IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 39

Criminal Appeal No 27 of 2016

Between

Pham Duyen Quyen

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

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

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Pham Duyen Quyen
v
Public Prosecutor

[2017] SGCA 39

Court of Appeal — Criminal Appeal No 27 of 2016
Sundaresh Menon CJ, Judith Prakash JA and Tay Yong Kwang JA
27 March 2017

19 June 2017

Tay Yong Kwang JA (delivering the grounds of decision of the court):

Introduction

1 This appeal was brought by Pham Duyen Quyen ("the Appellant"), a female Vietnamese, against her conviction and sentence in respect of the following charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):

> That you, **PHAM DUYEN QUYEN**,
>
> on 23 August 2013 at or about 8.20 a.m., at Arrival Hall of Terminal 3, Singapore Changi Airport (Airport Boulevard, Singapore), did import a Class A controlled drug specified in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed) ("the Act"), to *wit*, two (02) bundles containing crystalline substances which were pulverised and homogenised into a powdery substance which was analysed and found to contain not less than 249.99 grams of Methamphetamine, without any authorization under the said Act or the Regulations made thereunder and you have thereby committed an offence under section 7 and punishable under section 33(1) of the said Act.

2 After a trial, the Appellant was convicted by the High Court judge ("the Judge") and sentenced to 24 years' imprisonment with effect from the date of her arrest on 23 August 2013. As she is a woman, s 325(1)(*a*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") exempted her from the punishment of the mandatory 15 strokes of the cane provided for by the MDA.

3 After considering the parties' arguments, we dismissed the appeal against conviction and sentence. We now give the reasons for our decision.

Background facts

4 The Appellant is a 25-year-old Vietnamese woman. At the time of her arrest, she was almost 22 years old. On 23 August 2013, at about 8.20am, an officer from the Central Narcotics Bureau ("CNB"), Sergeant Muhammad Azim Bin Missuan ("Sgt Azim"), noticed an unclaimed luggage bag ("the Luggage") at Belt 47 of the Arrival Hall of Changi Airport Terminal 3. The Luggage had a tag with "SQ339403" at the barcodes and "SQ407/22AUG" and "PHAM/DUYENQUYEN MS" printed on it. Sgt Azim's suspicions were aroused and he informed two other CNB officers, Woman Staff Sergeant Wang Jingyi Dawn ("W/SSgt Wang") and Corporal Ahmad Badawi Bin Abubakar Bagarib ("Cpl Badawi") about the Luggage. At about 8.35am, the still unclaimed Luggage was retrieved by a customer service officer from Singapore Airport Terminal Services ("SATS") and transferred to the odd-sized luggage area located between Belts 45 and 46. When the Luggage was still unclaimed at 9am, Sgt Azim and Cpl Badawi brought it for an X-ray screening, which was conducted by an inspector from the Immigration & Checkpoints Authority

("ICA"). The screening revealed anomalies at the long side panels of the Luggage.[1]

5 At about 11.15am, W/SSgt Wang located the Appellant at Transfer Counter E of Changi Airport Terminal 2. The Appellant was escorted to the ICA Holding Room at the Arrival Hall of Changi Airport Terminal 3. There, she confirmed that the Luggage and its contents belonged to her. One of the CNB officers then opened the Luggage in the Appellant's presence and emptied the Luggage of its contents. He pried open the metal casing attached to the left long side panel of the Luggage and found an aluminium sheathed bundle ("A1A1") sandwiched between two wooden planks. He made a small incision in the bundle A1A1 and took out a sample of its contents. The sample contained a white crystalline substance which proved to be methamphetamine upon testing. Other CNB officers subsequently pried open the right long side panel of the Luggage and retrieved another aluminium sheathed bundle sandwiched between two wooden planks ("A1B1").[2]

6 The contents in bundles A1A1 and A1B1 were analysed by the Health Sciences Authority and were found to be 5,375g of crystalline substances containing not less than 3,037g of methamphetamine.[3] The street value of the drugs in Singapore was estimated to be about S$1.25m.[4]

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1 ROP vol 2 pp 230-231 paras 3-7

2 ROP vol 2 p 232 para 13

3 ROP vol 2 pp 48-49

4 Transcript 12 November 2015 p 29 lines 22-27 (ROP vol 1)

7 The Appellant was originally charged for a capital offence but the charge was subsequently amended to the non-capital offence of importing 249.99g of methamphetamine (see [1] above). The Appellant claimed trial to the charge.

The Appellant's version of events

8 A total of ten statements were taken from the Appellant, with the aid of Vietnamese interpreters. These consisted of a contemporaneous statement, a cautioned statement and eight long statements.[5] The Appellant also gave evidence as the only defence witness at trial.

9 According to the Appellant, she had worked in a leather shoe factory in Vietnam until the company closed down in June 2012.[6] During her period of employment, she earned about seven to eight million Vietnamese Dong (about US$300)[7] a month, of which she saved about half.[8] After that, she worked in another company for about a month and then left as she found the job unsuitable. She became unemployed and survived on her savings and earnings from odd jobs.[9] In the year preceding the Appellant's arrest, she moved to Cambodia and lived rent-free with a close friend known as "Heo" together with two other women. The Appellant did the household chores for Heo and the other women and in return, Heo gave the Appellant about US$30 to US$50 for daily expenses while the other women gave her money whenever they had extra funds.[10]

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5 ROP vol 2 pp 95-149

6 ROP vol 2 p 106 para 1 read with Transcript 17 February 2016 p 4 lines 17-20 (ROP vol 1)

7 Transcript 17 February 2016 p 5 lines 7-10 (ROP vol 1)

8 Transcript 17 February 2016 p 5 lines 26-31 (ROP vol 1)

9 ROP vol 2 p 106 para 1

10 ROP vol 2 p 118 para 31; p 138 para 65

10 On 19 December 2012, the Appellant travelled to New Delhi, India, for the first time. She had read on the Internet that the world was going to end on 21 December that year and wanted to visit India before that happened. In New Delhi, she chanced upon a shop that sold mobile phones and cameras and took a fancy to an Indian salesman at the shop. The Indian man told her his name but she could not remember what it was. She also could not remember the name of the shop.

11 Sometime around early August 2013, the Appellant decided to make a second trip to New Delhi to go shopping as an early birthday celebration (she was born on 10 September 1991) and for the "main purpose" of visiting the Indian salesman whom she fancied. She wanted to find out whether they were fated to be together.[11] The return plane tickets for her second trip were booked by her male Cambodian friend known as "Lun", although the Appellant paid for the tickets by passing Lun about US$1,100.[12] These tickets were for travel from Vietnam to New Delhi and back. Before flying to New Delhi, the Appellant met Lun at the Ho Chi Minh Airport where she passed him another US$1,300 to "safekeep" as she did not want to bring so much money with her to New Delhi".[13] Just before she arrived in New Delhi on 16 August 2013, she realised that one of the straps of the backpack she was carrying was broken.[14]

12 On that second trip to New Delhi, the Appellant claimed that she met up with the Indian salesman about three or four times at the shop and purchased various items from him, including a camera, a camera battery and a pair of

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11 ROP vol 2 p 108 para 14; p 117 para 26; p 138 Q1 A1; Transcript 17 February 2016 p 10 line 25-p 11 line 7; 18 February 2016 p 18 lines 25-28 (ROP vol 1)

12 Transcript 17 February 2016 p 17 lines 18-19 (ROP vol 1); ROP vol 2 p 118 para 30

13 ROP vol 2 p 125 para 38

14 Transcript 17 February 2016 p 26 lines 20-21 (ROP vol 1)

earphones. However, she did not know his name or the exact location of the shop except that it was within walking distance from where she was staying.[15]

13 The Appellant said she brought two mobile phones, a Nokia and a Samsung Galaxy, to New Delhi. She managed to sell the Samsung Galaxy there. On the fourth day of that trip in New Delhi, she decided to change her itinerary. Instead of flying back to Vietnam from New Delhi directly, as originally planned, she wanted to fly to Laos and then to Cambodia before returning to Vietnam. According to the Appellant, she wished to go to Laos to visit the temples and pray for her father (who was suffering from diabetes) and her deceased grandmother (whose first death anniversary fell in September 2013). Subsequently, she would head back to Cambodia to pick up her belongings which she had left at Heo's house. The Appellant thus contacted Lun and asked him to help her change her flight plan.[16] Lun managed to do so although she had to pay about US$1,000 in fees for the flight change from the money that she had passed to Lun for safekeeping at the Ho Chi Minh airport. Lun informed her that the flight from New Delhi to Laos involved a transit in Singapore as there was no direct flight from New Delhi to Laos.[17] Her new travel plan involved flying on Singapore Airlines from New Delhi on 22 August 2013 at 11.25pm for Singapore where she would take a connecting flight by Lao Airlines to Vientiane the next day at 1.20pm. From Vientiane, she would fly on Vietnam Airlines on 30 August 2013 for Ho Chi Minh City.

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15 ROP vol 2 p 109 para 15

16 ROP vol 2 p 125 para 36

17 ROP vol 2 p 125 para 39

14 At about 5pm on 22 August 2013, the Appellant left in a *tuk tuk* (three-wheeled vehicle) for the New Delhi airport.[18] On the way to the airport, she realised that the other strap of the backpack that she was carrying had also broken.[19] She thus asked the *tuk tuk* driver, by way of hand gestures, to make a detour so that she could buy a new suitcase. The *tuk tuk* driver brought her to an area with many shops selling luggage and clothes. She looked in two or three shops before buying the Luggage in question for US$39. The Luggage was a soft-cover type. The Appellant clarified that the shop that she bought the Luggage from was not introduced to her by the driver or anyone else. She chose the shop "by chance".[20] The Appellant also claimed that she had personally checked the Luggage for defects before buying it. She did this by unzipping the Luggage and checking its interior, zips and handles. She also checked the wheels of the Luggage by pushing the Luggage back and forth.[21] After that, she immediately transferred all her belongings from her backpack to the Luggage. To do so, she had to shift the Luggage from a standing position to a lying position.[22] She then threw away her backpack and continued her journey to the airport.[23]

15 Eventually, the *tuk tuk* driver dropped the Appellant off at a bus stop and not at the airport itself, as his vehicle was not allowed to be driven into the airport. The driver told her to take an airport bus from that bus stop to the airport

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18 ROP vol 2 p 126 para 41; p 109 para 16

19 Transcript 17 February 2016 p 27 lines 25-26 (ROP vol 1)

20 ROP vol 2 p 109 para 17

21 ROP vol 2 pp 109-110 para 17; Transcript 17 February 2016 p 29 lines 10-26 (ROP vol 1)

22 Transcript 18 February 2016 p 32 lines 1-7 (ROP vol 1)

23 ROP vol 2 p 110 para 18

instead, which she did.[24] When she reached the airport, she improvised a lock for the Luggage using a rubber band and a cotton bud. She then checked in the Luggage and was issued a luggage tag with her name printed on it. She kept the luggage tag in her passport. She then flew to Singapore on Singapore Airlines flight SQ 407, departing at 11.25pm on 22 August 2013.[25]

16 The Appellant arrived in Singapore from New Delhi at about 7am on 23 August 2013. She proceeded to the transfer counter at Changi Airport and showed a staff member her passport, the luggage tag and the printed itinerary. She was informed that she was too early and that she should return at about 11am. She claimed that because she had shown the staff member her luggage tag but was not informed that she had to retrieve the Luggage before her connecting flight, she was under the impression that her Luggage would be automatically transferred to her connecting flight to Laos. She therefore did not go to retrieve it.[26] At about 11am, she went back to the transfer counter, where she was approached by W/SSgt Wang and escorted to the ICA Holding Room, as described above at [5].

The proceedings below

The Prosecution's case

17 The Prosecution's case was that the Appellant had imported the drugs into Singapore. She was in actual possession, custody and control of the drugs that were found in the Luggage as she did not deny that the Luggage and the contents therein belonged to her and were within her custody and control. In the

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24 ROP vol 2 p 110 para 19

25 ROP vol 2 p 106 paras 2 and 3

26 ROP vol 2 p 107 para 5

alternative, the Prosecution relied on the presumption of possession under s 18(1) of the MDA. Since the Appellant was either in actual possession or presumed to have possession of the drugs under s 18(1), she was presumed to have known the nature of the drugs under s 18(2) of the MDA.[27] The Prosecution argued that she had failed to rebut the presumptions for the following reasons. The Appellant's explanation for her second trip to New Delhi was implausible, her sudden change in itinerary to fly to Laos was suspicious, she would have realised that the Luggage was unusually heavy, her reaction when the drugs were recovered was inconsistent with the personality that she attempted to portray, she also had a propensity to tailor her evidence in court and was unable to produce corroborative evidence for her version of events.[28]

The Appellant's defence

18 The Appellant's consistent defence was that she did not know that the two bundles of drugs (A1A1 and A1B1) were concealed in the Luggage and only found out about them when the CNB officers recovered the bundles in her presence.[29] She did not provide an explanation about how the bundles ended up in her Luggage. The Appellant argued that she was not in physical custody, possession or control of the Luggage at all from the time that she checked in her Luggage at the New Delhi Airport. Hence, the presumption of possession under s 18(1) of the MDA could not even apply.

19 Even if it did apply, the presumption had been rebutted on a balance of probabilities. The Appellant contended that her account of events (outlined

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27 Prosecution's closing submissions (High Court) paras 54-58

28 Prosecution's closing submissions (High Court) para 66

29 See eg, ROP vol 2 p 96 Q 17 A 17 (contemporaneous statement); ROP vol 2 p 105 (cautioned statement); ROP vol 2 p 108 para 13 (long statement)

above) was credible and internally consistent. Further, there was no objective evidence linking her to the drugs (other than the fact that they were found in the Luggage) or suggesting that she had knowledge of them.[30]

The findings of the Judge

20 The Judge convicted the Appellant of the charge and reasoned in his grounds of decision ("GD") as follows:

(a) The drugs must have been in the Luggage at the time of check-in at the New Delhi Airport. This was because the weight of the Luggage at check-in was stated on the luggage tag to be 21kg. The drugs which were recovered were about 5.4kg and this formed a significant component of the weight of the Luggage (at [22]).

(b) It was highly unlikely that the drugs could have been placed in the Luggage after check-in, given the high security of the baggage handling area and the fact that the drugs were placed in "the deepest recesses" of the Luggage and it would have entailed an "intricate operation" to carry this out in the baggage handling areas (at [22]).

(c) The presumption of possession under s 18(1) of the MDA applied. The Appellant had a luggage tag which entitled her to regain possession of the Luggage from the airline. This fell within the limb of "control" in s 18(1) of the MDA. The word "possession" in s 18(1) of the MDA referred only to physical possession (at [28] and [30]).

(d) The presumption of possession under s 18(1) of the MDA was not rebutted. The Appellant had a propensity to tailor her evidence

[30] Defence's closing submissions (High Court) paras 25, 29 and 107

especially in relation to whether she had personally handled the Luggage from the time she bought it until check-in (at [48]). The Appellant's story about the Indian salesman did not sound credible as she could not even recall his name although she had spent a considerable part of her life savings to make a second trip to New Delhi to see him. It was also odd that she was willing to spend another large part of her savings to change her flight plan on a whim (at [49]). The unusually heavy weight of the empty Luggage and the Appellant's calm reaction when the drugs were recovered should also be taken into account (at [50] and [52]). Significantly, a logical conclusion from the Appellant's narrative was that someone had already placed the drugs in her Luggage when she purchased it but it was unlikely that someone would misplace S$1.25m worth of drugs in this manner (at [51]).

(e) However, the Judge did not agree with the Prosecution's submissions that the Appellant's inability to produce corroborative evidence meant that she was not telling the truth. This was because the Appellant had been in remand since her arrest and did not have the financial resources to produce corroborative evidence (at [47]).

(f) Having been presumed to have the drugs in her possession, the presumption of knowledge under s 18(2) of the MDA was invoked and the Appellant was presumed to have known the nature of the drugs. As her defence was that she was not even aware of the drugs, she therefore offered no evidence to rebut the presumption of knowledge (at [55]).

21 With regard to sentence, the Judge took into account the mitigating factors that the Appellant was a first-time offender and was rather young. However, the Judge said that he could not ignore the large quantity of

methamphetamine that was involved, even though the charge had been reduced to a non-capital offence. In his judgment, the sentence should reflect this large quantity and also reflect the sentences imposed in similar cases. Accordingly, he sentenced the Appellant to 24 years' imprisonment, commencing from the date of her arrest on 23 August 2013.

Arguments on appeal

22 The Appellant appealed against both conviction and sentence and argued the appeal in person. She tendered handwritten submissions, raising the following points in essence:

(a) She raised numerous complaints regarding the Investigating Officer ("the IO") and the Vietnamese interpreter during the recording of her statements, claiming that they "[did] not do the[ir] job[s] properly".[31] She alleged that she did not remember giving some of the answers in the statements, did not understand the statements and signed them without checking. As a result, there were various inaccuracies in the statements.[32] She also claimed that the IO did not want to investigate her case properly and detailed the various steps he omitted to take in the investigations.[33]

(b) She maintained that she did not know how the drugs ended up in the Luggage.[34]

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31 Appellant's submissions on appeal p 8 point (B).

32 Appellant's submissions on appeal pp 9-12

33 Appellant's submissions on appeal pp 12-21

34 Appellant's submissions on appeal p 44

(c) She claimed that the luggage tag was not in her possession when she was arrested.[35]

(d) She said that the forensics software used to recover data from her mobile phone was defective, such that the call logs retrieved were inaccurate and not all the text messages that were sent and received during her time in New Delhi were captured.[36]

(e) In relation to sentence, she contended that the Judge should not have considered the actual quantity of methamphetamine imported, since her charge was ultimately reduced to 249.99g.[37]

Our decision

Meaning of "import" under s 7 of the MDA

23 In *Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052 at [5] and [22], this court held that the word "import" in s 7 of the MDA had the meaning defined in s 2(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) which was "to bring or cause to be brought into Singapore by land, sea or air". It did not matter that the drugs were only brought into Singapore on transit with a view to bringing them out to another country. The offence of importation was constituted the moment the drugs were brought physically into Singapore. Accordingly, in the present case, the element of importation in s 7 of the MDA was satisfied when the drugs concealed in the Luggage entered Singapore.

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35 Appellant's submissions on appeal pp 3, 23

36 Appellant's submissions on appeal pp 25-27

37 Appellant's submissions on appeal pp 54-55

The presumption of possession under s 18(1) of the MDA

24 One of the key issues that was raised at the trial below was whether the presumption of possession under s 18(1) of the MDA was invoked in the present case, given that the Appellant had checked in the Luggage at the New Delhi airport and the Luggage was retrieved by the CNB officers in Singapore before the Appellant regained physical possession of it.

25 The presumptions in s 18 of the MDA are as follows:

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

26 The presumption of possession in s 18(1) was held to apply in the largely similar case of *Van Damme Johannes v Public Prosecutor* [1993] 3 SLR(R) 694 ("*Van Damme*"). In that case, the appellant flew from Phuket to Singapore (on transit), intending to travel to Athens. He had checked in his suitcase at the

Phuket airport. The suitcase was subsequently retrieved by CNB officers at the in-flight spur area at Changi Airport and found to contain diamorphine. The appellant there argued that the presumption of possession under s 18(1) of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) (which is identical to s 18(1) of the present MDA) did not apply because he did not have in his possession, custody or under his control the suitcase containing the controlled drug. This was because he had checked the suitcase in at the Phuket airport and further, luggage in the in-flight spur area could not ordinarily be retrieved by a passenger without permission from the Lost and Found staff. This court did not agree with the "technical position" taken by counsel for the appellant, reasoning that the language used in s 18 clearly drew a distinction between "possession" in s 18(1) and "physical possession" in s 18(3). While the appellant did not have physical possession or physical control of the suitcase, such possession and control having been ceded to SATS for the purposes of moving the suitcase, the appellant nonetheless had possession of the suitcase. This was because he had the luggage tag to the suitcase and could obtain access to it, albeit only with permission from the Lost and Found staff.

27 The Judge in the present case observed that although at first blush, *Van Damme* appeared to stand for the proposition that the word "possession" in s 18(1)(*a*) of the MDA had a wider meaning than physical possession, he did not think that that was the court's intention. He was of the view that such a broad interpretation of the word "possession" would render the other limbs in the section of "custody" and "control" otiose. The Judge thus held that the word "possession" must be limited to physical possession. In any event, because the appellant in *Van Damme*, just like the Appellant in the present case, had a luggage tag which gave him the right to obtain physical possession of the luggage, this would fall within the limb of "control" which would also invoke

the presumption under s 18(1). It was unnecessary therefore to hold that the word "possession" had a wider meaning than physical possession (at [28] and [30] of the GD).

28 With respect, we disagree with the Judge's interpretation of *Van Damme*. In our view, this court in *Van Damme* at [8] held that the appellant had possession of his suitcase by virtue of his luggage tag, even though it expressly recognised that he was not in physical possession of it. When this court drew a distinction between "possession" in s 18(1) and "physical possession" in s 18(3), it must follow that the former word was wider in scope than the latter phrase.

29 This was also the reading of *Van Damme* in subsequent cases. In *Ubaka Chris Chinenye v Public Prosecutor* [1994] 3 SLR(R) 401, the appellant flew from Bangkok to Singapore on transit, intending to fly to Lagos as his final destination. He was detained for questioning at Changi Airport before he could retrieve the two pieces of luggage that he had checked in at the Bangkok airport. However, he had the two luggage tags. The two pieces of luggage were retrieved from the luggage area of Changi Airport Terminal 2 in the appellant's presence. This court applied *Van Damme* and interpreted the case as standing for the proposition that an accused person had possession of a luggage even though it would normally have remained in the in-flight area in the airport throughout the length of his transit and he could not ordinarily have retrieved it. In *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [61], this court referred to *Van Damme* at [8] and stated that the concept of "possession" in s 18(1) was often, but not invariably, physical in nature.

30 This broader construction of "possession" used in s 18(1) of the MDA was also consonant with how the word had been interpreted in earlier cases

before *Van Damme*. In *Tan Ah Tee and another v Public Prosecutor* [1979–1980] SLR(R) 311 ("*Tan Ah Tee*") at [25], this court, when dealing with s 16 of the Misuse of Drugs Act 1973 (Act 5 of 1973) (which is identical to s 18(1) of the present MDA), adopted the interpretation of "possession" in the English case of *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 ("*Warner*") at 304–306:

> One must, therefore, attempt from the apparent intention of the Act itself to reach a construction of the word 'possession' which is not so narrow as to stultify the practical efficacy of the Act or so broad that it creates absurdity or injustice.
>
> Parliament was clearly intending to prevent or curtail the drug traffic. …
>
> … ***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 in italics and bold italics]

31 Even though *Warner* was concerned with the meaning of "possession" in the context of s 1 of the Drugs (Prevention of Misuse) Act 1964 (c 64) (UK), which did not contain the presumption in s 18(1) of the current MDA, this court in *Tan Kiam Peng* at [53] reasoned that *Tan Ah Tee* had endorsed the *general concept* of possession in *Warner* which was not affected by the different statutory regimes. In *Fun Seong Cheng v Public Prosecutor* [1997] 2 SLR(R) 796 at [55], it was observed that the meaning of "possession" in *Warner,* as adopted in *Tan Ah Tee*, had been followed in a long line of cases.

32 In our judgment, the word "possession" in s 18(1) of the MDA includes both concepts of physical and legal possession. We do not think that it is restricted to physical possession alone. In the case before us, when the accused checked in the Luggage at the departure airport and was issued a luggage tag as evidence of ownership, she ceased to be in physical possession of the Luggage. However, she was still in legal possession of the Luggage by virtue of her ability to reclaim it using the luggage tag in her possession. She remained in legal possession of the Luggage even though she had not reclaimed it yet or did not reclaim it from the luggage belt at the airport because she thought it would be transferred directly onto her next flight. In these circumstances, the presumption of possession under s 18(1) of the MDA would still apply. Naturally, it was open to the Appellant to attempt to rebut the presumption of possession on a balance of probabilities, for instance, by adducing evidence to show that someone could have placed the drugs in her Luggage without her knowledge while it was not within her physical possession.

33 The Appellant, in her written submissions on appeal, argued for the first time that the luggage tag was not in her possession when she was arrested.[38] At the hearing of the appeal, she changed her position and said that she could not remember whether the airline officer had given it to her and she was unsure about whether it was found in her belongings. However, we rejected the Appellant's contention on this point. Her claim was contrary to her own evidence in her long statements that (a) upon check-in at the New Delhi airport, she was issued a luggage tag with her name printed on it and (b) when she arrived in Singapore, she proceeded to the transfer counter at Changi Airport and showed a staff member the luggage tag (see [15] and [16] above).[39] The

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38 Appellant's submissions on appeal pp 3, 23

39 ROP vol 2 pp 106-107 paras 3 and 5

luggage tag was issued by Singapore Airlines and bore the Appellant's name, the flight number and the date of her flight.[40] All these rendered the possibility that the airline staff did not issue the luggage tag to her a completely fanciful one.

Whether the Appellant had rebutted the presumption of possession under s 18(1) of the MDA

It was highly improbable that the drugs could have been placed in the Luggage when it was out of the Appellant's physical possession

34 As mentioned earlier, the Appellant's defence was that she did not know how the drugs came to be in the Luggage. Although she did not try to explain how or when the drugs could have been put inside the Luggage, we considered various possibilities. The first was that the drugs were already in the Luggage before she purchased it on the way to the New Delhi airport. However, as the Appellant said in her long statements, she chose that particular shop "by chance" (see [14] above). We found it impossible to believe that someone would place drugs of such high value (estimated to be worth S$1.25m) into a random suitcase in a shop without knowing who might decide to buy it and what the buyer would do with the suitcase. Further, the person(s) who hid the drugs in the suitcase would not know whether or when it would be brought out of the country and where the destination might be.

35 Given the Appellant's account that she handled the Luggage personally from the time she bought it from the shop until it was checked in at the New Delhi airport,[41] the second possibility was that the Luggage was tampered with after she checked it in. We found this equally implausible. As the Judge stated,

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40 ROP vol 2 p 114

41 ROP vol 2 p 110 para 20

the baggage area was a high security zone to which unauthorised personnel would not have access. Although it was not clear when the Appellant checked in at the New Delhi airport, it is reasonable to assume that there was only a short span of about two hours between the check-in and the flight's departure. Even if the drugs were planted by a person who had access to this secured zone, it was highly unlikely that he had sufficient time to conceal the bundles so intricately in the side panels of the Luggage, assuming he was able to tamper with the Luggage without arousing suspicion in the first place. Further, it was unbelievable that someone would choose to conceal such high-value drugs in a random suitcase.

36 The third possibility was that the drugs were put in the Luggage when it was in the cargo hold of the plane. The fourth possibility was that they were placed in the Luggage after it was unloaded from the plane in Singapore but before it was moved to the luggage conveyor belt. However, for largely the same reasons as outlined in the previous paragraph, we find these possibilities so highly unlikely as to be purely fanciful.

37 The last possibility was that the drugs were put into the Luggage after it arrived on the luggage conveyor belt at Changi Airport. However, the CNB officers had kept a watchful eye on the Luggage which was left in the open at that time (either circulating on the luggage conveyor belt or moved to the odd-sized baggage area). In our judgment, it was simply inconceivable that anyone could have planted the drugs in the Luggage during this period of time.

38 Finally, we found that the latter four possibilities were also improbable. The recorded weight of the Luggage on the luggage tag was 21kg at the time of check-in at the New Delhi airport. The IO testified that he weighed the Luggage with its contents and found that the weight was 20.739kg. This minimal

difference in weight at the point of check-in in New Delhi and at the time of weighing by the IO in Changi Airport must mean that the Luggage already contained the bundles of drugs weighing almost 5.4kg at the time of check-in.

39 Although it was open to the Appellant to rebut the presumption of possession by adducing evidence to show that someone could have slipped the drugs into the Luggage while it was out of her physical possession, she failed to adduce any credible evidence to this effect. The evidence showed clearly that the drugs were already in the Luggage at the time of check-in.

The reason for the Appellant's second trip to New Delhi was suspicious and the trip was extravagant in the light of her means

40 The Appellant claimed that the "main reason" for her second trip to New Delhi was to visit the Indian salesman that she had met on her first trip. This was despite the fact that she could not be sure that he was still working at the same shop and that she would be able to find him. Even though she visited him at the shop three or four times during that trip and spent about an hour with him each time, she was not able to recall even his name or the location and the name of the shop.[42] Her account of events was therefore totally unconvincing.

41 Moreover, the Appellant's travel was extravagant bearing in mind her very modest means. As explained at [9] above, after she was retrenched in June 2012, she did not have a steady income and was essentially living on her savings and surviving on goodwill payments or gifts from her friends. Yet, she appeared to have had no qualms whatsoever in having to spend about US$1,100 on her original return plane tickets between Vietnam and India in August 2013 for the purported reason of re-establishing contact with a man whose name she could

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42 ROP vol 2 p 109 para 15; ROP vol 2 p 138 Q2, A2, Q3, A3

not even recall and whom she had no apparent means of contacting.[43] This was also her second trip to New Delhi in less than a year, after the first trip in December 2012.[44] According to her, before making preparations for her second trip to New Delhi, her life savings totalled about US$3,500.[45] The sum of money she spent on her original tickets thus represented almost one-third of her total savings.

The reasons for the Appellant's sudden change in itinerary were implausible and financially imprudent

42 As explained at [13] above, sometime on the fourth day of her second trip in New Delhi, the Appellant decided to change her itinerary to include detours to Laos and to Cambodia before returning to Vietnam. However, this whimsical change in itinerary did not make sense at all. As the Prosecution pointed out, the Appellant must have already known that her father was suffering from diabetes before her trip to New Delhi, since his diagnosis was sometime at the end of 2011 or in early 2012. She was also aware of the date of her grandmother's first death anniversary.[46] She could have planned to go to those two countries before booking the return plane tickets but did not. The Appellant's sudden decision to change her plans and go to Cambodia to pick up her belongings left in Heo's place was also unbelievable. What was the urgency necessitating a sudden change in flights?

43 What was even more perplexing was the Appellant's willingness to spend another US$1,000 just to change her flight plans. Further, she claimed

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43 Transcript 17 February 2016 p 17 lines 18-19 (ROP vol 1); ROP vol 2 p 118 para 30

44 ROP vol 2 p 117 para 23

45 Transcript 19 February 2016 p 44 line 11-p 46 line 25 (ROP vol 1A)

46 Transcript 19 February 2016 p 1 line 28- p 2 line 10 (ROP vol 1A)

that she had taken US$800 with her to India and spent about US$600 there. That meant that her life savings of about US$3,500 had been reduced by her original plane tickets (US$1,100) and the personal expenses (US$800) to around US$1,600. To then practically throw away another US$1,000 just to change her itinerary was plainly unbelievable. As noted earlier, the Appellant was certainly not someone who could afford to spend money this way.

44 On the other hand, the seemingly carefree manner in which she changed her itinerary and spent her money would be consistent with someone tasked with transporting some S$1.25m worth of drugs. In that situation, the amounts spent on her travel and her sudden change of itinerary would appear negligible in comparison to the value of the drugs. Although the value of S$1.25m is the estimated street value of the drugs in Singapore, it would not be unreasonable to assume that the drugs would also be of substantial value in the destination country.

The weight of the Luggage could not have escaped the Appellant's notice

45 Finally, the weight of the Luggage that the Appellant bought from the shop on the way to the New Delhi airport could not have escaped her attention. The evidence showed that the combined weight of the seemingly empty, soft-cover Luggage with the drugs and the wooden planks concealed inside was a hefty 8.839kg.[47] Apparently, the Appellant travelled lightly as her belongings fit into her backpack. The belongings weighed only 11.9kg.[48] After the belongings were transferred into the Luggage (with the concealed drugs and wooden

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47 Transcript 12 November 2015 p 20 line 10 – p 22 line 12; Transcript 18 February 2016 p 28 lines 22-25 (ROP vol 1); ROP vol 2 p 102 (original charge); Transcript 18 February 2016 p 28 line 28 (ROP vol 1)

48 Transcript 18 February 2016 p 27 line 16; p 28 line 7 (ROP vol 1)

planks), the Luggage with all its contents weighed almost 21kg. As the Appellant indicated in her long statements, she was the only person handling the Luggage at all times between the point of purchase and check-in at the airport.[49] It followed that there were various occasions when the Appellant could and should have noticed the unusually heavy weight of the purportedly empty Luggage:

(a) The Appellant testified that at the shop after purchasing the Luggage, she shifted the Luggage from a standing position to a lying position in order to transfer her belongings from her backpack into the Luggage. Thereafter, she had to reposition the Luggage back to a standing position so that it could be moved around on its wheels.[50] Even though the Appellant strenuously denied noticing that the Luggage was unusually heavy when she shifted it twice,[51] it seemed to us implausible that the weight of the Luggage could have escaped her attention.

(b) When lifting the Luggage onto and off the *tuk tuk* after she left the shop (however, see the discussion at [46] below).

(c) When lifting the Luggage onto and off from the bus after the *tuk tuk* driver dropped her off at the bus stop for her to take the bus into the airport.[52]

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49 ROP vol 2 p 110 paras 18 and 20

50 Transcript 18 February 2016 p 32 lines 1-7, p 31 lines 1-14 (ROP vol 1)

51 Transcript 18 February 2016 p 32 lines 8-19

52 ROP vol 2 p 110 para 19

(d) When lifting the Luggage onto the luggage conveyor belt during check-in at the New Delhi airport (again, see the discussion at [46] below).[53]

46 When questioned during cross examination about the weight of the Luggage, the Appellant showed a propensity to tailor her evidence to suit the occasion. In her long statements, she was consistent in maintaining that she carried the Luggage personally, that no one else touched her Luggage and that she personally placed it on the luggage conveyer belt during check-in. However, under cross examination, she claimed that it was the *tuk tuk* driver who helped her lift the Luggage onto and off from the *tuk tuk* and that it was the Singapore Airlines staff who lifted the Luggage onto the luggage conveyor belt for her.[54] She therefore denied that she lifted the Luggage on those two occasions. When the inconsistencies between her long statements and her evidence at trial were pointed out to her, she immediately claimed that the inconsistent parts of her statements were "not correct".[55] However, she admitted that she lifted the Luggage onto and off the airport bus.[56] Even if she lifted the Luggage on only that occasion, it was still difficult to believe that she did not then notice the unusually heavy Luggage. In any case, her claims about not having lifted the Luggage at all when it was purportedly empty were incredible. As pointed out by the Judge at [50] of the GD, a person purchasing a suitcase would normally lift it to assess its weight.

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53 ROP vol 2 p 110 para 20

54 Transcript 18 February 2016 p 32 lines 31-32; p 33 lines 17-19; p 34 lines 15-25 (ROP vol 1)

55 Transcript 18 February 2016 p 34 lines 20-25, p 35 lines 12-16 (ROP vol 1)

56 Transcript 18 February 2016 p 35 lines 17-20 (ROP vol 1)

47 The Judge also took into account the "unusual feature" of the Appellant's calm reaction when the hidden bundles of drugs were found (at [52]). This was despite the Appellant's testimony that she was a calm person by nature and that she kept silent because she was surprised and shocked at the discovery of the drugs and because she could not communicate in English. The Judge saw and heard the Appellant and we saw no reason not to defer to his assessment of her credibility.

48 For the foregoing reasons, we agreed with the Judge that the Appellant failed to rebut the presumption of possession under s 18(1) of the MDA as she was unable to prove on a balance of probabilities that she did not know that the Luggage contained the drugs.

Whether the Appellant had rebutted the presumption of knowledge under s 18(2) of the MDA

49 Given that the Appellant's defence was that she did not know of the existence of the drugs at all, she adduced no evidence pertaining to lack of knowledge about the nature of the drugs. Accordingly, she also failed to rebut the presumption under s 18(2) of the MDA which operates to vest the Appellant with knowledge of the nature of the drug which she was in possession of (see *Obeng Comfort v Public Prosecutor* [2017] SGCA 12 at [39]).

Other ancillary issues

50 For completeness, we deal with two of the ancillary issues raised by the Appellant in her written submissions for this appeal. First, she made several complaints about the conduct of the IO and the Vietnamese interpreter who assisted during the taking of the statements. In the course of her examination-in-chief and cross examination during the trial, she also made some of these

allegations against the IO. In particular, she claimed that some parts of her statements were inaccurately recorded.[57] However, these allegations were not put to the IO, even though the Appellant was represented by counsel at the trial. In relation to the interpreter, her statement was admitted into evidence without cross examination and the Appellant's allegations against her were not canvassed at the trial. The Appellant's complaints before us were therefore nothing more than bare allegations. The Judge also did not see any reason to doubt the admissibility or the accuracy of the Appellant's statements and there was nothing that caused us to disagree with him.

51 The Appellant also stated in her written submissions that the forensic software used to recover data from her mobile phone was defective and therefore, the call logs were inaccurate and not all the text messages that were sent and received during her stay in India were recorded.[58] However, these were again bare assertions and she provided no evidence whatsoever in support. In any case, it would be obvious that we did not rely on the call or message logs in our decision to affirm the Judge's conclusions.

52 It followed from the reasons set out above that we affirmed the Judge's decision and upheld the conviction.

Whether the sentence imposed was manifestly excessive

53 The Second Schedule to the MDA prescribes that the unauthorised import or export of not less than 167g and not more than 250g of methamphetamine attracts a minimum sentence of 20 years' imprisonment and

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57 Transcript 17 February 2016 p 57 lines 21-24; 18 February 2016 p 3 lines 27-29; p 34 line 20 - p 35 line 15

58 Appellant's submissions on appeal pp 25-27

15 strokes of the cane and a maximum sentence of imprisonment of 30 years or life imprisonment and 15 strokes of the cane. The Appellant was sentenced to 24 years' imprisonment backdated to the date of her arrest. As noted at [2] above, as a woman, she was not liable to be caned pursuant to s 325(1)(*a*) of the CPC.

54 The quantity of drugs involved in a case will have a strong bearing on the sentence to be imposed as the quantity will usually be proportionate to the harm and it thus serves as a reliable indicator of the seriousness of the offence (see *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [23] and [44(a)] ("*Vasentha*")). The issue here was whether, in the event that the Prosecution exercised its discretion to amend a charge to reflect a lower quantity of drugs that would result in a non-capital offence, the actual amount of drugs imported should nonetheless be relevant in sentencing.[59] Here, the Judge said that he could not ignore the fact that a large quantity of methamphetamine was involved even though the charge had been amended to a non-capital offence. He held that it was necessary for the sentence to reflect this large quantity of drugs (at [58] of the GD). Indeed, the actual amount of methamphetamine imported (3,037g) was more than 12 times the statutory limit (of more than 250g) that would have attracted the death penalty.

55 The Judge's views on the appropriate sentence in this case were given before our recent decision in *Suventher Shanmugam v Public Prosecutor* [2017] SGCA 25 ("*Suventher*") which held that the fact that a charge was reduced from a capital to a non-capital one was not relevant for sentencing purposes. We also stated there that the full spectrum of possible sentences provided by law should be utilised and the sentence should be broadly proportional to the quantity of

[59] See also Appellant's submissions on appeal pp 54-55

drugs that the accused person was charged with importing. The sentencing range (for cannabis) set out in *Suventher* at [29] could also apply to offences involving other drugs where the range of prescribed punishment is the same (see [31] of that decision). The prescribed punishment for this case involving methamphetamine is the same as that for cannabis. Applying *Suventher* to the present case, with the amount of methamphetamine imported by the Appellant being just minimally below the statutory limit that would have attracted the death penalty, the appropriate sentence would certainly be in the top range of 26 to 29 years' imprisonment set out in the guidelines in *Suventher*. Further, the Appellant did not have the benefit of a plea of guilt which would have assisted her in mitigation.

56 In *Loo Pei Xiang Alan v Public Prosecutor* [2015] 5 SLR 500 at [14]–[18], Chao Hick Tin JA, in hearing an appeal from the District Court, took guidance from the indicative starting points in sentencing in *Vasentha* and considered it possible "to derive some sort of conversion scale or 'exchange rate'" between diamorphine (the drug in issue in *Vasentha*) and methamphetamine because the Second Schedule of the MDA prescribes the same minimum punishment (20 years' imprisonment and 15 strokes of the cane) and the same maximum punishment (imprisonment for life or for 30 years and 15 strokes of the cane) for trafficking between 10 and 15 grams of diamorphine and trafficking between 167 and 250 grams of methamphetamine. Chao JA held (at [17]) that, "doing the arithmetic, the culpability of an offender who traffics one gram of diamorphine is equivalent to the culpability of an identically-situated offender who traffics 16.7 grams of methamphetamine."

57 In the Appellant's case, even if we adopt Chao JA's methodology as set out above, we would still arrive at the very top end of the sentencing range for

diamorphine. The sentence would therefore have been above the 24 years' imprisonment imposed by the Judge here.

58 The Judge took into account the fact that the Appellant was a first offender and was rather young as mitigating factors (at [58] of the GD). No further mitigating factors were submitted by the Appellant on appeal. There was thus no basis for us to reduce the sentence, which, as pointed out above, was lower than it would have been had the equivalent sentencing ranges in *Suventher* been applied by the Judge. The Judge had also backdated the imprisonment term to commence on the date of arrest. It followed that the sentence imposed by the Judge could hardly be said to be manifestly excessive.

Conclusion

59 We therefore affirmed the Judge's decision on conviction and sentence and dismissed the appeal.

Sundaresh Menon	Judith Prakash	Tay Yong Kwang
Chief Justice	Judge of Appeal	Judge of Appeal

The appellant in person;
Anandan Bala, Rajiv Rai and Esther Tang (Attorney-General's Chambers) for the respondent.