IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 12

Criminal Appeal No 34 of 2015

Between

Obeng Comfort

… Appellant

And

Public Prosecutor

… Respondent

JUDGMENT

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

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Obeng Comfort
v
Public Prosecutor

[2017] SGCA 12

Court of Appeal — Criminal Appeal No 34 of 2015
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
26 October 2016

15 February 2017 Judgment reserved.

Tay Yong Kwang JA (delivering the judgment of the court):

Introduction

1 This is an appeal against conviction and sentence by Obeng Comfort ("the Appellant"), a female Ghanaian born in August 1972. She was 40 years old at the time of the incident leading to her arrest. At the conclusion of the trial, the trial judge ("the Judge") convicted her on a charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") for having imported crystalline substance weighing 2951.12g which was analysed and found to contain not less than 2309.45g of methamphetamine into Changi Airport Terminal 1, Singapore, on 3 September 2012 at about 10.10pm. The charge involved a capital offence. However, as the Judge found that the Appellant's role in the transaction was limited to that of a courier within the meaning of s 33B of the MDA and since the Public Prosecutor had issued a

certificate of substantive assistance under the same provision, the Judge exercised his discretion to sentence her to life imprisonment instead of the death penalty, with the sentence backdated to the date of her arrest on 3 September 2012. As the Appellant is a female, the mandatory minimum sentence of 15 strokes of the cane was not imposed.

2 The central issue in this appeal is whether the Judge was correct in deciding that the Appellant failed to rebut the presumptions of possession and knowledge in ss 18(1) and (2) of the MDA. The issue of whether the Appellant had knowledge of the presence and the nature of the drugs arose because the methamphetamine was concealed in digital video disc ("DVD") players, sandals and tin cans with food labels (see [3] below).

Background facts and the investigations

The facts pertaining to the offence

3 The Appellant is now 44 years old. She was born in Accra, Ghana. On 3 September 2012, at about 9pm, she arrived at Changi Airport Terminal 1. She had travelled from Kotoka International Airport in Accra and transited at Dubai before arriving here. At about 9.20pm, she was stopped by an officer from the Central Narcotics Bureau ("CNB"), Sergeant Muhammad Ridhuan bin Ariffin ("Sgt Ridhuan"), as part of a routine check. Sgt Ridhuan stated in his statement that this was because he found her behaviour suspicious as "she avoided eye contact and was looking down most of the time".[1]

4 The Appellant was carrying two handbags and a haversack. Her belongings were screened through an X-ray machine and anomalies were detected in the images of some items in her haversack. The suspected items

[1] Record of Proceedings ("ROP") Volume II at p 208.

were individually screened using the X-ray machine. In the Appellant's presence, CNB officers broke open the suspected items and found the following:

(a) two blocks of crystalline substance (marked as "A1A1") were found in a "Heinz Beanz" tin can;

(b) two blocks of crystalline substance (marked as "A2A1") were found in a "Sunripe Whole Sweetcorn" tin can;

(c) two packets of crystalline substance (marked as "A3") were found inside a pair of ladies sandals bearing the brand "Shoes Story";

(d) two packets of crystalline substance (marked as "A4") were found inside another pair of ladies sandals also bearing the brand "Shoes Story";

(e) five packets of crystalline substance (marked as "A5A1", "A5B" and "A5C" respectively), which were separately wrapped in aluminium foil, were found in a silver-grey DVD player with the brand "Chusei";

(f) a packet of crystalline substance (marked as "A6A"), which was wrapped in aluminium foil, was found inside a power adapter; and

(g) five packets of crystalline substance (one marked as "A7A" and four others marked as "A7B") were found in a black DVD player with the brand "Chusei".

All the exhibits of crystalline substance were sent to the Health Sciences Authority subsequently for analysis and they were found to amount to a total

of 2951.12g of crystalline substance which contained not less than 2309.45g of methamphetamine. We will refer to the various items containing crystalline substance listed above as "the Items". After a contemporaneous statement was taken from the Appellant, a search of her body revealed cash in US$100 notes amounting to US$2,900 and a black Nokia mobile phone hidden at the Appellant's hip area, between the Appellant's tights and panties.

5 While the Appellant was being questioned by the CNB officers after the arrest, she received numerous calls from various Ghanaian phone numbers which were not answered. Early the next day (4 September 2012), just after 6.00am, the CNB officers asked the Appellant to return the call of the last caller. The conversation, partly in English and partly in the Twi language, that the Appellant had with the male caller, whom she addressed as "Bra Kwaku" and whom she claimed was the person who gave her the Items, was recorded. The conversation was transcribed with the relevant portions in Twi language translated into English. The transcripts are marked as Exhibit "P59".[2] Not much can be gathered from the conversation apart from the fact that the male caller demanded to know why she had not answered his calls the night before and appeared concerned about whether something had happened. The Appellant lied to the male caller that she was in her hotel room and that she had not called him earlier because she was tired and had fallen asleep in the hotel room. It ended with the male caller telling her, "Let me buy credit and call you back" and the Appellant saying, "OK, I am waiting for your call".

Statements recorded after her arrest

6 In the course of investigations, the CNB officers recorded the following eight statements from the Appellant:

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2 ROP Volume II at pp 149-151.

(a) a contemporaneous statement recorded pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") on 3 September 2012, the day of arrest, at 10.48pm;[3]

(b) a cautioned statement recorded pursuant to s 23 of the CPC on 4 September 2012 at 7.56pm;[4] and

(c) six investigation statements recorded pursuant to s 22 of the CPC on 6, 8, 10, 13, 14 and 16 September 2012 respectively.[5]

In the proceedings below, the Appellant did not dispute that she had given these statements voluntarily. However, she disputed the accuracy of several portions of the statements on the basis that they had been inaccurately translated by the interpreter of the Twi language that she spoke in. The interpreter disagreed with this and stated that he only interpreted and conveyed what had been said by the Appellant.[6]

The contemporaneous statement

7 In the contemporaneous statement that was recorded in English soon after the Appellant's arrest, she denied knowing that the methamphetamine was hidden in the Items and stated that she was acting on the instructions of a person in Ghana who had passed her the Items outside the airport in Ghana and directed her to pass them to someone in Singapore.[7]

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3 ROP Volume II at pp 108-111.

4 ROP Volume II at pp 119-122.

5 ROP Volume II at p 124-148.

6 Transcript of the hearing on 24 February 2015, at pp 44-45.

7 ROP Volume II at p 112.

The cautioned statement

8 In her cautioned statement which was recorded the next day, the Appellant again maintained that she had no knowledge that there was methamphetamine hidden in the Items.[8] She claimed that a man had given her the Items at the airport in Ghana and had offered to pay for her air ticket and accommodation in Singapore if she agreed to deliver the Items for him. She also gave information on an exchange between the man and herself while she was in transit in Dubai. She said that the man told her over the phone that the laptop and the shoes that she was carrying were also known as "shine shine" and when she enquired further, he said that he would explain to her when she reached Singapore. She also said that the man told her that the recipient of the Items would give her $5,000 and that he would subsequently advise her on how that was to be dealt with. She claimed that she had no knowledge of the contents in the Items and "was basically asked to deliver the items in return for the free tickets and accomodation" (error in spelling in the original).

The long statements

9 In the course of the next two weeks, six long statements were recorded from the Appellant. The Appellant provided some background information about herself in the first long statement recorded on 6 September 2012. She said that she lived in Accra with her four children, whom she adopted after her sister passed away. Her husband was working as a trailer driver in the USA and he would remit to her about US$150 to US$250 every three to four months. The Appellant said that she studied only up to Form 4 of Middle School, which is slightly higher than Primary Six under the Singapore system. The Appellant said that she worked as a trader in many types of clothing and

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8 The transcribed version of the statement is at ROP Volume II at p 123.

accessories for a living. On average, she earned about 100 GHS (new Ghanaian currency) per month (or about one million Cedis). She also stated that she withdrew her savings, which amounted to 160 GHS, and passed them to her children before she left for Singapore.

10 The Appellant gave a detailed account of the events leading up to her arrest in the subsequent statements. She named the man who had given her the Items as Kwaku Mohamed ("Kwaku").[9] She claimed that she got to know Kwaku through Kwaku's wife, whom she knew as "Mama". She claimed that she first met Mama in December 2011 at a bus terminal in Accra.[10] However, at the trial, her testimony was that their first meeting took place at a market.[11] The Appellant claimed that later that month, Kwaku called her and told her that Mama had given him her number. He asked her how her business was doing and said that he was willing to help her by sponsoring her trips to China or to Singapore so that she could purchase electronic goods which she could then sell for profit in Ghana.[12]

11 Sometime in January 2012, Kwaku called her again and spoke to her about his offer. The Appellant accepted the offer even though she had mixed feelings about it.[13] Thereafter, the Appellant made three trips to Singapore, all of which were sponsored by Kwaku. She was arrested here on her third trip.

12 The Appellant said that her first trip to Singapore took place sometime in February 2012. Mama arranged for her to go to Niger, two days after she

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9 ROP Volume II at p 133.

10 ROP Volume II at p 133, para 28.

11 Transcripts of the hearing on 24 June 2015 at p 22.

12 ROP Volume II at p 133, para 29.

13 ROP Volume II at p 134, para 31.

spoke to Kwaku.[14] She was received by a man named Ariza when she arrived.[15] She stayed with Ariza for a month in his house in Niger along with seven other Nigerian men.[16] During that period, she was not told of the plans or when she would get to go to Singapore. Finally, Ariza gave her the air tickets and the documents for a hotel reservation in Singapore. She flew to Singapore, transiting at Algeria and Doha, Qatar, and stayed in Singapore for five days.[17] She said that during that time, she purchased around fifteen new and used mobile phones from Mustafa Centre on Kwaku's recommendation[18]. She spent around US$2,800 during that trip on the mobile phones and her hotel stay and personal expenses. She eventually sold those phones when she went back to Ghana, making profits totalling US$530,[19] without factoring in the air tickets as they were paid for by Kwaku. She added that "I had a second thought if Kwaku might have an ulterior motive for wanting to help me. However, I decided to stay positive and see him as a good Samaritan". She "did not really call Kwaku" after the first trip as she could not waste money on phone calls due to her financial situation.

13 About two months after the Appellant returned from her first trip, Kwaku asked her whether she wanted to go to Singapore again. She was keen to travel again but the constraint was always the cost of the air ticket. Kwaku told her that he was happy to help her but hoped that she would not turn him down should he need her help one day.[20] The Appellant said she was initially

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14 ROP Volume II at p 134, para 33.

15 ROP Volume II at p 134, para 35.

16 ROP Volume II at p 134, para 36.

17 ROP Volume II at p 135, para 37.

18 ROP Volume II at p 135, para 38; p 137 at para 40.

19 ROP Volume II at p 138, para 46.

20 ROP Volume II at p 139, para 47.

concerned whether Kwaku wanted an intimate relationship with her but was reassured otherwise.[21] Subsequently, Kwaku told the Appellant to get ready for another trip. This time, he purchased an air ticket for travel from Accra to Singapore via Dubai. Kwaku did not hand over anything to her and also did not give her any instructions. When the Appellant arrived in Singapore, she retrieved her haversack which had been checked in. An officer told her to put the haversack into the X-ray machine. She did so. After that, she was told to open it. After the officer had done a search, she was allowed to leave the airport.

14 According to the Appellant, she again purchased new and used mobile phones from Mustafa Centre and the neighbouring shops,[22] spending a total of about US$3,300. She claimed to have brought US$4,750 to Singapore but lost US$1,250 along with her purse.[23] The money lost was meant for her to purchase a flat-screen television set. She had tried calling Kwaku for the first two days, intending to ask him whether he could remit her some money so that she could buy more goods to bring to Ghana to sell. However, she could not reach him. She did not meet anyone while in Singapore. She overstayed the intended five days by about three or four days and had to pay US$100 to change her flight booking.[24] Upon her arrival back in Ghana, she managed to sell all her stock bought in Singapore within a period of about two weeks. She could not remember how much profits she made this time "as the trip was messy" and she had lost money here.

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21 ROP Volume II at p 139, para 47.

22 ROP Volume II at p 140, para 53.

23 ROP Volume II at p 140, para 52.

24 ROP Volume II at p 140, para 54.

15 The Appellant described her third trip to Singapore in her long statement that was recorded on 14 September 2012.[25] She said that Kwaku called her after she returned to Ghana and told her that he needed her help. She initially told him that she needed to rest as she was tired from the second trip. He called back a few days later. She then asked him what kind of help he needed but he would not tell her and they got into an argument over it. He told the Appellant that she should be patient and that he was a very kind person who had helped a lot of people to travel to Singapore. She wanted to meet some of these people to find out what sort of help they had been giving to Kwaku. He refused to tell her who these people were.

16 A few days later, on 2 September 2012, Kwaku called her and told her that he had bought her an air ticket to Singapore.[26] Kwaku packed the Items in her haversack before she left. She "probed him and asked him what they were". He told her they were laptops and shoes. She had been told that the DVD players were laptops and all references she made to "laptops" thus refer to the DVD players. She said she did not suspect anything as Kwaku was her friend and she trusted him.[27]

17 The Appellant gave differing accounts in her statements on whether she saw the Items before they were placed in her haversack. In the statement recorded on 8 September 2012, she said that Kwaku passed her two laptops and two pairs of shoes and asked her to bring them to Singapore.[28] He told her that the recipient in Singapore would contact her and that the person in question would use the Items as samples to purchase the same goods for him.

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25 ROP Volume II at p 142, para 58.

26 ROP Volume II at p 142, para 59.

27 ROP Volume II at p 143, para 60.

28 ROP Volume II at p 129, para 15.

Additionally, she said that he gave her two cans of baked beans, two cans of Coca Cola and a few cans of malt drink and told her they were for her consumption. This account differed from what she had stated in her contemporaneous statement and in her cautioned statement, which was that the cans of food were also to be passed to someone in Singapore. The Appellant also said in this statement that Kwaku opened the laptop and also showed her the two pairs of shoes to reassure her that there was nothing wrong with them when she "kept probing" about them. She then agreed to carry the Items for Kwaku and asked him to put them into her haversack. Thereafter, he packed the Items in her haversack. However, in her statement recorded on 14 September 2012, the Appellant said that she did not see any of the Items that Kwaku packed into her haversack at the carpark outside the airport as he "blindsided" her in the process by moving a few steps away from her.[29]

18 The Appellant further said in the statement recorded on 14 September 2012 that Kwaku called her when she was transiting in Dubai and told her that the Items contained something called "shine shine".[30] Kwaku further told her that the recipient of the Items would give her US$5,000. He did not tell her what "shine shine" was or what the sum of US$5,000 was for and said that he would do so only after she had collected the money.

The proceedings below

The Prosecution's case

19 The Prosecution's case against the Appellant was that she was presumed to have been in possession of the drugs and to have known the nature of the drugs by virtue of the two presumptions under s 18 of the MDA.

29 ROP Volume II at p 144, para 65.

30 ROP Volume II at p 143, para 61.

The Prosecution made four key arguments to support its submissions that the Appellant failed to rebut the presumptions.[31]

20 First, the Prosecution submitted that the suspicious circumstances surrounding her sponsored trips to Singapore must have alerted her that she was involved in importing controlled drugs for Kwaku.[32] The Prosecution pointed out that the Appellant did not know either Kwaku or Mama well, and yet trusted them and accepted Kwaku's proposition of a free trip to Singapore even before she had met him. The manner in which the trips were organised was also very unusual and she was essentially at Kwaku's beck and call. Further, the Appellant admitted that she was aware that she had to do something in exchange for the free trips to Singapore. The Prosecution submitted that from all the circumstances, it would have been clear to any reasonable individual that the Items contained controlled drugs.[33] The value of the free trips was wholly disproportionate to the task of transporting a few items from Ghana to Singapore. In particular, the circumstances of the third trip were unusual when compared to the circumstances of the first and the second trips.[34] Unlike the earlier trips, Kwaku asked her to deliver the Items to a person in Singapore and informed her that she would receive a large sum of money in return.

21 Second, the Prosecution submitted that the Appellant knew the Items *contained* "shine shine". The Appellant had said in her statement recorded on 14 September 2012 that Kwaku told her over the phone while she was in transit in Dubai that the Items *contained* something called "shine shine". The

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31 Prosecution's closing submissions for trial at para 64.

32 Prosecution's closing submissions for trial at para 66.

33 Prosecution's closing submissions for trial at para 78.

34 Prosecution's closing submissions for trial at para 92.

Prosecution submitted that her attempt at trial to change her account to say that Kwaku had told her that the Items were called "shine shine" and that she thought he was referring to the silver-grey laptop (*ie* DVD player) was unpersuasive.[35] It was submitted that she should also have been alerted at Kwaku's evasiveness.[36] The Prosecution placed significant reliance on the following portion of the statement recorded from the Appellant on 14 September 2012 to support its contention:[37]

> …
>
> 67 … I believe the shiny item shown in the photo 16 [which was the photograph of one of the DVD players] is the "shine shine" that Kwaku was talking about. I recognize the laptop shown in Photo 17. I believe the shiny item in the laptop shown in the photo is "shine shine".
>
> 68 I recognize the items marked 'A5B' and 'A5C' in Photo 18 as the "shine shine" that was taken out of the laptop. …
>
> 69 … I recognize the item marked 'A7' in Photo 25 as the same laptop taken out of my haversack after the X-ray scanning. The shiny items shown in Photo 26 are the "shine shine" taken out of the laptop
>
> …

The Prosecution argued that the fact that the Appellant identified the methamphetamine as "shine shine" when she was shown photographs of the Items seized was telling because it revealed that she knew that "shine shine" referred to illegal drugs.[38]

22 Third, the Prosecution submitted that the Appellant's suspicious behaviour at the airport indicated that she knew the Items contained controlled drugs. Sgt Ridhuan testified that the Appellant tried to avoid the X-ray

35 Prosecution's closing submissions for trial at para 107.

36 Prosecution's closing submissions for trial at para 109.

37 Prosecution's closing submissions for trial at para 50; ROP Volume II at p 145.

38 Prosecution's closing submissions for trial at para 54.

machine and equivocated when telling the officers where she had acquired the cans of food. She first said that they were brought from Ghana before changing her account to saying that they were bought in Singapore.[39] The Prosecution also pointed out that there was no sign of surprise or shock from the Appellant when the Items were opened before her and the methamphetamine was discovered.[40]

23 Finally, the Prosecution submitted that the Appellant's credibility was suspect as seen from the various inconsistencies in her evidence.[41]

The Appellant's defence

24 The Appellant's defence was that she was not aware of the presence of the drugs in the Items and was therefore not aware of the nature of the drugs. She claimed that she was merely acting on Kwaku's instructions, a person she trusted because of Mama. The Appellant also pointed to the fact that the drugs did not contain her deoxyribonucleic acid ("DNA"), which showed that she did not touch them. Further, she submitted that the Items looked normal from the outside and thus it was understandable that her suspicions were not aroused and that she did not think of scrutinising the Items.

25 As for the Prosecution's reliance on paragraphs 67 to 69 of the statement recorded on 14 September 2012 (see [21] above), the Appellant argued that this should not be construed to mean that she understood *prior to her arrest* and when she was given the Items that "shine shine" meant drugs.[42] Instead, all that she was telling the statement recorder was that she knew and

39 Prosecution's closing submissions for trial at para 115.

40 Prosecution's closing submissions for trial at para 116.

41 Prosecution's closing submissions for trial at para 119 onwards.

42 Defence's closing submissions for trial at para 77.

recognise the methamphetamine as "shine shine" *after* her arrest as she had seen them being taken out of the Items.[43]

The findings of the Judge

26 The Judge was not convinced that the Appellant had rebutted the presumptions that applied against her and found that the charge against the Appellant was proved beyond reasonable doubt.

27 From the evidence before him, in particular, the various inconsistencies in her evidence, the Judge found the Appellant's credibility to be suspect. The Judge emphasised that in assessing the Appellant's credibility, he took into account the fact that she was not very well educated and that she was in an unfamiliar environment and had to rely on interpretation in the course of the recording of the statements. Notwithstanding this, he found her "reasonably articulate, confident and intelligent". He found that the "changes, inconsistencies and illogicality in her evidence" could not be attributed to bad memory or other more innocent reasons such as her lack of education but were due to a "reluctance to tell the truth and a propensity to change her narration of the facts and retract troublesome admissions".[44]

28 In the Judge's view, it was clear that the Appellant knew of the presence of the methamphetamine which was hidden in the Items and she was in possession of the drug because of her admission in her statement recorded on 14 September 2012 that she knew the Items *contained* "shine shine" and the fact that she subsequently stated that she recognised the methamphetamine as "shine shine". The Judge did not believe that the admissions in the

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43 Defence's closing submissions for trial at para 78.

44 Grounds of decision at [29].

statement were the result of errors in translation because the interpreter had testified otherwise and further, the Appellant had signed the statement in acknowledgment after the statement was read back to her in the Twi language.[45] The Judge observed that in any event, the presumption in s 18(1) of the MDA that she was in possession of the methamphetamine would apply and she failed to rebut the presumption.[46]

29 The Judge was also satisfied that the Appellant knew the *nature* of the drugs. While there was no direct evidence showing that she had actual knowledge that the substance was methamphetamine, he held that the presumption in s 18(2) that she knew the nature of the drug applied and she again failed to rebut this presumption.[47] The Judge had considerable doubts about the Appellant's credibility, noting that she had prevaricated on the following issues, among others:[48]

(a) whether she saw Kwaku pack the Items into her haversack;

(b) whether the tin cans with food labels were from Ghana or Singapore;

(c) whether she knew that the Items contained "shine shine"; and

(d) whether she was supposed to collect US$5,000 from the recipient of the Items in Singapore.

The Judge also did not find the Appellant's account that Kwaku had told her the two cans of food were for her own consumption believable because it was,

45 Grounds of decision at [25].

46 Grounds of decision at [25].

47 Grounds of decision at [26].

48 Grounds of decision at [28].

to his mind, inconceivable that Kwaku would have taken the chance of her treating the cans as her own and giving or throwing them away.[49]

30 Taking the evidence in totality, the Judge concluded that the Appellant was not a guileless victim of Kwaku and that she was aware that she was carrying something hidden in the Items for Kwaku in return for his sponsoring of her trips to Singapore. He further found that her behaviour after the arrest undermined her attempt to rebut the presumption under s 18(2) of the MDA.[50]

Arguments on appeal

31 The arguments raised by the Appellant on appeal largely mirror her defence in the trial below. She argues that the Judge was wrong to have found that (a) she knew that the Items contained the methamphetamine and that the presumption in s 18(1) of the MDA would, in any event, not have been rebutted and that (b) she failed to rebut the presumption in s 18(2) of the MDA that she knew the nature of the drugs.

32 Specifically, as reflected in her petition of appeal, the Appellant argues that the Judge erred in the following aspects:

(a) in failing to take into account or to give due weight to the fact that Kwaku had told the Appellant that the two tin cans were for her consumption to distract her and avert her suspicions;

(b) in placing undue weight on Sgt Ridhuan's evidence that the Appellant had first told him that she got the tin cans from Ghana but subsequently said that she bought them in Singapore instead;

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49 Grounds of decision at [28(e)].

50 Grounds of decision at [29].

(c) in failing to give due weight to the fact that there were aberrations in the recording process, which led him to err in rejecting the Appellant's assertion that she did not tell the interpreter that she knew the Items *contained* "shine shine";

(d) in failing to give due weight to the fact that the Appellant had consistently denied in all eight statements that she did not know that she was importing methamphetamine;

(e) in failing to consider (i) the DNA report which indicated that she never touched the drugs; (ii) that she would not have thought that the Items were suspicious as they looked normal and innocuous; (iii) that the officers from the Immigration and Checkpoints Authority of Singapore and CNB also agreed that the Items did not look suspicious; (iv) that the recording of the phone call that took place after her arrest showed that Kwaku was a real person and that it supported her case and further demonstrated her willingness to cooperate, which is consistent with her plea of innocence; and

(f) in wrongly concluding that the Appellant had been inconsistent and was not credible.

Our decision

The test for rebutting the presumptions in s 18 of the MDA

33 We begin by setting out the manner in which the twin presumptions in s 18 of the MDA operate. Section 18 provides 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.
>
> (4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

These two presumptions were introduced to overcome the practical difficulty faced by the Prosecution of proving possession and knowledge on the part of the accused (*Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [55]).

34 Section 18(1) lists certain circumstances under which a person is presumed to have had a controlled drug in his possession. For the purposes of s 18(1), what we are concerned with is whether the thing in issue exists and whether the accused in fact has possession, control or custody of the thing in issue. The thing in issue is the container, the key or the document of title. In this sense, this provision deals with secondary possession of the drug in that

the accused possesses, controls or has custody of something which has the drug or which relates to the title in, or delivery of, the drug. As is evident in s 18(3), the accused does not need to be in physical possession of the drug, *ie* primary possession. At this stage, we are also not concerned with the qualities of the drug. In this regard, we respectfully disagree with the observations of the High Court in *Public Prosecutor v Mohsen bin Na'im* [2016] SGHC 150 at [115(a)(i)] in so far as the court suggested that knowledge that the item was a controlled drug is necessary to satisfy the requirement of possession. Once the prosecution proves that the thing in issue exists and that the accused has possession, control or custody of the thing in issue, the effect of s 18(1) is to raise a presumption of fact, which is that the accused, by virtue of his possession, control or custody of the thing in issue, is presumed to possess the drugs which are contained in or are related to the thing in issue.

35 To rebut the presumption in s 18(1), the accused has to prove, on a balance of probabilities, that he did not have the drug in his possession. In this context, the most obvious way in which the presumption can be rebutted is by establishing that the accused did not know that the thing in issue contained that which is shown to be the drug in question. Thus, for instance, the presumption could be rebutted successfully if the accused is able to persuade the court that the drug was slipped into his bag or was placed in his vehicle or his house without his knowledge. The inquiry under s 18(1) does not extend to the accused's knowledge of the *nature* of the drug. That is dealt with under the presumption of knowledge in s 18(2) where a person who is proved or presumed to be in possession of a controlled drug is presumed to have known "the nature of that drug". As clarified by this court in *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*") at

[23]–[24], the nature of the drug refers to the specific controlled drug found in his possession (for instance, methamphetamine or diamorphine).

36 Where the presumption in s 18(1) of the MDA is invoked by the Prosecution and is then rebutted successfully by the accused, the Prosecution would have failed to prove that the accused was in possession of the drug. There would be no need to consider the next issue of whether the accused had knowledge of the nature of the drug. However, if an accused is either (a) proved to have had the controlled drug in his possession; or (b) presumed under s 18(1) of the MDA to have had the controlled drug in his possession and the contrary is not proved, the presumption under s 18(2) that he has knowledge of the nature of the drug would be invoked. This follows because an accused person, who, it has been established, was in possession of the controlled drug should be taken to know the nature of that drug unless he can demonstrate otherwise. To rebut the presumption in s 18(2), the accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug (in effect, that he did not have the *mens rea* of the offence). In *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 ("*Dinesh Pillai*"), this court observed (at [18]) that the accused can do so by showing that "he did not know or could not reasonably be expected to have known the nature of the controlled drug".

37 Contrary to the concerns in some quarters that *Dinesh Pillai* has modified the test of knowledge in s 18(2) such that mere negligence or constructive knowledge on the part of the accused suffices to convict him, we do not think that the above-mentioned pronouncement in that case purported to do anything of that sort. This has already been made clear in the recent decision of this court in *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2016] SGCA 69. The court assesses the accused's evidence as

to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities. The onus on the accused has not changed after *Dinesh Pillai*. His duty is still the same. To rebut the presumption in s 18(2), he must lead evidence to prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug.

38 When the presumptions in ss 18(1) and (2) of the MDA apply, the accused stands before the court presumed to have been in possession of the drug and to have known the nature of the drug that he was carrying and, in the present case, importing. If the accused elects to remain silent and does not make his defence, he can be convicted on the relevant charge on the basis of the presumptions that operate against him. If he elects to make his defence but calls no evidence or inadequate evidence to rebut the presumptions, he can similarly be convicted.

39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was

drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. Similarly, he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of and to rebut this, he must give an account of what he thought it was.

40 Where the accused has stated what he thought he was carrying ("the purported item"), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item. This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country of receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. Ultimately, what the court is concerned with is the credibility and veracity of the accused's account (*ie*, whether his assertion that he did not know the nature of the drugs is true). This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.

41 Of course, apart from availing itself of the presumptions, the Prosecution may also prove that the accused had actual possession and actual knowledge of the drugs. In such a case, the presumptions are still operable even though they need not be invoked (*Tan Kiam Peng* at [54]). It is also clear from previous cases that a finding of wilful blindness is simply the inference of actual knowledge that is drawn because it is the only rational and therefore irresistible inference on the facts.

42 With these legal principles in mind, we turn to the facts of the present case.

Whether the Appellant was in possession of the methamphetamine

43 The Judge accepted the Prosecution's submission that the Appellant had admitted in her fifth long statement recorded on 14 September 2012 that she knew that the Items *contained* "shine shine" and had identified the methamphetamine as "shine shine" when she was shown the photographs. On appeal, the Appellant argues, as she did before the Judge, that this was not the meaning of the relevant portion of her statement because she was merely telling the interpreter that she recognised the methamphetamine as "shine shine" as she recognised it as the thing that was taken out of the Items after her arrest.

44 Having examined the relevant portion of the statement (*ie*, paragraphs 67 to 69), we accept the Appellant's submission and respectfully disagree with the Judge's finding on this issue. The meaning of this part of the statement becomes clearer when the relevant portion is set out in full (as opposed to the truncated version provided by the Prosecution which is set out at [21] above):

> 67 I recognize the laptop marked 'A5' in Photo 12 and 13. I first saw it when it was taken out of the haversack after the

> X-ray scanning. *I recognize the item marked 'A5A' and 'A5A1' in Photo 14 when it was shown to me after the laptop was ripped open after my arrest.* I recognize the item marked 'A5' in Photo 15 and 16 as the laptop that was taken out of my haversack after the X-ray scanning. I believe the shiny item shown in photo 16 is the "shine shine" that Kwaku was talking about. I recognize the laptop shown in Photo 17. I believe the shiny item in the laptop shown in the photo is "shine shine".
>
> 68 I recognize the items marked 'A5B' and 'A5C' in Photo 18 as the "shine shine" that was taken out of the laptop. I recognize the item marked 'A6' in Photo 19 and Photo 20. *I first saw it during the photo taking after my arrest.* I know it was taken out from one of the items in my haversack. I recognize the laptop marked 'A7' in Photo 22. I first saw it when it was taken out after the X-ray scanning.
>
> 69 I recognize the item marked 'A7' in Photo 23 and 24. It is the laptop taken out of my haversack after the X-ray scanning. I recognize the item marked 'A7A' in Photo 24. It is the "shine shine" and *I first saw it when it was taken out of the laptop during the photo taking after my arrest.* I recognize the photo marked 'A7' in Photo 25 as the same laptop taken out of my haversack after the X-ray scanning. The shiny items shown in Photo 26 are the "shine shine" taken out of the laptop.
>
> [emphasis added]

We do not think that the relevant portion of the statement can be construed as an admission on the Appellant's part that she knew all along that the Items contained "shine shine" and that "shine shine" was methamphetamine. A more natural reading of the paragraphs suggests that all she was saying was that she recognised the methamphetamine as the thing that was retrieved from the Items and which was shown to her *after* her arrest.

45 We are thus unable to agree with the Judge that actual possession was proved. The next question is whether the presumption of possession in s 18(1) of the MDA was rebutted. The Judge observed at [25] of his grounds of decision that in any event, even if he was wrong to have found actual possession, this presumption would apply. In this regard, the Appellant

asserted that she did not know there was anything hidden in the Items at all and she thought that "shine shine" referred to the laptop (that is, the DVD player).

46 Looking at the evidence and the circumstances of this case, we are of the view that the presumption in s 18(1) was not rebutted. The Appellant's evidence that she was an unsuspecting victim who was used by Kwaku as an unwitting drug courier was not believable. By her own account, she did not know Mama and Kwaku so well that she could repose so much trust in them, particularly Kwaku. Mama was merely someone she had met in the bus terminal or the market and yet she was willing to accept the offer to sponsor her on a trip to Singapore for her to purchase items to sell for her own profit in Ghana. Her own narration of the events showed that she was generally willing to fly all the way to Singapore at last-minute notice and was willing to stay a whole month in Niger pending their instructions. She was at Kwaku's beck and call. It was also not believable that Kwaku would have been so generous as to sponsor not only the flights but also the accommodation of her earlier two trips to Singapore just to "help her". It was equally unbelievable that she would have thought that Kwaku was willing to sponsor her third trip to Singapore just to bring an assortment of random objects (the two DVD players and two pairs of ladies sandals, even if we exclude the two tin cans) so that the recipient of the Items could use them as samples to purchase the same goods for him. This is especially so given that she was to receive US$5,000 from the recipient of the Items. In these circumstances, we find it incredible that the Appellant was in fact unaware that the items she was carrying contained something for which she could be accountable. If at all there could be any room to doubt this, this was wholly displaced by the phone call the Appellant received from Kwaku when she was in transit in Dubai in the course of which

she was told (i) that the items contained something he referred to as "shine shine"; and (ii) that the person collecting the items would pay her US$5,000. During that conversation, Kwaku refused to tell her what "shine shine" was or what the money was for. In our judgment, by this stage, at the very latest, it was not possible for the Appellant to say she had no knowledge that what turned out to be the controlled drugs in question were in her possession. Even after factoring in the Appellant's background and low educational level when assessing the veracity of her account, we do not think it is believable or sufficient to rebut the presumption in s 18(1) of the MDA. The presumption under s 18(1) was therefore not rebutted.

47 The Prosecution submitted before the Judge that this amount of US$5,000 was likely to have been the Appellant's profit. We do not think that this was established on the evidence. This does not, however, affect our decision that the Appellant has failed to rebut the presumption under s 18(1).

48 We do not see any basis to disturb the Judge's finding that the Appellant was not a credible witness. It is difficult for us (as it was also for the Judge) to believe that she did not know that the drugs were hidden in the Items. There were the various inconsistencies in the Appellant's evidence (see for example, the inconsistencies set out at [17] above). For instance, she gave at least three different accounts of how the Items came to be in her haversack. These were, namely, that (a) Kwaku had shown her the Items and physically handed them to her; (b) Kwaku had "blindsided" her by packing the Items into the haversack without allowing her to see what he was doing; and (c) Kwaku had shown her the Items but did not allow her to hold them. The Appellant was also inconsistent in her account on where the tin cans were from. She first told Sgt Ridhuan that Kwaku gave them to her in Ghana but later changed her account by stating that they were purchased in Singapore.

49 Like the Judge, we are not persuaded by the Appellant's explanation that these inconsistent accounts were due to inaccurate translation by the interpreter, not least because the Appellant did not even put forward such a case at trial to challenge the interpreter when he was on the stand. Instead, we agree with the Judge that the inconsistencies and her prevarication revealed a propensity to prevaricate and to retract admissions once she realised they were against her case.

50 For the above reasons, we are satisfied that the Appellant failed to rebut the presumption in s 18(1) and that the Prosecution has established that she was in possession of the methamphetamine.

Whether the Appellant knew the nature of the drugs

51 As we pointed out during the appeal hearing and as rightly conceded by counsel for the Appellant, the Appellant's alternative case that she did not know the nature of the drugs would necessarily be weakened once we disbelieved the Appellant's primary case that she did not know the methamphetamine was present in the Items. The presumption in s 18(2) of the MDA applied and it was not rebutted. To put it bluntly, the Appellant's case in essence was that she did not know what "shine shine" was. This is wholly insufficient to displace the presumption for the reasons set out at [39]-[40] above. If the Appellant is to be believed, she should have approached the customs officers at the airport and told them she had just learnt that Kwaku had put something called "shine shine" in her luggage and asked that this be checked. She did no such thing. Therefore, for the reasons set out above, we agree with the Judge's conclusion that the Appellant was guilty as charged.

Conclusion

52 We are of the view that the Appellant was correctly convicted and that there is no merit in her appeal against conviction. There is likewise no merit in her appeal against the sentence of life imprisonment, which is the statutory minimum sentence upon her conviction if the death penalty is not imposed. Accordingly, we dismiss the appeal.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal

Ram Goswami and Cheng Kim Kuan (Ram Goswami) for the appellant;
Anandan Bala and Kenny Yang (Attorney-General's Chambers) for the respondent.