

Pang Siew Fum & another v Public Prosecutor  
[2011] SGCA 5

**Case Number** : Criminal Appeal 4 of 2010  
**Decision Date** : 22 February 2011  
**Tribunal/Court** : Court of Appeal  
**Coram** : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA  
**Counsel Name(s)** : Mr Irving Choh and Ms Lim Bee Li (M/S Khattarwong) for the 1st Appellant Mr Ramesh Tiwary (M/S Ramesh Tiwary) and Mr Adrian Chong (M/S Low Yeap Toh & Goon) for the 2nd Appellant. Mr Leong Wing Tuck and Mr Toh Shin Hao (Attorney General's Chambers) for the Respondent  
**Parties** : Pang Siew Fum & another — Public Prosecutor

*Criminal law*

[LawNet Editorial Note: This was an appeal from the decision of the High Court in [\[2010\] SGHC 40.](#)]

22 February 2011

**Chao Hick Tin JA (delivering the grounds of decision of the court):**

**Introduction**

1 The 1<sup>st</sup> Appellant, Mdm Pang Siew Fum ("Pang"), a 56-year old Malaysian, and the 2<sup>nd</sup> Appellant, Mr Cheong Chun Yin ("Cheong"), a 27-year old Malaysian, were both convicted of trafficking in not less than 2,726 grams of diamorphine ("heroin"), and sentenced to death by Choo Han Teck J ("the Judge") in *Public Prosecutor v Pang Siew Fum and another* [2010] SGHC 40 ("the Judgment"). Both of them appealed against their convictions and sentences. We heard and dismissed the appeals on 21 October 2010. We now give our reasons.

2 Pang initially faced another charge of trafficking in not less than 5,054 grams of diamorphine, but the prosecution only proceeded with the first charge at the trial.

**The Facts**

3 On 16 June 2008, two teams of Central Narcotics Bureau ("CNB") officers were tasked to conduct surveillance on Pang and Cheong respectively. The first team kept Pang under surveillance at her flat at Block 98, Lorong 1 Toa Payoh #09-309, Singapore 390098 ("the flat"). She drove a Malaysian-registered silver Mitsubishi Grandis car with registration number JHY 6668 ("the car"), which was owned by her brother-in-law.

4 The second team of CNB officers stationed themselves at Changi Airport Terminal 2 to await the arrival of Cheong from Yangon, Myanmar, on board Silkair flight MI 511.

5 At 7 pm on the same day, the CNB officers trailed Pang as she drove from the carpark of her block of flats at Toa Payoh to Changi Airport. After she parked her car at Carpark 2A at Terminal 2, she proceeded to the Arrival Hall of Terminal 2 ("Arrival Hall") and waited for Cheong outside the arrival gates near conveyor belt 36.

6 At 8.10 pm Cheong collected a black trolley bag ("A1") from the conveyor belt and cleared Customs without being required to put A1 through the baggage scanner. Cheong met up with Pang at the Arrival Hall. They had a brief conversation, after which they walked towards Carpark 2A together. All this while, Cheong was pulling A1.

7 At 8.15pm, Cheong and Pang reached the vehicle pick-up point of Carpark 2A. Cheong handed A1 to Pang and headed back to the Arrival Hall where he made several calls on his mobile phone. Pang walked to her car with A1, loaded the bag into the boot and drove off from the airport.

8 Cheong left the airport in a taxi. Upon alighting at Arab Street at about 8.45pm, he was promptly arrested by the CNB officers who had been trailing him.

9 In the meantime, the other group of CNB officers trailed Pang from Changi Airport as she travelled along the East Coast Parkway, Pan Island Expressway and finally Lorong 6 Toa Payoh, where she drove around in circles, apparently waiting for a call. At 8.50 pm, the CNB officers intercepted Pang at a traffic light junction and arrested her. A1 was found in the boot of the car. The CNB officers arrested Pang and brought her together with A1 to the carpark of Blk 98 Lor 1 Toa Payoh, where they met with another party of CNB officers who had arrested her husband, Chow Yoke Jee ("Chow"). At 9.40 pm, the CNB officers brought both Pang and Chow, together with A1, to the flat.

10 In the flat, the CNB officers found two other black trolley luggage bags in the utility room behind the kitchen. These two bags were similar to A1. One bag, which was on a chair in the room, had a luggage tag bearing the name "Ong/Seng Hua", and a serial number "SQ519036" ("B1"). The other bag, which was on the floor, bore the name "Lew/Wai Loon", and a serial number "SQ603581" ("C1").

11 At 10.25 pm, Cheong was escorted to Pang's flat by another group of CNB officers led by Senior Station Inspector Sea Hoon Cheng.

12 At 10.30 pm, Staff Sergeant Karathigayan and Sergeant Muhd Fardlie ("Sgt Fardlie") conducted a search of A1 in the presence of Pang, Chow and Cheong. After the base had been prised open, a layer of cardboard was found beneath the base. Underneath the cardboard was a large packet secured with brown adhesive tape. Sgt Fardlie made a slight incision at the centre of the packet, and observed that it contained a white powdery substance. It is noteworthy that neither Pang, nor Chow, nor Cheong showed *any* reaction upon seeing the white powdery substance.

13 At 11.40 pm, the Investigating Officer for this case, Assistant Superintendent Gary Chan Gin Choong ("ASP Gary"), arrived at the flat with his Special Investigation Team ("SIT").

14 Some 20 minutes later, at 12.01 am on 17 June 2008, officers from the Forensic Management Branch arrived at the flat. At 12.35 am, ASP Gary took over the 3 luggage bags in the flat, which were at all times within view of Pang, Chow and Cheong. The SIT officers searched the three luggage bags. In A1, they found an orange comb, a shaver, an air ticket, a stack of papers, some clothing and most important of all, a modified base, beneath which was stored a large packet secured with brown adhesive tape, and which contained a white powdery substance.

15 As for B1, the SIT officers also found a modified base, beneath which was stored a large packet secured with brown adhesive tape. As in the case of A1, this packet also contained a white powdery substance.

16 Upon checking C1, the SIT officers found an orange comb, a small green purse and, as in the

case of the other two bags, a modified base, beneath which was stored a large packet secured with brown adhesive tape, and which contained a white powdery substance.

17 Later, at 2.45am, ASP Gary conducted a search of the car. He found and seized from the car a silver Nokia handphone, Cheong's electronic ticket passenger itinerary receipt and an electronic ticket passenger itinerary receipt with the name "So/Chin Hong", and with a photograph stapled onto it.

18 At 3.05 am, Pang, Chow and Cheong were escorted to the SIT office's "Exhibit Management Room". At 3.10 am, the drug packets from A1, B1 and C1 were weighed in their presence. The drug packet in A1 was found to contain 2,726 grams of diamorphine while those in B1 and C1 were found to contain 2,358 grams and 2,696 grams of diamorphine respectively.

### **Pang's version of events**

19 Pang's involvement with the drugs in question and the events leading up to her arrest were recounted in her statement recorded pursuant to s 121 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC") ("s 121 statement"). The admissibility of this statement was not challenged.

20 Pang said that she occupied the flat, but she lived principally in Malaysia, where she helped in the business of her sister, a pork seller. Apart from that, she was also involved in illegal lottery betting as well as being a bookie for horse racing. To earn extra money, she kept some bets which she did not put through to the main bookie. She chalked up heavy losses from her own bets and the bets which she did not put through to the main bookie. As a result, she started to borrow money from one "Teng Mor", a male Chinese in his mid 20's who had placed bets with her since the mid-1990s. According to Pang, she started borrowing money from Teng Mor in 1998 and by 2008 she owed him approximately S\$200,000.

21 Pang asserted that in February 2008, Teng Mor asked her how she was going to repay him the S\$200,000. In response, she pleaded for more time to pay as well as for the stoppage of interest charges on the debt. Teng Mor replied that he would have to consult his partners. A week later, Teng Mor told Pang that he would stop charging her interest on the debt and even offered her a job which involved receiving his friends at Changi airport and bringing them to wherever they wanted to go. Teng Mor told Pang that she would be paid S\$5,000 per trip. Pang said that, at the time, she declined the offer as she was not free.

22 In March 2008, Teng Mor renewed his offer of the said job to Pang. He told her that his friend would be coming from Myanmar. Pang asked Teng Mor why his friend could not go to the hotel on his own and Teng Mor replied that "there were a lot of precious things in the luggage and it was worth a lot of money". Pang explained:

I then asked him if it is illegal, he told me that he is running away from tax. I asked him what is in the bag. He told me that there are jade, blue sapphire, red ruby, diamonds and also Buddha pendants in the luggage. He told me that they are worth a lot of money and it is illegal to bring [them] out from Myanmar... He told me that he already known me for ten years and he had never got me into trouble and had been helping me... I find that it is nothing wrong and I think he is really helping me.

Pang said that she informed Teng Mor that she would think about the offer but nevertheless failed to contact him about it thereafter.

23 In May 2008, Teng Mor called Pang again and asked her to receive a friend ("the old lady") and

keep the luggage bag that the old lady would pass to her. Pang claimed that she decided to meet the old lady because she felt bad as Teng Mor had repeatedly reminded her that she owed him a favour for not pressing her to return the money owed to him. To enable her to identify the old lady, Teng Mor arranged for Pang to go to Merlin Tower in Johor Bahru, Malaysia ("Merlin Tower"), to meet a Malay man ("the Malay man"), who handed to her a photograph of the old lady as well as details of the old lady's flight.

24 On 26 May 2008, Pang borrowed a car from her brother-in-law, drove to the airport and met the old lady at around 3pm. In her s 121 statement, she initially said that after meeting the old lady at the Arrival Hall, they both went to McDonald's for a meal and then proceeded to the nearby carpark, where the old lady told Pang that she wished to retrieve her clothing from the luggage bag. Pang said that she noticed that apart from the clothing, which was packed in a plastic bag, the luggage bag was empty. She claimed that she felt the bottom of the bag but could not feel "anything unusual". The old lady then told her that "[Teng Mor] had already made a secret compartment to keep the red ruby, blue sapphire, jade, diamonds and Buddha pendants and that it was not visible." Thereafter, Pang brought the old lady to the Singapore Expo, after which she parted ways with the old lady.

25 In a further statement, Pang altered her story and admitted that she had lied about taking the old lady to the Singapore Expo. She said that while the old lady was eating at McDonald's she took the luggage bag (B1) to the car. At the car, she took out the plastic bag with the clothing from the luggage bag and brought it to the old lady. They parted ways at McDonald's and she went to the Singapore Expo alone. She said "This is the only part I did lie, I chose to tell the truth now because I feel bad about lying".

26 Pang claimed that on 26 May 2008, Teng Mor called her at 7 pm to inform her that he was not coming to Singapore and that the luggage bag that she had collected from the old lady should be placed at the flat. As such, she put the luggage bag in her utility room. Notably, Pang stated:

In the room, I then opened up the luggage bag, and I use my hand to feel the inside of the luggage bag. I felt that there is something hard and pointing at one of the corner inside the luggage bag. It did not cross my mind to cut open the luggage to check what is inside as I think it is stone and further the things does not belongs to me and it is not right for me to open it up. I then just put it at one corner of the room.

27 Pang further claimed that two days later, on 28 May 2008, Teng Mor called her to ask her to receive another one of his friends, known to her as "Siao Tee", who was subsequently identified as Lew Wai Loon ("Lew"). Teng Mor told her that Lew was on a flight bearing the same flight number as the old lady. Although he did not provide Pang with a photograph of Lew, he said that she only needed to recognize the luggage bag as it would be the same as the old lady's bag. Pang stated "I cannot remember if I did ask him what is in the bag, I presume what is in the luggage bag should be precious stones and Buddha pendants as [Teng Mor] told me it was the same kind of bag."

28 Pang said that she met Lew at around 3 pm and the latter passed her the luggage bag (C1) and a Singapore SIM card. She added:

I did not asked [sic] him what is in the luggage bag. I only asked him if he want to take back his things from the bag and he told me that I can throw away the two pieces of old clothes which is [sic] in the bag. I did not ask [Siao Tee] about the secret compartment in the luggage bag.

29 Pang brought the luggage bag home, took out the dirty clothes and threw them away. She

stated that she did not feel the inside of C1 and that she simply placed it in the utility room.

30 On 16 June 2008 at 11 am, Pang went again to Merlin Tower to meet the Malay man, who handed her a folded paper with three photographs and another paper with a handphone number. Teng Mor was also present but was injured in both legs. Teng Mor asked her to meet a person in one of the photographs (Cheong), and collect a luggage bag from him. Pang asserted that Teng Mor assured her that the contents of the luggage bags were precious stones and Buddha pendants. Later Pang drove to Terminal 2 of Changi Airport intending to meet Cheong. As Pang learnt that the flight would be much delayed, she returned to the flat and had a nap. At about 7 pm she left again for the airport, by which time she was under the surveillance of the CNB officers.

### **Cheong's version of events**

31 Cheong's version of the events are as follows. He said that he sold both legitimate and pirated DVDs at a stall in Johore, Malaysia. He claimed that in 2006, he met a Chinese man in his mid-40s known as "Lau De", who was a regular customer at his stall. After knowing Lau De for two to three months, Cheong enquired about his line of business and even asked Lau De if there was any quick way to make money. Lau De replied that he was engaged in smuggling gold bars, thereby evading taxes. Cheong said that he did not believe Lau De at that time, thinking it would not be so easy to carry out such illegal activities.

32 Cheong stated that in March 2008, Lau De brought a friend, who was decked in gold accessories, to his stall. This led him to believe that Lau De was really in the gold smuggling business. Lau De asked Cheong to help him smuggle gold bars and offered to pay him US\$500 as pocket money and RM8,000 for performing the task. Cheong replied that he would think about it.

33 Cheong thought about the offer from Lau De for two to three days and decided to accept it as he wanted to make more money which he would then save for his marriage in the event that he decides to marry his girlfriend. He then called Lau De saying that he would join the latter in the "gold smuggling business".

34 A day later, Lau De asked him to apply for a visa to Myanmar. He did so through a travel agency. On 24 May 2008, Cheong met Lau De at a coffee shop where Lau De gave him an electronic air ticket to Myanmar and the details of a hotel in Myanmar. Cheong was told to call Lau De once he had checked into the hotel in Myanmar. The next day, Cheong took a taxi from Johor Bahru to Changi Terminal 2, but was informed that his Visa to Myanmar had expired. As such, he could not board the flight.

35 As instructed by Lau De, on 26 May 2008 Cheong applied for a new Myanmar Visa. Cheong also stated that he saw Lau De on that day. However, he recanted from this position in his s 121 statement. When asked why he had entered Singapore on 26 May 2008, he revealed that he did so to escort another one of Lau De's friends to Changi Airport as the said friend "did not know the way". Cheong said that the man appeared to be a Malaysian, and that he did not ask the man about anything because he "[presumed that the man was] doing the same gold bar smuggling". He said that he had lied about seeing Lau De on 26 May 2008 as he did not want to reveal that Lau De had asked him to escort someone to Changi Airport that day.

36 On 13 June 2008, Lau De gave Cheong an electronic air ticket and four hotel name cards. Cheong was instructed to call Lau De after he had checked into any one of the suggested hotels and give the latter his room number. Lau De told him that someone would deliver a luggage bag to him, into which he could put his clothes and bring the bag to Singapore.

37 On 14 June 2008, Cheong took a taxi from Johore to Changi Airport Terminal 2, and boarded a flight to Myanmar. After arrival, he checked into a hotel and called to inform Lau De of his room number.

38 On 15 June 2008, Cheong received a luggage bag from a man, who appeared to be a local. Cheong did not ask this man any questions. He stated that he felt that the luggage bag was around 6 kg. He said he did not open the luggage and simply left it on the bed and went off for lunch.

39 After lunch, Cheong informed Lau De that he had received the luggage bag. Subsequently, Cheong returned to the hotel room and opened the bag. He stated as follows:

While I was in the hotel room, I opened the bag and found that it is empty. I then feel the inside of the luggage bag. I felt that the 4 interior sides of the luggage bag were hard and it felt as if there is [sic] a piece of thing hidden in each side. I feel [sic] that this piece of thing is around the same [size] as the side of the luggage it was hidden in but slightly shorter. I then felt the base of the luggage bag from its interior and I do not feel anything abnormal about it. When I press down, it spring [sic] back to normal. I did want to cut the interior side of the luggage to have a peep at the gold bar but I dare not do it because I was worried if there is really something wrong with the gold then I will be held liable since there is a cut in the luggage.

40 When asked whether he found it strange that the luggage only weighed 6 kg, Cheong stated:

...I do not find it strange because although I do not know the actual weight of gold, when I lift up the luggage bag, the weight of the luggage bag is balance [sic] and not lop sided and the pieces of gold at the side felt thick enough... I wish to say that I think it is logical for the luggage to weight 6 to 7 kg with the gold inside

When asked how much gold he needed to smuggle for Lau De to pay him RM8000 and US\$500, he said at least three to four kg of gold.

41 At around 7 pm, Cheong called Lau De to update him on his situation but did not ask him anything about the luggage bag as he "[did] not think it was necessary". He further stated that he "felt that it is better not to be made known to [him] the location of the gold bar so that [he] will not be liable if anything [happens]".

42 On 16 June 2008, shortly after noon, Cheong left the hotel for the airport. He arrived at Changi Airport at 8.10 pm.

43 Cheong said that after he had handed A1 to Pang, he messaged Lau De to inform the latter that he had conveyed the luggage over to Pang. Lau De replied that A1 had been received by the correct person.

### **The Judge's Decision**

44 Pang and Cheong were charged with the offence of drug trafficking under s 5(1)(a), read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA"). The relevant sections are as follows:

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

(a) to traffic in a controlled drug;

...

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

The punishment for trafficking in more than 15 grams of diamorphine under the Second Schedule of the MDA is the mandatory death penalty.

45 The Judge found both Pang and Cheong guilty of the respective charges which each of them faced and made the following findings of fact:

(a) In relation to Pang's testimony that she was helping Teng Mor deliver precious stones, that she made a cursory check of A1 but could not find the articles and that she did not report this to Teng Mor, the Judge found that her story was unconvincingly narrated and not credible. The Judge also pointed out that she had two opportunities, including during the recording of her cautioned statement, to tell her story to CNB officers and yet she said that she did not know what the luggage bag contained. (See Judgment at [4]).

(b) In relation to Cheong's evidence that he was helping Lau De bring gold bars to Singapore and that he did not report to the latter when he checked the bag and could not find the gold, the Judge found this testimony unconvincing and that it did not create any reasonable doubt as to whether he had been trafficking in heroin. (See Judgment at [5]).

(c) It was immaterial that the CNB did not make adequate efforts to trace Lau De or check his cell-phones. The absence of any trace of Lau De or Teng Mor was not taken as evidence in favour of or against either accused. (See Judgment at [5])

(d) The only issue was whether there was any evidence that would create any reasonable doubt as to whether Pang and/or Cheong knew that A1 contained heroin. According to Pang and Cheong, both claimed to be carrying valuable goods for their principals. However, when they could not find the goods, neither raised an alarm with their principals. Either they lied about checking the suitcase, or they did not check because they knew what they were carrying, namely heroin. The Judge found that the evidence against Pang and Cheong was incontrovertible and that the Prosecution had proven its case beyond a reasonable doubt. (See Judgment at [6])

## **The Law**

46 The defences raised by both Pang and Cheong were that they thought that they were helping Teng Mor and Lau De to smuggle precious stones and gold bars respectively into Singapore. They argued that they did not know that they were being used as drug couriers. At this juncture, we will set out the relevant statutory provisions which have a direct bearing on the questions of possession and knowledge of the drugs. Section 18(1) and (2) MDA read as follows:

### **Presumption of possession and knowledge of controlled drugs**

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

(a) anything containing a controlled drug;

...

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

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

47 The question of the meaning and scope of the presumptions provided for in these two subsections was raised in *Tan Kiam Peng v PP* [2008] 1 SLR(R) 1 at [62] ("*Tan Kiam Peng*"), where this court endorsed the following observations made by Yong Pung How CJ in *Van Damme Johannes v PP* [1993] 3 SLR(R) 694 at [9]:

'Possession' and 'knowledge' are distinct and dealt with under s 18(1) and s 18(2) respectively. The initial onus was on the prosecution to prove possession of anything containing a controlled drug (in this case, the suitcase), after which the appellant was presumed (i) to have the drug in his possession and (ii) to know the nature of the controlled drug. The onus was then on the appellant to rebut the two presumptions on a balance of probabilities...

48 In relation to the application of s 18(1), it was not disputed that Pang and Cheong were in possession of A1 and were thus presumed to be in possession of the drugs contained in A1 at one point or another. This in turn triggered the presumption under s 18(2) that they had knowledge of the nature of the drugs in their possession. In order to rebut either or both presumptions, they must prove, on a balance of probabilities, that they had no knowledge of the existence of the package or the nature of the drugs in the package. As this court stated in *Iwuchukwu Amara Tochi v PP* [2006] 2 SLR(R) 503 at [9]:

Rebutting the statutory presumption is a *matter of fact*, and is no different from any other *fact-finding exercise* save that the law requires that a person rebutting a statutory presumption does so on a balance of probabilities. It is not sufficient for him merely to raise a reasonable doubt

[emphasis added]

This passage was reaffirmed by this court in *Tan Kiam Peng* at [128].

49 In the present case, both Pang and Cheong asserted that they were made to understand that precious stones and gold bars respectively, were hidden in A1. Pang claimed to have been assured of this by the old lady and as for Cheong, by his own inspection of A1 in his hotel room in Myanmar. Quite rightly, they did not seek to rebut the presumption under s 18(1). Indeed, we could not see how they could rebut knowledge of the existence of the hidden items in the secret compartment in A1. Thus, the focus of the defence was on rebutting the presumption in s 18(2). The thrust of the Appellants' case was that they did not know that A1 contained drugs.

### Issues on appeal

50 In *Tan Meng Jee v PP* [1996] 2 SLR(R) 178, this court held (at [13]) that in order for the prosecution to establish a case against an accused under s 5(1)(a) of the MDA, it must prove:

(a) that the accused has possession of the controlled drug; (b) that he has done the act of trafficking in one of its forms as found in s 2 of the Act; and (c) that the accused had knowledge of the nature of that which he was in possession of.



51 The only issue in this appeal was whether Pang and Cheong had rebutted the presumption that they knew that A1 contained drugs. Both Pang and Cheong contended that the Judge had erred in finding that they had failed to rebut the presumption prescribed in s 18(2).

52 We will now turn to analyse the evidence to determine whether the Judge, as contended by Pang and Cheong, ought to have found that each of them had, on a balance of probabilities, rebutted the presumption of knowledge raised in s 18(2). Although Pang and Cheong's appeals contained common elements, their respective versions of events were distinct. As such, it is necessary to examine each case separately.

### **Pang's appeal**

53 The Judge having found that Pang's evidence was unconvincing, held that she had failed to rebut the s 18(2) presumption that she knew the nature of the drugs in A1. In particular, the Judge gave weight to two factors. First, Pang did not report to Teng Mor when she realised that the precious stones and Buddha pendants were not in A1. Secondly, in her earlier statements to the Police, she did not mention that she thought A1 contained precious stones and Buddha pendants. This claim only surfaced later.

54 Pang's main contentions before us were that the Judge erred in the following respects:

- (a) The Judge had failed to give sufficient consideration to her evidence as to how she had previously already examined B1 and as a result had no reason to suspect that these bags she was receiving contained controlled drugs. This point was further buttressed by the fact that she had openly left B1 and C1 in the utility room of her flat for quite a period of time.
- (b) The Judge placed too much emphasis on the fact that she did not report to Teng Mor when she found no precious stones in A1.
- (c) The Judge placed too much weight on Pang's failure to state in her s 122(6) statement that she thought A1 contained precious stones.

### ***Circumstances surrounding the job offer to Pang***

55 We would at the outset state that in our judgment the very circumstances surrounding the job offer by Teng Mor to her showed that she was an integral part of a drug syndicate, and that she certainly knew that she was involved in smuggling drugs. Pang claimed that by 2008, due to gambling and illegal betting, she owed Teng Mor S\$200,000. To help her repay this debt, Teng Mor quite unexpectedly offered her an extremely lucrative job, with a payment of S\$5,000 each time she received his friends, who were involved in smuggling precious stones and Buddha pendants into Singapore. An ordinary individual, in similar circumstances, would most likely have enquired as to why he or she was being paid so handsomely for such a simple task. The Prosecution also pertinently pointed out that as Pang did not possess any special attributes or experience which made her particularly suitable for receiving visitors or dealing with precious stones, there was no reason for Teng Mor to offer her such an unbelievably large and disproportionate sum for a relatively simple and low-risk job.

56 A second significant circumstance relates to the fact that a sum of RM235,500 in cash was

credited into Pang's Maybank account on 15 May 2008, just 11 days before she collected B1 on 26 May 2008. Then two days later, on 28 May 2008, she collected C1. This was by far the largest sum ever deposited into Pang's account. She said that she used this account to deposit her income as well as her winnings. Here, a number of facts must be borne in mind. Pang earned about RM100 a day working at a hair salon, RM50 a day when she helped out at her sister's stall, and RM2000 a week from the illegal betting activities. On Pang's own evidence, she owed Teng Mor S\$200,000. What must not be overlooked is that if in fact the RM235,500 were her winnings, she would have used it to pay off part of the alleged debt of S\$200,000 owing to Teng Mor. Yet, she did not. The alleged debt to Teng Mor was clearly a concoction. Obviously, this RM 235,000 was payment to her for her efforts in smuggling drugs because of the extremely high risk involved.

57 Furthermore, having received this enormous amount, Pang had never reminded Teng Mor about the supposed payment of S\$5,000 due to her for collecting each luggage bag, even though she claimed that she needed money as she was heavily in debt. This strongly buttresses the argument that the RM235,000 that had been paid into her account on 15 May 2008 was really the pre-payment for the job she had agreed to perform and that she knew that the job she was undertaking was far more risky than just the smuggling of precious stones and Buddha Pendants. Like the Judge, we found that this clearly pointed to the smuggling of drugs. Indeed, the payment of this large amount to her was an indication of her significant role in the drug syndicate operations. The three luggage bags (A1, B1 and C1) in Pang's possession contained not less than a staggering 7,780 grams of diamorphine. This entire consignment would be of significant monetary value. Teng Mor, or the drug syndicate bosses, must have trusted her greatly to let her handle such a large and valuable quantity of heroin.

58 Apart from the three luggage bags that Pang had already collected, there was evidence that she would have received at least one or two more luggage bags on behalf of the syndicate had she not been arrested. It would be recalled that when Pang met Teng Mor and the Malay man at Merlin Tower on 16 June 2008 (see [\[30\]](#) above), she received a folded piece of paper with three passport size photographs of Cheong, Lew and one Soh Chin Hong ("Soh"). She had already collected B1 from Lew on 26 May 2008. She received A1 from Cheong on 16 June 2008. Soh was due to arrive in Singapore from Myanmar on 17 June 2008 on Silkair flight MI 511. Although Pang claimed that she had been told to focus on Cheong, she could not give a satisfactory answer as to why she had retained the photographs and e-tickets of all the 3 said persons. The relevant portion of the cross-examination of Pang on the three photographs is as follows:

Q: Wouldn't it be natural for you to speak about this person whose photograph you recognised, "Teng Mor, I—I—I recognised this fellow?"

A: Yes, because I was only told to look at the—the photograph which was on—on top and which is the—this person, [Cheong] and the rest I need not look at them.

...

Q: And if what you are telling the Court is true, the natural thing for you to do is just keep the photograph of the---the person that you need to pick up on the 16<sup>th</sup> and return the other two photographs to Teng Mor?

A: Because I was in a hurry to go back to get the car.

59 Clearly, the Malay man would not have given Soh's photograph and his e-ticket from Myanmar for a flight on 17 June 2008 to Pang if the latter had nothing to do with Soh. In our view, the only logical and irresistible inference is that Pang had retained the photographs and e-tickets as she

planned to meet each of them to collect the luggage bags containing heroin as she had already done with regard to Lew and Cheong.

***Pang's failure to enquire about the secret compartment, check the contents of the luggage bag and tell Teng Mor that the bag was empty***

60 Pang asserted that the Judge should not have given weight to the fact that when she found that A1 was empty and did not contain the precious stones, she did not report this to Teng Mor. She explained that the old lady had told her that the precious stones were in the secret compartment. The truth of this assertion would necessarily depend on the credibility of Pang. To begin with, she admitted that she had lied to ASP Gary about the circumstances surrounding her first meeting with the old lady. Furthermore, in her amended version of her meeting with the old lady, which is considered in greater detail in [74] – [78] below, the latter was not present when she discovered that the luggage bag was empty. Thus, the old lady could not, as she had claimed, have told her at this juncture that the secret compartment contained precious stones and Buddha pendants. This casts serious doubt as to whether the old lady had ever told her that the precious stones and Buddha Pendants were in the secret compartment.

61 If Pang had really believed that she was merely involved in smuggling precious stones, the natural response for her would have been to check the secret compartment to verify that the precious stones and Buddha pendants were in fact there as she would have had to account for missing items. Yet she appeared surprisingly unperturbed when she discovered that the luggage bags were empty. During cross-examination, she stated:

Q: Mdm Pang, these are highly valuable items. So if any item is lost, who's going to pay for it?

A: I thought about this issue before. So I told no one about this, including my husband, I did not tell him.

...

Q: Now Mdm Pang... [b]ased on Teng Mor's instructions to you, you will know that if anything goes missing ... you'll be responsible?

A: I did not think about this. I sincerely did not think--- think about this

62 At the very least, one would have expected Pang, upon seeing an empty bag, to have asked Teng Mor about the secret compartment in which the gems were supposedly kept. Clearly, she had ample opportunities to do so as she spoke to Teng Mor on 26 May 2008 when he informed her that he could not collect the bag, and also on 28 May 2008, when Teng Mor instructed Pang to receive Lew at Terminal 2. Furthermore, when she met Teng Mor at Merlin Tower on 16 June 2008, she had also failed to ask about the secret compartment, or any questions to verify the fact that the luggage bag contained the supposed precious stones. Pang had placed extraordinary faith in not only Teng Mor, but also the old lady, a person whom she had just met rather briefly. This is inconceivable by any account.

63 Again, Pang's excuse for not checking the secret compartment of the luggage bag, namely that she had not thought about having to verify the contents of the bag, is just too convenient and most unpersuasive. Coupled with the fact that Pang did not even *mention* the empty luggage or secret compartment to Teng Mor despite having a number of opportunities to do so, it is clear that Pang was unconcerned because she already knew the true nature of the contents concealed in the "secret

compartment". Thus, there was nothing for her to ask or check.

64 Furthermore, Pang's claim that she was led to believe that the secret compartment contained precious stones because she felt something hard at the bottom of the luggage bag was wholly at odds with the factual position. She could not have felt something hard for the simple reason that the heroin packets at the bottom of the luggage bag were rather soft. Staff Sergeant Karathigayan s/o Jaya Balen testified that when he inspected A1 (which was similar if not identical to B1 and C1), there was a slight bulge in the base of A1. Obviously, there was no way that the packet of high-grade heroin could have been hard at one corner so as to give Pang the sensation that she was touching precious stones or Buddha pendants. We were convinced that she could not have felt anything hard when checking the bottom of A1 because the packet contained powdery substance. Pang's assertion of checking and feeling a hard object in the secret compartment was clearly fabricated to raise the defence of ignorance. If she had really thought that she was involved only in the smuggling of precious stones, and if she had checked the bottom of the bag, she would not have felt anything like precious stones. Given those circumstances, any ordinary person in a similar situation would have called his principal to verify. The fact that Pang did not do so could only lead to one inexorable conclusion: she knew what she was handling.

***Pang's lack of response when the luggage was cut open***

65 Pang showed no reaction when the luggage was cut open and the powdery substance was exposed. Although this particular issue was not dealt with by the Judge in his Judgment, it is worth noting that in *PP v Leong Soy Yip and Anor* [2009] SGHC 221, the court gave weight to the accused persons' lack of response when the packets in their possession were opened up to reveal a white powdery substance instead of the Erimin/Dormicum pills they had claimed to have carried. The weight of such evidence depends on the factual circumstances. We acknowledge that how an arrested person would react in a similar situation would very well depend on his personality as well as his perception as to whether he was expected to respond.

66 We noted that when Pang was cross-examined on her lack of a reaction, Pang responded by asking what type of reaction was expected of her. The relevant part of the cross-examination is reproduced below:

Q: ... We've heard from SSGt Choo Thiam Hock, the gentleman who first recorded your statement in the pocket book, that he noticed that you, including the other 2 persons arrested, ... did not show any response upon seeing the white powdery substance found in the luggage bag

A: What response do you want me to ... show? Do you want me to cry or what do you want me to do?

...

Q: [W]hen the other 2 bags from the utility room were opened, when ASP Gary Chan came with his team, right. When [the] packets were all exposed, and you saw the huge amount of heroin, again you didn't show any response.

A: When they opened, every --- all of them were the same ...if my memory serves me right, Cheong Chun Yin had also asked the officer as to what those things were; to which the officer scolded him by saying that the --- "Those things were brought by you, wouldn't you know about those things?" At that time, there were two female officers by my side and they

kept asking me to keep quiet and not to say anything. And what kind of response would you want from me?

67 In the context of these circumstances, Pang's non-reaction is perhaps not as significant. However, about ten to fifteen minutes later after the inspection of the contents of the luggage, Senior Staff Sergeant Choo Thiam Hock put to her some questions, amongst which was this question:

Q10:Do you know what is inside the luggage? (ni zhi dao xin li xiang li mian you shen mo mah).

A10:I do not know. (wo pu chi dao).

In so answering, she had failed to give her version of the facts – namely, that she was carrying precious stones and Buddha Pendants. This, coupled with her lack of reaction upon seeing the powdery substance, is wholly consistent with the fact that she knew that she was carrying drugs.

***Pang's failure to mention material facts in her defence in her statements to the Police***

68 Pang also asserted that the Judge erred in giving weight to the fact that when she was questioned by the police after her arrest, she did not mention that she thought that she was carrying precious stones or Buddha Pendants. Instead, she had told the Police that she was unaware of the contents of the luggage bags. This was the case for her oral statement of 16 June 2008 (reproduced above at [\[67\]](#)).

69 Pang's first cautioned statement, which was recorded under s 122(6) of the CPC at 5.57am on 17 June 2008, reads as follows in relation to the initial first charge of trafficking 3572.37g of diamorphine found in A1:

I do not know what to say at the moment but I would like to state that I do not know the content of the luggage, I just did as I was instructed.

70 With regard to the initial second charge of trafficking 7197.17g of diamorphine found in B1 and C1, Pang stated:

I brought back the two luggage as per instructed but I do not know what is the content of the luggage. I open them before but found nothing inside so I just place them inside the storeroom. My husband do not know what I am doing and have absolutely nothing to do with this

Pang accepted that these statements had been given voluntarily and her counsel did not object to the admission of the same at the trial.

71 It is noteworthy that the veracity of these three statements was not challenged. It is trite law that the Court may draw adverse inferences from an accused person's omission to mention his/her defence on arrest – including the fact that such silence arose from a realisation of guilt. In *Lee Lye Hoe v PP* [2000] SGCA 55, this court made the following observations (at [50]) with regard to the appellant's failure to give an explanation as to how she had come to be in possession of a large amount of opium:

It is telling that when W/Insp Jenny Tan questioned her in the flat, the appellant remained silent when asked why she had brought the opium into her house. She claimed to have been confused and frightened and that it did not occur to her to exculpate herself in any way nor did she wish to implicate anyone. Subsequently however, when her investigation statements were taken, the

appellant again failed to tell the whole truth about Henry Tan's involvement with the drugs as well as his earlier dealings with her family, preferring instead to fudge his identity. Bearing in mind the fact that the opium had been found in the appellant's bedroom and that she had admitted having brought them into her flat from outside, one would have expected the appellant to have attempted to explain and exonerate herself in the face of the extremely compelling evidence against her. The many instances of her failure to do so, when taken collectively, clearly fortified the inference that the appellant was in some way involved with the opium.[emphasis added]

72 In *Lai Chaw Won v PP* [1999] SGCA 29, the accused was convicted of trafficking heroin. In his conditioned statement, he failed to mention his defence that he thought that he was carrying Viagra. This court held that the trial judge was correct to have drawn an adverse inference from the accused's omission and held at [40]:

*Likewise, it did nothing for the appellant's credibility that he did not, in any of the statements to the police, tell them that he thought that the goods were Viagra or sex stimulants. Counsel's assertion that the judge erred in drawing an adverse inference against the appellant and had not adequately considered the appellant's reasons for not stating his belief therefore contained no merit. The judge had clearly considered the appellant's reasons but had found them insufficient and unbelievable. The appellant said that he was suffering from an inferiority complex at the time and that since the investigating officer were laughing at him for saying that he did not know that the drugs were heroin, he thought that it was no point stating his belief that the drugs were Viagra. As pointed out by the trial judge, someone facing a capital charge would hardly be likely to let his inferiority complex get in the way of attempting to clear his name. As such, the learned judge quite justifiably drew the conclusion that the appellant's alleged misapprehension about the goods and the specifics of the matter were concocted after he had had enough time to think about the matter. This is so even in the light of the appellant's s 122(6) statement in which he denied knowing that the goods were heroin. The appellant could only support this bare assertion after he had more time to think about things.[emphasis added]*

73 Accordingly, an adverse inference may be drawn from Pang's failure to mention at an earlier stage her defence that she thought that she was carrying precious stones and Buddha pendants. Her failure to do so in her statements to the Police strongly suggests that this defence was an afterthought. After all, it was only later in her s121 statement that Pang mentioned that she thought that A1, B1 and C1 contained precious stones and pendants. Furthermore, it was only when she was cross-examined at the trial in relation to this inconsistency that she tried to blame the recording officer for not recording everything that she said. In our view, her lie about the officers not properly recording her statements was an excuse invented later to save her own skin.

***Pang was an untruthful witness and her testimony was unreliable***

74 The Judge found that Pang's testimony was not credible and her story unconvincing. This finding, which is a finding of fact, is supported by the fact that apart from the implausibility of her account of the events, she admitted that she had lied to ASP Gary Chan on a number of issues. These include the circumstances surrounding her meeting with the old lady on 26 May 2008, and her meeting with the Malay man at Merlin Tower on 16 June 2008.

75 With regard to her meeting with the old lady, Pang had initially stated that after she had accompanied the old lady to McDonald's, they proceeded to Carpark 2A of Terminal 2 where the latter retrieved a plastic bag containing her clothes from B1. Pang said that subsequently she drove the old lady to the Singapore Expo where they shopped for vegetarian food, and she gave her \$50 to take a taxi. However, Pang contradicted herself when she subsequently stated:

I wish to say that I had lied about the part where the lady followed me to Singapore Expo. The lady had her meal at Macdonald's while I bring the luggage bag to the car. I was the one who take out the plastic bag with her clothing from the luggage bag and bring it back to Macdonald's for her. I did sat down at the Macdonald's restaurant and have a drink. Later part, I passed her S\$50 at the restaurant as she only had S\$180. After that we parted and I went to the Singapore Expo on my own. This is the only part I did lie, I chose to tell the truth now because I feel bad about lying.

76 Pang's lies about her meeting with the old lady are particularly significant as her earlier version of the events was that both she and the old lady were putting A1 into the boot of the car at the carpark when she first noticed that the luggage bag was empty and she asked the old lady why this was so. The old lady had apparently assured her that this was because "boss had already made a secret compartment to keep the precious stones and Buddha pendants". However, according to Pang's amended story, the old lady was not present when she took the latter's clothes out of the luggage bag and first discovered that the luggage was empty as the old lady was then having her meal and waiting for Pang at *McDonald's*.

77 Pang also lied about her meeting with the Malay man on 16 June 2008. Initially, she claimed that the Malay man was alone when she met him at Merlin Tower. However, she subsequently admitted that this was not true as Teng Mor was also present at the said meeting although he was using crutches and both his legs were bandaged. Notably, Pang did not provide a reason as to why she had initially lied about Teng Mor not being present at this meeting, at which she had received important instructions from Teng Mor.

78 Pang's propensity to lie about material issues with no proper explanation strengthened the Prosecution's case that she had fabricated her defence that she had thought that the luggage bag contained precious stones instead of drugs. Pang's lack of credibility also lends much weight to the Prosecution's assertion that she knew that she was trafficking drugs. The effect of an accused person telling lies was alluded to in *Public Prosecutor v Chee Cheong Hin Constance* [2006] 2 SLR(R) 24, where Rajah J said at [92]:

...The telling of lies cannot invariably be equated with guilt. Only when lies are clearly demonstrated to be a conscious attempt to conceal guilt can they then be employed to support other evidence adduced by the Prosecution; they cannot however by themselves make out the Prosecution's case: *R v Strudwick and Merry* (1994) 99 Cr App R 326 at 331, *per* Farquharson LJ:

Lies, if they are proved to have been told through a consciousness of guilt, may support a prosecution case, but on their own they do not make a positive case of manslaughter or indeed any other crime.

In essence, a lie told by an accused can only *strengthen* or *support* evidence if it is clear that (a) the lie was deliberate, (b) it relates to a material issue and (c) there is no innocent explanation for it: Archbold, *Criminal Pleading, Evidence and Practice* 2005 (Sweet & Maxwell, 2005) at para 4-402.

### **Our decision on Pang's appeal**

79 In our view, the circumstances pointed overwhelmingly to the fact that Pang knew that there were drugs in A1, as well as in B1 and C1. She had received a huge sum of RM 235,000 in her bank account before she had agreed to receive B1 from the old lady. In addition, following her agreement with the syndicate, she was entrusted by the syndicate with a huge consignment of heroin to be

delivered in at least three batches. These, coupled with the stark inconsistencies in her evidence and her admission that she had told lies about crucial events, persuaded us that Pang undoubtedly knew that she was involved in drug trafficking. Like the Judge, we had no hesitation in rejecting her claim of innocence.

80 In the result, we held that the Judge did not err in finding that Pang had failed to rebut the s 18(2) presumption.

### **Cheong's appeal**

81 The Judge found that Cheong's testimony was unconvincing and had no doubt that he knew that A1 contained drugs. Specifically, he highlighted the fact that Cheong did not inform Lau De immediately when he found that no gold bars were in the luggage bag and concluded that Cheong had either lied about checking the suitcase or had not checked the contents of the luggage bag as he knew that he was being asked to carry heroin.

82 Cheong had, in his cautioned statement, said that he thought that A1 contained gold bars and that he did not know that A1 contained drugs. He maintained this position at the trial and also at the hearing before us.

### ***Circumstances indicating knowledge***

83 Apart from the particular reasons mentioned by the Judge in not believing the claim of Cheong that he did not know that A1 contained drugs, there were also other circumstances which we will now examine and which, in our view, showed that he knew that he was being engaged to traffic drugs.

84 Cheong met Lau De as the latter was a regular customer at his DVD stall. According to Cheong, Lau De had approached him repeatedly over the span of two years to convince him to assist in smuggling gold bars. By Cheong's own admission, Lau De's insistence that Cheong should assist him is highly suspicious, as he did not possess any special attributes, which made him suitable for smuggling gold bars.

85 In fact, Cheong admitted that he entertained the thought that Lau De was involved in smuggling drugs. When cross-examined, he stated:

Q: So Mr Cheong, now you are saying you did entertain the thought, you did consider the possibility that Lau De could be smuggling drugs, yes?

A: Yes, Sir, this thought did occur to me when I knew Lau De initially.

Q: In 2006, you mean?

A: Yes.

...

Q: Why would you think he's smuggling drugs when you first knew him?

A: Because he had told me that he was smuggling gold bars and to me the – things weren't that simple.

86 It is noteworthy that Cheong had turned Lau De's offers away initially as he did not believe that



Lau De was involved in just gold smuggling. Cheong asserted that all his doubts that Lau De was in the gold smuggling business were completely erased in March 2008, when Lau De brought a friend, who was decked in gold accessories, to his DVD stall. This explanation, without more, is ludicrous as even at that point in time it was clear that Cheong knew very little of Lau De, as is evident from the following cross-examination:

Q: And you saw him only about twice a month when he came by to buy DVDs from you, correct?

A: Twice or thrice.

Q: So two or three times a month, you would see him, yes?

A: Yes

Q: No other interaction with him apart from that, correct?

A: Yes

...

Q: What is "Lau De's" full name, by the way?

A: I do not know.

...

Q: Does he have a car? Does he drive a car? Any idea?

A: As regards this, I did not pay any attention.

.....

Q: So am I right in saying the only thing you know about Lao De is, number one, his contact number, number two, his physical appearance... and number 3, according to you, he's involved in gold smuggling. These are the only three things you know about him, yes?

A: Yes.

Q: You don't know anything else about his personal particulars or his background, yes?

A: I do not know.

87 Cheong had also harboured doubts about why he had been asked to smuggle gold bars from Myanmar as he stated:

... [I]t did cross my mind that the jade in Myanmar is cheap but I had never heard that the gold in Myanmar is cheap too. I also think that in order for me to be paid RM8000, I will need to bring a number of gold bars back. However, I just dismiss it as a passing thought and never question 'Lau De' about it.

88 In addition, Cheong claimed that he did not think that something was amiss with this arrangement as he stated:

I did thought about the consequences if I were caught. But 'Lau De' ever told me before that if I get caught I will only be fined and will need to pay tax and he will pay for it. The thought of why is there such a good deal, of being paid RM8000 and US\$500 just by evading *tax never occur to me*. I also never thought about it if it is such a good offer, why "Lau De" did not do it himself. [emphasis added]

89 This could not be true as Cheong admitted that he had the thought that Lau De was involved in smuggling drugs. Undoubtedly, he could not have conceivably erased that concern from his mind, bearing in mind that engaging in drug trafficking attracted severe consequences in both Malaysia and Singapore. Furthermore, Cheong had never asked Lau De to confirm that he was not smuggling drugs:

Q: Did you ever ask Lau De to confirm that what he was smuggling was not drugs?

A: I did not ask. But Lau De did told me that what he was smuggling were gold bars.

90 In addition, the fact that Lau De had trusted him with such a large consignment of 3.5 kg of drugs containing not less than 2.726kg of diamorphine showed that his role in the drug syndicate was more than he was willing to admit. This is consistent with the fact that on 26 May 2008, Cheong was tasked to escort Lew, the person responsible for handing C1 to Pang on 28 May 2008. Although Cheong said that he did not speak to Lew during the taxi journey to Changi Airport and had simply assumed that he was also smuggling gold bars, which claim could hardly be credible, it is worth noting that he had not been upfront about this meeting with Lew. In fact, he did not mention that he escorted Lew until the Police showed him his passport and asked him why he entered Singapore on 26 May 2008. Only then did he say:

I did not mention this fact just now because I do not want to implicate others in this matter. I chose to lie about I did saw 'Lau De' on the [26 May 2008] because I do not want to reveal that 'Lau De' did ask me to send someone to Changi Airport.

91 This showed that Cheong would lie if he thought it would serve his purpose. This surfaced again when Cheong was questioned why he was asked to escort Lew to Changi Airport. He clamped up and refused to tell the truth as evidenced by the following:

Q: ...Mr Cheong... do you know why Lao De asked you to escort [Lew] to the airport?

A: Lao De told me that he did not know the way, and then asked me to bring him there.

Q: But all you did was get in the taxi with him and go to the airport. What's so difficult about that?

A: I do not know.

92 Clearly, these circumstances, together with the discrepancies in Cheong's evidence, strongly undermined his claim that he thought he was purely involved in smuggling gold bars. The only plausible conclusion is that Cheong knew that he was involved in smuggling drugs.

### ***Cheong's failure to check that gold bars were in the luggage***

93 The Judge gave weight to the fact that when Cheong checked A1 at the hotel at Myanmar and did not find any gold bars therein, he did not alert Lau De. In his view, this contributed to the inference that Cheong knew that A1 contained drugs.

94 Cheong's evidence is that when the luggage was passed to him in the hotel in Myanmar, he did not ask the delivery person any questions or check to see that the gold bars were in the luggage. Indeed, Cheong did not even know how he was to bring the gold bars from Myanmar to Singapore:

Q: Did [Lau De] tell you the gold bars would be hidden in the luggage bag, yes or no?

A: No.

Lau De did not tell him that the gold bars were hidden in the secret compartment in A1. If Cheong had believed that the luggage contained gold bars, his natural response upon opening the bag and finding that it was empty would have been to ask Lau De why were the gold bars not in the bag or were they hidden in any secret compartment. Surely Cheong could not be so naive as to believe that he would be able to shirk responsibility if he had brought an empty bag back to Singapore. Cheong's curious response to this issue is telling:

Q: And Mr Cheong, if you collect the bag that didn't actually contain what you were supposed to pick up, who would be responsible for the loss?

A: Well I did not cut open the interior of the bag. So I will receive the things and then I will just return the same to him, that's all. And that's the reason why I did not dare to cut open.

Q: And if it turned out that you received---brought back the wrong bag, who would be liable for the loss?

A: Then Lau De would have to be responsible for it.

95 Cheong claimed that after he opened the bag and found that it was empty, he felt the four interior sides of the luggage bag and found that they were hard as if there was a hidden object in each side. This, he believed could be gold bars. He claimed that he did think of cutting the interior side of the luggage to have a peep at the gold bars but did not dare to do so as he was concerned that he would be held responsible if something went wrong. Cheong also said that he noticed a small bulge at the base of the luggage but assumed that this was part of the making of the bag.

96 Cheong's evidence is manifestly unbelievable as the objective evidence squarely contradicts his testimony. As the wooden planks at the side of the luggage were merely 0.5cm thick, no sensible person would have felt that they were gold bars, notwithstanding that they were covered by fabric. That the Judge clearly thought as much can be seen from this cross-examination:

Q: You press this wooden plank now, this is clearly not a gold bar, right. I mean you feel it now. Feeling this wooden plank now, you wouldn't think that this is a gold bar, yes?

A: Yes.

...

Q: ...So take the fabric, cover up the surface of the wooden plank, feel it and tell me if it feels -  
--

Court: That won't be necessary. Mr Low, yes, move on to your next question.

97 Making a small incision in the bag to see if the gold bars were present at the sides was a simple

task, which Cheong inexplicably failed to do. On the other hand, Cheong was remarkably nonchalant when he was asked how he expected to get away with smuggling gold bars in the presence of metal detectors and baggage scans at the airport.

Q: You weren't afraid that when you go back to the airport the baggage scans or metal detectors will detect the presence of these gold bars?

A: Because Lau De had already said that if I were to be arrested, then he would pay the tax and he would bail me out.

### ***Cheong's lack of reaction upon finding out that the luggage contained drugs***

98 The fact *per se*, that Cheong had no reaction when A1 was cut open to reveal heroin, could well not be too consequential as how one would react is dependent on one's personality (see [\[65\]](#) above). However, by Cheong's own admission, he had the thought that Lau De could be involved in smuggling drugs when he first met him, an activity which he was not prepared to engage in. Thus, expressing no reaction upon seeing drugs being pulled out of the secret compartment in A1 was wholly consistent with the fact he knew that he was smuggling drugs.

### **Our decision on Cheong's appeal**

99 In summary, the circumstances under which Lau De enlisted Cheong to undertake the task, the payment he was to receive, his nonchalance upon receiving A1 by not asking the delivery person any questions, his lackadaisical attitude towards checking the contents of A1, and his failure to call Lau De to clarify why A1 was empty, all pointed to the fact that he knew he was engaged to courier drugs from Myanmar to Singapore and hence there was really nothing for him to ask or check. Furthermore, Cheong's claim that his inspection of A1 led him to believe that it contained gold bars contradicted objective evidence and was completely incredible. Viewing all the evidence in totality, we had no doubt that Cheong knew that he was engaged in smuggling drugs. Accordingly, we held that the Judge did not err in finding that Cheong had failed to rebut the s 18(2) presumption. There was simply no credible evidence to even start building a case to rebut the presumption.

### **Conclusion on the appeals**

100 In conclusion, we had no doubt that both Pang and Cheong knew that they were smuggling drugs. Their challenge in this appeal related to a finding of fact by the Judge, *ie* that each of them had failed to rebut the presumption laid down in s 18(2). For the reasons discussed above, we were of the opinion that the Judge was eminently correct to hold that the s 18(2) presumption had not been rebutted. The appeals of Pang and Cheong were therefore dismissed.

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