IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 42

Criminal Motion No 16 of 2018

Between

Norasharee bin Gous

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

TABLE OF CONTENTS

Norasharee bin Gous
v
Public Prosecutor

[2021] SGCA 42

Court of Appeal — Criminal Motion No 16 of 2018
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA, Tay Yong Kwang JCA
5 August 2019, 27 January 2021

21 April 2021 Judgment reserved

Tay Yong Kwang JCA (delivering the judgment of the court):

The factual background

1 This application is the sequel to our decision in *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 820 ("*Norasharee CA"*). The applicant, Norasharee bin Gous, was charged with abetting, by instigation, one Mohamad Yazid bin Md Yusof ("Yazid") to traffic in not less than 120.90g of diamorphine. The trial Judge accepted Yazid's testimony that he met the applicant on 23 October 2013 at VivoCity (a shopping mall next to the sea in the southern region of Singapore) and was instructed by the applicant then to collect the drugs from a Malaysian courier the following day: *Public Prosecutor v Mohamad Yazid Bin Md Yusof and others* [2016] SGHC 102 at [30]. On 1 June 2016, the trial Judge convicted the applicant and imposed the mandatory death penalty as the applicant could not satisfy any of

the requirements in s 33B of the Misuse of Drugs Act on alternative sentencing (Cap 185, 2008 Rev Ed).

2 The applicant and one of his co-accused appealed to the Court of Appeal. Yazid did not appeal. At the appeal, the applicant contended that he did not meet Yazid on 23 October 2013 at VivoCity or in its vicinity (*Norasharee CA* at [96]). Instead, the applicant claimed that he had lunch at VivoCity that day with his colleague, then identified as Mohammad Faizal Bin Zainab or "Lolo". This colleague was not called to testify at the trial and no application was made at the appeal to adduce further evidence from him. On 10 March 2017, in *Norasharee CA* (at [61] and [94]-[102]), this court affirmed the Judge's finding concerning the meeting between the applicant and Yazid on 23 October 2013. The applicant's conviction was upheld.

3 More than a year later, on 10 July 2018, the applicant took out the present application seeking to re-open the appeal in *Norasharee CA* by adducing further evidence in the form of a statutory declaration made by the colleague mentioned above. He was now identified as Mohammad Faizal Bin Zainan Abidin, nicknamed Lolok ("Lolok"). Lolok's evidence was said to be capable of assisting the applicant in raising a defence of *alibi* and of corroborating the applicant's testimony at the trial that he did not meet Yazid at VivoCity on 23 October 2013. In this application, the applicant also claimed that he had instructed Mr Amarick Gill ("Mr Gill"), his defence counsel at the trial and at the appeal, to call Lolok as a witness both before and during the trial but Mr Gill had failed to carry out his instructions.

4 On 5 August 2019, we heard the application and remitted this matter to the trial Judge to receive the evidence of Lolok. We stayed our order pending investigations by the Prosecution into certain factual issues raised by Abbotts

Chambers LLC, the then solicitors of the applicant for this application, in its letter dated 2 August 2019. In relation to the applicant's allegations against Mr Gill, we stated that we did not accept that the applicant had instructed Mr Gill to call Lolok for the reasons which Mr Gill had set out in his letter of 8 April 2019 which we considered were well-founded. We saw no reason to question Mr Gill's decision not to call Lolok given what he understood to be the essence of what Lolok had told him. Our decision to remit the matter was based on the possibility that there was a misunderstanding as to the facts relating to what Lolok did or did not say to Mr Gill.

5 On 14 November 2019, we directed the Supreme Court Registry to inform the parties that the stay of the remittal order was lifted. We also directed that a pre-trial conference be convened to fix the dates and the timelines for the taking of further evidence before the trial Judge.

The remittal hearing

6 The trial Judge heard the new evidence over two days in 2020. The applicant was represented by his new counsel, Mr Ravi s/o Madasamy ("Mr Ravi"). In his reserved judgment dated 14 September 2020, the trial Judge found no new evidence that would have altered the findings in his earlier decision. He also found, beyond reasonable doubt, that the *alibi* defence was an afterthought on the applicant's part and that the applicant did meet Yazid at VivoCity on 23 October 2013, as proved at the trial: see *Public Prosecutor v Norasharee bin Gous* [2020] SGHC 189 ("the Remittal Findings") at [4].

7 At the remittal hearing, the applicant called Lolok as his only witness. The applicant chose not to testify. The Prosecution, on the other hand, called three witnesses. Of these witnesses, two were called to testify about the existence of a certain marine logbook ("the logbook") allegedly kept on board

a vessel called the Long Ranger. However, as will be explained later, the existence of the logbook and its contents could not add anything material to the evidence before the court and would not affect its earlier findings. The most relevant evidence came from Lolok and the prosecution's last witness, Mr Gill.

Lolok's evidence

8 Lolok's evidence, comprising his two statutory declarations and his oral testimony at the remitted hearing, involved three main parts.

9 First, contrary to Yazid's testimony, Lolok said that the applicant was with him "all the time" at VivoCity on 23 October 2013.[1] The applicant was Lolok's employee since July 2013.[2] Both of them worked as freelance boat cleaners on the vessel, the Long Ranger, berthed at Marina Keppel Bay.[3] On 23 October 2013, they had an argument after Lolok teased the applicant about the tan lines on his forehead.[4] Lolok recorded this "incident report" in the logbook because he had to do it as part of the protocol of that vessel.[5] Following this incident, the two went to VivoCity together in the applicant's car to buy lunch.[6] Lolok claimed that the applicant was with him the whole time that they were buying lunch that day.[7] They went for lunch every day or almost every day.[8] After buying lunch, they returned to Marina Keppel Bay in the applicant's car.[9]

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1 ROP 1, p 29 lines 13 – 25.

2 ROP 2, p 72 paras 2 – 3.

3 ROP 2, p 79 para 3.

4 ROP 2, p 73 para 4; ROP 1, p 18 lines 20 – 32.

5 ROP 1, p 18 line 32 – p 19 line 1.

6 ROP 1, p 30 lines 8 – 21.

7 ROP 1, p 30 lines 23 – 29.

8 ROP 1, p 38 lines 1 – 9.

9 ROP 2, p 74 para 6.

10 Second, Lolok claimed that he was supposed to be a defence witness at the applicant's trial in 2016.[10] However, he was told by Mr Gill later that he should not be a witness for the applicant and that he should "stay away" from the case.[11] This was because Lolok had allegedly given information to the Central Narcotics Bureau ("CNB") and Mr Gill was angry with him for doing so. Lolok denied having told the CNB that he was not with the applicant in the afternoon of 23 October 2013.[12] This portion of Lolok's evidence was part of a larger attack mounted by the applicant against Mr Gill.

11 Third, Lolok offered some explanations for the following issues:

(a) why he was able to remember the events of 23 October 2013 so well. He was informed during the investigations that the CNB was at Marina Keppel Bay to ask for documents regarding the applicant. He therefore went to the vessel and flipped through the logbook and saw the incident report about the argument between him and the applicant. That was the first time in his life that his employee scolded him in front of everyone else;[13]

(b) why he made his statutory declarations only after the trial and the appeal were concluded. He said that he was approached by one of the applicant's family members, he believed it was the applicant's sister, who asked him for all the work documents and he told her that he had

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10 ROP 2, p 74 para 8.

11 ROP 1, p 26 lines 1 – 4.

12 ROP 1, p 63 lines 3 – 7.

13 ROP 1 p 17 lines 19 – 32; p 18 lines 20 – 23.

already mentioned to the lawyers that it was beyond his control to collect all those documents;[14] and

(c) why he did not tell the CNB that he was with Norasharee on 23 October 2013. Lolok said, "It's not that I don't want to provide any information to the CNB but I just don't want to get involved and I enough problems during my time and Marina Keppel Bay is just to keep my company record clean. So, and on top of it, I was also been told by Mr Amarick Gill to stay away from Norasharee case. Which I can take the swear."[15]

Mr Gill's evidence

12 Mr Gill's evidence is best understood as a response to the applicant's allegations. The applicant claimed that he had given "firm instructions" to call Lolok as a witness prior to the trial.[16] He also claimed that during the trial, he persisted in his instructions to Mr Gill to ask Lolok to take the stand as a defence witness but Mr Gill refused to listen to him.[17] When the trial was stood down for Mr Gill to take instructions, the applicant allegedly instructed Mr Gill to call Lolok as a witness but Mr Gill responded to the applicant's instructions by saying, "Why call so many people for?". The applicant also claimed that Mr Gill told him that Lolok was overseas and "he was unable to get a hold of Lolok and that he didn't know Lolok's whereabouts".[18]

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14 ROP 1, p 29 lines 1 – 8.

15 ROP 1, p 34 lines 21 – 25.

16 ROP 2, p 63 para 16.

17 ROP 2, p 64 para 17.

18 ROP 2, p 65 para 19.

13 Mr Gill denied that the applicant had instructed him to run an *alibi* defence at all. Indeed, it would have been a simple matter for him to advance that defence,[19] especially since Mr Gill had conduct of the case early and there was therefore plenty of time to file a notice of *alibi* and to inform the Prosecution, if necessary. Mr Gill emphasized that the fact that no notice of *alibi* was filed was a deliberate strategic choice. The *alibi* defence was considered but discarded because it was implausible and unviable. It was not possible for anyone to remember whom a person was with during a lunch break almost two and a half years ago since that day was an uneventful day.[20] The applicant also did not mention Lolok's name in his investigation statements and hence the *alibi* defence could be seen as an afterthought.[21] Nevertheless, the defence was still prepared to call Lolok as it was a capital case and it would be up to the trial Judge to decide on the *alibi* defence.[22] However, some four weeks before the trial started, Lolok informed Mr Gill over the phone that the CNB had questioned him and he told the CNB he was not with the applicant on the day in question.[23] The applicant was advised subsequently by Mr Gill about the development and that it would be "dangerous" to call Lolok as a witness. The applicant agreed not to call Lolok as a witness and said he would testify that he could not remember for sure whether he was alone on 23 October 2013 or whether he was with Lolok or whether Lolok had borrowed his car.[24]

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19 ROP 2, p 4 para 8.

20 ROP 2, p 22 para 4.

21 ROP 2, p 22 para 3.

22 ROP 2, p 22 para 5.

23 ROP 2, p 5 para 11.

24 ROP 2, p 23 para 9.

14 Moreover, it was impossible to explain why the applicant retained Mr Gill's services if Mr Gill had persisted in defying his "firm instructions" as the applicant claimed.[25] There were no fresh instructions and no references to Lolok for the purpose of filing an application to adduce fresh evidence of an *alibi* defence. Instead, the applicant confirmed and approved the arguments that were to be raised on appeal, such arguments being centred on the same instructions which he gave to Mr Gill at the trial.[26]

The trial Judge's findings

15 The trial Judge's findings were set out in the Remittal Findings. The salient parts are as follows:

(a) Lolok's evidence was internally inconsistent, especially on matters which he would have been expected to be familiar with given his experience working at Marina Keppel Bay for at least eight years: Remittal Findings at [15];

(b) there were material discrepancies between Lolok's account and the applicant's account of the events which transpired in 2013. The applicant's testimony at the trial was that he could not recall how frequently he went to VivoCity for lunch and that sometimes, he would go there with colleagues other than Lolok. In contrast, Lolok was confident that he had gone to lunch together with the applicant every day or almost every day: Remittal Findings at [7];

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25 ROP 2, p 4 para 8.

26 ROP 2, p 24 para 13.

(c) there was no proof of the logbook's existence. No logbook of any kind was produced in the proceedings and the owner of the Long Ranger testified that no such logbook was kept on the vessel: Remittal Findings at [8];

(d) the trial Judge did not accept the theory that there had been a miscommunication between Mr Gill and Lolok. Mr Gill's unshaken evidence was Lolok had informed him that he had told the CNB that he was not with the applicant at the material time and there was no evidence to show why or how Mr Gill could have misunderstood what Lolok had conveyed to him. Mr Gill "had fully and responsibly discharged his duties as [the applicant's] defence counsel at the material time": Remittal Findings at [14].

16 The trial Judge also held that Lolok's late appearance further detracted from the credibility of his testimony. Lolok testified that he did not, at any point of time, inform Mr Gill that he was with the applicant at VivoCity on 23 October 2013. If the applicant was someone that Lolok claimed he loved, it was unthinkable that Lolok would not have attempted to inform the CNB or Mr Gill about the *alibi*. For these reasons, the trial Judge found that Lolok's evidence was an afterthought and that he was not with the applicant at VivoCity on 23 October 2013: Remittal Findings at [17].

17 Besides the *alibi* defence, the applicant advanced two other grounds for re-opening his concluded appeal. First, he claimed to have been "dogged by failures in investigating procedures throughout his arrest, remand and initial sentencing": Remittal Findings at [18] These lapses had allegedly resulted in a miscarriage of justice that rendered his conviction unsafe. The applicant claimed that the CNB failed to record any statements from Lolok, conduct a

comprehensive investigation into the applicant's line of work and place of employment and seize documents and records from Marina Keppel Bay after the applicant's arrest.[27] The Prosecution failed to fulfil its disclosure obligations by not disclosing the fact that no statement was recorded from Lolok. Due to the intervening lapse of time, documents containing evidence which could have exonerated the applicant might have been discarded. Second, the applicant claimed that the testimony of Yazid had to be re-examined in the light of the investigative failures and the introduction of the *alibi* evidence: Remittal Findings at [21].

18 The trial Judge rejected both arguments. The way in which the CNB and the Prosecution dealt with the applicant's case did not result in any miscarriage of justice. Neither of them was aware of the significance of the applicant's employment details and/or his relationship with Lolok because Lolok did not tell the CNB that he was with the applicant on the day in question. There was therefore no apparent necessity for the CNB to take a statement from Lolok or to conduct an investigation into the applicant's line of work or to seize documents from Marina Keppel Bay: Remittal Findings at [19]. Similarly, the Prosecution was not aware of the discussions between Mr Gill and Lolok. Further, the Prosecution did inform Mr Gino Hardial Singh, the applicant's then counsel, in response to his letter dated 5 December 2018 (which was after *Norasharee CA* had been decided), that no statement was recorded from Lolok: – Remittal Findings at [20].

19 There was no need to re-examine the veracity and the weight of Yazid's evidence as it had already been analysed in comprehensive detail in *Norasharee*

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[27] Applicant's written submissions for CC 19/2016 dated 19 August 2020 at paras 6 to 10.

CA: Remittal Findings at [22] – [23]. The Court of Appeal in *Norasharee CA* had assessed that Yazid's testimony that he met the applicant at VivoCity was truthful and had given its reasons.

Our decision

The applicable principles

20 Recent amendments to the CPC have introduced a statutory framework for applications to re-open concluded appeals, referred to as "review applications" (see Part XX, Division 1B of the CPC, ss 394F–394K). These amendments came into operation on 31 October 2018 and therefore do not apply to the present application which was filed on 10 July 2018. The present application is therefore to be guided by the principles laid down in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 ("*Kho Jabing*") which were largely codified into the new CPC provisions on review applications.

21 The applicable test for reopening concluded appeals is whether there is "sufficient material on which [the court] may conclude that there has been a miscarriage of justice": *Kho Jabing* at [77(b)]. This involves two considerations:

(a) an evidential requirement of "sufficient material" to warrant the court exercising its inherent power of review. In this regard, the material put forward has to be "new" and "compelling": *Kho Jabing* at [52] and [77(d)].

(b) a substantive requirement that a "miscarriage of justice" was occasioned. This may arise where a decision of the court is shown to be "demonstrably wrong" in that, on the evidence tendered in support of the application alone and without the need for further inquiry, there is a "powerful probability" that the decision is wrong: *Kho Jabing* at [65]

and [77(e)(i)]. Miscarriage of justice may also arise if the decision under challenge has been tainted by fraud or a breach of natural justice (*Kho Jabing* at [69]) and [77(e)(ii)].

Whether the appeal should be re-opened

22 Having examined the evidence adduced in the present application, we see no grounds to disagree with the trial Judge's conclusions in the Remittal Findings. Lolok's evidence was hardly "compelling". We agree with the trial judge that it was inconsistent in several material aspects (see Remittal Findings at [15]) and that there were material discrepancies between Lolok's and the applicant's accounts regarding the events on 23 October 2013 (see Remittal Findings at [7]). The applicant did not attempt to explain these discrepancies as he chose not to testify at the remittal hearing.

23 In its bid to shore up Lolok's belated evidence, the defence focused much of its submissions on the allegedly missing logbook. It was asserted that the logbook contained the recorded argument between Lolok and the applicant on 23 October 2013 and that it helped Lolok to recall the events that transpired on an otherwise "uneventful day". It was used to explain why Lolok remembered that day so clearly and to buttress his credibility.

24 However, as the trial Judge pointed out, it was unclear from Lolok's evidence what the contents of the logbook were. Was it a "boat attendance list" which kept a record of persons who boarded the vessel and the time at which the crew started work, had their lunch break and when they finished their work? Was it more akin to a "mileage book" that was also used to record incidents that happened on board the vessel but did not record the timing for the crew's lunch break? There were varying accounts about the contents of the logbook and what it purportedly would have proved. Like the trial Judge, we also think that these

"inexplicable discrepancies cast significant doubt on the existence of the vessel's logbook and the entry which Lolok allegedly made therein": Remittal Findings at [16].

25 In any event, besides the inherent discrepancies mentioned above, when questioned by the court during the hearing before us, Mr Ravi conceded that the only fact that the said logbook could prove was that Lolok and the applicant were working on board the Long Ranger on 23 October 2013. Mr Ravi agreed that the logbook could not possibly prove that both men had gone for lunch together at VivoCity on 23 October 2013. As stated in *Norasharee CA* at [96], VivoCity was a ten-minute drive from Marina Keppel Bay.

26 The second element of the *Kho Jabing* test, the requirement of "miscarriage of justice", is clearly not established by the flimsy additional evidence from Lolok. It is clear that there is nothing "demonstrably wrong" with the decision in *Norasharee CA*. Yazid's testimony was scrutinized and accepted in *Norasharee CA.* There was objective evidence in VivoCity's carpark records and in Yazid's phone records. Lolok's belated and unreliable testimony is therefore incapable of raising any credible *alibi* defence for the applicant.

27 We also see no reason to disagree with the trial Judge's conclusion that there was no miscommunication between Mr Gill and Lolok. Mr Gill testified that Lolok had informed him that he had told the CNB that he was not with the applicant at the material time. With such information, it was not incumbent on Mr Gill to take the further step of verifying with the CNB whether Lolok had made such a statement: Remittal Findings at [14].

28 As Mr Gill also pointed out, it would be illogical for him to say "Why call so many people for?" when the applicant was the only witness in his own

defence at the trial.[28] Further, if Mr Gill had truly conducted the trial so egregiously as alleged, in that he would ignore readily available *alibi* evidence and go against his client's clear instructions to call Lolok as a defence witness at the trial, thereby causing the applicant to be convicted on a capital offence, it would be bizarre that the applicant decided to retain Mr Gill for his appeal against conviction anyway.[29] Further, when Mr Gill made no mention about applying for Lolok to give further evidence in his written submissions and in his oral arguments at the appeal on such an important issue relating to the capital charge, it would be extremely strange that the applicant did not object to the clear omission. In all the circumstances, we hold the view that the applicant's allegations against Mr Gill's conduct of the trial and the appeal were completely unfounded and unfair.

29 There was clearly no miscarriage of justice in the trial Judge's decision to convict the applicant on the capital charge and in our earlier decision in *Norasharee CA*. We therefore dismiss the application to re-open the appeal.

Observations on the choice of words in affidavits, cross-examination and submissions

30 In the face of the written submissions by counsel for the applicant, we think it appropriate to make some observations on litigation strategy and advocacy in court proceedings. We think it is highly undesirable for any counsel (both the Prosecution and Defence Counsel) to use needlessly sensational language and to adopt an unwarranted accusatory tone in submissions, whether written or oral. Some strongly-worded written submissions were made that cast aspersions on the competence and objectivity of the applicant's former defence

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28 ROP 2 p 3 para 7.

29 ROP 2 p 4 para 8.

counsel, the Prosecution, the investigating officers and even the trial Judge. Such an undesirable situation is compounded when the criticisms made in the written submissions against these persons turned out to be unjustified on the facts.

31 In the applicant's written submissions, the trial Judge was accused several times of "apparent bias by prejudgment"[30]. At one point, the applicant's submissions asked, "Did the trial judge have even the slightest intention in the first place to hear oral arguments from both parties at the 14 September hearing in accordance with the 27 July Registrar's Notice, having regard to the fact that he opened his sentence with "now" right before Mr Ravi stood up to speak, and likewise started off with "now" when he renders his oral ruling?".[31] Besides being questionable in logic, such accusatory rhetoric lacks courtesy. This allegation arose in relation to the following: (a) the trial Judge's alleged refusal to hear oral submissions,[32] (b) "Even if it can be said that the trial Judge had allowed Mr Ravi to make oral submissions, why did the trial Judge not request the Prosecution to respond to the submissions by Mr Ravi, contrary to the directions of the 27 July Registrar's Notice?"[33] and (c) the trial Judge's delivery of his written judgment shortly after the conclusion of the applicant's counsel's oral submissions. The statement was then made towards the end of the said submissions that "a breach of natural justice had occurred in a post-appeal context" and that "such egregious breach, if left unchecked and remedied, would throw the whole system of administration of justice into disrepute."[34]

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30 Applicant's Further Submissions dated 28 December 2020 at paras 18, 34, 35 and 37.

31 Applicant's Further Submissions dated 28 December 2020 at para 24.

32 Applicant's Further Submissions dated 28 December 2020 at paras 21 – 22.

33 Applicant's Further Submissions dated 28 December 2020 at para 23.

34 Applicant's Further Submissions dated 28 December 2020 at para 172.

32 The applicant's written submissions appeared to find it objectionable that the trial Judge asked at the start of the hearing on 14 September 2020 whether the applicant's counsel had anything to add to the written submissions.[35] That surely does not amount to prejudgment in any way. The trial Judge had read the written submissions before the hearing and it is normal for the court to ask counsel whether they wish or need to say anything else. In any event, when Mr Ravi replied "Yes" to the aforesaid question by the trial Judge, he was allowed to make his oral submissions. Immediately following that short exchange between the trial Judge and Mr Ravi, the record of proceedings contains ten pages of the transcript of Mr Ravi's oral submissions which he made without interruption.

33 The oral submissions repeated in essence what was already in the written submissions which the trial Judge had read before the hearing. There was therefore nothing new that the Prosecution should be invited to reply to since it had also filed written submissions which the trial Judge similarly had already read. It is also not uncommon for the court not to call upon the Prosecution or the Defence Counsel in criminal proceedings, or any opposing party in civil proceedings, to reply. In the circumstances here, the trial Judge was entitled to give his decision soon after standing down the hearing or indeed, immediately after the oral submissions concluded if he thought that was appropriate. At the hearing before us, Mr Ravi accepted correctly that there was in fact no breach of natural justice by the trial Judge.

34 On the facts of this case, we also think that the rather harsh criticisms made against the Prosecution and the investigating officers were quite unwarranted. The applicant attributed any deficiency in the evidence (for

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[35] Applicant's Further Submissions dated 28 December 2020 at paras 21 – 22.

instance, the defence's failure to produce the vessel's logbook) to the Prosecution's and investigating officers' "indolence". He claimed that his defence had been "dogged by failures in investigating procedures throughout his arrest, remand, and initial sentencing", thereby causing him to suffer a miscarriage of justice which rendered his conviction unsafe. The alleged "failures" included (a) the failure by the CNB to record a statement from Lolok and to seize documents and records from Marina Keppel Bay promptly after the applicant's arrest and (b) the failure by the Prosecution to fulfil its disclosure obligations by not directing the CNB to furnish its knowledge of the fact that a statement was not taken from Lolok: Remittal Findings at [18].

35 As the trial Judge noted, when the CNB approached Lolok in 2015, he did not inform the CNB that he was with the applicant at VivoCity at the material time. The Prosecution and the investigating officers were therefore not aware of the significance of the applicant's employment details or his relationship with Lolok before the trial. Accordingly, there was no apparent necessity for the CNB to investigate any *alibi* defence involving Lolok: Remittal Findings at [19]. There was no notice of *alibi* filed and Lolok was first mentioned only at the trial during the applicant's evidence-in-chief.[36] Similarly, the Prosecution did not know about any alleged miscommunication between Mr Gill and Lolok regarding whether Lolok had told the CNB that he was not with the applicant on 23 October 2013: Remittal Findings at [19] – [20]. The criticisms directed against the Prosecution and the CNB were therefore unjustified.

36 Although much of the further evidence and the arguments centred on the missing logbook, when one looks calmly and objectively at the entire case, the

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[36] ROP 2 p 13 line 26.

logbook itself was ultimately of peripheral evidential value. As we pointed out earlier, Mr Ravi accepted at the hearing before us that at best, the logbook if produced could show only that Lolok and the applicant were working on board the Long Ranger on 23 October 2013. It certainly could not be evidence that Lolok was at VivoCity on that day or that he was with the applicant during lunchtime between 1.07pm and 1.40pm on 23 October 2013, this being the window of time during which the alleged instigation of the drug offence took place.

37 We would therefore urge all counsel to be temperate in their use of words in court proceedings, whether in affidavits, in cross-examination or in submissions. Everyone should guard against sensationalizing facts or legal issues. Passionate advocacy should not be the antithesis of courteous discourse or even disagreement. Justice is best served when everyone involved in its administration is cool-headed and calm and completely objective in thinking.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Ravi s/o Madasamy (Carson Law Chambers) for the applicant;
Yang Ziliang and Daphne Lim (Attorney General's Chambers) for the respondent;