IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 39

Criminal Appeal No 24 of 2021

Between

A Steven s/o Paul Raj

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

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A Steven s/o Paul Raj
v
Public Prosecutor

[2022] SGCA 39

Court of Appeal — Criminal Appeal No 24 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
5 April 2022

11 May 2022 Judgment reserved.

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 The appellant, Mr A Steven s/o Paul Raj, was charged with one charge under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") of trafficking in a controlled drug, by having in his possession for the purpose of trafficking two packets containing not less than 901.5g of granular/powdery substance which was analysed and found to contain not less than 35.85g of diamorphine ("the Relevant Drugs"). He did not dispute his possession of the Relevant Drugs or his knowledge that they were diamorphine, and given that the amount of diamorphine exceeded the specified threshold of 2g, the presumption of trafficking in s 17(*c*) of the MDA applied. The appellant's only defence was that the Relevant Drugs were meant *solely* for his own personal consumption (or to be given to his friends occasionally as part of reciprocal arrangements to help each other), not for trafficking to anyone else.

This is to be contrasted with other cases where the accused claimed that a *portion* of the drugs was meant for personal consumption, such that the *balance* amount for trafficking was below the capital threshold – see, for example, *Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 ("*Sulaiman bin Jumari*") at [116] and *Public Prosecutor v Foong Seow Ngiu and others* [1995] SGHC 120. Consequently, for the purposes of the present appeal, it is essential for the appellant to establish that the *entire* amount of the Relevant Drugs was intended for his own consumption.

2 The trial Judge ("the Judge") found that the appellant had failed to establish his consumption defence on a balance of probabilities. Accordingly, the Judge convicted him of the charge. As the appellant did not qualify for sentencing under the alternative regime in ss 33B(1) and 33B(2) of the MDA, the Judge imposed the mandatory sentence of death under s 33(1) read with the Second Schedule to the MDA. The appellant filed the present appeal against his conviction and sentence, and the Judge issued his grounds of decision in *Public Prosecutor v A Steven s/o Paul Raj* [2021] SGHC 218 ("the GD").

3 Having carefully considered the submissions made by both parties, we dismiss the appeal. In our judgment, the appellant has not provided any basis for us to disturb the findings of fact made by the Judge, and the Judge's decision is amply supported by the evidence on record. We now set out our reasons for this conclusion, together with some observations on the consumption defence.

Facts

4 The appellant is a 57-year-old male Singapore citizen. At the material time, he was an odd-job labourer. On 23 October 2017, he had ordered two "*batu*" of "*panas*" (a street name for diamorphine) from one "Abang", his Malaysian drug supplier. What precisely transpired between the appellant and

"Abang" during this conversation is disputed and will be dealt with at [45]–[**Error! Reference source not found.**] below.

5 On 24 October 2017, at approximately 5.40am, the appellant received the drugs at Boon Keng MRT station. As he was on his way home, he was arrested by Central Narcotics Bureau ("CNB") officers (at approximately 5.43am on the same day), when his motorised bicycle ("the Bicycle") stopped at a traffic light junction along Serangoon Road.

6 Various items were found and seized following searches by CNB officers, including the following controlled drugs:

(a) Two packets of granular/powdery substances (marked as "B2B1A1A" and "B2C1A1A"), seized from the basket of the Bicycle which had been secured with a combination padlock. These were the drugs the appellant had ordered from "Abang" the previous day. The two packets were found to contain a total of 901.5g of granular/powdery substance containing not less than 35.85g of diamorphine. These are the Relevant Drugs in the present appeal.

(b) Another zip lock bag containing not less than 0.39g of granular/powdery substance, which was recovered from a bag beneath the kitchen sink in the appellant's flat. This was analysed and found to contain diamorphine.

(c) Three packets of crystalline substance, which were found either in the appellant's trouser pockets or in the basket of the Bicycle. These were analysed and found to contain, respectively, not less than 0.29g of methamphetamine; not less than 0.70g of methamphetamine; and not less than 16.80g of methamphetamine.

7 In addition, CNB officers found the following items beneath the kitchen sink in the appellant's flat:

(a) one yellow cut straw, which was examined and found to be stained with diamorphine;

(b) a large assortment of empty zip lock bags (collectively marked as "C1B");

(c) one piece of stained aluminium foil, one improvised smoking utensil, two stained spoons and two lighters; and

(d) four digital weighing scales (collectively marked as "C4").

8 As at 31 October 2017, the appellant had $9,892.32 in his personal bank account with DBS Bank. Between January 2017 and October 2017, the total inflow and outflow of moneys to and from his bank account were $63,750.67 and $67,524.24 respectively.

9 In the course of investigations, several statements were recorded from the appellant. It was undisputed that these statements were given voluntarily by the appellant and no threat, inducement or promise was made to him at any time before or during the recording of these statements. Two of these statements, both recorded by Assistant Superintendent of Police Seah Jin Peng Lucas ("ASP Seah"), are relevant to the present appeal:

(a) a statement recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") on 30 October 2017 at 2.22pm ("the First Long Statement"); and

(b) a statement recorded under s 22 of the CPC on 22 February 2018 at 3.00pm ("the Second Long Statement").

The parties' cases below

10 The Prosecution's case at trial was that the elements of possession of the Relevant Drugs and knowledge of their nature had been proven beyond a reasonable doubt. With regard to whether the appellant was in possession of the Relevant Drugs for the purpose of trafficking, the Prosecution relied on the presumption of trafficking under s 17(*c*) of the MDA (GD at [5]).

11 As we have noted in our introductory remarks (at [1] above), the appellant did not dispute his possession of the Relevant Drugs or his knowledge that the Relevant Drugs were diamorphine, and his only defence was that the Relevant Drugs were *solely* for his own consumption (GD at [10] and [14]–[15]). According to the appellant, he had been a drug user since he was 17 years old and was a heavy user of diamorphine, smoking two to three packets of 8g *per* day (GD at [6] and [8]).

12 The Prosecution submitted that the appellant's consumption defence should be rejected as there was no credible evidence to support his claimed rate of consumption. Even if his claimed rate of consumption were true, there was no credible evidence as to why he would need to stockpile such a large quantity as the Relevant Drugs. Further, the appellant's possession of various drug trafficking paraphernalia indicated that he intended to traffic in the Relevant Drugs (GD at [5]).

The decision below

13 Having considered the evidence before him, the Judge was satisfied that the appellant should be convicted of the Charge. The presumption of trafficking under s 17(*c*) of the MDA was not rebutted because the appellant had failed to discharge his burden of establishing the consumption defence on a balance of

probabilities. The Judge reasoned as follows (GD at [10]–[12], [17]–[45] and [51]):

(a) First, the appellant's evidence was not sufficiently consistent and cogent to establish his claimed rate of consumption on a balance of probabilities, as it was contradicted by the evidence given by the various doctors who examined him, and the appellant's explanations for these discrepancies were not convincing. The appellant's mental state (purported distress, withdrawal symptoms and any depressive disorder) was also not such as to affect his communication with the doctors or his giving of the statements.

(b) Second, the amount of the Relevant Drugs undermined the appellant's attempt to rebut the presumption. The burden lay on the appellant to prove that he did not possess this amount of drugs for trafficking, and his explanation for how he came to be in possession of this amount of drugs lacked sufficient credibility. His assertions regarding the effect of the Deepavali holiday and what "Abang" had told him were not sufficiently cogent or convincing. There was also a "substantial discrepancy" in that one would expect any supply difficulties around a holiday to have been resolved after the holiday, and the appellant was in fact able to get *more* than usual of the drugs after the Deepavali holiday.

(c) Third, the appellant's possession of paraphernalia normally used in drug trafficking, such as the zip lock bags and weighing scales, was not satisfactorily explained by him. This further weakened his argument that the Relevant Drugs were for his personal consumption only. Given the number of zip lock bags and weighing scales, and absent more evidence to support the appellant's contention that these were only used

for occasional sales, the natural inference was that their presence was for a more sustained level of sales to others.

14 The Judge found that the evidence of the appellant's financial transactions was neutral and equivocal, and did not undermine the consumption defence or support any inference that the appellant was involved in drug dealing. The witnesses called did not implicate the appellant in drug dealing, even if the evidence perhaps added to the suspicion that he was involved in unlicensed moneylending or other criminal acts such as gambling. Instead, the appellant's financial position was sufficient (at least at the point of arrest) for him to sustain his claimed consumption rate (GD at [12] and [46]–[50]).

15 Nevertheless, the evidence as a whole pointed to the conclusion that the appellant had not rebutted the presumption of trafficking. Furthermore, given that his only defence was of personal consumption, and he did not put forward any other explanation for his possession of the Relevant Drugs, the only inference that could follow on the facts was that he was in possession for sale to others. Accordingly, the Judge concluded that the appellant was in possession of the Relevant Drugs for the purpose of trafficking, and convicted him of the Charge (GD at [52]–[54]).

16 As the appellant did not qualify for sentencing under the alternative regime prescribed under ss 33B(1) and 33(2) of the MDA, the mandatory death sentence under s 33(1) read with the Second Schedule to the MDA applied (GD at [55]–[56]).

The parties' cases on appeal

17 The appellant appeals against his conviction and sentence. His case on appeal, like his case at trial, is confined to the consumption defence: he submits

that the *entire* quantity of the Relevant Drugs was for his own consumption, save for "a very miniscule amount that he sold to fellow addicts in reciprocation of their help in supplying him the drugs whenever he ran out of his own supplies". The appellant argues that he has rebutted the presumption of trafficking under s 17(*c*) of the MDA and/or cast a reasonable doubt by proving the consumption defence on a balance of probabilities in relation to the Relevant Drugs. He contends that the Judge erred in concluding otherwise, and that the Judge failed to give adequate weight to his explanations and evidence in arriving at the relevant findings of fact.

18 The Prosecution's case, in essence, is that the Judge's findings of fact and inferences leading to the rejection of the appellant's consumption defence were made after a careful consideration of the objective evidence and the testimony of the various witnesses, and after a careful assessment of their credibility and demeanour. The threshold for appellate intervention is not met as the Judge's findings are well supported by the evidence, and the Judge's decision to convict the appellant on the Charge cannot be said to be against the weight of the evidence or otherwise erroneous.

Issue to be determined

19 The sole issue before this court is whether the Judge erred in finding that the appellant had not established his consumption defence.

20 In this regard, the applicable principles governing the threshold for appellate intervention are well established: an appellate court will not disturb the trial judge's findings of fact unless they are "clearly arrived at against the weight of the evidence" (*Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [32]). The appellate court is restricted to considering whether the judge's assessment of witness credibility is "plainly

wrong or against the weight of evidence"; whether the judge's "verdict is wrong in law and therefore unreasonable"; and whether the judge's "decision is inconsistent with the material objective evidence on record" (*Haliffie bin Mamat v Public Prosecutor and other appeals* [2016] 5 SLR 636 at [32]). With this in mind, we turn to consider the various arguments made by the appellant.

The consumption defence

21 It is not disputed that the appellant had in his possession two packets containing not less than 35.85g of diamorphine. This is, as we pointed out to the appellant's counsel during the hearing, nearly *18 times* the amount necessary to engage the presumption of trafficking for diamorphine in s 17(*c*) of the MDA (*ie*, 2g of diamorphine).

Applicable principles

22 We begin with a brief restatement of the principles applicable to the consumption defence. In a case such as the present, where the presumption of trafficking in s 17(*c*) of the MDA is engaged, the burden is on the appellant to prove on a balance of probabilities that the diamorphine in his possession was *not* for the purpose of trafficking (see *Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 2 SLR(R) 706 ("*Jusri*") at [31] and *Low Theng Gee v Public Prosecutor* [1996] 3 SLR(R) 42 at [78]). As Yong Pung How CJ observed in *Jusri* at [63], while it is often difficult for an accused person to adduce any other evidence apart from his own testimony, "it must follow from the statutory presumption in s 17 of the [MDA] that an accused found in possession of a large quantity of drugs faces an uphill task". Moreover, if all an accused person can adduce is a bare allegation, the onus is on the trial judge to believe or not believe him, and an appellate court "would be most reluctant to disturb any such finding" (*Jusri* at [64]).

23 The relevant Parliamentary debates are also instructive in shedding light on the *basis* for this presumption. For instance, at the Second Reading of the Misuse of Drugs (Amendment) Bill (Bill No 55/75), the then-Minister for Home Affairs and Education, Mr Chua Sian Chin ("Mr Chua"), sought to "allay the fear of those who may have the impression that drug addicts might inadvertently be hanged as a result of their having in their possession a controlled drug which contains more than 15 grammes of pure heroin [the street name for diamorphine]" (so as to exceed the capital punishment threshold set out in the Second Schedule to the MDA). Mr Chua explained that the diamorphine commonly used by drug abusers and addicts in Singapore was usually mixed with other substances, such that the resultant mixture contained about 40% pure diamorphine and 60% adulterants. In these circumstances – having regard to the *amount* of these mixed substances that an accused person would need to be in possession of in order for him to be at risk of receiving the death penalty, as well as the likely *cost* of procuring drugs in such amounts – it was "most unlikely for a person who [was] in possession of so much heroin to be only a drug addict and not a trafficker". In the same Bill, a similar rationale was cited for reducing the threshold for invoking the presumption of trafficking for diamorphine from 5g to 2g – namely, the need to take into consideration the proportion of adulterants typically contained in these drugs when they were sold (see *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at cols 1382–1384).

24 Where (as in the present case) the drugs in question were not re-packed or apportioned in any particular manner to differentiate the amount intended to be sold from that intended to be consumed, the court must look at the totality of the circumstances to determine whether the appellant has rebutted the presumption in s 17: *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 ("*Muhammad bin Abdullah*") at [29]. Relevant

factors include: (a) whether there is credible evidence of the appellant's rate of drug consumption and the number of days the supply is meant for; (b) the frequency of supply of the drugs; (c) whether the appellant had the financial means to purchase the drugs for himself; and (d) whether the appellant had made a contrary admission in any of his statements that the *whole* quantity of drugs was for sale (*Muhammad bin Abdullah* at [30]–[31]). Further, the possession of drug trafficking paraphernalia whose utility is obviously in relation to the preparation of drugs for sale is also relevant as circumstantial evidence of the appellant's drug trafficking activities: *Sharom bin Ahmad and another v Public Prosecutor* [2000] 2 SLR(R) 541 ("*Sharom bin Ahmad*") at [36].

25 The key pillar and essential foundation of the consumption defence is, however, *the appellant's rate of consumption of the relevant drug*. The appellant bears the burden of establishing the extent of his personal consumption, and it is incumbent on him to show, by credible evidence, his rate of consumption (see *Sulaiman bin Jumari* at [117]). Other factors – such as the appellant's financial means to support his drug habit, how he came to be in possession of the drugs, and his possession of drug trafficking paraphernalia – are secondary. Thus, without credible and consistent evidence to establish his claimed rate of consumption on a balance of probabilities, an accused person who seeks to rely on the consumption defence will generally face insuperable difficulties.

26 With these principles in mind, we now consider the appellant's evidence in support of his claimed rate of diamorphine consumption, before turning to the other factors that are relevant in the present case.

Rate of diamorphine consumption

27 As we have noted at [13(a)] above, the Judge found that the appellant's evidence was not sufficiently consistent and cogent to establish his claimed rate

of diamorphine consumption on a balance of probabilities. The appellant contends that the Judge erred in finding that his claimed rate of consumption was not made out. He highlights his long history of drug addiction, beginning when he was 17 years old, as well as his troubled family background and severe difficulties re-integrating into society after being released from prison in June 2014, having been imprisoned for 26 years for prior drug-related offences. The appellant claims that he was an extremely heavy user of diamorphine and consumed 16 to 24g of diamorphine *per* day (*ie*, two to three packets of 8g each *per* day) at the time of his arrest in October 2017. On this basis, the appellant submits that he could easily have consumed the Relevant Drugs within a reasonable time frame of one to two months.

28 The appellant submits that his claimed consumption rate is reasonable and plausible. To corroborate his claimed consumption rate, he relies primarily on the First Long Statement recorded by ASP Seah on 30 October 2017 (six days after his arrest), where he stated that he smoked two to three 8g packets of diamorphine every day. The appellant further relies on the testimony of Dr Munidasa Winslow ("Dr Winslow"), then a psychiatrist at the Institute of Mental Health ("IMH"), who accepted that his claimed rate of consumption was *possible* if this consumption was for a short period of time and if it was spread out throughout the day. Dr Winslow also agreed that consuming crystal methamphetamine in combination with high amounts of diamorphine might lessen the effects of sleepiness caused by the latter.

29 The appellant acknowledges that different rates of diamorphine consumption were recorded by Dr Tan Chong Hun ("Dr Tan"), a prison medical officer in the Changi Prison Complex Medical Centre (4g *per* day), and Dr Jaydip Sarkar ("Dr Sarkar"), another psychiatrist with the IMH at the

material time (one packet of 8g *per* day for a month prior to his arrest). The appellant offers the following explanations for these discrepancies:

(a) With regard to Dr Tan, the appellant submits that he had clarified in his testimony at trial that what he had reported to Dr Tan was his *last* consumption of diamorphine *that morning* prior to his arrest, and not his usual consumption rate. The appellant also suggests that he was experiencing withdrawal symptoms during Dr Tan's examination and therefore might not have fully applied his mind to his stated rate of consumption or carefully checked what Dr Tan had recorded for accuracy.

(b) With regard to Dr Sarkar, the appellant argues that his consumption rate depended on the quality of the drugs, such that if the drugs were of a lower quality, he would require two to three 8g packets *per* day. He claims that the reason he did not explain his consumption pattern clearly to Dr Sarkar was that he was unwell, felt depressed and wanted to complete the interview as soon as possible, and could have been in a state of confusion at the time of the evaluation.

30 The appellant further submits that the fact that he gave different rates of consumption to different persons at different times does not mean he was not a credible witness. On the contrary, the up and down pattern of his recorded consumption rates is more indicative of a person who did not apply his mind carefully to provide a "manufactured" rate of consumption.

31 Having considered the appellant's arguments and the evidence before us, we affirm the Judge's finding that the appellant has failed to establish his claimed rate of diamorphine consumption (*ie*, two to three packets of 8g of diamorphine each, amounting to 16g to 24g in total, *per* day) on a balance of

probabilities. In our judgment, as in the case of *Sulaiman bin Jumari*, there is no consistent or credible evidence to support the appellant's claimed rate of consumption. Although this claimed rate is corroborated by the appellant's First Long Statement, it is – as the Judge found at [20]–[21] of the GD – undermined by the evidence given by the doctors who examined him at different points, both *before* and *after* the First Long Statement was recorded. Indeed, when the question was put to him by the Prosecution during the trial, the appellant himself agreed that he had not provided a consistent rate of consumption from the time of his arrest until the time of the trial.

32 The fluctuations in the appellant's recorded rates of diamorphine consumption are starkly apparent when the evidence is considered in sequence. Dr Tan examined the appellant on 26 October 2017 and recorded that his consumption rate was 4g of diamorphine a day. A report dated 28 October 2017, countersigned by Dr Winslow, certified that the appellant had consumed 4g of diamorphine a day. Two days later, on 30 October 2017, ASP Seah recorded the appellant's First Long Statement, in which the appellant stated: "These days I smoke about 2–3 8g packets of *panas* every day." Subsequently, Dr Sarkar conducted interviews with the appellant on 3, 6 and 9 November 2017, and recorded in his report dated 14 November 2017 that the appellant claimed to have consumed "one packet of heroin daily", of about 8g each.

33 It bears emphasising that the differences in the appellant's recorded rates of diamorphine consumption were very substantial, and that the consumption rates recorded by the doctors were all *significantly lower* than the appellant's claimed consumption rate of 16g to 24g *per* day. Dr Tan's and Dr Winslow's reports (recorded just a few days before the appellant's First Long Statement) both stated that the appellant had consumed 4g of diamorphine *per* day, while Dr Sarkar's report (recorded shortly after the appellant's First Long Statement)

stated that the appellant claimed to have consumed 8g of diamorphine *per* day. The higher of these two figures (*ie*, 8g) is *half* of the lower limit of the appellant's claimed consumption rate.

34 The appellant relies on the portion of Dr Winslow's testimony where he stated that it was *possible* for the appellant to have smoked two to three 8g packets of diamorphine *per* day over a short period of time, particularly if it was spread out over the day and consumed in combination with methamphetamine. This, however, misses the point. The relevant question is not whether the claimed rate of consumption is *possible*, in a generic sense, for a notional, unspecified drug consumer, but instead whether the appellant has produced credible and consistent evidence of *his* rate of consumption. In this case, he has not done so. Dr Winslow's opinion in respect of *this appellant* was that his claimed rate of diamorphine consumption was unlikely. Dr Winslow observed, based on the appellant's IMH reports between October 2014 and March 2016 (during which period he had received three episodes of in-patient care from the IMH for diamorphine dependence), that the appellant had been consuming only one to two straws (amounting to between 0.2g and 0.8g of diamorphine) to six to seven straws (amounting to between 1.2g and 2.8g of diamorphine) *per* day during that period, which provided "an idea of [the appellant's] general consumption rate" which was "moderate" for diamorphine. Although it is possible that the appellant's rate of diamorphine consumption escalated rapidly after March 2016, there is no corroborative evidence of this. Dr Winslow went on to opine that a consumption rate of 8g "sound[ed] heavy for this patient" and that the appellant's consumption rate was "more likely to be what he mentioned in the first instance to be about 4 grams per day". According to Dr Winslow, the appellant's claimed consumption rate of up to 24g of diamorphine *per* day was "at the extremely high level" and would not be sustainable for long periods of time. Furthermore, if the appellant's claimed consumption rate was merely the

rate that he *could* consume on particular occasions, or was consuming in the short period of time before his arrest, this would, in our view, beg the question of why he saw the need to stockpile such a large amount of diamorphine for his consumption over (on his own estimate) *one to two months*.

35 The explanations offered by the appellant for the inconsistent consumption rates he provided to Dr Tan and Dr Sarkar (summarised at [29] above) are also, in our judgment, unconvincing. As the Prosecution points out, and as the appellant's counsel rightly accepted during the hearing, the assertions that his rate of consumption was incorrectly recorded were not put to Dr Tan and Dr Sarkar, even though they went to the issue of the appellant's consumption rate which was critical to his consumption defence. Moreover, the appellant has provided no basis for disturbing the Judge's finding of fact that his mental state was not such as to affect his communication with the doctors (see the GD at [51]), and has made only bare assertions in this regard. As for the appellant's contention that 4g of diamorphine *per* day (as recorded by Dr Tan) was only what he had *last* consumed in the morning prior to his arrest, this is (on the appellant's own case) corroborated *only* by the fact that Dr Sarkar had recorded that the appellant had consumed 4g of diamorphine three to four hours before his arrest. It is not supported by Dr Tan's evidence that he had asked the appellant how much diamorphine he used "a day", in a series of questions that included how long the appellant had been taking the drug, how frequently he took it, and when was the last time he had taken it. In this context, we take the view that it would have been quite clear to the appellant that Dr Tan was asking about his *regular* consumption rate, and not only about how much he had *last* consumed. In any event, even if there was a misunderstanding between Dr Tan and the appellant, the inconsistent rates of consumption recorded by Dr Sarkar and Dr Winslow would still not have been satisfactorily explained.

36 We therefore see no basis for disturbing the Judge's finding that the appellant has failed to provide credible evidence of his very high claimed rate of diamorphine consumption – namely, 16 to 24g of diamorphine *per* day. In these circumstances, this essential pillar of the appellant's consumption defence cannot stand. As Yong CJ noted in *Jusri*, although a drug addict "cannot be expected to assess daily consumption with precision, he must at the very least be able to give a coherent account of his rate of consumption"; if "no reasonably consistent account is given", he cannot be said to have discharged the legal burden of rebutting the presumption of trafficking (*Jusri* at [49]). In our view, these observations apply squarely in the present case, especially since it is the appellant's case that *all* of the Relevant Drugs were meant for his personal consumption.

Paraphernalia associated with drug trafficking

37 Another factor which the Judge took into consideration was the appellant's possession of paraphernalia normally associated with drug trafficking activities, such as the empty zip lock bags and weighing scales in Exhibits C1B and C4 respectively. The appellant submits that the Judge erred in finding that the presence of such paraphernalia weakened his consumption defence. According to the appellant, the Judge failed to give adequate weight to his explanation that he used the zip lock bags to pack small amounts of drugs to carry on his person when leaving his home, given that he had to consume the drugs several times in the day. As for the discrepancies between the appellant's testimony in court and his earlier statements (such as his omission to include in his recorded statements that only one of the weighing scales in Exhibit C4 belonged to him, and that the zip lock bags in Exhibit C1B were to facilitate his own consumption), these are equally attributable to the appellant not having

applied his mind fully when giving his statements, or not having fully appreciated the significance of certain points.

38 In our judgment, the Judge did not err in this regard. Digital weighing scales and empty plastic sachets have been characterised as "drug trafficking paraphernalia, whose utility is obviously for the preparation of drugs for sale": *Sharom bin Ahmad* at [36] (where there was only one weighing scale and 21 empty sachets: see *Sharom bin Ahmad* at [9]). Even if we accept that only one of the four weighing scales was *owned* by the appellant, no explanation has been provided as to why he was in *possession* of this number of weighing scales, so as to displace the inference that they were used in drug trafficking activities. The sheer number of empty zip lock bags also undermines his assertion that these were used only to facilitate his *own* consumption. Indeed, the appellant made admissions to the contrary in his First Long Statement. Referring to the empty zip lock bags in Exhibit C1B, he stated that "[w]hen my friends want to buy *panas* I will use these packets to pack and sell to them"; and referring to the weighing scales in Exhibit C4, he stated that he "use[d] them to pack *panas* when [his] friends want[ed] to buy from [him]".

39 Although the appellant later claimed during his cross-examination that his admissions in the First Long Statement were untrue because he was "not in a proper mental state" and was "very confused" throughout the recording of the First Long Statement, this purported explanation is a bare assertion which we are unable to accept. As the appellant admitted, this was the first time he had raised the argument that he had been confused when the First Long Statement was recorded. Moreover, the appellant has not provided any basis for disturbing the Judge's finding of fact that his mental state was not such as to affect his giving of statements (see [51] of the GD). Even more fundamentally, given that the appellant relies primarily on the First Long Statement to corroborate his

claimed consumption rate, he cannot selectively disclaim the parts of the same statement that are unfavourable to his case while relying on other parts of the statement which support his contentions, without providing any explanation for why different portions of the same statement should be treated differently.

40 In these circumstances, we affirm the Judge's findings regarding the paraphernalia found in the appellant's possession. In our view, the sheer number of weighing scales and empty zip lock bags found in the appellant's flat provides objective evidence consistent with the presumption that the Relevant Drugs were for trafficking. This further undermines the appellant's consumption defence.

Admissions contrary to the consumption defence

41 The appellant's consumption defence is further undermined by certain contrary admissions he made in his statements, to the effect that he sold small quantities of diamorphine to his friends on a regular basis. In his First Long Statement, he stated that he would sell diamorphine to his "very good friends" when they asked him if he had some, at a rate of "about 1 packet a month on average", for about $120 or $130 *per* packet. In his Second Long Statement, he stated that he would "smoke or sell" his usual "*batu*" of diamorphine, and that he thought he smoked more than he sold but he "[could not] say exactly how much [he would] smoke or sell" because he did not keep track.

42 During his cross-examination, the appellant took the position that he had sold only "one packet" of drugs to his friend to return a previous favour, and that he was "not in a proper mental state" and "very confused" throughout the recording of the First Long Statement. However, we reject this purported explanation for the reasons set out at [39] above. Further, similar admissions are found in Dr Sarkar's report, which records the appellant as having said that he

had started selling diamorphine around a month prior to his arrest and that he sold the remainder of the drugs that he did not consume to his "very good friends" for around $100 a packet.

43 In our judgment, although the Judge did not make any specific findings on this point, these admissions – which are consistent with the presumption that the Relevant Drugs were indeed for trafficking – provide further support for the Judge's decision, by casting further doubt on the credibility of the appellant's First Long Statement and further undermining his consumption defence that *all* of the Relevant Drugs were meant *solely* for his personal consumption.

Explanation based on the Deepavali holiday

44 We now address the appellant's explanation for how he came to be in possession of the Relevant Drugs, which comprised 35.85g of diamorphine. This is, by any measure, a large amount, being nearly 18 times the amount necessary to engage the presumption of trafficking in s 17(*c*) of the MDA (as we have observed at [21] above), and more than double the amount needed to cross the threshold for capital punishment in the Second Schedule to the MDA.

45 According to the appellant, he initially wanted to purchase only one "*batu*" of diamorphine for $2,500. However, when he called "Abang" on 23 October 2017, he was persuaded to take two "*batu*" of diamorphine instead, to avoid disruptions to his diamorphine supply due to the Deepavali festive period. We refer to this as "the Deepavali Explanation". The appellant argues that, as "Abang" controlled all the arrangements for the delivery of his orders, it was not unreasonable that he went along with the suggestion and representations made by "Abang" regarding the possible supply disruptions during the Deepavali season, and therefore accepted two "*batu*" of diamorphine. He had no way of verifying the veracity of what "Abang" had told him.

Moreover, even though Deepavali had passed by the time the appellant collected the Relevant Drugs, it was plausible that drug couriers would be away for a longer period during the Deepavali season. The appellant therefore contends that the Judge erred in finding that the Deepavali Explanation was not sufficiently cogent or convincing. The Judge failed to give adequate weight to the fact that the appellant accepted at face value what he had been told by "Abang" and, fearing a disruption to his drug supply, was easily persuaded by "Abang" to accept two "*batu*" of the drugs.

46 We affirm the Judge's finding that the appellant's Deepavali Explanation is not persuasive. In his First Long Statement, the appellant made no mention of "Abang" having persuaded him to take double the amount of diamorphine to avoid supply disruptions due to the Deepavali festive season. On the contrary, according to the appellant, *he* had called "Abang" and told him he wanted two "*batu*" of diamorphine, and "Abang" agreed and "also asked [him] if [he] wanted to take some Sejuk". It was only in his Second Long Statement, recorded nearly four months after the First Long Statement, that the appellant sought to "clarify" that he had initially only wanted to order one "*batu*", but was persuaded by "Abang" to take two "*batu*" in view of the Deepavali season. The Deepavali Explanation is thus not consistently supported even by the appellant's own evidence. In these circumstances, the Deepavali Explanation appears to us to be a mere afterthought, and it does not provide a satisfactory explanation for the large amount of the Relevant Drugs found in the appellant's possession. The sheer amount of the Relevant Drugs found in the appellant's possession, which he has not provided any credible explanation for, thus further undermines his consumption defence. It provides additional objective evidence which supports an "irresistible inference" that the appellant intended to traffic in the Relevant Drugs (see *Public Prosecutor v Tan Lye Heng* [2017] 5 SLR 564 at [100]).

Financial evidence

47 The final factor considered by the Judge was the evidence of the appellant's financial transactions, which the Judge found to be "at most neutral" (GD at [12]). The appellant submits that the Judge erred in so concluding, as he has provided credible evidence that he had the financial means to purchase the drugs to sustain his high claimed consumption rate, and this strengthens his consumption defence. The appellant contends that the Judge did not give adequate weight to the fact that none of the Prosecution's witnesses whose accounts showed dealings with the appellant's bank account said that they had drug dealings with him.

48 The Prosecution, on the other hand, submits that the financial evidence undermines the appellant's credibility and his case, as there is a significant gap between his declared sources of income and his estimated drug spending which points to the presence of undeclared sources of income. The Prosecution calculates that the appellant would have needed to spend at least $50,700 on his drug habit in 2017 (based on his claimed consumption rate of 8g of diamorphine *per* day from the end of 2016 until he began purchasing diamorphine in bulk from "Abang" in August 2017), whereas he would only have earned and received a total of about $36,000 in 2017. Similarly, the Prosecution argues that the amount of moneys flowing through the appellant's bank account between January and October 2017, based on his 2017 bank statements – inflows amounting to $63,750.67 and outflows amounting to $67,524.24 – cannot be explained by the legitimate sources of income and expenditure disclosed by the appellant. The Prosecution further contends that these inflows and outflows are inconsistent with the appellant's explanation that he was working for an unlicensed moneylender known as "Ken", because if he was merely a conduit for unlicensed moneylending (as he claimed), the total amounts of inflows and

outflows should largely even out *after* accounting for his own income and expenditure. In contrast, after factoring in his drug expenditure, the remaining inflows and outflows from the appellant's bank account would have been severely imbalanced.

49 In our view, the Prosecution has not provided any basis for interfering with the Judge's finding (at [49] of the GD) that the financial evidence does *not* support an inference that the appellant was involved in drug trafficking. Although the financial evidence is curious and raises unresolved questions about the source of the funds flowing into the appellant's bank account, there is insufficient evidence to attribute this inflow of funds to *drug trafficking* (as opposed to other illegal activities such as unlicensed moneylending), bearing in mind that none of the witnesses who were called to give evidence on this point implicated the appellant in drug dealing (see [49] of the GD). Taken at face value, the financial evidence does suggest that the appellant had broadly sufficient financial means, at least at the point of his arrest, to sustain his claimed rate of consumption, as the Judge found (at [50] of the GD). This is, in our judgment, as far as the financial evidence goes.

50 Nevertheless, whether or not the appellant had the financial means to purchase the Relevant Drugs for his personal consumption is but one relevant factor in the analysis. Viewing the circumstances of this case holistically, and having regard to the other factors considered above, the evidence before the court leads us to the inexorable conclusion that the appellant has failed to establish his consumption defence on a balance of probabilities. The financial evidence, which is neutral at best, would only speak to the appellant's financial ability to fund his heavy drug consumption *if* his claimed rate of consumption was itself borne out by the evidence before us. On its own, it is neither here nor

there, and it therefore does not assist the appellant to rebut the presumption under s 17(*c*) of the MDA.

Conclusion

51 For the reasons set out above, we affirm the Judge's decision that the appellant has failed to rebut the presumption under s 17(*c*) of the MDA that the Relevant Drugs were in his possession for the purpose of trafficking. We therefore dismiss the appeal, and uphold the appellant's conviction and the mandatory death sentence imposed by the Judge.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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