IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 172

Criminal Case No 2 of 2021

Between

Public Prosecutor

And

Arun Ramesh Kumar

GROUNDS OF DECISION

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

TABLE OF CONTENTS

Public Prosecutor
v
Arun Ramesh Kumar

[2021] SGHC 172

General Division of the High Court — Criminal Case No 2 of 2021
See Kee Oon J
19–21, 26–29 January 2021, 23 April, 12 May 2021

7 July 2021

See Kee Oon J:

1 The accused, a male Malaysian national, claimed trial to two charges under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") of possession for the purpose of trafficking in controlled drugs. The first charge involved five packets which contained not less than 79.07g of diamorphine ("the diamorphine"). The second charge involved four packets which contained not less than 324.41g of methamphetamine ("the methamphetamine"). I shall refer to the diamorphine and methamphetamine collectively, where appropriate, as "the drugs".

2 At the conclusion of the trial, I was satisfied that the Prosecution had proved the charges beyond a reasonable doubt. I delivered brief oral grounds for my decision to find the accused guilty and convicted him on 23 April 2021. The Prosecution proceeded thereafter to issue a certificate of substantive assistance. In line with my finding that the accused had acted as a courier in

relation to the drugs, on 12 May 2021, he was sentenced to life imprisonment and 15 strokes of the cane per charge, with the total number of strokes limited at 24 as per ss 328(1) and (6) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). I now set out the grounds of my decision in full.

The Prosecution's Case

The accused's arrest and recovery of the drugs

3 The evidence pertaining to the arrest of the accused, the recovery of the drugs as well as the analyses of the drugs carried out by the Health Sciences Authority ("HSA") was largely uncontroversial. The undisputed background facts are set out in an Statement of Agreed Facts dated 6 January 2021 which was tendered pursuant to s 267(1) of the CPC ("SOAF").

4 On 3 April 2018, at about 4.29pm, the accused rode a motorcycle bearing Malaysian registration number JSJ6925 ("the motorcycle") and entered Singapore from Malaysia. One Nagenthiran Thenagan ("Nagenthiran"), a male Malaysian national, was his pillion rider. At about 6.40pm, a party of Central Narcotics Bureau ("CNB") officers deployed in the vicinity of the Alexandra Retail Centre ("ARC") located at 460 Alexandra Road spotted Arun and Nagenthiran leaving the multi-storey carpark of the ARC ("the carpark") on the motorcycle.[1]

5 The CNB officers stopped the accused at the traffic junction of Alexandra Road and Telok Blangah Road. The accused was arrested by Sergeant Syazwan bin Daud Mohamed ("Sgt Syazwan") and Staff Sergeant Goh Jun Xian ("SSgt Eric"). A bunch of seven keys and one carabiner (later marked

[1] SOAF at para 3.

as 'AR-KEY') were seized from him. Nagenthiran was arrested by Sergeant Dadly bin Osman ("Sgt Dadly"). Upon arrest, they were both escorted by SSgt Eric and Senior Station Inspector Ng Tze Chiang Tony ("SSI Tony") to a CNB operational vehicle driven by Sergeant Yogaraj s/o Ragunathan Pillay ("Sgt Yogaraj").[2]

6 Sgt Yogaraj then drove the CNB operational vehicle to Labrador Villa Road while Sgt Syazwan followed behind on the motorcycle. At about 7.38pm, Sgt Syazwan conducted a search of the motorcycle in the presence of the accused and Nagenthiran. Sgt Syazwan then handed over custody of the motorcycle and 'AR-KEY' to SSI Tony. At about 8.35pm, SSI Tony handed over custody of the motorcycle and 'AR-KEY' to Inspector Tay Cher Yeen ("Insp Jason").[3]

7 The accused informed Sgt Yogaraj that he worked as a cleaner at Harbourfront Tower One.[4] At about 10.40pm, Sgt Yogaraj drove the CNB operational vehicle to Harbourfront Tower One, with SSI Tony, SSgt Eric, Arun and Nagenthiran as passengers. Sgt Dadly and Sgt Syazwan followed behind on their CNB operational motorcycles.[5]

8 At about 10.45pm, the party arrived at Harbourfront Tower One. Sgt Syazwan, Sgt Yogaraj and Sgt Dadly escorted the accused to the cleaners' room at basement one of Harbourfront Tower One. The accused informed the CNB officers that 'AR-KEY' included the key to his locker in the cleaners' room. At about 11.05pm, Insp Jason handed over 'AR-KEY' to SSI Tony, who handed it over to Sgt Yogaraj. Sgt Yogaraj used one of the keys to open a three-

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2 SOAF at para 4.

3 SOAF at para 5.

4 Agreed Bundle ("AB") 278,

5 SOAF at para 6.

tiered drawer in the accused's locker in his presence.[6] Sgt Yogaraj then conducted a search of the locker, whereupon the following items were seized:[7]

(a) One red plastic bag containing one blue plastic bag containing four packets of methamphetamine or "ice";

(b) One red plastic bag containing four blue plastic bags and one small red plastic bag each containing one packet of diamorphine or "heroin" (*ie* a total of five packets of diamorphine); and

(c) One green plastic bag containing a digital weighing scale.

9 It was not disputed that all the drugs found in the total of nine packets which formed the subject-matter of the two charges were found in the accused's locker.[8] It was also not disputed that the accused had kept all the items in the said locker.[9]

10 At about 1.42am, Sgt Dadly, Sgt Syazwan and Sgt Yogaraj escorted the accused to the CNB operational vehicle. Sgt Yogaraj drove to CNB Headquarters ("CNB HQ"), with SSI Tony, SSgt Eric, the accused and Nagenthiran as passengers. At about 1.50am, the party arrived at CNB HQ.[10]

11 The integrity and custody of exhibits seized by the CNB officers were not challenged by the accused. In due course, the nine packets of drugs were sent for analysis by the HSA. The drugs in question were found to contain not

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6 SOAF at para 7.

7 AB278.

8 Notes of Evidence ("NE"), 28 January 2021, p 17, ln 29–30.

9 NE, 28 January 2021, p 14, ln 1–3, 15–16.

10 SOAF at para 8.

less than 79.07g of diamorphine in total, and not less than 324.41g of methamphetamine in total. The relevant HSA certificates were duly issued thereafter.

The accused's 13 statements

12 Thirteen statements recorded from the accused were admitted in evidence. Three of these were contemporaneous statements ("P159", "P160" and "P161"). P159 and P160 were recorded by Sgt Yogaraj, whilst P161 was recorded by Sgt Syazwan. The other ten statements were recorded by Assistant Superintendent Tan Zhi Yong Gabriel ("ASP Gabriel") and interpreted to the accused in Tamil by Mdm Vengadasalam Susila ("Mdm Susila"). These ten statements were as follows:

(a) three cautioned statements ("P173", "P174" and "P175") recorded under s 23 of the CPC on 4 April 2018 at 1.53pm, 2.22pm and 2.53pm respectively;[11]

(b) first "long" statement ("P176") recorded under s 22 of the CPC on 10 April 2018 at about 10.05am;[12]

(c) second "long" statement ("P177") recorded under s 22 of the CPC on 12 April 2018 at about 11.12am;[13]

(d) third "long" statement ("P178") recorded under s 22 of the CPC on 13 April 2018 at about 3.10pm;[14]

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11 AB475 to 483.

12 AB484 to 487.

13 AB488 to 494.

14 AB495 to 507.

(e) fourth "long" statement ("P179") recorded under s 22 of the CPC on 16 April 2018 at about 2.15pm;[15]

(f) fifth "long" statement ("P180") recorded under s 22 of the CPC on 8 June 2018 at about 3.20pm;[16]

(g) sixth "long" statement ("P181") recorded under s 22 of the CPC on 15 October 2018 at about 10.33am;[17] and

(h) seventh "long" statement ("P182") recorded under s 22 of the CPC on 23 October 2018 at about 11.17am.[18]

13 The accused accepted that all 13 of his statements enumerated above were given voluntarily and did not challenge their admissibility. However, he took issue with the accuracy and reliability of the recorded statements.[19]

14 The Prosecution relied principally on two contemporaneous statements (*ie*, P160 and P161) which comprised of oral statements made by the accused to show that he had actual possession and knowledge of the drugs. P161 was recorded before his locker was opened and searched. Sgt Syazwan had asked the accused if he had anything in the locker to surrender before the CNB officers began the search. The accused replied that the locker contained five packets of "cokelat" (*ie* Malay for "chocolate") and four packets of "ice", as well as a "timbang". They communicated in Malay. Sgt Syazwan immediately relayed

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15 AB508 to 516.

16 AB517 to 523.

17 AB524 to 525.

18 AB526 to 527.

19 Defence Written Submissions ("DWS") at para 18.

what the accused had said to Sgt Dadly, who wrote the accused's response in the field dairy. The statement was recorded in Malay,[20] an English translation was admitted into evidence at trial. The accused also wrote down his 12-digit Malaysian ID and appended his signature to acknowledge his statement.

15 After the locker was opened and searched, the accused was shown the respective packets containing the drugs. As recorded by Sgt Yogaraj in P160, the accused knew that these were packets of "saapadu" and "ice", and he kept the "saapadu" and "ice" in two separate red plastic bags in the locker. He admitted that he knew that "saapadu" means "heroin" in English. He also stated that the red plastic bag containing the "saapadu" was originally in the other red plastic bag with the "ice". The accused separated the two red plastic bags (with the "saapadu" in one plastic bag and "ice" in the other plastic bag) before keeping them in his locker.[21] In his third long statement recorded 13 April 2018 (*ie*, P178), the accused further admitted that he knew that the packets in one of the red plastic bags contained "ice".[22]

16 It was not disputed that the street names for diamorphine were "heroin" and "chocolate", and the street name for methamphetamine was "ice". The accused admitted having consumed "ice" before in Malaysia and was familiar with it.[23]

17 The Prosecution submitted accordingly that the totality of the evidence showed that the accused had possession and knowledge of the five packets of

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20 AB421 (the translated version of P161 in English).

21 P160.

22 AB496 at paragraph 27.

23 NE, 28 January 2021, p 14, ln 28–29.

diamorphine and four packets of methamphetamine. The burden was thus on the accused to rebut the presumption of trafficking under s 17 of the MDA.[24]

The Defence

18 The accused elected to give evidence as the sole witness for the Defence. He did not dispute his possession and knowledge of the four packets of methamphetamine. His defence focused on the question of possession and knowledge of the five packets of diamorphine. He claimed that he did not know the contents of the red plastic bag with the five plastic bags each containing one packet of diamorphine.[25]

19 The Defence was premised on two main arguments. The accused's first argument was that the Prosecution had not proven that he knew that he was in possession of the five packets of diamorphine.[26] His second set of arguments was premised on alleged threats by a Malaysian male that he only knew as "Sara". "Sara's" handphone number was saved in the accused's list of phone contacts under the name "S2".[27] He had been in contact with "Sara" to obtain a loan, but they had never met. In this context, the accused argued the defence of duress as he was allegedly threatened by "Sara" to receive and keep the drugs.[28] He also contended that he had only intended to return the drugs to "Sara" and was therefore not intending to traffic in the drugs *ie*, he was only holding the

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24 Prosecution's Written Submissions dated 19 March 2021 ("PWS") at para 13.

25 NE, 28 January 2021, p 19, ln 24-25.

26 DWS at para 26.

27 AB605.

28 DWS at paras 28–43.

drugs as a bailee as per the Court of Appeal decision of *Ramesh a/l Perumal v Public Prosecutor* [2019] 1 SLR 1003 ("*Ramesh a/l Perumal*").[29]

The accused's account of events leading to his arrest

20 The accused testified that he had contacted "Sara" for a loan in late March 2018. "Sara" called the accused on 1 April 2018 and asked him to pick up a plastic bag containing an "important thing". For doing "Sara" this favour, the accused would receive an interest-free loan. The accused agreed without asking what this "thing" was. After entering Singapore at 3.44pm on 1 April 2018, he went to Tuas on "Sara's" directions and collected the plastic bag from a dust-bin at a bus stop in Tuas. As "Sara" had said that it was an "important thing", the accused did not open the plastic bag to see the contents.[30]

21 "Sara" allegedly told the accused that someone would be coming to take the plastic bag from him.[31] The accused waited at the bus stop for a long time but no one came to pick up the plastic bag.[32] He decided to keep the plastic bag in his locker at Harbourfront Tower One.[33] Before doing so, he opened it and saw three plastic bags inside, one of which contained four packets of "ice" and another a weighing scale or "timbang", as it is called in Malay. He left the last of the three plastic bags unopened.[34]

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29 NE, 28 January 2021, p 20, ln 28-29; DWS at para 27.

30 NE, 28 January 2021, p 10, ln 32 to p 12 ln 31.

31 NE, 28 January 2021, p 12, ln 21–24.

32 NE, 28 January 2021, p 13, ln 4-6.

33 NE, 28 January 2021, p 14, ln 1–13.

34 NE, 28 January 2021, p 17, ln 1-11.

22 The accused then received a phone call from "Sara". He told "Sara" that he was scared on seeing the packets of "ice" and would throw them away if "Sara" did not come to collect it. "Sara" then threatened the accused, saying that he would call the police to arrest him, and that he would do something to the accused's family if he were to throw the plastic bag away. The accused agreed not to do so out of fear. "Sara" told the accused that he would call him the following day. The accused then returned to Malaysia.[35]

23 "Sara" and the accused subsequently communicated again on the night of 2 April 2018 and the morning of 3 April 2018. "Sara" told him that he would collect the plastic bag from him in Singapore. "Sara" further asked the accused to help him collect money from someone. The accused refused to do so as he had already helped "Sara" once and gotten into trouble. "Sara" then threatened the accused again and said that he would notify the police and get the accused caught and also that he would not leave him or his family alone. As the accused was scared, he agreed to collect the money. "Sara" then directed him to where he was supposed to pick up the money.[36]

24 The accused entered Singapore on 3 April 2018 and called "Sara" once he reached the specified location. "Sara" told him to collect a plastic bag which was left at the roadside. The accused noticed that the plastic bag contained money and another plastic bag. "Sara" told him to throw the plastic bag away at another place and collect money. The accused refused, but "Sara" again threatened to call the police or do something to his family. The accused eventually agreed to do whatever "Sara" wanted him to do. "Sara" told the accused to go to Alexandra and throw the plastic bag away, and then to go to

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35 NE, 28 January 2021, p 20, ln 6 to p 21 ln 8.

36 NE, 28 January 2021, p 23, ln 31 to p 24, ln 21.

Harbourfront Tower One. The accused did as he was told. On his way to Harbourfront Tower One, he was arrested.[37]

The accused's contentions in relation to his statements

25 The accused alleged that he had not spoken to Sgt Syazwan, the recorder of P161, on the day of his arrest.[38] He did not know what was written in his contemporaneous statements. He claimed that this was because he was under the influence of alcohol and "ice" that he had consumed earlier that day.[39] He claimed that he had signed on P161 only because Sgt Yogaraj had given him a book and told him to sign on it at specific places.[40] The accused further claimed that Sgt Yogaraj only showed him a packet of "heroin" from inside a "blue plastic bag" recovered from the locker, and that it was Sgt Yogaraj who told him that in Malaysia, it was known as "saapadu".[41]

26 In addition, the accused claimed that his various statements were not fully interpreted and read back to him in Tamil by both Sgt Yogaraj and Mdm Susila, the CNB interpreter. He maintained that after the recording of each s 22 CPC statement, Mdm Susila had only read a "summary" of each of these long statements back to him in Tamil.[42]

27 Before the accused testified, it was initially suggested through counsel's cross-examination of the prosecution witnesses that he may not have understood

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37 NE, 28 January 2021, p 24, ln 21 to p 25, ln 22.

38 NE, 28 January 2021, p 28, ln 8.

39 NE, 28 January 2021, p 78 lines 20–24; DWS at para 17.

40 NE, 28 January 2021, p 29, ln 7-8.

41 NE, 28 January 2021, p 34, ln 19-20; p 35, ln 3–5.

42 NE, 28 January 2021, p 49, ln 1-3.

English or Malay but was only able to understand Tamil. He eventually accepted under cross-examination that he was conversant in simple English and Malay[43] even though he did not understand the "big words" in English.[44] It was also not disputed that the accused was educated in Malaysia to Form Four, the equivalent of Secondary Four education in Singapore.[45]

My decision

28 The three key elements of the offence of possession of controlled drugs for the purpose of trafficking are (a) possession of the controlled drugs (which may be proved or presumed), (b) knowledge of the controlled drugs (which may be proved or presumed) and (c) proof that the possession of the controlled drugs was for the purpose of trafficking: see *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 at [28].

29 There was undisputed evidence that the accused was in possession of the drugs. For element (c), the Prosecution relied on the presumption of trafficking in s 17 MDA as the accused was found in possession of the drugs and positive evidence had been adduced in the form of his contemporaneous statements (*ie*, P160 and P161) showing that he knew the nature of the drugs in question. Accordingly, the primary issue for my consideration in this regard was whether the evidence was sufficient to prove beyond reasonable doubt that the accused knew the nature of the controlled drugs found in his possession. As for the methamphetamine, the accused did not dispute his knowledge that the four packets contained methamphetamine; he had consumed "ice" before in Malaysia and was familiar with it. The key issue was whether he knew that the

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43 NE, 28 January 2021, p 81, ln 1–3.

44 NE, 28 January 2021, p 53, ln 17-20; p 72, ln 25–30.

45 NE, 28 January 2021, p 84, ln 22–27.

five packets contained diamorphine. If this was established, the burden would then fall upon the accused to rebut the presumption of trafficking in s 17 of the MDA by proving on a balance of probabilities that he did not have the drugs in his possession for that purpose.

The accused knew that the five packets contained diamorphine

30 It is settled law that where an accused is charged with possession of a particular type of drug for the purpose of trafficking, he must have known the nature of the actual drug in his possession: see *Nagaenthran a/l K Dharmalingam v Public* Prosecutor [2011] 4 SLR 1156 at [24]–[26], as affirmed in *Ramesh a/l Perumal* at [65].

31 I rejected the accused's claim of ignorance of what the five packets actually contained. Two of his contemporaneous statements, P160 and P161, clearly revealed his actual knowledge that the five packets contained diamorphine. He had volunteered relevant incriminating information even before the locker was opened in his presence. He was familiar with the street names for both diamorphine and methamphetamine.

32 The accused's evidence was that he did not check the plastic bag when he first picked it up at Tuas as "Sara" had told him there were "important" things inside. Evidently, curiosity eventually got the better of him and he did check the bag after he had decided to bring the bag to keep in his locker. P160 and P161 plainly contradicted the accused's claim that after seeing that there were four packets of "ice" within the plastic bag as well as a "timbang", he did not check to see what else was inside.

33 Turning first to P161, this was a brief question and answer statement which was recorded in the field diary. I noted that Sgt Syazwan and Sgt Dadly

had given consistent evidence as to how the statement was recorded. The accused himself had written his Malaysian ID number and signed on the statement. He did not dispute this but claimed that he had only done so because Sgt Yogaraj told him to. Implicit in this claim was an assertion that Sgt Syazwan and Sgt Dadly were never involved in recording any statement from him, and had fabricated the contents of P161, as well as their evidence in court.

34 The Prosecution had disclosed in their entirety all the relevant portions from the field diary ("P232") at the trial to the Defence. This was furnished in the course of cross-examination of Sgt Dadly, who had confirmed the events that led up to the recording of P161. In the face of this contemporaneous evidence, no questions were posed by the Defence in relation to the juxtaposition of the statement in P161 within P232 to Sgt Yogaraj, Sgt Dadly or Sgt Syazwan. There was no suggestion that it appeared to be out of context in P232.

35 I rejected the accused's contentions in relation to P161. His claims simply did not make sense. The accused acknowledged that he had the opportunity to read the statement when it was shown to him before he appended his signature. He also accepted that he could read and understand the statement.[46] This was completely at odds with his claim that he had signed the statement purely because Sgt Yogaraj had shown him a book and asked him to sign it. There was also absolutely no plausible reason why his signature and Malaysian ID would have been written in P161 under his own hand unless this was for the purpose stated in P161 *ie* to acknowledge a statement that he had given voluntarily to Sgt Syazwan, as recorded by Sgt Dadly.

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46 NE, 28 January 2021, p 86, ln 7-11.

36 As for P160, this was a more detailed statement recorded by Sgt Yogaraj after the locker had been opened in the accused's presence and the drugs were shown to the accused. The accused denied that he had told Sgt Yogaraj that the diamorphine was "saapadu". Instead, he claimed that Sgt Yogaraj had told him that the substance was known as "saapadu" in Malaysia. When the accused's claim was put to Sgt Yogaraj during cross-examination, Sgt Yogaraj disagreed that he had initiated the use of the word "saapadu".

37 As with his contentions for P161, the accused's assertion was that Sgt Yogaraj had fabricated both P160 and his evidence in court. It is pertinent to note that the accused again acknowledged that he was given the opportunity to read the statement and had appended his signature numerous times on the statement, and also written down his Malaysian ID.[47] In any event, I accepted that Sgt Yogaraj had read the statement back to the accused in Tamil.

38 In respect of both P160 and P161, I saw no reason why the CNB officers involved in recording the statements would have fabricated the statements or given false evidence in court. P161 was recorded in the field diary as part of a listing of a chronological sequence of events. It was perhaps not wholly inconceivable, but highly unlikely, that P161 could have been fabricated by way of a contemporaneous addition into the field diary for the purpose of incriminating the accused. It was even less likely that it was surreptitiously added *ex post facto*. In any event, this was not the Defence's case and the accused did not offer any reason why the CNB officers would have resorted to such dubious means. As for P160, Sgt Yogaraj had recorded it using a question and answer format, just as he had done for the recording of the accused's first

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47 NE, 28 January 2021, p 78, ln 3-12.

contemporaneous statement in P159. The accused made no effort to correct both P159 and P160 but signed on them and wrote down his Malaysian ID as well.[48]

39 I found that the accused had exaggerated his claim to have been fatigued and under the influence of alcohol and the "ice" that he had allegedly consumed on the day of his arrest. His evidence on this score was not credible in any case. The three doctors (Dr Yak Si Mian, Dr Edmund Phua and Dr Derrick Yeo) who examined him following his arrest all confirmed that he had told them that he had not consumed any alcohol or drugs. In particular, Dr Yak Si Mian had examined the accused around 12 hours after P160 was recorded and had noted that he did not report or exhibit any drug withdrawal symptoms.[49]

40 Taking the accused's case at its highest *ie* that he had consumed both "ice" and alcohol on the day of his arrest, the totality of the evidence pointed cogently to him not exhibiting any signs of having been adversely affected by drugs or alcohol. He did not appear fatigued. He rode the motorcycle with Nagenthiran as pillion in a steady and normal manner and acknowledged that he was able to execute a U-turn on the motorcycle without apparent difficulty just before he was apprehended. Close-circuit TV footage capturing the accused at the lift lobby of the carpark of the ARC before his arrest also appeared uneventful; the accused himself agreed that he was not walking unsteadily or looking like he was intoxicated when the footage was shown at the trial.[50] Most importantly, upon his arrest, he was able to respond coherently and in detail to specific questions posed by the CNB officers, append his signature multiple times and also write down his Malaysian ID. Sgt Yogaraj in particular had not

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48 NE, 28 January 2021, p 78, ln 13-24.

49 NE, 19 January 2021, p 110, ln 7-20.

50 NE, 28 January 2021, p 61, ln 29 to-p 63, ln 18.

noticed anything significant or unusual about the accused's demeanour, or that he had smelled of alcohol, looked confused or tired.[51]

41 I was satisfied that both the accused's contemporaneous statements in P160 and P161 were truthful, accurate and reliable. I was also satisfied that where required, all the relevant statements had been duly read back and interpreted to him in Tamil, a language which he understood.

42 In relation to the long statements, I did not accept his claims that there were serious inaccuracies or that all Mdm Susila had done was to summarise the contents without interpreting the statements in their entirety to him. Mdm Susila was an experienced interpreter. She was consistent in her testimony of having interpreted every line of the long statements to the accused. The accused was then given the opportunity to make any amendments, and thereafter had appended his signature on every page. There was no reason to think that Mdm Susila was not telling the truth or had somehow been mistaken.

The accused could not avail himself of the defence of duress

43 As for the accused's claim of having acted under duress due to the threats from "Sara", I found that his evidence was not credible. At the outset, I noted that whilst he did mention to Dr Derrick Yeo that "Sara" had threatened to harm his family if he did not comply, he *did not* provide any details of these threats.[52] He also did not inform Dr Derrick Yeo that his wife was pregnant at the time.

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51 NE, 19 January 2021, p 53, ln 22-30.

52 AB263.

44 By the time Dr Derrick Yeo first examined the accused *ie* on 26 April 2018, aside from the three contemporaneous statements and the three cautioned statements, four long statements had already been recorded between 10 to 16 April 2018. Notwithstanding what the accused had told Dr Derrick Yeo, it was telling that he did not raise any fears or concerns about his safety or that of his immediate family in all ten statements which were recorded up to 16 April 2018. He did not do so in a further long statement recorded on 8 June 2018 either.

45 Instead, from all the statements the accused had given up to 8 June 2018, his only expressed fear was purportedly from having seen "ice" in the four packets as well as a "timbang". There was no more than an isolated mention of his concern over his wife's pregnancy in the first of his three cautioned statements (*ie*, P173).[53] He stated that she was due to give birth in four days and there was "no one to take care of [her]". He did not mention any threat from "Sara", let alone any such threat that was linked to his pregnant wife's safety. If such threats had been made and the accused had genuine concerns, it was natural and reasonable to expect that at least *some* mention of these threats would have been made in his statements at the earliest available opportunity, if not contemporaneously, then sometime soon after his arrest. Nothing else was said in his subsequent five long statements of any purported fear of threats to his pregnant wife's safety or his own until his statement of 15 October 2018 (*ie*, P181),[54] which was more than six months after his arrest.

46 From the objective evidence and based on his own account, the accused did not conduct himself in a manner that suggested that he was remotely fearful

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53 AB477.

54 AB524.

of "Sara" or apprehensive of any threat to his family's safety. He sent two pictorial messages to "Sara" and some others in the early morning hours of 3 April 2018, including one greeting them with a hale and hearty "Good Morning".[55] He took "ice" and downed a few beers on 3 April 2018 with seeming nonchalance. He even casually took a photograph of several beer cans he had purportedly purchased and sent it to one "Jo Bro".[56] Moreover, he had readily volunteered information about "Sara" in his contemporaneous statements in P159 and P160 immediately upon his arrest, in spite of his professed fear that "Sara" might harm his family if the police were to track "Sara" down. This was all starkly incongruous with the accused's claims of having been repeatedly threatened by "Sara". All considered, his actions were not consistent with any apparent concern for his own safety or the safety of his wife and family.

47 I should add that in the Defence's Closing Submissions, it was alleged at paragraphs 34 and 37 that "Sara" had threatened to "finish-off" the accused's wife.[57] This was not simply an afterthought, but a barefaced lie. It was pure fabrication on the accused's part. He had never once mentioned, whether in his statements or in his oral evidence at trial, any such threat from "Sara" to "finish off" his wife.

48 I found that the accused's claim of having acted under duress due to "Sara's" threats was patently implausible. It was an obvious afterthought. In any event, the defence of duress is not tenable in view of s 94 of the Penal Code (Cap 224, 2008 Rev Ed), which provides:

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55 AB637 to 639.

56 AB634.

57 DWS at paras 34, 37.

> **Act to which a person is compelled by threats**
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> 94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that *instant death* to that person or any other person will otherwise be the consequence.
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> [emphasis added]

49 It would suffice to highlight that the accused had never alleged that "Sara" had threatened *instant death* to him or his immediate family. The accused was unable therefore to avail himself of the defence of duress.

The alleged intention to return the drugs to "Sara" was an afterthought

50 Finally, I turn to the primary argument raised by the Defence at trial, namely that the accused was intending to return all the drugs to "Sara". The Defence had cited *Ramesh a/l Perumal* for the proposition that a person who returns drugs to the person who originally deposited the drugs with him would not ordinarily come within the definition of "trafficking": *Ramesh a/l Perumal* at [110]. It was submitted that the presumption of trafficking in s 17(*c*) and (*h*) of the MDA had been rebutted, since the accused's defence was that he was holding on to the drugs for the owner "Sara" to collect them back from him.

51 In *Ramesh a/l Perumal*, the Court of Appeal examined the legislative policy on the interpretation of the MDA having regard to the decision of the Privy Council in *Ong Ah Chuan v Public Prosecutor* [1979-1980] SLR(R) 710 and concluded thus as [110]:

> [I]n our judgment, a person who returns drugs to the person who originally deposited those drugs with him would not ordinarily come within the definition of "trafficking". It follows that a person who holds a quantity of drugs with no intention of parting with them other than to return them to the person who originally deposited those drugs with him does not come within the definition of possession of those drugs "for the purpose of trafficking". There is a fundamental difference in

> character between this type of possession and possession with a view to *passing the drugs onwards* to a third party. In the former situation, the returning of the drugs to person who already was in possession of them to begin with cannot form part of the process of disseminating those drugs in a particular direction – *ie*, from a source of supply towards the recipients to whom the drugs are to be supplied – because the act of returning the drugs runs counter to that very direction. On the other hand, in the latter situation, the intended transfer of the drugs to a third party is presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final consumer.
>
> [Emphasis in original]

52 The Court of Appeal further held at [114] that where a person's involvement with a quantity of drugs is limited to keeping the drugs as a "bailee" with the intention to return the drugs to the "bailor" who originally deposited them with him, this would not without more render the "bailee" liable for trafficking. The rationale was that the mere act of returning the drugs would not constitute part of the process of supply and distribution of drugs "along a chain" downstream to their end-users. The Court of Appeal did not go so far as to hold that the presumption of trafficking would not operate under any circumstances, but rather observed that a person found in possession of drugs in such a situation would not be caught by the definition of possession of those drugs "for the purpose of trafficking": at [110]. As the outcome in *Ramesh a/l Perumal* demonstrates, such a person would be able to successfully rebut the presumption of trafficking.

53 In my view, the Court of Appeal's observations in *Ramesh a/l Perumal* at [110] did not assist the accused. The prospect of the accused intending to return the drugs to "Sara" was only raised once, in his interviews with Dr Derrick Yeo for psychiatric assessment,[58] and elaborated upon for the very first

[58] AB263

time at the trial. By the time he was first interviewed by Dr Derrick Yeo on 26 April 2018, he had already given three contemporaneous statements, three cautioned statements and four long statements with absolutely no mention of any intention to return the drugs to "Sara". If he had truly intended all along to return the drugs to "Sara", there was patently no explanation why he had conspicuously failed to mention this in any of his 13 statements.

54 The varying versions the accused offered about how "Sara" was involved and how he had acted on "Sara's" instructions were vague and shifting. I have already highlighted how the accused's account of "Sara" threatening to harm his wife and family was not credible.

55 In addition, the accused had given different versions of the dates and times when he had actually picked up the plastic bag from Tuas. In his long statement at P178, he claimed that he had done so on 31 March 2018 after entering Singapore from Tuas Checkpoint sometime after 5 pm. He claimed that he waited at the bus stop at Tuas for "two plus hours" but no one came to collect the bag.[59] He was later confronted with his immigration entry and exit records (*ie*, P243) for 31 March 2018 which showed that he had stayed in Singapore for *less than two hours*, entering only at 8.24pm, before exiting at 10.02pm.[60] He maintained his account that he picked up the plastic bag that day but claimed that he could have recalled wrongly in P178 that he had waited for more than two hours.[61] However, he changed his account at trial. For the very first time, he claimed that he had in fact collected the plastic bag on 1 April 2018.[62] This was

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59 AB496.

60 P243.

61 AB526.

62 NE, 28 January 2021, p 12, ln 1-2; p 36, ln 2-8.

alleged some three years after the event. As the Prosecution rightly submitted, this was a blatant attempt to tailor his evidence in light of the immigration records. It amply demonstrated that he was not a reliable witness.

56 Crucially, the accused's evidence in connection with what he had intended to do with the drugs was materially inconsistent. In all his statements, (*eg,* his cautioned statements P174[63] and P175[64]; his long statements in P178[65] (13 April 2018); P179[66] (16 April 2018); P181[67] (15 October 2018)), he maintained that "S2" (*ie,* "Sara") had instructed him that *someone would collect the drugs from him*. The accused never mentioned in any of his 13 statements that "S2" had instructed that the drugs were to be returned to him. He had also never mentioned in any of his 13 statements that there was any arrangement for "Sara" to *personally collect* the drugs from him.

57 On the accused's own evidence, "Sara" had not in fact "deposited" the drugs with him for safekeeping. The drugs were never intended to be "deposited" with him as a "bailee" for "Sara" to begin with. The accused never alleged that "Sara" had *requested* him, let alone *instructed* him, to keep the drugs for him to await further instructions if no one came to collect them. Instead, the accused had kept them in his locker entirely on his own initiative. He allegedly did so only because he had waited in vain for the person who was supposed to collect them from him initially at Tuas on 1 April 2018.[68]

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63 AB480

64 AB483

65 AB497

66 AB510

67 AB524

68 NE, 28 January 2021, p 13, ln 22-29.

58 The common thread in all his 13 statements was that "Sara" would arrange to send someone to collect the drugs from him. It was only at trial, nearly three years after the event, that the accused mentioned *for the very first time* that "Sara" would be *collecting* the drugs from him. It would appear that the accused had decided to tailor his bespoke defence belatedly upon realising that "bailment" was a possible defence that might be supportable on the authority of *Ramesh a/l Perumal*, a decision which was handed down by the Court of Appeal in March 2019, after he had already given all his statements. The isolated mention of an intention to return the drugs to "Sara" when interviewed by Dr Derrick Yeo did not assist him. He would have had every opportunity to raise this point in subsequent long statements, but he never did.

59 I rejected the accused's claim that he was merely holding on to the drugs with a view to returning them to "Sara", and that "Sara" would be collecting the drugs from him. When the evidence was assessed in totality, it showed that all this was plainly crafted as an afterthought by the accused in a calculated effort to bring himself within the "bailment" defence identified in *Ramesh a/l Perumal*.

60 The Court of Appeal's observations in *Ramesh a/l Perumal* in relation to how a person who returns drugs to a person who originally deposited the drugs with him would not ordinarily come within the definition of "trafficking" therefore had no application to the present case.

The presumption of trafficking was not rebutted

61 As explained above, I had found that the accused was in possession of the drugs and had known that the four packets contained methamphetamine and

the five packets contained diamorphine. I had also found that he could not avail himself of the defence of duress.

62 Taking these findings together with his own admissions from his statements, it was evident that the accused knew that "Sara" was a drug trafficker who had gotten him involved in drug dealings. He was fully conscious that "Sara" had arranged for him to assist in delivering or handing over the drugs to some other person(s). Such conduct would amount to giving, transporting, sending or delivering the drugs to a third party. These are four of the seven possible meanings of trafficking stipulated under s 2 of the MDA. He was waiting for "Sara's" instructions when he was arrested. This was the Prosecution's basic narrative at trial.

63 In this regard, the Court of Appeal had pointedly observed in *Ramesh a/l Perumal* at [114] as follows:

> … while we have also found that Parliament's objective under the MDA was to address the movement of drugs towards end-users, *this should not be taken as any suggestion that establishing the offence of trafficking or possession for the purpose of trafficking requires the Prosecution to prove that the accused was moving the drugs closer to their ultimate consumer.* In the vast majority of cases, it can reasonably be assumed that the movement of drugs from one person to another, *anywhere along the supply or distribution chain*, was done to facilitate the movement of drugs towards their ultimate consumers. It is clear, however, that this assumption does not hold true in the case of a person who merely holds the drugs as "bailee" with a view to returning them to the "bailor" who entrusted him with the drugs in the first place. *Such a person cannot, without more, be liable for trafficking because the act of returning the drugs is not part of the process of supply or distribution of drugs.*
>
> [Emphasis added]

64 As the observations above make clear, the Prosecution was not required to prove that the accused was moving the drugs closer towards their ultimate

consumers. For the avoidance of any doubt, the Prosecution was also not required to show that the accused intended to sell or distribute the drugs. In the present case, there was nothing to suggest that the accused's act of possession was not intended for the downstream process of supply and distribution of drugs towards their ultimate consumers, given his own statements indicating that "Sara" would arrange for *someone to collect the drugs from him*.

65 Taking the accused's claims as contained in his statements at their highest, he had intended to pass on the drugs in his possession to *someone else* on "Sara's" instructions. By doing so, he would be acting as a courier on "Sara's" behalf since he undoubtedly knew that "Sara" was involved in drug trafficking. Adopting the Court of Appeal's observations in *Ramesh a/l Perumal* at [110], this would still amount to "possession with a view to passing the drugs onwards to *a third party*" [emphasis added]. The Court of Appeal had opined unambiguously at [110] that such a situation involving intended transfer of drugs to a third party is "presumptively part of the process of moving the drugs along a chain in which they will eventually be distributed to their final customer". The accused had not raised anything in his defence to counter this, other than to assert at the eleventh hour that his 13 statements were all inaccurate and that "Sara" had purportedly said that he would retrieve the drugs from him.

66 In my assessment, even if I had erred in the above analysis, the accused would still be liable in the alternative for abetting or doing an act preparatory to, or in furtherance of, the commission of a trafficking offence. The facts disclosed that the accused knew that "Sara" was the primary offender involved in drug trafficking. "Sara" had arranged for the delivery or distribution of the drugs through the accused. The accused took it upon himself to safekeep the drugs with a view to handing them over to "someone" who "Sara" would

arrange to send to collect the drugs. This is substantially in line with the illustration of abetment by aiding in *Ramesh a/l Perumal* at [115].

67 For completeness, I should mention that I had some reservations in respect of the Prosecution's closing submissions that the accused's possession of the drugs for the purpose of giving them *back* to "Sara" would fall squarely within the definition of trafficking under s 2 of the MDA.[69] I did not agree that [114] of *Ramesh a/l Perumal* supports this submission, which glosses over the Court of Appeal's fundamental point that a "bailee" who retains the drugs with a view to returning them to the "bailor" is not, without more, liable for trafficking. If I had accepted the accused's assertions that he was only planning to return the drugs to "Sara", the more reasonable inference would be that this would not amount to movement of drugs "along the supply or distribution chain", and therefore would not fall within the definition of trafficking under s 2 of the MDA.

68 I understood the Prosecution's closing submissions to be premised on the lack of evidence adduced by the accused to show that "Sara" was in fact the "bailor". It was submitted that the accused gave *no evidence* that "Sara" was the person who "originally deposited" the drugs with him or that "Sara" had personally left the drugs at Tuas for the accused to collect.[70] In my view, this submission was not sustainable. It reflected an attempt to draw unduly fine distinctions based on a somewhat pedantic reading of [110] and [114] of *Ramesh a/l Perumal*. There was some objective evidence that "Sara" was not entirely a figment of the accused's imagination although there was nothing apart from the accused's own say-so to link "Sara" to the drugs. I did not see a good

69 PWS at para 81.

70 PWS at para 82.

reason for adopting such a rigidly technical approach in evaluating the facts. The drugs could conceivably have been left at Tuas by someone else acting on "Sara's" directions and I did not see how that would necessarily negate the possible characterisation of "Sara" as the "bailor". The essence of the "bailment" defence is that the accused must not have intended to move the drugs along the supply or distribution chain – questions of *who* had deposited the drugs and *who* had reclaimed them are important but not determinative. The crux of the matter is that, a person cannot be liable for trafficking if his act "is not *part of* the process of supply or distribution of drugs" [emphasis in original] (see *Ramesh a/l Perumal* at [114]).

69 I found that the presumption in s 17 of the MDA that the accused was in possession of the drugs for the purpose of trafficking was correctly invoked. The accused had failed to rebut the presumption. His defence was not credible, and he was an unreliable and evasive witness. His explanations at trial were entirely self-serving. New assertions and embellishments emerged only in the course of the trial. Indeed, it was not possible to tell precisely how or when he came to be in possession of the drugs, given that he had blatantly lied and given inconsistent accounts and shifting explanations to suit his purposes.

Conclusion

70 I was satisfied that the Prosecution had proved that the accused had actual knowledge of the nature of the drugs. The accused had failed to rebut the presumption in s 17 of the MDA on a balance of probabilities, *ie* that he had the diamorphine and the methamphetamine in his possession for the purpose of trafficking. His intent to traffic in the drugs found in his possession was premised on his statements which showed that he was awaiting "Sara's" instructions for him to pass on the drugs to someone else who would be sent to

collect them from him. Essentially, by his own admission from his contemporaneous statements, the accused was acting as a courier on "Sara's" behalf.

71 The Prosecution had proved the two charges beyond reasonable doubt. I therefore found the accused guilty as charged and convicted him. As a certificate of substantive assistance was issued, I exercised my discretion under s 33B(1)(*a*) of the MDA not to impose the death penalty given that I had found that the accused's involvement with the drugs was limited to acting as a courier.

72 The accused was thus sentenced to life imprisonment and the mandatory minimum of 15 strokes of the cane for each charge, with caning limited to the maximum of 24 strokes permissible by law. I backdated his sentence to 3 April 2018, the date of his arrest.

See Kee Oon
Judge of the High Court

Dwayne Lum, Samuel Yap and Pavithra Ramkumar (Attorney-General's Chambers) for the prosecution;
A Revi Shanker s/o K Annamalai (AR Shanker Law Chambers) and Elengovan s/o V Krishnan (Elengovan Chambers) for the accused.