IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 227

Criminal Case No 52 of 2015

Between

Public Prosecutor

And

Pham Duyen Quyen

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Importation of controlled drugs]

[Criminal procedure and sentencing] — [Sentencing] — [Importation of controlled drugs]

Public Prosecutor
v
Pham Duyen Quyen

[2016] SGHC 227

High Court — Criminal Case No 52 of 2015
Lee Seiu Kin J
3, 5, 6, 11, 12, 18 November 2015; 17, 18, 19 February; 27 May; 8 August 2016

17 October 2016

Lee Seiu Kin J

1 The accused is Pham Duyen Quyen ("Pham"), a 24-year-old Vietnamese woman. She faced the following charge under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"):

> That you, **PHAM DUYEN QUYEN**, on 23 August 2013 at or about 8.20 a.m., at Arrival Hall of Terminal 3, Singapore Changi Airport (Airport Boulevard, Singapore), did import a Class A controlled drug specified in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev. Ed) ("the Act"), *to wit*, two (02) bundles containing crystalline substances which were pulverised and homogenised into a powdery substance which was analysed and found to contain not less than 249.99 grams of Methamphetamine, without any authorization under the said Act or the Regulations made thereunder and you have thereby committed an offence under section 7 and punishable under sections [*sic*] 33(1) of the said Act.

2 The trial was held over nine days in November 2015 and February 2016. On 27 May 2016, after hearing submissions from counsel, I found Pham guilty of the charge. On 8 August 2016, after hearing further submissions from counsel, I sentenced Pham to 24 years' imprisonment from the date of her arrest on 23 August 2013. On 18 August 2016, Pham filed a notice of appeal against her conviction and sentence. I now give the grounds of my decision.

The Prosecution's evidence

3 At about 8.20am on 23 August 2013, Sergeant Muhammad Azim Bin Missuan ("Sgt Azim") of the Central Narcotics Bureau ("CNB") noticed an unclaimed suitcase ("the Suitcase") at belt 47 of the arrival hall in terminal 3 of Changi Airport. He examined the luggage tag ("the Luggage Tag") and saw the words "SQ339403" and "Pham/Duyenquyen MS" printed on it. The Luggage Tag was produced in court and marked as exhibit P80". This aroused his suspicion and he decided to monitor the Suitcase. He told Woman Staff Sergeant Wang Jingyi Dawn ("W/SSgt Dawn") and Corporal Ahmad Badawi Bin Abubakar Bagarib ("Cpl Badawi") about the unclaimed luggage and gave them the name printed on the Luggage Tag. W/SSgt Dawn proceeded to trace the owner of the Suitcase.

4 At around 8.35am, the Suitcase was retrieved from belt 47 by Victoriano Pena Baterisna ("Baterisna"), a customer service officer with the Singapore Airport Terminal Services. Upon Sgt Azim and Cpl Badawi's query, Baterisna advised that he had to transfer all unclaimed luggage to the "odd-sized" luggage area located between belts 45 and 46. Baterisna proceeded to transfer the Suitcase to that location. When the Suitcase was still not claimed by 9.00am, Sgt Azim and Cpl Badawi brought it to the X-ray area

for screening. This was done by Immigration & Checkpoints Authority ("ICA") Checkpoint Inspector (1) Abdul Rahim Bin Mohamed Noor, who noted anomalies of orange-greenish images at the long side panels of the Suitcase.

5 Around 11.15am, W/SSgt Dawn located Pham at transfer counter E in terminal 2 of Changi Airport. Together with other CNB officers, W/SSgt Dawn escorted Pham to the ICA holding room ("the ICA Holding Room") located at the north wing of the arrival hall in terminal 3 of Changi Airport. At about the same time, Sgt Azim, Cpl Badawi and Station Inspector Tor Kok Hwee Daniel ("SI Daniel") brought the Suitcase to the ICA Holding Room.

6 Inside the ICA Holding Room, Pham confirmed in Mandarin that the Suitcase and its contents belonged to her. At about 11.45am, in the presence of Pham, SI Daniel, who was wearing a pair of gloves, emptied the Suitcase of its contents. SI Daniel then unzipped the lining at the bottom of the Suitcase, revealing its skeletal structure. Based on the location of the anomalies from the X-ray screening of the Suitcase, SI Daniel, with Cpl Badawi's assistance, pried open the metal casing attached to the left long side panel and found an aluminium sheathed bundle sandwiched between two wooden planks. SI Daniel made a small incision in the bundle and scooped out a sample of its contents. It was a white crystalline substance. When queried in Mandarin by SI Daniel if she knew about the hidden crystalline substance, Pham shook her head. SI Daniel then tested the crystalline substance using a "TruNarc" device, which showed that it was Methamphetamine.

7 Staff Sergeant Ridzwan Dino Bin Mustaffa ("SSgt Dino") and Cpl Badawi then pried open the long left side panel of the luggage with some tools

and retrieved the aluminium sheathed bundle sandwiched between two wooden planks. This bundle was later marked as exhibit "A1A1". Station Inspector Hisham Bin Sulaiman, SSgt Dino and Cpl Badawi then pried open the long right side panel of the luggage and retrieved another aluminium sheathed bundle sandwiched between two wooden planks. This bundle was later marked exhibit "A1B1". Both bundles (collectively, "the Drug Exhibits") were handed to Sgt Azim for custody and safe-keeping. Sgt Azim continued to have custody of the Drug Exhibits until he subsequently handed them over to the Investigation Officer, Inspector Nicholas Quah Chee Fook ("IO Quah") at the CNB Headquarters at Police Cantonment Complex.

8 W/SSgt Dawn and SI Daniel were with Pham in the ICA Holding Room when the Drug Exhibits were retrieved from the long side panels of the Suitcase. They testified that Pham was calm as the Drug Exhibits were recovered.

9 The Drug Exhibits were subsequently examined by the Health Sciences Authority and found to contain 3,037g of Methamphetamine out of a gross weight of 5,375g. IO Quah testified that the street value of the Drug Exhibits was S$1.25m.

10 As I found that the Prosecution had made out a *prima facie* case against Pham, I called upon her to give evidence in her defence. Pham elected to give evidence in Vietnamese. She was the sole defence witness.

Pham's evidence

11 Pham's position was that she was unaware of the presence of the Drug Exhibits in the Suitcase. It was only when the CNB officers took them out of

the Suitcase in the ICA Holding Room that she first knew of their existence. She gave the following account of the events leading to her arrival in Singapore.

12 Pham testified that she had worked in a shoe factory in Ho Chi Minh City for seven years during which she earned about US$300 a month. However she was laid off when the factory folded in June 2012. She then worked in another company but left after a month as she found the job unsuitable. After that, she travelled to Cambodia to stay with a close friend called Heo, who lived in a house with two other women. While she lived there, Pham took care of the housework and cooking. Heo gave Pham US$30 to US$50 for daily expenses while the other housemates also gave her money now and then. In this manner, Pham lived in Cambodia for almost a year.

First trip to New Delhi in December 2012

13 On 19 December 2012, Pham travelled to New Delhi, India for the first time. She had seen on the Internet articles stating that the world was going to end on 21 December 2012 and she wanted to visit India before this. On this first trip to New Delhi, Pham met an Indian man ("the Indian Man") who worked in a telephone shop. She had bought a SIM card from him and he had helped her with the documentation for the SIM card. Pham testified that she took a fancy to him. Pham said that he had told her his name but she was unable to remember it. Pham was also not able to recall the name of the telephone shop.

Second trip to New Delhi in August 2013

14 Pham testified that sometime around end-July or early-August 2013, she decided to travel to India for a second time. She said that this was meant to be an early birthday celebration and she also wanted to meet the Indian Man again. She wanted to see if they were fated to be together.

15 Pham arrived in New Delhi on 16 August 2013. She made her way to a guest house called Sonu Guest House by taxi, having shown the driver the guest house card that she had taken during the previous trip. Pham testified that she visited the Indian Man about four times. Pham purchased a number of items from him at the telephone shop. These included a camera, a pair of earphones and a camera battery. The telephone shop was within walking distance of Sonu Guest House. During the trial, Pham marked on a map its location in relation to Sonu Guest House. Pham had used her savings to fund her second trip to New Delhi in August 2013.

16 Pham said that she brought two handphones to New Delhi, a Nokia E83 handphone ("the Nokia handphone") and a Samsung Galaxy handphone ("the Samsung handphone"). She said that she sold the Samsung handphone in New Delhi.

Change of flight

17 Pham testified that her original intention was to fly back to Vietnam from New Delhi in order to commemorate the anniversary of her grandmother's death which fell on 6 September 2013. However, while in New Delhi, Pham decided to visit temples in Vientiane and to collect her belongings from Cambodia before returning to Ho Chi Minh City. She

contacted a friend called Lun and sought his help to change her flight to travel from New Delhi to Vientiane. Lun managed to get her a ticket to Vientiane via Singapore. Pham was booked on Singapore Airlines flight SQ407 which was scheduled to depart New Delhi for Singapore on 22 August 2013 at 11.25pm. She would then fly by Lao Airlines flight QV536 to Vientiane departing Singapore on 23 August 2013 at 1.20pm. From Vientiane, she was booked to fly to Ho Chi Minh City on 30 August 2013 on Vietnam Airlines flight VN921.

The Suitcase

18 On 22 August 2013, at around 5.00pm, Pham left Sonu Guest House for the airport in a "tuk-tuk", a local taxi. On the way to the New Delhi airport, she realised that the strap of her backpack was broken. She decided to purchase another bag. Using hand gestures, she asked the driver to help her find a place to buy the bag. He brought her to a place with shops that sold bags and clothes. Pham looked in two or three shops and, at one of them, selected the Suitcase, and purchased it for US$39. She then transferred her belongings into the Suitcase and eventually continued her journey to the airport.

19 Pham said that she had examined the Suitcase prior to paying for it. She checked the handle by pulling at it. She tested the wheels by pushing the Suitcase forward and backward. She unzipped it and checked the inside.

20 At the airport in New Delhi, Pham made a make-shift lock for the Suitcase using a rubber band and a cotton bud. She then checked in the Suitcase and was issued a luggage claim ticket ("the Luggage Claim Ticket") which was produced in court and marked as exhibit "P94". She subsequently

boarded flight SQ407 for Singapore and landed at Changi Airport at around 7.40am on 23 August 2013.

The arrest

21 Pham said that she was under the impression that the Suitcase would be checked through to Vientiane. Since it was too early to check in for her transfer flight to Vientiane, Pham went for breakfast and after that, she walked around the terminal. Around 11.00am, Pham went to transfer counter E where she was subsequently approached by W/SSgt Dawn and escorted to the ICA Holding Room.

My findings

Were the Drug Exhibits in the Suitcase at New Delhi?

22 There was no direct evidence that at the time Pham checked in at the New Delhi airport, the Drug Exhibits were in the Suitcase. Pham's counsel, Mr Anand Nalachandran ("Mr Nalachandran"), raised the possibility that the Drug Exhibits could have been put in the Suitcase after it was checked in at New Delhi, whether done there before take-off or in Singapore after landing. However, the Luggage Tag (Exhibit "P80") as well as the Luggage Claim Ticket (Exhibit "P94") both showed the check-in weight to be 21kg. IO Quah testified that he had weighed the entire contents of the Suitcase and found it to be 20.7kg. This was within the margin of error that would be expected in two weighing operations. I should add that the gross weight of the Drug Exhibits was almost 5.4kg and this formed a significant component of the weight of the Suitcase. Although Mr Nalachandran submitted that there was no evidence of the accuracy of the weighing machine in New Delhi, I was satisfied that there was nothing in the circumstances of the case to cast doubt on the veracity of

the weight recorded on the Luggage Tag and the Luggage Claim Ticket as this was done in the ordinary course of business. Also, the Suitcase was conveyed by the airline in the ordinary course of business. The baggage handling area of an airport is a high-security zone as there are considerable property and aircraft security concerns. Hence, there will be cameras recording the handling and flow of luggage. Baggage handling is a time-sensitive process as the bags have to reach, in a timely manner, the aircraft during loading and the luggage belts during unloading. The Drug Exhibits were placed in the deepest recesses of the Suitcase and it would have entailed an intricate operation to carry this out in the luggage handling or storage areas of an airport. It is therefore highly unlikely that this can be done after check-in. Furthermore, Pham did not state that her personal belongings in the Suitcase appeared to have been rearranged. I also took into account the sheer improbability that anyone would place drugs with a street value of S$1.25m in a random suitcase at an airport in this manner, with all the attendant risks involved.

23 Therefore, for the reasons I have set out, I was satisfied that the Drug Exhibits were in the Suitcase at the time Pham checked it in at the New Delhi airport.

Was the presumption in s 18(1) of the MDA invoked?

24 The evidence showed the following. Pham had checked in the Suitcase at the New Delhi airport. The airline took possession of the Suitcase and conveyed it to Singapore where it was sent to belt 47 at terminal 3. The Suitcase remained unclaimed and CNB officers who had been monitoring it took it to be X-rayed. The image showed a suspicious content in the Suitcase. Pham was eventually tracked down at transfer counter E in terminal 2. She

was brought to the ICA Holding Room in terminal 3. The Suitcase was also brought there. She identified it as hers.

25 From this undisputed evidence, Pham never had physical possession of the Suitcase in Singapore; the last time she had physical possession of it was when she handed it to Singapore Airlines at the check-in counter at the New Delhi airport.

26 The issue was whether the presumption in s 18(1) of the MDA had been invoked in these circumstances. The provision states as follows:

> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (*a*) anything containing a controlled drug;
>
> (*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.

The result turns on the question of whether, for the purposes of s 18(1)(*a*) of the MDA, Pham had possession, custody or control of the Suitcase, which is the "thing" containing a controlled drug.

27 In *Van Damme Johannes v Public Prosecutor* [1993] 3 SLR(R) 694 ("*Van Damme*"), the appellant had flown to Changi Airport and was on transit to Athens. His luggage, which was checked in at Phuket, was retrieved by narcotics officers from the in-flight spur area in Changi Airport and found to have Diamorphine hidden in it. The Court of Appeal held that this constituted

possession for the purposes of s 18(1) of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) ("the 1985 MDA"). Section 18(1) of the 1985 MDA is identical to s 18(1) of the MDA. In rejecting the appellant's argument that he did not have the luggage "in his possession, control or under his custody", the Court of Appeal stated at [8] of its judgment:

> … The language used in [s 18 of the 1985 MDA] clearly draws a distinction between "possession" in s 18(1) and "physical possession" in s 18(3). We agree that whilst the appellant may not have had physical possession or physical control of the suitcase, such possession and control having been ceded to SATS for the purposes of moving and checking the luggage, the appellant had possession of the suitcase. He had the baggage tag to the suitcase and could obtain access to it, albeit only with permission from the Lost and Found staff. …

28 Before proceeding further, I would like to make the following observation about this statement of the Court of Appeal in *Van Damme*. It would appear at first blush that the Court of Appeal had held that the word "possession" in s 18(1)(*a*) of the 1985 MDA has a wider meaning than physical possession, and that it includes the right to obtain physical possession. However, I did not think that this was the Court of Appeal's intention because that word is part of the phrase "in his possession or custody or under his control". There are three limbs in this phrase, *viz*, (a) possession; (b) custody; and (c) control. In this context, the word "possession" must mean physical possession and not the wider meaning as set out above. Otherwise, this would render the words "custody" and "control" otiose. In *Van Damme*, the appellant had the baggage tag which gave him the right to obtain physical possession and this would fall within the concept of control. It was therefore unnecessary for the Court of Appeal to hold that the word "possession" in s 18(1)(*a*) of the 1985 MDA has a wider meaning than physical possession. The comparison to the words "physical possession" in s 18(3) of the 1985

MDA (which is identical to s 18(3) of the MDA) can be understood once both ss 18(1) and (3) of the MDA are read together:

> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (*a*) anything containing a controlled drug;
>
> (*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.
>
> …
>
> (3) The presumptions provided for in this section shall not be rebutted by proof that the accused never had physical possession of the controlled drug.

In the situations envisaged in s 18(1)(*b*), (*c*) and (*d*) of the MDA, the person need not even have handled the controlled drug at all; it is only necessary to prove that he has had the key to unlock anything or any place containing the controlled drug or a document of title or delivery relating to it. It is clear that s 18(3) of the MDA is meant to exclude the possibility of the presumption being rebutted even though the accused had never been anywhere near the controlled drug at all. I therefore proceeded on the basis that the word "possession" in s 18(1) of the MDA refers to physical possession.

29 *Van Damme* was followed in *Ubaka Chris Chinenye v Public Prosecutor* [1994] 3 SLR(R) 401 ("*Chinenye*"). In the latter case, the accused had flown into Singapore from Bangkok intending to transfer to Lagos *via* Bangkok and Zurich. He was apprehended at the airport before he could

retrieve his luggage from the belt. He had in his possession two luggage claim tickets for them. Controlled drugs were found in the two pieces of luggage after they were retrieved. The Court of Appeal said at [8]:

> … Furthermore, this court held in [*Van Damme*] that an accused person has possession of a bag even though it would have normally remained in the in-flight area of the airport throughout the whole length of his transit in Singapore and he could not ordinarily have retrieved it. Accordingly, the presumption under ss 18(1) and 18(2) of [the 1985 MDA] operated.

30 In the present case, the Suitcase belonged to Pham. She had it checked in at the New Delhi airport with the intention of retrieving it at the end of her flight. Her position was that she did not claim it in Singapore because she thought it was checked through to Vientiane, and I must say that the evidence supports this. However, had she known that the Suitcase had to be retrieved in Singapore to be checked in for the onward flight to Vientiane, there was no reason to believe that she would not have retrieved it and proceeded to have it checked in for the onward flight to Vientiane. This is because it was her intention all along to regain possession of it after her flight, and indeed Pham had the Luggage Claim Ticket which entitled her to possession of the Suitcase from the airline. Mr Nalachandran submitted that "control" for the purposes of s 18(1) of the MDA must mean that Pham was able to dictate how the Suitcase was being moved. However I disagreed with that submission because Pham was entitled to regain possession of the Suitcase by virtue of the Luggage Claim Ticket and that fell within the expression "control" in s 18(1) of the MDA. The present case is similar to the circumstances in *Van Damme* and *Chinenye*.

31 It was also my view that it is not necessary, for the purposes of s 18(1)(*a*) of the MDA, that the possession (which, as I have said at [28]

above, refers to physical possession) takes place in Singapore. First of all, the provision does not specifically require it. Indeed, it is clear on the face of the provision that what is required to be proven is that the person must be proved to "have had in his possession" the "thing" containing the controlled drug. I am fully cognisant that this is a provision establishing a presumption and must be construed strictly. Nevertheless, the language is wide enough for this construction and, more importantly, there is no reason to restrict it to possession in Singapore. In my view, what is important is that at the time that the person was in possession of the "thing" concerned, say, a bag, the controlled drug must be proven to be contained in that bag. In the present case, I had found that the Drug Exhibits were in the Suitcase at the time it was checked in by Pham at the New Delhi airport. Where possession is not in Singapore, there is greater scope for an accused person to rebut the presumption by giving evidence or raising the possibility that the drugs had been placed in the bag after he last had possession of it, as Pham had done in the present case.

32 For the foregoing reasons, I found that the presumption in s 18(1)(*a*) of the MDA was invoked and Pham was presumed to have had the Drug Exhibits in her possession.

Was the presumption in s 18(1)(a) of the MDA rebutted?

33 The presumption in s 18(1)(*a*) of the MDA is rebuttable. However, the burden was on Pham to do this on a balance of probabilities. On the position that Pham had taken, *ie*, that she simply had no idea that the Drug Exhibits were in the Suitcase, there was really no positive evidence that she could have given to rebut the presumption. Throughout my consideration of the evidence, I was conscious of this difficult task before her, which was essentially to prove

a negative. In such a situation, the court had to examine her narrative and consider whether, in all the circumstances of the case, she had proved on a balance of probabilities that she was not aware that the Drug Exhibits were in the Suitcase.

34 Pham relied on her narrative that she was an innocent traveller who had no idea how the Drug Exhibits came to be found in the Suitcase. I found the following points in Mr Nalachandran's submissions to be relevant on this issue:

(a) Pham was not in possession of any drug paraphernalia and was not tested positive for consumption of controlled drugs.

(b) Pham had cooperated with the authorities and was forthcoming in giving her statements. She had repeatedly requested that the matter be investigated fully.

(c) The Drug Exhibits were well-hidden in the Suitcase.

(d) There was no DNA evidence linking Pham to the Drug Exhibits.

(e) Pham had all along denied knowledge of the Drug Exhibits. Her contemporaneous statement, cautioned statement and long statements were all consistent on this.

35 There was no dispute on these five points. In particular, Pham had denied knowledge from the outset, and she maintained this position throughout the investigation and in the trial. Mr Nalachandran also submitted a few other points but I found them to be irrelevant.

36 The significant feature of the five points was that they were also consistent with the Prosecution's position. The picture presented by the Prosecution was that Pham was a drug courier, paid to convey the Drug Exhibits. Therefore, the fact that the Drug Exhibits were well-hidden and contained no trace of her DNA was not inconsistent with this. Pham need not be a drug addict to be a courier and hence whether or not she was tested positive for consumption of controlled drugs would have been immaterial. In addition, it was not the Prosecution's position that Pham was involved in packing the Drug Exhibits into the Suitcase. If the Drug Exhibits had been placed in the Suitcase by other persons, it was conceivable that Pham's DNA would not be found on them especially since they were so well-hidden in the Suitcase. Finally, I did not consider Pham's cooperation with the authorities and her denial of knowledge of the Drug Exhibits to be a relevant, much less determinative, indicator of her involvement. .

37 The Deputy Public Prosecutor, Ms Jasmine Chin, submitted that the following factors showed that Pham was not telling the truth:

(a) Pham's explanation for travelling to New Delhi from Cambodia in August 2013 was implausible.

(b) Pham's sudden change in itinerary to fly to Vientiane was suspicious.

(c) Even if Pham had purchased the Suitcase on her way to the New Delhi airport, she would have felt that it was unusually heavy.

(d) Pham's reaction when the Drug Exhibits were recovered in the ICA Holding Room was inconsistent with the persona she attempted to portray.

(e) Pham's propensity to tailor her evidence in court and inability to produce corroborative evidence indicated that she was not being truthful.

38 In relation to (a), Pham had, in her statement to the CNB, stated that the purpose of her trip to New Delhi was for shopping and to meet the Indian Man again. Pham testified that she wanted to see if they were "fated to be together" and that if he liked her, she would reciprocate. However, Pham was unable to recall his name, or the name of the telephone shop he worked in. Ms Chin submitted that Pham had demonstrated in the witness box that she had a very good memory, having the ability to recall the 12-digit phone numbers of six of her friends and the exact directions to the telephone shop where the Indian Man worked. Yet, she was unable to recall the name of a person towards whom she had such romantic inclinations. Not only that, Pham did not know if the Indian Man was married. Ms Chin submitted that for someone so infatuated with a person that she was prepared to make a second trip to New Delhi to see him, Pham was unusually bereft of details of the object of her affection. Ms Chin submitted that Pham did not provide any evidence at all to prove that the Indian Man was not a figment of her imagination. Pham claimed that she had bought a camera costing US$100 from the Indian Man's shop but, when asked, said that no receipt was issued. Ms Chin submitted that Pham's sparse information about the Indian Man, despite the fact that she was facing a serious criminal charge, could only mean that he did not exist.

39 Ms Chin pointed out that Pham had, in her testimony, added a further reason for her second trip to New Delhi – to celebrate her birthday. This was not mentioned in her statements, although Pham alleged that she had stated

this to IO Quah but he did not record it. Ms Chin noted that this was not put to IO Quah when he was cross-examined.

40 Ms Chin further submitted that Pham did not have the financial means to travel in that manner. She noted that Pham had given evidence that she had worked in a shoe factory for seven years earning about US$300 per month, saving about half that sum. However, in the year prior to the trip, she was not working and relied on handouts from Heo and her friends in Cambodia. Pham had stated that she managed to save about US$3,500 prior to her second trip to New Delhi. The cost of her return ticket to New Delhi from Ho Chi Minh City was US$1,100. She had brought with her US$800 of which about US$600 was spent in New Delhi.

41 Against this background, Ms Chin submitted that in relation to point (b) above, Pham's decision in New Delhi to change her flight to fly to Vientiane via Singapore was highly suspicious. Pham had incurred additional costs in the region of US$1,000 to make that change. Although she had this sum of money with her friend, Lun, in Vietnam, Ms Chin submitted that this was more than half the money she had left in this world and to spend it on what appeared to be a whimsical change, forgoing the return flight to Ho Chi Minh City just so she could detour to Vientiane earlier, was wholly irrational. Ms Chin also pointed out that it was equally baffling that Pham would keep so much of her money with Lun, who did not even appear to live in Cambodia, which was where she was residing. Ms Chin pointed out that Pham had testified that there was no special reason for her to travel directly to Vientiane from New Delhi; it was just that she felt that she had stayed long enough in New Delhi. Pham had agreed that it would have been much cheaper for her to take the flight to Ho Chi Minh City under her return ticket which was already

paid for and then travel to Vientiane from there. Pham later added that she felt an intense urge to go to Vientiane.

42 Ms Chin also pointed out that Pham had claimed that she had spoken to Lun from New Delhi on the Nokia handphone to get him to change the flight. However, when IO Quah recorded one of her statements, Pham could not point to anything in the phone record to show that there was such a call. Pham said that she had no explanation for this. At the initial part of her cross-examination, she confirmed that she had spoken to Lun only with the Nokia handphone. However, she later testified that she could have done so using the Samsung handphone, which she had sold before leaving New Delhi. Ms Chin submitted that this showed Pham's tendency to shift her evidence.

43 Ms Chin submitted that another circumstance contradicting Pham's position that the trip to Vientiane was decided in New Delhi was the fact that she had a Laotian SIM card with her. Pham's explanation was that it was acquired during a trip to Vientiane in 2013 and she had kept it since then.

44 In relation to point (c) above, Ms Chin submitted that Pham's story on how she purchased the Suitcase could not be believed. The evidence showed that the Drug Exhibits weighed almost 5.4kg. The wooden planks and aluminium foil wrapping the Drug Exhibits weighed 1.3kg. The Suitcase when empty weighed 2kg. Ms Chin submitted that the combined weight of the Suitcase (when empty), the Drug Exhibits and the wooden planks and aluminium foil was 8.7kg, more than four times the empty weight of the Suitcase. Mr Nalachandran submitted that there was no evidence that the wooden planks (the weight of the aluminium foil should be negligible) were not part of the Suitcase's original construction. But even if that were the case,

this would bring the empty weight of the Suitcase to 3.3kg. At 8.7kg, which is 2.6 times the empty weight suggested by Mr Nalachandran, any person would have noticed the unusually heavy weight of this kind of softcover suitcase. Although Pham testified that she had never lifted the Suitcase when it was empty and therefore could not have felt its weight, Ms Chin submitted that this was highly unlikely. Furthermore, Pham conceded that she had to shift the Suitcase from an upright to a horizontal position when she packed it with her belongings. Pham also testified that she did not feel the full weight of the Suitcase (when packed) as she had rolled it on its wheels all the time. Pham said that she had help from the "tuk-tuk" driver. She also had help to lift the Suitcase at the check-in counter. However, this contradicted her statement to IO Quah, in which she said that she had carried the Suitcase personally and placed it on the conveyor belt at the check-in counter. Indeed, Pham had emphasised in her statement that from the time she stepped into the New Delhi airport, nobody touched the Suitcase until she had checked it in. When asked about this in cross-examination, she said that IO Quah had incorrectly recorded it.

45 In relation to point (d) above, Ms Chin submitted that Pham's reaction when the Drug Exhibits were discovered in the Suitcase was not consistent with that of a person who was not aware that there was anything hidden in the Suitcase. Pham testified that she was surprised, shocked, curious and afraid when the Drug Exhibits were recovered. But she said that she was a calm person by nature and remained silent because she was surprised and shocked. She also remained silent because she was not able to communicate in English. Ms Chin submitted that such total lack of emotion was not possible for a person who did not know about the Drug Exhibits, in particular, someone as well-travelled, intelligent and street smart as Pham.

46 In relation to point (e), Ms Chin submitted that Pham's propensity to tailor her evidence in court and inability to produce corroborative evidence to back up her story indicated that she was not telling the truth. With respect to the latter, Ms Chin produced a list of persons who could have given evidence in support of Pham's narrative, principally witnesses from New Delhi, Cambodia and Vietnam.

47 I would, at the outset dispose of point (e), that Pham's inability to produce corroborative evidence to back up her story showed that she was not telling the truth. Pham had been in remand since her arrest. She did not have any financial resources and, in fact, required legal aid for her defence. I did not see how, in those circumstances, a submission could be made that Pham's inability to produce corroborative evidence in the form of procuring witnesses from overseas to support her version of events showed that she was not telling the truth. This submission did not impress me at all and played no part in my decision.

48 However, the submission that Pham had a propensity to tailor her evidence had some support in the evidence before me. She made a number of allegations that IO Quah had wrongly recorded her evidence when those parts of her statements were used to contradict her evidence. In particular, in relation to the part of her statement that she had personally handled the Suitcase from the time she bought it until check in, she said in cross-examination that it was not entirely correct because the "tuk-tuk" driver had helped her lift it up and down the "tuk-tuk" and an airline staff had lifted it for her at the check-in counter.

49 In relation to points (a) to (d), I found that Ms Chin's submissions were supported by the evidence. Pham's story about the Indian Man did not sound credible, having regard to her inability to recall the name of someone she had been so infatuated with that she spent a considerable part of her life savings to make a second trip to New Delhi. I also found it rather strange that Pham was so willing to spend another large part of her savings to change her flight virtually on a whim.

50 An important consideration was the empty weight of the Suitcase. If Pham had lifted it when empty, I have no doubt that she would have noticed that it was unusually heavy. Although in her long statement, she had confirmed that only she had handled it, she had not only taken great pains to stress that she did not lift it when empty, but asserted that all the way to the check-in counter, she had never lifted it at all and that other people had done the lifting for her. I had to take into account that a person purchasing a suitcase like this one would normally lift it to assess its weight.

51 More importantly, it was a logical conclusion from Pham's narrative that somebody had already put the Drug Exhibits in the Suitcase when she purchased it. If the Suitcase was intended for somebody else, then she was an accidental recipient. First of all, the likelihood that somebody would misplace S$1.25m worth of narcotics in this manner would be low. Secondly, the person who sold the Suitcase to Pham would have noticed the unusually heavy weight. The low probability of such a chain of events was another factor to be considered.

52 Pham's calm reaction when the Drug Exhibits were recovered was also another unusual feature to be taken into account.

53 Although Pham had an explanation for each and every one of the five points submitted by Ms Chin, when looked at collectively, I was moved to find on a balance of probabilities that Pham was not telling the truth about the presence of the Drug Exhibits in the Suitcase. I therefore found that she had failed to rebut the presumption under s 18(1)(*a*) of the MDA that she had the Drug Exhibits in her possession.

The presumption in s 18(2) of the MDA

54 Section 18(2) of the MDA provides as follows:

> (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.

55 Having been presumed to have had the Drug Exhibits in her possession, s 18(2) of the MDA was invoked and Pham was presumed to have known the nature of the Drug Exhibits. As Pham's defence was that she was not aware of the Drug Exhibits, she had offered no evidence to rebut the presumption of knowledge in s 18(2) of the MDA. It followed that she was unable to rebut this presumption as well.

Conviction

56 Pham was apprehended in Changi Airport on 23 August 2013. The Drug Exhibits were found well-hidden in the Suitcase which she admitted belonged to her. She was unable to rebut the presumption of possession under s 18(1)(*a*) of the MDA and the presumption of knowledge under s 18(2) of the same. I therefore found her guilty as charged and convicted her accordingly.

Sentence

57 In mitigation, Pham's counsel pointed out that she was a first offender and also a young one, particularly in comparison with the offenders in the cases cited to me. He submitted that her imprisonment would bring hardship to her family. He pointed out that Pham was a rather naïve person and submitted that, at most, a slight increment from the mandatory minimum of 20 years' imprisonment was justified.

58 In my decision on sentence, I took into account the mitigating factors, principally that she was a first offender and rather young. However, I could not ignore the fact that a large quantity of Methamphetamine was involved, even though the charge had been reduced to a non-capital offence. It was necessary for the sentence to reflect this large quantity, and also to reflect the sentences that have been imposed in similar cases. From those precedents, I determined that the appropriate sentence would be 24 years' imprisonment and sentenced her accordingly. I also ordered the sentence to commence from the date of her arrest on 23 August 2013.

Lee Seiu Kin
Judge

Jasmine Chin-Sabado, Wong Woon Kwong and Rajiv Rai (Attorney-General's Chambers) for the Prosecution;
Anand Nalachandran (TSMP Law Corporation), Tan Li-Chern Terence (Robertson Chambers LLC) and Chenthil Kumar Kumarasingam (Oon & Bazul LLP) for the accused.
