

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 234

Criminal Case No 51 of 2018

Between

Public Prosecutor

And

(1) Lingkesvaran Rajendaren
(2) Alfian bin Abdul Rahim

GROUND OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal procedure and sentencing] — [Sentencing]

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Public Prosecutor
v
Lingkesvaran Rajendaren and another

[2018] SGHC 234

High Court — Criminal Case No 51 of 2018
Audrey Lim JC
25–26, 31 July; 1–3, 7 August; 15 October 2018

29 October 2018

Audrey Lim JC:

Introduction

1 The first accused (“Lingkes”) is a 26-year-old Malaysian. The second accused (“Alfian”) is a 48-year-old Singaporean. It is undisputed that on 24 May 2016, Lingkes delivered a bundle wrapped in black tape (“Bundle P3”) to Alfian at the void deck of Block 289 Yishun Avenue 6. Bundle P3 was subsequently found to contain not less than 1,373.7g of granular/powdery substance that was analysed and found to contain not less than 52.77g of diamorphine (“the Drugs”).

2 Lingkes and Alfian were tried jointly and they each claimed trial to one charge under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”). The respective charges against each of them read as follows:

That you, 1. LINGKESVARAN RAJENDAREN,

on 24 May 2016, at the void deck of Blk 289 Yishun Avenue 6, Singapore, did traffic a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by giving one bundle containing not less than 1,373.7 grams of granular/powdery substances which was analysed and found to contain not less than 52.77 grams of diamorphine to one Alfian Bin Abdul Rahim ... , without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed).

That you, 2. ALFIAN BIN ABDUL RAHIM,

on 24 May 2016 at about 11.43 am, at the void deck of Blk 289 Yishun Avenue 6, Singapore, did traffic a Class A Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by having in your possession for the purpose of trafficking, one bundle containing not less than 1,373.7 grams of granular/powdery substances which was analysed and found to contain not less than 52.77 grams of diamorphine, without authorisation under the said Act or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) and punishable under s 33(1) of the said Act.

3 Lingkes' defence was that he did not know that Bundle P3 contained the Drugs, but believed that it contained tobacco. Alfian admitted that he knew the contents of Bundle P3 but that he was simply a courier tasked to collect the Drugs and to pass them on to someone else. At the conclusion of the trial, I found that the Prosecution had proved beyond a reasonable doubt the charges against Lingkes and Alfian respectively, and I convicted them on their respective charges.

4 Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the prescribed punishment is death. Pursuant to s 33B(1)(a) of the MDA, the court has a discretion not to impose the death penalty if the requirements set out in s 33B(2) of the MDA are satisfied. I found that Lingkes' role in the offence

was restricted to that of a courier. However, the Prosecution did not issue Lingkes with a certificate of substantive assistance under s 33B(2)(b) of the MDA, and as such I passed the mandatory death sentence on him. I also found that Alfian's role in the offence was restricted to that of a courier. The Prosecution issued a certificate of substantive assistance in respect of Alfian, and I thus imposed the alternative sentence of life imprisonment and the mandatory minimum 15 strokes of the cane on him.

5 Lingkes has appealed against the conviction and sentence. I now provide the reasons for my decision.

The Prosecution's case

Arrest of Lingkes and Alfian

6 On 24 May 2016, officers from the Central Narcotics Bureau ("CNB") conducted an operation involving a drug consignment that Alfian was to collect from Lingkes. The following account of the events leading up to and including the arrest of Lingkes and Alfian is undisputed and is based on statements given by CNB officers recording their observations during, and conduct of, the operation.

7 At about 8.30am, Alfian and one Rodrigues Morris Christopher ("Rodrigues") arrived at bus stop number 2 along Senoko Drive. Alfian was wearing a white top and carrying a brown haversack. Alfian and Rodrigues were seen alternating between pacing about the bus stop and sitting on the bench at the bus stop. Around 10.30am, Alfian and Rodrigues then left the bus stop and walked along Senoko Drive in the direction of Senoko Avenue. They continued along Senoko Avenue towards Admiralty Road West, where they boarded a bus. At about 11.10am, Alfian and Rodrigues were seen walking along Yishun

Avenue 7 near Block 288 and in the direction of Block 289. They sat down at a stone bench between Blocks 288 and 289 and, soon after, got up and sat down at another stone bench at the void deck of Block 289.

8 At about 11.40am, Lingkes and one Suresh Sigamani (“Suresh”) were seen walking towards the void deck of Block 289 in the direction of Block 288. Lingkes approached Alfian, and when they met, Lingkes and Alfian were observed looking down into their respective haversacks. Shortly thereafter, Alfian and Rodrigues walked away from Lingkes. CNB officers subsequently arrested Alfian and Rodrigues at about 11.43 am around Block 284, and Lingkes and Suresh at about 11.48 am at the bus stop in front of Block 289.

9 Alfian’s haversack was searched and a black “City Chain” paper bag containing a big rectangular shaped bundle wrapped in black tape (Bundle P3) was retrieved.¹ Lingkes’ backpack was also searched and a red plastic bag containing two large stacks of money was found.² It was later ascertained that one stack of money contained S\$8,200 and the other contained S\$6,600.³ The personal properties of both Lingkes and Alfian were seized. Suresh’s personal properties were also seized, and his haversack was searched and various items were recovered from it.

Analysis of the drug exhibits

10 Bundle P3 was subsequently unwrapped by CNB officers in Lingkes’ and Alfian’s presence. It was found to comprise three smaller bundles of granular substances. The CNB submitted the three smaller bundles to the Health

¹ Agreed Bundle (“AB”) 471.

² AB 504.

³ AB 504.

Sciences Authority for analysis.⁴ The three smaller bundles were found to contain not less than 1,373.7g of granular/powdery substance, which was analysed and found to contain not less than 52.77g of diamorphine, a Class A controlled drug under the MDA.⁵

Statements from Lingkes and Alfian

11 The Prosecution tendered eleven statements recorded from Lingkes⁶ and five statements recorded from Alfian⁷ in the course of investigations. Lingkes and Alfian did not challenge the admissibility of these statements. I will refer to the contents of their statements, where relevant, in my analysis below.

Handphone records

12 The Prosecution also tendered the records of audio and text messages which were found on the following mobile devices:

- (a) a Samsung Galaxy SIII Mini phone (exhibit “SS-HP1”), which belonged to Suresh, but which, it is undisputed, Lingkes had used on the day of his arrest.⁸
- (b) a Nokia 1280 phone (exhibit “LK-HP1”) belonging to Suresh, but which Lingkes had used to contact Ayyavoo on the day of his arrest;⁹

⁴ AB 574.

⁵ AB 248–251.

⁶ AB 438–441 (and translation at AB 516–516A), AB 536–539, AB 593–598, AB 599–601, AB 602–604, AB 615–617, AB 618–621, AB 622–623, AB 624–627, AB 628–629 and AB 630–636.

⁷ AB 589–592, AB 657–667, AB 668–672, AB 673–674, AB 675–679.

⁸ AB 58–199; Exhibit D; and Plaintiff’s Supplementary Bundle.

⁹ AB 278; 398–400; Exhibit C.

- (c) a Samsung tablet (exhibit “B1C”) belonging to Lingkes;¹⁰
- (d) a Samsung Galaxy S4 phone (exhibit “B1D”) belonging to Lingkes;¹¹
- (e) a Nokia 300 phone (exhibit “B1E”) belonging to Lingkes;¹²
- (f) a Nokia 105 phone (exhibit “AL-HP1”) belonging to Alfian;¹³
- (g) a Nokia 1202-2 phone (exhibit “AL-HP2”) belonging to Alfian;¹⁴
and
- (h) a Nokia 1200 phone (exhibit “AL-HP3”) belonging to Alfian.¹⁵

13 Based on these mobile device records, the Prosecution tendered Exhibits D and E. Exhibit D was a table showing communications between Suresh and Lingkes, and between either of them and a Malaysian number which Lingkes identified as belonging to “Ayyavoo”. According to Lingkes, Ayyavoo was a Malaysian man who had instructed him to enter Singapore to collect money and under whose instructions he had picked up and delivered Bundle P3 on 24 May 2016. It was not disputed that the phone numbers traced to Lingkes and Suresh in Exhibit D were the phone numbers tied to their mobile devices.¹⁶

14 Based on Exhibit D, the Prosecution drew the court’s attention to a series of Whatsapp audio messages (“the Audio Messages”) between Suresh and

¹⁰ AB 212–231.

¹¹ AB 315–349.

¹² AB 350–361; 401–402.

¹³ AB 298–305.

¹⁴ AB 202–210; 403–408.

¹⁵ AB 306–314; 409–420.

¹⁶ 1/8/18 NE 28.

Lingkes on 30 April 2016 in which they discussed “ice”, “papan”, “set” of “ice”, and the “rate” and “price”. The numbers “3” and “5” were also mentioned. For proper context, I set out here the relevant audio messages, translated from their Tamil transcription:¹⁷

S/N	Sender	Recipient	Time	Translated audio message (untranslated terms in italics)
1	Suresh (SS-HP1)	Lingkes (B1D)	16:21	They want five, one <i>papan</i> , <i>ice</i> , half a set They want to know the prevailing price. We can take that as <i>cari makan</i> during the day. I had asked earlier ... the same price I said ... or else we'll take 50 <i>sen</i> or 30 <i>sen</i> as <i>cari makan</i> . Okay, okay ... I ... you check the price
2	Lingkes (B1D)	Suresh (SS-HP1)	22:07	Don't understand, don't understand. <i>Ice</i> one <i>set</i> , what about 5? 5 <i>papan</i> or 1 <i>papan</i> ... don't understand clearly ... say so <i>correctly</i>
3	Suresh (SS-HP1)	Lingkes (B1D)	22:07	<i>Ice</i> half a <i>set</i> , <i>five</i> , one <i>papan</i>
4	Lingkes (B1D)	Suresh (SS-HP1)	22:09	Who asked? Is it to be sent to Singapore? Say properly, dude. I don't understand clearly. No, do you want?
5	Suresh (SS-HP1)	Lingkes (B1D)	22:10	½ set 5 satu <i>papan</i>
6	Lingkes (B1D)	Suresh (SS-HP1)	22:15	Dude, do you want at your rate? Do you want to push it? Or, do you want the <i>correct</i> rate to be quoted?

¹⁷ Supplementary Bundle 2–5; Exhibit D

7	Suresh (SS-HP1)	Lingkes (B1D)	22:15	There is, dude.....there is..... I have no issues.....Find out the price they <i>buka</i> and inform me.
8	Suresh (SS-HP1)	Lingkes (B1D)	22:16	Give me some <i>cari makan</i> lah. I..... just for us to <i>cari makan</i> a little from it.
9	Suresh (SS-HP1)	Lingkes (B1D)	22:19	Dude, it seems they said it was three six <i>kosong</i> at the place at which you enquired. It seems one <i>set</i> is three hundred and sixty dollars. That's why they're enquiring the price from us.
10	Lingkes (B1D)	Suresh (SS-HP1)	22:20	You can't get it at that rate. Tell him to stay put where he is. It's 4... at my place.... Is it <i>okay</i> ? If I were to export it in, the price will be different <i>lah</i> . If I were to export in..... he will take it at 3....5... <i>gram</i> thirty-five <i>gram</i> . So, we'll get a lower price. It wouldn't be half a <i>set</i> . My rate would only be four. If you want I can bring (you). You can meet and speak in person. Don't know whether the <i>five</i> needs to be changed. I will inform you after finding out about that.
11	Lingkes (B1D)	Suresh (SS-HP1)	22:24	Wait, dude. What I shall do is..... I'll ask Aivoo tomorrow. Aivoo's one <i>set</i> would be 3....5.... I think it should be 3....5.... I'll inform you after I find out. Is that <i>okay</i> ? Don't <i>buka</i> the price in a hurry. Find out about their price first... and inform me later.

15 Using these Audio Messages, the Prosecution sought to demonstrate the following assertions that were relevant to the state of Lingkes' knowledge about the nature of the Drugs which he delivered:

(a) First, CNB's ASP Prashant Sukumuran testified that based on his experience, the Audio Messages concerned drug prices and quantities.¹⁸ For instance, "set" referred to the quantity of "ice". The numbers "3" and "5" could refer to the weight or price of the drugs, while "papan" is a Malay word which means "slab" and is used to refer to Erimin-5, a controlled drug.

(b) Second, in the Audio Messages, Lingkes had mentioned that he would check with one "Aivoo" about his "one set". The Prosecution claimed that Lingkes' reference to "Aivoo" in the Audio Messages was actually a reference to Ayyavoo, and that Aivoo and Ayyavoo are one and the same person.

16 Exhibit E was a table setting out the relevant communications between Alfian and one "Bossy". According to Alfian, "Bossy" was a Malaysian drug supplier whom he had communicated with on 23 May 2016 to collect the Drugs.

Close of the Prosecution's case

17 At the close of the Prosecution's case, I found that there was sufficient evidence against both Lingkes and Alfian for them to be called upon to give evidence in their defence. They decided to testify but did not call other witnesses.

Lingkes' defence

18 Lingkes' account was as follows. He was employed as a security officer at an illegal casino in Johor Bahru, Malaysia, earning a monthly salary of RM\$1,500 (or about RM\$2,000 with overtime). He had been employed at the

¹⁸ 31/7/18 NE 37.

casino since March 2016, and that was when he came to know Ayyavoo. Ayyavoo was in charge of security at the casino and was also an illegal moneylender. However, he did not know whether Ayyavoo was dealing in drugs. Ayyavoo had never spoken to him about drugs or tobacco.

19 As Lingkes was going into Singapore regularly to find work, Ayyavoo asked whether Lingkes could help him to collect money (being interest due on loans) from borrowers in Singapore. Lingkes agreed as Ayyavoo had offered to pay him RM\$500 for each trip into Singapore. Prior to his arrest, Lingkes had entered Singapore on two other occasions to collect money for Ayyavoo's moneylending business. I will refer to these as the "First Occasion" and "Second Occasion", and to the day of his arrest as the "Third Occasion".

20 The First Occasion was sometime in April 2016. After Lingkes entered Singapore, Ayyavoo contacted him on the phone, instructing him to collect money from an unknown Malay uncle (I will call him "M") at Kallang. Lingkes proceeded to Kallang, where M gave him a bundle of S\$50 notes.¹⁹ Lingkes did not know how much money he had collected and did not count the money either. Lingkes then returned to Johor Bahru and passed the money to Ayyavoo, who paid him RM\$500.

21 The Second Occasion was about a week before Lingkes' arrest. Again, after Lingkes entered Singapore, Ayyavoo instructed him to go to Kallang to collect money from M. This time, M handed him not only a bundle of cash (tied with a rubber band) but also two envelopes. Once again, Lingkes did not know or ask about how much cash M had handed to him.²⁰ The two envelopes were

¹⁹ 2/8/18 NE 5; AB 595.

²⁰ 2/8/18 NE 8.

wrapped in black tape and were about seven to eight inches long and one inch thick. The opening of the envelopes was wrapped in blue tape. M asked Lingkes to pass the envelopes to someone else at Senoko Drive and to collect money from that person at the same time. During cross-examination, Lingkes added that he had asked M about the contents of the two envelopes and was told that one envelope contained money and the other contained documents.²¹

22 Lingkes called Ayyavoo to ask whether he could assist M as requested by M. Ayyavoo told Lingkes to do so. He informed Lingkes that the two envelopes contained documents and money, and further instructed Lingkes to collect money from the recipient of the envelopes. Later, Ayyavoo told Lingkes where in Senoko Drive to meet the recipient.²² Lingkes proceeded to Senoko Drive, delivered the two envelopes to Alfian and collected money from him. In cross-examination, Lingkes stated that he did not know Alfian's name as they did not strike up a conversation.²³ Lingkes then returned to Johor Bahru, where he handed the money collected from both M and Alfian to Ayyavoo, who paid him RM\$500.

23 The Third Occasion was on 24 May 2016, the day of Lingkes' arrest. The day before, Ayyavoo had asked Lingkes to enter Singapore to collect money from Ayyavoo's borrowers. Ayyavoo did not inform Lingkes beforehand from whom and where he was to collect money.²⁴ Even though Ayyavoo sent him the message "Senoko Drive, bus-stop number B02" before Lingkes entered Singapore, Lingkes testified that he was subsequently informed

²¹ 2/8/18 NE 11.

²² 2/8/18 NE 15.

²³ 2/8/18 NE 17.

²⁴ 2/8/18 NE 17.

by Ayyavoo that this message was mistakenly sent, and hence Lingkes did not know the collection address before he entered Singapore.²⁵

24 On 24 May 2016, after Lingkes had crossed the Tuas checkpoint, Ayyavoo called him, instructing him to alight at the first bus stop after the Tuas checkpoint, where M would be waiting. However, Lingkes missed the first bus stop. So he called Ayyavoo, who instructed him to alight at a bus stop near the 3M building (“3M”) instead. Suresh joined Lingkes to proceed to 3M, as Lingkes had asked Suresh to follow him for company when they bumped into each other at the Tuas checkpoint earlier that morning.

25 After alighting at 3M, Lingkes received M’s car plate number from Ayyavoo.²⁶ Lingkes approached the car and was told to get on board. Whilst in the car, Lingkes asked M for the money, but M did not have money for Lingkes to collect. Instead, M directed Lingkes to look at the floor of the car where there was one big bundle (*ie*, Bundle P3) and one small bundle (“the small bundle”). Both bundles were wrapped in black tape.²⁷ M told Lingkes that the two bundles contained “tobacco” (in English) and asked him to pass the bundles to someone else and collect money from the recipient. In cross-examination, Lingkes elaborated that M had asked him to do so as a favour, and that the two bundles were to be given to different recipients. He was to pass the small bundle to someone at the “Tiger company” at Tuas, and Bundle P3 to someone else at Yishun, where he was also to collect money.²⁸

²⁵ 2/8/18 NE 17–18.

²⁶ 2/8/18 NE 19; AB 618 at para 52.

²⁷ 2/8/18 NE 22.

²⁸ 2/8/18 NE 24–26.

26 Lingkes did not know what “tobacco” was. While still in the car, he called Ayyavoo to inform him that M did not give him any money. He told Ayyavoo that M wanted him to deliver two bundles to someone else, and asked if he could do so. Ayyavoo asked to speak to M, and they had a short conversation on Lingkes’ phone, after which M returned the phone to Lingkes. At this point, Ayyavoo told Lingkes that the two bundles contained “tembakau”, which Lingkes understood to be tobacco. Ayyavoo told Lingkes to help M to deliver the two bundles and collect money. Lingkes thus placed the two bundles in his bag. M gave Lingkes \$100 for taxi fares and dropped Lingkes back at the bus stop in front of 3M, where Suresh was waiting for him.

27 Next, Lingkes and Suresh made their way to the Tiger company at Tuas. When they arrived, Ayyavoo gave Lingkes the vehicle number of a car that would come by. When the car arrived, Lingkes approached the car with the small bundle and one of the passengers (whom I will refer to as “X”) “grabbed” the small bundle from Lingkes and “threw” a sealed envelope out of the car. The car then drove off. Lingkes picked up the envelope and tore it open to check if it contained money. Inside, he found “hell notes”.²⁹

28 Lingkes called Ayyavoo to inform him that he had received hell notes. Ayyavoo said it was alright and told him to go on to Kallang to collect money. But before Lingkes could proceed to Kallang, Ayyavoo messaged him to go to “Chai Chee Avenue Blk 31” instead.³⁰ When Lingkes arrived at Chai Chee, no one turned up. Ayyavoo then instructed Lingkes to go to Kallang to collect money “for the moneylending”. At Kallang, he was instructed to meet a Tamil man. The Tamil man came up to him and uttered “Ayyavoo”, to which Lingkes

²⁹ P19.

³⁰ Exhibit D, p 29, item 151; 1/8/18 NE 17.

replied, “yes”. Lingkes collected four bundles of money from the Tamil man,³¹ but did not know how much it amounted to. Upon being informed that Lingkes had collected the money at Kallang, Ayyavoo told Lingkes to go to Block 289 Yishun Avenue 7.³² This address was sent to Lingkes via a text message.

29 When Lingkes and Suresh reached Block 289 Yishun Avenue 7, Lingkes called to notify Ayyavoo of his arrival. Ayyavoo told him to look out for two persons at the void deck, one wearing a white shirt and the other wearing an orange shirt. This was a reference to Alfian and Rodrigues. Lingkes and Suresh spotted Alfian and Rodrigues, and approached them. Lingkes placed Bundle P3 in Alfian’s bag while Rodrigues “threw” some money into Lingkes’ bag.³³ No words were exchanged.³⁴ Lingkes did not know how much money Alfian had given him, but he claimed that this money was “interest money” for Ayyavoo’s moneylending business.³⁵ Thereafter, Lingkes and Suresh walked to a bus stop and were arrested by the CNB officers.

30 Lingkes’ defence was that he believed that Bundle P3 (and the small bundle) contained tobacco because M and Ayyavoo had told him so. He had agreed to deliver Bundle P3 because he did not think that it was illegal to deliver tobacco.³⁶ He claimed that he had never consumed heroin, did not know what heroin looked like, and did not know or suspect that the two bundles that M had passed to him contained heroin. Further, he had entered Singapore to collect

³¹ 1/8/18 NE 18; Photos B8 and B12.

³² 1/8/18 NE 21; Exhibit D, p 31, item 158.

³³ 1/8/18 NE 21–22.

³⁴ 1/8/18 NE 22; 2/8/18 NE 48.

³⁵ 1/8/18 NE 23.

³⁶ 1/8/18 NE 36.

money for Ayyavoo's moneylending business, and he did not expect that he would be given two bundles to deliver to other persons in Singapore.³⁷

31 As for the Audio Messages, Lingkes claimed at first that he could not recall having such a conversation with Suresh.³⁸ After listening to the Audio Messages in court, Lingkes said that he did not know if it was his voice.³⁹ He also claimed that Aivoo and Ayyavoo were two different persons. Aivoo was a fellow security officer at the illegal casino and was Lingkes' drug supplier.⁴⁰ If anyone wanted drugs, Lingkes would check with Aivoo to find out his drug prices.⁴¹

Alfian's defence

32 Alfian's account was as follows.⁴² After being released from prison in 2015, Alfian came into contact with a Chinese man he knew as "Botak", who used to be his drug supplier. Botak asked if he had any contacts for drug supplies, and Alfian gave him the contact details of one "Bossy". Alfian agreed to collect heroin ordered by Botak in return for some money.

33 The first time Alfian collected heroin for Botak was on the Second Occasion. Alfian testified that about a week before his arrest, Lingkes delivered three bundles fully wrapped in black tape to Alfian at a bus stop at Senoko

³⁷ 1/8/18 NE 24.

³⁸ 1/8/18 NE 28; 2/8/18 NE 35–37.

³⁹ 7/8/18 NE 8.

⁴⁰ 2/8/18 NE 50.

⁴¹ 1/8/18 NE 25; AB 630.

⁴² 3/8/18 NE 5–11; AB 658–660.

Drive. In exchange, Alfian passed Lingkes \$8,200.⁴³ Beyond telling Lingkes that he was giving him “8,200”, the two men did not speak to each other.⁴⁴

34 On 23 May 2016, Botak bumped into Alfian and used Alfian’s phone to order heroin from Bossy in Malaysia. After placing the order, Botak informed Alfian that he would hand him some money that night and asked Alfian to go to Senoko the next day to collect the heroin that Botak had ordered. That night, Botak passed Alfian \$8,200 in a red plastic bag.⁴⁵

35 The next morning, Alfian, accompanied by Rodrigues, went to the bus stop at Senoko Drive. They waited for a long time but no one showed up.⁴⁶ Alfian grew impatient and arranged with Bossy to have the heroin delivered to a location near his home in Yishun. Alfian and Rodrigues made their way back to Yishun and waited between Blocks 288 and 289 Yishun Avenue 6. A while later, Alfian saw Lingkes approaching him with another man (*ie*, Suresh). Alfian recognised Lingkes from the previous delivery on the Second Occasion.⁴⁷ Alfian and Lingkes nodded to acknowledge that they recognised each other.⁴⁸ Lingkes placed Bundle P3 in Alfian’s bag while Alfian got Rodrigues to pass the red plastic bag (containing \$8,200) to Lingkes. Alfian told Lingkes that he was passing him “money 8,200”.⁴⁹

⁴³ 3/8/18 NE 12–13, 25; AB 659 (Alfian’s statement of 26 May 2016 at paras 7–8).

⁴⁴ 3/8/18 NE 31.

⁴⁵ Exhibits “C1A” and “C1A1”.

⁴⁶ AB 659 (Alfian’s statement of 26 May 2016 at para 7).

⁴⁷ AB 659 (Alfian’s statement of 26 May 2016 at paras 7–8).

⁴⁸ 3/8/18 NE 15.

⁴⁹ 3/8/18 NE 16–17.

36 Alfian’s defence is that he was simply a “deliveryman” for Botak. He was tasked only to collect the diamorphine or heroin and pass it to Botak, and would be paid \$400 in return.⁵⁰ He did not dispute that he intended to pass the Drugs to Botak and that he knew that Bundle P3 contained diamorphine. Alfian also gave evidence that he did not know any “Aivoo” or “Ayyavoo” and that he had never borrowed money from anyone by those names in Malaysia.⁵¹

The law

37 Sections 5(1)(a) and 5(2) of the MDA provide:

Trafficking in controlled drugs

5.—(1) Except as authorised by this Act, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore —

(a) to traffic in a controlled drug;

...

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

38 As established by *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 at [13] and *Raman Selvam s/o Renganathan v Public Prosecutor* [2004] 1 SLR(R) 550 at [35], the following elements must be proved to satisfy a charge under s 5(1)(a) or s 5(1)(a) read with s 5(2) of the MDA:

(a) possession of a controlled drug – which may be proved or presumed pursuant to s 18(1) of the MDA or deemed pursuant to s 18(4) of the MDA;

⁵⁰ 3/8/18 NE 7; AB 592; AB 669 (Alfian’s statement of 26 May 2016 at para 13).

⁵¹ 3/8/18 NE 29, 31–32.

- (b) knowledge of the nature of the drug – which may be proved or presumed pursuant to s 18(2) of the MDA; and
- (c) an act of trafficking (where a charge is brought under s 5(1)(a)) or proof that possession of the drug was for the purpose of trafficking which was not authorised (where a charge is brought under s 5(1)(a) read with s 5(2) of the MDA).

39 Additionally, the relevant rebuttable presumptions in ss 18(1) and (2) of the MDA provide as follows:

Presumption of possession and knowledge of controlled drugs

18.— (1) Any person who is proved to have had in his possession or custody or under his control –

(a) anything containing a controlled drug;

...

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

Decision on Lingkes' charge

40 As regards the element of possession, the Court of Appeal in *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] SGCA 62 (“*Zainal*”) held that where the Prosecution seeks to prove the fact of possession, it must prove not only that the accused was in possession of the package or the container but also that he knew that it contained something, which may later be established to be the drugs in question (at [12]). The Prosecution need not prove that the accused specifically knew that he was in possession of drugs or even of something that turns out to be contraband; the question of whether the accused

knew the package or container contained drugs is an inquiry that arises when considering the question of knowledge (at [12]–[13]). Once it is proved that the accused had physical control over or possession of the package or container that contained the thing in question, the court is entitled to infer that he had knowledge of the existence of that thing. It is then incumbent on the accused to discharge the evidential burden by raising a reasonable doubt that this was not the case (at [16]). In an appropriate case, the Prosecution may also rely on the presumption of possession under s 18(1) of the MDA.

41 Lingkes did not dispute that he had had physical control over or possession of Bundle P3, which he had obtained from M, and that Bundle P3 turned out to contain the Drugs. His defence was that he believed Bundle P3 contained tobacco. Possession could therefore be proved. Following from *Zainal*, I could infer that Lingkes knew of the existence of the thing inside Bundle P3 (*ie*, the Drugs) and it was incumbent on him to discharge the evidential burden by raising a reasonable doubt that this was not the case.

42 Additionally, both Prosecution and Defence counsel for Lingkes agreed that the presumptions under ss 18(1) and (2) of the MDA applied.⁵² Lingkes was thus presumed to be in possession of the Drugs, and to know of the nature of the Drugs, unless the contrary is proved. To rebut the presumption of knowledge under s 18(2) of the MDA, Lingkes can show, on a balance of probabilities, that “he did not know or could not reasonably be expected to have known the nature of the controlled drug” (*Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 (“*Dinesh Pillai*”) at [18]). In *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633, the Court of Appeal elaborated as follows:

⁵² 7/8/18 NE 9.

37 ... The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities...

...

39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA ..., *he should be able to say what he thought or believed he was carrying* ...

40 *Where the accused has stated what he thought he was carrying ("the purported item"), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item.* ... Ultimately, what the court is concerned with is the credibility and veracity of the accused's account. ... This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.

[emphasis added]

43 After considering all the evidence, I found that Lingkes failed to raise a reasonable doubt that he did not know of the existence of the Drugs in Bundle P3, or rebut the presumptions of possession and knowledge under s 18(1) and (2) of the MDA. Lingkes' defence was that he believed that Bundle P3 contained tobacco. However, I found that his assertion was not a credible one.

Veracity of Lingkes' claim that he was collecting money for Ayyavoo's moneylending business

44 First, I disbelieved Lingkes' account that he was merely collecting money for Ayyavoo's moneylending business or that his role was limited to collecting money. The evidence strongly suggested that Lingkes was aware that he was assisting Ayyavoo in some illicit activities, that the delivery of items

was within Lingkes' job scope all along, and that he knew that the moneys received from Alfian on the Second and Third Occasions were for the items that he had passed to Alfian.

45 The circumstances surrounding how Lingkes was to go about collecting money from Ayyavoo were highly suspicious. Lingkes was never informed of who and where he was to collect money from until after he had entered Singapore. Even after entering Singapore, he was content to act on Ayyavoo's immediate directions that were issued to him one location and one counterparty at a time, without ever being provided with any means of contacting the counterparty. He was also never given the name of the persons he was meeting but only a description. Moreover, although Lingkes was tasked to collect money from M three times, he was never given M's name or contact details, but had to laboriously rely on Ayyavoo to inform him of the meeting venue each time. Lingkes did not provide any reasons why Ayyavoo operated with such a level of secrecy and insecurity, especially if Lingkes was merely collecting debts as he claimed. I found it unbelievable that Lingkes did not find this mode of operation suspicious.

46 Furthermore, it was odd that Ayyavoo could not collect the money from borrowers in Singapore himself, particularly when he did not seem to be unavailable. In fact, and based on Lingkes' own account, when he returned from Singapore on the First and Second Occasions, Ayyavoo was readily anticipating him at the Johor Bahru customs checkpoint where Lingkes would hand over the money. Further, Lingkes claimed that Ayyavoo had asked him to collect money from Singapore borrowers since Lingkes was in Singapore frequently to search for a job. But Lingkes' account showed that for each of the First to Third Occasions, he had entered Singapore for the sole purpose of carrying out Ayyavoo's instructions. There was no evidence that Lingkes was, on any of the

three Occasions, looking for a job in Singapore, and was collecting money for Ayyavoo on the way only because it was convenient.

47 I found that it should have been clear to Lingkes that the deliveries on the Second and Third Occasions were carried out for Ayyavoo and that the money collected for the deliveries was unrelated to the moneylending business. The strange arrangements between Ayyavoo and M showed that Ayyavoo was the one directing the delivery of the items that M passed to Lingkes on the Second and Third Occasions.

48 First, although M gave Lingkes the items for delivery supposedly as a favour *to M*, it was *Ayyavoo* who gave Lingkes details of where and when to meet the intended recipients and how to identify them. Second, Lingkes asked *Ayyavoo* whether he could deliver items for M, and only did so when Ayyavoo instructed him to. Third, even though Ayyavoo was not in Singapore, he appeared to have knowledge of what items M was handing to Lingkes for delivery as he was able to give Lingkes independent confirmation of their contents over the phone. This would have suggested to Lingkes that Ayyavoo had prior arrangements with M for Lingkes to pick up these items. Further, when Lingkes received hell notes in return for the small bundle which he delivered as a favour *for M* (as he claimed), it was *Ayyavoo* who reassured Lingkes that this was alright. Lastly, by Lingkes' own account, the money that he collected from the recipients of the items was to be handed over to *Ayyavoo*. This was despite the fact that it was M who had also asked Lingkes to collect money from the recipients. It would have been a most unlikely coincidence that each of the recipients of the items were also borrowers who separately owed money to Ayyavoo. Indeed, Lingkes admitted that when he agreed to assist M to deliver the bundles, he was in fact assisting Ayyavoo. Although M did not inform Lingkes *whose* money he was to collect at Tiger company and at Yishun when

he delivered the small bundle and Bundle P3, Lingkes had assumed that the money was meant for Ayyavoo, rather than M.⁵³

49 In these circumstances, it was implausible that Lingkes could have thought that the money he was collecting was unrelated to the delivery of the items and was purely for Ayyavoo's moneylending business. Lingkes' own conduct, in taking directions from Ayyavoo about the deliveries and handing over the money (which came from the recipients of the items) to Ayyavoo, was inconsistent with such a belief. Thus, I doubted Lingkes' claim that the deliveries were done as a favour for M and that the money he was collecting was for Ayyavoo's moneylending business rather than in exchange for the items delivered. Indeed, in Lingkes' investigation statement dated 19 July 2016, he stated that he "did not know" if the money he received from Alfian on the Third Occasion was in consideration of Bundle P3 or for Ayyavoo's moneylending business; this was inconsistent with his defence in court that he was collecting debts for Ayyavoo on all three occasions. Further, the fact that Lingkes did not inquire why he was taking instructions from Ayyavoo for a delivery entrusted to him by M suggested to me that Ayyavoo had tasked Lingkes from the outset to not only collect money but also pick up items from M for delivery.

50 Finally, Lingkes was receiving a substantial payment of RM500 for a simple job of (what he claimed to be) debt collection. Lingkes acknowledged that this was "good money" to make as it was a third to a quarter of his monthly salary. This ought to have alerted Lingkes that he was involved in something riskier than merely collecting debts or delivering documents and tobacco.

⁵³ 2/8/18 NE 21, 26 and 29.

51 For these reasons, I found that Lingkes was aware that he was assisting Ayyavoo in illicit activities beyond the purported moneylending business.

Veracity of Lingkes’ claim that he believed Bundle P3 contained tobacco

52 Second, on 24 May 2016, Lingkes received and delivered Bundle P3 in very suspicious circumstances that ought to have alerted him to the illegal nature of its contents and prompted him to inquire further. The following facts would have caused a reasonable person to suspect and verify the contents of Bundle P3.

53 At [45]–[46] and [50] above, I explained why Lingkes’ disproportionate remuneration and the secrecy surrounding the meeting times and places and the identity of the counterparties would have raised suspicions that Lingkes was involved in an illicit endeavour. Those facts and circumstances were also incongruent with Lingkes’ purported debt collection job.

54 On 24 May 2016, there was an abrupt and substantial change in Lingkes’ job scope, but by his own account, he never protested. He testified that prior to entering Singapore, he had only been instructed to help Ayyavoo to collect money but was not told how many persons to collect from and how much to collect from each person. Furthermore, instead of collecting money from M, Lingkes was tasked to deliver two bundles which he picked up from M. If his purpose for meeting M was to collect money, then the meeting was entirely futile because M enlisted Lingkes’ help to run some errands instead. Lingkes claimed that he had agreed to deliver the two bundles, when he had entered Singapore to collect money, because he saw it as a favour for M and as Ayyavoo had asked him to do. For reasons explained at [47]–[48] above, I did not believe Lingkes’ claim that the deliveries were carried out as a favour for M. Instead, I

found that Lingkes understood all along that his job entailed delivering the bundles.

55 Next, if the two bundles that Lingkes delivered on the Third Occasion contained merely tobacco, it defied logic that M would have required Lingkes' assistance to deliver them when M could have done so himself. I found it particularly bewildering that M needed Lingkes to deliver the small bundle to X. If the 3M and Tiger company were in close proximity as Lingkes said they were, M could have delivered the small bundle himself, especially when he had a car and a chauffeur at his disposal. It made no sense that M, who was in Singapore, needed Lingkes, who had to travel all the way from Malaysia, to carry out these deliveries to and collect money from persons in Singapore. I found it difficult to believe that Lingkes did not find this request strange if he was unaware that he was delivering illegal substances.

56 Despite these suspicious circumstances, Lingkes testified that it did not occur to him to check what was inside the two bundles he received from M. Lingkes said in his statements that he did not know if tobacco was usually delivered in this manner and whether it was legal to deliver tobacco in this manner,⁵⁴ and yet he did not ascertain for himself what Bundle P3 contained. He agreed under cross-examination that he could have easily peeled off the black tape to find out the contents of Bundle P3.

57 Lingkes' claim that Bundle P3 contained tobacco – and his failure to check its contents for himself – rested entirely on his trust in M's and Ayyavoo's representations that Bundle P3 contained tobacco. According to Lingkes, M told him that the two bundles contained "tobacco". He then called Ayyavoo and

⁵⁴ AB 622 (Paras 65 and 68 of the statement).

Ayyavoo also told him that the bundles contained “tembakau” and instructed Lingkes to deliver them and collect money from the recipients.

58 In my view, Lingkes had no good explanation for reposing so much trust in M and Ayyavoo and in light of the suspicious circumstances. Lingkes had only met M briefly on two prior occasions and did not even know M’s name. As for Ayyavoo, Lingkes had only known him for two months. He did not know Ayyavoo’s full name, or if “Ayyavoo” was even his actual name.⁵⁵ Lingkes conceded that he did not know much about Ayyavoo beyond his role as the head of security at the casino. Lingkes claimed that he trusted Ayyavoo because Ayyavoo had done a lot for him by finding him a place to stay. However, this did not seem to justify such deep trust to the extent that Lingkes would shut his eyes to all the dubious facts surrounding the delivery of Bundle P3. Indeed, Lingkes’ relationship with Ayyavoo was a transactional one, as he agreed to perform these jobs to earn “good money”. Moreover, there was no evidence that Ayyavoo had seen the contents of Bundle P3 such that he could provide Lingkes with credible assurance that it contained tobacco. This is especially when Lingkes claimed that M had *unexpectedly* informed him to deliver Bundle P3 only when he met M. Lastly, I found that Lingkes was fully aware that Ayyavoo was a shady character who was involved in a number of illegal activities, including drug trafficking. This finding is supported by the Audio Messages, which I deal with below. I also note that Lingkes had saved Ayyavoo’s number under the contact name “G” rather than his name,⁵⁶ suggesting that Lingkes was aware that Ayyavoo was a clandestine character whose identity had to be concealed. I did not accept Lingkes’ explanation that he had done so because he

⁵⁵ 1/8/18 NE 43 and 45.

⁵⁶ AB 218.

did not know how to spell Ayyavoo's name, especially when his handphone contained names of other persons whom he could and had spelt out.⁵⁷

59 I found that Lingkes would not have delivered Bundle P3 to Alfian without verifying its contents unless he already knew or suspected what it contained. Lingkes' own conduct suggests that he would have checked if he sensed that something was amiss. On the Second Occasion, Lingkes had asked M what was in the two envelopes because he was not prepared to deliver them without knowing what they contained.⁵⁸ On the Third Occasion, when X hurriedly grabbed the small bundle from Lingkes at the Tiger company and threw an envelope out of the car, Lingkes *tore open* the seal of the envelope to check if he had received money as he expected to and because X had thrown it at him.⁵⁹ If Lingkes was so cautious and by his own account the request to deliver Bundle P3 was unexpectedly sprung on him by M, he would have likewise made further inquiries, especially considering the suspicious circumstances in which he was asked to deliver it. This is especially when, as he stated in his investigation statement of 2 June 2016, he found out that the envelope X threw contained hell notes and he felt "suspicious" and he wondered why "this was all happening" and that "something was wrong".⁶⁰ Both the small bundle and Bundle P3 were handed to Lingkes by M. Yet Lingkes made no real attempt to independently verify the contents of Bundle P3 prior to delivering it, even though he had ample opportunity to do so after he discovered the hell notes and his suspicion was aroused. His failure to do so despite the shady

⁵⁷ 1/8/18 NE 44.

⁵⁸ 2/8/18 NE 11.

⁵⁹ 2/8/18 NE 28.

⁶⁰ AB 617.

circumstances strongly suggests that he was well aware of the nature of his task, *ie*, to deliver drugs rather than tobacco.

60 Therefore, the surrounding circumstances and the manner in which Lingkes conducted himself strongly suggested that he knew or suspected that Bundle P3 contained controlled drugs, and not tobacco as he claimed. This explained why he did not inspect the contents of Bundle P3 in spite of so many red flags.

61 Furthermore, I found that Lingkes had previously delivered diamorphine or heroin to Alfian on the Second Occasion, and lied about this in his statements and at trial to distance himself from the drugs he delivered to Alfian on the Third Occasion. Lingkes' evidence was that he delivered two paper envelopes wrapped in black tape, with blue tape at the opening, to Alfian at Senoko Drive on the Second Occasion. M had given him these envelopes and told him that one envelope contained money and the other contained documents.⁶¹ Alfian's evidence was that Lingkes had delivered three bundles of heroin wrapped in black tape to him in exchange for \$8,200.

62 I found Alfian's account to be far more credible than Lingkes'. First, Lingkes did not in any of his investigation statements state that the envelopes contained money and documents. In fact, he stated on 2 June 2016 that he *did not know* what the envelopes contained.⁶² This embellishment about the contents of the envelopes only emerged at trial. Second, Lingkes' version of events was illogical. It made no sense for M to have passed Lingkes one bundle of cash (unwrapped) *and* another envelope of cash (wrapped in tape) with the latter

⁶¹ 1/8/18 NE 8; 2/8/18 NE 11.

⁶² AB 615.

being for delivery to someone else. When asked why M had wrapped only the envelope of cash, Lingkes said it was possible that M did not trust him with the money.⁶³ If that was so, M would have wrapped the bundle of cash as well to ensure its safe passage to the intended recipient. Further, it was illogical for Lingkes to be asked by M to *deliver* an envelope of *cash* to Alfian only to *collect cash* from Alfian.

63 Third, Alfian had no reason to lie because he had readily admitted that he knew that he was receiving heroin from Lingkes on the Second and Third Occasions. Alfian's admission was detrimental to himself. I also accept that Alfian did not take any loans from Ayyavoo or anyone in Malaysia. He did not have a passport to travel out of Singapore.

64 I found that Lingkes lied about the appearance and contents of the item delivered to Alfian on the Second Occasion to give the impression that it was his first time delivering bundles wrapped in black tape on the Third Occasion, and to thereby buttress his claim that he was ignorant of the true contents of Bundle P3 and that it did not occur to him to take steps to verify its contents.

65 Alfian also testified that when he collected heroin from Lingkes on the Second Occasion, he informed Lingkes that he was handing over "8,200" in cash.⁶⁴ This would have conveyed to Lingkes that he had delivered an item of very high value and would have put him on notice that it was likely to be an illegal substance. Hence, when Lingkes was asked to do a similar delivery on the Third Occasion and to collect money from the recipient of Bundle P3, he

⁶³ 2/8/18 NE 16.

⁶⁴ 3/8/18 NE 31.

would have been put on notice that Bundle P3 may likewise contain illegal substances.

Lingkes' credibility

66 Lastly, I considered Lingkes' evidence unreliable because, besides lying about what he delivered on the Second Occasion, he made other attempts to distance himself from objective evidence that was inculpatory in nature.

67 First, I was satisfied that Lingkes exchanged the Audio Messages with Suresh, and Lingkes had falsely attempted to distance himself from the Audio Messages. When questioned about the Audio Messages during investigations on 16 March 2017, Lingkes claimed that he could not remember having this conversation and did not know whether it was a conversation between him and Suresh.⁶⁵ He however conceded that the phone marked B1D and the SIM card inside belonged to him. At trial, Lingkes claimed that he could not recall the contents of the Audio Messages and had never had any conversations with Suresh concerning drugs.⁶⁶ When the Audio Messages were played in court, Lingkes claimed that he did not know whose voice it was and denied that it was his voice.⁶⁷ In my view, Lingkes' denial was not believable:

- (a) Lingkes admitted that the two numbers reflected in Exhibit D belonged to himself and Suresh.⁶⁸ He has not suggested that someone else was communicating with Suresh. There was no evidence that

⁶⁵ AB 630.

⁶⁶ 1/8/18 NE 28; 2/8/18 NE 51.

⁶⁷ 7/8/18 NE 8 and 11.

⁶⁸ 1/8/18 NE 28.

someone else had used Lingkes' handphone to send and receive the Audio Messages to and from Suresh.

(b) The audio messages sent from Lingkes' number referred to one "Aivoo" who knew about drug prices and could arrange for drugs to be delivered to Suresh. Lingkes admitted that Aivoo was his drug supplier and that he would also check with Aivoo about his selling rates on behalf of others.⁶⁹ Lingkes' explanation of his relationship with Aivoo cohered with the contents of the Audio Messages, which reflected the sender offering to inquire with Aivoo about drug prices.

(c) It bears remembering that the conversation in the Audio Messages occurred on 30 April 2016, less than a month before the events of the Second and Third Occasions. Surprisingly, Lingkes could recall the events of the First, Second and Third Occasions clearly (as he claimed⁷⁰) even at trial, but could not recall whether the conversation as reflected in the Audio Messages took place (even when asked in his investigation statement in March 2017). I found him to be evasive particularly because the conversation was not a mundane conversation but pertained to drug activities, as Lingkes himself acknowledged during the trial.

68 At this juncture, I deal with Defence counsel's submission that an adverse inference should be drawn against the Prosecution for failing to call Suresh to support its case that the Audio Messages captured a conversation which Suresh had with Lingkes. I rejected this submission. This was not a case in which the Prosecution was withholding any material information which was

⁶⁹ AB 630.

⁷⁰ 2/8/18 NE 53.

solely within its knowledge and possession to produce. Lingkes could have easily called Suresh to support his case (*ie*, that Suresh did not have this conversation with Lingkes) but chose not to. It also bears remembering that, with the presumptions under s 18(1) and s 18(2) of the MDA engaged, Lingkes bore the burden of proving, on balance, that he was not in possession of the Drugs nor had the requisite knowledge of the nature of the Drugs.

69 Hence, having found that Lingkes was the party exchanging the Audio Messages with Suresh, I was satisfied that the Audio Messages showed that Lingkes had knowledge of drugs and was involved in drug-related activities. At trial, Lingkes admitted that he understood the Audio Messages to be a conversation about procuring drugs.⁷¹ He understood that the words “papan”, “set”, “rate” and “ice” pertained to the selling rate of drugs. In the light of this, it appeared to me that Lingkes had falsely attempted to deny any association with the Audio Messages because he understood that the contents of these messages would be tainting. Lingkes’ credibility was thereby diminished. I add that I had the benefit of hearing the Audio Messages in court and was satisfied that the voice in the Audio Messages was similar to Lingkes’ voice in court. Being cognisant that the court is not here to give an expert opinion on voice-recognition, I make this observation merely for completeness.

70 Second, I accepted the Prosecution’s submission that “Aivoo” and “Ayyavoo” were the same person and that Lingkes had deliberately sought to dissociate them because it would have been damaging to his defence as it would reveal that he was assisting someone who, he was aware, trafficked drugs. Coincidentally, Lingkes claimed that he knew both Aivoo and Ayyavoo at the same time while working at the casino; and one (Aivoo) was a security officer

⁷¹ 2/8/18 NE 51–52.

while the other (Ayyavoo) was the head of security. Lingkes knew nothing about Aivoo's background or where he lived.⁷² Next Lingkes has not produced a shred of evidence to prove Aivoo's existence as a distinct person from Ayyavoo, apart from Aivoo's name being mentioned in the Audio Messages. Even though the Audio Messages refer to some contact with Aivoo regarding drugs, Lingkes claimed that he had never contacted Aivoo on the phone. He did not even have Aivoo's phone number saved in any of his phones.⁷³ Even in the case of Ayyavoo, his contact number was saved in Lingkes' handphone under the contact name "G".

71 As I find that Aivoo and Ayyavoo are one and the same person, this would cast further doubt on Lingkes' defence that he trusted Ayyavoo's representation that Bundle P3 contained tobacco, because Lingkes would have been aware that Ayyavoo was dealing in drugs.

72 Furthermore, I found a number of inconsistencies in Lingkes' evidence over the course of investigations and the trial. For example:

(a) There was some evolution in Lingkes' account of the circumstances in which he came to possess Bundle P3 and the errands he ran for Ayyavoo before delivering Bundle P3 to Alfian. First, in his contemporaneous statement, he claimed that he was given money and tobacco from a Singaporean man (which, in the light of his later statements, I infer to be M) in Kallang on 24 May 2016.⁷⁴ This was different from his later statements and oral testimony that he had

⁷² 1/8/18 NE 46.

⁷³ 1/8/18 NE 46.

⁷⁴ AB 398.

collected two bundles from M in a car in Tuas. Second, Lingkes mentioned in his statement dated 27 May 2016 that M instructed him to meet him in Kallang to collect money from him after he had delivered the bundles – this detail was missing from all his subsequent accounts.⁷⁵ Third, in his statement dated 30 May 2016, Lingkes said that prior to going to Yishun, Ayyavoo had instructed him to go to Kallang to collect two bundles of *tobacco* but nobody showed up, and he subsequently went to another location where he collected three to four bundles of cash from an Indian man.⁷⁶ On the stand, he said that it was in Kallang that he met a Tamil man who gave him four bundles of *money*, while it was at Chai Chee that nobody showed up.⁷⁷

(b) Next, as mentioned earlier, Lingkes claimed in his investigation statement dated 2 June 2016 that he did not know what was inside the envelopes that M passed to him on the Second Occasion.⁷⁸ At trial, he claimed that he had asked M what the envelopes contained and was told that they contained cash and documents.⁷⁹

(c) In his investigation statement dated 19 July 2016, Lingkes claimed that he did not know if it was legal or illegal to deliver the tobacco that M had passed to him, and that he did not know if the money he collected from Alfian was for the tobacco he delivered or for Ayyavoo's moneylending business.⁸⁰ However, at trial, he gave

⁷⁵ AB 596.

⁷⁶ AB 602.

⁷⁷ 1/8/18 NE 17.

⁷⁸ AB 615.

⁷⁹ 2/8/18 NE 11–12.

⁸⁰ AB 622.

evidence that he did not think that it was illegal to deliver tobacco, and the money he collected from Alfian was for Ayyavoo’s moneylending business and was unrelated to Bundle P3.

Conclusion on Lingkes’ charge

73 Having considered all the evidence, I rejected Lingkes’ claim that he believed Bundle P3 contained tobacco and that the money he collected when he delivered Bundle P3 was for Ayyavoo’s moneylending business. I found that Lingkes was not a credible witness. For all the above reasons, I found that Lingkes failed to rebut the presumptions of possession and knowledge under ss 18(1) and (2) of the MDA. He had failed to raise a reasonable doubt that he did not know of the existence of the Drugs in Bundle P3. Lingkes had “turned a blind eye” to circumstances which would have prompted a reasonable person to suspect and verify whether Bundle P3 contained the Drugs (*Dinesh Pillai* at [21]) and he did not verify the contents of Bundle P3 though he could easily have done so. Further, Lingkes had committed an act of trafficking in the Drugs by giving or delivering Bundle P3 which contained the Drugs to Alfian. Accordingly, I found that all the elements of the charge against Lingkes had been proved beyond a reasonable doubt and I convicted Lingkes on the charge framed against him.

Decision on Alfian’s charge

74 I turn now to the charge against Alfian. The Prosecution and Alfian’s counsel agreed that the presumptions under ss 18(1) and 18(2) applied in Alfian’s case. Alfian admitted to all the elements of the charge in his statements and his testimony at trial:

(a) Alfian did not dispute that he was in possession of Bundle P3. He admitted that he had collected Bundle P3 from Lingkes and Bundle P3 was found in his haversack when he was arrested.⁸¹

(b) Next, I found that Alfian had actual knowledge of the nature of the Drugs in Bundle P3. Alfian admitted that he knew that Bundle P3 contained heroin or diamorphine when he received it from Lingkes on 24 May 2016 as he had been instructed by Botak to collect heroin.⁸² Alfian admitted that he had asked Rodrigues to hand over cash of \$8,200 in a red plastic bag to Lingkes as payment for the heroin. He also admitted that he had collected heroin from Lingkes on a previous occasion. His oral testimony was consistent with the statements he gave to the CNB officers.

(c) Finally, I was satisfied that Alfian's possession of Bundle P3 containing the Drugs was for the purposes of trafficking. Alfian admitted that he intended to deliver the Drugs to Botak.⁸³ Clearly (and undisputedly) Alfian was not authorised to traffic in heroin.

75 As such, I found that the elements of the charge against Alfian had been proved beyond a reasonable doubt and I convicted him on the charge framed against him.

⁸¹ 3/8/18 NE 16.

⁸² AB 657 and 675; 3/8/18 NE 16.

⁸³ AB 673; 3/8/18 NE 30.

Sentence

76 I turn then to the sentence to be imposed. Given the quantity of drugs in this case, the prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. However, s 33B of the MDA confers on the court the discretion to impose the alternative sentence of life imprisonment and the mandatory minimum 15 strokes of the cane, provided the offender satisfies the requirements in s 33(B)(2)(a) of the MDA and receives a certificate of substantive assistance from the Public Prosecutor.

77 The Prosecution did not dispute that both Lingkes' and Alfian's involvement in their respective offence was limited to activities set out under s 33B(2)(a) of the MDA, *ie*, that they were couriers.⁸⁴ In the round, I was satisfied that Lingkes' role was restricted to that of delivering the drugs to Alfian on Ayyavoo's instructions. Even if he had collected payment from Alfian, this could be considered as an act incidental to the delivery of the drugs. As for Alfian, I was also satisfied that he was a courier. The Prosecution did not challenge Alfian's evidence that he was collecting Bundle P3 for Botak, and there was also no evidence that he was involved in repacking or redistributing of drugs. I was thus satisfied that both Lingkes' and Alfian's acts fell within the acts of a courier under s 33B(2)(a) of the MDA.

78 However, the Prosecution did not issue Lingkes with a certificate of substantive assistance under s 33B(2)(b) of the MDA. As such, Lingkes could not avail himself of the alternative sentencing regime under s 33B of the MDA. I therefore passed the mandatory death sentence on him.

⁸⁴ Prosecution's Closing Submissions, para 37.

79 As for Alfian, the Prosecution had issued a certificate of substantive assistance. I found no reason to impose the death penalty on Alfian, nor did the Prosecution submit there was any such reason. Accordingly, I imposed the alternative sentence of life imprisonment and the mandatory minimum 15 strokes of the cane.

Audrey Lim

Judicial Commissioner

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