

**IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

**[2017] SGHC 302**

Criminal Case No 62 of 2015

Between

Public Prosecutor

And

Muhammad Nur Sallehin bin  
Kamaruzaman

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**SUPPLEMENTAL GROUNDS OF DECISION**

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[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] – [Illegally  
importing controlled drugs]

## **TABLE OF CONTENTS**

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<b>THE ARREST .....</b>	<b>4</b>
<b>ACTIONS TAKEN AFTER THE ARREST .....</b>	<b>5</b>
<b>THE ACCUSED’S STATEMENTS .....</b>	<b>6</b>
THE CONTEMPORANEOUS STATEMENT .....	6
THE INVESTIGATION STATEMENTS.....	9
<b>CLOSE OF THE PROSECUTION CASE .....</b>	<b>12</b>
<b>THE ACCUSED’S DEFENCE .....</b>	<b>12</b>
<b>EVALUATION OF THE DEFENCE.....</b>	<b>17</b>
<b>DIANEY’S ALLEGED MARRIAGE TO THE ACCUSED.....</b>	<b>20</b>

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**Public Prosecutor**  
**v**  
**Muhammad Nur Sallehin bin Kamaruzaman**

**[2017] SGHC 302**

High Court — Criminal Case No 62 of 2015

Kan Ting Chiu SJ

23–26 November 2015, 1 December 2015, 16, 22–24, 27–28 June 2016, 5, 18, 26 July 2016, 3 August 2016; 14 February 2017

21 November 2017

**Kan Ting Chiu SJ:**

1 These grounds of decision are supplemental to the first grounds of decision that I issued on 11 May 2017 (see *Public Prosecutor v Muhammad Nur Sallehin bin Kamaruzaman* [2017] SGHC 107). At that time the Accused, Muhammad Nur Sallehin bin Kamaruzaman, had only appealed against the sentence of life imprisonment and 15 strokes of the cane imposed on him. He subsequently amended his appeal to appeal extended to his conviction as well, and these supplemental grounds will deal with the conviction.

2 The Accused was convicted on a charge that he:

on 7 February 2012 at about 5.29pm, at the Woodlands Checkpoint, Singapore, together with one Nur Dianey Mohamed Salim (NRIC No. S XXXXXXXXX) and in furtherance of the common intention of [them] both, did import a Class 'A' controlled drug listed in the First Schedule to the Misuse of

Drugs Act (Cap 185, 2008 Rev Ed) (“the Misuse of Drugs Act”), to wit, three packets containing 493.5 grams of crystalline substance which were analysed and found to contain **not less than 378.92 grams of methamphetamine**, without any authorisation under the said Act or the Regulations made thereunder, and [he had] thereby committed an offence under section 7 of the Misuse of Drugs Act read with section 34 of the Penal Code (Cap 224, 2008 Rev Ed) (“the Penal Code”) and punishable under section 33 of the Misuse of Drugs Act, and further, upon [his] conviction under section 7 of the Misuse of Drugs Act read with section 34 of the Penal Code, [he might] alternatively be liable to be punished under section 33B of the Misuse of Drugs Act.

[emphasis in original]

3 He was also charged with three other charges, including a charge for importing 100 pink tablets containing ecstasy recovered from one of the bundles,<sup>1</sup> but this charge was stood down.

### The arrest

4 On 7 February 2012 at about 5.30pm, the Accused was stopped at the Woodlands Checkpoint (“the Checkpoint”). The Accused was with his mother, Normalah binti Mohamed Said (“Normalah”), and Nur Dianey Mohamed Salim (“Dianey”). They were entering Singapore in Normalah’s car SJK 2013Z,<sup>2</sup> which Normalah was driving.

5 The car was searched by officers of the Central Narcotics Bureau (“CNB”) at the Checkpoint. The officers found a Daia brand washing powder box<sup>3</sup> in the boot of the car.<sup>4</sup> When the base of the box was opened, three bundles<sup>5</sup>

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<sup>1</sup> PH21.

<sup>2</sup> PH10–PH14.

<sup>3</sup> PH16, A1A.

<sup>4</sup> PH12.

<sup>5</sup> PH18, A1A2, A1A3 and A1A4.

wrapped in cling wrap were found. When the cling wrap was removed from the bundles, each bundle was found to contain a packet of white crystalline substance; and the third bundle was also found to contain two smaller packets of pink tablets.<sup>6</sup> (To be clear, I use the word “bundle” to describe the items when wrapped in cling wrap, and the word “packet” to describe the items after the cling wrap was removed).

6 The white crystalline substance and the pink tablets were sent to the Health Sciences Authority (“HSA”) for analysis. The outcome of the analysis was that the three bundles of white crystalline substance were methamphetamine, which became the subject-matter of the charge for importing methamphetamine.

7 Methamphetamine is also known as ice, and the drug in the pink tablets, which has a complex pharmacological name, is commonly known as ecstasy. There was no issue over the identification and quantification of the drugs in the packets.

### **Actions taken after the arrest**

8 As stated earlier, the Accused was charged with four charges. The prosecution proceeded on charge set out in [2] above.

9 Dianey was also charged with importing methamphetamine with the Accused. In her case, the charge stated the weight of the methamphetamine as not less than 249.99 grams (below the 250 gram threshold that would attract capital punishment), although the statement of facts stated the actual weight of

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<sup>6</sup> PH18–PH21.

the methamphetamine as not less than 378.92 grams. She pleaded guilty to the charge and was sentenced to twenty years imprisonment.<sup>7</sup>

10 In the course of this trial, much time was spent over whether Dianey was married to the Accused and the effect that would have on the case against the Accused. This was ultimately a red herring, as I shall explain at the end of these grounds of decision.

11 No action was taken against Normalah.

### **The Accused's statements**

12 Subsequent to the discovery of the bundles in the Daia box, the Accused was placed under arrest, and a series of statements were recorded from him. All these statements were admitted in evidence during the trial. No issue was raised regarding voluntariness, although the Accused raised issues regarding the veracity of the contents of some of the statements.

### ***The contemporaneous statement***

13 The first statement was a contemporaneous statement<sup>8</sup> recorded by Sgt Ibrahim bin Juasa ("Sgt Ibrahim") at 7.35pm on 7 February 2012 at the CNB office at the Checkpoint. The statement was typewritten, and was signed by the Accused. It read as follows:

Statement of B1) Muhammad Nur Sallehin Bin Kamaruzaman,  
NRIC: SXXXXXXX recorded on the 07.02.2012 @ [1935] hrs  
at Woodlands CNB office, room B-303. B1) chose to speak in  
English language. Statement recorded by Sgt Ibrahim Juasa  
and witnessed by Cpl Vengedesh Raj.

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<sup>7</sup> Criminal Case No 6 of 2015.

<sup>8</sup> P30.

- Q1: What is this? (*Pointing to 3 plastic packets containing a white crystallize substance btb [believed to be] controlled drug*)
- A1: “Ice”.
- Q2: What is this? (*Pointing to several pink tablets in one of the plastic packets containing the white crystallize substance btb controlled drug*)
- A2: I do not know.
- Q3: Whom does the “Ice” and the pink tablets belong to?
- A3: It all belongs to “Pai Kia”. He told me to deliver the “Ice” to a person named, “Wan” in Ang Mo Kio Central.
- Q4: Who is “Pai Kia”?
- A4: He is my clubbing friend in JB. I have known him for only one year.
- Q5: Where was the “Ice” and pink tablets found?
- A5: Inside the washing powder.
- Q6: How did the “Ice” and the pink tablets [*sic*] found inside the washing powder?
- A6: I bought the washing powder in JB, today. Then I passed it to “Pai Kia” at Tun Aminah shop houses. He told me to come back in half an hour’s time. When I came back later, “Pai Kia” gave the washing powder back to me. He said that inside got Ice not more than 100 gram. He also asked me to pass the Ice to “Wan” in Ang Mo Kio Central. He will call me later for the next instruction. I said ok and then we parted. I then placed the washing powder containing the Ice inside the boot of my mother’s car.
- Q7: What will you get after delivering it to “Wan”
- A7: “Wan” will give me \$800/-
- Q8: Does your mother and your girlfriend know about you bringing in the “Ice”? (*Recorder’s note: The mother is one, Normalah Binti Mohamed Said, NRIC: SXXXXXXXX and the girlfriend is one, Nur Dianey Mohamed Salim, NRIC: SXXXXXXXX. Both subjects are also arrested together with B1 in the car that they were travelling in. The mother was the driver of the car, SJK2013Z.*)
- A8: No.
- Q9: How do you contact “Pai Kia” and “Wan”?

A9: “Pai Kia” can be contacted at +60 XXXXXX371 stored as “Ah Kwang” in my handphone contacts. I do not know how to contact “Wan”.

[emphasis added]

The statement indicated that it was recorded from “1735 hrs” on 7 February 2012. However, Sgt Ibrahim corrected the commencement time from “1735 hrs” to “1935 hrs” when he gave evidence.

14 On 8 February 2012, before the HSA analysis was completed, the Accused was charged with that he:

on the 7<sup>th</sup> day of February 2012 at or about 5.29 p.m., at the Woodlands Checkpoint, Singapore, did import a controlled drug specified in Class ‘A’ of the First Schedule to the Misuse of Drug Act, Chapter 185, to wit, *three (3) packets* of white crystalline substance weighing approximately 553.04 grams believed to contain Methamphetamine, at the said place, without authorisation under the said Act or the Regulations made thereunder and [he had] thereby committed an offence under Section 7 of the Misuse of Drugs Act, Chapter 185 and punishable under Section 33 of the Misuse of Drugs Act, Chapter 185.

[emphasis added]

A cautioned statement<sup>9</sup> in answer to the charge was recorded from the Accused under s 23 of the Criminal Procedure Code 2010 (Act 15 of 2010). In this statement, the Accused said:

I was promised by him that he would not give me more than *100 grams of Ice. He was the one who packed.* So, if I want to check, I have to re-open the box again. I do not know how to re-seal it back properly. I do not have a weighing machine with me that can measure this big amount of Ice.

[emphasis added]

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<sup>9</sup> P35.



(The Accused clarified in his evidence in court that the unnamed person he referred to in the statement was Pai Kia).

***The investigation statements***

15 In the course of investigations, the investigation officer Insp Chua Zhi Wei (“Insp Chua”) recorded five statements<sup>10</sup> from the Accused between 10 February 2012 and 19 April 2012 covering the events of the day of his arrest and his dealings with Pai Kia (“the Pai Kia statements”).

16 In these statements, the Accused narrated that:

- (a) He had known a person by the name of Pai Kia for about a year. Pai Kia offered him \$800 to bring tawas (a substance consumed to “wash urine”) into Singapore, to test if tawas could be detected by the scanner at Singapore checkpoints.
- (b) On 6 February 2012, when he was in Johor, he met Pai Kia and agreed to help him bring tawas to Singapore.
- (c) On 7 February 2012, he went with Dianey to Carrefour [a supermarket] in Johor and they bought a box of washing powder.
- (d) After buying the box of washing powder, he drove his aunt’s car to meet Pai Kia. He left the box with Pai Kia for about half an hour and collected it back from him thereafter. He asked Pai Kia what was in the box. Pai Kia told him: “Not to worry. As I promise you before, I just want to try this”. He did not open the box to check its contents.
- (e) After collecting the box from Pai Kia, he returned to his

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<sup>10</sup> P39–P43.

grandmother's house and transferred the box to the boot of his mother's car.

- (f) He left with his mother and Dianey in his mother's car for Singapore at about 5.00pm.
- (g) At the Checkpoint, the CNB officers searched the car and found the box of washing powder and recovered the three bundles inside the box.<sup>11</sup>
- (h) If he had known that he would be bringing ice into Singapore, he would have rejected Pai Kia's offer of \$800.<sup>12</sup>
- (i) He had no idea what illegal items the box contained.<sup>13</sup>
- (j) He had "mixed feelings" that the box contained tawas.<sup>14</sup>

17 The Accused's narration of the events changed radically in his investigation statement made subsequently on 15 January 2013.<sup>15</sup> This took place when Insp Chua (who had been promoted to the rank of Assistant Superintendent) visited him at Changi Prison, where he was remanded, and informed him that DNA found on the cling wrap from the bundles matched his DNA and Dianey's DNA.

18 In this statement ("the Bob statement") the Accused abandoned his original account, in which he referred to Pai Kia and tawas, and referred to a

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<sup>11</sup> P39 para 17.

<sup>12</sup> P41 para 34.

<sup>13</sup> P41 para 36.

<sup>14</sup> P41 para 40.

<sup>15</sup> P44.

different person called Bob, and different substances, *ie*, ice and ecstasy. He stated that:

- (a) On 6 February 2012, he and Dianey were at the home of his friend Bob. Bob asked him to bring some ice into Singapore, and he agreed to do that. Bob offered him some money for his help, and told him that the weight of the ice was 250 grams.
- (b) On 7 February 2012, at about 6.00am, he and Dianey collected ice and ecstasy from Bob.
- (c) He and Dianey brought the ice and ecstasy to their room [in his grandmother's home in Johor Bahru] and kept them there.
- (d) At about 11.00am, he and Dianey drove to Carrefour, bought a box of washing powder, and brought it back to their room.
- (e) Dianey cut the box and asked him to look for something to wrap the ice and ecstasy with. He found and handed to her some wrapping material described as "string wrap".<sup>16</sup> (The Accused was probably referring to the cling wrap in which the bundles were wrapped.)
- (f) After handing the wrapping material to Dianey, he had a shower. After the shower, he noticed that the drugs were already packed into the box. He used glue to seal the box and brought it to the boot of his mother's car.
- (g) He had lied in his previous statements because he was afraid, but now he was willing to tell the truth.

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<sup>16</sup> PH19–PH21.

**Close of the prosecution case**

19 The Accused had made two sets of admissions in the Pai Kia statement and the Bob statements. Taking all the statements together with the changes in them, he had admitted that:

- (a) he had been in possession of the Daia washing powder box;
- (b) he knew that methamphetamine and ecstasy were hidden in the box;
- (c) he agreed to bring the methamphetamine and ecstasy to Singapore; and
- (d) he was doing that with Dianey when they were arrested.

20 The admissions and the circumstances of his arrest also triggered the presumptions in s 18(1) and (2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“the MDA”) that he was in possession of the methamphetamine and was aware of its nature.

21 The admissions and the presumptions established a sufficient case for the Accused to be called upon to enter his defence.

**The Accused’s defence**

22 The Accused’s defence was unexpectedly brief. When he stated his defence in his evidence-in-chief, his counsel did not bring him through the statements he made during the investigation.

23 The Accused’s defence was that on the morning of the day of his arrest, he and Dianey went to Bob’s house in his aunt’s car. At Bob’s house, he,

Dianey, Bob and Bob's wife consumed ice, and Bob handed to him a bundle of white crystalline substance and pink tablets<sup>17</sup> which he handed to Dianey to keep in her bag.

24 He and Dianey left Bob's house at about 8.00am. They went to his grandmother's house and put the items there. They then went to Carrefour to buy the Daia box of washing powder and brought it back to their room in his grandmother's house.

25 When they were in the room, Dianey suggested that they find something to wrap the ice and ecstasy. He found some cling wrap and brought it to the room, where he saw Dianey cutting the base of the box. He left the cling wrap there and went to the toilet for about an hour to consume ice and sniff glue.

26 When he came out of the toilet, Dianey told him she had packed the drugs into the box. He then sealed the box, which was subsequently brought to and kept in the boot of his mother's car.

27 When they returned to Singapore in the car, the car was checked by officers of the CNB who discovered the box in the boot. They asked who the box belonged to. He saw one bundle,<sup>18</sup> and admitted that it was his. At that time he did not see the other two bundles.<sup>19</sup>

28 The prosecutor went through the defence with him in greater detail. The Accused was asked if the three bundles were shown to him when he made his contemporaneous statement.<sup>20</sup> His answer was that he could not remember that

<sup>17</sup> PH21.

<sup>18</sup> PH18, A1A4.

<sup>19</sup> PH18, A1A2 and A1A3.

<sup>20</sup> P30.

because he was high on drugs.<sup>21</sup> (It was not put to Sgt Ibrahim who testified positively that he pointed the three packets to the Accused,<sup>22</sup> that the three packets were not shown to him). A reading of the contemporaneous statement (see [13] above) shows that the Accused was alert and clear-thinking when he gave his answers.

29 The Accused also claimed that he could not remember saying that the ice and pink tablets belonged to Pai Kia,<sup>23</sup> and that he did not have a friend called Pai Kia with the telephone number given in his contemporaneous statement.<sup>24</sup> He went on to say that he might have lied when he made the statement because he was afraid.<sup>25</sup> He explained that a CNB officer who conducted the search on the car told him that if he did not admit knowledge of the drugs, they would implicate everybody; and he did not want his mother to get involved.<sup>26</sup> (It was not put to Sgt Ibrahim or Corporal Vengedesh Raj Nainar, the CNB officers involved in the search, or any other CNB officer that this threat was made).

30 The prosecutor also cross-examined the Accused on his cautioned statement,<sup>27</sup> where he said that Pai Kia had promised him that there was no more than 100 grams of ice involved. The Accused clarified that Pai Kia had told him that the weight was 125 grams and he did not know why he had mentioned 100 grams in the statement.<sup>28</sup> (This answer to the prosecutor was meaningless

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<sup>21</sup> NE 28 June 2016 p 32 line 3.

<sup>22</sup> NE 24 November 2015 p 59 lines 23-30.

<sup>23</sup> NE 28 June 2016 p 33 line 17.

<sup>24</sup> NE 28 June 2016 p 34 lines 16-26.

<sup>25</sup> NE 28 June 2016 p 38 lines 2-11.

<sup>26</sup> NE 28 June 2016 p 41 lines 19-31.

<sup>27</sup> P35.

<sup>28</sup> NE 28 June 2016 p 45 lines 8-12.

because he had at the time of the cross-examination abandoned his account relating to Pai Kia and replaced it with the Bob narrative.)

31 The Accused was then referred to his investigation statements.<sup>29</sup> He agreed that he was no longer high on drugs when he made them. He was feeling better, but was experiencing withdrawal symptoms, and was delusional and was hearing voices.<sup>30</sup> (This was not supported by medical or expert evidence).

32 With regard to the Bob statement of 15 January 2013 (see [18] above),<sup>31</sup> where the Accused retracted the references to Pai Kia and tawas, his counsel confirmed to the court that the entire Pai Kia story was a fabrication.<sup>32</sup> The Accused confirmed that most of the Bob statement was the truth, although he did not know the weight of the drugs when he made this statement,<sup>33</sup> and he admitted that he lied in the Pai Kia statements.<sup>34</sup>

33 The Accused still had issues with the Bob statement. He did not say that Bob told him that there was 250 grams of ice (as recorded in paragraph 50). In fact Bob had told him that there were 125 grams of ice,<sup>35</sup> but the investigation officer (Insp Chua) told him his DNA was “found at the 250 grams”.<sup>36</sup> (That was not put to Insp Chua, and the implication that a DNA test can determine the weight of ice is simply preposterous; it was incredible for Insp Chua to have said that and for the Accused to have believed it.)

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<sup>29</sup> P39–P43.

<sup>30</sup> NE 28 June 2016 p 52 lines 12–22.

<sup>31</sup> P44.

<sup>32</sup> NE 28 June 2016 p 64 lines 12–15.

<sup>33</sup> NE 28 June 2016 p 53 lines 21–23.

<sup>34</sup> NE 28 June 2016 p 54 lines 26–28.

<sup>35</sup> NE 28 June 2016 p 59 lines 8–14.

<sup>36</sup> NE 28 June 2016 p 59 line 16.

34 Moreover, he had made clear that Bob told him about the 250 grams when he stated in his last investigation statement of 21 June 2013:<sup>37</sup>

I wish to clarify that I did not ask my girlfriend Nur Dianey Mohamed Salim to pack the drugs. *Bob told me that the ice was below 250 grams*, so I just took it. I also do not have weighing machine to check the weight.

[emphasis added]

35 While he admitted that he had lied about the existence and role of Pai Kia, the Accused's position was that his account of Bob was true, and that Dianey also knew Bob<sup>38</sup> (although Dianey's evidence was that she did not know anyone by that name.<sup>39</sup>)

36 The Accused also expanded on his dealings with the box and the drugs. He and Dianey had discussed hiding the drugs in a box before they purchased the Daia box.<sup>40</sup>

37 There was some inconsistency in the number of packets of ice involved. In the Bob statement of 15 January 2013,<sup>41</sup> he stated that Bob handed to him one packet of white crystalline substance and two packets of pink tablets.<sup>42</sup> Dianey's evidence, however, was that she packed two packets of ecstasy and two packets of ice.<sup>43</sup>

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<sup>37</sup> P32.

<sup>38</sup> NE 28 June 2016 p 67 lines 18–20.

<sup>39</sup> NE 24 June 2016 p 98 lines 7–8.

<sup>40</sup> NE 5 July 2016 p 2 lines 7–14.

<sup>41</sup> P44.

<sup>42</sup> NE 28 June 2016 p 14 lines 1–7.

<sup>43</sup> NE 25 November 2015 p 93 lines 13–14 and 19–24; p 94 lines 7–13 and NE 24 June 2016 p 96 line 9.



### **Evaluation of the defence**

38 The Accused was in possession of the Daia washing powder box from which the ice and ecstasy were recovered. He admitted that he had intended to conceal the ice and ecstasy he received from Bob in the box, and to bring it to Singapore.

39 By these admissions, the Accused was importing methamphetamine into Singapore when he was arrested. The prosecution also submitted that the Accused was presumed under s 18(1) and (2) of the MDA to have possession of the methamphetamine and knowledge of its nature. As there was direct evidence on these matters, the case against the Accused was not dependant on the presumptions.

40 There were several issues raised in his defence. The first was whether he knew that the three bundles of ice were in the box.

41 Looking at the evidence as a whole, he had agreed with Bob to take ice and ecstasy to Singapore. He purchased the box of washing powder and arranged with Dianey to have the drugs wrapped in cling wrap and placed in the box. Although he said there was one packet, and Dianey remembered two packets, there were three packets recovered which were wrapped in the same way in cling wrap in the box. He had not expressed any disagreement with the references to three packets referred to in Question 1 in the contemporaneous statement (see [13] above) and in the charge<sup>44</sup> that he responded to his cautioned statement (see [14] above). The Accused and Dianey were the only persons engaged in wrapping the drugs and placing them in the box. They must have

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<sup>44</sup> P35.

wrapped and packed the packets which were recovered. On the evidence he knew that the three packets were in the box.

42 The second issue was the quantity of drugs the Accused had agreed to carry into Singapore.

43 The Accused's position on this issue was most unsatisfactory. In his cautioned statement,<sup>45</sup> he stated that he had been promised that it would be not more than 100 grams. In the Bob statement,<sup>46</sup> he said Bob told him that the ice weighed 250 grams, but he claimed in his evidence in court that it should be 125 grams but he said 250 grams because of the DNA test result (see [33] above). To compound the confusion, he said in his investigation statement of 21 June 2013 that Bob told him it was below 250 grams (see [34] above).

44 The only unequivocal part of the defence was that he agreed to carry ice for Bob. From his own evidence, Bob was not a reliable person as he had stated the weight of the ice to be 125 grams and 250 grams. It is noteworthy that mistake and reliance on Bob's representations were not parts of his defence.

45 The Accused's defence was set out in its closing submissions where it was stated:<sup>47</sup>

The Court will note (and this is to be said at the outset) that the Accused admits to importing (and intending to import) the meth contained in the exhibit A1A4A. Therefore, the evidence as to how the meth (and what quantity) was procured and in what fashion becomes critical for the Court's consideration on the issue of what quantum of meth that was imported is to be ascribed to the Accused.

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<sup>45</sup> P35.

<sup>46</sup> P44.

<sup>47</sup> Defence Closing Submission para 11.

46 The basis for the submission was that the weight of the methamphetamine in packet A1A4A<sup>48</sup> that the Accused admitted to was 92.49 grams.

47 However, the Accused's evidence on the number of packets and the quantity of methamphetamine he agreed to carry cannot be accepted. On the evidence, I find that he had agreed to carry methamphetamine to Singapore, and that he and Dianey hid the three packets of drugs in the washing powder box. I also find that he was not told of the weight of the ice; and if he was told, he did not rely on it when he committed the offence.

48 In the circumstances, I find the Accused guilty on the charge he faced and convicted him.

#### **Dianey's alleged marriage to the Accused**

49 In the course of the trial, it was contended by the defence that Dianey was married to the Accused at the time of the offence and consequently s 124 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Evidence Act") came into play. Section 124 states:

No person who is or has been married shall be compelled to disclose any *communication made to him* during marriage by any person to whom he is or has been married; nor shall he permitted to disclose any *such communication* unless the person who made it or his representative in interest consents, except in suits between married persons or proceedings in which one married person is prosecuted for any crime committed against the other.

[emphasis added]

According to defence counsel, s 124 restricted the evidence that could be led from Dianey.

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<sup>48</sup> PH21.

50 The issue took up a considerable amount of time, but was ultimately irrelevant and without factual basis. Section 124 applies to *communications* made to a person by his or her spouse. Dianey's evidence touched on her *activities* with the Accused during the disputed marriage, and did not go into what he told her. She recounted that they bought the Daia box to hide the drugs in, and that he found the cling wrap that she used to wrap the packets. As this evidence did not pertain to spousal communications, the marriage issue had no legal relevance.

51 More fundamentally, the defence did not prove that there was a marriage. From the time of their arrest and throughout the investigations, the Accused referred to Dianey as his girlfriend, and Dianey referred to him as her boyfriend.

52 The marriage issue came up in a most unusual way. It came out for first time during the cross-examination of the Accused's mother, Normalah, when she tendered a document that purported to be a certified marriage certificate.<sup>49</sup> Normalah's evidence was that she received it in the post. She remembered that it was posted from Johor Bahru, but could not remember when she received it and whether the document came with an accompanying note; and she did not know if the sender's identity was disclosed on the envelope which she had thrown away. Essentially, she did not know why the unknown sender had sent the certificate to her without her request. Although the certificate was in Jawi, she understood that it was a marriage certificate of the Accused and Dianey. (An English translation of the document was produced at the trial).<sup>50</sup> It was submitted on behalf of the Accused that he and Dianey had contracted a Muslim marriage in Pattani, Thailand evidenced in a Marriage Licence No 09383.<sup>51</sup>

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<sup>49</sup> D1.

<sup>50</sup> D1T.

53 As I have mentioned, neither the Accused nor Dianey told the investigation officers that they were married, and neither of them had a copy of the marriage certificate in their possession. Dianey's recollection was that they were married in a mosque in Kelantan, not in Pattani, Thailand. They only asserted that they were married after the curious certificate came to light through Normalah.

54 In view of the unorthodox manner in which the certificate surfaced, some investigations was clearly necessary. The defence, while relying on the marriage certificate produced by Normalah as proof of the marriage, did not take the initiative to verify the authenticity of the document. It was the prosecution which did that. A letter was sent to the Royal Thai Embassy in Singapore, forwarding a copy of the certificate and seeking confirmation if it was genuine and issued in Thailand and recognised under Thai law.<sup>52</sup> The response from the Embassy was that:<sup>53</sup>

... The Islamic Council of Pattani Province has confirmed the certificate of marriage Book No. LL 0376 No. 09383 between Muhammad Nor Sallehin Bin Kamaruzaman and Nur Dianey Binti Mohamed Salim is in fact a counterfeit document.

[emphasis in original]

55 Although the defence was informed of the correspondence, it did not follow up on it or undertake any investigations of its own.

56 The alleged marriage and the certificate had to be proved by the defence in compliance with the Evidence Act. Section 80(1)(g) of the Evidence Act requires a public document in a foreign country be proved:

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<sup>51</sup> Defence's submissions on section 279 of the Criminal Procedure Code para 5(d).

<sup>52</sup> P101.

<sup>53</sup> P99.

by the original or by a copy certified by the legal keeper thereof, with a certificate under the seal of a notary public or of a consular officer of Singapore that the copy is duly certified by the officer having the legal custody of the original and upon proof of the character of the document according to the law of the foreign country.

57 In this case, the marriage was not proved; and, to the contrary, there was authoritative confirmation that the mysterious certificate was a counterfeit. Consequently, I find that there was no marriage; and even if there was a marriage, it did not have any effect on the admissibility of the evidence of Dianey relating to the offence.

Kan Ting Chiu  
Senior Judge

David Khoo and Quek Jing Feng (Attorney-General's Chambers) for  
the Prosecution;  
Suresh s/o Damodara (Damodara Hazra LLP) and Sankar s/o Kailasa  
Thevar Saminathan (Sterling Law Corporation) for the Accused.