IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 76

Criminal Case No 59 of 2015

Public Prosecutor

v

(1) Vejiyan A/L Muniandy

(2) Razak Bin Dolla

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Illegally importing controlled drugs]
[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act] — [Abetting the trafficking of controlled drugs through conspiracy]

Version No 1: 27 Oct 2020 (22:39 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Public Prosecutor
v
Vejiyan a/l Muniandy and another

[2016] SGHC 76

High Court — Criminal Case No 59 of 2015
Choo Han Teck J
16–19, 23–26 February; 1–2, 14 March 2016

10 May 2016 Judgment reserved.

Choo Han Teck J:

1 The first accused, Vejiyan a/l Muniandy ("Vejiyan"), is a 30-year-old Malaysian. He faces a charge under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") for importing not less than 51.9g of diamorphine, a controlled drug, into Singapore. The second accused, Razak bin Dolla ("Razak"), is a 50-year old Singaporean. He has been charged for abetting the trafficking of not less than 22.41g of diamorphine, an offence under s 5(1) read with s 12 of the MDA, through conspiracy with Vejiyan and one "Sasi". At the time of the trial, the identity of "Sasi" has not been established.

2 On 3 January 2013 at 7.20am, Vejiyan arrived in Singapore at the Tuas Checkpoint, on a motorcycle bearing licence plate number JLJ 2171 ("the motorcycle"). He was directed by officers of the Immigration & Checkpoints Authority ("ICA") to the 100% Inspection Pit for checks and there, Cpl Mohammad Faizal Bin Senin "("PW19") noticed a bundle covered with black

tape hidden below the headlight of the motorcycle. Officers from the Central Narcotics Bureau ("CNB") were alerted. Sgt Mohamed Faizil bin Mohamed Farook ("PW43") asked Vejiyan what was in the black bundle, but Vejiyan replied that he did not know. When asked further whether there were any more bundles in the motorcycle, Vejiyan again said that he did not know and added that the motorcycle was not his but belonged to his friend. On further search, PW43 recovered another four bundles wrapped in black tape that were hidden in the motorcycle. The five bundles varied in size, and weighed between 432.5g and 154.9g. Each of the five bundles was filled with granular/powdery substances, which subsequent forensic analysis revealed as containing diamorphine. The biggest and smallest bundles was found to contain not less than 22.41g and 5.29g of the drug respectively, while the remaining three bundles contained not less than 6.56g, 6.63g and 11.01g of the same. In total, the five bundles contained not less than 51.9g of diamorphine.

3 Three mobile phones were seized from Vejiyan when he was arrested. At 10am, PW43 noticed that one of the seized mobile phones displayed missed calls from one "Saientix". Vejiyan informed that he had stored the contact number of one of his Malaysian friends, who he called "Sasi", as "Saientix" on his mobile phone. He said that "Sasi" was the owner of the motorcycle and was the one who had asked him to bring the bundles into Singapore. Vejiyan was supposed to call "Sasi" once he had arrived in Singapore, for instructions on what he was to do with the bundles.

4 At 11.03am, PW43 used Vejiyan's mobile phone to call "Saientix". The call connected and Vejiyan spoke to "Saientix"/"Sasi" in Tamil. At the end of the conversation, Vejiyan informed the CNB officers that "Sasi" told him to remove the bundles from the motorcycle and to wait for "Sasi" to send

Version No 1: 27 Oct 2020 (22:39 hrs)

to him an SMS with a telephone number for Vejiyan to call. Shortly after that, Vejiyan received an SMS from "Saientix" which showed the number "0284290376". On the instructions of SSI Iqbal bin Mohamed ("PW47"), Vejiyan made the following further phone calls to "Sasi" and to the number "84290376" (the prefix "02" was dropped as PW47 knew that the prefix can only be used when a phone call to Singapore was made from Malaysia, but not when the call was made from Singapore):

(a) 11.36am: Vejiyan called "Sasi" again. After the call, Vejiyan informed the CNB officers that "Sasi" had directed him to call the number "0284290376".

(b) 11.40am: Vejiyan called the number "84290376". At the end of the conversation, which was conducted in Malay, Vejiyan informed that the person whom he had spoken to had asked to meet him in Woodlands in an hour's time.

(c) 12.07pm: Vejiyan was instructed to call "Sasi" to find out how many bundles were in the motorcycle, how many bundles were to be given to the intended recipient in Woodlands, and if there was any need to collect any money from the intended recipient. At the end of the conversation, Vejiyan revealed that "Sasi" told him "to deliver the big bundle" to the intended recipient in Woodlands, and that the other four bundles were to be delivered to another recipient whom "Sasi" would inform of later. Vejiyan forgot to ask "Sasi" whether he needed to collect any money from the intended recipient in Woodlands.

(d) 12.45pm: Vejiyan called the number "84290376" for the second time, to inform the intended recipient that he had arrived at

Version No 1: 27 Oct 2020 (22:39 hrs)

Woodlands. Following the conversation, Vejiyan informed that the intended recipient had originally wanted him to go to Woodlands Avenue 1 but when Vejiyan gave the excuse that he was not familiar with the area, the intended recipient told him to call back 15 minutes later.

(e) 1.11pm: Vejiyan called the number "84290376" for the third time. At the end of the conversation, Vejiyan revealed that the intended recipient said that he would not be going into the car park of Woodlands Centre Road near the vicinity of the old cinema building. Instead, the intended recipient directed Vejiyan to wait at the main road close to the McDonald's restaurant which was near the car park, and told him that he would arrive in a car to pick Vejiyan up in five minutes. Vejiyan asked for the colour of the car, but the intended recipient did not say.

The phone calls were made by Vejiyan using PW47's mobile phone, as the value in Vejiyan's prepaid SIM card was low.

5 Meanwhile, by 12.28pm, a party of CNB officers were already at the car park at Woodlands Centre Road near the vicinity of the old cinema building. At 12.47pm, DSP Lester Lim Hang Meng ("PW49") instructed Cpl Yogaraj s/o Ragunathan Pillay ("PW44") to pose as Vejiyan. PW44 sat on the motorcycle bearing the licence plate number JLJ 2171 which had been parked in front of the "Buy & Fix" shop at the car park, while PW49 took up position near the McDonald's restaurant. Although the CNB officers were informed by Vejiyan at 1.13pm that the intended recipient said that he would not be coming into the car park but would be picking Vejiyan up from the

Version No 1: 27 Oct 2020 (22:39 hrs)

main road near the McDonald's restaurant instead, PW44 was instructed to remain seated on the motorcycle in the car park.

6 PW44 was instructed that if approached by anyone, he was to engage that person in conversation and CNB officers lying in ambush would move in to arrest him. This plan failed. At 1.24pm, while PW44 was seated on the motorcycle in the car park, he turned and saw a red-coloured KIA bearing the licence plate number SKA 7603D ("the red KIA") in front of him. The left rear passenger door of the car was open and one male Malay, later recognised to be the second accused Razak, was at the left rear passenger seat. According to PW44's testimony, Razak gestured to PW44 for him to go towards the car. PW44 did so but when he was about two metres away from the red KIA, Razak signalled for him to enter the car. PW44 then gestured and discreetly said no. Intending to convey to Razak that the bundle was in the bush on his right, PW44 also pointed to his right side and said "bush". However, Razak, after looking at him and the bush, closed the car door. The red KIA then drove from the car park, before the CNB officers lying in ambush could arrest the suspects.

7 When the plan failed, PW47 instructed Vejiyan to call "Sasi" again. According to Vejiyan, "Sasi" told him to call the intended recipient again to fix a meeting point. Two further phone calls to the number "84290376" were then made at 1.45pm and 1.56pm, during which the intended recipient instructed Vejiyan to take a taxi to meet him at Blk 323 Woodlands Street 32. The meeting never took place because the CNB officers found the red KIA parked behind Blk 325 Woodlands Street 32 ("Blk 325") and decided to make the arrest there at 2.30pm. Razak was seated at the rear passenger seat of the

Version No 1: 27 Oct 2020 (22:39 hrs)

red KIA, and one Mohamad Saleh bin Atnan ("Saleh") ("PW56") was seated at the driver's seat. Both men were arrested.

8 A number of items were seized from Razak and Saleh and from the red KIA. A mobile phone ("MSA-HP1"), linked to the number "82289412", was seized from Saleh's person. When asked by PW47 whether he had anything to declare, Saleh pointed PW47 to a black pouch which was attached to the inside of the driver's door panel of the red KIA. When PW47 asked him whether the pouch contained "heroin", Saleh nodded. The pouch was later found to contain 84 straws of heroin and cash amounting to $566. Following a search, another mobile phone ("MSA-HP2") and cash amounting to $4,600 were recovered from the centre console of the car, as well as some drug utensils. From Razak, a mobile phone ("RBD-HP") was seized from the front left pocket of his jeans. A subsequent test call conducted by the CNB officers established that the phone number of "RBD-HP" was "84290376", ie the number that "Sasi" had provided to Vejiyan and which Vejiyan had used to communicate with the intended recipient of the bundle(s). Razak was also found with a BMW car remote key on which a sticker bearing the registration number SKB 2476G was affixed. The CNB officers subsequently located a white BMW bearing the registration number SKB 2476G ("the BMW") at the car park at Blk 325 and matched it to the car remote key seized from Razak. A packet of granular substances, later found to contain 0.03g of morphine, was recovered from the BMW. The BMW was registered under one Rahmat bin Mohd Noor ("Rahmat") ("PW38").

9 The evidence was sufficient for the defence to be called for both accused persons. Both Vejiyan and Razak elected to testify.

Version No 1: 27 Oct 2020 (22:39 hrs)

Vejiyan's Case

10 Vejiyan does not dispute that he had brought into Singapore on the motorcycle the five bundles which were subsequently found to contain not less than 51.9g of diamorphine. He admitted that he was the one who had hidden the bundles in the motorcycle, under the instructions of "Sasi". He decided to help "Sasi" because he was in financial difficulties. At the time of his arrest, he was working as a delivery man earning a monthly wage of RM 800. This was not enough to cover his mother's medical expenses and the monthly rent that he had to pay for their shared accommodation. A friend introduced Vejiyan to "Sasi", and "Sasi" promised to pay Vejiyan RM 2000 if he would bring the five bundles into Singapore. In the early morning of 3 January 2013, "Sasi" asked Vejiyan to go to his house, where "Sasi" showed him the five bundles which were by then already covered with black tape. "Sasi" then told Vejiyan to hide the five bundles in "Sasi's" motorcycle and to ride that motorcycle into Singapore. Vejiyan obliged.

11 As Vejiyan was in possession of the five bundles containing diamorphine, he is presumed under s 18(2) of the MDA to know that the bundles contained diamorphine and there was no need for the Prosecution to prove, beyond a reasonable doubt, whether Vejiyan had actual knowledge that the bundles contained diamorphine. The question that I have to decide is whether Vejiyan has rebutted the presumption under s 18(2) on a balance of probabilities. Under s 18(2), the accused bears the burden of proving that "he did not know or could not reasonably be expected to have known the nature of the controlled drug" that was found in his possession: see *Dinesh Pillai a/l K Raja Retnam* [2012] 2 SLR 903 at [18]. The MDA does not prescribe a positive legal duty for a person to inspect and determine what he was carrying,

Version No 1: 27 Oct 2020 (22:39 hrs)

such that if he failed to do so, he would not be able to rebut the presumption under s 18(2) and would consequently be found liable under s 7 of the MDA on account of that failure. Section 18(2) of the MDA is not about the knowledge of the controlled drug but the absence of such knowledge on the part of the accused, and he can rebut the presumption if he can prove that he genuinely believed that what was in his possession was innocuous, or that he genuinely thought that it was a controlled drug other than the one actually found in his possession. There can be many reasons why a court may not believe an accused person when he says that he genuinely thought that what was in his possession was not the drug that was actually found, and the fact that he made no attempt to check what he was carrying when the circumstances were such that a reasonable man in his position would have done so could be one such reason. Conversely, when a reasonable man in the accused person's position would not have had reason to check, the court may be more likely to believe the accused person when he says that he did not check because he genuinely thought that he was carrying something else. In all cases, however, it is the subjective state of mind of the accused that matters, although the court may draw inferences as to his state of mind from circumstances when it decides whether the accused is to be believed.

12 In the present case, Vejiyan admitted that he suspected that the five bundles contained controlled drugs. He said that he remained suspicious even though he had asked "Sasi" whether the bundles contained controlled drugs and "Sasi" had told him that "there is (was) nothing of that sort". Vejiyan maintained, however, that he did not know that the bundles contained diamorphine specifically, although he also conceded that he had ample opportunity to check the contents of the bundle but did not do so. In the circumstances, I do not think that this sufficiently rebuts the presumption

Version No 1: 27 Oct 2020 (22:39 hrs)

under s 18(2) of the MDA (that he knew that the five bundles contained diamorphine). Other than his cursory claim that he did not know that the bundles contained diamorphine he offered little evidence to support that claim. Indeed, he admitted through his counsel that he is not challenging the fact that he has committed the offence under s 7 of the MDA as charged.

13 I therefore find that that the Prosecution has proven its case against Vejiyan beyond reasonable doubt. However, I also find that Vejiyan's role in the transaction was limited to that of a courier, that is, his involvement in the offence under s 7 of the MDA was restricted to the activities listed in s 33B(2)*(a)* and duplicated in s 33B(3)*(a)* of the Act, namely transporting, sending or delivering drugs and/or offering to transport, send or deliver drugs and/or doing or offering to do any act preparatory to or for the purpose of transporting, sending or delivering drugs. There is no evidence showing that he did more than that.

Razak's Case

14 Razak's case is more complicated. None of the five bundles of drugs that form the subject of the present trial were ever found in Razak's possession. No presumption under the MDA operates against him. Vejiyan claims that he did not know who the intended recipient of the drugs was and he had met neither Razak nor Saleh prior to his arrest. Vejiyan had spoken with the intended recipient of the drugs under the instructions of the CNB officers and he had informed the CNB shortly after Razak and Saleh were arrested that he would be able to recognise the voice of the intended recipient if he were to hear the voice again. However, the CNB officers did not ask Vejiyan to try to identify whether it was Razak's or Saleh's voice that he had heard when he spoke to the intended recipient. By the time of the trial, Vejiyan

Version No 1: 27 Oct 2020 (22:39 hrs)

said that with the passage of time, he could no longer recognise the voice of the speaker behind phone number "84290376". The main incriminating evidence against Razak are that — (i) the mobile phone ("RBD-HP") that was seized from his person is linked to the number "84290376", that is the number that "Sasi" had provided to Vejiyan and which Vejiyan had used to communicate with the intended recipient of the bundle(s); (ii) it was Razak who had attempted to communicate with PW44 (who was posing as Vejiyan) at the car park at Woodlands Centre Road when the red KIA pulled up near the motorcycle; (iii) Razak had the key to the BMW from which a packet containing 0.03g of morphine was recovered (although the drugs found on the BMW are not directly relevant to the present charge against Razak); and (iv) Saleh's testimony that Razak was a drug trafficker and that it was Razak who had directed him to drive the red KIA to the carpark at Woodlands Centre Road to meet PW44 (who was posing as Vejiyan).

15 Razak denies involvement in any drug-related offences. His defence is that Saleh was the real culprit who had conspired with Vejiyan and "Sasi" to traffic diamorphine, and that he was simply just at the wrong place at the wrong time. He claims that the mobile phone ("RBD-HP") did not belong to him but to Saleh, and that it was Saleh who had rented the red KIA, asked Razak to communicate with PW44 at the car park, and who had left the drugs in the BMW. Razak's account is that Saleh was his friend and that on 3 January 2013, Razak had called Saleh to ask him out to have lunch together. He called Saleh using a public phone, as the battery of his only mobile phone was flat and Razak had left it at home. Saleh agreed to meet him at the car park of Blk 325. Razak took a taxi to the agreed meeting place and when he arrived, Saleh was already sitting in the red KIA at the car park. Razak initially wanted to sit at the front passenger seat of the red KIA, but changed

Version No 1: 27 Oct 2020 (22:39 hrs)

his mind to sit at the back passenger seat because the front passenger seat had a foul smell. As Razak sat down at the back seat, he saw straws scattered there. He says that he did not know what the straws contained and also did not know that Saleh was a drug addict, but he picked the straws up one by one and placed them inside a plastic bag that was also at the back seat, before handing the plastic bag of straws to Saleh. He also saw a stack of red-coloured Singapore dollar notes near the clutch area of the car, and exclaimed to Saleh "Wah a lot of money", but Saleh just laughed. Saleh then drove Razak in the red KIA to Woodlands Centre for lunch. During the journey, Saleh stopped the car about once or twice and spoke to someone on Saleh's phone ("RBD-HP") in a soft tone, but Razak was not able to hear the conversation. When Saleh and Razak reached the car park at Woodlands Centre Road, Saleh made two rounds around the car park and on the second round, he told Razak that he had seen a friend. Saleh then stopped the car, told Razak to open the left rear passenger door, and instructed Razak to call out to an Indian man (who was PW44 posing as Vejiyan). Razak saw the Indian man signalling to him but at this point, Saleh said to Razak that he had gotten the wrong person and told him to close the car door. Saleh then drove off from the car park. After leaving the car park, Razak suggested going to Blk 325 to eat prata instead. During the journey, Razak saw Saleh speaking on "RBD-HP" again. When the duo reached Blk 325, Saleh asked Razak to help him to top up the SIM card for "RBD-HP". Razak obliged and took the mobile phone to a shop at Blk 326 Woodlands Street 32. That was how "RBD-HP" came to be in his possession. When Razak returned to the red KIA after topping up the SIM card for "RBD-HP", he went to sit at the back passenger seat and the CNB officers moved to arrest both Razak and Saleh shortly after before Razak had the chance to return "RBD-HP" to Saleh.

Version No 1: 27 Oct 2020 (22:39 hrs)

16 As for the BMW, Razak initially told the CNB officers that he had found the BMW remote key in a coffee shop. He later admitted that this was a lie. He explained that the car belonged to his friend Rahmat ("PW38"), and that Rahmat had given the BMW remote key to him as he wanted Razak to help him to take care of the BMW while Rahmat was overseas. Razak said that he lied about finding the BMW remote key at a coffee shop as he did not have a driving licence and was worried that he would get Rahmat into trouble. He also said that Saleh had borrowed the BMW on 2 January 2013 from about 9am to 6pm, and that it was Saleh who had left the packet later found to contain 0.03g of morphine in the BMW.

17 I do not find Razak's testimony to be credible. His account was incoherent and inconsistent, and he was evasive when confronted with objective evidence which contradicted his version of the events. First, I find that Razak had not been truthful about who the real owner of the BMW was. Although the BMW was registered under PW38's name, PW38 testified at trial that it was in fact Razak who had paid the initial deposit for the purchase of the BMW, who had been servicing the loan, and who had been using the car. According to PW38, Razak had persuaded him to be the registered owner of the BMW. The car salesman who attended to Razak and PW38 for the purchase of the BMW, Zhuang Guanren ("PW55"), corroborated PW38's account when he testified that PW38 had informed him that even though the BMW was to be registered in PW38's name, Razak would be the person using it. PW55 also told the court how Razak had unusually paid the down payment of $14,219 for the BMW in cash using notes in small denominations of $50, $10, $5, and $2. PW55 is an objective witness and I believe his testimony. By Razak's own account, prior to his arrest, he was doing odd jobs as a mover earning wages of between $500 and $600 a week. He was the sole

Version No 1: 27 Oct 2020 (22:39 hrs)

breadwinner of his family of five young children. There is no logical explanation as to why Razak would fork out $14,219 for the down payment of the BMW, unless the BMW was bought for his use.

18 Secondly, Razak was found to have $2,100.95 on him when he was arrested. This amounts to about three to four weeks of his wages. When questioned during cross-examination why he was carrying so much cash on him, Razak told the court that he had intended to use $500 to pay his bills. As for the remaining $1,600, Razak initially said that he intended to use the money to bet on horses on the next day, but later claimed that he was in the habit of keeping large sums of money with him in case his relatives ask to borrow money. I find it hard to believe that a person would habitually keep cash amounting to weeks of his wages just so that he would be able to hand them to his relatives at immediate notice if they should ask him for a loan. The Prosecution submitted that the real reason why Razak had so much cash on him on 3 January 2013 was because he was going to use them to pay for the drugs that he was supposed to pick up on that day. However, as it was the Prosecution's own evidence that Vejiyan had forgotten to ask "Sasi" whether Vejiyan needed to collect any money from the intended recipient in Woodlands, this contention that Razak had brought extra cash to pay for the drugs is largely speculative. Nonetheless, I will consider this argument fully with the rest of the evidence.

19 Thirdly, during Razak's examination-in-chief, Razak said that after he topped up the SIM card for "RBD-HP", he saw Saleh sleeping in the red KIA and so did not have the chance to pass the mobile phone back to Saleh. However, in his first long statement to the police, the account was different. Razak said then that when he returned to the red KIA after having topped up

Version No 1: 27 Oct 2020 (22:39 hrs)

the SIM card, he sat down in the car but did not return the mobile phone back to Saleh because they were busy talking about what to eat for lunch. When this inconsistency was pointed out to Razak during cross-examination, Razak changed his testimony and said that Saleh was sleeping when he returned to the red KIA but he woke him up and they were talking about lunch before the CNB officers came and arrested them.

20 Fourthly, in his statement to the CNB, Razak stated that after he called Saleh out for lunch on 3 January 2013, he set off from his home at Blk 853 Woodlands by taxi at "10am plus" and arrived at his destination at Blk 325 in about 15 to 20 minutes' time. He said that Saleh was already there when he reached Blk 325 and that Saleh drove him from Blk 325 to Woodlands Centre in a journey that took about 20 minutes. When they reached Woodlands Centre, Razak decided that they should head back to Blk 325 for prata instead, and he estimated that the journey back took about 15 to 20 minutes. As the CNB officers spotted the red KIA behind Blk 325 only at 2.05pm, Razak was asked to explain why he had taken so long to reached back at Blk 325 given his evidence that he had met Saleh at "11am to 11am plus", and their journey to Woodlands Centre and back took only about 40 minutes in total. Razak was unable to provide any explanation or to give any details of what he and Saleh had done during the more the one and a half hour or so which has been unaccounted for, except that he did not have a watch with him and had therefore just provided estimates of the time. Conspicuously, Razak omitted to mention his encounter with PW44 (when PW44 was posing as Vejiyan) at the car park at Woodlands Centre Road when he gave his statements to the CNB. This was so even though Inspector Deng Kaile ("PW40") had specifically asked him on multiple occasions whether anyone had opened the car door of the red KIA in the entire journey. It was only during his examination-in-chief

Version No 1: 27 Oct 2020 (22:39 hrs)

at trial that Razak testified about Saleh seeing a "friend" at Woodlands Centre and asking Razak to call out to this "friend". When asked during cross-examination why he had failed to mention this encounter earlier in his statements, Razak explained that it was because he "thought nothing of the incident" and was also sick when the statements were recorded. I agree with the Prosecution that Razak's explanation was a weak one, since the entire event, which involved odd gestures from someone (PW44 posing as Vejiyan) who was supposedly a stranger to Razak, should have struck Razak as being very peculiar. I also accept the learned DPP's submission that Razak deliberately omitted to mention his encounter with PW44 because he did not want the CNB to know that he was involved in the events at Woodlands Centre and he only changed his story when he realised subsequently that the "Vejiyan" he encountered was actually a CNB officer who identified him at trial.

21 Fifthly, Razak claimed that "RBD-HP" belonged to Saleh, and that Razak only owned one mobile phone which he had left at home at the material time. Razak said that he had used a public phone to contact Saleh for lunch on 3 January 2013, and that he was able to memorise the number for "RBD-HP" then as he had assisted Saleh to top up the SIM card to "RBD-HP" on several previous occasions. Razak was, however, unable to remember his own mobile phone number during the recording of a statement just six days after his arrest. Although Razak explained that he could not remember his own mobile phone number then as his mind "was not stable" at that time and he had high cholesterol, and because he did not make it a point to remember his own number, the Prosecution submitted, and I am inclined to agree, that it is quite incredible for one to remember another person's number but not his own. The old refrain, "I do not ring my own number" has grown weak in the digital age

Version No 1: 27 Oct 2020 (22:39 hrs)

as we are called upon more and more to give our phone numbers as a reference.

22 Finally, the Prosecution pointed out that although Razak maintained that both "RBD-HP" and "MSA-HP1" did not belong to him but to Saleh, the call records showed that as many as five phone calls were made to and from the two phones on 3 January 2013 between 6.44am to 1.50pm. The duration of the calls ranged from seven seconds to one minute and seven seconds. If Razak's account that both "RBD-HP" as well as "MSA-HP1" belong to Saleh is true, this would mean that Saleh was in the peculiar habit of making multiple calls to himself. In fact, one of the calls made from "RBD-HP" to "MSA-HP1" occurred at 1.50pm on 3 January 2013 and since Razak agreed that he was together with Saleh from 1.24pm to 2.20pm and further maintained that "RBD-HP" was in Saleh's possession before 2.20pm, this would mean that Saleh called himself using one of his phone ("RBD-HP") that was in his possession to another of his phone ("MSA-HP1") that was also in his possession in the presence of Razak. When asked during cross-examination to explain the phone calls made to and fro the two mobile phones, Razak simply stated that he was in no position to answer the question as the phones were not his. Another discrepancy is that although Razak testified that there were no phone calls made to or from "RBD-HP" when he was in possession of the phone from 2.20pm onwards on 3 January 2013, the phone records showed that three phone calls were in fact made by "RBD-HP" to a Malaysian number ("108292211") at 2.22pm, 2.23pm, and 2.26pm. When confronted with the phone records during cross-examination, Razak was again unable to offer any explanation and merely stated that he did not know as the phone was not his. The phone records further showed that there were multiple text messages sent from "MSA-HP1" to "RBD-HP" prior to 3 January 2013.

Version No 1: 27 Oct 2020 (22:39 hrs)

The contents of these messages were identical; each of them read "Jak reach home already". In light of the evidence before me, I am of the view that "RBD-HP" belonged to Razak, and that it was Razak who was using this mobile phone on 3 January 2013. It is not disputed that "MSA-HP1" belonged to Saleh.

23 Counsel for Razak pointed out that there is no direct evidence that Razak had conspired with Vejiyan and "Sasi" to traffic drugs. This may be so. The nature of conspiracy is agreement, and in most cases, the actual agreement will take place in private in such circumstances that direct evidence of it will rarely be available (*Public Prosecutor v Yeo Choon Poh* [1993] 1 SLR(R) 302 ("*Yeo Choon Poh*") at [19]). Hence, the existence of a conspiracy can be proved by circumstantial evidence, as well as the conduct of the parties both before and after the alleged commission of the offence, such as where the words and actions of the parties indicate their concert in the pursuit of a common object or design, giving rise to the inference that their actions must have been co-ordinated by arrangement beforehand: see *Yeo Choon Poh* at [20] and also *Nomura Taiji v Public Prosecutor* [1998] 1 SLR(R) 259 ("*Nomura Taiji*") at [106]). The evidence before me is that following "Sasi's" instructions, Vejiyan was to deliver drugs to the intended recipient with the mobile phone number "84290376". This number was traced to "RBD-HP". On "Sasi's instructions, Vejiyan made calls to "84290376", and made arrangements with the person at the other end of the line to meet at Woodlands. Razak, together with Saleh, then turned up at the agreed meeting location in the red KIA and there, Razak opened the rear door of the red KIA to initiate contact with PW44 who was posing as Vejiyan. When Razak was arrested subsequently, "RBD-HP" was found in his possession. I am satisfied, after considering the evidence, that the Prosecution has proven, beyond a

Version No 1: 27 Oct 2020 (22:39 hrs)

reasonable doubt, that there was an agreement between Razak, Vejiyan and "Sasi" to traffic drugs.

24 The evidence considered thus far, along with my reasons given above as to why I disbelieve Razak's testimony, would have been sufficient to convict Razak. The Prosecution called Saleh as a Prosecution witness to contradict Razak's testimony. Saleh gave an account that was different from that of Razak. It is not disputed that Saleh had been a drug addict for many years, and in court he claimed that he had been getting his drug supplies from Razak for about four years before Razak was arrested. Saleh said that on 3 January 2013, he called Razak to buy two straws of heroin from him. Razak told him to meet him at Blk 325. When Saleh arrived at Blk 325, he saw Razak standing beside the BMW. The red KIA was also parked there. Razak then took a straw of heroin from a black pouch that was at the driver's seat of the red KIA and sold it to Saleh for $30. He told Saleh to smoke the straw of heroin inside the red KIA. As Saleh sat at the driver's seat of the red KIA, Razak sat on the back passenger seat at the left side of the car. Razak spoke to someone on Razak's mobile phone ("RBD-HP"), and then told Saleh to drive him to Woodlands Centre as Razak needed to meet someone there. Even though Saleh had no driving licence, he agreed to drive Razak to Woodlands Centre as he was afraid that if he refused to do so, then Razak would refuse to supply him with more heroin. During the journey to Woodlands Centre, Razak used RBD-HP and said to someone in Malay a line which translates to "you said that the person has come. Call your man to call me. I have been waiting for quite long. Since your man is using a private number, I cannot call him". Upon arriving at the car park of Woodlands Centre Road, Razak directed Saleh to stop in front of an Indian man (PW44 posing as Vejiyan) who was sitting on a motorcycle. Razak called out to the Indian man for him to come

Version No 1: 27 Oct 2020 (22:39 hrs)

near the car. The Indian man came closer, but did not enter the car, and made certain hand gestures which Saleh thought was to ask them to go back. Razak then instructed Saleh to drive out of the car park and to go back to Blk 325. When they reached Blk 325, Razak initially asked Saleh to go home but while Saleh was walking home, Razak called him back and told him that Razak's friend might be coming to meet them at Blk 325. Saleh automatically sat at the driver's seat of the red KIA when he returned to Blk 325. While they were waiting inside the red KIA, officers from CNB came and arrested them both. Saleh maintained that he has only one mobile phone ("MSA-HP1"), and that both "MSA-HP2" as well as "RBD-HP" belonged to Razak. He also denied borrowing the BMW on 2 January 2013 or that the packet of drugs found on the BMW belonged to him.

25 I do not find Saleh to be a credible witness. First, Saleh gave evidence that the black pouch containing straws of heroin which was seized from the red KIA belonged to Razak. At the trial, however, it transpired that Saleh had actually been charged before the State Courts for possession of the drugs in the black pouch, and that he had in fact pleaded guilty to the charge.

26 Secondly, Saleh initially testified in definitive terms that it was Razak who had rented the red KIA from one "Ajis". He did not mention that he had played any role in procuring the red KIA for Razak. However, when the Defence put to him in cross-examination that the owner of the red KIA had given a statement to the CNB that Saleh had gone alone to him in the middle of December 2012 to rent the red KIA, Saleh denied that he went alone and maintained that the car was rented by Razak and claimed that he had helped Razak to procure the red KIA by bringing him to see Ajis. It is possible that Saleh had initially omitted to mention his role in procuring the red KIA for

Version No 1: 27 Oct 2020 (22:39 hrs)

Razak either inadvertently or because he did not think that it was critical, and not because he was deliberately trying to conceal the fact from the court. Nonetheless, the evidence is unclear as to whether it was Razak or Saleh, or possibly both, who had rented the red KIA.

27 Thirdly, during the cross-examination of Saleh at trial, the Defence pointed him to a series of text messages sent by one "Jai" to "MSA-HP1" (which Saleh admitted was his phone), where "Jai" appeared to be making enquiries to buy drugs. For instance, on 16 December 2012, "Jai" sent the following two texts to "MSA-HP1":

> "bng saley my friend ask about set price 1200 still have not?"
>
> "Salleh got tolak set or not"

About two and a half hours later, Saleh replied:

> "Jai got I already ask for you, stengah $700/-, one $1300"

"Jai" then texted back to say that:

> "With you now got?"
>
> "1300 I take..the thing inside bag don't broken ar"

On an earlier occasion on 8 November 2011, "Jai" also sent the following text message to Saleh, where he appeared to have warned Saleh to be more careful in going about his drug trafficking activities:

> "…you be careful, you have forgotten about safety…remember *lehh* got *kamera* already later want to move also difficult..you *tolak*, you relax you *tembak* it's all the same place….have to think bro..everyday you play with life you know..ajak's name also is hot now..only his face cnb didn't recognise.
>
> [Translator's note: "Tolak" means "to push" but in this context, it could mean "to sell or traffic drugs."]

Version No 1: 27 Oct 2020 (22:39 hrs)

28 Saleh was evasive when the above text exchanges were shown to him. He first denied having seen some of the text messages, even though they were sent to a phone which he admitted was his. He then denied knowing anyone by the name of "Jai", even though the evidence was that he had replied to "Jai's" message and had addressed "Jai" by that name in the reply. The Prosecution conceded that Saleh might not have been entirely truthful in his testimony about whether he had engaged in drug trafficking activities prior to 3 January 2013.

29 Lastly, even though Saleh only admitted that he owned "MSA-HP1" but said that "MSA-HP2" belonged to Razak, the Defence pointed out that the address books of both mobile phones were similar in that both had contacts in code names. Some of the contacts, such as "Mango 131" and "Didi Endang", appeared in both the address books of the two mobile phones. Further, if we were to accept Saleh's testimony that both "RBD-HP" and "MSA-HP2" belonged to Razak, then Razak would have, on at least two occasions, made calls to himself from one phone to another, as the call records of "MSA-HP2" showed that on 3 January 2013 at 10.08am, a call was received on "MSA-HP2" from "RBD-HP" and that on the same day at 10.13am, a call was also dialled from "MSA-HP2" to "RBD-HP". I have already made the finding that "RBD-HP" belonged to Razak and I am of the view that "MSA-HP2" was owned by Saleh.

30 The evidence before me indicates that far from being a credible witness, Saleh may well be a co-conspirator, together with Razak. Indeed, apart from the evidence already considered above, the phone records of "MSA-HP1" (which Saleh admitted was his phone) further indicated that Saleh and Razak were in some form of a partnership. The evidence showed

Version No 1: 27 Oct 2020 (22:39 hrs)

that "RBD-HP", which was linked to the number "84290376", belonged to Razak. This number was saved under the name of "jatero 4" in "MSA-HP1". On multiple occasions on 4 December 2012, 11 December 2012, 15 December 2012 and 19 December 2012, Saleh sent the following identical message to "jatero 4".

> "jak reach home already"

The same message was sent by Saleh from "MSA-HP1" to "jatero" at phone number "83789577" on 22 October 2012, and to "jatero two" at phone number "84274492" on 15 November 2012, 19 November 2012, 1 December 2012 and 3 December 2012. During cross-examination at trial, Saleh said that "jak" referred to Razak. It appears that Razak might have had multiple phone numbers which Saleh had saved in "MSA-HP1" under different variations of the nickname "jatero". When asked why he had needed to inform Razak that he was home, Saleh's explanation was that he wanted to purchase drugs from Razak and that Razak would sometimes send the drugs to Saleh's home. I am not wholly convinced. I consider it more probable that Saleh had seen the need to inform Razak that he had reached home because they were in some kind of an illegal partnership involving drugs. The following four text messages, sent by Saleh from "MSA-HP1" on various dates in December 2012, support my view (the first message was sent to "jatero two" at "84274492" while the remaining three messages were sent to "jatero four" at "84290376"):

> "jak rai wants 1 more shot I say cannot the one just now he say he already told you want 1 more to ask you first"
>
> "Jak gigi one eight zero help pack already prepare kol him or me"
>
> "Jak Gigi want salary half a month"
>
> "Jak Gigi ask his salary for one month he wants to take".

Version No 1: 27 Oct 2020 (22:39 hrs)

At the time of their arrest, Saleh said that he was working as a forklift driver while Razak was doing odd jobs as a mover. However, it seems from the text messages above that one "Gigi" was in the employment of Razak and possibly also Saleh, and that "Gigi's" job scope possibly involved the "packing" of certain substances.

31 Two persons who are jointly involved in a criminal enterprise have obvious incentive to pin the blame on each other so to exculpate themselves, and so, their testimonies should be treated with caution. Illustration (b) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) provides that the court may presume that an accomplice is unworthy of credit and that his evidence needs to be treated with caution. Whether or not the court should believe the testimony of an accomplice would depend on all the circumstances of the case, including whether that testimony can stand alongside objective evidence: see *Chai Chien Wei Kelvin v PP* [1998] 3 SLR(R) 619 at [61]. In the case here, I am of the view that neither Razak nor Saleh had told the truth in court.

32 Although I have some suspicion that Saleh may be a co-conspirator together with Razak, it is not the function of this court to determine the guilt of Saleh, who is not on trial here. My present duty is to establish whether or not Razak is guilty. Counsel for Razak submitted that the guilt of Razak relies almost exclusively upon Razak's word against that of Saleh, and that if the Prosecution fails to establish that Saleh's version of events is the truth, then Razak must be acquitted. I am not so persuaded. I have already stated (at [23] – [24] above) that even without Saleh's testimony, the objective circumstantial evidence that is before this court sufficiently proves Razak's guilt beyond reasonable doubt. It may be that Razak alone had conspired together with Vejiyan and "Sasi" to traffic drugs, or Saleh might had been in it together with

Version No 1: 27 Oct 2020 (22:39 hrs)

Razak, Vejiyan and "Sasi". Either way, I am convinced, beyond reasonable doubt, that Razak is a party to the conspiracy. In *Quek Hock Lye v Public Prosecutor* [2012] 2 SLR 1012 ("*Quek Hock Lye*"), the Court of Appeal held (at 37]) that in order to secure a conviction for criminal conspiracy, it is sufficient for the Prosecution to prove that there are two or more persons who are guilty of conspiracy, even though the other person(s) involved may still be at large, dead, unknown, or for some reason acquitted on a technical ground. It was unnecessary that the co-conspirator(s) be tried and/or convicted: see *Quek Hock Lye* at [38], citing *Pradumna Shriniwas Auradkar v State of Maharashtra* 1981 Cri L J 1873. The same principle applies with respect to the present offence of abetment by conspiracy.

33 Having found that Razak was a party to the conspiracy to traffic drugs, the next question is what was the weight of diamorphine that the parties agreed to traffic? The five bundles brought into Singapore by Vejiyan contained varying quantities of diamorphine from 5.29g to 22.41g. According to PW43, PW44 and PW47, Vejiyan had informed the CNB officers immediately following his telephone conversation with "Sasi" at 12.07pm on 3 January 2013 that "Sasi" had instructed him to deliver "the big bundle" to the intended recipient in Woodlands and that the other four bundles were to be delivered to another recipient whose identity would be disclosed later. However, Vejiyan gave different testimonies in his subsequent statements to the CNB. In his statements recorded on 4, 6 and 9 January 2013, Vejiyan said that "Sasi" had told him to pass "2 of the bigger/biggest bundles" to the intended recipient in Woodlands. Yet in another statement recorded on 8 January 2013, Vejiyan said, without making any reference to the size of the bundles, that "Sasi" instructions were for him to pass "the 2 bundles of drugs…in (the) motorbike" to the intended recipient in Woodlands. Finally, in

Version No 1: 27 Oct 2020 (22:39 hrs)

Vejiyan's statement dated 13 January 2013, "Sasi's" instructions became that Vejiyan was supposed to pass all five bundles to the same recipient. During his examination-in-chief at trial, Vejiyan told the court that he was in a confused state of mind when the CNB officers asked him to call "Sasi" on 3 January, as he had consumed drugs before that and had also not slept well. He also said that he had told the CNB when he subsequently recorded his statements that he could not really remember what "Sasi's" instructions to him were with respect to how many bundles of drugs he was supposed to pass to the intended recipient in Woodlands. He only said two bundles when the CNB officer who was taking his statements insisted that he gave an answer. At trial, Vejiyan maintained that he could now not recall what "Sasi's" instructions to him were on which bundle(s) he was to pass to the intended recipient in Woodlands.

34 Although Vejiyan's evidence with respect to how many or which of the five bundles of drugs he was supposed to deliver to Razak was not wholly consistent, I consider the account that he had provided to PW43, PW44 and PW47 on 3 January 2013, immediately after he had received his instructions from "Sasi" over the phone, to be the most reliable. The subsequent statements were recorded later and by then, Vejiyan's memory of what "Sasi's" instructions were could have faded over time. Apart from the statement recorded on 8 January 2013, it is clear from all of Vejiyan's other statements and accounts that "Sasi" had instructed him to deliver at least the biggest of the five bundles to Razak, whether or not he was also asked to deliver other bundles. The Prosecution had charged Razak with abetting by conspiracy the trafficking of 22.41g of diamorphine – the quantity of diamorphine found in the biggest of the five bundles. PW47 testified that this bundle was obviously bigger than the other four bundles which were each only about half its size. In

Version No 1: 27 Oct 2020 (22:39 hrs)

the circumstances, I am satisfied that Razak had conspired with Vejiyan and "Sasi" to traffic at least 22.41g of diamorphine.

Conclusion

35 Having considered the evidence and the submissions of counsel, I am satisfied that the Prosecution has proven the respective charges against Vejiyan and Razak beyond reasonable doubt. I thus find both Vejiyan and Razak guilty as charged and convict them accordingly.

- Sgd -
Choo Han Teck
Judge

Terence Chua and Nicholas Wuan Kin Lek (Attorney-General's Chambers) for the prosecution.
Amarjit Singh (Donaldson & Burkinshaw LLP) and Prasad s/o Karunakarn (K Prasad & Co) for the first accused.
John Abraham (Crossborders LLP) and Satwant Singh s/o Sarban Singh (Satwant & Associates) for the second accused.

Version No 1: 27 Oct 2020 (22:39 hrs)