IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 204

Criminal Case No 28 of 2018

Between

Public Prosecutor

And

(1) Saridewi Binte Djamani
(2) Muhammad Haikal Bin Abdullah

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Public Prosecutor
v
Saridewi Bte Djamani and another

[2018] SGHC 204

High Court — Criminal Case No 28 of 2018
See Kee Oon J
11–13, 17 April, 2, 8–11, 28 May, 5, 27 June, 6 July 2018

14 September 2018

See Kee Oon J:

Introduction

1 The two accused persons were jointly tried in respect of drug trafficking offences. The first accused person, Saridewi Binte Djamani ("Saridewi"), was charged under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for having in her possession six packets and seven straws containing a total of not less than 30.72 grams of diamorphine, which is a Class A controlled drug under the First Schedule to the MDA. The second accused person, Muhammad Haikal Bin Abdullah ("Haikal"), was charged under s 5(1)(*a*) of the MDA, for delivering two packets containing a total of not less than 28.22 grams of diamorphine to Saridewi.

2 At the conclusion of the joint trial, I was satisfied that the Prosecution had proved the charges against the respective accused persons beyond

reasonable doubt. Upon delivering brief grounds for my decision to find them guilty, both accused persons were convicted and sentenced on 6 July 2018. I now set out the grounds of my decision in full.

Facts

3 A statement of agreed facts was tendered pursuant to s 267(1) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") at the beginning of the trial. The evidence pertaining to the operations carried out by the Central Narcotics Bureau ("CNB"), the arrests of the two accused persons, the seizure of exhibits, the reports produced by the Forensic Response Team ("FORT"), the analyses of the quantity of diamorphine and deoxyribonucleic acid ("DNA") by the Health Sciences Authority ("HSA") were largely uncontroversial and undisputed.

4 On 17 June 2016, at about 3.35pm, Haikal drove a motorcycle bearing registration number JHH 4015 ("the Motorcycle") into the carpark of Block 350 Anchorvale Road, Singapore ("Block 350"). After parking, he retrieved a white plastic bag from the Motorcycle and proceeded to the lift of Block 350. He took the lift up to the 17th floor. He met Saridewi on the 17th floor and handed a white plastic bag to her. In return, Saridewi handed him an envelope, with the marking "10.000" on it, to him. The movements of Haikal and Saridewi using the lifts of Block 350 at the material time were captured clearly on the CCTV cameras in the lifts, and this was not disputed when the camera footage was viewed in the course of the trial.[1] The two then parted ways; Haikal proceeded back to the Motorcycle while Saridewi went back to the unit where she resided, located at #16-143 of Block 350 ("the Unit").

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1 Notes of Evidence ("NE") 10 May 2018, at pp 24, 25 and 31.

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5 The CNB had received information of the drug transaction that was to take place at Block 350 that afternoon and various CNB officers were deployed at the vicinity in a covert operation. Shortly after riding off from Block 350 on the Motorcycle, Haikal was intercepted and placed under arrest by CNB officers at the junction of Anchorvale Road and Anchorvale Street. The officers recovered in his possession, *inter alia*, an envelope with the marking "10.000" on it (later marked as "MHA-1") found to contain cash totalling SGD$10,050 and a brown envelope (later marked as "MHA-2") found to contain cash totalling SGD$5,500. Three mobile phones found in his possession were seized and sent to FORT for analysis.

6 Meanwhile, CNB officers arrived at the Unit. Saridewi, upon hearing movements and voices outside her door and suspecting the presence of CNB officers, threw various items out of the kitchen window of the Unit.[2] Before the CNB officers could cut through her metal grille gate to effect entry, she opened the door to allow the CNB officers to enter the Unit. In the Unit, various exhibits including packets of crystalline substance, numerous glass tubes, a slab of tablets, numerous empty packets and straws, several unused envelopes, one digital weighing scale, one heat sealer, and a notebook were seized. From the construction site adjacent to Block 350, the CNB officers recovered a white "SKP" plastic bag (later marked as "A1") containing another white "SKP" plastic bag (later marked as "A1A"), which contained two plastic packets (later marked separately as "A1A1" and "A1A2"), each containing one packet of granular/powdery substance (later marked as "A1A1A" and "A1A2A" respectively). On the ground floor of Block 350, CNB officers recovered, *inter alia*, two stained packets (later marked as "B1"), some loose brown granular substance (later marked as "C1"), one packet (later marked as "D1") containing

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2 NE 9 May 2018, at p 67 lines 19–31.

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eight packets of crystalline substance ("later marked as "D1A"), one packet containing three packets of granular/powdery substance ("later collectively marked as "D2A"), one packet containing two white straws and five blue straws each containing granular/powdery substance (later collectively marked as "D3A"), and one digital weighing scale. Four mobile communication devices were seized from Saridewi, later marked as "SBD-HP1", "SBD-HP2", "SBD-HP3" and "SBD-TAB" respectively, and sent to FORT for analysis. It was not disputed that the integrity and custody of all the exhibits seized from Haikal and Saridewi were not compromised in any way at any point in time.

7 The HSA analysed the drug exhibits and found the quantity of drugs in the exhibits as follows:

S/N	Exhibit Marking	Quantity of Drugs
1.	A1A1A (1 packet)	Not less than 9.39 grams of diamorphine
2.	A1A2A (1 packet)	Not less than 18.83 grams of diamorphine
3.	C1 (loose granular substance)	Not less than 1.77 grams of diamorphine
4.	D2A (3 packets)	Not less than 0.55 grams of diamorphine
5.	D3A (7 straws)	Not less than 0.18 grams of diamorphine

The total amount of diamorphine contained in the exhibits listed above was not less than 30.72 grams.

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8 The DNA analyses by the HSA showed, among other things, that Haikal's DNA profile was found on the exterior and interior surface of exhibit "B1" (the two stained packets).

9 Seven investigation statements were recorded from Haikal and Saridewi respectively. There was no challenge as to the voluntariness of statements, but both accused persons challenged the accuracy of certain portions of their statements.

Prosecution's Case

10 The main thrust of the Prosecution's case was that Haikal had passed a white "SKP" plastic bag containing the two packets of diamorphine to Saridewi on 17 June 2016 on the 17th floor of Block 350 in exchange for the envelope containing SGD$10,050. This drug transaction arose because Saridewi had placed an order of diamorphine with her supplier, whom she knew as "Bobby" or "Brown", on 16 June 2016, the day before the transaction.

11 The Prosecution submitted that there was no break in the chain of exhibits – the white "SKP" plastic bag retrieved along with the two packets of diamorphine inside (A1, A1A1A and A1A2A) was the exact one that Haikal had delivered to Saridewi. It could not be seriously contended that someone else in Block 350 who was alerted to the presence of the CNB had thrown down exhibit A1, because the CNB operation was covert. To reduce the risk of the operation being uncovered, unmarked vehicles were used and CNB officers were dressed in civilian clothes.[3]

[3] NE 11 April 2018, at p 61 line 8; NE 12 April 2018, at p 74 lines 4–5.

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Prosecution's case against Saridewi

12 The Prosecution's case against Saridewi was that she was in possession of the six packets and seven straws containing a total of not less than 30.72 grams of diamorphine, and that she knew of the nature of the drugs. Pursuant to the presumption of trafficking in s 17 of the MDA, she was presumed to be in possession of the diamorphine for the purpose of trafficking. The Prosecution submitted that she had failed to rebut the presumption of trafficking with her defence of diamorphine consumption, because the evidence showed that she was not an abuser of diamorphine at the material time at all.[4]

13 In relation to the statements recorded from Saridewi, the Prosecution submitted that they were accurate and weight should be placed on them accordingly. The Prosecution submitted that the opinions of Dr Julia Lam ("Dr Lam"), the defence psychologist, were flawed. Dr Lam opined that Saridewi "might not have the mental ability to give an accurate version of events during the statement taking process because of her mental conditions" and that Saridewi was suffering from persistent depressive disorder and severe amphetamine-type substance use disorder.[5] The Prosecution took the position that Saridewi was not suffering from drug withdrawal at the time when the statements were recorded, and that she was not suffering from persistent depressive disorder.[6] Further, the evidence showed that there was no substantial impairment of her mental state when the statements were taken.[7]

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4 Prosecution's closing submissions at para 43.

5 Psychologist report by Dr Julia Lam (D2) at paras 35 and 37.

6 Prosecution's closing submissions at paras 36 and 37.

7 Prosecution's closing submissions at para 40.

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Prosecution's case against Haikal

14 The Prosecution submitted that Haikal was presumed to know the nature of the substance he had delivered to Saridewi pursuant to s 18(2) of the MDA, and that he was unable to rebut the presumption on a balance of probabilities. In support of their argument, the Prosecution pointed out that Haikal had stated in his cautioned statement that he knew what he had passed to Saridewi was "drugs",[8] and had also furnished the contact numbers of one Kunjai and one Abang as being related to "drugs".[9] In addition, Haikal had delivered the same substance to Saridewi on five or six occasions, and the circumstances of the handling of the substances on each occasion were highly suspect.[10] Moreover, Haikal earned RM500 for each delivery.[11]

15 At the close of the Prosecution's case, the Defence made no submission. I was satisfied that a *prima facie* case had been established to warrant calling for the defence of both accused persons. After I administered the standard allocution, Saridewi elected to give evidence in the English language. She was one of two defence witnesses, the other being Dr Lam. Haikal elected to give evidence in the Tamil language, and was the only witness for his case.

Saridewi's Defence

16 Saridewi's defence was that a substantial portion of the diamorphine seized during the arrest was for her own consumption. She claimed on the stand that she relapsed to consuming diamorphine a month before her arrest.[12] She

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8 Haikal's statement dated 18 June 2016, Agreed Bundle ("AB") at p 294.

9 Haikal's statement dated 23 June 2016 at para 29, AB at p 349.

10 Prosecution's closing submissions at para 16(iv).

11 Prosecution's closing submissions at para 16(iii).

12 NE 9 May 2018, at p 48 lines 27–28.

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testified that out of the two packets of diamorphine she received from Haikal, she intended to keep the packet which contained better quality diamorphine for her own consumption.[13] The straws of diamorphine seized were also for her own consumption.[14] She claimed that she needed to stock up on diamorphine for her own consumption because she predicted her rate of consumption would escalate to 8 to 12 grams of diamorphine a day,[15] and because it was the fasting month.[16] Based on her account, out of the 30.72 grams of diamorphine specified in the charge, she intended to keep 19.01 grams of diamorphine for her own consumption and 11.71 grams for trafficking. This would mean that the amount of diamorphine intended for trafficking would fall below the threshold of 15 grams for triggering the death penalty under s 33(1) of the MDA read with the Second Schedule to the MDA.

17 Saridewi admitted that she had made arrangements to purchase two packets of diamorphine from "Bobby", her supplier.[17] She did not deny that she ran a drug trafficking business,[18] and that she had intended to repack the diamorphine into smaller quantities for sale to various buyers. However, she sought to downplay the scale of her trafficking activities, and suggested that she had been meaning to exit the drug trade and was planning to transfer her business to someone else.[19]

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13 NE 9 May 2018, at p 63 lines 24–28.

14 NE 9 May 2018, at p 48 lines 16–17.

15 NE 9 May 2018, at p 61 line 4.

16 NE 10 May 2018, at p 40 lines 14–15.

17 NE 9 May 2018, at p 62 lines 16–23.

18 NE 9 May 2018, at p 48 line 13 and p 94 at lines 18–28.

19 NE 10 May 2018, at p 38 lines 28–31.

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18 As for her statements, Saridewi accepted that they were given voluntarily but sought to show that she was suffering from drug withdrawal, persistent depressive disorder and substance abuse disorder, and thus might not have been able to narrate her account accurately. In this regard, she sought to rely on Dr Lam's assessment of her mental state.[20]

19 Saridewi further argued during the course of the trial that the evidence in the FORT reports and her investigation statements pertaining to her past drug trafficking transactions ("the Disputed Evidence") could not be admitted on the basis that they constituted similar fact evidence.[21]

Haikal's Defence

20 Haikal admitted that he had made a delivery to Saridewi and had received the envelope with the marking "10.000" on it from her. The crux of his defence lay in his lack of knowledge of the nature of the substance he had delivered. He alleged that he believed he was delivering "sapadu" or "makanan",[22] which mean food and to eat in Tamil and Malay respectively,[23] because that was what he was told by the person who had instructed him. He also claimed that he believed the nature of the substance was medical drugs[24] and in re-examination he claimed that he thought they were for pain relief or to enhance sexual performance.[25]

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20 Psychologist report by Dr Julia Lam (D2) at para 35.

21 Saridewi's submissions on the non-admissibility of similar fact evidence ("Saridewi's SFE submissions") at para 3.

22 NE 28 May 2018, at p 22 lines 13–17, at p 61 lines 10–15.

23 NE 28 May 2018, at p 22 line 25.

24 NE 28 May 2018, at p 26 lines 12–22.

25 NE 5 June 2018, at p 31 lines 13 and 14.

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My decision

Chain of drug exhibits

21 It was not disputed that Haikal delivered a plastic bag to Saridewi on 17 June 2016 and that Saridewi had handed over a white envelope with the marking "10.000" on it to Haikal.[26] However, both accused persons took the position that although exhibit A1 looked like the plastic bag that Haikal had delivered to Saridewi, it could not be ascertained conclusively that exhibit A1 was indeed the plastic bag delivered. Saridewi suggested that some other drug user residing in Block 350 could have been alerted to the presence of CNB officers in the vicinity and thrown out exhibit A1.[27] This position taken by the accused persons was untenable as the totality of the evidence led ineluctably to the conclusion that exhibit A1, containing two packets of drugs, was the very same plastic bag that Saridewi had received from Haikal and thrown out of the kitchen window of the Unit.

22 From the outset, the observations of CNB officers of the window of the Unit and the contemporaneous retrieval of exhibit A1 left no room for doubt that Saridewi threw out exhibit A1 from her Unit. It was not disputed that prior to the CNB officers entering the Unit to arrest Saridewi, she threw various items out of the window of the Unit.[28] She admitted that she threw out a metal container which contained, *inter alia*, exhibits C1, D2A, D3A and B1, which were later recovered by CNB officers from the grass patch on the ground floor beside Block 350.[29] Her acts of throwing out the items were witnessed by CNB officers positioned on the ground floor next to Block 350. Senior Staff Sergeant

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26 Statement of Agreed Facts ("AF") at para 24.

27 NE 11 April 2018, at p 74 lines 16–18; 13 April 2018, at p 16 lines 26–29.

28 AF at para 5.

29 NE 10 May 2018, at p 34 lines 19–21.

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Wilson Chew Wei Xun (PW36) ("SSGT Chew"), who was observing the Unit from the ground floor, saw an individual wearing a brown top throwing out a white plastic bag from the Unit.[30] He heard a "bang" sound of the white plastic bag hitting the corrugated metal fence of the construction site that was close to and opposite Block 350 at the material time, before it disappeared over the fence.[31] He further witnessed the same person in the brown top throwing more items out of the window of the Unit.[32] It was not disputed that Saridewi was wearing a brown top at the material time; her attire was also captured clearly in the CCTV cameras in the lifts at Block 350 used by Saridewi immediately prior to the arrest.[33]

23 Station Inspector Saravanan s/o Veerachami (PW35) ("SI Saravanan") conducted a contemporaneous search of the vicinity of Block 350 in the direction of where Saridewi had thrown the items, and retrieved a white "SKP" plastic bag (A1) from a drainage system within the construction site.[34] This plastic bag was later found to contain another white "SKP" plastic bag (A1A), which contained two plastic packets (A1A1 and A1A2), each containing one packet of granular/powdery substance (A1A1A and A1A2A). The fact that exhibit A1 was retrieved from the construction site about 35 minutes thereafter,[35] coupled with the fact that there were no other white plastic bags recovered at the site, pointed strongly to the conclusion that exhibit A1 must have been thrown by Saridewi. Saridewi's allegation that exhibit A1 was

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30 Conditioned Statement ("CS") of Wilson Chew, AB at p 245.

31 NE 11 April 2018, at p 70 lines 1–2.

32 CS of Wilson Chew Wei Xun at para 4, AB at p 245.

33 NE 10 May 2018, at p 31 lines 29–31.

34 NE 12 April 2018, at p 58 lines 11–13; CS of Saravanan s/o Veerachami at para 5, AB at p 243.

35 NE 11 April 2018, at p 65 line 31, p 71 line 22.

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retrieved from an area that was too far away from Block 350 was not persuasive,[36] in light of the observations of SSGT Chew and the contemporaneous search conducted in the direction of where she had thrown the items.

24 Upon Saridewi's arrest, she acknowledged and identified exhibit A1 as the plastic bag that she threw out of the Unit at the material time. Station Inspector Alwin Wong testified that he had shown exhibit A1 to Saridewi during the recording of her contemporaneous statement, and she acknowledged exhibit A1 to be the white "SKP" plastic bag containing the "2 bundles of heroin" she referred to in her statement.[37] In her statement dated 22 June 2016, she also identified exhibit A1 (and exhibit A1A) as the plastic bag given to her by Haikal before her arrest.[38] Similarly, Haikal stated in his statement that exhibits A1 and A1A were the plastic bags that he had carried to the Sengkang flat, *ie*, Block 350.[39] He further confirmed that exhibits A1 and its contents, as photographed, were the ones that he had collected from Kunjai, who was the one giving him instructions.[40] Furthermore, the contents of exhibit A1 corresponded exactly to the accused persons' descriptions of the contents of the white plastic bag that Haikal had passed to Saridewi. Even though Saridewi denied looking into the plastic bag prior to her arrest, she testified that she believed exhibit C1 (loose granular substance analysed to contain diamorphine) could have come from exhibit A1A1A or A1A2A,[41] which suggested that she knew that A1A1A and

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36 Saridewi's closing submissions at para 12.

37 NE 12 April 2018, at p 81 at lines 19–21; AB at p 181.

38 Saridewi's statement recorded on 22 June 2016 at 10.43am at para 4, AB at p 368.

39 Haikal's statement recorded on 21 June 2016 at para 5, AB at p 296.

40 Haikal's statement recorded on 23 June 2016 at para 25, AB at pp 349–350.

41 Saridewi's statement recorded on 22 June 2016 at 10.43am at para 4, AB at p 368; NE 10 May 2018, at p 36 lines 9–17.

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A1A2A were of similar appearance and contained substances similar to exhibit C1. Haikal admitted that he had looked at the contents and saw "small stones that look[ed] like … the colour of chocolate".[42]

25 Saridewi's suggestion that some other drug user residing in Block 350 could have thrown out exhibit A1 after being alerted to the presence of CNB was wholly against the weight of the evidence. Counsel adduced a newspaper article,[43] reporting that three persons from Block 350 were arrested in July 2015 for drug trafficking, to show that there was a possibility that there might have been other drug users residing in the same block. Counsel also brought up the arrest of one Anna Sew for drug-related offences. It was not disputed that Anna Sew's registered residential address was Block 350, in March 2016.[44] Notwithstanding this, Saridewi's claim that there might be another drug user residing in Block 350 on 21 June 2016 who might have thrown out the white plastic bag remained a mere conjecture which lacked evidential basis. The CNB officers involved in the operation to arrest Saridewi and Haikal, including SI Saravanan,[45] Assistant Superintendent Tjoa Nazri Adam,[46] Senior Staff Sergeant Tan Kheng Chuan,[47] Station Inspector Tay Cher Yeen ("SI Tay"),[48] and Assistant Superintendent Peh Zhen Hao ("ASP Peh"),[49] testified that they did not know of any persons residing in Block 350 who were involved in drug activities at the material time besides Saridewi. ASP Peh clarified that Anna

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42 NE 28 May 2018, at p 28 lines 8–10.

43 Hariz Baharudin, "Stand-off for 5 hours", *The New Paper* (22 July 2015) at p 5 (D1).

44 NE 8 May 2018, at pp 93–95.

45 NE 12 April 2018, at p 59 lines 1–5.

46 NE 12 April 2018, at p 67 lines 23–26.

47 NE 11 April 2018, at p 99 lines 23–32.

48 NE 13 April 2018, at p 15 lines 6–11.

49 NE 8 May 2018, at p 91 lines 21–25.

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Sew had an ongoing drug case but was residing in a bungalow located at Lorong Lew Lian and he did not know if she stayed at Block 350.[50] Moreover, the operation was a covert one and therefore unlikely to arouse the suspicions of drug users (if any) in Block 350. SI Tay, who was the officer leading the operation, testified that the measures in place, including the use of unmarked vehicles, the civilian attire of the CNB officers and the minimisation of the number of officers deployed at the vicinity of Block 350, were sufficient to render the operation a covert one.[51]

26 Saridewi also argued that exhibit A1 was not the plastic bag that she had received from Haikal because there was no DNA of either of the accused persons found on it. On the other hand, it was more likely that exhibit B1 (two stained packets) found on the grass patch below Block 350 were the contents of the plastic bag thrown out by Saridewi, because Haikal's DNA was found on them.[52] The contents would have fallen out since the plastic bag was not tied up.[53] This suggestion was once again a grasp at straws. It was clear that the plastic bag delivered by Haikal contained packets with "small stones" of the colour of "chocolate", and not empty packets. The absence of DNA evidence on exhibit A1 could not be conclusive proof that it was not the plastic bag delivered by Haikal to Saridewi.

27 Therefore, I found that the accused persons had no basis to seriously contend that a different white "SKP" plastic bag coincidentally containing two packets of diamorphine somehow ended up being discarded by another person at or about the same time and was eventually retrieved below Block 350.

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50 NE 8 May 2018, at p 94 lines 24–30.

51 NE 13 April 2018, p 20 lines 8–24.

52 Saridewi's closing submissions at paras 16 and 17.

53 NE 5 June 2018, at p 6 line 30.

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Saridewi

28 Since Saridewi was found to be in possession of 30.72 grams of diamorphine seized and was aware of the nature of the drugs, she was presumed to be in possession of the diamorphine pursuant to s 17 of the MDA. Section 17 of the MDA states:

> **Presumption concerning trafficking**
>
> **17.** Any person who is proved to have had in his possession more than –
>
> …
>
> (c) 2 grammes of diamorphine;
>
> …
>
> whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

29 From the outset, the evidence showed without a doubt that Saridewi was operating a drug trafficking business at the material time, involving the sale of different drugs, including methamphetamine and heroin. Extensive forensic evidence derived from her mobile communication devices showed messages and call exchanges which revealed that she was running a drug trafficking business. An example of such exchanges, the message communication on 4 June 2016 between Saridewi and a customer, Franco, is reproduced as follows:[54]

> [Saridewi:] Lau Abg nak 125g Adek Kira da Kasi Abg cost price Tapi Lau individual 25g I can't count u 760 [Translation: If you want 125g I counted already given you cost price but if individual 25g I can't count you 760]
>
> [Franco:] Kata booking boleh [Translation: Said can booking]
>
> [Saridewi:] Bila masa Adek ckp mcm tu Abg? [When did I say like that Bro?]

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[54] Table of Phone Communications retrieved from exhibit SBD-HP1 (P252) at p 3.

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> [Franco:] Ok..can i take 125g cash eh
>
> 10 bags abg nak pakai dulu (p) [10 bags I want to use first (p)]
>
> …
>
> [Saridewi:] Adek Amek 500g wit a price dat was set as a deal but if I take 125 or 250 3800 was my price, Abg… mane ade org jual brg wit their actual cost price Abg… Mungkin ade but not me, Abg [Translation: I take 500g with a price that was set as a deal but if I take 125 or 250 3800 was my price, Bro… where got people sell stuff with their actual cost price Bro… Maybe there is but not me, Bro]

30 Saridewi conceded that she operated a drug trafficking business, selling diamorphine, methamphetamine, cannabis and Erimin.[55] The notebook that was seized from the Unit showed undisputed records of her sale transactions in controlled drugs to 12 customers.[56] Prior to the trial, she had however maintained in all her investigation statements that she had not started selling or trafficking controlled drugs yet;[57] it was clear that this assertion could not be maintained in the face of the overwhelming objective evidence showing records of a drug trafficking business.

31 At the core of Saridewi's defence was her contention that the 30.72 grams of diamorphine was not entirely meant for trafficking, but that a substantial portion of it, ostensibly the packet of diamorphine she deemed to be of "better quality", was intended for her own consumption.[58] Before turning to the core of her defence, I will first address her challenge on the admissibility of the Disputed Evidence relating to her past drug trafficking activities, and her

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55 NE 9 May 2018, at p 48 lines 9–15 and p 94 at lines 7–17.

56 NE 9 May 2018, at p 96 lines 10 – 17.

57 Saridewi's statement recorded on 21 June 2016, AB at p 365; Saridewi's statement recorded on 22 June 2016 at para 8, AB at p 369; Saridewi's statement recorded on 23 June 2016 at 9.43am at para 17, AB at p 408; Saridewi's statement recorded on 23 June 2016 at 5.00pm at para 22, AB at p 410.

58 NE 9 May 2018, at p 63 lines 24–28.

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allegation of being unable to give accurate accounts during the statement-taking process because of her alleged mental conditions.

Challenge on admissibility of evidence

32 Saridewi accepted that her statements were given voluntarily but challenged the admissibility of the Disputed Evidence on the basis that it was prejudicial similar fact evidence. Counsel submitted that the evidence came under ss 14 and 15 of the Evidence Act (Cap 97, 1997 Rev Ed) only to the extent of showing that Saridewi knew that she was transacting in controlled drugs.[59] It was further submitted that the prejudicial effect of any similar fact evidence contained in the FORT reports and investigation statements outweighed its probative value. The evidence would be prejudicial to Saridewi as it might lead the court to find that she had the propensity to traffic controlled drugs, and it had no probative value as it had no relevance to the charge against her.[60]

33 The Prosecution argued that the purpose for which the evidence is adduced is vital (*Micheal Anak Garing v PP and another appeal* [2017] 1 SLR 748 at [8]) – if the evidence is adduced to show a disposition towards crime, such evidence would be inadmissible. The Prosecution submitted that it was not adducing the Disputed Evidence to show Saridewi's disposition towards drug trafficking, rather, it was to provide a true and complete picture of the state of affairs at the material time.[61] Similar fact evidence could be admitted where it is relevant, cogent and the strength of inference to be drawn therefrom is sufficiently strong (*Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178

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59 Saridewi's SFE submissions at para 8.

60 Saridewi's SFE submissions paras 13 and 15.

61 Prosecution's submissions on admissibility of evidence at paras 13–15.

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("*Tan Meng Jee*") at [52]); its admission depended on the balancing test between prejudicial effect and probative weight (*Tan Meng Jee* at [50]).

34 The Prosecution submitted that the Disputed Evidence was cogent since Saridewi's statements were given voluntarily and her mobile communication devices were seized and analysed in a proper manner.[62] The Disputed Evidence was relevant because they showed the demand and supply sides of Saridewi's business, thus showing whether or not it would make financial sense for Saridewi to sell the two packets of diamorphine in A1. The Disputed Evidence was also relevant to Saridewi's defence of consumption as they related to the frequency of her supply of drugs and her financial means, which are factors relevant to the assessment of a defence of consumption set out in *Muhammad bin Abdullah v Public Prosecutor and another* [2017] 1 SLR 427 ("*Muhammad bin Abdullah*") at [31]. The Prosecution further submitted that the Disputed Evidence was highly probative to the issue whether the diamorphine in the charge was meant for trafficking or for Saridewi's own consumption.[63]

35 I ruled that the relevant portions remained admissible as the Prosecution's case did not depend solely on similar fact evidence to establish guilt but was founded on Saridewi's admissions and the statutory presumption in s 17 of the MDA. The evidence of her past drug trafficking activities was relevant to her state of mind and probative of the factual context at the material time of her arrest. I accepted the Prosecution's submission that its probative value in connection with her defences strongly outweighed any prejudicial effect. Saridewi did not in any event dispute that past similar trafficking transactions did take place.

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62 Prosecution's submissions on admissibility of evidence at paras 16 and 17.

63 Prosecution's submissions on admissibility of evidence at para 33.

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Mental state during statement recording

36 Saridewi submitted that weight should not be placed on her statements because she was allegedly suffering from mental conditions that impaired her ability to respond in a coherent fashion. In this regard, she adduced evidence from Dr Lam, who opined that Saridewi "might not have the mental ability to give an accurate version of events during the statement taking process because of her mental conditions", namely persistent depressive disorder and substance abuse disorder.[64] Dr Lam found Saridewi to exhibit feelings of sadness and hopelessness, loss of interest and pleasure in activities, poor appetite, sleep difficulties as her continuous consumption of methamphetamine kept her awake, trouble concentrating and indecisiveness, low self-esteem and feelings of worthlessness and excessive guilt.[65] In coming to her conclusion, Dr Lam relied on psychological tests administered to Saridewi, namely the Personality Assessment Inventory ("PAI"), the Barratt Impulsiveness Scale ("BIS-11"), the Beck Depression Inventory ("BDI-II"), and the Beck Anxiety Inventory ("BAI"). Dr Lam also found Saridewi to be a chronic heavy methamphetamine abuser, and stated that chronic abusers might experience a range of emotional and cognitive problems as a result of neurological changes.[66]

37 On the other hand, the opinion of Dr Jason Lee, a psychiatrist from the Institute of Mental Health ("IMH") who conducted a forensic psychiatric evaluation on Saridewi, was that she had a longstanding history of drug abuse but did not suffer from any other mental illness or intellectual disability. He observed her to be calm and attentive throughout the interviews, and not fidgety or restless.[67] In his assessment, she was not suffering from persistent depressive

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64 Psychologist report by Dr Julia Lam (D2) at paras 35 and 37.

65 Psychologist report by Dr Julia Lam (D2) at para 36.

66 Psychologist report by Dr Julia Lam (D2) at para 37.

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disorder at the material time.[68] He opined that she did not fulfil the criteria listed in the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Publishing, 5th Ed, 2013) ("DSM-5") for persistent depressive disorder to be found. Specifically, he was of the opinion that Saridewi did not fulfil diagnostic criterion B, which states that two or more of the following characteristics need to be present to diagnose persistent depressive disorder: (a) poor appetite or overeating; (b) insomnia or hypersomnia; (c) low energy or fatigue; (d) low self-esteem; (e) poor concentration or difficulty making decisions; and (f) feelings of hopelessness. This was because he did not elicit any persistent low self-esteem, feelings of hopelessness or negative cognitions from her. Rather, she reported good concentration and energy levels after consuming methamphetamine, and any appetite loss and sleep disturbances could be confidently attributed to the abuse of methamphetamine.[69] In determining whether diagnostic criterion B was satisfied, Dr Jason Lee emphasised the importance of the exclusionary criterion under diagnostic criterion G, *ie*, that symptoms that could be attributed to the physiological effects of a substance or another medical condition had to be discounted.[70]

38 In response to the psychological tests administered by Dr Lam, the Prosecution called Dr Kenji Gwee (PW54), a psychologist at IMH, to give evidence. Dr Kenji Gwee had never examined Saridewi himself, and only gave evidence as to the reliability and purpose of the psychological tests. Dr Kenji Gwee testified that the PAI was a measure of personality and psychopathology, and it was based on self-reporting.[71] The PAI was not meant to be a diagnostic

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67 Psychiatric report by Dr Jason Lee (P131) at paras 12 and 15, AB at 170.

68 NE 2 May 2018, at p 22 lines 13–18.

69 NE 2 May 2018, at p 25 lines 15–23.

70 NE 2 May 2018, at p 23 lines 4–7.

71 NE 8 May 2018, at p 4 line 29 to p 5 line 14.

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tool and the results of PAI in themselves did not indicate diagnosis of any kind.[72] Built into the PAI were eight validity indices, including the Malingering Index, which was meant to determine the degree of simulation of mental disorder in the patient, and the Rogers Discriminant Function, which distinguished the PAI profiles of *bona fide* patients from those simulating psychiatric disorders.[73] None of these validity indices were reflected in Dr Lam's report, although it was extremely important to set out these indices in a forensic setting.[74] Dr Kenji Gwee further testified that the BIS-11, BDI-II and BAI were similarly based on self-reporting.[75] He warned that there were differing schools of thought in the literature as to the analysis and interpretation of BIS-11, so BIS-11 results should be treated with caution.[76] Moreover, the instructions to the BDI-II and the BAI directed the test-taker to think back for the time frame of two weeks and one week respectively;[77] if the time frames for the tests were altered, the norms based on standardised administration could no longer be used.

39 I was not persuaded that Dr Lam's assessment of Saridewi's mental state during the statement-recording process and diagnosis of persistent depressive disorder was reliable; I found Dr Jason Lee's evidence to be more reliable. Firstly, Dr Lam's assessment was not contemporaneous because she only assessed Saridewi about one and a half years after the statement-taking process. Dr Jason Lee, in contrast, assessed Saridewi on 15 July 2016, which was only about a month after the arrest, and he was in a better position than Dr Lam to obtain a more accurate mental state examination of Saridewi. Secondly, Dr Lam

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72 NE 8 May 2018, at p 9 line 23, p 10 line 1.

73 NE 8 May 2018, at pp 7–8.

74 NE 8 May 2018, at p 9 lines 1–9.

75 NE 8 May 2018, at p 10 lines 10–21.

76 NE 8 May 2018, at pp 10–11.

77 NE 8 May 2018, at p 15 lines 12–26, p 17 at lines 1–5.

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herself conceded that all the depressive symptoms she observed "overlapped a lot" with symptoms of Saridewi's methamphetamine abuse.[78] This meant that her assessment that Saridewi had persistent depressive disorder was flawed because she had failed to apply the exclusionary criterion to exclude symptoms attributable to the physiological effects of methamphetamine abuse during the period when Saridewi was abusing methamphetamine. Although Dr Lam testified that Saridewi was also having low self-esteem and feelings of sadness and hopelessness in June 2014 before she relapsed to taking methamphetamine, she conceded that during the period when Saridewi was on methamphetamine, her dysfunction was also a function of her methamphetamine abuse.[79] Thirdly, Dr Jason Lee's assessment was supported by the accounts of Saridewi's mother and sister, who reported that Saridewi, other than her weight and appetite loss (attributable to her consumption of methamphetamine), "was otherwise not noted to have the features suggestive of a mood or psychotic disorder, or to have decline [*sic*] in her functioning in recent times".[80] Fourthly, Dr Lam conceded that her failure to obtain an account of how the statement-recording process took place was a "crucial deficiency" in her assessment of Saridewi's mental state during the statement-recording process.[81] Lastly, the tests administered by Dr Lam were all based on Saridewi's self-reporting, and the validity indices that could possibly reveal the degree of malingering were not included in her report. The reliance on BIS-11 to demonstrate that Saridewi had significant impulse control issues at the time of the statement-taking process was also flawed as the test was only suitable for finding the current mental state of the patient.

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78 NE 11 May 2018, at p 60 lines 17–24.

79 NE 11 May 2018, at p 64 lines 3–11; p 73 lines 15–17.

80 Psychiatric report by Dr Jason Lee (P131) at para 14, AB at 170.

81 NE 11 May 2018, at p 42 lines 1–12.

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40 In relation to Dr Lam's diagnosis of substance abuse disorder, there was no evidence as to how the disorder affected Saridewi's mental state in the statement-taking process. Dr Lam stated generally that chronic abusers might experience a range of emotional and cognitive problems as a result of neurological changes.[82] However, there was no evidence as to how Saridewi was affected during her statement-taking process.

41 Saridewi also claimed that she was suffering from drug withdrawal during the statement-taking process. She testified that when she was brought to Changi Women's Prison for a drug withdrawal assessment on the day of her arrest, "all [she] was thinking [of was] to sleep".[83] This was because she smoked methamphetamine that morning and did not consume any thereafter, so she was lethargic and just needed to sleep.[84] She had also consumed diamorphine three days prior to her arrest. In her submissions, Saridewi pointed out that ASP Peh had recorded in his conditioned statement that she told him she was "not in the right state of mind to have her statement taken" and she "needed rest".[85] She further submitted that the four doctors who had examined her close to the date of her arrest, namely Dr Tan Chong Hun ("Dr Tan") (PW53), Dr Edwin Lymen Vethamony ("Dr Vethamony") (PW52), Dr Rachel Chan (PW17) and Dr Wong Kia Boon ("Dr Wong") (PW16), were not able to note her sleepiness accurately because they only saw her for a few minutes and because they were only looking for withdrawal symptoms based on a fixed standard-form list.[86] Further, she also suggested that they might not have observed her withdrawal symptoms because

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82 Psychologist report by Dr Julia Lam (D2) at para 37.

83 NE 9 May 2018, at p 73 line 5.

84 NE 9 May 2018, at p 73.

85 Saridewi's closing submissions, at para 54; CS of Peh Zhen Hao at para 18, AB at p 276.

86 Saridewi's closing submissions, at paras 54–57.

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her withdrawal from diamorphine was not very strong, since she took it on a three-day cycle with only one or two straws per use.[87] Saridewi also used Dr Lam's testimony in court that the amount of methamphetamine in Saridewi's urine was seven times higher than the cut-off point in the IUT result to substantiate her allegation that she was suffering from drug withdrawal.[88]

42 I found that Saridewi's claims that she was suffering from drug withdrawal during statement taking were afterthoughts. To begin with, she did not raise any complaints or exhibit symptoms of drug withdrawal to the four doctors who assessed her.[89] Moreover, none of the doctors noticed any symptoms of diamorphine withdrawal during their examinations.[90] On the other hand, the doctors who had examined her had opined that she was not sleepy, but was alert and oriented during their examinations. On 18 June 2016, Dr Tan administered the Glasgow Coma Scale to assess her neurological state in terms of responsiveness and communicativeness, and Saridewi achieved the maximum score of 15, meaning that she was alert and oriented.[91] Dr Rachel Chan, who examined Saridewi on 20 June 2016, did not agree that Saridewi was sleepy during her examination. Had a patient looked sleepy and been unable to respond coherently or well, she "would definitely have noted and documented so".[92] Dr Wong, who examined her on 21 June 2016 just before the recording of her cautioned statement, reported that she was "alert, oriented and haemodynamically stable".[93] Dr Wong's report clearly concluded that there was

87 NE 9 May 2018, at p 75 lines 7–9.

88 Saridewi's closing submissions, at para 63; NE May 11 2018, at p 100 lines 5–8.

89 NE 10 May 2018, at p 3 lines 1–3; Medical report by Dr Rachel Chan (P250) at paras 4(d), 5(b) and 6(b).

90 NE 17 April 2018, at pp 8–10; Medical report by Dr Wong Kia Boon, AB at p 160.

91 NE 17 April 2018, at p 29 lines 20–24.

92 NE 12 April 2018, at p 26 lines 2–7.

93 Medical report by Dr Wong Kia Boon, AB at p 160.

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"no clinical evidence of drug withdrawal at that moment in time", and in concluding so, he had looked for any withdrawal symptoms through physical examination and Saridewi's response to his questions.[94] Dr Wong's evidence and his report were not challenged by Saridewi's counsel as no questions were posed to him for his cross-examination.

43 Saridewi's reliance on ASP Peh's record that she told him she was "not in the right state of mind to have her statement taken" and she "needed rest" was clearly misplaced. ASP Peh explained that because she told him she was not in a proper state of mind to have her statement taken, he decided not to record a statement from Saridewi at that time.[95] This showed that ASP Peh took care to ensure that she was in a right state of mind before proceeding to record a statement, further weakening her allegation that she was not in the right state of mind during the statement-recording process due to her drug withdrawal.

44 Further, although the four doctors saw her for a short period of time during their examinations, all four of them concluded that they did not observe Saridewi to have any withdrawal symptoms. Dr Rachel Chan testified that the ward nurses conducting night shift observations would comment on the sleep of the remandees and she would also rely on their clinical notes.[96] The observations conducted on Saridewi were thus more thorough than Saridewi had alleged. Moreover, it was also wrong to allege the doctors only looked for symptoms stated in the fixed standard form list. Dr Rachel Chan testified that there were two components in an assessment for drug withdrawal – an objective assessment and a subjective assessment. Under the subjective assessment, she asked Saridewi questions stated in the standard form;[97] under the objective assessment,

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94 NE 12 April 2018, at p 42 lines 1–17.

95 CS of Peh Zhen Hao at para 18, AB at p 276.

96 NE 12 April 2018, at p 23 lines 17–29.

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she conducted a physical examination of Saridewi to observe any symptoms of drug withdrawal.[98] There was no indication that the objective assessment was similarly limited to merely looking for the symptoms on the standard form. Her conclusion that Saridewi exhibited no withdrawal symptoms was drawn from a combination of both assessments. Lastly, my finding of Saridewi's lack of withdrawal symptoms was buttressed by Dr Lam's concession during cross-examination that Saridewi was not suffering from drug withdrawal during the statement-taking process.[99] In any case, the Defence conceded that the purpose of Dr Lam's assessment was not to determine whether Saridewi was experiencing any withdrawal symptoms,[100] and so it was of no relevance to the issue.

45 An analysis of Saridewi's conduct during the statement-recording process further demonstrated that she retained the ability to give an accurate account of events. The Prosecution was correct to point out that Saridewi could not claim that her mental state was impaired during her statement-recording in the face of evidence of her clear lucidity and conscious deliberations in deciding how to craft her statements in a way beneficial to herself. She conceded that she had lied in her investigation statements about her drug trafficking activities because she had been aware of the severe punishments for drug trafficking. She conceded that when she gave her statements, she created a picture to ensure that she looked like she was involved in a less serious kind of activity than she actually was.[101] Her deliberate lies in order to paint an exculpatory picture beneficial to herself demonstrated her capacity to make calculated decisions in

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97 NE 12 April 2018, at p 5 lines 7–22.

98 NE 12 April 2018, at p 6 lines 7–20.

99 NE 11 May 2018, at p 53 lines 13–17.

100 Saridewi's closing submissions at para 64.

101 NE 10 May 2018, at p 76 lines 2–15.

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order to downplay her guilt. Adopting Dr Lam's considerations of "judgement, impulse control and decision making",[102] Saridewi's actions were indicative of an individual whose judgment, impulse control and decision making were not substantially impaired.

46 For the above reasons, I rejected Dr Lam's evidence of Saridewi's impaired mental state when her statements were recorded, because her assessment of Saridewi was not reliable. I found the evidence of the prosecution witnesses, in particular the evidence of Dr Jason Lee and Dr Kenji Gwee, to be more consistent with the objective probabilities and therefore more persuasive. Saridewi's allegation that she was suffering from drug withdrawal during her statement-taking similarly did not withstand scrutiny when tested against the testimony of the four doctors who examined her contemporaneously after her arrest. The allegation was evidently an afterthought. Accordingly, I placed weight on Saridewi's statements.

The defence of consumption

47 When an accused person relies on the defence of consumption to rebut the presumption of possession for the purpose of trafficking, the court has to consider the overall circumstances of the case to determine on the balance of probabilities whether the accused person has rebutted the presumption. In particular, the court should consider the rate of consumption, the number of days the supply is meant for, the frequency of supply, whether the accused had the financial means to purchase the drugs for himself, and whether he had made a contrary admission in any of his statements about the intended purpose of the possession of the drugs (*Muhammad bin Abdullah* at [29]–[31]).

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102 Psychologist report by Dr Julia Lam (D2) at para 38.

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48 Considering the overall circumstances of the case, I was unable to accept Saridewi's assertion that she had intended to keep the packet of diamorphine of better quality (A1A2A) and the straws of diamorphine (D3A) for her own consumption. I found that Saridewi was not a witness of truth, in light of numerous inconsistencies in the multiple accounts given by her.

(1) Inconsistencies as to rate of consumption

49 Saridewi asserted that she had relapsed to consuming diamorphine prior to her arrest; therefore, she had to stockpile diamorphine for her own consumption because she expected her consumption to escalate and because it was close to the fasting month.[103]

50 Having regard to all the evidence, I found that Saridewi's allegation of being a severe diamorphine addict was conveniently self-serving and lacking credibility. Firstly, I did not believe Saridewi's evidence that she had told the doctors who had assessed her that she was consuming diamorphine.[104] Evidence from all four doctors who had examined her soon after the arrest showed that she only informed them that she took amphetamines but did not mention diamorphine. Dr Tan, who assessed Saridewi on 18 June 2016, testified that he had made a handwritten note which stated "[n]o other drugs" apart from amphetamine, written down in all likelihood corresponding to Saridewi's answer as to whether she had consumed any other drugs apart from amphetamine.[105] Dr Vethamony, who assessed Saridewi on 19 June 2016, testified that if Saridewi had told him that she had consumed any drug other than amphetamine (amphetamine having already been recorded by Dr Tan), he

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103 NE 10 May 2018, at p 40 lines 11–15; NE 11 May 2018, at p 8 lines 1–5.

104 NE 9 May 2018, at p 74 lines 4–11.

105 NE 17 April 2018, at p 26 lines 8–16.

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"would have made an entry on the paper".[106] There was no such entry. Dr Rachel Chan, who examined Saridewi for *inter alia* either single drug use or multiple drug use on 20 June 2016, gave evidence that she verified with Saridewi that she had only consumed amphetamine and had not consumed any other drugs.[107] Dr Wong, who conducted a pre-statement medical examination on Saridewi on 21 June 2016, asked her if she had consumed drugs and her answer was no.[108] The Prosecution was correct in pointing out that there was no reason why Saridewi would surface only her methamphetamine use and not her diamorphine use; the absence of any reporting of diamorphine use meant that she was not an abuser of diamorphine in the period prior to her arrest.

51 Moreover, Saridewi stated in her statement recorded on 23 June 2016 that she had not really smoked any diamorphine yet, that she had stopped smoking diamorphine since she was released from prison in 2014, and that she did not know when she would be consuming diamorphine again.[109] This very likely represented the actual state of affairs since she conceded that she had the opportunity to inform her statement recorder about her diamorphine use,[110] but she did not do so. When pressed to give an explanation for what she said in the statement, she testified that "this statement really I do not know why I say all these", and she had no explanation to offer.[111] In all her statements, Saridewi stated that she intended to smoke diamorphine, but there was no indication that she had already started doing so. The Defence was wrong to gloss over her

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106 NE 17 April 2018, at p 8 lines 9–15.

107 NE 12 April 2018, at p 6 lines 30–32, p 26 lines 8–11.

108 NE 12 April 2018, at p 40 lines 13–18.

109 Saridewi's statement recorded on 23 June 2016 at para 18, AB at p 408.

110 NE 10 May 2018, at p 43 lines 3–5.

111 NE 10 May 2018, at p 43 lines 21–29.

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admission that she had not smoked any diamorphine yet at the time of her arrest.[112]

52 Furthermore, Saridewi's inability to give a consistent account of when she relapsed to diamorphine consumption and her rate of consumption accentuated the fact that she was being untruthful. In court, Saridewi claimed to have relapsed to consuming diamorphine a month before her arrest, which was in May 2016.[113] On the other hand, she informed Dr Jason Lee that she relapsed to consuming diamorphine a week prior to her arrest, which was in June 2016.[114] This contradicted her statement dated 14 November 2016 where she stated that she had consumed diamorphine since March 2016.[115] Saridewi's accounts regarding her rate of consumption were also inconsistent. Firstly, there was no mention of her rate of consumption of diamorphine at all in all of the statements taken from her, spanning from the date of arrest, 16 June 2016, to 30 June 2017 (which was not unexpected since there was no indication that she had already started consuming diamorphine in the first place). Secondly, she informed Dr Jason Lee that she only consumed "half straw" of diamorphine on one or two days in the week of her arrest.[116] Thirdly, her account in court was that she would consume "one to two straws" every three days.[117] Saridewi's constantly evolving accounts regarding when she relapsed to consuming diamorphine and her rate of consumption during the period prior to her arrest greatly eroded her credibility.

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112 Saridewi's closing submissions at para 45.

113 NE 9 May 2018, at p 48 lines 27–30.

114 Psychiatric report by Dr Jason Lee at para 10, AB at p 169.

115 Saridewi's statement recorded on 14 November 2016 (P254) at para 39.

116 Psychiatric report by Dr Jason Lee at para 10, AB at p 169.

117 NE 9 May 2018, at p 60 lines 5–14.

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53 In addition, the HSA certified that Saridewi's urine test was negative for morphine, and Chan Si Jia, an analyst from the HSA, testified that the negative result meant that there was either non-consumption of opiates or that the opiate had already passed the detection window, which was three days.[118] In this regard, Saridewi claimed on the stand that she consumed heroin three days before her arrest. However, her claim in court was clearly an afterthought as analysed in the context of all the evidence.

54 The Defence pointed out that the instant urine test ("IUT") result showed that there was an amount of 79.64ng/mL of opiates in Saridewi's urine, although the result was a negative reading. Saridewi pointed to this trace amount to support her claim that she did consume diamorphine. She explained that only traces of opiates remained in her urine because she had smoked diamorphine three days prior to the IUT, and because she had used "anti-detection methods" involving drinking plenty of fluid and taking laxatives to avoid being detected.[119] However, Chan Si Jia, an analyst with the HSA, testified with certainty that the only conclusion to be drawn from the result was that there were 79.64 nanograms of opiates per millilitre of urine, but it could not be confirmed that the 79.64 nanograms per millilitre was morphine. It could not be said that there was morphine present in the urine, because the IUT was a general test and there was a possibility of cross-reactivity with the assay used to conduct the test for opiates. The presence of morphine could only be confirmed with a confirmatory test, which was not conducted in producing the IUT results.[120] Confirmatory tests were conducted on the urine sample analysed at HSA, and it was found to be negative for codeine and morphine.[121] Thus, weight should be placed on the

118 NE 13 April 2018, at p 41 lines 3–12, p 42 lines 3–4.

119 NE 9 May 2018, at p 72 lines 13–27.

120 NE 13 April 2018, at p 46 line 23 to p 47 line 8.

121 NE 13 April 2018, at p 39 line 27 to p 40 line 11.

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HSA analysis instead of the IUT result, and the analysis showed that there was neither codeine nor morphine in Saridewi's urine.

55 In light of the numerous inconsistencies in her evidence, I found that Saridewi failed to provide a convincing account of her rate of consumption. Her allegation of being a severe diamorphine addict was not credible. More plausibly, she was not consuming diamorphine at all prior to her arrest, which was her account as recounted in her statements and provided to the four doctors who had examined her. The allegation of consumption was *ex post facto*, created to exonerate herself from the charge, and her alleged accounts were conveniently designed to fit the objective evidence. To work around the fact that there was no diamorphine detected in the HSA urine tests, she had to state a low rate of consumption. In order to account for the large amounts of diamorphine found in her possession, she claimed that it was in anticipation of an escalation in consumption.

(2) Contrary admissions in statements and during investigations

56 The Prosecution aptly pointed out that *the trial marked the first time* that Saridewi made mention of the quality and quantity of diamorphine that she had intended to keep for her own consumption. I agreed that her allegation made during the trial, that she had intended to keep the packet of better quality (A1A2A) for her own consumption, was yet another contrived afterthought conceived to apportion the amount of diamorphine for the purpose of trafficking below the quantity attracting the death penalty.

57 If Saridewi had genuinely intended to traffic only a much smaller quantity of diamorphine while excluding what was purportedly the "better quality" diamorphine which she intended to stockpile for her own consumption, it would have been perfectly reasonable for her to have sought to put this

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explanation forward in her statements, or during her assessments by the various doctors. She had the opportunity to raise this account in the six statements taken from her from 16 June 2016 to 14 November 2016, but she did not do so. In her cautioned statement, she only stated that her intention was "that some [were] for selling and some [were] for consumption".[122] However, in her statement recorded on 17 January 2017, which was about half a year after her arrest, she averred that she intended to consume both packets of diamorphine, namely exhibit A1A1A and exhibit A1A2A.[123] Subsequently, her account changed once more during the trial, where she claimed that she was planning to keep only the packet of better quality out of the two received from Haikal for her own consumption. Saridewi claimed that her contrary account given in the statement recorded on 17 January 2017 was due to her hurry to conclude the statement-taking so that she could ask ASP Peh whether he told her ex-husband about her impending drug trafficking case.[124] I found this to be unconvincing and a mere excuse. The changes in her evidence over the course of investigations and trial strongly suggested that her explanation given during the trial was an *ex post facto* rationalisation designed to exculpate herself from the charge.

58 Even with regard to the other drug exhibits seized (D2A and D3A), Saridewi was inconsistent as to which quantities were for her own consumption. She informed Dr Jason Lee that she was keeping the other three packets (referring to exhibit D2A) and seven straws (referring to exhibit D3A) as stated in the charge for her "own consumption".[125] In her statement dated 23 June 2016, she stated that she intended to keep the straws of diamorphine for her own consumption in case she wanted to smoke diamorphine again. She was unclear

122 Saridewi's statement recorded on 21 June 2016, AB at p 365.

123 Saridewi's statement recorded on 17 January 2017, AB at p 423.

124 NE 10 May 2018, at p 77 lines 7–10.

125 Psychiatric report by Dr Jason Lee at para 11, AB at p 169.

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as to whether she also intended to keep the three packets in exhibit D2A for her own consumption.[126] On the stand, she testified unequivocally that she would pack the diamorphine into packets, which she referred to as sachets, for sale to her customers, and into straws for her own consumption. There was no mention that she intended to keep any packets, or what she referred to as sachets, for her own consumption as well; in fact, the clear inference was that she had intended to sell the packets in D2A since they were packed into sachets.[127]

59 The Prosecution urged the court to draw an adverse inference under s 261(1)(*c*) of the CPC. The provision allows an adverse inference to be drawn in determining whether an accused person is guilty where he failed to mention any fact which he subsequently relies on in his defence, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so questioned, charged or informed. Where the fact or circumstance that is withheld will exculpate the accused from an offence, a court may justifiably infer that it is an afterthought and untrue and draw an adverse inference against him, unless the court is persuaded that there are good reasons for the omission to mention that exculpatory fact or circumstance (*Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 ("*Kwek Seow Hock*") at [19] and [20]). In that case, the Court of Appeal held that the judge was entitled to draw an adverse inference against the accused person charged with drug trafficking for not mentioning his defence of consumption in his long statements.

60 In cases where an adverse inference has been drawn against an accused person for failing to mention any fact subsequently relied upon in his defence, there was a complete omission of a defence or an inclusion of an utter lie (see *Public Prosecutor v Saravanan Chandaram* [2017] SGHC 262 at [52]; *Kwek*

126 Saridewi's statement recorded on 23 June 2016 at paras 17 and 18, AB at p 408.

127 NE 9 May 2018, at p 48 lines 9–17, p 58 lines 1–13.

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Seow Hock at [19]; *Public Prosecutor v Fazali bin Mohamed* [2018] SGHC 23 at [29]; *Public Prosecutor v BLV* [2017] SGHC 154 at [87]; *Yap Giau Beng Terence v Public Prosecutor* [1998] 2 SLR(R) 855 at [38]). It is less clear whether an adverse inference should be drawn in a case where an accused person did mention his defence but left out specific details. In any case, a court is entitled to disbelieve the evidence of a witness without having to draw an adverse inference against him for omitting to earlier mention some material fact which, if disclosed, would be in his favour (*Kwek Seow Hock* at [20]). In the present case, Saridewi had mentioned in her cautioned statement dated 21 June 2016 that part of the drugs seized was for her own consumption,[128] further mentioned in her statement dated 23 June 2016 that the straws of diamorphine seized were meant for her own consumption,[129] and finally in her statement dated 17 January 2017 that the two packets of diamorphine received from Haikal were for her own consumption.[130] The present case involved a situation of constantly evolving evidence, instead of a complete omission to mention the defence of consumption in the statements taken. Nevertheless, I disbelieved Saridewi's evidence because it was fraught with inconsistencies, and I saw no necessity to draw an adverse inference.

(3) Number of days the supply was meant for and the frequency of supply

61 Based on her account that she was consuming one to two straws every three days, exhibit A1A2A would have lasted Saridewi about 682 days (about one year and 10 months).[131] The need to stock up almost two years' worth of supply of diamorphine was unbelievable, especially given that she had received

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128 Saridewi's statement dated 21 June 2016, AB at p 365.

129 Saridewi's statement dated 23 June 2016 at para 17, AB at p 408.

130 Saridewi's statement dated 17 January 2017, AB at p 423.

131 Prosecution's closing submissions at para 68.

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diamorphine consignments in either one or two pounds from Bobby on three or four occasions according to her own evidence.[132]

62 This hugely differed from Saridewi's estimation that exhibit A1A2A would last her for about one and a half months.[133] In coming to her estimation, she alleged that her rate of consumption was expected to escalate to a rate of eight to 12 grams every day. However, this claim contradicted her own evidence that she did not want to go through the experience of having drug withdrawal again because it was such a difficult experience. She testified that she also wanted to prevent her mother and son from seeing any diamorphine withdrawal symptoms, because the symptoms, including vomiting and runny nose, were physically visible.[134] Therefore, she ostensibly had a regime of taking diamorphine and stopping for three to four days to prevent getting any withdrawal symptoms.[135] Saridewi could not claim on the one hand that she needed to stock up in June 2016 because her consumption would escalate up to eight to 12 grams every day, and claim on the other hand that she had a disciplined regime, at the time of her arrest in June 2016, to control her diamorphine intake to prevent getting withdrawal symptoms. She herself conceded that logically speaking, her rate of consumption based on her own evidence would not increase as drastically as she claimed it would.[136]

63 Turning to the frequency of her supply, Saridewi did not provide convincing evidence that her source of drug supply was unreliable. She had already received diamorphine consignments three or four times from Bobby,

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132 NE 9 May 2018, p 97 line 4.

133 NE 11 May 2018, at p 6 lines 21–28.

134 NE 9 May 2018, at pp 55–56.

135 NE 11 May 2018, at p 8 at lines 6–22.

136 NE 11 May 2018, at p 8 at lines 16–22.

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with each consignment containing one or two pounds of diamorphine. Since she claimed on the stand that she only started selling diamorphine two or three months before her arrest (which meant March 2016 at the earliest)[137] and relapsed to consuming diamorphine in May 2016,[138] it would mean that she had received three or four consignments from Bobby in a span of three months. Based on Haikal's account that he had delivered the "same brown stuff" (*ie*, diamorphine) to Saridewi on five or six occasions,[139] she would have received five or six consignments of diamorphine over a mere span of three months. Bobby was clearly not as unreliable a supplier as Saridewi had claimed,[140] and there was certainly no need for her to stock pile almost two years' worth of diamorphine. Moreover, her claim that there would be difficulty in getting diamorphine over the Hari Raya period was a bare allegation that she raised in a very belated fashion – only during her cross-examination.[141] It made little sense that a break in supply or an increase in price over a month would necessitate stockpiling for almost two years. In addition, Saridewi stated that she could go through her customers' other suppliers to procure diamorphine if the need arose.[142] She was evidently resourceful enough to know how to replenish her supplies if required; this further eroded the credibility of her alleged need to stockpile diamorphine for her own consumption.

(4) Financial means

64 Saridewi's opportunity cost in consuming exhibit A1A2A would be about SGD$5600 to SGD$6720.[143] The estimate was based on sales by sachets,

137 NE 10 May 2018, at p 19 line 20.

138 NE 9 May 2018, at p 48 lines 27–30.

139 NE 28 May 2018, at p 37 lines 1–4.

140 NE 9 May 2018, at p 63 lines 11–12.

141 NE 10 May 2018, p 40 lines 11–15.

142 NE 11 May 2018, p 3 lines 7–14.

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with a total of 56 or 57 sachets repacked from exhibit A1A2A, each sold at SGD$100 to SGD$120.[144] Saridewi's limited financial means constituted a cogent basis to disbelieve that she had intended to forego SGD$5600.

65 Saridewi was unemployed and did not have a regular income. Her ex-husband had been defaulting on his monthly maintenance payment of SGD$300 for nine years and his application to reduce the maintenance payment was sufficient to cause her stress.[145] Not only was her income minimal, Saridewi's expenses were substantial. She had to take care of her mother, which cost her about SGD$100 a month, and had to meet her son's financial needs, including payment for tuition fees (SGD$450) and school transport (SGD$120). If she had "extras", she would also contribute to her mother's medical expenses.[146] She also had to finance her own methamphetamine consumption, which cost her about SGD$13,500 a month, based on her consumption rate of five to six grams every day and a purchase price of SGD$450 for five grams.[147]

66 Saridewi claimed that she had financial support from her ex-boyfriend, one Syameer Alfy, from January 2014 to November 2015,[148] and had an income from selling methamphetamine since June 2015[149] and online sales of glassware meant for methamphetamine consumption.[150] She claimed that she could earn about SGD$3000 to SGD$4000 from her glassware sales.[151] By the end of 2015,

143 Prosecution's closing submissions at para 69.

144 NE 10 May 2018, at p 17 line 5; NE 11 May 2018, at p 3 line 29 to p 4 line 1.

145 NE 9 May 2018, at pp 51 and 52.

146 NE 10 May 2018, at pp 11 and 12.

147 NE 9 May 2018, at pp 45 and 46.

148 NE 9 May 2018, at p 41 lines 21–32, p 50.

149 NE 9 May 2018, at p 44 lines 20–22.

150 NE 9 May 2018, at p 42.

151 NE 9 May 2018, at p 43 line 26.

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any support from her ex-boyfriend would have ceased. There was no objective evidence showing how much she earned from her methamphetamine and glassware businesses. A consideration of all the evidence, especially her manifestations of stress at the non-receipt and possible reduction of maintenance payments and the enormous expense needed to sustain her methamphetamine consumption, showed that Saridewi had limited financial means. This further diminished the credibility of her claim that she intended to keep exhibit A1A2A for her own consumption.

(5) Lies satisfying the *Lucas* criteria

67 Saridewi admitted during the trial that she had lied in her statements that she was not yet involved in drug trafficking activities. Saridewi had lied in her statements that she "[had] not made any dealing with [her] customers since [she] came out in 2014",[152] that she "[had] not packed to sell before"[153] and that her "conscience [was] clear that [she had] not done any trafficking yet".[154] The prosecution submitted that these lies were corroborative evidence of guilt if the criteria established in *R v Lucas* [1981] QB 720 ("*Lucas*"), classically referred to as the *Lucas* criteria, were met. *Lucas* was approved in *Ng Beng Siang and others v Public Prosecutor* [2003] SGCA 17 at [52]. The *Lucas* criteria are that: (a) the lie told out of court must be deliberate; (b) it must relate to a material issue; (c) the motive for the lie must be a realisation of guilt and a fear of the truth; and (d) the statement must be clearly shown to be a lie.

68 I agreed with the Prosecution that Saridewi's lies corroborated her guilt, *ie*, that she had purchased the two packets of diamorphine delivered by Haikal

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152 Saridewi's statement dated 22 June 2016 at para 8, ABD at 369.

153 Saridewi's statement dated 23 June 2016 at about 9.43am at para 17, ABD at 408.

154 Saridewi's statement dated 23 June 2016 at about 5.00pm para 22, ABD at 410.

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for the purpose of trafficking, as part of her drug trafficking business. What she had stated in her statements were clearly shown to be lies told deliberately and consistently to ASP Peh, the recorder of her statements. Besides her outright admission, Saridewi's drug trafficking business was also clearly evidenced by the communications relating to drug trafficking activities found in Saridewi's communication devices as well as her handwritten drug trafficking records found in her notebook. The lies related to the material issue of her trafficking activities, and were conceived out of fear that the truth would be discovered, *ie*, that she had the two packets of diamorphine in her possession (A1A1A and A1A2A) for the purpose of trafficking. Her fear led her to cover up any previous drug trafficking activity; this was a clear case where the lies were crafted to cover up the truth of the matter.

69 In the overall analysis, Saridewi's defence was materially inconsistent, indicative that it consisted of fabrications and afterthoughts. I was unable to accept that Saridewi had rebutted the presumption in s 17 of the MDA. I found that the prosecution had proved beyond reasonable doubt that she was in possession of the entire quantity of diamorphine for the purpose of trafficking, and that she knew that the drugs in question were diamorphine. I was satisfied that the aggregate quantity of diamorphine which was retrieved had been in her possession for the purpose of trafficking.

Haikal

70 Haikal admitted that he had delivered a plastic bag to Saridewi containing "small stones that look[ed] like … the colour of chocolate" on the instructions of one Kunjai,[155] and it could not be seriously contended that exhibit A1 along with its contents retrieved from below Block 350 was not the plastic

[155] NE 28 May 2018, at p 28 lines 8–10; Haikal's statement dated 21 June 2016 at paras 5–8, AB at p 296.

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bag that Haikal had delivered, as explained at [21]–[27] *supra*. Since Haikal's possession of the drugs was admitted and proved, I found that Haikal was presumed to have known the nature of the drugs pursuant to s 18(2) of the MDA. Section 18(2) of the MDA states:

> 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.

71 The burden is on the accused person to prove that he did not know or could not reasonably be expected to have known the nature of the controlled drug on a balance of probabilities (*Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 at [18]). The court has to assess the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of the accused's account on a balance of probabilities (*Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [37]).

72 Haikal claimed that he did not know the true nature of the substance he had delivered to Saridewi. His defence was essentially a bare denial. He described his belief of the nature of the substance in various ways, namely as something consumable, food and as medical drugs (see [20] *supra*). I found that Haikal had not proved, on the balance of probabilities, that he did not know or could not reasonably be expected to have known that exhibit A1 contained diamorphine. My finding was based on the contradictions in his evidence and

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on the suspicious manner in which the substance Haikal had delivered was dealt with.

Inconsistencies in evidence

73 Haikal's claims that he believed he was delivering food or medical drugs were inconsistent with his statements and with what he had informed Dr Kenneth Koh during his psychiatric examination in July 2016. The claims were also contradictory in themselves.

74 Haikal did not challenge the voluntariness of the seven statements that he had given, although he disavowed certain portions of the statements: that he started delivering to Saridewi in May 2016 instead of March 2016 as stated in his statements,[156] and that he delivered to Saridewi once to thrice a month instead of twice or thrice a week.[157] These portions were not central to the analysis of Haikal's belief as to the nature of the substance delivered to Saridewi. In any case, I found that all the statements recorded from Haikal were accurately recorded and due weight should be accorded to them. Haikal was capable of reading and understanding English but he did not point out any inaccuracies when the statements were being recorded. All the statements were also interpreted to him in Malay, which was the language he chose for the statement recording process. Importantly, Haikal confirmed on the stand, despite correcting the frequency and period of delivery, that he did deliver to Saridewi the same substance in one or two packets, on a total of five or six occasions.[158]

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156 Haikal's statement dated 21 June 2016 at para 10, AB at p 297; Haikal's statement dated 22 June 2016 at para 14, AB at p 318.

157 Haikal's statement dated 22 June 2016 at para 21, AB at p 320.

158 NE 28 May 2018, at p 12 lines 10–12, p 23 line 30.

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75 In all his seven statements, Haikal had only mentioned "makanan" once, in his statement dated 21 June 2016.[159] Even so, the mention of "makanan" was in the context of describing the term that Kunjai had used to refer to the substance that Haikal delivered, and not in the context of his belief as to the nature of the substance. I state the relevant portion here for reference:

> After I collected 'the stuff'. When 'Kunjai' calls me, he will use the term 'makanan' which means food to refer to 'the stuff'. So he will call me and tell me 'tomorrow got makanan' and I will know tomorrow got 'delivery' (recorder's note: accused said the word delivery in English).

76 There was no mention of his purported belief that the substance he delivered was food or medical drugs at all in any of his statements. In his contemporaneous statement, Haikal only stated that he met a woman at Block 350, whom he described as the "Sengkang lady", to collect money from her. There was no mention of any delivery of a plastic bag.[160] In his cautioned statement, Haikal said that "Actually the name of the stuff I do not know, I only know it is drugs."[161] When suggested to Haikal that the word "drugs" used related to illegal drugs, he agreed and explained that it was because he used the same word in the charge.[162] With regard to his statement dated 21 June 2016, when asked why he failed to raise his belief that the substance he delivered was food or medication, his explanation was that he "did not have that in mind at that point in time".[163] In his statement dated 23 June 2016, Haikal stated that he "[did] not know if Kunjai [had] other businesses other than 'drugs'. [He knew] that the money [he] collected [was] 'drug money' because [he had sent] 'drug'" to Saridewi before.[164] Subsequently, he furnished the mobile phone numbers of

159 Haikal's statement dated 21 June 2016 at para 7, AB at p 297.

160 Haikal's contemporaneous statement dated 17 June 2016, AB at p 231.

161 Haikal's cautioned statement dated 18 June 2016, AB at p 294.

162 NE 5 June 2018, at p 24 lines 9–12.

163 NE 28 May 2018, at p 62 lines 29–32.

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Abang and Kunjai, which were "the numbers [he had] relating to 'drugs'".[165] He further offered information that Kunjai had told him to purchase a "EX5 Honda motorcycle" if he wanted to do the "easy job", and he suspected that "people who [rode] EX5 Honda motorcycle 'got chance that they are doing this thing'".[166] Far from showing that Haikal thought he was dealing in food, the numerous mentions of drugs and information relating to drugs in the statements instead showed that Haikal undoubtedly knew he was dealing in illegal drugs.

77 During the trial, although Haikal testified that he did not "even know what the item" he was delivering was,[167] he provided various versions of his belief. He claimed that he thought he was dealing in "sapadu", which meant "food" in Tamil, because that was what Kunjai had told him.[168] It was also during the trial that Haikal's alleged belief that he was dealing with medical drugs first surfaced. The belief that he was dealing in food and the belief that he was dealing in medical drugs were clearly inconsistent. When confronted with this inconsistency, Haikal explained that he believed he was dealing with something consumable because he was told the substance was food, and "the word 'drug' meant something that [was] to be consumed as a drug", something that one could obtain from "clinics or hospitals".[169] I found this convoluted explanation to be a desperate attempt at reconciling his various purported beliefs, and it was patently not credible.

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164 Haikal's statement dated 23 June 2016 at para 25, AB at p 349.

165 Haikal's statement dated 23 June 2016 at para 29, AB at p 350.

166 Haikal's statement dated 23 June 2016 at para 30, AB at p 351.

167 NE 5 June 2018, at p 6 lines 10–11.

168 NE 28 May 2018, at p 22 lines 16–25.

169 NE 28 May 2018, at p 26 lines 18–22; NE 5 June 2018, at p 25 line 32 to p 26 line 1.

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78 In addition, Haikal put forward a belief that he was dealing in medical drugs with sexual enhancement benefits. This was raised very belatedly during the trial only at the tail end of Haikal's re-examination, even though it had been mentioned in the Opening Statement tendered by counsel for Haikal. In his re-examination, Haikal stated that it was not explained to him what kind of medical drugs he was dealing with and he thought that it was something that was to be taken when one was in pain or to give strength to the body.[170] It was only upon my directions for further questioning and clarification that Haikal expressly mentioned his purported belief that the drugs could also be meant for enhancement of sexual performance.[171] There was no basis for this belief as Haikal himself did not say that Kunjai had represented the substance as such to him, and Haikal did not even know what sexual enhancement medication looked like because he had never dealt with them before.[172] I was drawn to conclude that the belief that he was dealing in medical drugs for sexual performance was no more than an afterthought to bolster his claim that he did not know the true nature of the drugs.

79 Another piece of evidence pointing towards Haikal's knowledge of the true nature of the substance was the use of the word "heroin" in the psychiatric report prepared by Dr Kenneth Koh, a psychiatrist from IMH who had examined Haikal in July 2016.[173] The report stated that "Mr Haikal admitted to having delivered the heroin to the lady mentioned in the charge" and that "Mr Haikal said that he suspected that it was most likely drugs that he was being asked to bring over to Singapore". Dr Kenneth Koh testified that in narrating what had happened, Haikal reported that after Kunjai had told him he needed a Honda

170 NE 5 June 2018, at p 27 lines 17–20.

171 NE 5 June 2018, at p 31 line 13.

172 NE 5 June 2018, at p 32.

173 Psychiatric report of Haikal produced by Dr Kenneth Koh, AB at pp 165–166.

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EX5 motorcycle specifically to "put the stuff", he was worried and suspected that the "stuff" was drugs.[174] Dr Kenneth Koh also gave unequivocal evidence that Haikal knew the difference between medical drugs and illegal drugs, because in questioning his patients, he would talk about medical drugs and illegal drugs separately.[175] When confronted with the psychiatric report, Haikal claimed that he had told Dr Kenneth Koh that he did not know what "heroin" was before his arrest and only realised that he had delivered "heroin" after speaking with random accused persons in the State Courts lock-up who confirmed that his descriptions of the substance fitted the description of "heroin".[176] Although Dr Kenneth Koh stated that the conversations with other accused persons could very well have happened, he testified convincingly that Haikal did not mention this to him at all in the interviews.[177] Even if Haikal did not know that the drugs he delivered were diamorphine, I found that he knew that they were illegal drugs.

80 Haikal's lack of creditworthiness was further highlighted by his responses during cross-examination. The Prosecution rightly pointed out that Haikal was evasive even about basic matters such as whether he knew that different drugs such as "heroin" and "ice" existed. After being probed, he conceded that he had heard about "heroin" and "ice" and read about "ice" and "ganja" (street name for cannabis) in the newspapers, but insisted again that he did not know that different types of drugs existed before his arrest.[178] His evasiveness revealed that he was overly ready to distance himself from any knowledge of any kind of illegal drug.

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174 NE 5 June 2018, at p 40 line 30 to p 41 line 7.

175 NE 5 June 2018, at p 38 lines 23–29.

176 NE 28 May 2018, at pp 52–56.

177 NE 5 June 2018, at p 39 lines 25–28, at p 44.

178 NE 28 May 2018, at pp 39 and 40.

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81 In view of the numerous inconsistencies in his belief as to the nature of the substance he had delivered, and considering his statements and the psychiatric report prepared by Dr Kenneth Koh, I found that his beliefs that the substance he had delivered was consumable items, medical drugs or food were concocted *ex post facto*.

Suspicious circumstances

82 The entire transaction – from the instructions received from Kunjai, to the circumstances in which Haikal received the consignment, to the concealment of the consignment to the deliveries made – was highly suspicious and an ordinary reasonable man would have been alerted to the illegality of the substance.

83 From the outset, the manner in which Kunjai had interacted with Haikal was highly secretive. Kunjai always remained behind the scenes and never once met Haikal in person.[179] Even when they conversed, Kunjai and Haikal would speak only very briefly to each other every time Kunjai called. Kunjai would just give him instructions that a person would give him "the stuff" at a certain place at a certain time.[180] Moreover, the circumstances in which Haikal collected the consignments were highly surreptitious. Haikal did not know any of the people who had passed him the "stuff" and money for his job, and there was a different person each time. In each instance, the person would put the "stuff" in places like "beside a bus stop", "outside [a] shopping centre" or "beside a tree" when the person knew that Haikal was nearby. They would not meet face-to-face. Kunjai would have told Haikal the exact position where the "stuff" would be.[181] Haikal conceded that the circumstances clearly showed that the stuff had

179 NE 28 May 2018, at p 41 line 11.

180 Haikal's statement dated 21 June 2016 at para 6, AB at p 296.

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to be concealed from the view of the public, and that Kunjai and his men were being secretive about the way they handled it. Haikal was unable to provide any reason for why Kunjai's men would have needed to operate in such a clandestine and furtive manner if indeed all they were dealing with was food or even medical drugs.[182]

84 In addition, Kunjai's instructions to conceal the substance in the side cover of Haikal's motorcycle clearly gave the lie to Haikal's denial of any knowledge of its illegality.[183] Haikal stated that after collecting the packets specified in the charge, he drove to a carpark without any lamp posts where no one was watching. He used a screwdriver to open the side cover of his motorcycle by unscrewing one screw. He then placed the plastic bag containing the two packets into the "cavity" of the side cover, before screwing the side cover back onto the motorcycle. Kunjai had told him to procure the EX5 Honda motorcycle in order to do this job because the side cover of the motorcycle was easy to remove and its "cavity" was big enough to store things.[184] Haikal agreed that storing the packets in the cavity of the side cover in a motorcycle was not a conventional way of storing things, and that the circumstances were "odd".[185] He conceded that it was possible that the reason why the packets were concealed in this manner was to avoid detection at Woodlands Checkpoint when entering Singapore.[186] On the other hand, Haikal insisted that the choice of a carpark without anyone around was not because he suspected that he was dealing in

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181 Haikal's statement dated 21 June 2016 at para 6, AB at p 296; NE 28 May 2018, at p 45 lines 2–4.

182 NE 28 May 2018, at p 45 lines 10–19.

183 NE 28 May 2018, at p 46 lines 2–4.

184 Haikal's statement dated 23 June 2016 at paras 27 and 30, AB at pp 350 and 351.

185 NE 28 May 2018, at p 46 lines 19–25.

186 NE 28 May 2018, at p 47 lines 2–5.

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something illegal but because he simply did not want anyone to steal the packets upon seeing them.[187] This explanation defied logic – there were many conventional methods of keeping the packets without anyone seeing them, such as bringing them home. The method of concealing the packets went far beyond just preventing anyone from taking them; the method went towards the prevention of detection of the presence of the packets altogether. There was simply no reason why one would have to go so far to conceal food or medical drugs.

85 The interaction between Haikal and Saridewi further revealed that the substance being dealt with was dangerous and illegal. Although the deliveries were always done at Block 350, Saridewi had never met Haikal at the same location in Block 350 to take delivery from him and Saridewi would inform him of the specific location only when he approached the block.[188] Haikal's text message sent to Saridewi on 24 May 2016, which read "HOW LONG MORE. I CAN'T WAIT LONG HERE. DANGEROUS",[189] plainly showed that Haikal knew that he might be in danger when delivering the substance to Saridewi. Haikal could only claim somewhat feebly that he did not know to what extent it was dangerous. Clearly, his own text message spoke volumes of his knowledge that he was engaging in dangerous and illegal activities.

86 All the circumstances surrounding how the substance was handled, along with the promised remuneration of RM500 to Haikal for each delivery done, made it blatantly obvious that Haikal was dealing with something illegal and was engaged in dangerous activity. An ordinary and reasonable person would have been alerted to the illegality of the substance, and would have

187 NE 5 June 2018, at p 6 lines 17–22.

188 NE 28 May 2018, at p 48 lines 1–4.

189 Supplementary Statement of Agreed Facts, Annex E, at p 9 s/n 3.

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enquired further into its nature. The evidence, especially the text message sent on 24 May 2016 and Haikal's various concessions, showed that he was subjectively alerted to the danger and illegality of the substance he was delivering to Saridewi. I found that Haikal was aware that he was delivering an illegal drug.

87 Even though he was aware of that he was delivering an illegal drug, Haikal never made any enquiry as to its actual nature. The delivery to Saridewi for which Haikal was arrested was not the first time he had done a delivery for Kunjai. Haikal testified that he had delivered the same substance to Saridewi on a total of five or six occasions.[190] This meant that Haikal had many opportunities to check with Kunjai as to the nature of the substance he was delivering. Haikal conceded so, but the fact remained that he did not ask Kunjai what exactly was the substance.[191] He also conceded that he had many opportunities to conduct checks as to the nature of the substance he was delivering but never did so.[192] His failure to enquire into the nature of the substance, despite being alerted to its suspicious and illegal nature, showed that he was willing to turn a blind eye in order to do the "easy job"[193] to get the remuneration of RM500 for each delivery. Similarly, Haikal had ample opportunities to find out more about the identity of Kunjai. Haikal agreed that his failure to conduct checks on the identity of Kunjai meant that he was agreeable to get involved in illegal dealings with him.[194]

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190 Haikal's statement dated 22 June 2016 at para 14, AB at p 318; NE 28 May 2018, at p 29.

191 NE 28 May 2018 at p 46 lines 14–18.

192 NE 5 June 2018, at p 23 lines 4–7.

193 Haikal's statement dated 23 June 2016 at para 30, AB at p 351.

194 NE 28 May 2018, at p 52 lines 4–7.

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88 I therefore concluded that Haikal had failed to rebut the presumption in s 18(2) MDA and he was presumed to have known the nature of the drugs. Considering all the circumstances, I would have found in the alternative that Haikal was wilfully blind as to the nature of the illegal drug he was delivering to Saridewi. A finding of wilful blindness is the inference of actual knowledge that is drawn because it is the only rational and therefore irresistible inference on the facts (*Obeng Comfort* at [41]). Counsel for Haikal cited *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*") in support of the proposition that negligence or recklessness did not amount to wilful blindness (at [20]), and in that case, the court found that the appellant's failure to check the contents of the package constituted only negligence or recklessness. The factual circumstances of *Khor Soon Lee* were unique and distinguishable from the present case. In that case, the Court of Appeal accepted that the appellant had an established practice of transporting only Erimin, Ketamine, Ice and Ecstasy, and not diamorphine. He had also sought assurances from the person instructing him that the deliveries would not involve diamorphine because he was afraid of the death penalty. Therefore, he had no reason to strongly suspect that the package he delivered contained diamorphine. In those circumstances, the court found that he was only negligent or reckless in not checking the package (at [28]). In contrast, Haikal had been delivering the same substance to Saridewi on five or six occasions, and he did not bother to get any assurance from Kunjai that he would not be delivering diamorphine or any other illegal drug. On the other hand, Haikal knew that it was dangerous for him to deliver the drugs and the activities were conducted in suspicious circumstances, but he did not check on the nature of the substance at all. I found that the high threshold for finding wilful blindness had been crossed, for the only rational inference was that Haikal knew he was likely delivering illegal drugs but turned a blind eye to their nature.

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89 In my assessment, Haikal had not proved, on the balance of probabilities, that he did not know or could not reasonably be expected to have known that exhibit A1 contained controlled drugs, *ie* diamorphine. I did not accept his strained and contrived claims that he thought that exhibit A1 only contained consumable items, medical drugs, or sex enhancement drugs. He knew full well that he was delivering something illegal for Kunjai and he would be paid handsomely for each delivery. He must have been further emboldened as he had managed to evade detection on the previous few occasions when he transported drugs into Singapore. I found that the presumption in s 18(2) MDA had not been rebutted and the Prosecution had proved the charge of trafficking against Haikal beyond reasonable doubt.

Sentence

90 Where an accused person can satisfy the criteria set out in s 33B(2) of the MDA, the court has the discretion not to impose the sentence of death. On the facts, I found that Saridewi's role was not confined to transporting, sending or delivering the diamorphine, or offering to do so, or doing or offering to do any acts preparatory to or for the purpose of transporting, sending or delivering the diamorphine (commonly collectively known as acts of a courier). Instead, she intended to repack the diamorphine found in her possession for sale to her customers. In any case, the Prosecution did not certify that Saridewi had substantively assisted the CNB in disrupting drug trafficking activities. Thus, as both s 33B(2)(*a*) and s 33B(2)(*b*) of the MDA were not fulfilled, Saridewi was sentenced to the mandatory death penalty.

91 I found that Haikal's role in delivering the two packets of diamorphine to Saridewi was that of a courier. The Prosecution certified that Haikal had substantively assisted the CNB in disrupting drug trafficking activities pursuant

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to s 33B(2)(*b*) of the MDA. Therefore, I exercised my discretion and sentenced Haikal to life imprisonment with the mandatory minimum 15 strokes of the cane.

Conclusion

92 The evidence established that Saridewi had the 30.72 grams of diamorphine in her possession for the purpose of trafficking, and Haikal had delivered two packets of diamorphine to her. I found that both accused persons had failed to rebut the operative presumptions under the MDA against each of them; in Saridewi's case, she had not rebutted the presumption in s 17 MDA that she had possessed the diamorphine for the purpose of trafficking and in Haikal's case, he had not rebutted the presumption in s 18(2) MDA pertaining to his knowledge of the nature of the drugs. The Prosecution had proved the respective charges against both accused persons beyond reasonable doubt. I therefore found them both guilty and convicted them on their respective charges. Saridewi was sentenced to suffer the death penalty and Haikal was sentenced to life imprisonment with 15 strokes of the cane.

93 The Prosecution applied for the disposal of the case exhibits as set out in a specific list. The accused persons raised no objection and I ordered the exhibits in that list to be disposed of accordingly.

See Kee Oon
Judge

Marcus Foo and Lim Shin Hui (Attorney-General's Chambers) for the prosecution;

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N K Rajarh (M/s Straits Law Practice LLC) and Luo Ling Ling (M/s RHTLaw Taylor Wessing LLP) for the first defendant;
Masih James Bahadur (M/s James Masih & Co) and Dhanaraj James Selvaraj (M/s James Selvaraj LLC) for the second defendant.

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