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

[2021] SGHC 164

Criminal Case No 55 of 2019

Between

Public Prosecutor

And

Gunasilan Rajenthiran

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Evidence] — [Proof of evidence] — [Presumptions]
[Criminal Procedure and Sentencing] — [Statements] — [Voluntariness]

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Public Prosecutor
v
Gunasilan Rajenthiran

[2021] SGHC 164

General Division of the High Court — Criminal Case No 55 of 2019
Valerie Thean J
2–5, 10–13 November 2020, 25 January 2021, 3, 28 May 2021

7 July 2021

Valerie Thean J:

Introduction

1 Gunasilan Rajenthiran, a 27-year-old male Malaysian national ("the accused") was charged with importing cannabis into Singapore under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):

> **YOU ARE CHARGED** at the instance of the Public Prosecutor and the charge against you is:
>
> That you, **GUNASILAN RAJENTHIRAN,**
>
> are charged that you, on 25 July 2018 at or about 7.35a.m., at Tuas Checkpoint, Arrival Motorcycle Zone 3, Lane 76, Singapore, did import into Singapore a controlled drug listed in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"), *to wit*, five (05) blocks containing not less than 1,475.3 grams of vegetable matter which was analysed and found to be cannabis, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 7 punishable under section 33(1) of the Act, and further upon your conviction under section 7 of the Act, you may

> alternatively be liable to be punished under section 33B of the Act.

2 I convicted him on the charge as framed on 3 May 2021. The criteria under s 33B(2) of the MDA were met. I sentenced him to life imprisonment and 15 strokes of the cane on 28 May 2021. The accused has appealed against his conviction and sentence. These are my grounds of decision.

Facts

3 At the material time, the accused was residing in Malaysia and working in Singapore as a production worker at Nelco Products Pte Ltd ("Nelco").[1] He entered Singapore through Tuas Checkpoint on motorcycle each working day.[2] On 25 July 2018, at around 7.35am, when Auxiliary Police Officer Sergeant Muhammad Afiq Bin Haron ("Sgt Afiq") did a routine check of his motorcycle, two packets containing reddish cubes were found inside the motorcycle seat.[3] Sgt Afiq sought help from Sergeant Mohamed Sabbir Bin Mohamed Zamshahasry ("Sgt Sabbir"), who placed the two packets on the motorcycle seat and covered them with the accused's helmet.[4] An "ION Scan" and swab test of the two packets were conducted.[5] Around this time, Auxiliary Police Officer Staff Sergeant Usha Devi d/o Krishnasamy ("SSgt Usha") approached the motorcycle and shined her torchlight on the packages to check what they were.[6]

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1 Statement of Agreed Facts dated 15 September 2020 ("SOAF") at para 1.

2 Transcript, 12 November 2020, p 80 lines 9–17.

3 Agreed Bundle ("AB") p 211.

4 AB at p 211.

5 AB at p 211.

6 Transcript, 11 November 2020, p 84 lines 28 – 31.

She asked the accused what he had brought into Singapore and he responded that it was food.[7]

4 At around 7.58am, a team of Central Narcotics Bureau ("CNB") officers which included Station Inspector Mohd Raziff Bin Mohd Yusoff ("SI Raziff"), Sergeant (3) Muhammad Fadhil Bin Amar Tugiman ("Sgt(3) Fadhil") and Staff Sergeant Poh Wee Lee ("SSgt Poh") arrived at the scene.[8] They were briefed by Sgt Sabbir and Sgt Afiq and shown the two packets placed on the motorcycle. After identifying himself to the accused as *pegawai narkotik* (the Malay equivalent for "narcotics officer"), SI Raziff arrested the accused. When informing him of the grounds of arrest, he used the word *dadah*, a Malay word meaning "drugs".[9]

Discovery of the cannabis

5 The accused was escorted by the officers to Tuas Checkpoint, A3 Garage ("the garage").[10] At about 8.10am in the garage, SSgt Poh asked the accused if he had anything in his motorcycle. The accused replied that there was something in the front storage box. SSgt Poh found a pair of folded raincoat pants containing one block of vegetable matter (marked B1A) when he searched the front storage box.[11] Afterwards, he asked the accused if he had anything else, and the accused stated that there were items on his body. SSgt Poh then searched

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7 Transcript, 11 November 2020, p 86 lines 13 – 16; 12 November 2020, p 87 lines 3 – 18.

8 SOAF at para 3.

9 AB 214; Transcript, 3 November 2020, p 3 lines 3 – 9, p 7 line 28 to p 8 line 12; 12 November 2020, p 87 line 31 to p 88 line 4.

10 AB at p 4.

11 SOAF at para 5.

the accused's body and recovered four blocks of vegetable matter, marked BW-F1, BW-F2, BW-B1, and BW-B2.[12]

6 The five blocks (B1A, BW-F1, BW-F2, BW-B1, and BW-B2, collectively, "the Drugs") were seized and photographed. They were weighed in the accused's presence, acknowledged by the accused, and thereafter submitted to the Health Sciences Authority's ("HSA") Illicit Drugs Laboratory for analysis.[13] The Drugs' chain of custody was not disputed at trial. On 19 November 2018 Dr Ong Mei Ching ("Dr Ong"), an analyst with the Illicit Drugs Laboratory, produced certificates under s 16 of the MDA in respect of the five blocks (the "HSA Certificates"). These showed that the five blocks contained 1,475.3g of vegetable matter that was found to be cannabis.[14]

Phone calls made and received post-arrest

7 After the accused was arrested, between 8.45am and 4.06pm on 25 July 2018, the accused made and received several phone calls in Tamil to and from persons identified as "Pandian" and "Jo".[15] The accused explained at trial that Pandian was previously a colleague from the same department as he was at Nelco,[16] and he was acquainted with Jo through Pandian.[17]

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12 SOAF at para 6.

13 SOAF at paras 8 and 12 to 14.

14 AB at pp 185–194.

15 SOAF at para 17; Exhibit P112.

16 Transcript, Transcript, 12 November 2020, p 74 lines 7–9.

17 Transcript, 12 November 2020, p 78 lines 17–19.

The accused's statements and Dr Phang's report

8 The accused gave several statements after his arrest and during the course of investigations (the "accused's statements"). These included:

(a) the accused's first contemporaneous statement recorded on 25 July 2018 by Sgt(3) Fadhil at around 9.45am;[18]

(b) the accused's second contemporaneous statement recorded on 25 July 2018 around 11.45am by Sgt(3) Fadhil;[19]

(c) the accused's cautioned statement recorded under s 23 of the Criminal Procedure Code (Cap 68, 2008 Rev Ed) ("CPC") by Station Inspector ("SI") Epeer on 25 July 2018 at 10.48pm;[20] and

(d) finally, a series of statements recorded under s 22 of the CPC by SI Epeer from 27 July 2018 until 1 August 2018.[21]

9 Further, Dr Stephen Phang ("Dr Phang") conducted a psychiatric evaluation over three interviews, on 8, 10 and 14 August 2018. In his subsequent psychiatric report dated 21 August 2018 ("Dr Phang's report"), Dr Phang concluded that the accused was of sound mind and fit for trial.[22]

Forensic examination of the accused's mobile phones

10 The two mobile phones belonging to and solely used by the accused were seized in the course of investigations *ie*, one black "Asus" Z10 D mobile

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18 P114I.

19 P115I.

20 P116I.

21 P117I – P124I.

22 AB at p 203.

phone marked "GR-HP1" and one black "Asus" Zenfone mobile phone marked "GR-HP2".[23] Forensic analysis of the two mobile telephones was produced at trial.[24]

Legal context

11 The accused was charged for importing drugs into Singapore under s 7 of the MDA, which reads:

> **Import and export of controlled drugs**
>
> **7.** Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

12 The elements of drug importation into Singapore under s 7 of the MDA were set out in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [27]: (a) the accused person was in possession of the drugs; (b) the accused person had knowledge of the nature of the drugs; and (c) the drugs were intentionally brought into Singapore without prior authorisation.

13 There is no dispute that there was no prior authorisation for the cannabis possession. There was also no dispute that the accused was in knowing possession of the drugs. First, even on his own evidence, he received the blocks from Pandian and put them on his body and in his motorcycle.[25] Second, at the point of arrest, he told the police where to locate the blocks: he first directed them to the block in the motorcycle box, and then to the remaining four blocks on his body (see [5] above).

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23 SOAF at para 15.

24 SOAF at para 15.

25 Transcript, 12 November 2020, p 82 lines 1–8.

14 The main issue, therefore, was whether the accused knew that the bundles contained cannabis. In this context, the presumption under s 18(2) of the MDA ("the s 18(2) presumption") was relevant and reads as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.** – …
>
> (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.

Prosecution and Defence cases

15 On this issue regarding the accused's knowledge that the blocks were cannabis, the Prosecution's position was that the accused had knowingly brought the Drugs into Singapore and knew that the Drugs were cannabis. Their case, as put to the accused, was that the accused knew that the five blocks he had been given were cannabis when he collected them in the early morning of 25 July 2018, prior to coming into Singapore.[26] Adducing the accused's statements and Dr Phang's report, they argued that the accused had admitted during the investigation that he knew the Drugs were cannabis before coming to Singapore. They also argued that the accused's testimony was both internally and externally inconsistent, so his contention that he did not know the bundles contained cannabis was an afterthought and a lie.

16 The accused's main factual contention was that he did not know that the blocks contained cannabis and thought that they were books. Around 24 July 2018, he began experiencing financial problems. He approached Pandian, his former colleague and a good friend, for help.[27] In response, Pandian tasked him

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[26] Transcript, 25 January 2021, p 29 lines 1–3.

[27] Transcript, 12 November 2020, p 72 lines 29 – 30; p 74 lines 5 – 22; p 76 lines 7 – 12.

with making a delivery in Singapore, and told him that once he completed this job, all his problems would be solved.[28] The accused then met with Pandian the next day on 25 July 2018, received the blocks, and brought them to Singapore where he was arrested.[29]

17 The Defence also raised the following procedural and evidentiary issues:

(a) that the weight of the cannabis in the charge ought to be based on its purity;

(b) that the Prosecution should have preferred separate charges against the accused in respect of each block of cannabis;

(c) that the amended HSA certificates were not valid;

(d) the voluntariness and consequent admissibility of the accused's statements; and

(e) the late disclosure of two witness statements in breach of the Prosecution's disclosure obligations.

18 I deal with these issues as preliminary matters, before analysing the central substantive issue of the accused's knowledge.

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28 Transcript, 12 November 2020, p 78 lines 30 – 31.

29 Transcript, 12 November 2020, p 80 line 18 – p 84 line 8.

Preliminary issues

The weight of cannabis and the single charge brought

19 The Court of Appeal's decision in *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 ("*Saravanan*") is relevant to the first two issues, and I deal with them together.

20 First, defence counsel submitted that it was insufficient to rely solely on the weight of the cannabis in the charge brought. Instead, the chemical breakdown of the cannabis should be taken into account.[30]

21 Second, based on the related idea that homogenisation is not possible in cannabis analysis, defence counsel sought to argue that the accused should have been charged separately in respect of each bundle recovered from him.[31] In this regard, a distinction was drawn between cannabis and other drugs such as diamorphine.[32] In *Sim Mai Tik v Public Prosecutor* [1988] 2 SLR(R) 262 ("*Sim Mai Tik*"), which considered the packing of diamorphine, the Court of Appeal considered that the manner of packing of a controlled drug was not relevant. It was argued that this decision did not apply to cannabis because homogenisation is not possible in its analysis.

22 Neither argument was meritorious post-*Saravanan*. The Court of Appeal there drew a distinction between cannabis mixture and cannabis. In doing so, it considered that s 2 of the MDA defined cannabis as "any part of a plant of the genus Cannabis, or any part of such plant, by whatever name it is called":

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30 Defendant's Written Submissions dated 8 March 2021 ("DWS") at para 112.

31 DWS at para 143.

32 DWS at para 145.

Saravanan at [79] and [81]. This approach was further emphasised by Minister for Law, Prof S Jayakumar in explaining that it was not necessary for tetrahydrocannabinol ("THC") and cannabinol ("CBN") to be included in the definition because the plant cannot be considered to be of the genus cannabis without their presence (see *Singapore Parliamentary Debates, Official Report* (10 November 1993) vol 61 at cols 928–929). The chemical breakdown was therefore irrelevant in respect of cannabis. The case of *Sim Mai Tik* applies to cannabis as it does to other controlled drugs. In the present case, the accused imported the five blocks on his person. The charge rightly dealt with the entire quantity of cannabis. The accused in *Saravanan* similarly imported ten bundles in his car, and the cannabis within the ten bundles were the subject of the charge on which his conviction was upheld.

The validity of the HSA certificates

23 The Defence in their written submissions questioned the validity of the HSA certificates in this case. First, they argued that the impartiality of the certificates was questionable,[33] because they were amended to reflect the changes to the law introduced by the case of *Saravanan.* Second, the Defence raised two points regarding the propriety of the HSA's testing procedure. The first was that the HSA's method of analysis does not accord with UNODC's suggested methodology.[34] The second argument was that since there the analysis destroyed the samples, the Defence was unable to run their own independent tests and thus were forced to accept the HSA's analysis at face value.[35]

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33 DWS at paras 91–95.

34 DWS at para 96.

35 DWS at para 100.

24 Neither contention was meritorious. HSA's evidence was in the nature of expert evidence. As the law had changed, the amendments were requested in order to bring the certificates into conformity. It cannot be said that AGC interfered with the expert by doing so. On the second point of the standards used by HSA, this point was not posed to Dr Ong. In *Saravanan* at [68], the Court of Appeal specifically highlighted and commended the rigorous testing standards employed by HSA for the certification of cannabis. No query was raised on the correctness of Dr Ong's testing method, nor was other expert evidence adduced as to any better method of testing. The fact that the method of testing altered the evidence cannot, by this fact alone, raise doubt about the results obtained.

Admissibility of the accused's statements

The law on voluntariness

25 The provision governing the admissibility of an accused's statement is s 258(3) of the CPC, which states that the court shall refuse to admit the statement of an accused if:

> (a) There was "any inducement, threat or promise", which has "reference to the charge against the accused" and comes "from a person in authority" (the "objective limb"); and
>
> (b) In the court's opinion, it is sufficient "to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in a reference to the proceedings against him", thus causing him to make the statement (the "subjective limb").

26 In summary, the first considers whether a threat, inducement or promise was objectively made. The second, subjective limb, is concerned with whether

this threat, inducement or promise operated on the accused's mind through hope of escape or fear of punishment connected with the charge: *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 ("*Kelvin Chai*") at [53]. The burden of proof was on the Prosecution to prove beyond a reasonable doubt that the statements were made voluntarily: *Kelvin Chai* at [53].

The Prosecution and Defence positions

27 The accused argued that the statements he gave to CNB officers were not made voluntarily and thus were inadmissible under s 258 of the CPC. The accused first argued that he was not conversant in Malay and thus did not understand Sgt(3) Fadhil, who spoke to him in Malay during the recording of his first and second contemporaneous statements. Second, he alleged that there were inducements given by the officers that if he cooperated with the investigation, he could definitely avoid the death penalty. In particular, he alleged that Sgt(3) Fadhil did not read him a notice regarding the Mandatory Death Penalty that he may face (the "MDP notice"),[36] but made an oral statement guaranteeing a reduction of sentence in the garage,[37] and reiterated a similar guarantee a second time during the recording of the second contemporaneous statement.[38] He testified that this inducement operated on his mind throughout the remainder of the statements.[39]

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36 Defence's Skeletal Submissions for the Ancillary Hearing dated 11 November 2020 ("ADWS") at para 7.

37 ADWS at para 8.

38 ADWS at para 11.

39 Transcript, 10 November 2020, p 46 lines 19–20; p 47 lines 16–20; p 49 lines 4–6.

28 The Prosecution argued that the accused understood Malay well[40] and that the MDP notice was properly read by Sgt(3) Fadhil.[41] However, Sgt(3) Fadhil and further, SI Epeer, conceded that they orally explained that the accused could escape the death penalty if he cooperated. Notwithstanding, the Prosecution contended that all the statements were voluntary.

The first contemporaneous statement

(1) Was the accused conversant in Malay?

29 I found that the accused was conversant in Malay. Although the accused claimed that he could not understand "refined Malay",[42] he was brought up in Malaysia, worked in various jobs there, was educated in Malay up to Form 4[43] and attained mechanic qualifications.[44] Sgt(3) Fadhil testified that he spoke to the accused in Malay, and the accused did not display any signs that he was unable to understand.[45] I also accepted Sgt(3) Fadhil's testimony that when spoken to in Malay, the accused responded with no difficulty,[46] as well as SI Epeer's evidence that the accused himself had stated he was comfortable speaking in Malay.[47] In this respect, the accused's contentions regarding the first contemporaneous statement were somewhat contradictory, as his assertions about its content rested on an allegation that he understood Sgt Raziff's earlier

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40 Prosecution's Skeletal Submissions for the Ancillary Hearing dated 11 November 2020 ("APWS") at para 12.

41 APWS at para 14.

42 Transcript, 10 November 2020, p 36 lines 14–17.

43 Transcript, 10 November 2020, p 35 lines 16–26.

44 Transcript, 11 November 2020, p 26 lines 12–13.

45 Transcript, 5 November 2020, p 19 lines 16–19.

46 Transcript, 3 November 2020, p 80 lines 18–25.

47 Transcript, 5 November 2020, p 69 lines 15–25.

use of the Malay word "*dadah*" at his arrest, in relation to the packets of cubes, to refer to "drugs" (see [4] above and [78] below). In my judgment, there was no danger that any language impediment affected any of the conversations in Malay.

(2) Did Sgt(3) Fadhil read the MDP notice?

30 The accused contended that, prior to the first contemporaneous statement, Sgt(3) Fadhil did not read the MDP notice to him but made an oral statement promising a reduced sentence. This alleged statement was made in Malay,[48] that "[i]f you bring this *jaman* into Singapore, you would be getting death penalty. But if you cooperate with the authorities, your sentence would be reduced".[49] Sgt(3) Fadhil then allegedly made the accused sign the form.[50] The accused claimed that his understanding was that if he had cooperated with the police, he would definitely get a reduced sentence.[51]

31 Sgt(3) Fadhil, on the other hand, testified that he read the MDP notice to the accused in Malay, after which the accused signed on the form.[52] Regarding the contention that he used the phrase "*kalau* you *bawah untuk* Singapore you *kena gantung.* You *mengaku* cooperate *untuk kita* you *punya denda boleh kurang*", he was certain he would not have said it because it was his practice to use "*kau*" and not "you".[53]

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48 Transcript, 10 November 2020, p 42 line 17.

49 Transcript, 10 November 2020, p 42 lines 7–9.

50 Transcript, 10 November 2020, p 42 lines 22–26.

51 Transcript, 10 November 2020, p 43 lines 11–13.

52 Transcript, 5 November 2020, p 45 lines 8–15.

53 Transcript, 5 November 2020, p 53 lines 17–26.

32 In my view, Sgt(3) Fadhil was generally a truthful witness: for example, he admitted to having given oral remarks to the accused prior to the recording of the second contemporaneous statement (see [35] below). I accepted that Sgt(3) Fadhil had read the specific words of the MDP notice to the accused in Malay and administered the written notice without making any oral remarks. This explained why the accused's signature was on the standard form, once before giving information, and again, after doing so. The information given by the accused was written onto the form itself. That the accused understood the conditional nature of the MDP notice was reflected both in his statements and in his repeated queries to Sgt(3) Fadhil prior to the second statement[54] and to SI Epeer prior to the last statement.[55]

(3) Effect of reading the MDP notice

33 Explanation 2(*aa*) of s 258 of the CPC makes clear that the reading of the MDP notice is not to be taken as an inducement:

> *Explanation 2* – If a statement is otherwise admissible, it will **not be rendered inadmissible merely because it was made in the following circumstances**:
>
> (*a*) …
>
> (*aa*) where the accused is informed **in writing** by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act (Cap. 185) under which life imprisonment may be imposed in lieu of death;
>
> [emphasis added in bold]

34 As the notice was administered to him in accordance with the CPC, there was no inducement, threat or promise rendering the first contemporaneous

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54 Transcript, 3 November 2020, p 84 lines 16–27.

55 Transcript, 5 November 2020, p 67 line 29 to p 69 line 12.

statement involuntary. I admitted the accused's first contemporaneous statement recorded on 25 July 2018 by Sgt(3) Fadhil at around 9.45am.

Remaining statements made by the accused

(1) Sgt(3) Fadhil's and SI Epeer's oral remarks

35 The accused contended that prior to the recording of his second contemporaneous statement on 25 July 2018, Sgt(3) Fadhil told him that if he wanted to "save [his] life, [he] must cooperate".[56] Sgt(3) Fadhil testified that during the recording of the second contemporaneous statement, the accused had asked whether he would avoid the death penalty if he cooperated, and in response, he had told the accused that based on the notice he may not get the death penalty, but it was up to the courts.[57]

36 Further, SI Epeer testified that prior to the recording of the last statement on 1 August 2018 at 6.35pm, the accused had asked what was going to happen to his case. SI Epeer further testified that he had told him that the statement was going to be important as the accused would need to tell him all he needed to know about Jo and Pandian:[58]

> Yes, Your Honour. I had previously informed the accused that that day is his last day in remand. Then at the completion of the statement, I remember *the accused, somewhere along the line, had asked me what's going to happen to this case, that he had tried to cooperate*, however Jo and Pandian somehow suspected that he had been arrested, and that there was no--- no arrest made after that. I told the accused, at that point, I am not able to tell him anything about what's going to happen to his case. However, I told the accused that I would be seeking him---seeing him later that night to record another statement.

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56 Transcript, 10 November 2020, p 46 line 4.

57 NEs 3 November 2020, p 84 at lines 18–27.

58 NEs 5 November 2020, p 71 lines 12–22.

> *I told him that that statement would be important as I would need him to tell me everything he knows about Jo and Pandian*, his relationship with them, and everything that leads to his---to the offence that he has committed. That's all, Your Honour.
>
> [emphasis added in italics]

(2) Effect of oral summaries of the MDP notice

37 Sgt(3) Fadhil's and SI Epeer's remarks were, in effect, oral summations or reiterations of the MDP notice. The issue was whether Explanation 2(*aa*) applied to these oral remarks that were made after the administration of the MDP notice. In my judgment, a distinction ought to be drawn between the delivery of the written MDP notice and subsequent oral iterations, for two reasons. First, an oral summation does not carry the same safeguards as the written MDP notice, which uses a precise form or words and warns specifically that nothing in it should be construed as a threat, inducement or promise. Secondly, Explanation 2(*aa*) itself specifically stipulates that the accused be administered the MDP notice in *writing*. This requirement is itself a safeguard, to ensure that the precise form of words, and those only, be used. This suggests that oral variations of the MDP notice should not be used. Both reasons focus on fairness to the accused, and are therefore important. Accordingly, if Sgt(3) Fadhil had not made any comments about s 33A of the MDA, Explanation 2(*aa*) would have continued to operate. However, once any question is asked about the conditional reduction in sentence and any explanation is to be made, out of fairness to the accused, the written notice itself should be administered. In the present case, this was not done. This would mean that Explanation 2(*aa*) did not apply. As an objective matter, accused persons would want to avoid the death penalty and it follows that Sgt(3) Fadhil's and SI Epeer's responses to the accused could be construed objectively as an inducement under s 258(3) of the CPC.

(3) Subjective effect of the oral remarks on the accused

38 I come then to the subjective element, which only became relevant in this case because the statements fell outside the ambit of Explanation 2(*aa*).

39 The accused testified that he had made the second contemporaneous statement on 25 July 2018 because of the oral inducement.[59] After the contemporaneous statements, a cautioned statement was later taken on the same day at around 10.48pm, and ending at 12.17am the next day. After this, there was a series of statements recorded under s 22 of the CPC by SI Epeer from 27 July 2018 until 1 August 2018.

40 The accused's evidence was that Sgt(3) Fadhil's remarks continued to operate on his mind throughout. I accepted his evidence. Pertinently, prior to the last statement he asked SI Epeer again what was going to happen to his case.[60] This supported the assertion that Sgt(3) Fadhil's remarks continued to weigh on his mind anxiously. The cautioned statement and two of the long statements also reflected that Sgt(3) Fadhil's comments were in his consideration:

> (a) In his cautioned statement given on 25 July 2018, recorded at 10.48pm, the accused stated, "I had told Pandian that I was not arrested because I was informed by the arresting officers that if I co-operated with the authority to give identity of Pandian and Jo the charge can be reduced."[61]

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59 Transcript, 10 November 2020, p 46 at lines 19–20.

60 Transcript, 5 November 2020, p 71 lines 12–22.

61 P116I at 317.

(b) In his further statement dated 29 July 2018 at 9.50am, he stated that "I was informed by an officer in Malay language that with all these things that I have brought, I am liable to be sentenced to hanging. I was then further informed, that if co-operate on this case and identify the people involved, I can have my punishment reduced."[62] He also stated that "If I am able to identify then my punishment can be reduced and I can save my life."[63]

(c) In his further statement dated 1 August 2018 at 9.10pm, the accused stated that "I had done all these to help the officers to identify who are the people involved in this case. I was informed that if I assisted the officers, I could have my punishment reduced."[64]

41 I took into account that this effect in his mind would have been caused, at least in part, by the written MDP notice; insofar as this was the case, any such subjective inducement would be exempt from consideration. Nevertheless, I could not rule out that the oral remarks made by Sgt(3) Fadhil, and then later by SI Epeer, had no effect in securing the statements that were given by the accused after the specific remarks were made. In the circumstances, the Prosecution had not proved beyond a reasonable doubt that the second contemporaneous statements, the cautioned statement and the long statements had been given voluntarily.

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62 P119I at 329.

63 P119I at 332.

64 P124I at 360.

Conclusion on admissibility of the statements

42 For the above reasons, I admitted the first contemporaneous statement but not the remainder of the statements.

Contentions in respect of disclosure of two witness statements

43 A final matter relating to the evidence arose from the Prosecution's disclosure of two witness statements from the accused's Nelco supervisors. Whilst these were taken in August 2018, shortly after his arrest, they were disclosed in the midst of his cross-examination on 9 December. They explained that they had done so because their disclosure obligations were only engaged when the accused had testified in court regarding his relationship with Pandian.[65] The Defence, on the other hand, submitted that their case was irreversibly prejudiced by the Prosecution's late disclosure of witnesses.

Content of the Prosecution's disclosure obligations

44 The Prosecution, aside from their statutory duties under the CPC, are also under common law disclosure requirements:[66]

> (a) First, as set out in *Muhammad bin Kadar v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*"), the Prosecution must disclose to the Defence any material which takes the form of (i) "unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused"; and (ii) "unused material that is likely to be inadmissible, but would provide a real (not fanciful) chance of pursuing a line of inquiry that leads to

65 Plaintiff's Skeletal Reply Submissions dated 3 May 2021 ("PWS2") at para 14.

66 DWS at paras 130–131.

material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused." This would only include material that undermines the Prosecution's case or strengthens the Defence's case: *Kadar* at [113].

(b) Second, as set out in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*"), the Prosecution is obliged to disclose any statements of material witnesses to the Defence. They differ from the *Kadar* obligations as it does not matter if these statements are favourable, neutral or adverse to the accused's case. Further, the Prosecution does not need to carry out an assessment of the credibility or relevance of the statement: *Nabill* at [41].

45 Ideally, these obligations should be fulfilled when the Prosecution is serving their case, or before trial begins. However, if the relevance of a particular statement only becomes apparent after the accused testifies at trial, it should be disclosed at that juncture: *Nabill* at [50].

46 The effect of non-disclosure by the Prosecution will necessarily rest on the facts of the case. In the context of the *Kadar* obligations, the Court of Appeal stated that non-disclosure *could* lead to a conviction being rendered unsafe: *Kadar* at [120]. The Court of Appeal referred (at [120]) to *Beh Chai Hock v Public Prosecutor* [1996] 3 SLR(R) 112 at [38], which noted the need to weigh two principles, one being fairness to the accused, and the other being the need to ensure that guilty persons do not "escape scot-free merely because of some technical blunder". Such principles should equally apply to the additional obligations under *Nabill*, as both were created to "uphold established notions of a fair trial in an adversarial setting" (*Nabill* at [40]; *Kadar* at [105]); and to "arrive at a just outcome through a fair process": *Nabill* at [47].

The consequences of the present case of non-disclosure

47 In written submissions after trial, defence counsel alleged that the accused had lost his right to elect to remain silent and could have instead called the other two witnesses to give evidence.[67] The statements were not in evidence despite these contentions. At the oral responses, I asked for the statements to be tendered and for their relevance to be articulated. In answer to the issue of relevance, defence counsel pointed to a single paragraph in each, where references to Pandian were made. From these, they concluded that Pandian and the accused were acquainted.

48 The fact that the accused and Pandian were friends was not disputed. The statements did not reveal any fact that was of significance to the accused's case. In the present case, the *Nabill* obligations were not engaged, as the two supervisors were not material witnesses. The Prosecution stated that they disclosed the statements arising from their *Kadar* obligations because the accused alluded to Pandian in his evidence. Calling them to verify that the accused knew Pandian would not have added to the accused's defence, and in any event, he was given the opportunity to do so but did not.

49 The prejudice that the accused relied upon was a loss in his ability to remain silent, while calling the two witnesses in his defence. The facts of the two cases relied upon by defence counsel in citing this prejudice were, however, entirely different to the case at hand. In *Public Prosecutor v Wee Teong Boo* [2020] 2 SLR 533 the medical report that was disclosed late was relevant to the accused's defence that he suffered from severe erectile dysfunction. This was material to a central point of his defence, that it would have been physically

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67 DWS at para 131.

impossible for him to perform the act of rape. In *Chan Kin Choi v Public Prosecutor* [1991] 1 SLR(R) 111 the accused faced a charge of murder for stabbing the victim in the neck at a restaurant. In establishing his defences of sudden fight, provocation and self-defence — on which he bore the burden of proof — the accused elected to remain silent, relying instead on the witnesses who were at the restaurant. These witnesses saw the fight as it unfolded and had personal knowledge as to the facts the accused was relying on for his defence.

50 In contrast, in the present case, the accused was required to establish a positive belief on his part, in order to rebut the s 18(2) presumption. For this he could not rely on the testimony of others who had no knowledge of his belief. There was nothing to indicate that the two co-workers had any personal knowledge as to his belief; neither was that specific assertion made. Their knowledge of his friendship with Pandian, which was not in any event disputed, bore no relevance to his belief regarding the contents of the five blocks he imported.

Substantive case and the issue of the accused's knowledge

51 Having dealt with the preliminary issues, I come to the substantive case. The physical elements of the offence of importation under s 7 of the MDA, and the accused's possession and knowledge of the bundles were not disputed. The only question left then was whether the accused knew that he was carrying cannabis. This was the main factual contention of the case.

Prosecution and Defence positions

52 The Prosecution argued that the accused's first contemporaneous statement and Dr Phang's report was proof of the accused's actual knowledge,[68] and that his inconsistent and unbelievable evidence showed that his claims were afterthoughts and lies. The Defence's response was that little weight should be given to both the accused's first contemporaneous statement as well as Dr Phang's report,[69] and that the s 18(2) presumption was rebutted on the facts. The accused's evidence was that he thought that the five blocks were books, and while he knew they were illegal, he thought that they would only attract a fine.[70]

53 I first deal with the frame o f the analysis. In their written submissions and opening statement, the Prosecution ran a "primary case" and an "alternative case".[71] The primary case was that the accused had actual knowledge, and the alternative case was that he had not rebutted the s 18(2) presumption. However, the s 18(2) presumption is one that *presumes actual knowledge*. The alternative and primary case weres therefore the same in that *actual knowledge* was the key factual basis in both. An alternative case is ordinarily used to make clear an alternative legal argument applicable on a *different factual basis* from the primary case. In *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087 ("*Mui Jia Jun*") the Court of Appeal's guidance was that where the Prosecution's case rests on *several distinct factual bases*, they must make it clear to the accused that they are also seeking a conviction on any one of those factual bases, if this objective is not already clear on its face: *Mui Jia Jun* at [85]. If they fail to

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68 Prosecution's Written Submissions dated 8 March 2021 ("PWS") at para 22(a).

69 DWS at para 72.

70 Transcript, 12 November 2020, p 85 lines 1–25.

71 PWS at pp 14 and 30.

clearly articulate their alternative cases, it cannot be relied upon to secure a conviction: *Mui Jia Jun* at [96]. Relevant to the present legal context are subsequent MDA cases where alternative cases were mentioned. For example, the Court of Appeal in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") highlighted at [55] that procedural fairness required alternative cases where two distinct cases were being advanced against an accused person. Its context was, however, allegations of actual knowledge and wilful blindness. Because wilful blindness relies on the absence of actual knowledge, such primary and alternative positions would be premised on distinct, and contrary, factual bases.

54 In the present case, in contrast, there is only *one* factual basis alleged: the *accused had actual knowledge* that the drugs were cannabis. In terms of *proof*, the Prosecution could rely on either direct evidence of knowledge or the s 18(2) presumption. These were *alternative modes of proving* their single case. It would be artificial to consider evidence as to the accused's actual knowledge without consideration of the excuse he raised to rebut the s 18(2) presumption. Conversely, any evidence raised to rebut the s 18(2) presumption would need to be balanced against any evidence that indicated he had actual knowledge. The accused's consistency and credibility were matters important to both methods of fulfilling the burden of proof.

55 More fundamentally, the legislature had enacted s 18(2) to mitigate the difficulties in proving knowledge, by putting the burden squarely on the accused once the limited circumstances of the section are triggered: see *Gobi* at [68]–[69]. It is in keeping with statutory design for an analysis of the accused's knowledge to start with s 18(2) of the MDA once its prerequisite conditions are met. If the s 18(2) presumption of actual knowledge is rebutted, then any alternative case (such as wilful blindness, which is premised on the lack of

knowledge) could be considered, if there is one. While consideration of the s 18(2) presumption concerns a wholly different set of considerations from direct proof of actual knowledge (as mentioned by *Saravanan* at [29]), where the s 18(2) presumption has been rebutted, conversely, it is logically anomalous to find actual knowledge proved. Rather, if the s 18(2) presumption applies, the Prosecution remains entitled to press for a factual finding on the evidence available, aside from that relevant to the s 18(2) presumption, pointing to the accused's knowledge. The frame of the analysis is pertinent to the assessment of the evidence. There was no prejudice to the accused in adopting this frame for analysis as the substantive issues in the case were not affected. I explained these points to the Prosecution and the Defence during the closing arguments, and neither party expressed further views or objections.

56 In light of my views on statutory design, I start with the analysis on the s 18(2) presumption and deal first with the question whether the accused has rebutted the s 18(2) presumption on the balance of probabilities.

Application of the s 18(2) presumption to the case at hand

57 The accused accepted that the burden was his to rebut the s 18(2) presumption. As highlighted by the Court of Appeal in *Gobi* at [57], the accused person is only required to establish that he did not know the nature of the drugs in his possession. The key principles in approaching this query was distilled as follows:

> (a) As a matter of common sense and practical application, an accused person who seeks to rebut the s 18(2) presumption should be able to say what he thought or believed he was carrying, and a claim that he simply did not know what he was carrying would not usually suffice: see *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Zainal*") at [23(b)]; *Obeng* at [39].

> (b) The inquiry into the accused person's state of mind or knowledge is ultimately a subjective inquiry (see *Masoud* ([41(e)] *supra*) at [56]–[59]).
>
> (c) However, the court will assess the veracity of the accused person's assertion as to his subjective state of mind against the objective facts and examine his actions and conduct relating to the item in question in that light in coming to a conclusion on the credibility of his assertion. This will invariably be a highly fact-specific inquiry, and the relevant considerations might include the physical nature, value and quantity of the item and any reward that was to be paid for transporting it (see *Obeng* at [40]; *Masoud* at [55]) or, for that matter, any amount that was to be collected upon delivering it. We raise these purely as examples to emphasise the overarching fact-sensitive nature of the inquiry.
>
> (d) Where an accused person's defence is found to be patently and inherently incredible, then that will not impose any evidential burden for the Prosecution to rebut: see *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") at [70] and [71]. To put it simply, a hopeless defence is no defence and raises nothing to rebut. In such circumstances, the court should find that the s 18(2) presumption remains unrebutted.
>
> (e) In assessing the evidence, the court should bear in mind the inherent difficulties of proving a negative, and the burden on the accused person should not be so onerous that it becomes virtually impossible to discharge (see *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 at [2] and [24]).

58 It was clear from (a) and (d), therefore, that the accused was required to articulate a *credible positive belief* that is incompatible with the knowledge that the thing he was carrying was the specific drug in his possession (and see also *Gobi* at [60] to like effect).

59 What was the accused's belief, in this case? The accused's asserted belief, as framed by him, was that *he thought the Drugs were books, which would only attract a fine as a penalty*. The query into the credibility of this asserted belief, in line with (b) and (c), was a fact specific and subjective exercise which would include the physical nature, value and quantity of the item and any reward that was to be paid for transporting it.

Credibility of the accused's belief

60 The accused himself found his version of events difficult to explain. In examination-in-chief, the accused testified that when Pandian gave him the items, he asked Pandian what they were and Pandian repeatedly told him that they were "five books and two food chocolate[s]".[72] At the same time, he testified that when Pandian then told him to hide them when he brought it into Singapore, he knew that they must have been illegal.[73] At no time in his evidence did he allege that Pandian told him doing so would only attract a fine. It was not disputed that this information that the items were contraband that would attract only a fine was raised for the first time in cross-examination.[74]

61 In cross-examination, he first stated that he believed Pandian totally when he told him that the items were books:[75]

> Q Again, Mr Guna, I put it to you that you did not believe Pandian when he told you these were books. That is why you kept asking him what the items were.
>
> A I disagree, Your Honour. Your Honour, when someone passes something to a person, it's normal for the person to ask them what the items are. So that's what I did. *But when I asked him, he told me that these were wrong items and that they were books, food and chocolate. And I believed him totally when he told me that.*
>
> [emphasis added in italics]

62 This version of events would have entailed the court accepting that while the blocks were tucked into his waistband, tight against his skin and under his armpit, these blocks felt to him like books. The accused himself knew that this

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72 Transcript, 25 January 2021, p 23 lines 18–21.

73 Transcript, 25 January 2021, p 26 lines 15–18

74 Transcript, 13 November 2021, p 29 lines 11–25.

75 Transcript, 13 November 2020, p 21 lines 24–30.

narrative that he believed the Drugs were books was incredible. He too lacked any conviction in this contention. If they were books, they would not require concealment. The means of concealment also revealed his knowledge. While the first block was wrapped in raincoat pants, the remaining four blocks were on his own body, next to his skin, secured by the waistband of his trousers or his armpit. He would have well known that they were not books, which was why he testified for the first time in his examination-in-chief that they were items that he thought would attract a fine.

63 Not surprisingly, when the case was put to him again, his evidence shifted and he admitted that he did not believe that they were books and chocolates:[76]

> Q Now, you did not believe that the items that were given to you were five books or two chocolate packets as you stated.
>
> A I agree, Your Honour.

64 Therefore, as a starting point, his asserted belief as to the nature of the Drugs was not a strongly persuasive one.

The payment of RM5,000

65 A factor to be considered in this case was the promised reward of RM5,000. In *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng*") the Court of Appeal noted at [40] that "the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item." In *Obeng*, where the accused had not rebutted the s 18(2) presumption, the Prosecution had argued that the value of her previous

[76] Transcript, 25 January 2021, p 28 lines 28–30.

free trips and the promise of a large sum of money for her final trip militated against her attempt to rebut the presumption. In *Saravanan*, the Court of Appeal took into account that the accused had been promised substantial monetary reward in highly suspicious circumstances, concluding at [37]–[38] that it was "simply incredible" that the accused believed the bundles were contraband tobacco. It was, in my view, important to scrutinise the accused's explanation as to why his RM5,000 remuneration was innocuous.

66 It was not disputed that the accused would have received RM5,000 from Pandian after delivering the Drugs. The accused's testimony was that Pandian had given him this job because he was in financial difficulty and he told Pandian that he needed RM5,000. Pandian told him that if he completed the delivery of the bundles, his problems would be "solved" and he would be given $5,000.[77] The Prosecution submitted that the money was to be given to the accused in consideration for his completion of importing cannabis, and that the accused knew that.[78] On the other hand, the accused attempted to sever the link between the delivery and its reward, on the basis that he had borrowed money from Pandian before and returned it.[79]

67 I found the accused's account of the RM5,000 difficult to believe. The fact that he had borrowed and returned loans from Pandian in the past did not assist his assertion that the RM5,000 was not a reward for the delivery of the Drugs. The accused was also not consistent in attempting to distance the delivery from its reward. In his first contemporaneous statement, when asked about Pandian, he stated that Pandian was the person who had asked him to

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77 Transcript, 12 November 2020, p 76 lines 26–31 to p 77 lines 1 – 3, p 83 lines 3–6.

78 PWS at para 52.

79 DWS at para 34.

deliver all the items, and that he would get RM5,000 for the delivery.[80] This was stated again during examination-in-chief, where the accused stated that "[Pandian] told [him] that the *jaman* should be delivered in Singapore, and once [he] delivered, [Pandian] would pay [him] the 5,000 RM".[81] It was during cross-examination, that the accused sought to assert that it did not occur to him that the RM5,000 was a reward for the delivery:[82]

> Q And RM5,000 is a lot of money to be paid just for delivering something from Johor Bahru to Singapore, isn't it?
>
> A It did not occur to me at that point in time that this money was being paid because I was being asked to deliver the items. All I knew was that I had asked him for money. It did not occur to me that this big amount was actually meant for the things that he asked me to deliver. All I knew was that I asked him for money and he told me to deliver these items.

When asked again, the accused stated that:[83]

> Your Honour, when I asked Pandian for money, he told me to complete the work. So all I believed was that he would pay me this money once I delivered the items. I didn't think anything else.

Further along, he stated that the RM5,000 was "not meant for those items".[84] Moments later, however, he contradicted himself and agreed with the Prosecution. When asked if his belief was that he was going to be paid RM5,000 for delivering the items, he agreed:[85]

> Q In fact, your belief, according to you, is that it is an item that would get you a fine.

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80 P114I at p 222.

81 Transcript, 12 November 2020, p 83 lines 3–4.

82 Transcript, 13 November, p 8 lines 16-31.

83 Transcript, 13 November 2020, p 23 at lines 23–24.

84 Transcript, 13 November 2020, p 23 at lines 28–29.

85 Transcript, 13 November 2020, p 24 at lines 4–10.

A Yes.

Q And yet you were going to be paid 5,000 Ringgit for delivering these items that would only attract a fine? That's my question.

A Yes, Your Honour.

Finally, when the Prosecution put to the accused that he had agreed to do the job because he needed money and knew he would be paid RM5,000 for completing the job, the accused also agreed.[86]

68 In the present case, the RM5,000 promised was, according to the accused's testimony as to his salary, almost two months of his salary.[87] This was not by any means a small amount to the accused. In the light of the quantum, it was quite incredible that the accused thought he would receive this remuneration for delivering chocolates and books, or "items that would merely attract a fine". Such items would not warrant such a large payment, and thus, detracted from the credibility of the accused's articulated positive belief.

The accused's communications with Pandian

69 I deal, before concluding this section, with the evidence arising from forensic reports of the accused's telephone communications with Pandian.[88]

70 The Prosecution tendered an "Aide Memoir" during trial that summarised relevant phone calls between the accused and Pandian,[89] and a translated version of the salient text messages.[90] In particular, there was a high

86 Transcript, 25 January 2021, p 28 lines 24–27.

87 Transcript, 13 November 2020, p 5 lines 4 – 6.

88 AB at pp 53–125; 127–153.

89 Exhibit E.

90 Exhibit P50A.

frequency of calls between Pandian and the accused on 16, 17, 20 and 23 July 2018. Similar to those on 25 July 2018, these calls occurred early in the morning. The accused was not able to explain these well. In respect of the early morning calls he initially agreed in the two weeks prior to the offence that he and Pandian had "no reason" to contact one another early in the morning; subsequently, when confronted with records of calls between him and Pandian, he said that Pandian might call him to wake him up in the morning.[91]

71 A series of text messages from Pandian were also incriminating in a general way. The following in particular alluded to similar tasks from Pandian:

(a) on 24 May 2018, 8.40pm, "Bro want work 1 only";[92]

(b) on 31 May 2018 6.08pm, "Today don't work on these 4, do tomorrow";[93]

(c) on 7 June 2018. 3.28am, "Bro don't have work u can enter sg ya sorry bro they just inform bro";[94]

(d) on 6 July 2018 at 8.23pm, "bro want work 1 book / block 9 o'clock TQ";[95]

(e) on 13 July 2018 at 4.50am, "Have work cl me";[96] and

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91 PWS at paras 42–44.

92 Exhibit P50A at p 23.

93 Exhibit P50A at p 19.

94 Exhibit P50A at p 19.

95 Exhibit P50A at p 6.

96 Exhibit P50A at p 5.

(f) a similar message on 24 July 2018 10.25pm, "Bro tomorrow have work".[97]

72 The accused could not explain these cogently, saying that for (a), that Pandian was telling him to work until 1pm;[98] for (b), that Pandian was telling him to work until 4pm;[99] for (c), Pandian was telling him to go to work at Nelco;[100] for (d), he could not understand the message and he asked Pandian about it and Pandian had told him he had sent him this message wrongly;[101] and for (e), Pandian was asking the accused to call him if he was working at Nelco the following day.[102] For (f), the final 24 July message, he originally agreed that the message was in relation to the 25 July 2018 job.[103] He later changed his stance, claiming that the message had to do with his work at Nelco.[104]

73 What could be drawn from the above? It was conceded that Pandian was the accused's source for the Drugs in any event. That fact was clear from the accused's testimony as to events of the day. Insofar as the Prosecution was attempting to prove that there was a consistent practice between Pandian and the accused to do deliveries, I did not agree. There was no independent evidence to show that the Accused had done jobs on other days. To the contrary, the accused's first contemporaneous statement, which contents the Prosecution was asserting as accurate, recorded the accused stating that the occasion charged was

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97 Exhibit P50A at p 2.

98 Transcript, 25 January 2021, p 20 lines 1–3.

99 Transcript, 25 January 2021, p 19 lines 14–29.

100 Transcript, 25 January 2021, p 18 lines 26–28.

101 Transcript, 25 January 2021, p 11 lines 29–30.

102 Transcript, 25 January 2021, p 11 lines 10–12.

103 Transcript, 13 November 2020, p 42 line 28 to p 43 line 25.

104 Transcript, 25 January 2021, p 10 lines 13–21.

his *first occasion* in transporting drugs (see "A12" at [77] below). The Prosecution's assertion that there was an established practice would be inconsistent with its assertion that the statement reflected the truth. Nevertheless, the accused's inability to explain his dealings and close association with Pandian remained relevant as it did not lend any credence to his stated positive belief, which was his to establish. Whilst this inability to explain was not otherwise probative of his guilt, it was a clear weakness in his attempt to rebut the s 18(2) presumption.

Conclusion on the s 18(2) presumption in the present case

74 In the present case, the accused could have checked the bundles, but he did not. The blocks were in a transparent plastic wrapping and in his sole possession from the point of collection and a simple visual inspection in proper light would have informed him of the contents. He was familiar with Selesa Jaya as he previously resided there and could have found an area to stop and check the bundles.[105] He had chosen not to check although he thought the books were illegal items that would attract a fine. In this respect, [67]–[69] of *Gobi* is pertinent:

> 67 An accused person who is in a position to verify or ascertain the nature of what he is carrying but who chooses not to do so in the following types of situations may be described as being indifferent to the nature of what he is carrying:
>
> (a) An accused person who is in fact wholly indifferent to what he is carrying.
>
> (b) An accused person who knows that the thing he is carrying is a contraband item, but who does not care to find out what that contraband item is or is not.
>
> (c) An accused person who identifies the drugs in his possession by some idiosyncratic or colloquial name, but who does not know what that means and does not

105 Transcript, 13 November 2020 p 14 line 21 to p 16 line 3.

> bother to ascertain the meaning. For example, in *Obeng*, the appellant referred to the drugs as "shine shine", but did not know what that meant and did not take steps to inquire further (at [51]).
>
> 68 In each of these cases, the accused person is *able* to verify or ascertain the nature of the thing he is carrying but *chooses* not to do so. The proper inference to be drawn in the circumstances is that he is in truth indifferent to what that thing is. The difference between these cases is, if anything, essentially one of degree. We consider that in these situations, the presumption of actual knowledge will generally be found not to have been rebutted because of the need to give full purposive effect to the policy underlying the MDA, which is to stem the threat that drug trafficking poses: see *Tan Kiam Peng* ([41(e)] *supra*) at [23]–[28], citing Singapore Parliamentary Debates, Official Report (20 November 1975) vol 34 at cols 1379–1381 (Mr Chua Sian Chin, Minister for Home Affairs and Education)…
>
> 69 … The question for present purposes is whether Parliament intended for the s 18(2) presumption to be rebutted by an accused person whose defence is simply that he was indifferent to what he was carrying. In our judgment, the answer to this is in the negative because, as we have explained above, the s 18(2) presumption will only be rebutted where the accused person is able to establish that he *did not know the nature of the drugs* in his possession, and an accused person who is indifferent to the nature of the thing he is carrying cannot be said to have formed any view as to what the thing *is* or *is not* (see [65] above).

75 The accused's articulated belief, that the blocks were books that were contraband but would attract a fine only, fell squarely within scenario (b) of [67]. In this context, he was not able to explain his RM5,000 reward, he was inconsistent in court, and his close contact with Pandian militated against any inability on his part to ascertain the true contents of the blocks. The s 18(2) presumption applied squarely to him and he was unable to rebut it.

The evidence aside from the s 18(2) presumption

76 In this context, I return to the Prosecution's primary contention that even without the s 18(2) presumption, the accused's actual knowledge that he

imported cannabis was proved beyond a reasonable doubt. This aspect of their case relied on the accused's statement at point of arrest and Dr Phang's report. I deal with each in turn.

The first contemporaneous statement

77 The Prosecution relied in particular on questions and answers 4 to 6. I set out the statement in full for context:[106]

> Q1 Are you able to give your statement now?
>
> A1 Yes, I am able to give my statement now.
>
> Q2 What are the items in the 2 packets? (Recorder's note: The accused was shown 2 packets containing granular / powdery substance, that was recovered under the seat)
>
> A2 The item in the 2 packets is 'makanan' and I do not know what it is used for.
>
> Q3 Are you aware that items in the 2 packets are controlled drugs?
>
> A3 I do not know if the items are drugs.
>
> Q4 What are these items? (Recorder's note: The accused person was shown 1 raincoat pants and 1 block of vegetable matter.)
>
> A4 *The block is 'ganja' and I had used the raincoat pants to wrap and the 'ganja' block to hide it and I had placed it on the storage compartment located below the handlebar.*
>
> Q5 *What is 'ganja'?*
>
> A5 *It is a form of illegal drugs.*
>
> Q6 The officers subsequently conducted a search on you and they had recovered more items from you. What were the items that were recovered and where was it recovered from?
>
> A6 *The officers had recovered four blocks of 'ganja' that I had hidden underneath the shirt that I was wearing. I had hidden 2 blocks of 'ganja' on my back and 1 block*

106 P114.

on the front. As for the last block, I had hidden it underneath my left armpit.

Q7 *Why did you bring the 2 packets of 'makanan' and the 5 blocks of 'ganja' into Singapore?*

A7 *I was supposed to deliver all the items to an unknown recipient at the vicinity at 52 Tuas Road at 9pm.*

Q8 How are you supposed to deliver all the items?

A8 After I had ended my shift at 9pm, I am supposed to receive a call from 'Pandian' before proceeding to 52 Tuas Road for the delivery. He will also give me the description of the person that I am supposed to deliver too.

Q9 What is 'Pandian' number?

A9 'Pandian' has 2 numbers. The Malaysian number is +60 16-4069004 and the Singapore number is 8358 8902

Q10 How much are you supposed to collect from the unknown recipient for the delivery of the items?

A10 I do not know the amount. I will only know the amount that I will need to collect when 'Pandian' calls me again at night

Q11 Who is 'Pandian'?

A11 He is the person who had asked me to deliver all this items and I will get RM5,000/- for the delivery. 'Pandian' also used to work together with me at Nelco.

Q12 How many times have you made such deliveries into Singapore?

A12 This is my first time doing so.

[Emphasis added]

78 The statement contained admissions as to his knowledge that the five blocks were cannabis. The accused furnished two reasons for his answer. The first was that he only stated that the Drugs were *ganja* because SI Raziff told him at the point of arrest that the exhibits were *dadah*, a Malay word meaning

drugs. He immediately associated this with *ganja*,[107] as he knew that *dadah* meant *ganja*.[108] This aspect of the accused's explanation was not credible for several reasons. First, SI Raziff first used the word *dadah* in relation to the cubes found in his motorcycle seat. If *dadah* were synonymous in his mind with *ganja*, he would have identified the cubes as *ganja*. But at Q2 he identified the cubes as food. When told at Q3 the items were controlled drugs, he answered that he did not know that they were drugs. SI Raziff had not used *dadah* in relation to the five blocks, which were seized in the garage at the point of search. There was no reason for him to connect *dadah* to *ganja* in his mind.

79 The accused furnished a second explanation, which was that once he was taken to the garage and shown the block of vegetable manner (as reflected in Q4 of the statement), he thought that they looked like "*ganja* leaves", which he recognised from social media on his phone.[109] Looking at the plain text of A4 in isolation, this was plausible. It had some consonance with his explanation in court that he knew the books were contraband items but not with his assertion that they attracted a fine only. First, in his answer at A4 he revealed that he used raincoat trousers to *hide* the block at Q4. The fact that he acknowledged he was hiding the block suggests he knew that the block contained something illegal. Second, his responses to later questions revealed a plan to deliver the five blocks and food for RM5,000. In context, it would have been logical for him to explain at A4 that he did not know the blocks contained *ganja* until that point, in the same way that he said he did not know that the cubes were drugs. This was not

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107 DWS at para 150; Transcript, 12 November 2020, p 88 lines 1–8; 13 November 2020, p 27 at lines 22–24.

108 Transcript, 12 November 2020, p 90 lines 26–29.

109 Transcript, 12 November 2020 p 89 lines 30 to p 90 line 11.

the only inference that could be drawn, however, and I return to this issue after a consideration of Dr Phang's report, at [88] below.

Dr Phang's report

80 The Prosecution relied on the accused's admissions recorded in Dr Phang's report as corroboration of his first contemporaneous statement.[110] The Defence, on the other hand, argued that Dr Phang's report should not be taken as evidence of the facts stated therein, and that little weight should be given to it.[111] The crux of their argument was that the report gave the accused's answers out of context, without the questions which elicited his answers, and thus less weight should be accorded to the report. In reply, the Prosecution relied on the case of *Public Prosecutor v Saridewi Bte Djamani and another* [2018] SGHC 204 ("*Saridewi*").[112] In that case, "[a]nother piece of evidence pointing towards [the accused's] knowledge of the true nature of the substance was the use of the word "heroin" in the psychiatric report": at [79].

81 The later decision of *Anita Damu v Public Prosecutor* [2020] 3 SLR 825 ("*Anita Damu*") suggests doubt, at [38]–[41] that an accused's account to a psychiatrist could be treated as a statement under s 258(1) of the CPC. Whilst the comments made in *Anita Damu* were with regard to the specific issue of admissibility and in the present case the psychiatric report was admitted for different reasons, the views expressed in [38]–[41] are applicable. Police statements are admissible under s 258 of the CPC because they are recorded in a specific manner provided for under ss 21 and 22 of the CPC. Statements to

110 PWS at paras 29–31, 33.

111 DWS at para 72; Defendant's Reply Submissions dated 3 May 2021 ("DWS2") at para 8.

112 PWS2 at para 9.

psychiatrists do not have the same safeguards and are admitted for the specific purpose of obtaining the psychiatrist's opinion. The details of interviews are important to explain the basis of the psychiatrist's opinion and should be considered in their proper context. Interviews recorded by way of history by psychiatrists assessing soundness of mind should not carry the same weight and would not be as reliable as admissions made in statements to the police. Notwithstanding, such statements could be used in cross-examination in the assessment of an accused's credibility and as a reference point to test the evidence. In my view, such an approach is not inconsistent with that of the court in *Saridewi*.

82 In this context, I deal with the Prosecution's cross-examination of the accused on paragraphs 9 and 10 of the report. The Prosecution's case was that the report showed the accused knew that the bundles contained cannabis *before* his arrest.

83 Paragraph 9 of Dr Phang's report read as follows:[113]

> 9. That evening (24th July 2018), the accused related that Pandian drove over to his rented quarters at 8.30 pm, and as they sat in the latter's car talking, '"he (Pandian) told me he's got a job for me; you do this job you can settle your financial problem". The accused stated that Pandian told him the 'job' was "in relation to stuff...something, substance, which is unlawful. My understanding is that when he used the (Tamil) word 'porul', it meant something unlawful .... he said if you do this job, to deliver the thing to Singapore, you can settle your financial problem that's what he told me", and Pandian also promised him payment of RM 5,000 upon the successful completion of the 'job'. *The accused stated that he did not ask Pandian about the exact nature of the 'substance' he was to prospectively convey into Singapore, though he added that "he (Pandian) said it's a porul' job ... anybody will know what is a 'porul' job ... something illegal", and which the accused stated he also understood as "something related to drugs". Nevertheless he*

113 AB at p 205.

> *stated that he still accepted Pandian's offer as "I urgently needed money".*
>
> [emphasis added in italics]

84 When asked about the italicized portion of paragraph 9 by the Prosecution, the accused simply repeated his earlier evidence that Pandian had told him it was an illegal job, but it was only after he was caught and he heard the word *dadah* at the point of his arrest that he knew the blocks were cannabis.[114]

85 Paragraph 10 of Dr Phang's report read as follows:[115]

> The following morning, the accused related that he met Pandian at 5.30 am, and "I asked him, so he told me it's 'book'. The ones I placed on my body, and the one in the basket, he told me it's 'book'. I know it's not a real book but it's the size of a small book. And the other two (in the white plastic bag) he called it food chocolate". He further stated that "I did not say it was ganja but I thought it looked like ganja", having previously seen the drug on WhatsApp, on my phone". In spite of his cognizance then that the substance he was to transport to Singapore was illegal, the accused stated that he still agreed to accept the 'job' as he was in urgent need of cash then, as alluded to above. In his own words, " *I do not know exactly the content, (but] yes, I know its drugs ...I did not know anything else about the drug what it's used for … I only know it's drugs, and something illegal". He also stated that while "he (Pandian) already told me it's something: to do with drugs, though I was a bit taken aback and I felt fear also, definitely, but I didn't want to show him that I was in fear, shock, surprise... (the reason being) I was in such a (financial] state that I didn't want to show him that I was backing out of his proposal.*

86 Again, when asked about the italicized portion in paragraph 10, the accused first restated that he only found out that the bundles contained drugs

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114 Transcript, 25 January 2021, p 22 line 16 to p 23 line 3.

115 AB at p 205–206.

after his arrest.[116] When the Prosecution asserted that he knew it was *ganja* at the point of collection, premised on the line "I thought it looked like *ganja* having previously seen the drug before",[117] the accused again reiterated his narrative that he had only realized the bundles contained drugs after his arrest.[118]

87 Dr Phang's report of his interview with the accused was inconsistent with the accused's evidence in chief, because paragraphs 9 and 10 indicated that the accused knew the blocks were drugs. The accused maintained in court instead that the items, while illegal, only attracted a fine. In cross-examination, rather than being able to explain the difference, the accused simply reiterated his evidence in chief.

88 Nevertheless, read in context and as a whole, Dr Phang's record of his interview with the accused was also inconsistent with the Prosecution's interpretation of A4 of the accused's first contemporaneous statement. The Prosecution relied on this to show that the accused knew the blocks contained *ganja* at the point of collection. But paragraph 10 of the Dr Phang's report stated that at the point of collection from Pandian, whilst the accused knew the blocks were drugs, he only thought that they "looked like" *ganja*.[119] This indicated that he did not definitively know that the blocks were *ganja*. Conversely, this could support the accused's evidence in court regarding A4 of his first contemporaneous statement, that he only realised the blocks were cannabis *after* he was shown them. Thus, it was not clear beyond a reasonable doubt that the accused possessed specific knowledge of the nature of the drug at the point of

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116 Transcript, 25 January 2021, p 23 lines 18–24.

117 Transcript, 25 January 2021, p 26 lines 2–7.

118 Transcript, 25 January 2021, p 26 lines 15–20.

119 AB at p 205–206.

importation. Rather, it remained plausible that he harboured a suspicion prior to the importation that the blocks contained cannabis, and it was only later confirmed when he was shown the blocks in daylight. It was possible that he readily identified the cannabis at that point because, as recorded at paragraph 12 of Dr Phang's report, he wished to cooperate.[120]

Conclusion on accused's knowledge

89 The accused's first contemporaneous statement contained an admission that he was aware that the Drugs were cannabis. The issue was whether his answer referred to a knowledge at the time of his importation of the blocks, or only upon seeing the blocks in daylight at the garage as he contended at trial. Dr Phang's record of his interview with the accused, when read as a whole and in context, did not point to either alternative. The accused's inconsistencies and lack of credibility, while relevant to the issue of the s 18(2) presumption, were of a general nature. When considered aside from the s 18(2) presumption, they were not probative of his knowledge of the nature of the drug in question.

90 In the light of the Prosecution's burden of proof, I did not think that actual knowledge could be established in this case on the basis of the accused's contemporaneous statement without the benefit of the s 18(2) presumption. But the accused's knowledge that the blocks were drugs put him squarely into scenarios (b) and (c) articulated by the Court of Appeal at *Gobi* at [67]: see [74] above. The statement was an additional piece of evidence that pointed away from the accused being able to rebut the s 18(2) presumption. I therefore convicted the accused on the charge brought against him.

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120 AB at p 206.

Sentencing

91 Coming to the issue of sentence, the accused's actions in the present case were limited to those of transporting cannabis, and associated preparatory acts for the transporting. The Prosecution agreed that the accused was a courier and further tendered a certificate of substantive assistance. Both requirements of s 33B(2) of the MDA were therefore met. In such circumstances, s 33B(1) of the MDA allows the imposition of a life sentence in the stead of a death penalty, with a mandatory minimum of 15 strokes of the cane where a life term was imposed. I exercised my discretion to sentence the accused to life imprisonment and 15 strokes of the cane. The life term was backdated to his date of remand, 26 July 2018.

Valerie Thean
Judge of the High Court

Sruthi Boppana and Gregory Gan (Attorney-General's Chambers) for the prosecution;
N K Rajarh (K&L Gates Straits Law LLC) and Sureshan s/o T Kulasingam (Sureshan LLC) for the accused.