to the accused by Kumar after the latter had returned the motorcycle. The accused was specifically asked to ride the motorcycle into Singapore a few hours later during the early morning of 12 May 2011. He was directed to meet Kumar and a Chinese man at a Caltex petrol kiosk along Kranji Road so that he could pass Kumar the motorcycle again. He was also instructed that the motorcycle would be returned to him at the same place at around noon on the same day. Thereafter, the accused was to ride his motorcycle back to Malaysia. He would meet Gobi who would then give him the RM1,500 loan. Gobi would also take the motorcycle as security.

46 Such an unusual loan arrangement would have aroused the suspicion of any person. The accused was required to ride his motorcycle into Singapore after lending it to Kumar for a couple of hours. He was then required to lend it to Kumar again after entering Singapore. The accused could have simply lent his motorcycle to Kumar for the latter to ride into Singapore instead of undertaking this elaborate scheme. Why should the accused and Kumar enter Singapore separately in the wee hours of 12 May 2011 and then meet up again immediately after clearing the Singapore checkpoint?

47 Such suspicion should have been further heightened when the accused discovered the unusual hardness of his motorcycle seat when he went over humps and bumps after Kumar returned the motorcycle to him. He noticed the abnormality of his motorcycle seat after Kumar returned him the motorcycle and instructed him to ride the motorcycle into Singapore. Gobi had also previously asked him specific questions on 10 May 2011 relating to Singapore and travelling into Singapore. Given such circumstances, I find it incredible that the accused did not check the seat of the motorcycle which caused him discomfort whenever it went over a hump. There was no hardness in the motorcycle seat before the motorcycle was handed over to Kumar on 11 May 2011. A reasonable person under these circumstances would have checked the motorcycle seat to ascertain what caused the hardness to his relatively new motorcycle seat. This check would have been more crucial as the accused knew that he was entering into Singapore with the motorcycle. He was no stranger to the stringent process of clearance at the Singapore checkpoint as he had travelled to Singapore often. Therefore, he knew that vehicles would be checked before entry into Singapore was allowed. This is an important reason for the accused to check his motorcycle seat before entering Singapore.

48 The unusual hardness of his motorcycle seat must logically indicate that there was something in the motorcycle seat that had caused this hardness. I saw the exhibits in court and the six bundles are substantive in size despite the fact that the contents had undergone analysis by HSA. It was therefore not surprising that the accused came to the realisation that something was stuffed in his motorcycle seat when he detected the hardness. When the bundles of diamorphine were shown to the accused at the Woodlands Checkpoint, PW4 asked him the following questions to which the accused answered accordingly: [note: 15]

Q1 What is this?

A1 I don't know.

Q2 Who does it belong to?

A2 I don't know.

Q3 Are you aware that there was something stuffed inside your motorbike seat?

A3 Yes.

Q4 How do you know that something was stuffed inside your motorbike seat?

A4 I felt something hard, when I sat on my motorbike seat.

The above are contemporaneous answers and reveal the fact that the accused knew that something was hidden in his motorcycle seat that caused the hardness.

49 Therefore, any law-abiding person would have checked the motorcycle seat to ensure that there were no contraband items, drugs or illegal items hidden inside. This simple check would have been the most rational thing for any reasonable person to do if his vehicle had been taken from his possession under highly suspicious circumstances prior to his entry into Singapore. The accused gave very unconvincing reasons for not checking his motorcycle seat. He explained that it was late and that he was more concerned about his brother. I do not see how he could not have examined the seat of the motorcycle given that there were moments when he was free and that such a check would not have taken long. For example, he could have examined the seat of the motorcycle when he was smoking at a coffee shop prior to riding to the Johor customs. [note: 16]

Wilful blindness

50 From the discussion above, I am of the view that this is a classic case of deliberate wilful blindness. A finding of wilful blindness is based on a finding that the factual matrix gives rise to a suspicion that a certain state of affairs exists. As stated by the Court of Appeal in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [125] and [127]:

> … *[S]uspicion is* legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye. *However*, that suspicion must, as Lord Scott perceptively points out in *Manifest Shipping* (see at [113] above), "be firmly grounded and targeted on specific facts". Mere "untargeted or speculative suspicion" is insufficient (see also Hor ([75] *supra*) at 73). A decision in this last-mentioned instance not to make further inquiries is, as the learned law lord correctly points out, tantamount to negligence, perhaps even gross negligence, and is as such insufficient to constitute a basis for a finding of wilful blindness. As Lord Scott aptly put it (see at [113] above), "[s]uspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect a firm belief in the existence of the relevant facts". It is important to note that the (unacceptable) negligence which the Judge referred to in the court below relates to the *level* of *suspicion* required before a decision not to make further inquiries will be considered to constitute wilful blindness. It is equally - if not more - important to emphasise that the Judge was therefore *not* stating that suspicion *per se* would not be sufficient to ground a finding of wilful blindness. On the contrary, *suspicion is a central as well as integral part of the entire doctrine of wilful blindness*. However, the caveat is that a *low level* of suspicion premised on a factual matrix that would *not* lead a person to make further inquiries would be insufficient to ground a finding of wilful blindness where the person concerned did not in fact make further inquiries. What is of vital significance, in our view, is the substance of the matter which (in turn) depends heavily upon the *precise facts* before the court. It is equally important to note that in order for wilful blindness to

be established, the appropriate level of suspicion (as just discussed) is a necessary, but not sufficient, condition, inasmuch as that level of suspicion *must then lead to a refusal to investigate further*, thus resulting in "blind eye knowledge" (see also the second quotation from the article by Wasik & Thompson at [127] below).

…

… It is imperative, in order to avoid any unnecessary confusion, that we emphasise, once again, that wilful blindness is a combination of suspicion *coupled with* a *deliberate* decision not to make further inquiries, whereas the recklessness that has been referred to by Prof Williams refers to recklessness in terms of the accused's conduct in the context of circumstances *which would not otherwise have aroused suspicion* on the part of the accused. We think that it is important to reiterate this point because it is possible, on another interpretation, to argue that the decision by the accused not to make further inquiries when faced with suspicious circumstances may be characterised as reckless conduct. We do *not* agree with such an argument and characterisation. Such conduct is wilful blindness that entails a *deliberate* decision not to make further inquiries when faced with suspicious circumstances. …

[original emphasis]

51 The events on the night of 11 May 2011 concerning Kumar and Gobi as well as the hardness of the accused's motorcycle seat are, as described above, highly suspicious. It must have occurred to the accused that illegal drug must have been hidden in his motorcycle seat and that he was being used as a courier for the loan of RM1,500. The accused made no attempts to check the seat of his motorcycle at all. He deliberately turned a blind eye towards the fact that Kumar or Gobi might have planted something in the motorcycle seat for him to transport into Singapore. Therefore, the accused was wilfully blind towards the presence of the diamorphine in the motorcycle seat. I find that such wilful blindness, premised on the accused's failure to check despite the suspicious and surreptitious circumstances, is proven beyond a reasonable doubt based on the accused's version of the events.

Actual knowledge

52 The Court of Appeal in *Tan Kiam Peng* discussed comprehensively the common law jurisprudence on the mental state of an offender relating to possession and knowledge of an article. The Court also showed deep appreciation of the presumption under s 18 of the Act. It is instructive for me to refer to *Tan Kiam Peng* at [104]:

The practical reality, however, is, as Yong CJ put it in *Koo Pui Fong*, that "[o]f course, we would never have the benefit of going into the mind of another person to ascertain his knowledge and in every case, knowledge is a fact that has to be inferred from the circumstances" (([103]*supra*) at [14]; see also the Singapore Court of Appeal decision of *Tay Kah Tiang v PP* [2001] 1 SLR(R) 577 ("*Tay Kah Tiang*") at [34]). Likewise, a finding of wilful blindness is "solely dependent on the relevant inferences to be drawn by the trial judge from all the facts and circumstances of the particular case, giving due weight, where necessary, to the credibility of the witnesses" (*per* Abdul Malik Ishak J in the Malaysian High Court decision of *Public Prosecutor v Tan Kok An* [1996] 1 MLJ 89 at 101; see also *per* Lord Esher MR in the English Court of Appeal decision of *The English and Scottish Mercantile Investment Company, Limited v Brunton* [1892] 2 QB 700 at 708 ("*Brunton*") (the relevant passage of which is quoted at [109] below)). Indeed, short of a clear admission (which will, in the nature of things, be extremely rare), inferences drawn from the precise facts and circumstances of the case concerned are the only viable material available to the court in order to ascertain whether or not either actual knowledge or wilful blindness exists.

It is, at this juncture, important to note, once again, that *wilful blindness* has always been treated, in law, as the *equivalent* of *actual* knowledge (see also *per* Yong CJ in *Koo Pui Fong*, cited at the end of this paragraph and *per* Devlin J in *Roper v Taylor's Central Garages (Exeter), Limited* [1951] 2 TLR 284 ("*Roper*") (quoted at [116] below), as well as at [123] below). This is entirely understandable as well as logical and practical simply because the court cannot read a person's mind (see *per* Yong CJ in *Koo Pui Fong*, *supra*, as well as *per* Lord Esher MR in *Brunton* at [109] below). As we have just mentioned, a clear admission is going to be extremely rare. The proof of an actual situation of actual knowledge is, in the circumstances, going to be equally rare. This is *a fortiori* the case in so far as offences under the Act are concerned. Accused persons are hardly likely to admit to possessing actual knowledge and can (indeed, will) easily disavow such knowledge even if it existed, given the surreptitious nature inherent in drug offences as well as the draconian penalties that are imposed on conviction. In any event, as we have already noted, wilful blindness has, in any event, always been treated, in law, as *actual* knowledge. In this regard, Yong CJ, in *Koo Pui Fong*, observed that the "concept of wilful blindness does not introduce a new state of mind to that of knowing" and that "[i]t is simply a reformulation of actual knowledge" ([103]*supra* at [14]); the learned Chief Justice then proceeded to observe as follows (see *id*):

> It seems to me that it is wholly in keeping with common sense and the law to say that an accused knew of certain facts if he deliberately closed his eyes to the circumstances, his wilful blindness being evidence from which knowledge may be inferred. Thus I fully agree with the following passage of Lord Bridge in *Westminster City Council v Croyalgrange Ltd* (1986) 83 Cr App R 155 at 164:
>
> > ... it is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.

[original emphasis]

53 Therefore, wilful blindness equates to actual knowledge. My finding that the accused was wilfully blind satisfies the *mens rea* requirement for establishing the offence of importation. This is then sufficient ground for convicting the accused since he does not dispute the *actus reus* element of the offence. Nonetheless, before I conclude, I shall also deal with the accused's confessions during the course of the investigations.

The accused's confessions to the police

54 The accused incriminated himself twice in his statements given to the recording officer. The first was in a statement recorded on 15 May 2011. In this statement, the accused stated:

> I want the court to quickly deal with the matter and after I am being hanged, to send my body back to my parents as early as possible because my father is a heart patient and my father's 2nd wife is also not in good health. My family is in great difficulties and they will not be in a position to come and visit me very often. As such, I do not want to cause problem to my family, the officers who are involved in this case, the Singapore government. I want to plead guilty to the offence as quickly as I could and I also want to be punished as early as possible. I do not want to be punished very late after I had already pleaded guilty because if my father comes to know about this matter in the meantime, he may die of the shock. For the past 14 years, I have been away from my family and have been staying with them only for the past 4 months. I do not want

to hear of my parent's death while I am alive. Even now while I am in the lock up here, I could hear my parent's voice crying and weeping for me. If I remain in the lock up for long, I will get mad. Hence, when I appear in Court on the 20th of this month, I will admit to the charge and I want to be punished immediately. I request the recording officer in this matter to help me do this favour. I am prepared to fall on your feet to seek this favour. That's all. [note: 17]

55 The next incriminating statement was recorded on 16 May 2011. The accused stated in this statement:

… One of the 2 persons, either Kumar or Gobi had made use of my situation of needing a loan and put me in this situation. Since I rode the motorcycle into Singapore, and the drugs were taken from my motorcycle, I am to be blamed and that is the reason I wish to plead guilty. By remaining in custody, I do not want to waste time and cause worries to my parents as I had been living with them only for the past 4 months. I have been an orphan for 14 years and after my death, I do not want to go away as an orphan. Hence, I wish to plead guilty early and have my punishment early. In order to prove myself innocent, I cannot remain in prison for 3 or 4 years to prove that. And moreover, by then my parents would have died because both of them are sick. Even though if I am able to prove my innocence, I would at least be punished for 10 years because that drugs were found in my motorcycle. I am ready to face death and the earlier the better. [note: 18]

56 The accused acknowledged that these statements were given by him voluntarily to the CNB investigation officer. Is the incriminating statement recorded on 15 May 2011 a confession or an admission? This will depend on the definitions of an admission and of a confession which can be found under s 17 of the Evidence Act (Cap 97, 1997 Rev Ed):

Admission and confession defined

17. —(1) An admission is a statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons and under the circumstances hereinafter mentioned.

(2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.

57 It is necessary to look at the incriminating statement recorded on 15 May 2011 in its proper context. On the day of the accused's arrest, *ie* 12 May 2011, a cautioned statement under s 23 of the Criminal Procedure Code (Cap 68, 2010 Rev Ed) was recorded from him. During the recording of the cautioned statement, a Notice of Warning together with the charge of importation of diamorphine into Singapore was read, interpreted and explained to the accused. He gave a statement exonerating himself from the offence on the ground that someone could have hidden the drug in his motorcycle seat without his knowledge. Three days later, he gave a statement indicating that he wanted to plead guilty to the charge of importation of diamorphine. He requested for his case to be dealt with quickly as he wanted to be hung expeditiously. In these circumstances the accused was aware and had the knowledge that he was facing a charge of importation of diamorphine as the drugs were found hidden in his motorcycle seat. Therefore, when he gave a voluntary statement on 15 May 2011 pleading guilty to the charge, he knew exactly what he was pleading guilty to and that admission fulfils the definition of a "confession" under s 17 of the Evidence Act. Through such a confession, the accused had effectively admitted to the *actus reus* and the *mens rea* of the charge of knowingly importing diamorphine into Singapore on 12 May 2011.

58 I shall now deal with the accused's second confession which was recorded the following day on 16 May 2011. Here the accused also expressed his intention to plead guilty.

59 During cross-examination the prosecution put to the accused that he pleaded guilty in his statement because he knew that he was in fact guilty:

> Q. Mr Devendran, I put it to you that you made the request to be able to plead guilty on the 15th of May 2011 because you knew that you were in fact guilty. Do you agree or disagree?
>
> A. I disagree, Your Honour. Your Honour, can I give my explanation for that? At the time after I was arrested, my brother was also arrested and he was in jail in Malaysia, and I was unable to bail him out. I was very confused. Not only that, the IO kept on asking me the same questions over and over again. I was stressed. That's the reason I say that I wish to plead guilty and to hang me to death. My situation was such. That's the reason I gave that statement. [note: 19]

60 The accused's answer does not impinge on the voluntariness of his statement which was not in dispute. In any event, for the statement to be involuntary, the threat, inducement or promise must originate from the recording officer or someone in authority. The accused was not mistreated in any way. However, he alleged that "the IO kept asking me the same questions over and over again". This does not make the statement involuntary. One must expect a certain degree of persistent questioning in the course of an investigation. In *Seow Choon Meng v Public Prosecutor* [1994] 2 SLR(R) 338 at [33], the court acknowledged that "[r]obust interrogation is … an essential and integral aspect of police investigation". In *Yeo See How v Public Prosecutor* [1996] 2 SLR(R) 277 at [40], the court stated that interrogators are not required to remove all discomfort in the course of the interrogation, as some discomfort has to be expected from the investigative process. I do accept, however, that harsh and unduly prolonged badgering by an interrogator may give rise to oppression in certain circumstances. However, there is no evidence of such treatment in this case.

61 Furthermore, the fact that the accused was confused and stressed does not make his confession any less voluntary. I should also reiterate that the accused admitted that all the statements were given voluntarily by him to the CNB recording officers.

62 It is settled law that an accused person can be convicted on his own confessions if the court is satisfied that they were made voluntarily and that they are true. There is no need for corroborative evidence to support them: see *Public Prosecutor v Rozman bin Jusoh and another* [1995] 2 SLR(R) 879 at [52]; and *Syed Abdul Mutalip bin Syed Sidek and another v Public Prosecutor* [2002] 1 SLR(R) 1166 at [20]–[23]. Nonetheless, as I have stated above, I would have convicted the accused even in the absence of the confessions. The accused's two confessions only serve to confirm my decision.

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

63 The germane presumptions in this case are ss 18 and 21 of the Act. The presumption in s 18 imputes knowledge of the drug onto the accused when the drug is in his possession, custody or control:

> **Presumption of possession and knowledge of controlled drugs**
>
> 18. —(1) Any person who is proved to have had in his possession or custody or under his control —

(*a*) anything containing a controlled drug;

(*b*) the keys of anything containing a controlled drug;

(*c*) the keys of any place or premises or any part thereof in which a controlled drug is found; or

(*d*) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

(3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.

64 On the other hand, s 21 of the Act is a presumption of possession of the drug found in a vehicle:

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

65 The accused admits that he is the owner of the motorcycle and he does not deny that the diamorphine was found in the seat of the motorcycle. Therefore, s 21 of the Act may be of lesser importance as the possession of diamorphine in the accused's motorcycle seat is not disputed. This presumption of possession then gives rise to the presumption that the accused knew of the nature of the diamorphine under s 18(2) of the Act. The cumulative effect of these two presumptions is the establishment of the requisite *mens rea* for the offence of importation of a controlled drug.

66 The act of possession triggers off the presumption under s 18(2) of the Act. Thus the accused is presumed to have the knowledge that the hidden bundles were diamorphine. The accused failed to show to the contrary that he did not know that the six wrapped bundles hidden in his motorcycle seat were diamorphine. The accused's main defence at the trial is based on his version of events which suggest that the drug could have been planted by Kumar, Gobi or Alagendran. I have given my reasons for disbelieving his version of events. In my view, even if his version of events was true, it is insufficient to rebut the presumption of possession and knowledge of the diamorphine on a balance of probabilities. He admits in his version of events that he knew of the hardness of his motorcycle seat and that there was something hidden inside. His failure to check, despite these suspicious circumstances, amounts to wilful blindness which equates to actual knowledge. Accordingly, the presumption that the accused knew of the diamorphine stands. In fact, even in the absence of the presumption, the *mens rea* element of the offence of importation is made out with the finding of wilful blindness and, together with the *actus reus* element which is not disputed by the accused, the offence of importation is made out.

Conclusion

67 For the foregoing reasons, I find that the Prosecution has proven its case against the accused beyond a reasonable doubt. The accused's allegations held no water and ultimately failed upon scrutiny. I, therefore, convict the accused for the offence of importation of 83.36 grammes of

diamorphine into Singapore under s 7 of the Act.

[note: 1] Agreed Bundle, at p 143, para 4.

[note: 2] Agreed Bundle, at p 146, A1.

[note: 3] Agreed Bundle, at p 146, A2.

[note: 4] Agreed Bundle, at p 146, A3.

[note: 5] Agreed Bundle, at p 146, A4.

[note: 6] Notes of Evidence, 11 February 2014, Day 3, p 22 at lines 14–15 and 21–29.

[note: 7] See Agreed Bundle contents page, page 3.

[note: 8] Agreed Bundle, at p 232, para 52.

[note: 9] Agreed Bundle, at pp 197–198.

[note: 10] Agreed Bundle, at p 203, para 15.

[note: 11] Agreed Bundle, at p 217, para 35.

[note: 12] Agreed Bundle, at p 217, para 36.

[note: 13] Agreed Bundle, at p 216, paras 33 and 34.

[note: 14] Agreed Bundle, at p 240, para 60.

[note: 15] Agreed Bundle, at p 146.

[note: 16] Agreed Bundle, at p 221, para 43.

[note: 17] Agreed Bundle, at pp 207–208.

[note: 18] Agreed Bundle, at pp 218–219, para 39.

[note: 19] Notes of Evidence, 12 February 2014, Day 4, p 4 at lines 13–21.