Public Prosecutor *v* Phuthita Somchit and another
[2011] SGHC 67

Case Number : Criminal Case No 52 of 2009

Decision Date : 25 March 2011

Tribunal/Court : High Court

Coram : Lee Seiu Kin J

Counsel Name(s) : Kenneth Yap, Stella Tan and Luke Tang (Attorney-General's Chambers) for the Public Prosecutor; Thrumurgan s/o Ramapiram (Thiru & Co) and Amarick Singh Gill (Amarick Gill & Co) for the first accused; Singa Retnam (Kertar & Co) and Nedumaran Muthukrishnan (K Krishna & Partners) for the second accused.

Parties : Public Prosecutor — Phuthita Somchit and another

Criminal Law – Statutory offences – Misuse of Drugs Act (Cap 185, 2008 Rev Ed)

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 20 of 2010 was dismissed by the Court of Appeal on 9 April 2012. See [2012] SGCA 25.]

25 March 2011

Lee Seiu Kin J:

Introduction

1 The first accused ("Somchit") and second accused ("Quek") were jointly charged with an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the Act"). The charge ("First Charge") read as follows:

> That you, 1. Phuthita Somchit
>
> 3. Quek Hock Lye,
>
> on or about the 3rd day of October 2008 in Singapore, together with one Winai Phutthaphan, were parties to a criminal conspiracy, and in such capacity, agreed and engaged with one another to do an illegal act, namely, to traffic in diamorphine, a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185) ("the Act"), without any authorization under the Act or the Regulations made thereunder, whereby the said Phuthita Somchit was in possession of **not less than 62.14 grams of diamorphine** at Block 21 Bedok Reservoir View #01-02, Aquarius by the Park, Singapore, for the purpose of trafficking in pursuance of the said conspiracy, an offence under section 5(1)(a) read with section 5(2) of the Act, and you have thereby committed an offence punishable under section 120B of the Penal Code (Cap 224) read with section 33 of the Act.

2 At the commencement of the trial, the prosecution applied to stand down a second charge against Quek under the same provisions of the Act, which I allowed. The prosecution and both counsel for Somchit and Quek tendered a statement of agreed facts ("SAF") pursuant to s 376(1) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC"). The effect of this was that the facts

stated in the SAF were conclusively proved in this trial. I set out below the SAF in its entirety (incorporating amendments made at the end of the first day of the trial):

THE ACCUSED PERSONS

1. The accused persons are:

(a) Phuthita Somchit, a female Thai National / 34 years old, FIN No. G9046929R ("**Somchit**"); and

(b) Quek Hock Lye, a male Singaporean / 44 years old, NRIC No. S1680916J ("**Quek**").

2. The accomplice is Winai Phutthaphan, a male Thai National / 25 years old, FIN No. G9046933P ("**Winai**").

3. Somchit is Quek's girlfriend. She is also the aunt of **Winai**'s wife.

THE ACCUSED PERSONS' PLACE OF RESIDENCE

4. On the day of their arrest, the place of residence of Winai, Somchit and Quek was at Block 21 Bedok Reservoir View #01-02, Aquarius by the Park, Singapore.

5. Investigations revealed that Quek had entered into a lease agreement dated 6 September 2008 for the rental of the unit. He had done this by using his forged driving licence under the name of "Lim Chay Yong". He had also informed the landlord that Somchit and one Wannarat Tancharoen will also be staying at the unit. He had produced photocopies of their passports as well as his forged driving licence, which were then attached to the lease agreement.

6. Investigations further revealed that Quek had asked Winai to move into Block 21 Bedok Reservoir View #01-02 on the day before 3 October 2008.

EVENTS LEADING TO THE ARREST

7. On 3 October 2008, at about 7.45 p.m., a team of officers from the Central Narcotics Bureau ("CNB") consisting of Assistant Superintendent of Police Tai Kwong Yong ("ASP Tai"), Station Inspector Neo Han Siong ("SI Neo"), Senior Staff Sergeant Pang Hee Lim Joe ("SSSgt Joe Pang") and Staff Sergeant Yeo Kheng Wei Daniel ("SSgt Daniel Yeo") arrested **Quek** next to his rented vehicle, a red colour car SJJ 2514A ("the car"), which was parked next to the badminton hall along Pine Lane, Singapore.

8. After **Quek** was arrested, ASP Tai opened the rear left door of the car and saw a "Nokia" handphone box on the floor mat on the floorboard. ASP Tai then placed it back on the floor mat. The team of CNB officers then escorted **Quek** to the multi-storey car park at Block 56A, Cassia Crescent, to conduct a search on him and the car. SI Neo drove the red car SJJ 2514A, with **Quek**, SSgt Daniel Yeo and ASP Tai inside, while SSSgt Joe Pang drove the CNB operations car to the same carpark.

9. At the carpark, SSSgt Joe Pang and SSgt Daniel Yeo guarded **Quek**, while ASP Tai and SI Neo searched the car. ASP Tai and SI Neo recovered, amongst other things, cash amounting to a total of S$5948.00, from various parts of the car.

10. SSSgt Joe Pang also searched and recovered one (1) bunch of four (4) keys attached to a

key tag with the words "21 Aquarius #01-02" written on it from **Quek's** trousers' pocket. **Quek** was questioned on the exact address to which the keys belonged, but he did not reveal the address. SSSgt Joe Pang then handed the keys over to ASP Tai, who reported to CNB Headquarters ("HQ") about the keys. ASP Tai's team of CNB officers subsequently received instructions to proceed to Block 21, Bedok Reservoir View, #01-02, Aquarius by the Park ("the unit") to conduct a raid.

11. Other CNB officers consisting of Woman Assistant Superintendent of Police Tan Siew Fong ("W/ASP Tan"), Senior Staff Sergeant Chong Wee Loong Henry ("SSSgt Henry Chong") and Sergeant Low Yew Weng James ("Sgt James Low") had also arrived at the multi-storey car park at Block 56A, Cassia Crescent, to provide reinforcement to ASP Tai's team.

12. On the same day (3 October 2008), at about 8.45 p.m., the CNB officers escorted **Quek** and reached Block 21, Aquarius by the Park, Bedok Reservoir View. Thereat, ASP Tai tasked SI Neo and SSSgt Joe Pang to proceed to check out the unit discreetly. SSSgt Joe Pang subsequently spotted **Winai** at the door to the unit. However, when Winai saw SSSgt Joe Pang, Winai quickly turned and walked away from the door of the unit. SSSgt Joe Pang and SI Neo Han Siong ("SI Neo") then proceeded to follow Winai, and they reported this over the radio set.

13. ASP Tai then proceeded to raid the unit with W/ASP Tan, SSSgt Henry Chong and Sgt James Low. They gained access to the unit by using the bunch of keys that had been recovered from **Quek** earlier. SSgt Daniel Yeo was guarding **Quek** in the car during this time.

14. After entering the unit, the CNB officers arrested **Somchit**, as well as one Wannarat Tancharoen (FIN No.: G9046930X) and one Samruai Phutthawan (FIN No.: G9046931U) within the unit.

15. Meanwhile, SSSgt Joe Pang and SI Neo had arrested **Winai** near the poolside. Cash amounting to a total of S$2700.00 was seized from a black colour sling bag that **Winai** was carrying at the time of his arrest.

16. ASP Tai subsequently gave instructions for **Quek** and **Winai** to be brought to the unit.

EXHIBITS SEIZED IN THE UNIT

17. CNB officers conducted a search of the unit. There were 3 rooms: one was a master bedroom (later established to be occupied by Quek and Somchit), one was a guests' room (occupied by Winai, Wannarat, Samruai and an unknown female Thai National named Min) and a third room was a "study room".

18. CNB officers subsequently searched and recovered, amongst other things, the following items from the unit:

On the television console in the living room

18.1 One (1) "Nokia speaker" box containing:

(a) three (3) big plastic bags containing a total of fifteen (15) packets of granular substances ("**A1A1**").

From a cupboard in the study room:

18.2 One (1) white bag containing:

(a) One (1) yellow plastic bag containing:

(i) One (1) "Airwick" plastic box which contained the following:

➢ Eleven (11) packets of granular substance ("**B1A1A**");

➢ One (1) big packet of granular substance ("**B1A1B**"); and

➢ Five (5) packets of granular substance inside a plastic packet ("**B1A1C1**").

(ii) Five (5) packets of granular substance inside a plastic packet ("**B1A2A**"); and

(iii) Fifty (50) tablets in foil packaging;

(b) One (1) purple plastic box containing four (4) packets of crystalline substance;

(c) One (1) brown paper carton box which contained the following:-

(i) Seventeen (17) plastic packet containing a total of eighty-five (85) packets of granular substance ("**B1C1A**"); and

(ii) Two (2) packets of granular substance ("**B1C2**").

(d) One (1) bundle wrapped with black tape, which was unwrapped and found to contain two (2) green paper packets, which contained one (1) packet of crystalline substance each.

18.3 One (1) black and white plastic bag containing two (2) digital weighing scales ("C1A and C1B");

18.4 One (1) brown paper shoe box containing one (1) electric sealer ("C2A");

18.5 One (1) paper box containing three (3) paper cutters and one (1) double-sided tape; and

18.6 One (1) paper box containing numerous straws.

On a table in the study room

18.7 One (1) exercise book with a yellow cover ("E6");

18.8 One (1) packet of rubber bands, one (1) roll of aluminium foil and one (1) packet of empty plastic packets ("E9").

19. Three (3) other exercise books were found in the master bedroom which was occupied by **Somchit** and **Quek**. A plastic bag containing S$4,880.00, a flowery handbag containing S$715.00 and a colourful handbag containing S$10,000.00 [i.e. total cash of S$15,595.00] were also found in the master bedroom.

ESCORTING OF THE ACCUSED PERSONS TO CNB HQ

20. On 4 October 2008, at about 1.40 a.m., and after the photograph-taking of the exhibits, **Somchit** was escorted by W/ASP Tan and Staff Sergeant Oh Kian Seng Kelvin ("SSgt Kelvin Oh") from the unit to CNB HQ. They arrived at CNB HQ at about 2.00 a.m.

21. As for **Quek**, on 4 October 2008, at about 1.40 a.m. and after the photograph-taking of the exhibits, he was escorted by ASP Tai, SI Neo, SSSgt Henry Chong and SSgt Daniel Yeo, from the unit to his official residence at Block 110, Whampoa Road, #03-25, Singapore 321110 for a house raid. **Quek** informed that he had sold the flat sometime back and did not have the keys to the flat. The CNB officers knocked on the door for about 10 minutes. There was no response and they then escorted **Quek** to and arrived at CNB HQ at about 2.15 a.m.

MEDICAL EXAMINATIONS

22. On 4 October 2008, at about 4.45 a.m., **Somchit** was escorted by CNB officers to Alexandra Hospital ("AH") for her pre-statement medical examination. She arrived at AH at about 5.00 a.m. and was examined by the doctor. After her medical examination, she was escorted to and arrived at CNB HQ at about 5.50 a.m.

23. On the same day (4 October 2008), at about 5.50 a.m., **Quek** was escorted by CNB officers to AH for a pre-statement medical examination. He arrived at AH at about 6.05 a.m. and was examined by the doctor. After his medical examination, he was escorted to and arrived at CNB HQ at about 6.35 a.m.

24. On the same day (4 October 2008), at about 7.20 a.m., **Somchit** and **Quek** were escorted by CNB officers to AH for their post-statement medical examinations. They arrived at AH at about 7.40 a.m. and they were examined by the doctors. After their medical examinations, they were escorted to and arrived at the Subordinate Courts lock-up at about 8.15 a.m.

PERSONAL PROPERTIES OF ACCUSED PERSONS

25. On 4 October 2008, at about 5.50 a.m., W/ASP Tan handed over the following personal properties of **Somchit** to Assistant Superintendent of Police Stanley Seah Choon Keng ("ASP Stanley Seah"):

i) Three(3) Nokia handphones with battery and SIM card;

ii) One (1) Samsung handphone with battery and SIM card;

iii) One (1) Nokia speaker;

iv) One (1) Nokia earpiece;

v) Three (3) Nokia chargers;

vi) One (1) pink MooDo MP3 player;

vii) One (1) Sennheiser headphone;

viii) One (1) colourful handbag;

ix) One (1) white bag with red flowery prints and the words "ksports";

x) One (1) small black coloured purse with the word "COMPLETE";

xi) One (1) transparent make-up kit pouch;

xii) One (1) small red coloured coin purse;

xiii) Thai currency amounting to Baht 460.00

xiv) Singapore currency amounting to S$1.00;

xv) One (1) Siam Commercial Bank mastercard;

xvi) Three (3) yellow-coloured earrings with white stones;

xvii) Two (2) silver-coloured earrings with white stones;

xviii) One (1) silver-coloured earring with pink stone;

xix) One (1) yellow-coloured dragon pendant;

xx) One (1) yellow-coloured necklace with wordings, attached with a round pendant;

xxi) One (1) yellow-coloured ring with a white stone; and

xxii) One Thailand passport with passport number U679808.

26. On the same day, at about 7.35 a.m., ASP Tai handed over the following personal properties of **Quek** to ASP Stanley Seah:

i) Three (3) Nokia handphones with battery and SIM cards;

ii) One (1) Nokia handphone with battery only;

iii) One (1) LG handphone with battery only;

iv) One (1) MP4 handphone with earpiece and battery only;

v) Singapore currency amounting to S$4.45;

vi) One (1) silver-coloured watch bearing the word "Tudor";

vii) One (1) black pouch containing:-

a) Two (2) Starhub top-up cards;

b) One (1) Esso reward card;

c) Two (2) "Tai Siang" pawnshop tickets;

d) One (1) yellow-coloured figurine;

e) One (1) string attached with a piece of grey-coloured metal;

f) One (1) black wallet;

g) Two (2) EZ link cards; and

h) Two (2) cash cards.

viii) Assorted namecards and papers with writings;

ix) Two (2) necklaces attached with pendants;

x) Two (2) brown rings with stones;

xi) One (1) key;

xii) One (1) black cap;

xiii) One (1) handphone charger; and

xiv) One (1) bunch of four (4) keys with a keytag written with the words "Aquarius #01-02".

27. ASP Tai also handed over to ASP Stanley Seah a total of S$5,948.00, which had been recovered from **Quek**.

HSA ANALYSIS OF DRUG EXHIBITS

28. The one hundred and twenty-four (124) packets of granular substance, which were recovered from the unit, were subsequently analysed by the Health Sciences Authority ("HSA") and found to contain a total of not less than **62.14 grams** of diamorphine.

29. The following table shows the results of the HSA analysis:

S/N	**Exhibit Labelling**	**Description**	**Gross weight**	**Amount of diamorphine**	**Page of [Agreed Bundle ("AB")]**
1	A1A1	15 packets	112.7 g	7.43 g	Page 118
2	B1A1A	11 packets	80.26 g	2.20 g	Page 119
3	B1A1B	1 packet	225.4 g	6.37 g	Page 120
4	B1A1C1	5 packets	37.41 g	1.01 g	Page 121
5	B1A2A	5 packets	37.07 g	1.07 g	Page 122
6	B1C1A	85 packets	639.6 g	43.38 g	Page 123
7	B1C2	2 packets	11.30 g	0.68 g	Page 124
		Total: 124 packets	Total 1143.74 g	Total: 62.14 g	

HSA ANALYSIS OF URINE SAMPLES

30. **Somchit**, **Quek** and **Winai** provided their urine samples for analysis. **Somchit**'s urine samples were only tested positive for methamphetamine. **Winai**'s urine samples were not tested positive for any controlled drug. **Quek**'s urine samples were only tested positive for methamphetamine and nimetazpam. The urine samples of all three of them were tested negative for morphine.

3 The prosecution called a total of 45 witnesses to give evidence on its behalf. At the end of the prosecution's case, I found that a *prima facie* case had been made against Somchit and Quek and called upon them to give evidence in their defence. Somchit elected to give evidence as well as call witnesses to give evidence in her defence. Quek elected to remain silent. Before going further, it should be clarified that Somchit also refers to Quek as "Wan" and Winai Phutthaphan ("Winai") as "Od".

The case for and against Somchit

4 The following were the evidence against Somchit. 124 packets of white granular substance comprising not less than 62.14 grams of diamorphine ("the seized drugs") were found at Block 21 Bedok Reservoir View #01-02 Aquarius by the Park ("Bedok Condominium"), where Somchit resided. Somchit admitted to being in possession of the seized drugs, and in any event, that was clear from the evidence. Not only did Somchit know of the existence of the seized drugs, she was also the one who handed the Nokia Speaker Box (A1) to Winai and the one who kept the white bag (B1). By operation of s 18(2) of the Act, Somchit was "presumed to have known the nature" of the seized drugs. As far as trafficking was concerned, Somchit readily admitted her involvement with Quek's drug dealings [note: 1]. She was involved in the packing process, took orders from customers, instructed Winai to deliver packets of drugs to customers, and kept records of the sales. However Somchit denied knowledge that the seized drugs were diamorphine. The sole issue, as far as Somchit was concerned, was whether she had rebutted the presumption in s 18(2) of the Act.

Somchit's statements to the Central Narcotics Bureau ("CNB")

5 Somchit made a number of statements to the CNB officers from the time she was arrested. On the night of the arrest (3 October 2008), W/ASP Tan Siew Fong ("W/ASP Tan") questioned her on various items in the Bedok Condominium. A Thai interpreter, Orawan Triteeyaprasert (PW40), interpreted from English to Thai and vice versa. The following is an extract from the question and answer record, which was given within three hours of her apprehension:

Q6: What do the customer(s) buy from 'Wan'?

A6: White-colour

Q7: What do you mean by white colour?

A7: I do not know what is the white colour. 'Wan' only engage me to help him pack into smaller packets and he will pay me for the work.

6 At 6.31am on 4 October 2008, at the CNB headquarters, after she was charged, Somchit said as follows in answer to it:

> I know the white colour item is one kind of drug which is controlled. However I do not know what is the effect of the drug and I also do not know how heavy of the sentence for the offence. My boyfriend told me if anything happen regarding the drug it will have no problem for me, the worst they will just send me back to Thailand and he will admit that all the drug belong to him. This is the reason why I help him.

7 Somchit subsequently gave a number of long statements to the CNB, all of which she agreed to admit in evidence. In relation to the issue of her knowledge of the nature of the seized drugs, the following are relevant:

(a) Statement recorded on 6 October 2008 at 3.30pm

> 5 … I do know that the white substance are drugs but I do not know exactly what type of drugs it is. I ever asked my boyfriend what drug is that but my boyfriend told me that I do not need to know.

(b) Statement recorded on 7 October 2008 at 10.55am

> 15 … When I saw the white colour substance, I asked 'Wan' what it is the white colour substance and he answered me that this is his job …
>
> 16 … 'Wan' did not tell me what the white colour substance is but I think it is drugs because once 'Wan' came home, he asked me to closed [sic] up everything. I suspect the reason for doing this is that substance he brought back is illegal.

(c) Statement recorded on 7 October 2008 at 2.45pm

> 18 After the first time I saw 'Wan' packed the white substance, he did not bring home anymore white substance until 2 days later. About 2 days later 'Wan' came home with a shopping bag … I asked 'Wan' if he need me to help him pack white substance and he say 'Ok'. I know that the white substance is a kind of drug because when 'Wan' brought home this kind of white colour substance the first time, I did ask him if it is drugs and he say 'Yes'.
>
> …
>
> 23 … When I came to know that the white substance is drugs, I did inform 'Od' that what he is carrying is drugs. I told him to finish up his visa make some money for the time being and go back to Thailand when his visa expired.

(d) Statement recorded on 16 January 2009 at 10.00am

> 42 I am asked with regards to paragraph 16, what do I mean by close everything when Wan comes home with the white colour substance. I mean to say he will ask me to close the curtains and check that the main door was locked. In the same paragraph, I had also said that I suspected that the reason that he did this was because the substance was illegal. I am asked why I had not left him, left the place or reported to the police if I had suspected that the things were illegal. Actually, I wanted to leave him. However, I had no money and I still depended on him for my livelihood. Secondly, I still loved him. Thirdly, I thought it was not a very serious

matter as Wan did not appear that he was afraid. He behaved normally.

43 I am asked if I had suspected that the white substance were drugs. I suspected that they were because Wan always told [me] not to let anybody see the white substances. But I do not know what time of drugs they were…

44 With regards to paragraph 23 of my statement, I said that I had told Od that he was carrying drugs. I decided to tell him as I wanted to let him make his own decision as to whether to continue working or to stop, and I will respect his decision. He was surprised when I told him that he was carrying drugs, but he was not angry. Od did ask me if they are really drugs, and I replied that I think so. He then told me to let him continue working till his visa expired and he will go back. He told [me] that at least he can have some money to return home. He also told me to go back together with him as he was worried about me. I had intended to go back with him and not return to Singapore anymore. He also asked me if I was scared and I said I was. When he said scared, he meant how are our families to survive if something happened to us.

…

49 I am asked if I had I [sic] ever told Od that what he was carrying were herbs. I am not sure, but I am very sure that eventually, I had told him that the white substance are drugs …

Somchit's evidence at trial

8 Somchit related her background [note: 2]. She was born in 1975 and had only completed primary school after which she went out to work. She first worked as a masseuse and then turned to prostitution. She had married a man but subsequently divorced him. She has two sons, presently aged 19 and 17. This meant that she became a mother at the age of 15 or 16 years. She had at some stage visited London for a short period, where she worked as a prostitute. Around 2004, she came to Singapore, also to work as a prostitute. She would remain here for two weeks to a month each time, until her social visit pass expired. She plied the alleys of Geylang, earning about $2,500 to $3,000 per month. This was her source of income out of which she supported her mother, two sons, a niece and nephew. Her family members were not aware that she was working as a prostitute. Quek was one of her clients; she had first met him around June 2007. Shortly thereafter, they took a liking to each other and Somchit stopped working as a prostitute when Quek offered to take care of her. Since then, Somchit would travel back and forth from Thailand and live with Quek whenever she was in Singapore. Quek was supportive both of Somchit and her family in Thailand – he gave her an average of $2,000 a month and even conversed over the telephone with the members of her family. Their relationship progressed to the point where they discussed marriage. Sometime in the middle of August 2008, Somchit arranged for her nephew, Winai, to come to Singapore to work for Quek. Quek agreed to pay him 25,000 baht (equivalent to S$1,000) a month. Winai came to Singapore on 24 August 2008 [note: 3] (Somchit was not in Singapore at that time).

9 Somchit recounted her first encounters with Quek's drug dealings [note: 4]. She returned to Singapore on 28 August 2008. The first time she saw the drugs Quek dealt with (which turned out to be diamorphine) was a few days after moving into the Bedok Condominium on 6 September 2008. Quek asked her to close the door and windows. They then went into the study room and Quek took a black bundle out of a plastic bag. Quek walked to the kitchen, and cut open the black bundle which contained a white substance which he then poured into a bowl and started repacking into other packets. Due to the surreptitious circumstances, Somchit suspected that the white substance was illegal and asked Quek if it was a drug and he admitted that it was. Somchit then contacted Winai and

informed him that Quek was dealing with "*yaaseptit*" (which she understood to mean narcotic or illegal drug). Somchit told Winai that they should go back to Thailand after their visa expired. Subsequently, on a second occasion, Somchit again questioned Quek if the white substance was a drug and Quek again admitted that it was. Somchit asked Quek what type of drug it was. Quek did not tell her the name of the drug, but told her it was a "not serious drug" and that if anything were to happen, she would be sent back to Thailand. Upon hearing Quek's assurance, Somchit volunteered her help with the packing of the drugs.

10 When asked by counsel why she believed Quek's representations, Somchit stated the following [note: 5] :

> Q Okay. When he told you it was not a serious drug and he said won't have serious effect on you, did you trust him?
>
> A Yes, I believe him.
>
> Q Why did you believe him?
>
> A Because the first time when I asked him, he told me it's yaaseptit. Second time, he also answered me yaaseptit. He never lie to me. That's why I trust him.
>
> ...
>
> Q If your boyfriend has told you this was medicine --- ... or flour --- ... would you have believed him?
>
> A I --- I won't believe him.

Somchit also answered to the following when asked by counsel [note: 6] :

> Q If your boyfriend ... had told you, "No, this is a serious drug" ... would you have volunteered to help him pack?
>
> A No, I--- I don't think so.
>
> ...
>
> Q ... And if it was --- he told you it was serious drug, what would you have told him?
>
> A If he were to --- told me that this was a serious drug, I would tell him to stop and talk about it, "since you have future with me".

Finally, Somchit testified that while she had heard of other drugs which in Thai she referred to as "Yaba" and "Ganja", she had no knowledge of "Phong Khaou", which the Thai interpreter explained was the Thai term for heroin [note: 7] .

Winai's evidence

11 The third person to the alleged conspiracy, Winai, gave evidence for the prosecution. Having heard his evidence which was also tested during cross-examination, I found it to be inconsistent in parts. For example, Winai initially testified that Somchit never told him that the drugs were *yaaseptit*

(the Thai interpreter explained that this was a general term for narcotic or illegal drug). However, subsequently, he claimed that he could not remember if she did [note: 8]. Another example related to whether Winai made any drug deliveries for Quek between 26-28 August 2008, *ie* the two days during which Winai was alone in Singapore with Quek. Winai stated in his statement to the CNB [note: 9] (dated 8 October 2008) that because he could not understand Quek's instructions, he refused to make any deliveries. At trial, Winai testified that in fact, he did make deliveries when he understood Quek's instructions or when Somchit translated Quek's instructions to him by phone. [note: 10] When cross-examined on the apparent inconsistency, Winai explained that when his statement was being recorded, he informed the interpreter and recording officer that he did make deliveries. [note: 11] Nevertheless, even taking Winai's statement at its highest, two points may be noted. The first was that at no time did Winai allege that Somchit knew that the drugs they dealt with were heroin. The second was that Winai consistently stated that he was asked to make drug deliveries by Quek. These points will be further discussed below.

The prosecution's submissions

12 The prosecution submitted that Somchit had failed to rebut the presumption under s 18(2) of the Act. Firstly, the prosecution submitted that the relevant authorities supported the first interpretation of *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1 (*"Tan Kiam Peng"*) *ie* that the prosecution need only to prove that the accused knew that he or she was in possession of a controlled drug (see below at [19]). Since Somchit admitted that she knew the seized drugs were illegal, on this interpretation, the prosecution would have proven the charge beyond reasonable doubt.

13 Secondly, in any case, Somchit had actual knowledge that she was dealing in diamorphine:

(a) Somchit knew and referred to the seized drugs as the "white substance" or "white one", which were common parlance for diamorphine.

(b) When Somchit informed Winai that they were dealing with drugs, he asked her if she was scared and she said that she was; this suggested that Somchit knew that the drugs she was dealing in attracted severe penalties under the law.

(c) Somchit was intimately involved with the trafficking process. Not only did she pack the drugs into 8-gram packets, as was the market practice for selling diamorphine, she also dealt directly with customers. Furthermore, she knew that the drugs were sold at a high price (between S$240 to S$320 per packet) and she was remunerated lucratively for her work.

(d) Somchit was not a stranger to controlled drugs. She consumed methamphetamine ("Ice") and was introduced to nimetazepam ("Erimin 5") by Quek. It would have been odd that when it came to diamorphine, Quek did not even mention its name to her. She had also witnessed firsthand the way by which it was consumed by Quek and the effects it had on him. Given the intimacy of their relationship, as Somchit had claimed, there was no reason why Quek would refrain from referring to the drugs as "*peh hoon*" or withhold from her the fact that it was diamorphine.

(e) It was inconceivable that during the period in which she assisted Quek, which lasted almost one month, Somchit had never heard Quek refer to the drugs as "*peh hoon*".

From the above, the prosecution submitted that Somchit was not an innocent courier in a one-off

transaction. Instead, she was intimately involved in the entire transaction and her behaviour suggested that she must have known the nature of the seized drugs. Furthermore, the prosecution submitted that Somchit's claim that Quek had told her that the drugs he dealt with were "not serious" drugs was an after-thought, which she did not mention in any of her nine statements to the CNB officers (comprising of contemporaneous statements, cautioned statement and long statements). Likewise, it was not apparent from Winai's evidence that Somchit thought that the drugs were "not serious".

14 Thirdly, even if she did not have actual knowledge that the seized drugs were diamorphine, she was at least wilfully blind as to its nature. In particular, the circumstances surrounding the drug dealings were suspicious. For example, Quek had asked her to lock the doors, close the windows and draw the curtains when he packed drugs in the Bedok Condominium. Furthermore, Somchit was not a stranger to drugs, and knew that it was illegal to deal in controlled drugs. In fact, she was worried when she first learnt that Quek dealt with controlled drugs. Against this backdrop, although she had opportunities to probe further *eg* by asking Quek or the customers, she chose to turn a blind eye and was content to rely on Quek's answers without attempting further to ascertain the true nature of the drugs.

The defence's submissions

15 The defence submitted that Somchit had rebutted the presumption under s 18(2) of the Act. Firstly, the defence submitted that Somchit did not have actual knowledge of the nature of the seized drugs. In her statements to the CNB officers and her testimony in court subsequently, Somchit freely and readily admitted to her involvement in the trafficking process, but did not at any point concede that she knew that the drugs she dealt with was diamorphine. In fact, Somchit's statements to the CNB were consistent with her defence at trial. Furthermore, neither Winai's evidence nor Quek's statements to the CNB suggested that Somchit was aware of the nature of the seized drugs. Secondly, the defence submitted that Somchit was not "wilfully blind" but "rendered blind" by her trust in Quek and her belief in the representations made by Quek. Somchit had no reason to disbelieve Quek as he treated her well, and did not conceal the fact that the drugs he dealt with were a controlled drug.

The law

16 Subsections (1) and (2) of s 18 of the Act provide as follows:

> (1) Any person who is proved to have had in his possession or custody or under his control —
>
> (a) anything containing a controlled drug;
>
> (b) the keys of anything containing a controlled drug;
>
> (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or
>
> (d) a document of title relating to a controlled drug or any other document intended for the delivery of 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.

These provisions establish two presumptions in the law. The first is the presumption of possession in s 18(1) of the Act. Any person who is proved to have in his possession, custody or control anything containing a controlled drug or the keys to anything, place or premises which contain a controlled drug, shall be presumed to have had that drug in his possession. This presumption extends to possession of any document intended for delivery of a controlled drug. The second is the presumption of knowledge – once possession is proved or presumed under s 18(1), s 18(2) of the Act operates to presume that the person knew the nature of that drug. The effect of this is to place on the accused the burden of proving, on a balance of probability, that he did not know the "nature of the drug".

17 I first considered *Warner v Metropolitan Police Commissioner* [1969] 2 AC 256 *("Warner")*, the English authority that had spawned the precedents in Singapore on s 18 of the Act. The appellant in *Warner* had picked up two parcels from a cafe which he believed had contained scent. However one parcel contained amphetamine sulphate tablets, a substance specified in the Schedule to the Drugs (Prevention of Misuse) Act 1964 (c 64) ("the 1964 Drugs Act") and possession of which would, without lawful authority, be an offence under s 1(1). The point of law that was stated by the English Court of Appeal to the House of Lords was:

> [w]hether for the purposes of section 1 of the [1964 Drugs Act], a defendant is deemed to be in possession of a prohibited substance when to his knowledge he is in physical possession of the substance but is unaware of its true nature.

The House ruled, by a majority, that s 1 of the 1964 Drugs Act was an absolute offence and a person in possession of any of the scheduled drugs without lawful authority commits an offence even if he had no knowledge that it was a scheduled drug. In his judgment, Lord Pearce said (at 304–306) that parliamentary intention in the 1964 Drugs Act was to prevent or curtail the drug traffic and the term "possession" must not be construed so narrowly "as to stultify the practical efficacy of the Act or so broad that its creates absurdity or injustice." He reasoned that it could not have been intended to be a defence for an unauthorised person to show that he possessed the drugs for a laudable purpose but on the other hand, it could not have been the intention that a person would be guilty if he did not know he had the thing at all. Lord Pearce concluded that "possession" would exclude the situation where the thing had been planted on him without his knowledge, but it would cover one in which the person had knowledge of the existence of the thing itself but not its qualities. In relation to things in containers, Lord Pearce said as follows at 305-306:

> The situation with regard to containers presents further problems. If a man is in possession of the contents of a package, prima facie his possession of the package leads to the strong inference that he is in possession of its contents. But can this be rebutted by evidence that he was mistaken as to its contents? As in the case of goods that have been "planted" in his pocket without his knowledge, so I do not think that he is in possession of contents which are quite different in kind from what he believed. Thus the prima facie assumption is discharged if he proves (or raises a real doubt in the matter) either (a) that he was a servant or bailee who had no right to open it *and* no reason to suspect that its contents were illicit or were drugs or (b) that although he was the owner he had no knowledge of (including a genuine mistake as to) its actual contents or of their illicit nature and that he received them innocently and also that he had had no reasonable opportunity since receiving the package of acquainting himself with its actual contents. For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.

So to read the Act would, I think, accord with what Parliament intended and would give it a sense which would accord with the practical views of a jury, although I realise that a deeper investigation of the legal implications of possession might support various differing views. It would leave some unfortunate victims of circumstances who move innocently but rashly in shady surroundings and who carry packages or tablets for strangers or unreliable friends. But I think even they would have an opportunity of ventilating their story and in some cases, if innocent of any knowledge and bad motives, obtaining an acquittal. Some of the persons in some of the rather far-fetched circumstances which have been envisaged in argument would still be left in difficulties. But I do not think that Parliament intended to cater for them in its efforts to stop a serious evil.

[emphasis in original]

18 In *Tan Ah Tee and another v Public Prosecutor* [1979-1980] SLR(R) 311 ("*Tan Ah Tee*"), the second appellant claimed that she did not know that the contents of the plastic bag she was carrying were diamorphine. Her contention before the Court of Appeal ("CA") was that she had proved, on a balance of probabilities, that "she did not have possession under the Act of the contents of the plastic bag and did not know the nature of its contents" (at [18]). A major issue before the CA was the presumption of possession in s 16(1) of the Act (now s 18(1)). The court referred to the speech of Lord Pearce in *Warner* and concluded as follows at [25]-[26]:

25 In our opinion the word "possession" in the Act should be construed as that word has been construed by Lord Pearce and we would respectfully adopt his reasons as contained in his speech. There is, however, one qualification because of the statutory presumptions in the Act. Under our Act where a person is in possession of a bag or package which contains in fact a controlled drug it is presumed that he is in possession of and knows the nature of the controlled drug unlike in the United Kingdom where there is only a *prima facie* strong inference that he is in possession of its contents. Thus under our Act the burden rests on him to prove on a balance of probabilities that he was not in possession of and did not know the nature of the controlled drug which was contained in the package or bag.

26 For all these reasons the appeals of both appellants are dismissed.

19 It should be noted that the CA in *Tan Ah Tee* dealt only with the presumption of possession in s 18(1) of the Act. There was no discussion on the nature of the presumption in s 18(2) and *Tan Ah Tee* is not authority on this presumption. In *Tan Kiam Peng*, the CA discussed the interpretation of s 18(2). The court set out, at [80] and [81] of the grounds of decision, the two possibilities as to the nature of the knowledge that the accused is presumed to have, *viz*:

(a) the accused is presumed to have known that the drug concerned was a controlled drug ("the first interpretation"); or

(b) the accused is presumed to have known that the drug concerned was not only a controlled drug, but was the specific drug for which he was charged ("the second interpretation").

20 The CA noted that the decided cases supported the first interpretation, and made the following observations at [85]-[87] of the grounds of decision:

85 Let us, however, now turn to the *case law* which, as we shall see, supports the first interpretation - especially when viewed in *the context of the underlying policy of the Act itself*.

86 In this court's decision in *Fun Seong Cheng* … the following passage from Lord Pearce's judgment in *Warner* (… at 305) was cited … :

> One may, therefore, exclude from the 'possession' intended by the Act the physical control of articles which have been 'planted' on him without his knowledge. *But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that 'possession' implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities* ...

87 The above observations by Lord Pearce, cited and adopted by this court in *Fun Seong Cheng*, clearly *exclude* the need by the prosecution to prove that the accused knew of the *precise nature* of the drug; the prosecution need only prove that the accused knew that the drug is (in the Singapore context) a controlled drug. This would, in fact, be an appropriate juncture to emphasise that this basic approach was not only embodied within the quotation above but generally within *Warner* itself - a point which emerges from our analysis of *Warner* above … Indeed, the court in *Fun Seong Cheng* proceeded to point out … that *this* particular meaning of possession (enunciated by, *inter alia*, Lord Pearce in *Warner*) had in fact been adopted by this court as well in the earlier decision of *Tan Ah Tee …* see also the decision of this court in *Gulam bin Notan Mohd Shariff Jamalddin v PP* [1999] 1 SLR(R) 498 at [66]). *Tan Ah Tee* is, in fact, a seminal decision where the court cited, in addition to the observations quoted above, *in extenso* from the judgment of Lord Pearce in *Warner*. As we have already emphasised … to the extent that the court in *Warner* was dealing with the *general concept* of *possession*, then *that* approach (*adopted*, as we have just seen, in *Tan Ah Tee* as well as other Singapore decisions) clearly supports the view that s 18(2) *does* not refer to the *specific* drug in question but, rather, simply to controlled drugs generally. Indeed, Lord Pearce's views in *Warner* … find a similar expression in Lord Guest's observations in the same case, as follows (… at 301):

> If the correct interpretation of section 1 [of the 1964 UK Act] is that the prosecution are required to prove knowledge by the accused of the existence of the substance this will be, in my view, *a drug pedlar's charter in which a successful prosecution will be well-nigh impossible in the case of the trafficker who conceals the drugs and on questioning remains silent or at any rate refuses to disclose the origin of the drug. ... If, therefore, this is not an absolute offence the prosecution will, in my view, require to establish knowledge by the accused not only of possession of the actual substance but also knowledge of the nature of the substance, namely, that it is a prohibited drug under the Act. This would, in my view, lead to wide-scale evasion of the Act*.

Interestingly and perhaps even significantly, this particular approach towards the concept of possession has apparently been *retained in the UK context*, despite the presence of a quite different statutory regime to that which existed at the time *Warner* was decided: see, for example, the English Court of Appeal decisions of *McNamara* … at 251-252; *R v Gareth Edmund Lewis* (1988) 87 Cr App R 270 at 276 and *John A Leeson v R* [1999] EWCA Crim 2176 ("Leeson"); as well as the House of Lords decisions of *R v Boyesen* [1982] AC 768 at 773-774 and *Regina v Lambert* [2002] 2 AC 545, especially at [16], [56]-[59], [61]-[71], [120]-[123] and [126] (*cf* also s 28(3)(*a*) of the 1971 UK Act itself as well as *Fortson* … especially at paras 3-67-3-76) and Robert Ribeiro & John Perry, "Possession and Section 28 of the Misuse of Drugs Act 1971" [1979] Crim LR 90, especially at 100-101).

[emphasis in original]

21 However, the CA in *Tan Kiam Peng* also observed (at [84]) that simply looking at the ordinary meaning of the words "the nature of that drug" in s 18(2) of the Act, the second interpretation must prevail. Although the CA did not make a conclusive finding on the interpretation of s 18(2), it made clear that it preferred the second interpretation, *ie* that the accused must have knowledge of the nature of the drug. The CA said as follows at [90]-[93] and [95]:

> (*c*) *The second interpretation*
>
> 90 As already mentioned above, the key argument in favour of the second interpretation (that the reference to knowledge in s 18(2) of the Act is to knowledge that the drug concerned is *not only* a controlled drug *but is also* the *specific drug* which it turns out the accused was in possession of) is the *literal wording* of s 18(2) itself. However, as we have also seen, the literal wording of this provision is also (at least arguably) consistent with a *contrary* interpretation ... More importantly, we have also referred to the fact that the second interpretation would tend to *undermine* the general policy of the Act itself.
>
> 91 In summary, it would appear that there are fewer arguments that support the second interpretation. The fact that an accused charged under the Act might receive very harsh punishments is, *in and of itself*, not conclusive. However, it does not thereby follow that this particular fact is wholly irrelevant. What *is* of *direct* relevance for the purposes of the present issue is this: That where the possible punishments are harsh and may even result in the imposition of the death penalty, the fact that an *ambiguity in the statutory language* exists (thus giving rise to these two possible interpretations) does tend to suggest that the benefit of the doubt ought to be given to the accused in the light of the fact that adoption of the first interpretation would tend, on balance, to work against him or her … Indeed, the present appeal is precisely one such instance. In this regard, it is important to note that the very strict approach in *Warner*, albeit general in nature, was adopted in the context of punishments that were less harsh than those under the Act, and which certainly did not include the death penalty. In our view, this particular argument appears to be the strongest in so far as support for the second interpretation is concerned. Indeed, it might even be argued that there is no ambiguity in the statutory language and that the literal language is, instead and in addition to the argument just mentioned, the strongest argument in favour of the second interpretation. We also pause to observe that there has been, to the best of our knowledge, no local decision that has in fact adopted the first interpretation.
>
> (*d*) *Conclusion*
>
> 92 Unfortunately, no detailed argument with respect to which of these two interpretations was to be preferred was proffered by counsel before this court.
>
> 93 In the circumstances, we cannot - and ought not to - express a definitive conclusion. This being the case, and in fairness to the appellant, our analysis and decision will proceed on the footing that the second interpretation applies (which interpretation in fact constituted the nub of his argument before this court).
>
> ...
>
> 95 However, given the specific language of s 18(2) of the Act, the need (given the extreme penalties prescribed by the Act) to resolve any ambiguities in interpretation (if they exist) in favour of the accused, as well as the fact that no case has (to the best of our knowledge) adopted the first interpretation, it would appear, in our view, that (whilst not expressing a

conclusive view in the absence of detailed argument) the second interpretation appears to be the more persuasive one and … will in fact be adopted in the present appeal ...

[emphasis in original]

22 As is clear from the foregoing, the CA in *Tan Kiam Peng* declined to rule definitively on the interpretation of s 18(2) of the Act because counsel had not made detailed submissions on that issue. The CA proceeded on the basis that the second interpretation (*ie* that knowledge that the drug was the specific drug the subject matter of the charge) was the correct one and dismissed the appeal on the ground that the appellant had actual knowledge of the nature of the drug he was in possession of.

23 I observe that the CA in *Tan Kiam Peng* had held at [84], and reiterated at [90], that the ordinary meaning of the words in s 18(2) of the Act pointed to the second interpretation. In my opinion, this alone ought to have determined the issue. However the CA felt constrained by earlier decisions and by the view that the first interpretation is consistent with the general policy of the Act whereas the second would undermine it (see [85], [88] and [90] of *Tan Kiam Peng*). Unfortunately the CA did not proceed to consider what the underlying policy of the Act is in order to test this proposition. I will attempt to do so now.

24 The long title to the Act states that it is "for the control of dangerous or otherwise harmful drugs and substances and for purposes connected therewith". Part II of the Act establishes offences of trafficking, manufacture, import and export, possession and consumption of controlled drugs specified in the First Schedule. Part III contains rules of evidence pertaining to prosecutions under the Act, provisions pertaining to enforcement and forfeiture and sets out the punishments for various offences. There are several sections setting up presumptions, including s 18. Part IV deals with treatment and rehabilitation of drug addicts. Part V contains provisions empowering the taking of photographs of and body samples from persons under supervision. Part VI deals with the establishment of committees of inquiry for matters connected with discipline and other functions of any approved institution for rehabilitation of drug addicts. Considering the Act as a whole, and the parliamentary debates dealing with its enactment in 1973, it is clear that the Act was enacted to deal with the problem of narcotic drug abuse and addiction. It punishes persons not only for trafficking, but also for consumption of controlled drugs. It provides for incarceration for the purposes of rehabilitation of drug addicts. It would not be inaccurate to state that the general policy underlying the Act is that of reducing and even eradicating narcotic drug abuse in Singapore. The next question is whether taking the first interpretation or the second would further the policy or undermine it. There is no doubt that adopting the first interpretation would make it much easier for the prosecution to secure a conviction in cases where the presumption in s 18(2) of the Act is required to be invoked. But it is quite a different thing to say that making it easier for the prosecution to secure a conviction would promote the general policy of the Act whereas making it more difficult to do so would undermine it. Our system of criminal justice requires the prosecution to prove an accused person's guilt beyond reasonable doubt in order to secure a conviction. The presumption in s 18(2) of the Act shifts the burden of proof of knowledge to the accused person once the conditions therein are met. The legislature had decided where the line should be drawn in relation to that burden. If, as the CA in *Tan Kiam Peng* held, the ordinary meaning of the words in s 18(2) point to the second interpretation, then it is my respectful opinion that there cannot be room for any consideration as to whether this meaning "undermines the general policy" of the Act as Parliament had decided on this line as the appropriate balance between burden on the prosecution and on the accused.

25 Even if there is an ambiguity in s 18(2) of the Act, it should be noted that this is a criminal provision. The CA in *Tan Kiam Peng* stated at [91] that, as the punishments for offences under the

Act are harsh and even encompass the death penalty, any ambiguity in the statutory language ought to be resolved in favour of the accused. I would point out that this is a principle of statutory interpretation of great antiquity in the common law. In Francis Bennion, *Bennion on Statutory Interpretation* (LexisNexis, 5th Edition, 2008), the writer put it in the following manner at s 271, p 825:

> It is a principle of legal policy that a person should not be penalised except under clear law ... The court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which penalises a person where the legislator's intention to do so is doubtful, or penalises him or her in a way which was not made clear …

26 In *Tuck & Sons v Priester* (1887) 19 QBD 629, the plaintiffs entered into a contract with the defendant to make copies of a drawing which belonged to the plaintiffs. The plaintiffs subsequently registered their copyright. Without the consent of the plaintiffs, the defendant made additional copies in a foreign country with the intention of selling them for his own profit. An issue before the court was whether under the Fine Arts Copyright Act 1862 (25 & 26 Vict. c. 68) ("the Victorian Act") the defendant made copies of the work unlawfully and was therefore subjected to additional penalties pursuant to s 6 of the Victorian Act. Lord Esher MR held that (at 638):

> … We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections …

27 This decision was followed in *Teng Lang Khin v Public Prosecutor* [1994] 3 SLR(R) 1040, an appeal to the High Court from the Magistrate's Court. The appellant there was convicted under s 101(2) of the Road Traffic Act (Cap 276, 1985 Rev Ed) ("RTA") for causing a vehicle registered for private use to be used as a public service vehicle without there being in force a public service licence in respect of the vehicle. She had rented to customers cars registered for private use. At issue was what constituted a "public service vehicle" under the RTA. Section 2 of the RTA stated:

> 'public service vehicle' means a vehicle used or kept for use for the carriage of passengers for hire or reward, other than a vehicle constructed for use on fixed rails or specially prepared ways ...

Yong Pung How CJ ("Yong CJ") held, albeit "not without some reluctance", that the literal construction of s 2 of the RTA was that the cars hired out by the appellant did not constitute "public service vehicles" since they were hired out as self-drive cars and there was no evidence that they had been used for carriage of passengers for hire or reward. Yong CJ cited with approval the passage from *Tuck & Sons v Priester* reproduced above at [26] and also made the following statement (at [18]):

> ... in the present case the definition of "public service vehicle" in s 2 of the Road Traffic Act appeared to me to be quite clear. The deputy public prosecutor did not attempt to suggest that there might be some underlying ambiguity to s 2; and wisely so, for any suggestion that ambiguity existed would only have led to the alleged ambiguity being resolved in favour of the person otherwise liable under s 101(2) - in this case, the appellant. Indeed, in view of the draconian penalty prescribed in s 101(6) of forfeiture of an accused's vehicles, I would have had no hesitation in resolving any obscurity in favour of the appellant, unmeritorious though her

conduct might have been …

28 This rule has been attenuated in recent times and the courts adopt a more pragmatic purposive approach to statutory interpretation especially after the enactment of s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed). In *Public Prosecutor v Low Kok Heng* [2007] 4 SLR(R) 183, V K Rajah JA opined at [38]:

> 38 The modern local position on the construction of penal statutes is appositely summarised by Yong Pung How CJ in [*Forward Food Management Pte Ltd and another v Public Prosecutor* [2002] 1 SLR(R) 443] … at [26] in the following terms:
>
> > [T]he strict construction rule is only applied to ambiguous statutory provisions as a tool of last resort. The proper approach to be taken by a court construing a penal provision is to first consider if the literal and purposive interpretations of the provision leave the provision in ambiguity. It is only after these and other tools of ascertaining Parliament's intent have been exhausted, that the strict construction rule kicks in in the accused person's favour.
>
> To my mind, this is decidedly the most appropriate approach to adopt, particularly in the light of the principle of statutory construction of statutes endorsed by Parliament in the Interpretation Act (Cap 1, 2002 Rev Ed), as discussed below.
>
> ...

The general position in Singapore with respect to the construction of written law should be the same whether the provision is a penal or civil one. Purposive interpretation in accordance with s 9A(1) of the Interpretation Act is the paramount principle of interpretation even with respect to penal statutes; it is only in cases where penal provisions remain ambiguous notwithstanding all attempts at purposive interpretation that the strict construction rule applies.

29 However this rule is nevertheless germane in capital cases. In *Forward Food Management Pte Ltd and another v Public Prosecutor* [2002] 1 SLR(R) 443, Yong CJ said at [21]:

> To my mind, it was therefore important to consider the theoretical basis of the rule and its applicability in the modern legal environment, where courts are more disposed to applying the purposive approach to statutory interpretation. The origins of the strict construction rule can be found in capital cases where the courts construed ambiguous statutory provisions *in favorem vitae* as this was regarded as a form of fairness to the individual. According to Prof Andrew Ashworth, "Interpreting Criminal Statutes: A Crisis of Legality?" (1991) LQR 419 at 432, the principle was subsequently carried over into other areas of criminal law, probably because criminal proceedings were viewed as an unequal contest between the individual and the State. This seems to be supported by the *dicta* of Wilson J in *R v Paré* (1987) 60 CR (3d) 346 at 368. Furthermore, the editors of *Cross on Statutory Interpretation* (3rd Ed) opined, at p 173, that the application of this rule in earlier cases like *Rex v Harris, Balls, and Moses* (1835) 7 Car & P 416 was justified on humanitarian grounds because of the manifest injustice brought about by other interpretations of a statute. These, however, have been rendered unnecessary by the mitigation of the rigours of the criminal law. Moreover, courts have increasingly taken the view that an extreme slant in favour of the accused is not always desirable because it often defeats the purposes of the legislation and this in turn leads to some other form of injustice.

30 Therefore, if there is an ambiguity in s 18(2) of the Act, as the CA in *Tan Kiam Peng* put in at [91], "the benefit of the doubt ought to be given to the accused". There is a further reason for doing

so. Under s 18(1), an accused is presumed to have possession of the controlled drug if it is proved that he had possession of the keys to a place or premises or even a document intended for delivery. Under s 18(2), once this presumption of possession is operative, the presumption of knowledge is invoked. Section 18(2) therefore involves a presumption upon a presumption, a further reversal of the burden of proof from the prosecution to the accused. In my opinion, "the second interpretation" of s 18(2) that the CA in *Tan Kiam Peng* had considered (at [95] of their judgment) to be "the more persuasive" one must be the correct one in law.

My finding in relation to Somchit

31 From both her demeanour in the witness box and the consistency of her evidence, I found Somchit to be a witness of truth. Somchit gave evidence over almost three days. She came across as a person of average intelligence and displayed a level of street smart savvy that can be expected from her background. I had noted that throughout her testimony, she answered questions without hesitation and in a forthright manner. She admitted to every question put to her save on the issue of her knowledge that the drugs she was dealing with were heroin. Somchit had maintained this position right from the time of her arrest in the Bedok Condominium. There, W/ASP Tan had asked, through an interpreter, what Quek's customers bought from him. She said that it was the "white colour". To the follow-up question, she had said: "I do not know what is the white colour. 'Wan' only engage me to help him pack into smaller packets and he will pay me for the work." Somchit was then taken to CNB headquarters and questioned through the night. In the morning, at around 6.30am on 4 October 2008, Somchit was charged with trafficking heroin and that was when it was brought to her attention that she was facing a capital offence in relation to that drug. In her statement in response to the charge, she said that she knew that it was a controlled drug, but she did not know its effect nor the severity of the punishment. She said that Quek told her that if anything happened, she would not get into serious trouble; and at worst, she would be deported. It can be seen that her reactions in the hours after the shock of arrest, and when faced with a capital charge, are consistent with what she maintained in her defence. Over several months she gave a number of statements to the CNB. There were no significant inconsistencies there with her defence. Finally, the evidence given at the trial by Winai and Somchit herself were also consistent with her defence. I took into consideration Somchit's background. She had only completed primary school in Thailand and thereafter had gone to work, first as a masseuse before resorting to prostitution. Her life had been a constant struggle, and she stooped to the lowliest occupation a woman could take to support her sons and an extended family. Therefore when Quek rescued her from this life and not only placed her in comfortable surroundings, treated her well and provided for her family, but also professed his love for her and intention to marry her, it is not surprising that she trusted him and took his words literally. Having had the opportunity to observe her demeanour in the witness box, I found her evidence to be truthful.

32 For completeness, I will now deal with what the prosecution has submitted are the weaknesses in Somchit's defence.

33 The first point highlighted by the prosecution was that the circumstantial evidence, *ie* the money she received, the packing, Quek's method for consuming the drug *etc* points to the conclusion that Somchit knew that the seized drugs were diamorphine. However, given the nature of their relationship, I accepted Somchit's evidence that Quek would have given her money whether or not she helped him in his drug dealings. More importantly, Somchit had admitted that she knew that the substance was some kind of illegal drugs, and therefore it would not be surprising to her that there would be money in the operation.

34 The second point was that Somchit did not mention in her statements to the CNB that Quek told her the drug he dealt with was a "not serious drug"; on the contrary, she stated then that Quek

told her she did not need to know what the drug was. When cross-examined on this apparent omission from her statements to the CNB, Somchit stated that [note: 12]:

> My understanding at that time was not serious of my doing and not serious about the drug that he sell. That is why I thought --- I never think of the words "serious drug".

In my view, Somchit's evidence to this court was consistent with her statements to the CNB. Firstly it must be emphasised that s 122(6) of the CPC does not require the accused person to minutely detail the defence he will be relying on at the trial: see *Roshdi v Public Prosecutor* [1994] 3 SLR(R) 1 at [21]. More importantly, I found that although Somchit did not state specifically that Quek told her the drugs were "not serious", her statements had in fact alluded to it. As noted above, from the moment she was arrested, Somchit had denied knowledge of the nature of the seized drugs. In her cautioned statement, she stated that she did not know the effect of the drug or the severity of the penalty. I noted that Somchit's statement to the CNB was slightly different from her evidence in trial, *ie* in her cautioned statement, she denied knowledge of the severity of *the penalty*, and not *the drug* itself. However in the context, I was of the view that the two are connected. Taking into account Somchit's background, I found that it was reasonable that when laying out the material aspect of her defences in her statement, she did not appreciate the difference. I therefore found her cautioned statement to be consistent with her evidence at trial, and that by stating that Quek told her that the worst that would happen would be for her to be sent back to Thailand, Somchit alluded to the fact that Quek told her that the drugs he dealt with were "not serious". The prosecution submitted that the reason why Somchit thought that the worst that would happen to her was being sent back to Thailand was because Quek told her that he would admit that all the drugs belonged to him. While that is a plausible interpretation, in my view, it was necessary to consider her evidence in its totality. Again, here I noted the consistency of her statements and her defence at trial.

35 The third point raised was that when Somchit learnt that Quek was dealing with drugs, and Winai asked her if she was scared, she said she was [note: 13]. In Somchit's statements to the CNB, she stated the following:

> 23 ... When I came to know that the white substance is drugs, I did inform [Winai] that what he is carrying is drugs. I told him to finish up his visa make some money for the time being and go back to Thailand when his visa expired. [note: 14]
>
> ...
>
> 44 With regards to paragraph 23 of my statement, I said that I had told [Winai] that he was carrying drugs. I decided to tell him as I wanted to let him make his own decision as to whether to continue working or to stop, and I will respect his decision. He was surprised when I told him that he was carrying drugs, but he was not angry. [Winai] did ask me if they are really drugs, and I replied that I think so. He then told me to let him continue working till his visa expired and he will go back. He told [me] that at least he can have some money to return home. He also told me to go back together with him as he was worried about me. I had intended to go back with him and not return to Singapore anymore. He also asked me if I was scared and I said I was. When he said scared, he meant how are our families to survive if something happened to us. [note: 15]

As for what would happen to her, Somchit agreed with the prosecution that she thought she may be imprisoned [note: 16]. Thus, she wanted to go back to Thailand when her visa expired. The prosecution submitted that these suggested that she knew the seriousness of the drugs Quek dealt with. Somchit testified that she had two conversations with Winai. The first conversation took place

after she first found out that Quek dealt with drugs when he brought the drugs to the Bedok Condominium. Somchit called Winai to inform him that Quek dealt with drugs and that Winai and her should return to Thailand after their visa ended [note: 17]. It was during this conversation with Winai where Somchit expressed that she was "scared" [note: 18]. The second conversation with Winai, where Somchit told Winai that at the very most, they would be sent back to Thailand, took place subsequently after she began to help Quek with the packing *ie* after Quek had told her that the drugs were not serious. [note: 19] Thus, the defence submitted that although Somchit was initially "scared", her fears were removed when Quek represented to her that the drugs were "not serious", and she therefore decided to help him as well as extend her visa. I accepted Somchit's explanation as to the apparent inconsistency in her evidence. In my view, it was consistent with her explanation as to why she chose to extend her visa although she initially stated that she wanted to return to Thailand with Winai after their visas were expired. I also noted that para 44 of Somchit's statement (see above at [35]) related to the events which took place after the first time she saw Quek bringing the drugs back to the Bedok Condominium.

36 The fourth point was that even if Somchit did not have *actual knowledge* as to the nature of the drugs, she was at least wilfully blind as to its nature. As for what amounted to "wilful blindness", the prosecution relied on the CA's decision in *Tan Kiam Peng*, which states the following:

> 104 ... The proof of an actual situation of actual knowledge is, in the circumstances, going to be equally rare. This is a *fortiori* the case in so far as offences under the Act are concerned. Accused persons are hardly likely to admit to possessing actual knowledge and can (indeed, will) easily disavow such knowledge even if it existed, given the surreptitious nature inherent in drug offences as well as the draconian penalties that are imposed on conviction. In any event, as we have already noted, wilful blindness has, in any event, always been treated, in law, as *actual* knowledge. In this regard, Yong CJ, in *Koo Pui Fong*, observed that the "concept of wilful blindness does not introduce a new state of mind to that of knowing" and that "[i]t is simply a reformulation of actual knowledge" … the learned Chief Justice then proceeded to observe as follows …:
>
> > It seems to me that it is wholly in keeping with common sense and the law to say that an accused knew of certain facts if he deliberately closed his eyes to the circumstances, his wilful blindness being evidence from which knowledge may be inferred. Thus I fully agree with the following passage of Lord Bridge in *Westminster City Council v Croyalgrange Ltd* (1986) 83 Cr App R 155 at 164:
> >
> > > ... it is always open to the tribunal of fact, when knowledge on the part of a defendant is required to be proved, to base a finding of knowledge on evidence that the defendant had deliberately shut his eyes to the obvious or refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed.
>
> [emphasis in original]

37 It should also be observed that the CA distinguished between *wilful blindness* and *constructive knowledge* in the following manner:

> 116 In *Roper* … although the court arrived at its decision on a comparatively narrow ground to the effect that the court below had taken into account inadmissible evidence and that the defendants' appeal had therefore to be allowed, Devlin J (as he then was) nevertheless proceeded to make the very pertinent observations, which merit quotation in full, as follows (at

288-289):

> There are, I think, three degrees of knowledge which it may be relevant to consider in case[es] of this kind. The *first* is *actual* knowledge, which the justices may find because they infer it from the nature of the act done, for no man can prove the state of another man'[s] mind; and they may find it even if the defendant gives evidence to the contrary. They may say, "We do not believe him; we think that that was his state of mind." They may feel that the evidence falls short of that, and if they do they have then to consider what might be described as knowledge of the *second* degree; *whether the defendant was, as it has been called, shutting his eyes to an obvious means of knowledge*. Various expressions have been used to describe that state of mind. I do not think it necessary to look further, certainly not in cases of this type, than the phrase which Lord Hewart, C.J., used in a case under this section, *Evans v. Dell* ((1937) 53 *The Times* L.R. 310), where he said (at p. 313): "... the respondent deliberately refrained from making inquiries the results of which he might not care to have."
>
> The *third* kind of knowledge is what is generally known in the law as *constructive* knowledge: *it is what is encompassed by the words "ought to have known" in the phrase "knew or ought to have known". It does not mean actual knowledge at all*; it means that the defendant had in effect the means of knowledge. When, therefore, the case of the prosecution is that the defendant fails to make what they think were reasonable inquiries it is, I think, incumbent on them to make it plain which of the two things they are saying. *There is a vast distinction between a state of mind which consists of deliberately refraining from making inquiries, the result of which the person does not care to have, and a state of mind which is merely neglecting to make such inquiries as a reasonable and prudent person would make*. If that distinction is kept well in mind I think that justices will have less difficulty than this case appears to show they have had in determining what is the true position. *The case of shutting [the] eyes is actual knowledge in the eyes of the law; the case of merely neglecting to make inquiries is not knowledge at all - it comes within the legal conception of constructive knowledge, a conception which, generally speaking, has no place in the criminal law*.

[emphasis in original]

The above observations - quoted at length because, as we shall see below, of their signal importance - are instructive. Although the learned judge spoke of "three degrees of knowledge", there are, in point of fact, only *two distinct categories*, *viz*, actual knowledge and constructive knowledge, respectively. The former, however, comprises two sub-categories - first, actual knowledge in (for want of a better way of putting it) an actual sense and, secondly, actual knowledge in the form of *wilful blindness*. And, as Devlin J aptly put it, the other main category of knowledge, *viz*, constructive knowledge "has no place in the criminal law". However, as we shall see below at [38] (especially at [133] of *Tan Kiam Peng*), the line between actual and constructive knowledge is not always that clear, owing to the very factual nature of the inquiry.

38 The CA went on to state the general principles relating to the concept of wilful blindness:

> 123 The first is that wilful blindness is treated, in law, as being the *equivalent* of *actual* knowledge ...
>
> 124 What is clear from the above observations is that the accused is under no legal obligation not to turn a blind eye. However, if he does in fact turn a blind eye, that could, on the facts, be

taken to be wilful blindness on his part. If so, this would be tantamount to actual knowledge in law, and the accused would have failed to have rebutted the presumption of knowledge under s 18(2) of the Act ...

125 The second central principle is that *suspicion is* legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding *and* the accused deliberately decides to turn a blind eye ... What is of vital significance, in our view, is the substance of the matter which (in turn) depends heavily upon the *precise facts* before the court. It is equally important to note that in order for wilful blindness to be established, the appropriate level of suspicion (as just discussed) is a necessary, but not sufficient, condition, inasmuch as that level of suspicion *must then lead to a refusal to investigate further*, thus resulting in "blind eye knowledge" (see also the second quotation from the article by Wasik & Thompson at [127] below).

126 That having been said, the requirement of *suspicion* is nevertheless a vital (and, indeed, threshold) one. So, for example, if the accused makes merely token inquiries because he suspects that making more substantive inquiries might lead him to the truth which he does not want to know, that is wilful blindness. If the factual matrix was such that the accused ought to have been suspicious, the court must then consider the accused's reasons for not making further inquiries. We will come to this point below but it suffices to state at this juncture that a court would be well justified in thinking that the reason why an accused refused to make further inquiries may be because he or she was virtually certain that if further inquiries were made, his or her suspicions would be confirmed ...

127 We would venture to state a third central principle... is imperative, in order to avoid any unnecessary confusion, that we emphasise, once again, that wilful blindness is a combination of suspicion *coupled with* a *deliberate* decision not to make further inquiries, whereas the recklessness that has been referred to by Prof Williams refers to recklessness in terms of the accused's conduct in the context of circumstances *which would not otherwise have aroused suspicion* on the part of the accused …

128 Finally, a fourth central principle is that whether or not a presumption (here, of knowledge) under the Act is *rebutted* (on a balance of probabilities … depends, in the final analysis, on *the precise factual matrix* concerned ...

129 Indeed, in the context of the doctrine of wilful blindness, while some illustrations may be helpful, it is nevertheless imperative to note that, owing to the intensely factual nature of the inquiry, they cannot be representative, let alone comprehensive. Generally speaking, if an accused has had his or her suspicions aroused in the manner set out at [125] above, the accused can still rebut the relevant presumption under s 18 of the Act by demonstrating that he or she took reasonable steps to investigate by making further inquiries that were appropriate to the circumstances ... However, to the extent that the Judge later suggests that it would be wrong to convict accused persons *solely* on the basis that they had failed to make proper inquiries … we would respectfully disagree with such a suggestion ... Wilful blindness *cannot* be equated with virtual certainty for, as already explained above, this would be to equate wilful blindness with actual knowledge in its purest form. The result would be to erase the doctrine of wilful blindness from the legal landscape altogether ...

130 Situations such as that which exists on the facts of the present appeal underscore this point since the accused already knows that he or she is carrying controlled drugs and surely cannot rely *merely* on the fact that he or she had asked for assurances that the controlled drugs

concerned were not of a nature which carried the death penalty. If the accused chooses to take an enormous (indeed, deadly) risk and proceed without establishing the true nature of the drugs he or she is carrying, that constitutes, in our view, wilful blindness ...

…

132 However, as we have emphasised, the possible factual scenarios are far too many to admit of blanket propositions and, hence, the decision of the court in a given case will have to depend on the precise facts, the evidence adduced as well as the credibility of the witnesses themselves (not least the accused) (this was also, as we have seen in the preceding paragraph, the apparent position ultimately adopted by the Judge in the court below). To reiterate an obvious (but important) example, where the accused has had the controlled drugs slipped into a bag without his or her knowledge, it is clear that no offence under the Act would have been committed (see, once again, the passage by Lord Parker CJ in *Lockyer v Gibb* …). Where, to take another example, the accused is asked by a close family member to carry a box containing controlled drugs on the understanding that the box (wrapped up, say, in ribbons) contains a cake which is to be delivered to another close relative, there might be a strong case for arguing that the accused could not be said to be wilfully blind because the circumstances ought not to have aroused his or her suspicions, let alone entailed further investigation. Again, however, much would (to reiterate an extremely important point) depend on the precise facts, evidence as well as credibility of the witnesses (especially the accused).

133 Given our views on actual knowledge as well as wilful blindness (which is, in law, a form of actual knowledge), it is unnecessary, in our view, to consider other forms of knowledge. In particular, and here we agree with the Judge, it i s *inappropriate* to include *constructive* knowledge as falling within the ambit of s 18(2) of the Act. However, given the objective approach that this (indeed, any) court must adopt *as well as* the very factual nature of the inquiry itself, we should emphasise that *there might be occasions when the line between actual and constructive knowledge might be blurred* (this may particularly be the case in so far as (in the nature of things) the application of the doctrine of wilful blindness is concerned). Indeed, as Scott LJ (as he then was) perceptively observed in the English Court of Appeal decision of *Polly Peck International plc v Nadir (No 2)* [1992] 4 All ER 769 (at 777):

> The various categories of mental state identified in *Baden's* case are not rigid categories with clear and precise boundaries. *One category may merge imperceptibly into another*.

[emphasis in original]

39 It is clear that the CA considered wilful blindness to be the *legal* but not *actual* equivalent to actual knowledge. In any case, I was of the view that Somchit was not wilfully blind as to the nature of the drug. I noted that Somchit had asked Quek what the drug was, to which he replied that it was a "not serious" drug. I further noted that Somchit had testified that, had Quek told her that the drugs were medicinal, or not illegal, she would not have believed him. This showed that Somchit was not blindly willing to accept anything Quek said – she had considered his representations, and given the nature of their relationship, I found that Somchit had a *genuine belief* that the drugs she dealt with were "not serious". This was therefore different from a situation where there was "suspicion *coupled with* a *deliberate* decision not to make further inquiries" (see [127] of *Tan Kiam Peng*). I found that although Somchit was initially suspicious of the nature of the drugs Quek dealt with, her suspicions were allayed when Quek told her that the drugs were "not serious". The decision not to make further inquiries was therefore a result of her trust in Quek (along with her reasonable belief that Quek had no reason to lie to her since he had already readily admitted to her that the white substance was an

illegal drug), and not a refusal to investigate further to avoid her suspicions being confirmed.

40 In view of the foregoing, I believed Somchit's defence that she believed that the drug was a "not serious drug" and therefore found that Somchit had succeeded in proving, on a balance of probability, that she did not know the nature of the drug the subject of the charge against her. I therefore acquitted her of the charge.

41 However, as Somchit had intended to traffic in a "not serious drug", and the evidence supported it, I exercised my power under s 175(2) of the CPC and convicted Somchit of the following charge:

> That you, Phuthita Somchit, on or about the 3rd day of October 2008 in Singapore, did attempt to traffic in a controlled drug under Class C of the First Schedule to the Misuse of Drugs Act (Cap 185) ("the Act"), without any authorisation under the Act or the Regulations made thereunder, to wit, by having in your possession of not less than 62.14 grams of diamorphine at Block 21 Bedok Reservoir View #01-02, Aquarius by the Park, Singapore, which you believed was a controlled drug as defined in section 2 of the Act, for the purpose of trafficking, an offence under section 5(1)(a) read with section 5(2) and section 12 of the Act, and you have thereby committed an offence punishable under section 33 of the Act.

42 In my view, although Somchit admitted to an intention to traffic a "not serious drug", it could not be proven beyond a reasonable doubt that the "not serious drug" she intended to traffic was a Class A or Class B drug. However, since Somchit admitted to her intentions and her knowledge that the white substance was an illegal drug, I found that she must have intended, at the very least, to traffic a Class C drug.

43 After hearing counsel's submissions on sentencing, I sentenced Somchit to 9 years' imprisonment, for the reason that Somchit had participated in the offence over a period of a month and was actively involved in packing the drugs, taking orders and had not only recruited Winai for the operation but had also directed him in conducting it.

The case for and against Quek

Evidence against Quek

44 I now turn to the evidence against Quek. Quek was arrested on 3 October 2008 at about 7.45pm. At about 8.45pm, CNB officers raided the Bedok Condominium using keys that had been found on Quek's person. As noted above, the seized drugs were found in the Bedok Condominium (also see SAF above at [2]).

45 Quek made the following statements to the CNB, which were admitted into evidence:

(a) Contemporaneous statement taken on the 3 October 2008 at 2140h:

Q: Whose heroin are those in the cupboard belonged to?

A: Mine

...

Q: There is any box containing heroin in the hall next to the television. Whose heroin are those

belonged to?

A: Mine

(b) Cautioned statement taken on 4 October 2008 at 0646h:

All these things belong to me. It has nothing to do with the rest. They are only staying at my place. The things are referring to drugs.

(c) Statement recorded on 8 October 2008 at 1450h:

30 ... I am now shown another photo of [a "Nokia" box] and 3 plastic packets containing smaller packets of white granular substance ... I recognize that the white substance is heroin and I think they belong to me ...

31 I am now shown a photo of a white bag and the contents inside and told that the bag was found inside the cupboard in the store ... I recognize the bag and I wish to say that it belongs to me ...

32 There is a yellow plastic bag in the white bag. In the yellow plastic bag, I am told that there is a plastic box containing 11 packets, 1 big packet and 1 packet containing 5 packets of granular substance. I wish to say they are heroin. I wish to say that out of the 11 packets of heroin, some are meant for selling while some are meant for own consumption ...

33 ... In the white bag, there is a paper carton box. Inside the paper box, I am told there are 2 packets of granular substance and 17 plastic packets each containing 5 packets of granular substance. These are all heroin and I wish to say that these heroin are meant for sale ...

46 The Bedok Condominium was tenanted to one "Lim Chay Yong", who was in fact Quek (Quek also stated in his statement recorded on 7 October 2008 that at the time of his arrest, he was staying at a Bedok Condominium which he rented). By virtue of s 18(1)(c) of the Act, Quek was presumed to have the seized drugs in possession. In any case, it was not necessary to rely on the presumption under s 18(1)(c). Quek admitted in his statements that the drugs belonged to him. By virtue of s 18(2), Quek would be presumed to have known the nature of the drugs. However, again it was unnecessary to rely on this presumption. It was clear from his statements that Quek knew that the drugs were heroin. Likewise, from his statements, Quek's intention to traffic the drugs was apparent.

47 The evidence against Quek was corroborated by both Somchit and Winai. Somchit testified that she resided in the Bedok Condominium with Quek [note: 20]. Somchit also testified that it was Quek who procured the seized drugs [note: 21] and that she had packed the drugs found in the Nokia Box for Quek's customers [note: 22]. Likewise, Winai testified that Quek had instructed him to deliver white substances to customers. [note: 23]

My finding in relation to Quek

48 Quek elected to remain silent upon his defence being called and did not call any witness to give evidence on his behalf. Evidence of possession and knowledge by prosecution witnesses and Somchit were not disputed by Quek's counsel in cross-examination. From the evidence of the events from the time of Quek's arrest to the search in the Bedok Condominium, I found that there was sufficient

evidence to prove beyond reasonable doubt that Quek had possession and knowledge. Counsel for Quek submitted that there was no evidence before the court that showed that Quek had possession of the drugs the subject of the charge for the purpose of trafficking. Counsel argued that while there was evidence that Quek had sold drugs in earlier transactions, those drugs were not the subject of the charge. I did not agree with this submission for two reasons. Firstly, the presumption of trafficking in s 17 of the Act was available to the prosecution as the amount in question, 62.14 grams of diamorphine, was more than the threshold of 2 grams under that provision. Secondly and more importantly, Quek had packed the drugs in question for the purpose of selling them. The drugs in question were his stocks in his continuing narcotic drug retailing operation. There was therefore ample basis for finding that Quek had intended to traffic the drugs the subject of the charge.

49 However, in view of my finding that Somchit did not have knowledge, I exercised my power under s 163(1) of the CPC to amend the charge against Quek to the following:

> That you, Quek Hock Lye, on or about the 3rd day of October 2008 in Singapore, together with one Winai Phutthaphan, were parties to a criminal conspiracy, and in such capacity, agreed and engaged with one another to do an illegal act, namely, to traffic in diamorphine, a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act (Cap 185) ("the Act"), without any authorisation under the Act or the Regulations made thereunder, whereby you were in possession of not less than 62.14 grams of diamorphine at Block 21 Bedok Reservoir View #01-02, Aquarius by the Park, Singapore, for the purpose of trafficking in pursuance of the said conspiracy, an offence under section 5(1)(a) read with section 5(2) of the Act, and you have thereby committed an offence punishable under section 120B of the Penal Code (Cap 224) read with sections 12 and 33 of the Act.

50 Pursuant to s 163(2) of the CPC, this altered charge was read and explained to Quek. Pursuant to s 164(1), Quek was called upon to plead thereto and to state whether he was ready to be tried on the altered charge. He claimed trial and stated that he was ready to be tried on the altered charge. Pursuant to s 167 of the CPC, I invited Quek and the prosecution to state whether they wished to recall or re-summon and examine with reference to the altered charge any witness who may have been examined. Both responded that they did not require to recall any witness. I asked Quek if he wished to call any new witnesses and whether he wished to give evidence in relation to the altered charge and he replied to both in the negative. I was of the view that, as there was no material difference between the altered charge and the original charge that would require recalling any witness or calling any new witness, the trial on the altered charge could proceed without any prejudice to Quek.

51 I proceeded to examine the evidence against Quek on the altered charge and upon evaluating all the evidence in the trial and submissions of counsel, I found that the evidence was sufficient to prove beyond reasonable doubt his guilt in relation to the altered charge, convicted him and sentenced him to death, which is the mandatory punishment under the charge.

[note: 1] NE Day 12 pp 34-43

[note: 2] NE Day 12 pp 3-5, 14-16, 24-25

[note: 3] NE Day 12 pp 7-8

[note: 4] NE Day 12 pp 26 - 33

[note: 5] NE Day 12 pp 33, 51

[note: 6] NE Day 12 pp 50-51

[note: 7] NE Day 12 p 52

[note: 8] NE Day 4 p 71; Day 5 p 37

[note: 9] D1

[note: 10] NE Day 3 pp 10–12

[note: 11] NE Day 6 pp 51-56

[note: 12] NE Day 13 p 57

[note: 13] NE Day 14 pp 11-12

[note: 14] Statement recorded 7 October 2008 at 2.45pm

[note: 15] Statement recorded 16 January 2009 at 10.00am

[note: 16] NE Day 14 p 12

[note: 17] NE Day 12 pp 29-30

[note: 18] NE Day 14, p 49

[note: 19] NE Day 12 pp 46-47

[note: 20] NE Day 12 p 24

[note: 21] NE Day 13 p 19

[note: 22] NE Day 13 p 30

[note: 23] NE Day 4 p 55

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