IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 74

Criminal Motion No 17 of 2021

Between

Rahmat Bin Karimon

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Procedure and Sentencing] — [Criminal review] — [Leave for review]
[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

TABLE OF CONTENTS

Rahmat bin Karimon
v
Public Prosecutor

[2021] SGCA 74

Court of Appeal — Criminal Motion No 17 of 2021
Steven Chong JCA
12 July 2021

5 August 2021 Judgment reserved.

Steven Chong JCA:

Introduction

1 This is an application by Rahmat bin Karimon ("Rahmat") for leave under s 394H(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") to review an earlier judgment of the Court of Appeal in CA/CCA 49/2017, which was reported in *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Rahmat (CA)*"). This application is premised on the change of the law brought about by the Court of Appeal's decision in *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") as regards the proper treatment of the concept of wilful blindness in the context of the presumption under s 18(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") that any person who is proved or presumed to possess a controlled drug shall be presumed to have known the nature of the drug. In particular, the Court of Appeal held in *Gobi* that the s 18(2)

presumption cannot be invoked to presume wilful blindness. Thus, following *Gobi*, the Prosecution cannot rely on the s 18(2) presumption to presume wilful blindness. In this application, Rahmat submits that the Prosecution's case in the trial below and on appeal was "in substance" based on wilful blindness rather than on actual knowledge. Consequently, the Prosecution could not have relied on the s 18(2) presumption, and the trial judge's (the "Judge") and the Court of Appeal's findings that Rahmat could not rebut the s 18(2) presumption thus cannot stand.

2 This is not the first application for leave to review a concluded criminal appeal on the basis of the change of law in *Gobi*. In *Datchinamurthy a/l Kataiah v Public Prosecutor* [2021] SGCA 30 ("*Datchinamurthy*") and *Khartik Jasudass and another v Public Prosecutor* [2021] SGCA 13 ("*Khartik*"), the applicants in those cases similarly brought leave applications on the basis that the s 18(2) presumption was not open to the Prosecution as the Prosecution's case at the trial had purportedly been based on wilful blindness rather than on actual knowledge. Both of those leave applications failed because this court found in those cases that the Prosecution's cases and the court's decisions were in fact based on actual knowledge and not on wilful blindness.

3 To succeed in a leave application under s 394H of the CPC, the application must disclose a legitimate basis for the exercise of this court's power of review. The court hearing such a leave application would have to consider the requirements set out in s 394J of the CPC. In particular, under s 394J(2), there must be (a) "sufficient material on which the appellate court may conclude" that (b) there has been "a miscarriage of justice" (*Datchinamurthy* at [21]–[22]). These have come to be known as the "sufficiency" and "miscarriage of justice" requirements respectively, and I shall refer to them in this judgment as such. The present case presents a suitable opportunity for this court to

examine and clarify the contours of these requirements and the respective roles they play in the leave application.

Factual and procedural background

Background facts

4 The factual background of *Rahmat (CA)* is relatively straightforward. At the material time, Rahmat was employed as a runner for one "Kanna Gila" ("Kanna") who was in the business of illegal money-lending. Rahmat had known Kanna for a period of less than two months prior to his arrest.

5 On 27 May 2015, sometime before 6.51pm, Rahmat entered Singapore from Malaysia via the Woodlands Checkpoint in a car. He was with his wife and their three children. Pursuant to Kanna's earlier instructions, after entering Singapore, Rahmat drove to Rochor Road where he met up with a male subject known as "Bai", who instructed Rahmat to meet Zainal bin Hamad ("Zainal") at the IKEA store located in Tampines, Singapore ("IKEA"). Rahmat was known to Zainal as "Abang" and Zainal was known to Rahmat as "26".

6 Rahmat and Zainal then met at the staircase on the second level of IKEA. At about 8.35pm, Zainal passed S$8,000 to Rahmat. After which, Rahmat placed a green bag ("Bag") at the staircase landing in front of Zainal before leaving IKEA. Rahmat then met up with his wife and children and drove the car with his family to Woodlands Checkpoint. At the checkpoint, Rahmat and his wife were arrested by officers of the Central Narcotics Bureau ("CNB"). Rahmat's wife was searched, and S$8,000 was found concealed in her brassiere. Rahmat had passed the S$8,000 he received from Zainal to his wife and had told her to conceal it in her brassiere whilst they were en route to Woodlands Checkpoint.

7 Zainal thereafter picked up the Bag and placed it in a warehouse located on the second floor of IKEA. At about 9.25pm, CNB officers entered the warehouse and arrested Zainal. The Bag was found to contain one red coloured plastic bag containing three plastic packets of 1381.7g of granular/powdery substance (the "Drugs"). The Drugs were subsequently found to contain not less than 53.64g of diamorphine, a controlled drug. Neither Rahmat nor Zainal were authorised under the MDA or the Regulations made thereunder to traffic or be in possession of a controlled drug.

The trial and the trial judge's decision

8 Rahmat was jointly tried with Zainal before the Judge. Zainal was charged with having not less than 53.64g of diamorphine in his possession for the purpose of trafficking under s 5(l)(*a*) read with s 5(2) and punishable under s 33(1) of the MDA, while Rahmat was charged with trafficking in not less than 53.64g of diamorphine under s 5(1)(*a*) and punishable under s 33(1) of the MDA.

9 At the trial, the Prosecution had run three arguments in its closing submissions: (a) Rahmat could not rebut the s 18(2) presumption of knowledge; alternatively, (b) Rahmat was either wilfully blind or (c) had actual knowledge that the Bag contained diamorphine. Rahmat's defence was that he believed that he was carrying medicine.

10 The Judge convicted Zainal and Rahmat of their respective charges and imposed the mandatory sentence of death on them, as no certificate of substantive assistance was provided. The Judge's decision is reported in *Public Prosecutor v Rahmat bin Karimon and another* [2018] 5 SLR 641 ("*Rahmat (HC)*"). The Judge noted that the Prosecution's primary case was that Rahmat could not rebut the s 18(2) presumption *of knowledge* (*Rahmat (HC)* at [15]).

The Judge also noted that the Prosecution had run an "*alternative*" case that Rahmat was "either wilfully blind or had actual knowledge of the nature of the Drugs" (*Rahmat (HC)* at [16]). The Judge found that Rahmat failed to rebut the s 18(2) presumption (*Rahmat (HC)* at [60]); and that actual knowledge and wilful blindness had been separately proven beyond a reasonable doubt (*Rahmat (HC)* at [61] and [65] respectively).

The appeal and the Court of Appeal's decision

11 On 11 September 2018, the Court of Appeal dismissed both Zainal's and Rahmat's appeals against conviction, and delivered its grounds of decision ("GD") in *Rahmat (CA)* on 3 October 2018. There is no suggestion in this application that the Court of Appeal's GD in *Rahmat (CA)* had inaccurately recorded the parties' respective cases. While Rahmat challenged all three aspects of the Judge's findings in his written submissions, for the appeal hearing, he chose, as it was his prerogative, to focus on his *sole* defence that the s 18(2) presumption of knowledge had been rebutted. This was explicitly noted in *Rahmat (CA)* at [30]. On this basis, the Court of Appeal held that Rahmat had failed to rebut the s 18(2) presumption of knowledge (*Rahmat (CA)* at [36]).

Subsequent events

12 On 21 January 2020, an order under s 313(*f*) of the CPC was issued by the President of the Republic of Singapore for the sentence of death pronounced on Rahmat to be carried into effect on 14 February 2020. Pursuant to s 313(*g*) of the CPC, a warrant was then issued by the Chief Justice authorising and requiring the Commissioner of Prisons to carry the sentence of death into execution. On 11 February 2020, the President of the Republic of Singapore, in accordance with Art 22P(1) of the Constitution of the Republic of Singapore

(1985 Rev Ed, 1999 Reprint) and s 313(*h*) of the CPC, ordered a respite of the execution of the said warrant pending any further order.

13 On 20 February 2020, the Court of Appeal granted leave to the applicant in *Gobi* to make a criminal review application. On 19 October 2020, the Court of Appeal's decision on the criminal review application in *Gobi* was delivered. Following the Court of Appeal's decision in *Gobi*, the Attorney-General's Chambers wrote to Rahmat's counsel, Mr Jason Chan SC ("Mr Chan"), on 2 December 2020, stating that, in view of *Gobi*, the Prosecution was of the view that it would be "prudent" for Rahmat to "undertake [his] own review of the record of proceedings" to consider how, if at all, the decision in *Gobi* could affect him. Rahmat then filed the present criminal motion on 21 April 2021. Under s 394H(6)(*a*) of the CPC, such a leave application is to be heard by a single Judge sitting in the Court of Appeal where the appellate court in question is the Court of Appeal. It is on this basis that I am determining this leave application.

Applicable law

14 It first bears emphasis that the review process is directed at the earlier decision of the *appellate court, ie*, the decision of the Court of Appeal in *Rahmat (CA)*: see ss 394F(1), 394G(1) and 394J(5) of the CPC. The focus of any application for leave to commence a review application should, thus, be on the relevant appellate court's decision, which is the decision that must be shown to be demonstrably wrong to establish a miscarriage of justice (*Datchinamurthy* at [25]).

15 Following the seminal decision in *Kreetharan s/o Kathireson v Public Prosecutor and other matters* [2020] 2 SLR 1175 at [17], it is now settled that an application for leave to commence a review application under s 394H of the

CPC must disclose a "legitimate basis" for the exercise of the court's power of review. This requires a consideration of the requirements set out in s 394J of the CPC, including the sufficiency and miscarriage of justice requirements.

16 For the material to be "sufficient", it must satisfy all the requirements set out in ss 394J(3)(*a*) to 394J(3)(*c*): (a) before the filing of the application for leave to make the review application, the material has not been canvassed at any stage of the said criminal matter; (b) the material could not have been adduced in court earlier even with reasonable diligence; and (c) the material is compelling, in that it is reliable, substantial, powerfully probative *and capable of showing* almost conclusively that there has been a miscarriage of justice in the said criminal matter. Where the material consists of legal arguments, s 394J(4) imposes an additional requirement that it must be based on a change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to the said criminal matter (see also *Datchinamurthy* at [21] to [22]). It is not disputed in this case that the decision in *Gobi* was made after the conclusion of *Rahmat (CA)* (see [11] and [13] above).

17 It should, however, be highlighted that the mere fact that there has been a change in the law does not, in and of itself, justify the reopening of a concluded criminal appeal (*Gobi* at [26]). This is where the miscarriage of justice requirement is material. It is not necessary for the court to conclude that there has in fact been a miscarriage of justice. There only needs to be sufficient material on which the court "*may*" conclude that there has been a miscarriage of justice. That being said, the court may only come to that conclusion if the decision in the criminal appeal that is sought to be reopened is "demonstrably wrong" (see s 394J(5)(*a*), CPC), in that the court finds it apparent, *based only on the evidence tendered in support of the review application and without any further inquiry*, that there is a "powerful probability" – and not just a "real

possibility" – that that decision is wrong (see ss 394J(6)(*a*) and 394J(6)(*b*), CPC). Alternatively, the court may conclude that there has been a miscarriage of justice if the earlier decision is "tainted by fraud or a breach of the rules of natural justice" (see s 394J(5)(*b*), CPC).

The parties' cases in this application

18 Rahmat submits that the Prosecution's entire case at the trial, including its arguments on the s 18(2) presumption, was "in substance" based on wilful blindness in the "extended" sense, which is a mental state that is factually short of actual knowledge because the accused did not in fact know the true position but sufficiently suspected it and deliberately refused to investigate, even though he could have done so, in order to avoid confirmation of his own suspicions. This is to be contrasted with wilful blindness in the "evidential" sense, which is inferred actual knowledge (see *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [41]–[50] in the context of s 18(1) of the MDA, which was subsequently applied to s 18(2) of the MDA in *Gobi* at [98(c)]). In this judgment, I shall refer to wilful blindness in the "extended" sense simply as "wilful blindness".

19 Rahmat submits that, following *Gobi*, the Prosecution's case on Rahmat's wilful blindness must be proven beyond reasonable doubt, and the Prosecution could not have recourse to the s 18(2) presumption. Rahmat submits that this is because the Court of Appeal in *Gobi* held at [56] that "the doctrine of wilful blindness … *should not feature* in the analysis of whether the s 18(2) presumption has been rebutted" [emphasis added]. Rahmat's case is that this change in the law brought about by *Gobi* is not confined to only preclude the Prosecution from relying on the s 18(2) presumption to presume wilful blindness. Rahmat's counsel, Mr Chan, seeks to persuade this court that the

holding in *Gobi* at [56] extends to preclude the doctrine of wilful blindness from *featuring* in the analysis on the applicability of the presumption *irrespective* of whether the presumption was in fact relied on to presume wilful blindness.

20 The Prosecution submits that its case at the trial and on appeal was based on actual knowledge. The s 18(2) presumption was relied on to presume actual knowledge. Likewise, wilful blindness was relied on in the "evidential sense", *ie*, inferred actual knowledge, to demonstrate that Rahmat had actual knowledge of the drugs.

Issues to be determined

21 The principal issue in this application is whether there is a legitimate basis for the court to exercise its power of review. To determine this, it is necessary to examine whether the sufficiency and miscarriage of justice requirements have *both* been satisfied. The present application provides an apt occasion to clarify the sufficiency requirement under s 394J(2) of the CPC.

Sufficiency requirement

Composite requirement

22 The first important point to note regarding s 394J(2) of the CPC is that, while it is conceptually neat to analyse the sufficiency and miscarriage of justice requirements as two discrete elements, it is also important to bear in mind that, ultimately, s 394J(2) lays down a *composite* requirement. This is why s 394J(3)(*c*) mandates that the new material is only sufficient if it is "*capable of showing* almost conclusively that *there has been a miscarriage of justice*" [emphasis added].

Relevancy threshold

23 This leads to the next important question: how does the court assess if a change in the law is "capable of showing" that there has been a miscarriage of justice in any given case? It appears from the earlier cases that the court has taken different paths to address this issue.

24 In *Gobi*, Tay Yong Kwang JCA summarily allowed the leave application without written grounds. As such, his specific approach to the twin requirements is not apparent from his decision. However, in *Gobi*, it was clear that the Court of Appeal's decision in *Adili* in relation to the doctrine of wilful blindness under s 18(1) of the MDA would be relevant, at least *prima facie*, to show that the Prosecution should not have been permitted to invoke the presumption under s 18(2) at the trial when its case there was run on the basis of wilful blindness, and so it was never put to the accused that he did not believe that the drugs in his possession were "disco drugs" mixed with chocolate and not diamorphine. By the time of the appeal, the Prosecution ran its case on the basis of actual knowledge but it was not pointed out to the court either by the Prosecution or the Defence at the appeal that the accused had not been challenged at the trial on this point. Therefore, in *Gobi*, the change in the law brought about by *Adili* was clearly *prima facie* relevant to affect the decision in the original appeal in *Gobi* and thus *capable of showing* almost conclusively that there has been a miscarriage of justice.

25 In *Khartik*, the applicant only challenged the trial judge's, as opposed to the Court of Appeal's, findings. This was perhaps understandable since the Court of Appeal did not issue a judgment. As pointed out in *Khartik* at [8], the Court of Appeal in dismissing the appeal merely stated that there was no reason to disturb the trial judge's finding that the accused had failed to rebut the s 18(2)

presumption. In opposing the leave application, the Prosecution submitted that the sufficiency requirement was not satisfied (*Khartik* at [11]). Tay JCA found the applicant's attempt to "recast" the judge's finding to be one of wilful blindness to be unmeritorious. Tay JCA found that the Prosecution's case at the trial was one of actual knowledge of the nature of the drugs and held at [28] and [32] of *Khartik* that the miscarriage of justice requirement was not satisfied.

26 In *Datchinamurthy*, Chao Hick Tin SJ explicitly noted that the Prosecution did not dispute that the legal principles articulated in *Gobi* would constitute "sufficient" material" (*Datchinamurthy* at [26]). In other words, it was common ground between the parties that the sufficiency requirement was satisfied. On this basis, Chao SJ considered that the "central issue" was whether there was a miscarriage of justice. To determine this issue, Chao SJ considered (a) the Prosecution's case at the trial; (b) the trial judge's decision; and (c) the Court of Appeal's decision, though Chao SJ stressed that the miscarriage of justice must arise from the Court of Appeal's decision, rather than the decision of the trial judge (*Datchinamurthy* at [34]). Chao SJ dismissed the leave application as he found that the Prosecution's case at the trial, the trial judge's decision, and the Court of Appeal's decision had all been based on actual knowledge (specifically, the s 18(2) presumption to presume actual knowledge) rather than wilful blindness short of actual knowledge (*Datchinamurthy* at [28], [40], [43] and [49]). In short, the application was dismissed for failing to satisfy the "miscarriage of justice" requirement.

27 *Khartik* and *Datchinamurthy* share one significant common denominator with the present application. They *all* claimed that the Prosecution's case at the trial and the ensuing decisions were premised on the reliance of the s 18(2) presumption to presume *wilful blindness*.

28 In my judgment, it is clear from the text of s 394J(3)(*c*) of the CPC that the sufficiency requirement has a relevancy threshold, *ie*, the change in the law must be *prima facie relevant* to show that the appellate court's decision is demonstrably wrong. This is because s 394J(3)(*c*) mandates that the new material must be "*capable of showing* almost conclusively that there has been a miscarriage of justice" [emphasis added]. This must be so because, if the new material is not relevant to the application, it would necessarily be *incapable* of showing conclusively that there has been a miscarriage of justice. Mr Chan accepted this at the hearing before me. The sufficiency requirement is not limited to examine the *probative weight* of the new material because, if it were otherwise, any change of law would invariably satisfy the sufficiency requirement since any such change would by definition be "reliable" and "powerfully probative". This can be illustrated, for instance, by considering hypothetically if Rahmat had relied on the change in the law brought about by *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*"), which held that a bailee's act of returning drugs to a supplier would not be considered drug trafficking. Since *Rahmat (CA)* did not concern a bailee situation at all, the change of the law brought about by *Ramesh* would have no *prima facie* relevance to the leave application. In my view, Rahmat has to show that the change in law brought about by *Gobi* is *prima facie* relevant to affect or disturb the appellate court's findings in *Rahmat (CA)*. It is thus imperative for Rahmat to demonstrate that the Judge and the Court of Appeal had relied on the s 18(2) presumption to presume *wilful blindness* in finding that the presumption had not been rebutted.

The Court of Appeal's decision in Rahmat (CA)

29 In my judgment, Rahmat has failed to show any *prima facie* relevance of the decision in *Gobi* to affect the decision in *Rahmat (CA)*. To determine if

Gobi is relevant, it is of vital importance to examine the Court of Appeal's decision in *Rahmat (CA)*. In particular, did the Court of Appeal rely on s 18(2) of the MDA to presume wilful blindness, which is now impermissible following *Gobi*?

30 In this connection, it is essential to examine how Rahmat has relied on *Gobi* to mount his leave application. He relies principally on [56] of *Gobi*, which I shall set out below in full:

> 56 Accordingly, we hold that the knowledge that is presumed under s 18(2) is confined to actual knowledge of the nature of the drugs in the accused person's possession, and does not encompass knowledge of matters to which the accused person is said to be wilfully blind. It follows that the Prosecution is not permitted to invoke the s 18(2) presumption to presume that the accused person was wilfully blind to the nature of the drugs in his possession, and the doctrine of wilful blindness *is therefore* irrelevant to and *should not feature in the analysis of whether the s 18(2) presumption has been rebutted*. Where the Prosecution's case is that the accused person was wilfully blind to the nature of the drugs in his possession, it must prove beyond a reasonable doubt that the accused person was wilfully blind to that fact, such that he should be treated at law as though he had actual knowledge of that fact. These are discrete inquiries which ought not to be conflated. We discuss the elements of wilful blindness in the context of knowledge of the nature of the drugs at [76]–[96] below.
>
> [emphasis in original omitted; emphasis added in italics]

31 The key holding at [56] of *Gobi* is that s 18(2) cannot be used to presume wilful blindness. Mr Chan submits that [56] of *Gobi* also imports a separate prohibition in that wilful blindness "should not feature" in the analysis of whether the s 18(2) presumption has been rebutted. However, the point that wilful blindness should not "feature" in the analysis of whether s 18(2) is rebutted is merely a corollary of the *main holding* that s 18(2) cannot be invoked to presume wilful blindness. In other words, [56] of *Gobi* holds that, if the Prosecution cannot rely on s 18(2) to presume wilful blindness, then wilful

blindness should not feature in its analysis of s 18(2). These two points are, essentially, two sides of the same coin. This is why that sentence at [56] of *Gobi* is preceded with the observation that the doctrine of wilful blindness "*is therefore* irrelevant to and should not feature" in the s 18(2) analysis [emphasis added].

32 Bearing this in mind, this application can only succeed if Rahmat can show that the Court of Appeal had relied on s 18(2) to presume wilful blindness. However, a plain review of *Rahmat (CA)* will reveal that the Court of Appeal's dismissal of Rahmat's appeal was based on its finding that the s 18(2) presumption of *actual knowledge* had not been rebutted:

> 30 We turn to Rahmat's appeal. Mr Jason Chan ("Mr Chan"), counsel for Rahmat, accepted that Rahmat was in possession of the green bag and of the drugs; *his defence was solely* to attempt to rebut the presumption *of knowledge* under s 18(2) of the MDA. We refer in this connection to what we have said at [23] above on the appropriate analytical framework to be adopted in such circumstances.
>
> 31 The objective facts are that Rahmat delivered the green bag to Zainal and, in exchange, collected $8,000 from Zainal. Rahmat needed to address both these facts in order for his appeal to succeed.
>
> 32 Mr Chan advanced two arguments. … as a preliminary point, we observed, and Mr Chan candidly accepted, that Rahmat's evidence was afflicted with many inconsistencies. …
>
> 33 On the first argument, Rahmat's case was that he had been a runner for Kanna's illegal moneylending business … and [Kanna] told him that he could have such a loan [of RM30,000] interest-free, repayable over five years and also that he could leave Kanna's syndicate. All he had to do was to bring some medicine to someone in Singapore called Bai and then collect $8,000 from Zainal.
>
> 34 We found this incredible. …
>
> 35 Turning to the second argument, Rahmat said he thought he was carrying medicines but this too was incredible …

> 36 For all these reasons, we were satisfied that Rahmat too had failed to rebut the presumption *of knowledge* under s 18(2) of the MDA. Since he delivered the drugs to Zainal, there was no doubt that he was trafficking. We therefore dismissed Rahmat's appeal also.
>
> [emphasis added]

33 Unlike *Gobi*, where the trial was run on the basis of wilful blindness while the case on appeal was run on the basis of actual knowledge, here the Judge found that the presumption of actual knowledge under s 18(2) had not been rebutted by Rahmat *in addition* to wilful blindness. Tellingly, Rahmat had approached his appeal on the basis that he had rebutted the s 18(2) presumption of *knowledge*, as is clear from [30] of the GD in *Rahmat (CA)*. Thus, this application is a non-starter and Rahmat's arguments on the potential application of *Gobi* to *Rahmat (CA)* are entirely misconceived.

34 It bears mention that the Prosecution's case on appeal was in response to Rahmat's case, which focused on the Judge's findings that the s 18(2) presumption of *actual knowledge* had not been rebutted (*Rahmat (CA)* at [30]; see [32] above). As explained above, it is of paramount importance to first identify what the presumption was used for. As it was relied on by the Prosecution to presume actual knowledge and not wilful blindness, the change in the law in *Gobi* would have no relevance at all to the leave application.

35 Consistent with Rahmat's case on appeal in seeking to rebut the presumption of knowledge, the Prosecution in response submitted that Rahmat could not rebut the s 18(2) presumption (which was used to presume actual knowledge) or that Rahmat had actual knowledge of the nature of the drug. This is evident from the following paragraphs of the Prosecution's appeal submissions:

> 104 … As such, the Judge found that Rahmat had *both actual and presumed knowledge* of the Drugs. …
>
> 116 … the Judge rightly concluded that Rahmat had *actual knowledge* of the Drugs, and in any event, *could not rebut the presumption of knowledge* under Section 18(2) of the MDA. …
>
> 121 The suspicious nature of the transaction would be apparent to Rahmat by the time he left the Bag with Zainal. Rahmat's decision to proceed with the transaction evinces *his knowledge* of its illicit nature. In the circumstances, he cannot rebut the presumption of *knowledge* under section 18(2) of the MDA.
>
> 122 … Rahmat apparently made no enquiries about this further onward delivery, nor did he ask about the identity of this '26'. The layers of secrecy shrouding the transaction would give any reasonable person cause to pause and make further enquiries. Rahmat's failure to do so strongly suggests that *he was well aware of* the illicit nature of the present transaction.
>
> 132 Rahmat's attempt to deny *knowledge* of the Drugs is both illogical and fraught with material inconsistencies. *The result is an inherently incredible account that involves Rahmat (a) turning a blind eye* to the most suspicious of circumstances, and (b) being in a selective state of shock which affects only specific and material portions of his investigation statements. *The Judge was amply justified in rejecting Rahmat's account and finding that he had knowledge, whether actual or presumed, of the Drugs*. …
>
> [emphasis added]

36 Paragraphs 121 and 122 of the Prosecution's appeal submissions are of particular significance as they clearly show that the Prosecution's primary case was based on actual knowledge: the Prosecution's acceptance that Rahmat did not check the contents of the bag was not to show that Rahmat did not know what was in the bag; on the contrary, the Prosecution's case was that Rahmat did not check the contents of the bag because he *already knew* what it contained, *viz*, diamorphine. Paragraph 132 also shows that the Prosecution had submitted that Rahmat's claim that he had turned a blind eye was "inherently incredible", *ie*, the Prosecution *did not* accept this as the truth, and that the Judge was right to reject Rahmat's account.

37 Therefore, it is clear that the Court of Appeal's decision in *Rahmat (CA)* was based on the appellant's failure to rebut the s 18(2) presumption of *actual knowledge*, and that *both* the Prosecution and Rahmat had approached the appeal on the *same* basis.

The Prosecution's case at trial

38 In this application, as was the case in *Khartik*, Rahmat devotes his focus to the Prosecution's case at the trial. However, as was emphasised recently in *Datchinamurthy* (see [14] above), it should not be overlooked that the decision being challenged in a criminal review application is the *appellate court's* decision. The Prosecution's case at the trial and the trial judge's decision are only relevant to the extent that they inform the context behind the appellate court's decision. The Prosecution's case at the trial and the trial judge's holding would bear significance where the Prosecution had *changed* its case from the trial to appeal, as was the case in *Gobi*, because the change in the Prosecution's case (from one of wilful blindness at the trial to actual knowledge on appeal) might prejudice the accused person. This was not the case here as shown below.

39 The Prosecution's primary case at the trial was likewise based, *inter alia*, on actual knowledge, specifically, that the s 18(2) presumption of knowledge had not been rebutted.

Prosecution's put questions and cross-examination of Rahmat

40 In *Adili* and *Gobi*, as the Prosecution had accepted at the trial that the accused did not know that the delivered package contained drugs or had not challenged the accused on his claim that he did not know the nature of the drug, it followed that it was no longer open to the Prosecution to either prove actual knowledge or rely on the presumption to presume actual knowledge. In that

situation, the Prosecution was limited to only one remaining basis to prove the charge – proof of wilful blindness and, in that respect, reliance on the presumption was precluded.

41 Mr Chan, in his effort to draw a parallel with *Adili* and/or *Gobi,* relied on the Prosecution's put to Rahmat that "all [his] statements to IO Shafiq [*ie*, the investigation officer who took Rahmat's statements] were accurately recorded", and, in Rahmat's cautioned statement recorded by IO Shafiq, Rahmat had stated that "[he] really [did not] know what was inside the bag." However, unlike *Adili* and *Gobi*, the put question was to the effect that Rahmat's statements were *accurately recorded* and not that his statements were *true*. I agree with the Prosecution that the main reason it was put to Rahmat that his statements were recorded accurately was because Rahmat had claimed at the trial that there were inaccuracies in the statement recording and that his court testimony should be preferred. It was in that context that the Prosecution put to Rahmat that he had, *inter alia*, *lied* in his contemporaneous statements about receiving S$8,000 from Kanna, instead of Zainal, so as to distance himself from the transaction. The put question to Rahmat that he had lied in his contemporaneous statement would put paid to Rahmat's submission that the Prosecution had accepted his statements to be true. It was thus misleading for Rahmat to suggest that, because it was put to Rahmat that the statements were accurately *recorded,* the Prosecution had therefore accepted the *truth* of his statements in particular that he did not know the contents in the bag.

Prosecution's trial submissions

42 The Prosecution's trial submissions also make it clear that its primary case was that the s 18(2) presumption of *knowledge* had not been rebutted, and

that its case on wilful blindness (which was not based on the s 18(2) presumption) was an alternative case.

(a) At paragraph 24, the Prosecution's case was that "Rahmat had failed to rebut the presumption *of knowledge* given the suspicious circumstances surrounding the collection and subsequent delivery of the Drugs to Zainal" [emphasis added].

(b) At paragraph 32, the Prosecution submitted that "Rahmat has given wildly inconsistent accounts" and his "bare allegation" that he was delivering medicine "is insufficient to surmount the threshold to rebut the s 18(2) MDA presumption" and "close scrutiny of the suspicious circumstances of the transaction will reveal that he was *either* wilfully blind *or* had in fact, actual knowledge of the heroin that was delivered to Zainal" [emphasis added]. The emphasised portion of the foregoing line shows clearly, as the Judge had pointed out (see [10] above), that the Prosecution's case on wilful blindness was *alternative* to its primary case relying on s 18(2) to presume actual knowledge.

43 Notwithstanding the clear direction of the Prosecution's submissions at the trial, Rahmat submits that the Prosecution had "featured" wilful blindness in its analysis on s 18(2) in its trial closing submissions at paragraph 36:

> 36. The veracity of Rahmat's bare assertion is highly suspect given the apparent and callous disregard as to the nature of the items he was carrying. In conjunction with the arguments pertaining to the display of wilful blindness highlighted below, Rahmat cannot be said to have successfully rebutted the presumption under s 18(2) of the MDA.

44 Mr Chan focused on the fact that the Prosecution had approached its analysis on s 18(2) "in conjunction with the arguments pertaining to the display of wilful blindness". However, this sentence has to be seen in its proper context.

The line immediately preceding states that "[t]he *veracity of Rahmat's bare assertion* is highly suspect *given the apparent and callous disregard as to the nature of the items* he was carrying" [emphasis added]. The Prosecution's submissions on wilful blindness were focused on Rahmat's inconsistent and unbelievable accounts. Therefore, the allusion to the Prosecution's arguments on wilful blindness at [43] above was made with reference to Rahmat's incredible and inconsistent defence. Indeed, this was also how the Judge approached the s 18(2) analysis, as he found that Rahmat was unable to rebut the s 18(2) presumption *of knowledge* because his account was inconsistent and incredible (see *Rahmat (HC)* at [49] and [58]). The Judge's analysis in this regard was also explicitly noted by the Court of Appeal in *Rahmat (CA)* at [32].

45 It appears to me that Rahmat's application is essentially mounted on an ill-conceived argument by selectively choosing *one* aspect of the Prosecution's case at the trial, *ie*, proof of wilful blindness, and thereafter juxtaposing that argument against *another* separate and independent argument based on the presumption of *knowledge* under s 18(2). In so doing, he conflated two distinct arguments into one. This juxtaposition is fatally flawed because the Prosecution's reliance on the s 18(2) presumption was, in any event, to presume actual knowledge and *not wilful blindness*. What Rahmat has effectively sought to do is to *reconstruct* the Prosecution's case at the trial and in so doing *recast* the decision of the Judge in order to invoke the change of the law in *Gobi* so as to persuade this court that there is compelling new material to demonstrate a miscarriage of justice. As alluded to at [33] above, Rahmat was clearly cognisant that s 18(2) was relied on to presume *actual knowledge* and, significantly, he had sought to rebut the s 18(2) presumption of *knowledge* at the trial and on appeal.

46 In the circumstances, there can be no basis to show that *Gobi* is "capable" of showing almost conclusively that there has been a miscarriage of justice in the court's decision in *Rahmat (CA)*.

Conclusion

47 Accordingly, I find that the sufficiency requirement has not been satisfied. There is thus no question of any miscarriage of justice. Consequently, the application is dismissed.

Steven Chong
Justice of the Court of Appeal

Chan Tai-Hui Jason SC, Leong Yi-Ming, Zeslene Mao Huijing, Tan Xue Yang (Allen & Gledhill LLP) for the applicant;
Muhamad Imaduddien and Chin Jincheng (Attorney-General's Chambers) for the respondent.