IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 75

Criminal Appeal No 19 of 2016 (Criminal Motion No 5 of 2017)

Between

Ranjit Singh Gill Menjeet Singh

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the Matter of Criminal Case No 21 of 2016

Between

Public Prosecutor

And

(1) Ranjit Singh Gill Menjeet Singh
(2) Mohammad Farid Bin Batra

FINDINGS ON REMITTAL

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19 March 2019 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 In the course of the accused's application to adduce further evidence for his appeal, the matter was remitted to me pursuant to s 392 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"). These are my findings.

Background

2 The accused was convicted of a charge of trafficking in not less than 35.21 grams of diamorphine, an offence under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). He was sentenced to life imprisonment and 15 strokes of the cane. My grounds of decision are contained in *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2016] SGHC 217 ("GD").

3 The case turned on the accused's knowledge that a plastic bag which he handed to the co-accused contained the drugs. The plastic bag was in the bus which the accused drove from Malaysia to Singapore. The accused's defence was that he did not know that the plastic bag contained anything illegal or specifically, the drugs. As explained in [37]–[50] of the GD, based on the facts and circumstances, I found that he had failed to rebut the presumption of knowledge of the nature of the drugs contained in s 18(2) of the MDA.

4 At the trial, the accused was represented by Mr Singa Retnam ("Mr Retnam"), as lead counsel, Mr Dhanaraj James Selvaraj ("Mr Selvaraj"), as assisting counsel and Mr Gino Hardial Singh ("Mr GH Singh"), as junior assisting counsel ("the previous lawyers"). The accused appealed against the decision, and is now represented by a new set of lawyers led by Mr Bachoo Mohan Singh ("Mr BM Singh").

5 At the appeal hearing on 12 February 2018, the accused applied, *inter alia*, for leave to adduce further evidence of his personal and financial circumstances, so as to establish that he had no reason to carry drugs into Singapore. The Court of Appeal observed that the further evidence was available at trial. The further evidence was also directly contrary to many of the statements given and assertions made by the accused at the trial. This would affect the reliability of the evidence. These points militated against the admission of the further evidence. However, the Court of Appeal highlighted that there was a possibility that the position taken below while the accused was represented by the previous lawyers was not the position he had instructed them to take.

6 Therefore, the Court of Appeal granted the accused leave to file an affidavit setting out his exact instructions to Mr Retnam on the points he has

pursued on appeal, and how those instructions varied from the position that Mr Retnam in fact took at the trial. A copy of the affidavit was to be made available to Mr Retnam, with a waiver of privilege to the extent needed to allow Mr Retnam to furnish a written response to the allegations.

7 In accordance with the directions, the accused filed his affidavit on 12 March 2018.[1] The previous lawyers responded by way of affidavits filed on 20 March 2018.[2]

8 At the further hearing on 26 March 2018, pursuant to s 392(1) of the CPC, the Court of Appeal remitted the matter to me to take additional evidence with the following directions:

> Having regard to the gravity of the allegations that have been levelled by [the accused] against the lawyers who represented him at the trial, the central thrust of which is that his lawyers below did not represent him in accordance with his instructions, pursuant to s 392 of the Criminal Procedure Code ("CPC"), we remit the matter to the trial judge ("the Judge") to take additional evidence *on the narrow question of whether [the accused's] case at trial was presented in accordance with his instructions as set out in the affidavits he has filed in [the criminal motion*]. [emphasis added]

9 Once the taking of the evidence is completed, the court is to return the record to the Court of Appeal in accordance with s 392(3) of the CPC, and to state under s 392(4) of the CPC, what effect, if any, the additional evidence has on the earlier verdict.

The remittal proceedings

10 By [8] above, the remittal proceedings concern "the narrow question of

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1 Agreed Bundle of Documents Vol 3 ("3ABD"), Tab 37.

2 3ABD, Tabs 38, 39 and 45.

whether [the accused's] case at trial was presented in accordance with his instructions" as set out in his affidavit. I pause to observe, however, that in his affidavit, the accused also made many other complaints about the previous lawyers' conduct of the case and their performance at the trial. The previous lawyers disputed these matters and provided explanations on the approach taken by them.

11 During the proceedings, the witnesses' evidence touched on some of the other complaints. This was inevitable as some aspects provided the background and context for the determination of the narrow question. Nonetheless, the parties were agreed that such complaints are beyond the scope of these proceedings. They pertain to the competency of the previous lawyers and the level of assistance they provided at the trial, and fall to be dealt with on appeal.

12 Therefore, as far as possible, the parties sought to confine themselves to the accused's allegations of failure of the previous lawyers to act in accordance with his instructions. By way of overview, these allegations may broadly be categorised into four areas. These shall be the areas I deal with below.

The accused's evidence

13 According to the accused, the previous lawyers did not visit him very often. Mr Retnam interviewed him twice via video-link and went to prison to visit him about five to six times. During one of those visits, Mr Retnam was accompanied by Mr Selvaraj. He did not see Mr GH Singh at all prior to the start of the trial.[3] Oral instructions were given to Mr Retnam during the interview sessions.

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[3] 3ABD, pp 898–899.

14 In addition, the accused gave three sets of "written instructions" to Mr Retnam dated 21 May 2015, 15 October 2015 and 3 December 2015. These were handwritten notes.

15 The notes dated 21 May 2015 comprised seven pages. In them, the accused provided an account of how he was asked to perform the delivery into Singapore, and the circumstances of the delivery.[4] Sometime in or around October 2015, the accused received copies of his statements to the Central Narcotics Bureau, as well as the statements of the co-accused.[5] In the notes dated 15 October 2015 comprising eight pages, the accused commented on the contents of his statements, as well as the contents of the co-accused's statements.[6] In the notes dated 3 December 2015 comprising three pages, again, the accused commented on the co-accused's statements.[7] In these proceedings, the accused did not rely on the third set of notes.

16 To summarise, in his affidavit, the accused contended that contrary to his instructions, the previous lawyers failed to do the following:

(a) First, the previous lawyers did not object to the admissibility of his statements, on the ground that they were made involuntarily.

(i) In the notes dated 21 May 2015, the accused said he wanted to "write again all the statements that had given [*sic*]", and that he would like to "do some corrections of those statements that…can be useful for [his] defense in the trial [*sic*]". He said that on the day of his arrest, he was in disbelief, and

4 3ABD, pp 916-929.

5 3ABD, p 893.

6 3ABD, pp 930-937, 941-948.

7 3ABD, pp 938-940, 949-951.

could not concentrate on giving his statement. He gave his statements "out of fear", and without much thinking, "as many negative thoughts were going through [his] mind".[8]

(ii) In his notes dated 21 October 2015, he claimed that on a Sunday, the investigation officer met him in the interview room, and asked him not to "worry about these statements". The investigation officer said that he knew the accused was "innocent", told the accused that "these statements would help him in court", and asked the accused to sign them. Believing the investigation officer, the accused signed the statements, and the investigation officer gave him food to eat. The accused added that he "had been induce(d)", and that "[he] was sapped by [the investigation officer], force to do the detector test, force to sign voluntary lie detector test paper [*sic*]".[9]

(iii) During a subsequent visit by Mr Retnam and Mr Selvaraj, Mr Selvaraj questioned him briefly about his statements. Mr Selvaraj said that they would challenge his statements in accordance with the second set of notes. Mr Retnam also said they would raise the matters set out in his written instructions. However, they did not question him in detail about the contents of his statements, or how they were recorded.[10]

(iv) At the trial, the previous lawyers did not challenge the admissibility of the statements.[11]

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8 3ABD, p 923.

9 3ABD, p 948.

10 3ABD, p 895.

(b) Second, the previous lawyers did not present evidence to show that he was not in financial difficulties, and to dispute portions of his statement which state that he was in financial difficulties. For clarity, I should state that the relevant statement is Exh P130, a statement recorded from the accused on 11 February 2014, and the pertinent portions are paras 10–12.[12]

(i) Contrary to the contents of paras 10–12 of Exh P130, the accused pointed out that in his notes dated 15 October 2015, he denied selling his buses due to financial difficulties. He also denied that he was working for a man named Siva, and said that he was "self-employed". He said that his friend named Sarr had requested for a loan of RM6,000 from him and not RM12,000.[13]

(ii) Further, during the prison interviews, he informed Mr Retnam that he was a legitimate businessman operating a tourist bus business and that he had business records to prove this. After selling two old buses, he did not have to pay the monthly instalments and the drivers' salaries. He ordered a new bus as a replacement; he owned the bus he drove into Singapore. He also owned a house and a car.[14] He also arranged for his business associate based in Singapore, one Rani, to hand three log books recording details of his business to Mr Retnam.[15]

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11 3ABD, p 901.

12 Agreed Bundle of Documents Vol 4 ("4ABD"), Tab 56.

13 3ABD, p 946.

14 3ABD, p 896.

15 3ABD, p 892.

(iii) Therefore, the portions of his statement which stated that he was in financial difficulties were incorrect, and he said he wished to challenge them. However, Mr Retnam did not ask him questions about his financial situation and did not ask him to provide any documents relating to his financial situation.[16]

(iv) Whereas Rani told the accused that she had handed over the log books to Mr Retnam, Mr Retnam denied this. Unfortunately, Rani was no longer willing to assist the accused in his case by coming forth to give evidence on her involvement.[17]

(v) At the trial, Mr Retnam did not carry out these instructions. No evidence was presented on the accused's financial situation.

(c) Third, the previous lawyers did not challenge the accuracy of certain portions of his statements (which were unrelated to his financial circumstances) as instructed in his notes dated 15 October 2015. While there were other inaccurate portions raised, the two main aspects are as follows:

(i) He did not know the contents of the plastic bag he had delivered. He had only seen the three bundles within the plastic bag after the plastic bag had been placed in the bus. His "pocket book statement", *ie*, the contemporaneous statement, Exh P131, wrongly recorded that he stated that there were three bundles in the plastic bag and it was wrongly implied that he knew that there

16 3ABD, pp 896–897.

17 3ABD, pp 892–893.

were three bundles before the plastic bag was placed on the bus.[18]

(ii) He did not use the word "*barang*" to refer to something illegal in his statements. He questioned why the word "*barang*" had not been translated from Malay to English in his statements. He used "*barang*" to refer to items he transported.[19] I should add that at para 28 of Exh P134, a statement recorded on 14 February 2014, the accused was recorded as stating that on the day of the arrest, Siva had contacted him to bring "*barang*" to Singapore, and that "[*b*]*arang to me is something which is illegal but I do not know the contents*" [emphasis added].[20] The allegation appears to be that this portion of the statement should have been challenged by his previous lawyers.

17 In the cross-examination of the previous lawyers, it was also suggested that they only ran a *partial* defence that the accused was a courier.[21] While this was not specifically raised in the accused's affidavit, this seemed to be an allegation of a failure to run a full defence in accordance with instructions. This formed the fourth main contention by the accused.

Mr Retnam's evidence

18 Mr Retnam produced records to show that he visited the accused 11 times. This was confirmed by a letter from the Singapore Prison Service dated

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18 3ABD, p 941.

19 3ABD, p 943.

20 4ABD, p 1198.

21 NE, 26 September 2018, p 11, lines 3–9 (Mr GH Singh); p 35, lines 10–11 (Mr Selvaraj); p 49, line 21 (Mr Retnam).

12 June 2018 listing 12 visits between 27 November 2014 to 1 June 2016; one visit was cancelled. On five occasions from 29 December 2015 to 1 April 2016, Mr Retnam was accompanied by Mr Selvaraj.[22]

19 In terms of attendance notes, Mr Retnam produced five sets arising from the prison visits, dated 27 November 2014, 6 March 2015, 30 October 2015, 29 December 2015 and 1 April 2016.[23] I pause to observe that the attendance notes of 29 December 2015 are important and are referred to at [53] below.[24]

20 Mr Retnam also produced representations to the Prosecution made on 27 June 2015 (which he said closely followed the notes dated 21 May 2015 setting out the accused's account of the events), asking for the charge against the accused to be withdrawn. There were also other representations to the Prosecution, asking for portions of the accused's statements concerning previous drug transactions to be expunged. In a letter dated 1 April 2016, Mr Retnam wrote to ask for a certificate of substantive assistance to be issued to the accused.

21 Mr Retnam did not dispute receiving the three sets of notes. It was not disputed that he did not give copies of the same to Mr Selvaraj or Mr GH Singh.

22 Turning to the allegations, according to Mr Retnam, during the prison visits, the accused did not say that his statements were made involuntarily, under threat, inducement or promise.

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22 3ABD, Tab 49.

23 Agreed Bundle of Documents Vol 1 ("1ABD"), Tabs 6, 7, 13, 14 and 22.

24 1ABD, Tab 14.

23 During cross-examination, Mr Retnam was referred to the portions of the notes dated 15 October 2015 set out above at [16(a)(ii)], where the accused raised his concerns about the statement recording process. Mr Retnam responded that while the accused stated that he had given the statements out of fear, the notes dated 15 October 2015 did not provide any basis to claim that there was any threat, inducement or promise.[25] Mr Retnam explained to the accused that "excuses" would not hold water in court, and there must be "really some evidence" of threat, inducement or promise. To Mr Retnam's mind, the accused wanted to have his statements rewritten, something that was not achievable.[26] Subsequently, during the prison interviews, the accused confirmed to Mr Retnam and Mr Selvaraj that there was no threat, inducement or promise when he provided his statements.[27]

24 Next, Mr Retnam said that the accused did not mention that he was a "rich man" who need not resort to drug trafficking. This was not his defence. Specifically, the accused did not raise this in his notes.[28] In cross-examination, Mr Retnam stated that he did not ask the accused for detailed information of his financial position as he did not see how it would be relevant to the charge.[29]

25 Further, Mr Retnam pointed out that the accused informed the psychiatrist from the Institute of Mental Health, Dr Kenneth Koh ("Dr Koh"), of his financial difficulties. That account was consistent with the version in his statement. Specifically, in the psychiatric report dated 12 March 2014,[30] Dr Koh

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25 NE, 26 September 2018, p 71, lines 15–26.

26 NE, 26 September 2018, p 72, lines 3–19.

27 NE, 26 September 2018, p 106, lines 8–21.

28 3ABD, p 1019.

29 NE, 26 September 2018, p 96, lines 1–13.

30 3ABD, pp 1066–1069.

reported that the accused said that his transport business hit a "downturn … necessitating his sale of 2 of his tour buses, leaving behind one". Further, he was a guarantor for a loan by his friend Sarr. After Sarr ran away, he was left to pay the debt, "in addition to the installments for his bus and other expenditures". As a result of his financial difficulties, he approached Siva for help. Siva agreed to "settle the loan", in return for a delivery job to be carried out by the accused. The delivery that formed the subject matter of the charge was his second delivery. Given the contents of the psychiatric report, Mr Retnam explained that disputing the portions of his statement concerning his financial difficulties would have affected the accused's credibility.[31]

26 On these aspects, Mr Retnam also stated that the accused's oral instructions to Mr Retnam and Mr Selvaraj were similar.[32]

27 Turning to the alleged failure to challenge the other aspects of the statements (unrelated to the accused's financial circumstances), under cross-examination, Mr Retnam stated that he informed the accused that most of the portions of the statements that he sought to challenge were irrelevant to his defence, and did not go to the "root of the case". He advised the accused that he would be focusing on the main issues, and the accused agreed.[33]

28 On the allegation that the previous lawyers put forth only a partial defence that the accused was a courier, Mr Retnam disagreed. Prior to the commencement of the trial, the Prosecution had informed him that a certificate of substantive assistance would be issued. Nevertheless, the previous lawyers

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31 NE, 26 September 2018, p 87, lines 1–4; p 102, lines 8–19.

32 3ABD, p 1024.

33 NE, 26 September 2018, p 68, lines 8–22.

proceeded to fully defend the accused on the basis that the accused did not know about the drugs – which was his defence all along.[34]

Mr Selvaraj's evidence

29 Mr Selvaraj said that after being assigned to the case on 2 November 2015, he reviewed the committal hearing bundle. Based on what the accused said in his statements, he came to the view that the defence would centre on the knowledge of the drugs in the plastic bag.[35]

30 When Mr Selvaraj first met the accused with Mr Retnam on 29 December 2015, the accused confirmed his instructions that he had no knowledge of the contents of the plastic bag that he handed to the co-accused.[36]

31 Mr Selvaraj was not aware of the existence of the three sets of notes. However, during all the prison interviews, the accused did not mention the three sets of notes at all.[37]

32 With regards to the allegations, Mr Selvaraj stated that during the prison interviews, the accused confirmed that there was no threat, inducement or promise made to him, and that the statements were given voluntarily. There was no basis to challenge the admissibility of the statements. In fact, they were more concerned about the mention made of previous drug transactions in the statements. As such, at the trial, Mr Retnam sought to expunge these portions from the statements.[38]

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34 NE, 26 September 2018, pp 102–103.

35 3ABD, pp 1099–1100.

36 3ABD, p 1100.

37 3ABD, p 1101.

38 3ABD, p 1100.

33 Mr Selvaraj also stated that the accused did not at any point of time claim that he was a "rich businessman" and "there was no need to traffic in drugs". He did not recall the applicant making any references to any log book of his business.[39]

34 On the occasions that he visited the accused in prison with Mr Retnam, the accused's "sole [d]efence was that he had no knowledge of the contents of the plastic bag". This was the very defence put forth at the trial.[40]

Mr GH Singh's evidence

35 As the junior assisting counsel, Mr GH Singh said that he played a "minor" role. In the main, he took down notes of evidence. He did not visit the accused in prison, and only visited the accused once in the court lock-up with Mr Retnam and Mr Selvaraj.[41] There was no discussion on the accused's written notes, and he had not been provided with a set of the written notes. Accordingly, Mr GH Singh was in no position to comment on the accused's alleged instructions. However, he reiterated that the case at the trial was that the accused did not know he was carrying drugs.[42]

The parties' submissions

36 At the end of the proceedings, written submissions were filed by the accused, Mr Retnam, Mr Selvaraj and the Prosecution.

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39 3ABD, p 1101.

40 3ABD, p 1101.

41 NE, 26 September 2018, pp 9 and 15.

42 NE, 26 September 2018, pp 10–11.

37 To summarise, Mr BM Singh submitted that in the conduct of the defence, the previous lawyers had departed from the accused's "express written instructions" on the aspects set out above.

38 Mr BM Singh pointed out that Mr Retnam did not even give Mr Selvaraj and Mr GH Singh copies of the written instructions. Therefore, Mr Selvaraj and Mr GH Singh were not able to explain why the written instructions were not carried out; they were not aware of those instructions. During the prison interviews, it was unlikely that the written instructions were discussed. Mr BM Singh submitted that this was because Mr Retnam did not deem it necessary to deal with the written instructions. Mr Retnam had concluded how best to run the case, and did not bother to act on the written instructions as he thought they were unimportant.

39 In relation to the oral instructions regarding the accused's financial situation, Mr BM Singh submitted that these were clearly not carried out at the trial. There was an absence of attendance notes confirming that the previous lawyers had advised the accused person not to put forth such evidence, and that he had agreed with the advice. Again, it was contended that the failure arose because Mr Retnam considered the instructions to be irrelevant, unimportant and frivolous.

40 In contending that Mr Retnam ignored the accused's instructions, Mr BM Singh stated that Mr Retnam failed to consult the accused as he was confident in his own skills as a criminal lawyer. He acted in a paternalistic fashion, making key decisions without the accused's instructions. Mr BM Singh illustrated this by highlighting two complaints against Mr Retnam's conduct. First, prior to the trial, Mr Retnam did not furnish the full committal hearing bundle to the accused. Second, Mr Retnam did not consult the accused on the

Statement of Agreed Facts. Nonetheless, Mr BM Singh conceded that he should "say no more at this juncture, as we appreciate that these are issues that should more appropriately be ventilated before the Court of Appeal".

41 As I explained at [11], the parties were in agreement that there are complaints which go beyond the scope of these proceedings. The two matters raised by Mr BM Singh fall within that list. I shall not be making any findings on any of these complaints.

42 In his written submissions, Mr Edmund Nathan ("Mr Nathan"), counsel for Mr Retnam, submitted that Mr Retnam acted in accordance with the instructions of the accused. The defence centred on the accused's lack of knowledge of the drugs, and Mr Retnam put forth that defence.

43 It was not true that Mr Retnam did not visit the accused often. In fact, it cannot be disputed that Mr Retnam visited the accused at least 11 times. This was an attempt to discredit Mr Retnam, as were the many other allegations made against Mr Retnam.

44 Mr Nathan pointed out that while the accused denied telling the previous lawyers not to challenge his statements, he referred to his statements throughout the trial. If he had wished to challenge the voluntariness of his statements, he would not have relied on them at the trial.

45 Further, it was not true that Mr Retnam had ignored the written instructions. Relying on the contents of the notes dated 21 May 2015, Mr Retnam had made detailed representations to the Prosecution dated 27 June 2015, asking for the charge against the accused to be withdrawn.[43]

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[43] 1ABD, pp 95–99.

46 As for the evidence on the accused's financial position, the accused had not called Rani to testify that she had handed the log books to Mr Retnam. Mr Retnam denied that he received the log books.

47 At the end of the day, Mr Retnam endeavoured to present the accused's case at the trial in accordance with his instructions.

48 By and large, Mr Selvaraj's submissions covered points raised by Mr Nathan. I shall not set these out in detail.

49 According to the Prosecution, there was no objective or credible evidence to support the accused's claim that his lawyers did not present his case in accordance with his instructions. Also, the previous lawyers have denied the claims, and their evidence was corroborated by the previous lawyers' attendance notes and the documentary evidence. Further, as observed in the GD, the accused was not a credible witness. At this juncture, he was merely seeking to blame the previous lawyers. The Prosecution urged the court to find that the previous lawyers did not fail to present the accused' case at trial in accordance with his instructions. The additional evidence has no effect on the court's verdict.

50 With that, I set out my findings.

Findings

Alleged failure to challenge the admissibility of his statements

51 I turn to the allegation that contrary to the accused's written and oral instructions, the previous lawyers failed to challenge the admissibility of his statements. For the reasons set out below, I find that there was no such

instruction for the previous lawyers to do so, and that the agreed position was to the contrary.

52 For a start, both Mr Retnam and Mr Selvaraj have stated that during the prison interviews, the accused did not instruct them to object to the admissibility of the statements.

53 This was borne out by the contemporaneous record. In respect of the prison visit on 29 December 2015 by Mr Retnam and Mr Selvaraj, the attendance notes recorded that they told him that "since he had made his statements voluntarily and the police had not threatened, used physical force when recording his statements [they] would not challenge the statements at the trial. *He agreed.*"[emphasis added].[44]

54 In the cross-examination of Mr Retnam and Mr Selvaraj, it was not put to either of them that the 29 December 2015 attendance notes were fabricated or recorded inaccurately. When confronted with the 29 December 2015 attendance notes, the accused responded that "[t]here were no questions and I gave no answers. I did not mention it was voluntary or involuntary".[45] In a later part of his cross-examination, he denied that there was a conversation pertaining to whether they should challenge the statements at trial.[46] The accused was not able to dispute the accuracy of the contemporaneous record, and I give full weight to the 29 December 2015 attendance notes.

55 I appreciate that the accused had voiced some concerns about the statement recording process in the notes dated 21 May 2015 and 15 October

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44 1ABD, Tab 14.

45 NE, 25 September 2018, p 72, lines 11–13.

46 NE, 25 September 2018, p 103, lines 1–6.

2015. In my view, it would be quite wrong to elevate each and every assertion made by the accused in the notes to the status of an "express instruction" of the approach to be taken at the trial. Furnished in the early stages of the preparation of the case, the notes contained the accused's narration of the events and his responses to the contents of the statements. From a perusal of the notes, I find it hard put to say that any firm instruction had been given to object to the admissibility of the statements on the ground of voluntariness.

56 In any event, it was for the previous lawyers to assess the information, to evaluate the strengths and weaknesses of the assertions put forth by the accused, to advise the accused on the merits of his assertions and to agree on the position to be taken at the trial. It appears to me that the previous lawyers did just that. As Mr Retnam testified, he told the accused that mere "excuses" would not suffice in court, and there had to be "really some evidence" of threat, inducement or promise. Mr Selvaraj shared the view that there was no basis to mount a challenge on the ground of voluntariness. In fact, as Mr Retnam testified, he would have had no difficulty carrying out such an instruction, if required. He pointed out that at the trial, he had sought (albeit unsuccessfully) to expunge portions of the statements relating to the previous drug transactions involving the accused, on the ground that such matters would be prejudicial to the accused.

57 Given all of the above, I accept the consistent stance of Mr Retnam and Mr Selvaraj that at the end of the day, the position *as agreed* with the accused was that there would not be any objection to the admissibility of the statements. I should add that in coming to this position, I have also considered the merits of the accused's allegations about the statement recording process.

58 Admittedly, these allegations were not tested at the trial. Nonetheless, they are hardly strong allegations. The particulars of inducement are weak. There are no details as to how the accused's will was "sapped" in relation to the recording of the statements. Instead, the accused only said he was forced to sign on a document relating to a polygraph test. I was also perturbed by the fact that in cross-examination in these proceedings, the accused conceded that he did not comprehend the word "sapped", and that it was included in his notes because a fellow prison inmate had suggested it.[47] I see little basis for a challenge on the ground of voluntariness. The evidential weakness in these allegations lent credence to the previous lawyers' explanation that they had advised the accused against challenging the statements and eventually obtained the accused's agreement on the approach.

59 In sum, I reject the accused's allegation that the previous lawyers failed to adhere to his instructions by failing to challenge the admissibility of the statements. I find that it is not a credible claim.

Alleged failure to present evidence that the accused was not in financial difficulties, and to dispute portions of his statement which state that he was in financial difficulties

60 I move to the second allegation. According to the accused, contrary to the written and oral instructions, the previous lawyers failed to present evidence of the accused's sound financial position, and to dispute the portions of his statement relating to his financial difficulties. Such aspects would go towards showing that the accused had no reason at all to bring drugs into Singapore. Once again, I reject the accused's contention for the following reasons.

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47 NE, 25 September 2018, p 35, lines 3–8.

61 It is true that in the notes dated 15 October 2015, the accused mentioned that he did not sell the bus due to financial difficulties, that he did not work for Siva and that Sarr borrowed only a sum of RM6,000 from him and not RM12,000. While the accused had made such assertions, it remained for the previous lawyers to assess their merits, and for parties to agree on the stance to be adopted at the trial. Once again, I rely on my reasoning at [55]–[56] above.

62 In this connection, Mr Retnam stated that the agreement with the accused was that they would focus on the crux of the defence – being the accused's knowledge of the contents of the plastic bag. That was his "sole defence", according to Mr Selvaraj. They confirmed that it was *not* the accused's instruction that he need not resort to bringing drugs into Singapore because he was financially sound. In particular, Mr Retnam and Mr Selvaraj stated that during the prison visits, the accused did not brief them on his financial circumstances at all.

63 Further, as Mr Retnam explained, Dr Koh's psychiatric report revealed that the accused provided an account of his financial difficulties which was consistent with the portions of his statement. By raising this issue, there was a risk of damaging the credibility of the accused. Mr Selvaraj expressed a similar concern. In his written submissions, Mr Selvaraj pointed out that in the psychiatric report, Dr Koh also reported that the accused's wife "corroborated his account of his business problems".[48]

64 Given the consistent position of Mr Retnam and Mr Selvaraj, I accept that there was an agreement for the previous lawyers to focus on the defence of knowledge of the contents of the plastic bag. I also accept that the accused did not instruct the previous lawyers that he need not traffic in drugs because he

[48] 3ABD, p 1069.

was financially sound. In fact, this was supported by the accused's evidence which I discuss at [65] below. Moreover, the accused's financial difficulties were confirmed by the contents of the psychiatric report. Disputing the portions of the statement carried some risk. To my mind, in not dealing with this area, the previous lawyers acted in accordance with the agreed approach to focus on the material aspects of the defence. They did not depart from the accused's instructions.

65 In contrast, the accused's allegation is questionable. If he had been concerned about the impact of his financial position, apart from informing Mr Retnam as he claimed (see [16(b)(ii)] above), he would have specifically raised the issue with Mr Selvaraj. Also, he would have mentioned the notes to Mr Selvaraj. Instead, Mr Selvaraj stated that there was no mention of the notes during the interviews. It was especially telling that in cross-examination, the accused admitted that he did not tell Mr Retnam or Mr Selvaraj that he wanted his financial status to be an important part of his defence.[49]

66 Further, on the accused's claim that Rani handed Mr Retnam the three log books of the business, Mr Retnam denied this. Mr Selvaraj said that there was no mention of the three log books by the accused to him. According to the accused, Rani has not been willing to testify for the accused, to explain what happened to the three log books. As such, the accused was simply not able to substantiate his claim.

67 I also wish to add that in the GD, I merely referred to the fact that in his statement, the accused said he was facing financial difficulties: see [25(a)] of the GD. In arriving at my decision to convict the accused, I did not rely on the

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[49] NE, 25 September 2018, p 101, lines 9–14.

evidence that he was in financial difficulties. The evidence in this area would not have any effect on my verdict.

Alleged failure to challenge other aspects of his statements

68 The next allegation is that contrary to the accused's written instructions, two key aspects of the statements were not challenged. Relying on the notes dated 15 October 2015, the accused claimed that he instructed Mr Retnam to dispute the accuracy of the portion in his contemporaneous statement where he mentioned that there were three bundles in the plastic bag. He only saw the three bundles *after* the plastic bag was placed in the bus ("the first point"). Also, he instructed Mr Retnam to dispute the fact that he said that "*barang*" meant something illegal ("the second point").

69 To reiterate, according to Mr Retnam, the areas did not go to the crux of the defence. The agreed position was that they would not challenge portions of his statements which were irrelevant to the defence. As for Mr Selvaraj, he did not receive the notes dated 15 October 2015, and he was not able to comment on these matters.

70 In relation to these two points raised by the accused, there is no contemporaneous record of the specific approach to be taken at the trial. Nonetheless, given that lengthy statements of the accused were to be used at the trial, I accept Mr Retnam's position that he advised the accused not to challenge portions of the statements irrelevant to the defence, and that the accused agreed to this general approach. This was also in line with the agreement to focus on the material aspects of the defence: see [64] above.

71 Turning to the first point, I accept Mr Retnam's evidence that it was a minor and irrelevant point which he did not pursue. In the contemporaneous

statement, it was recorded that "[t]there are 3 packages. I'm not sure what is inside it." There was no mention of *when* the accused discovered that there were three bundles – and there was no reason to clarify that he specifically found out that there were three bundles only after the plastic bag was placed in the bus. In not dealing with the first point, Mr Retnam acted in accordance with the general approach.

72 As for the second point, I am of the view that it is closely connected to the accused's defence that he did not know that the plastic bag contained drugs. The second point – that the statement inaccurately reflected that the accused knew that "*barang*" was something illegal – is not irrelevant. Under the general approach, Mr Retnam was meant to pursue matters going to the root of the defence. Dealing with the second point would have been one such matter. Thus, it would have been in order for Mr Retnam to cross-examine the recording officer and the interpreter on the statement recording process, and to dispute whether they accurately recorded the point in para 28 of Exh P134. It would also have been in order for Mr Retnam to adduce evidence from the accused on this matter. Mr Retnam did not do so.

73 That said, I am of the view that this failure would have no effect on the verdict. Quite apart from the admission in the statement that the accused knew that "*barang*" was something illegal, there was overwhelming evidence to show that he knew he was delivering *illegal* items for Siva, and that the plastic bag contained something illegal. I elaborate.

74 In the statements, the accused stated that he delivered "*makan*" or "*barang*" or "*air batu*" for Siva. At para 8 of Exh P130, he said that "*makan*" would have meant something illegal. At the trial, under cross-examination by the Prosecution, he also accepted that "*makan*" would have meant something

illegal.[50] While he claimed that he only knew that "*air batu*" was "ice cubes", and not methamphetamine, I had found this assertion to be unbelievable: see [43] of the GD. Given that "*barang"*, "*makan*" and "*air batu*" were being delivered for the same person Siva, and that he knew the latter two were illegal items, it was untenable for the accused to claim that he thought the "*barang*" which he conveyed for Siva was something legal.

75 In fact, at the trial, the accused had attempted to disavow the portion of his statement claiming that "*barang*" referred to illegal items. Under cross-examination by the previous lawyer for the co-accused, the accused claimed that he told the investigation officer that "*barang*" and "*makan*" referred to something legal. Under cross-examination by the Prosecution, when confronted with para 28 of Exh P134 which stated that he knew "*barang*" referred to something illegal, he said he "agree[d] with" and "accept[ed]" the statement. In the same breath, the accused claimed that he was stressed. An adjournment was granted for him to compose himself. After the adjournment, the accused replied "[w]hat transpired today about paragraph 28, I accept".[51] As I mentioned in the preceding paragraph, he also admitted that "*makan*" would have meant something illegal.

76 At [45] of the GD, I discussed in some detail the accused's attempts to disassociate himself from this unfavourable aspect of his statement. While I noted that Mr Retnam did not cross-examine the relevant Prosecution witnesses, I also emphasised that eventually, the accused conceded that his statement had been accurately recorded. As such, I had rejected the claim that he thought "*barang*" referred to legal items.

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50 Agreed Bundle of Documents Vol 2 ("2ABD") p 714, lines 25–28.

51 2ABD, p 712, line 16 to p 714, line 24.

77 Even if the accused were to successfully challenge the portion of his statement stating that "*barang"* referred to something illegal, the question would be what he thought the "*barang"* he delivered for Siva was. If the accused did not think he was delivering anything illegal, it remained the case that he had not positively asserted what he thought the plastic bag contained. The fact remains that he was delivering illegal items which he referred to as "*makan*" and methamphetamine which he referred to as "*air batu*". Given all the facts and circumstances, as I found from [46]–[49] of the GD, he ought to have been – and must have been – highly suspicious of the contents of the plastic bag. He had the opportunity to check its contents or enquire about the contents from Siva but did not do so. Thus, this entire area of evidence at these proceedings would not, in my view, change my finding that he had failed to rebut the presumption of knowledge within s 18(2) of the MDA.

Alleged failure to raise a full defence

78 I will deal with the last allegation briefly. It is clearly untrue that the previous lawyers ran a partial defence that the accused was merely a courier. At all times, the defence raised was that the accused did not know that the plastic bag contained drugs. Therefore, this allegation is completely without merit. In any case, Mr BM Singh did not rely on this in the written submissions.

Conclusion

79 To sum up, I find that the previous lawyers, particularly Mr Retnam, presented the accused's case in accordance with the instructions of the accused, save for one limited aspect. The accused has failed to prove, on a balance of probabilities, otherwise.

80 Turning to the limited aspect, it is in relation to the failure to dispute the accuracy of para 28 of Exh P134, where it is recorded that the accused said "*[b]arang* to me is something which is illegal". This point is closely connected to the defence. Given the accused's denial of this point in his notes dated 15 October 2015, and the instruction for Mr Retnam to deal with points material to the defence, Mr Retnam should have disputed the accuracy of this portion of the statement. This was not carried out.

81 That said, for the reasons set out at [73]–[77] above, the failure to deal with this point would not have any effect on my verdict. For the avoidance of doubt, the additional evidence in these proceedings covering the other areas would have no effect on my verdict.

82 I should add that I agree with the Prosecution that the accused is now seeking to blame the previous lawyers for *substantially* failing to act in accordance with his instructions in order to strengthen his chances of getting out of his present predicament. There is no merit to the complaint that his instructions were ignored.

83 Before I conclude, I make two comments. First, it would have been good practice for Mr Retnam to have shared the notes with Mr Selvaraj and Mr GH Singh, and for attendance notes to be kept of all the interviews with the accused. Second, as for the many other complaints regarding the competency of the previous lawyers and the level of assistance they provided at the trial, they

go beyond the scope of these proceedings. These will not be dealt with here.

Hoo Sheau Peng
Judge

Terence Chua and Jason Chua (Attorney-General's Chambers) for the Public Prosecutor;
Bachoo Mohan Singh and Too Xing Ji (BMS Law LLC) for the First Accused;
Thangavelu (Thangavelu LLC) and Syazana Binte Yahya (Eugene Thuraisingam LLP) for the Second Accused;
Edmund Nathan (M/s Tan & Pillai) for Singa Retnam;
Dhanaraj James Selvaraj in person;
Gino Hardial Singh in person.