IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 155

Criminal Case No 6 of 2019

Between

Public Prosecutor

And

(1) Imran bin Mohd Arip
(2) Pragas Krissamy
(3) Tamilselvam A/L Yagasvranan

GROUNDS OF DECISION

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Joint trial]

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Public Prosecutor
v
Imran bin Mohd Arip and others

[2019] SGHC 155

High Court — Criminal Case No 6 of 2019
Valerie Thean J
19–22, 26–28 February 2019, 1, 5 March 2019; 5, 22 April 2019

2 July 2019

Valerie Thean J:

Introduction

1 These grounds of decision deal with the conviction and sentence of Imran Bin Mohd Arip ("Imran"), Pragas Krissamy ("Pragas"), and Tamilselvam A/L Yagasvranan ("Tamil") after their joint trial. Imran was convicted under s 5(1)(*a*) read with s 12 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for abetment by engaging in a conspiracy with Pragas and Tamil to traffic in not less than 19.42g of diamorphine. Pragas and Tamil, whom the prosecution established to have delivered the diamorphine to Imran, were convicted under s 5(1)(*a*) of the MDA read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for trafficking in not less than 19.42g of diamorphine. Section 33B of the MDA was not applicable. I therefore imposed the mandatory sentence of death on Imran, Pragas and Tamil.

Charges

2 Imran is a 49-year-old male Singaporean who was charged as follows:

> That you, 1. IMRAN BIN MOHD ARIP, on or before 8 February 2017, in Singapore, did abet the doing of a thing by engaging in a conspiracy with one Tamilselvam A/L Yagasvranan (FIN: [GXXXXX57M]) and one Pragas Krissamy (FIN: [GXXXXX76P]) to do a certain thing, namely, to traffic in a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), *to wit*, two (2) packets containing 894.2 grams of granular/powdery substance which was found to contain **not less than 19.42 grams of diamorphine**, and in pursuance of that conspiracy and in order to the doing of that thing, on 8 February 2017, at or about 7.09 a.m., at the level 4 corridor of Block 518 Jurong West Street 52, Singapore, the said Pragas Krissamy and Tamilselvam A/L Yagasvranan did jointly deliver two (2) packets containing 894.2 grams of granular/powdery substance which was found to contain not less than 19.42 grams of diamorphine to you, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 12 of the MDA punishable under section 33(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under Section 33B of the MDA. [emphasis in original]

3 Pragas is a 34-year-old male Malaysian national who was charged as follows:

> That you, 2. PRAGAS KRISSAMY, on 8 February 2017, at or about 7.09 a.m., at the level 4 corridor of Block 518 Jurong West Street 52, Singapore, together with one Tamilselvam A/L Yagasvranan (FIN: [GXXXXX57M]) and in furtherance of the common intention of you both, did traffic in a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), *to wit*, by delivering two (2) packets containing not less than 894.2 grams of granular/powdery substance which was analysed and found to contain **not less than 19.42 grams of diamorphine**, to one Imran Bin Mohd Arip (NRIC No.: [SXXXXX97B])… without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the MDA read with section 34 of the Penal Code (Chapter 224, 2008 Rev Ed) punishable with section 33(1) of the MDA, and further upon your conviction, you may

> alternatively be liable to be punished under Section 33B of the MDA. [emphasis in original]

4 Tamil is a 32-year-old male Malaysian national who was charged as follows:

> That you on 8 February 2017, at or about 7.09 a.m., at the level 4 corridor of Block 518 Jurong West Street 52, Singapore, together with one Pragas Krissamy (FIN: [GXXXXX76P]) and in furtherance of the common intention of you both, did traffic in a controlled drug listed in Class 'A' of the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), *to wit,* by delivering two (2) packets containing not less than 894.2 grams of granular/powdery substance which was analysed and found to contain **not less than 19.42 grams of diamorphine**, to one Imran Bin Mohd Arip (NRIC No.: [SXXXXX97B]) without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the MDA read with section 34 of the Penal Code (Chapter 224, 2008 Rev Ed) and punishable under section 33(1) of the MDA, and further upon your conviction, you may alternatively be liable to be punished under Section 33B of the MDA. [emphasis in original]

5 The Prosecution, with the agreement of defence counsel, applied for a joint trial under s 143(*g*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") and I so ordered.[1]

Facts

6 The three charges centre on a delivery of a white plastic bag by Pragas to Imran in the presence of Tamil in the corridor outside Imran's residence, unit #04-139 of Block 518 Jurong West Street 52, Singapore ("the Unit")[2] on 8 February 2017. The following facts surrounding the arrest of the three men are not disputed.

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1 Notes of Evidence ("NE") 19 February 2019, p 6.

2 Agreed Statement of Facts ("ASOF"), tendered under s 267(1) of the CPC, at [4].

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7 Officers from the Central Narcotics Bureau ("CNB") who were on duty observed that at about 7.05am, Tamil and Pragas entered the carpark of Block 518A Jurong West Street 52.[3] They parked at the motorcycle lots behind Block 517 Jurong West Street 52. Thereafter, they walked together towards Block 518 Jurong West Street 52, which was where the Unit was located. Pragas carried a black haversack. Tamil handed Pragas a mobile telephone before entering a lift at Block 518.

8 At about 7.09am, Tamil came out of the lift at the fourth storey corridor of Block 518 Jurong West Street, and there met with Imran, who came out of the Unit.[4] Tamil then called Pragas using a mobile telephone. Pragas spoke to Tamil using the mobile telephone that Pragas had given him at the foot of Block 518. Pragas then went upstairs to the fourth storey corridor via the staircase from the ground floor. Once there with Tamil and Imran, Pragas opened his black haversack and took out a white plastic bag which he handed over to Imran. Imran then walked back to the Unit with the white plastic bag, while Tamil and Pragas walked down the staircase of the block and towards their motorcycles.

9 This exchange was witnessed by Senior Staff Sergeant Wilson Chew Wei Xun ("SSSgt Chew") and Woman Staff Sergeant Cynthia Lee Shue Ching ("W/SSgt Lee") who stationed themselves at unit #07-08 of Parc Vista Tower 1 ("the Parc Vista condominium unit"), a nearby condominium, in order to observe the Unit.[5]

10 At about 7.10am, a team of CNB officers arrested Pragas and Tamil in

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[3] ASOF at [7].

[4] ASOF at [8].

[5] ASOF at [5].

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the vicinity of where their motorcycles were parked.[6] They seized several items from both Pragas and Tamil. In particular, the officers seized a stack of Singapore currency amounting to $6,700 tied with two red rubber bands from Tamil's black waist pouch. This was marked as E1. Three mobile telephones belonging to Tamil were also seized and marked respectively as TS-HP1, TS-HP2, and TS-HP3.

11 Meanwhile, at about 7.15am, a separate team of CNB officers conducted a raid of the Unit.[7] They arrested Imran inside the kitchen of the Unit. A search was then conducted inside and outside the unit in Imran's presence. An initial search revealed exhibits from various parts of Imran's flat. Hidden within a pair of grey "Everlast" shoes that were placed on a shoe rack outside the Unit were A1A1 (ten packets of granular/powdery substance believed to be a controlled drug), A2A1 (ten packets of granular/powdery substance believed to be a controlled drug), A2B1 (ten packets of granular/powdery substance believed to be a controlled drug). These substances do not form part of the subject matter of the charges. S$97,500 (B1A1A) was found in a refrigerator in the kitchen.

12 From Imran's bedroom, officers seized D1, a white plastic bag that was on his bed; and from a drawer of a dressing table, eight packets of duty-unpaid Marlboro Red cigarettes ("contraband cigarettes"). These eight packets were subsequently destroyed by Singapore Customs after Imran was administered a stern warning for the possession of duty-unpaid cigarettes, an offence under the Customs Act (Cap 70, 2004 Rev Ed).

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6 ASOF at [9].

7 ASOF at [22].

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13 Subsequently, at about 11.00am, two bags of items were seized from the top shelf inside the storeroom of the Unit.[8] First, a green and white "City-Link" plastic bag, C1. Inside C1, a packet of granular/powdery substance believed to be a controlled drug, C1A1A1, was found. Second, a black plastic bag, C2. Inside C2 were two bundles, marked C2A and C2B. Inside C2A, within another clear plastic bag marked C2A1, was a packet of granular/powdery substance believed to be a controlled drug, marked C2A1A. Inside C2B, within another clear plastic bag marked C2B1, was a packet of granular/powdery substance believed to be a controlled drug, marked C2B1A. C2A1A and C2B1A form the subject matter of the three charges.

14 The various drug exhibits were submitted to the Health Sciences Authority ("HSA") on 9 February 2017, and determined to contain diamorphine.[9] C2A1A and C2B1A, in particular, contained not less than 5.79g and 13.63g of diamorphine respectively.[10] This amounted to a total of 19.42g of diamorphine. Imran, Tamil and Pragas were all not authorised under the MDA or the Regulations made thereunder to possess or traffic in diamorphine.[11]

15 On 14 February 2017, it was ascertained from various blood samples from Imran, Pragas and Tamil, submitted to the HSA for DNA analysis, that Imran's DNA was found on C2,[12] the black plastic bag in the storeroom which contained C2A1A and C2B1A, the two bundles containing diamorphine that was the subject matter of the three charges.

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8 ASOF at [24].

9 ASOF at [39], [40].

10 ASOF at [41].

11 ASOF at [43].

12 ASOF at [44]-[46], [49].

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The legal context

16 Section 5(1)(*a*) of the MDA formed the basis of the charges against Imran, Pragas and Tamil. Section 5(1)(*a*) reads as follows:

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

17 The act of trafficking is, in turn, defined under s 2 of the MDA:

> "traffic" means —
>
> (*a*) to sell, give, administer, transport, send, deliver or distribute; or
>
> (*b*) to offer to do anything mentioned in paragraph (a),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning;

The specific mode of trafficking Pragas and Tamil were alleged to have effected was that of delivery to Imran.

18 Imran was charged with abetment by conspiracy, under s 12 of the MDA. Section 12 of the MDA provides:

> **Abetments and attempts punishable as offences**
>
> **12.** Any person who abets the commission of or who attempts to commit or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

19 Imran was the recipient of the delivery. A recipient of such a delivery may be charged with abetment of trafficking if his intention, either presumed or proved, is that of onward distribution: see *Ng Yang Sek v Public Prosecutor*

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[1997] 2 SLR(R) 816, *Liew Zheng Yang v Public Prosecutor* [2017] 5 SLR 611, and *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 ("*Ali*"). No defence of consumption or any other defence negativing onward distribution was advanced by Imran.

20 The mode of abetment Imran was charged with in this case is that of conspiracy. For an offence for abetment by conspiracy to traffic drugs, the guidance of the Court of Appeal in *Ali* at [34] and [75] is that three elements must be satisfied:

> (a) the abettor must have intended to be party to an agreement to do an unlawful act;
>
> (b) the abettor must have known the general purpose of the common design, and the fact that the act agreed to be committed is unlawful; and
>
> (c) the abettor's purpose in taking delivery must be for the onward distribution of the drugs, and not for his own consumption.

21 Pragas and Tamil, on the other hand, were charged with having the common intention to traffic pursuant to s 5(1)(*a*) of the MDA read with s 34 of the Penal Code. Section 34 reads as follows:

> **Each of several persons liable for an act done by all, in like manner as if done by him alone**
>
> **34.** When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

22 Under s 34 of the Penal Code, constructive liability is imputed to a secondary offender in relation to an offence arising from a criminal act committed by the actual doer in furtherance of the common intention shared by

the actual doer and the secondary offender (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 ("*Ridzuan*") at [27]; *Daniel Vijay s/o Katherasan and others v Public Prosecutor* [2010] 4 SLR 1119 ("*Daniel Vijay*") at [76]). Three elements must be present before constructive liability can be imposed pursuant to s 34 of the Penal Code:

> (a) the criminal act element: this concerns the aggregate of all the diverse acts done by the actual doer and secondary offenders which collectively give rise to the offence that they have been charged with;
>
> (b) the common intention element: this focuses on the common intention of the offenders to do something or achieve some goal or purpose; and
>
> (c) the participation element: this requires a secondary offender to participate in the specific criminal act committed by the actual doer which gives rise to the offence charged or participate in some other criminal act that is done in furtherance of the common intention of all the offenders.

23 The Court of Appeal was of the view in *Ridzuan* (at [29]) that once constructive liability against an accused has been established, there is no further need to additionally establish the elements for the charge of trafficking. It approved the stance taken in *Foong Siew Ngui v Public Prosecutor* [1995] 3 SLR(R) 254 at [62]:

> … the actual offence constituted by the criminal act was possession of the drugs for the purpose of trafficking and the persons who committed the criminal act were Foong and Lim… and s 34 was invoked to render Tan liable for that criminal act. *If s 34 applies in this case, as we think it does, it does not matter whether Tan had possession of the drugs at the material time.* [emphasis in original]

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24 In the Court of Appeal's view, an alternative analysis based on whether the elements of the offence of trafficking had been made out under s 5(1)(*a*) read with s 5(2) of the MDA could also be completed out of an abundance of caution: see *Ridzuan* at [30]–[31].

Overview of the Prosecution and Defence cases

25 The Prosecution's case was that Imran arranged with Tamil to deliver two pounds of heroin on the morning of 8 February 2017. This was for onward transmission to Imran's customers. Tamil then arranged with his supplier for the necessary, and asked Pragas to assist him with the delivery. The delivery on that morning was the culmination of their plan. Tamil's plan required two persons in order to effect delivery. He would first meet Imran to check that the location and the payment was secure. Thereafter he would telephone Pragas, who would go to the assigned location and deliver the heroin.

26 Imran accepted that there was a delivery of heroin to himself, and that he was engaged in a conspiracy to have heroin so delivered. His defence was that he only intended to traffic in one pound of heroin, which brought his offence below the capital punishment threshold. Tamil was his "boss". Imran contended he was Tamil's courier. Tamil, contrary to his promise to deliver him a single pound of heroin for onward distribution, gave him two pounds, contrary to their prior agreement and his intention.

27 Pragas and Tamil, on the other hand, testified that their common intention was to deliver contraband cigarettes to Imran. In keeping with their plan, they contended, they delivered two cartons of cigarettes – and not heroin – to Imran that morning. Pragas highlighted that he had minimal interaction with Imran, and had been paid to assist Tamil with deliveries of contraband

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cigarettes. They would travel from Malaysia to Singapore to meet a contact who would hand over the cigarettes. On that morning, a Malay man went into a toilet in Tuas to put the white plastic bag into Pragas's haversack, which Pragas then transported to the venue and handed over to Imran, thinking that the bag contained cigarettes. Tamil, similarly, contended that cigarettes were delivered that morning. The $6,700 found on his person at the time of arrest was a loan he sought from Imran because they had a plan to buy 400 cartons of contraband cigarettes.

Imran

28 Imran gave a total of seven statements. The Prosecution relied on the first six statements, recorded on 8–11 and 14 February 2017. Imran contended at trial that only his last and seventh statement, recorded on 18 December 2017, was accurate. His counsel asked for an ancillary hearing in respect of the first six statements, to which Prosecution agreed, and I therefore conducted.

The ancillary hearing

29 Imran's basis for his allegation of threat, inducement or promise was that on the morning of 8 February 2017, when the CNB officers were raiding the Unit, he heard a CNB officer tell his colleague in English the following statement, which I refer to in these grounds as "the Disputed Statement": [13]

> If he admits, there's a good chance for him. If he does not admit, bring back his parents to the station.

Imran understood the Disputed Statement to mean that he had to provide, in his words, a "simple account" of the events in relation to the transaction between

[13] Closing Submissions for the First Accused, p 2; NE 20 February 2019, p 78.

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Pragas, Tamil and himself, in order to ease the job of the CNB officers and if he did, they would secure a lighter sentence for him.[14] It was this Disputed Statement that induced him to lie in the first six of his seven statements given in the course of 8–14 February 2017.[15]

30 Section 258(3) of the CPC states:

> The court shall refuse to admit the statement of an accused or allow it to be used in the manner referred to in subsection (1) if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused, proceeding from a person in authority and sufficient, in the opinion of the court, to give the accused grounds which would appear to him reasonable for supposing that by making the statement he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

31 Section 258(3) comprises two limbs: an objective limb requiring that there was in fact, a threat, inducement or promise; and a subjective limb requiring that the threat, inducement or promise operated on the mind of the accused through hope of escape or fear of punishment connected with the charge (see *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 at [53]; *Ismail bin Abdul Rahman v Public Prosecutor* [2004] 2 SLR(R) 74 ("*Ismail*") at [36]).

32 First, there was no evidence of the Disputed Statement having been made by anyone. Imran's contention was a bare assertion. He was unable to recall which officer made the statement. He did not follow up with any of them to verify that he had heard the statement correctly, or that it had any veracity.

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14 Closing Submissions for the First Accused, p 25.

15 Closing Submissions for the First Accused, pp 12, 27.

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The fact that Imran failed to seek clarification from anyone regarding the meaning of such a nebulous statement suggests that the Disputed Statement was raised as an afterthought. The Prosecution argued that there was no reason for the CNB officers to threaten to arrest Imran's elderly parents, who were not involved in Imran's activities. The 12 CNB officers who were on duty that morning were called to give evidence, and each affirmed that no such statement was made by any of them.

33 Second, even assuming that the statement was made, it could not objectively amount to a threat, inducement or promise. Bringing Imran's parents to the police station did not amount to a threat. No danger arose therefrom. There was nothing to suggest that they were involved in Imran's dealings, nor did the officers question them at any point. The raid was targeted at Imran alone. Regarding the "good chance" that was purportedly offered to Imran, this was too vague and uncertain to amount to an inducement. As stated in *Ismail* at [41], it is important for the court to consider the degree of assurance offered in any given case. The mere offer of a "good chance", without more, could not serve as an inducement. Much less an inducement that operated on Imran's mind throughout the course of seven days between 8 February, when he gave his first statement, to 14 February 2017, the date of his sixth statement. The corollary is that any inducement arising from the Disputed Statement, even if genuinely heard by Imran, would be self-induced. Self-perceived threats are insufficient to render a statement involuntary; the existence of a threat, inducement or promise from a person in authority must be established (*Lu Lai Heng v Public Prosecutor* [1994] 1 SLR(R) 1037 at [19]).

34 I held, therefore, that it was proved beyond reasonable doubt that the six statements were voluntarily made. They were duly admitted.

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Abetment by conspiracy

35 Coming then to the elements of Imran's offence, the Prosecution's case was that Imran knowingly conspired with Pragas and Tamil to deliver two pounds of heroin for $6,700, for onward sale and distribution, and this plan was successfully carried out on 8 February 2017.

Act of delivery of heroin

36 While SSSgt Chew and W/SSgt Lee observed the transfer of the white plastic bag from Pragas and Tamil to Imran, they did so from the Parc Vista condominium unit, which was approximately 50m to 60m away from the Unit.[16] They were unable to see the contents of the white plastic bag from their viewing point.

37 Pragas and Tamil disputed that the white plastic bag handed by Pragas to Imran contained heroin. They contended that what was handed over was only a bag with two cartons of cigarettes, one of Marlboro Light and another of Gudang Garam.

38 Imran admitted at trial that the white plastic bag that they saw contained two pounds of heroin. He said he received the heroin in the white plastic bag, then transferred the heroin he received from the white plastic bag into a black plastic bag and thereafter stored the black plastic bag with the two bundles within it in the storeroom. When cross-examined on the reason for transferring the bundles from the white bag into a black bag, he explained that he took the bundles out and put them into an opaque black plastic bag before putting them

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[16] NE 19 February 2017, p 97.

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away in the storeroom because the original white bag was very thin and he did not want his parents to see the contents. The white bag D1 was shown to the court by Home Team Specialist Toh Sin Ee and I would mention that it was an almost translucent bag, consistent with Imran's testimony. [17]

39 Imran's statements, which alluded to prior transactions, were also clear about the delivery:

> (a) In his first statement (first contemporaneous statement) recorded on 8 February 2017 at 11.49am, where he was queried on various different packets of drugs found in his apartment, Imran stated that the two bundles (C2A1A and C2B1A, the subject of the charges) contained heroin intended for sale, and that the source of the bundles was Tamil, to whom he paid $6,700 on 8 February 2017.[18]
>
> (b) In his third statement (first investigative statement) recorded on 10 February 2017 at 11.05am, Imran stated that he had met up with Tamil and Pragas approximately ten minutes before the CNB arrested him on 8 February 2017. He stated that Tamil and Pragas were supposed to deliver two pounds of heroin to him for $6,700, and that after he met Tamil and Pragas, he returned to his house and confirmed that there were two big bundles of heroin contained in the white plastic bag that he was handed. He then transferred the two bundles to a black plastic bag and placed it on the top shelf of his storeroom. He mentioned that when they

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[17] NE 19 February 2019, p 28.

[18] Imran's Statements, p 308.

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spoke, he and Tamil would refer to heroin as cigarettes, in order to avoid detection from the CNB.[19]

(c) Contrary to Pragas's and Tamil's narrative of prior deliveries of cigarettes to Imran, Imran's fourth statement (second investigative statement) recorded on 10 February 2017 at 3.10pm detailed a prior delivery of a pound of heroin, either on 2 February 2017 or 3 February 2017. The contents were in the green and white plastic bag marked C1 found on the top-shelf of his storeroom.[20]

(d) In his fifth statement (third investigative statement) recorded on 11 February 2017 at 11.30am, Imran stated that he had known Tamil since 2015, when they worked together at a company called Totel Oil Asia. He confirmed that the sum of $6,700 was meant as payment to Tamil for two pounds of heroin. He also stated that he had been purchasing heroin from Tamil once a week from sometime in September 2016, save from December 2016 to end-January 2019. Each time, Imran would hand the money to Tamil, and Pragas would subsequently deliver the heroin.[21]

(e) Imran's sixth statement (fourth investigative statement) recorded on 14 February 2017 at 4.00pm contradicted the contention of Pragas and Tamil that their plan was to deliver cigarettes and that Imran had agreed to loan Tamil $6,700. Imran said that he had never lent any money to Tamil or Pragas, nor had they asked to borrow money from

[19] Imran's Statements, pp 341–342.

[20] Imran's Statements, p 344.

[21] Imran's Statements, p 354–355.

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him. He also stated that neither Tamil nor Pragas had previously delivered cigarettes to him at his house or at his lift lobby; Imran had only purchased cigarettes from Tamil when they were still working together.[22]

(f) Similarly, his seventh statement recorded on 18 December 2017, which he maintained as accurate at trial, did not dispute the fact that two pounds of heroin were delivered to him.[23] His defence was aimed at *mens rea* – his evidence was that he thought the bag contained only one pound of heroin and not two.

40 The investigation scene showed no trace of the two cartons of cigarettes, one of Marlboro Light and another of Gudang Garam, which Pragas and Tamil contended they handed over. This was despite a thorough and lengthy search completed by the officers that morning. Only eight packets of duty-unpaid Malboro Red were recovered from the Unit.

41 In my judgment, it was clear that two pounds of heroin were delivered to Imran. Imran's evidence in his statements that the price was $6,700 was corroborated by the evidence that $6,700 was found on Tamil at the time of his arrest. Further, SSgt Chew testified during trial that $6,700 for two pounds of heroin would be consistent with market prices in 2017.[24]

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22 Imran's Statements, p 367.

23 Agreed Bundle ("AB") 446–447.

24 NE 19 February 2019, p 91.

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Act of and members to the conspiracy

42 The charge against Imran is that of abetment by conspiracy. While Imran played the role of recipient in the conspiracy to deliver heroin, no defence of consumption was mounted. In his second statement (cautioned statement) recorded on 9 February 2017 at 3.33am, Imran admitted to a charge against him for having in his possession drugs for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA. The total amount of drugs stated in that charge was that of "3 bundles and 30 packets containing approximately 1426.85g of granular/powdery substance believed to contain diamorphine".[25] In his fourth statement, Imran said he sold heroin to supplement his income.[26] His conspiracy to take delivery of heroin for the purpose of trafficking falls within the policy purview of the MDA, which was enacted to address the growing problem of drug abuse (see *Ali* at [64]). His version of events at trial also alluded to his role in the onward distribution of the heroin, albeit to one "55" as Tamil's courier. I address the alleged role of "55" in more detail below (see [47]).

43 His partner in the conspiracy was primarily Tamil. Imran's evidence at trial was that on 7 February 2017, Tamil telephoned him in the afternoon to inform him that he had a new shipment of drugs.[27] On the day in question, that which they conspired to do came to pass. Imran took delivery of the two pounds of heroin and paid Tamil $6,700. The $6,700 was recovered from Tamil upon arrest.

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25 Imran's Statements, p 333.

26 Imran's Statements, p 346.

27 NE 26 February 2019 at pp 94–95.

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44 A last matter concerns the nexus between Imran and Pragas, whose assistance was arranged by Tamil. While Imran gave evidence of similar prior assistance that Pragas rendered Tamil, Imran's evidence was that he did not communicate with Pragas concerning the delivery of heroin. The only conversation he had with Pragas was on an occasion when he attempted to telephone Tamil, who did not pick up the call. A few minutes later, Pragas returned the call from a different number, informing Imran that Tamil was busy and would return his call.[28] Pragas's and Tamil's evidence, in like vein, was that Pragas did not know what transpired between Tamil and Imran, as Pragas did not directly deal with Imran.[29]

45 On a charge of conspiracy, it is sufficient to "show that the words and actions of the parties indicate their concert in the pursuit of a common object or design, giving rise to the inference that their actions must have been co-ordinated by arrangement beforehand" (see *Public Prosecutor v Yeo Choon Poh* [1993] 3 SLR(R) 302 ("*Yeo Choon Poh*") at [20]). There is no requirement that each member of a criminal conspiracy must have had direct contact with each other. As the Court of Appeal stated in *Yeo Choon Poh* at [19], affirming the words of Whitton J in *R v Chew Chong Jin* [1956] MLJ 185 at 186:

> Again it is clear that there need not be communication between each conspirator and every other, provided that there be a common design common to each of them all: *R v Meyrick & Ribuffi* 21 Cr App R 94.

46 It was thus unnecessary for Pragas and Imran to have had direct contact with each other; all that is required is that they shared a common design. The facts make clear that Imran communicated with Tamil to arrange for the

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[28] NE 28 February 2019, pp 19 and 21.

[29] NE 1 March 2019, pp 19-21, 5 March 2019, pp 14, 37 and 40-41.

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delivery of heroin;[30] and Tamil then secured Pragas to assist in the delivery. The plan came to fruition on 8 February 2017. Tamil's caution in meeting Imran first and ascertaining payment before calling Pragas was a clear demonstration of the conspiracy, which was successfully carried out.

Mental element

47 Imran's defence was directed at his *mens rea*, that he intended to traffic in only one pound of heroin. This defence first started emerging in his interviews on 22 February 2017, 24 February 2017 and 1 March 2017 at Changi Prison Complex Medical Centre with Institute of Mental Health ("IMH") consultant Dr Cheow Enquan ("Dr Cheow"), who assessed him to be of sound mind. Dr Cheow's psychiatric evaluation report, dated 6 March 2017, mentioned that Imran had contended Tamil passed him two bundles of heroin instead of one without his knowledge.[31] Subsequently, another iteration of his new narrative emerged in his seventh statement recorded some ten months after his arrest, on 18 December 2017 around 11.20am. At that point, Imran contended he was working for Tamil.[32] Imran stated that Tamil had instructed him to hold on to the bundles of heroin, and to wait for a phone call by a Singaporean Indian known as "55". "55" was a Singaporean Indian who was about 30 years old, skinny, and without any tattoos. After delivering the drugs to "55", Imran would purportedly collect money on Tamil's behalf. He would

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30 Closing Submissions for the First Accused, p 39; Prosecution's Closing Submissions, p 25.

31 AB139.

32 AB446–447.

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then be paid a sum of $300 by Tamil. This was the position Imran maintained at trial.[33]

48 I note here that even if I were to accept Imran's defence, his actions would nevertheless fall within the definition of trafficking, which includes the sending or delivering of unauthorised drugs (see above at [17]). His defence would simply serve to reduce the weight of drugs trafficked to below the threshold for attracting capital punishment.

49 In any case, I rejected this defence. First, it was evidently raised as an afterthought, and did not square with other aspects of the evidence. Imran's previous statements contained clear admissions of his awareness of how much heroin he had agreed to traffic. He appears to have begun regretting this on 22 February 2017 when he saw Dr Cheow, and therefore told Dr Cheow he ordered one bundle. I note that this is inconsistent with his evidence at trial that he expected two small bundles, although in both scenarios the amount to be received would likely be under the capital punishment threshold for diamorphine. Imran's account in his December 2017 statement (that he worked for Tamil as a courier and expected to deliver drugs to "55") was even more difficult to believe. "55" was clearly a figment of his imagination, as were the allegations that he worked for Tamil for a $300 commission. Imran's new contention would also require him to explain the $6,700 paid to Tamil, which was otherwise a clear nexus to the sale of two pounds of heroin because it reflected the market price for the same. Imran tried to explain this away by claiming that $3,700 was received from "55" and the remainder was a $3,000 loan he was making to "his boss" Tamil, who would pay him after "55"

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33 NE 28 February 2019, pp 62–63, 67.

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collected the drugs.[34] This explanation was illogical. If Imran were truly working for Tamil, and being paid $300 per delivery to "55", why would Tamil require $3,000 from him? In any case, this explanation was not only unsupported by evidence but also contradicted by Tamil, who instead claimed that the entire sum of $6,700 was a loan from Imran for the purchase of cigarettes.[35] The only plausible explanation is that Imran paid Tamil $6,700 for two pounds of heroin.

50 Second, Imran's defence that he intended to traffic in only one pound of heroin could not withstand cross-examination. Acceptance of Imran's version of events at trial would require acceptance that Imran could not tell the difference in weight between one and two pounds of heroin. The difference in weight should have been apparent to Imran – and indeed was, as I shall explain – the moment Pragas handed him the white plastic bag, in light of the fact that Imran was familiar with receiving and dealing drugs. When pressed, he conceded during cross-examination that he took the bag despite being able to feel the difference in the weight. The relevant part of the transcript is as follows:[36]

> Q: So don't you agree, Mr Imran, when you take over the plastic bag, you will immediately know that this weighs twice the normal weight that you normally collect from Pragas or Tamil?
>
> A: I did not realise that because at that time I was rushing. I took the bag and immediately went back to my house.
>
> Q: But when you take the bag, you would feel the weight, correct? You carry in your hands.

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34 NE 28 February 2019, p. 26.

35 NE 5 March 2019, p 10.

36 NE 28 February 2019, p 63.

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> A: I took the plastic bag. I went back home, I wanted to check---and Tamil and Pragas had already left. Once I took the plastic bag, they left.
>
> Q: No. Mr Imran, my point is, the moment you carry the plastic bag and you take it over from Pragas, you would have known this is twice the weight as compared to what you normally received.
>
> A: *I could feel the difference but they had already left. So I went back home and I checked the plastic bag.*
>
> [Emphasis added in italics]

51 His excuse that, while he "could feel the difference", "they had already left" was unconvincing, as his admission was that he could feel the difference *once the bag was in his hand*. He could have called Tamil and Pragas back to seek an explanation: when they left him, they were merely walking to the stairwell and down the stairs. Imran's excuse must further be weighed against another piece of his own evidence, to the effect that there was a previous delivery just immediately before the 8 February 2017 delivery, either on 2 or 3 February 2017, where he had been given "four small bundles but what was promised were [*sic*] two small bundles".[37] If so, on 8 February, he ought to have been more cautious about the number of bundles he was given. This is a wholly different situation from past cases such as *Public Prosecutor v Muhammad Farid bin Mohd Yusop* [2015] 3 SLR 16 ("*Farid*"), where the accused had similarly alleged that he had entered into an agreement with his supplier to traffic in a non-capital quantity of drugs. There, at [25]–[33], the Court of Appeal accepted the accused's assertion that he did not know he was carrying more than 250g of Ice. In reaching this decision, the court placed emphasis on the fact that there was no "inherent contradiction" between the accused's statements and his defence, as well as the fact that the weight of Ice delivered

[37] NE 26 February 2019, p 92.

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on three prior occasions was 250g or less (see *Farid* at [28] and [32]). In contrast, in this case, Imran has no basis for such sanguinity. Indeed, by Imran's own admission, Tamil had previously delivered to him an excessive amount of heroin. This being the case, he must surely have been cognisant of the possibility of a misdelivery occurring yet again on 8 February 2017.

Conclusion on charge against Imran

52 I found therefore that the charge against Imran for abetment by conspiracy to traffic in not less than 19.42g of diamorphine was made out beyond reasonable doubt. I convicted him accordingly.

Pragas

Elements of common intention

53 Pragas and Tamil were charged with trafficking in furtherance of their common intention to do so. As stated at [22] above, the Court of Appeal set out in *Ridzuan* and *Daniel Vijay* the three elements required: (a) the criminal act element; (b) the common intention element; and (c) the participation element.

54 Element (a) refers to the aggregate of all the diverse acts done by the actual doer and secondary offender that collectively give rise to the offence that they have been charged with (see *Daniel Vijay* at [92]). Here, element (a) would be the act of delivery of the two bundles of heroin to Imran. Element (b) would refer to their joint intention to effect that act of delivery. Element (c) would refer to Pragas's involvement by way of actually effecting the delivery of the two bundles, and Tamil's involvement by way of facilitating the same.

55 Pragas's defence was twofold. First, he argued that the white plastic bag that he delivered to Imran did not contain any drugs, only contraband cigarettes.

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Second, even if the bag contained drugs, Pragas contended he was under the impression that it contained cigarettes.[38] His defence went to all three of the elements of common intention. The argument that the bag he handed over contained cigarettes related to the acts necessary for (a) and (c), while the argument that even if the bag contained drugs he thought they were cigarettes targeted the mental element necessary for (b).

Using Imran's statement against Pragas

56 Imran's statements were an integral part of the Prosecution's case against Pragas. The use of such statements against a co-accused is governed by s 258 of the CPC, which reads in its material part as follows:

> When 2 or more persons are tried jointly in any of the following circumstances, and a confession made by one such person affecting that person and any other such person is proved, the court may take into consideration the confession as against the other person as well as against the person who made the confession:
>
> (*a*) *all of those persons are tried jointly for the same offence*;
>
> (*b*) *the proof of the facts alleged in the charge for the offence for which one of those persons (A) is tried* (excluding any fact relating to any intent or state of mind on the part of *A* necessary to constitute the offence for which *A* is tried) *would, for each of the rest of those persons, result in the proof of the facts alleged in the charge for the offence for which that person is tried* (excluding any fact relating to any intent or state of mind on the part of that person necessary to constitute the offence for which that person is tried); …
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> [emphasis added in italics]

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[38] Closing Submissions for the Second Accused, p 46.

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57 Section 258(5B) states that "offence" in s 258(5) includes an abetment of a conspiracy to commit the offence, making s 258(5) readily applicable to Imran's confession as to his receipt of drugs.

58 The court, however, may exercise its discretion to refuse to take into account a co-accused's confession. Section 258(5A) of the CPC states:

> Despite subsection (5), the court may refuse to take into consideration a confession as against a person (other than the maker of the confession), *if the prejudicial effect of the confession on that person outweighs the probative value* of the confession. [emphasis added in italics]

59 In *Norasharee bin Gous v Public Prosecutor and another appeal and another matter* [2017] 1 SLR 830 ("*Norasharee*"), the Court of Appeal gave guidance where a conviction was sought solely on the basis of a co-accused's confession. *Norasharee* was decided prior to the passing of the Criminal Justice Reform Act 2018 (No 19 of 2018) ("CJRA"), which added subsections (*a*) and (*b*) to s 258(5) of the CPC, as well as new subsections 258(5A) and 258(5B). In *Norasharee*, the question of Norasharee's conviction turned on evidence given by his co-accused, Yazid, who claimed that he had been instructed by Norasharee to traffic in drugs (see *Norasharee* at [4]). Norasharee, on the other hand, claimed that Yazid was trying to frame him as he possessed a personal vendetta against him due to a long-term gang rivalry. As the Court of Appeal noted, the case against Norasharee rested almost entirely on Yazid's statement (see *Norasharee* at [53]). In deciding that Norasharee's guilt had indeed been proven beyond a reasonable doubt, the court stated at [54] that a conviction based solely on a co-accused's confession could be sustained "provided that the evidence emanating from [the co-accused's] confession satisfied the court beyond reasonable doubt of [the accused's] guilt".

60 In the present case, Pragas's conviction was not based solely on Imran's

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confession. However, because of the importance of Imran's statements to Pragas's conviction, I was mindful of the guidance in *Norasharee* that the court should consider, in deciding how much weight to accord to a co-accused's confession, the state of mind and any incentive that such a co-accused might have in giving evidence against the accused (see *Norasharee* at [59]). This is even more so in the light of the new s 258(5A). While Parliament did not discuss the scope of s 258(5A) when the new subsection was introduced, the court has nevertheless long possessed a common law discretion to exclude evidence that would otherwise be admissible where its prejudicial effect exceeds its probative value (see *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*") at [51]–[53]). This is because the very reliability of the evidence sought to be admitted is questionable where the evidence's prejudicial effect exceeds the probative value (*see Kadar* at [55]). The inclusion of s 258(5A), in my view, affirms the application of the court's discretion. In particular, *Norasharee*'s guidance (at [59]) to take into consideration the state of mind and the incentive that said co-accused might have in giving evidence against the accused is still instructive.

61 I was satisfied that ss 258(5)(*a*) and (*b*) of the CPC applied. Imran, Pragas and Tamil were, as determined by s 258(5B), charged with the same offence as mandated by s 258(5)(*a*). Section 258(5)(*b*) also applied in respect of the act of delivery of the heroin because proving that Imran had received two pounds of heroin from Pragas and Imran on 8 February 2017 was a necessary step in proving that Pragas had indeed delivered the same two pounds of heroin. At the same time, there was no reason to exclude it under s 258(5A) of the CPC. When assessing the potential prejudicial effect and probative value of a piece of evidence, the court must consider factors such as the presence of procedural irregularities and the conditions under which one's evidence had been obtained,

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such as whether the accused had given statements while under the powerful effects of drugs: *Kadar* at [53] and [55]. No such factors were present. Further, in each case where reliance was placed on Imran's statement, it was not the sole piece of evidence, as had been the case in *Norasharee*. There were other pieces of evidence, as detailed in the relevant sections below.

The criminal act element

62 In convicting Imran for abetment by conspiracy, I made a finding of fact that two bundles of heroin were delivered to him (at [4141] above). The act of delivery is supported not only by Imran's statement but also his oral testimony and the context of what transpired.

63 Turning to the charge against Pragas, I found that the criminal act element, being the delivery of the two bundles of heroin to Imran, was made out on the basis of this same factual finding. I did not accept Pragas's account that the bag contained only contraband cigarettes. None of the surrounding evidence supported Pragas's narrative – only eight packets of contraband Marlboro Red cigarettes were found following a search of the Unit that lasted for more than three hours.[39]

64 In addition, I considered in detail Pragas's previous explanations, which I found to be inconsistent with each other. Pragas did not challenge the voluntary nature of his seven statements. The first two, however, contained a different narrative from his third to seventh. I turn now to explain.

65 The first two, which were contemporaneous and recorded at 11.00am

[39] NE 22 February 2019, p 76.

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and 11.46am, were bare denials.[40] Pragas claimed that Tamil had asked him to accompany him to meet a friend. When Imran went up in the lift, he went to the second floor and then came down again after less than a minute. He did not meet Imran on that day, and he did not know why Tamil had requested his company. While he recognised that heroin was a form of illegal drug, he had not seen, touched or been in close proximity with it. It was only in his third statement that he disclosed his and Tamil's purported agreement to smuggle cigarettes. At trial Pragas explained that the statements were inaccurate because Sgt Nasrulhaq recorded a Malay conversation in English. The narrative maintained after the third statement, however, was too starkly different to be explained by translation inaccuracy. Pragas also contended that Sgt Nasrulhaq failed to record what he told him, and instead concocted the evidence. There is no evidence of such fabrication; moreover it would be surprising for Sgt Nasrulhaq to fabricate bare denials, if he indeed had the motive to fabricate statements.

66 From 9 February 2017, for his cautioned statements, Pragas maintained a narrative that he was there to deliver cigarettes. In particular:

(a) In his third statement (first cautioned statement) recorded on 9 February 2017 at about 3.57am, he denied delivering heroin to Imran, claiming that he had delivered cigarettes instead. He stated that he had not seen the contents of the bag, and that Tamil had told him that it contained cigarettes.[41]

(b) In his fourth statement (first investigative statement) recorded on 10 February 2017 at about 11.03am, he claimed that on 7 February 2017,

40 Exhibits P109 and P110.

41 AB405.

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Tamil had enlisted his help to smuggle illegal cigarettes into Singapore, offering to reward him in Malaysian currency.[42]

(c) In his fifth statement (second investigative statement) recorded on 10 February 2017 at about 3.15pm, Pragas specified that Tamil had told him on 7 February 2017 that he needed assistance to deliver two cartons of cigarettes to a person in Singapore. He also disclosed that he received RM500 for the previous three occasions where he assisted Tamil with deliveries. Pragas stated that on the next day, 8 February 2017, he and Tamil had met a Malay man at a coffeeshop near Tuas Industrial Park. There, Pragas handed his backpack to the Malay man, who entered the toilet with it. Ten minutes later, the Malay man returned the backpack to Pragas. Pragas did not check the contents of the backpack.[43] Subsequently, Pragas and Tamil made the delivery to Imran. Pragas said that during the delivery, when he took out a plastic bag and handed it to Imran, the weight of the plastic bag felt "normal" (a point reiterated in cross-examination where he stated that he did not feel any apparent difference in weight of the bag that day).

67 A third nuance to his narrative was introduced when he was interviewed and examined by Dr Jerome Goh Hern Yee ("Dr Goh"), who assessed that Pragas was of sound mind through interviews on 22 February 2017, 28 February 2017 and 6 March 2017. Dr Goh stated that Pragas had told him he had seen the cigarettes in his bag on 8 February 2017.[44] This stands in contrast to Pragas's

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[42] AB409.

[43] AB411–412.

[44] NE 21 February 2019, p 34.

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previous statements where he alleged that he had not directly seen the contents of his backpack. In court, Pragas returned to the version used in his third to seventh statements.

68 Given that Pragas's account is internally inconsistent and unsupported by the evidence, I rejected this account and instead preferred the version of events upon which my finding in respect of the delivery of two bundles of heroin to Imran is based. Accordingly, I found that the criminal act element of delivering the two bundles of heroin to Imran is satisfied.

The common intention element

69 Pragas's defence on this issue was that he thought the common intention was to deliver contraband cigarettes. He contended that, being in the dark about the dealings between Imran and Tamil, he was under the impression that he was delivering cigarettes to Imran, not drugs.[45]

70 Pragas's knowledge that the plastic bag contained heroin was therefore a necessary pre-requisite to any finding that he had common intention to traffic the same and I deal with this issue first.

71 Recently, the Court of Appeal, in *Adili Chibuike Ejike v Public Prosecutor* [2019] SGCA 38 ("*Adili*"), had the opportunity to examine the concept of wilful blindness, albeit in a slightly different context of s 18(1) of the MDA. In the present case, the presumption under s 18(1) is not necessary, because it has been proved that the white plastic bag with two bundles of heroin was in Pragas's possession and delivered by Pragas to Imran. The issue relates

[45] Closing Submissions for the Second Accused, p 45.

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to Pragas's knowledge, or wilful blindness, of what he handed over. The Court of Appeal in *Adili* noted at [45] that the term "wilful blindness" has been used in two distinct senses. First, when "the accused person's suspicion and deliberate refusal to inquire are treated as evidence which, together with all the other relevant evidence, might sustain a factual finding or inference that the accused person had actual knowledge". Second, the term "wilful blindness" has also been used to "describe a mental state which falls short of actual knowledge, but nevertheless is held to satisfy the *mens rea* of knowledge because it is the legal equivalent of actual knowledge. Having established the differing ways in which wilful blindness had been used in the past, the court affirmed that wilful blindness, in its true sense, referred to a mental state falling short of actual knowledge (see *Adili* at [50]). Where the circumstances are such that "a person in the accused's shoes ought to make further inquiries" but failed to do so, he would be considered to be wilfully blind.

72 In this case, which was heard prior to the release of the judgment in *Adili*, the Prosecution took the view, reflected in their closing submissions, that wilful blindness was used in the first sense, relying on *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*"). The deputy public prosecutor elaborated during oral response time that what was meant was "lawyers' speak for actual knowledge". [46] At the same time, the Prosecution did not contend that actual knowledge should be inferred from the circumstances, their submissions distinguished such a scenario, drawing a distinction with *Public Prosecutor v Koo Pui Fong* at [14].[47] On the facts of this

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[46] Prosecution's Closing Submissions dated 5 April, paragraphs 47-48 and NE, 22 April 2019 p 41.

[47] Prosecution's Closing Submissions dated 5 April, paragraphs 46.

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case, and in view of the Prosecution's stance, I did not make an inferential finding that Pragas in fact knew that the parcel contained heroin. I was of the view, beyond reasonable doubt, that Pragas was wilfully blind, in the second sense adopted by the Court of Appeal in *Adili*, to the fact that the white plastic bag he delivered contained two bundles of heroin. My reasons for this finding follow.

73 The Court of Appeal in *Adili* set out, at [51] and [83], the elements of wilful blindness, which are the following:

(a) The accused must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind;

(b) There must have been reasonable means of inquiry available to the accused, which, if taken, would have led him to discovery of the truth; and

(c) The accused must have deliberately refused to pursue the reasonable means of inquiry available so as to avoid such negative legal consequences as might arise in connection with his knowing that fact.

In setting out these elements, the Court of Appeal stated at [52] that the concept of wilful blindness must be considered in the context of the accused person's knowledge of a specific fact, whether that be knowledge as to the existence within his possession, custody or control, of the thing later found to be a drug, or knowledge of the nature of the drug. In particular, the second element might vary if the fact in question were knowledge of the nature of the drug. I deal with this in the context of the second element in the discussion below.

74 Coming to the first element, the facts were such that Pragas would have

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had a clear, grounded and targeted suspicion of what he was to deliver. Pragas had confirmed at trial that he was paid RM500 for three previous deliveries of contraband cigarettes.[48] This would be considered a gross overpayment for help with contraband cigarettes, even by the numbers that Tamil provided. At trial, Tamil claimed that he purchased his contraband cigarettes for approximately $50 per carton, and sold them to Imran at $70 per carton.[49] This meant that Tamil's profit would be $20 per carton of cigarettes, which amounts to approximately RM60. The payment of RM500 to Pragas for his three deliveries of two cartons each would wholly outstrip the profit for the same deliveries, which would amount to RM360. The surreptitious and elaborate system of delivery was wholly out of keeping with the delivery of contraband cigarettes, and the weight of the drugs in his backpack was not that of two cartons of cigarettes.

75 In this context, and as mentioned above, the present case was heard prior to the release of the judgment in *Adili*, where the Court of Appeal stated that "it must be put to him that he had *in fact* suspected the truth *of the particular material fact* at *the material time*" (*Adili* at [90], emphasis in original). Because the Prosecution relied on the case of *Nagaenthran*, a case that defined wilful blindness in the first sense, the question put to Pragas was that of actual knowledge:[50]

> Q: And I put it to you that you were wilfully blind as to what the item was.
>
> A: All I know is it was cigarettes.

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48 NE 1 March 2019, p 32.

49 NE 5 March 2019, p 39.

50 NE 1 March, p 53.

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> Q: And I put it to you the reason why you did not check was because you *knew* the items were drugs.
>
> A I disagree because I did not check because I thought that it was cigarettes.
>
> [emphasis added]

I am of the view that the issue was sufficiently put to Pragas such that he appropriate notice that he had to explain why he did not check the parcel throughout the time period in which it remained in his care. His explanation, that he knew or thought it contained cigarettes, did not pass muster.

76 Second, Pragas had reasonable means of inquiry. Even if the contents of his backpack were inserted out of his sight as claimed in his statement, the parcel was readily discoverable from opening the backpack; he could have checked his backpack at any time thereafter. He had many opportunities to do so: during the journey from the coffeeshop in Tuas to Jurong, which took about 15 to 20 minutes, throughout which the backpack remained with him;[51] when he alighted after parking in the motorcycle lot at Block 518A in Jurong; before and while going up the four flights of stairs.

77 In this regard, the facts are quite different from *Adili*, where the drugs were hidden in the inner lining of a suitcase. In *Adili*, the Court of Appeal explained at [62] that when dealing (as this case is) with the element of knowledge, rather than possession, "it would generally not be sufficient for the accused person simply to say that he did not know what he was carrying, or worse, that he had been *indifferent* to what he was carrying". This was because, by this stage of the inquiry, the accused person has already been found to have been in possession of the thing that turns out to be a drug. Where his suspicions

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[51] NE 1 March 2019, p 52.

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are sufficiently aroused but he nonetheless deliberately refused to check, the Court of Appeal formed a provisional view that such a person would likely to be found to be wilfully blind to the nature of the drug. The logic and good sense in this provisional view is illustrated by the facts of this case. Such an approach is also consistent with earlier Court of Appeal authority, *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR(R) 1, which used wilful blindness in the second sense, the approach adopted in *Adili.* At [129], the Court of Appeal there stated as follows:

> … Nevertheless, one obvious situation is where the accused takes no steps whatsoever to investigate his or her suspicions. The court would naturally find that there was wilful blindness in such a situation. **Where, for example, an accused is given a wrapped package and is told that it contains counterfeit currency when it actually contains controlled drugs, we would have thought that, absent unusual circumstances, the accused should at least ask to *actually view* what is in the package.** [emphasis in italics in original; emphasis added in bold]

Similarly, in this case, Pragas knew the parcel was put in his backpack and chose not to check despite the many signs that alerted him to the nature of its contents.

78 Third, I find that Pragas deliberately refused to pursue the above-mentioned reasonable means of inquiry. The weight of two pounds of heroin and two cartons of cigarettes are totally different. This would have been obvious to him each time he handled the backpack, either in his hands or on his back as he walked up the staircase towards the Unit. Further, as mentioned at [38], the white plastic bag D1, as shown at trial via photograph P53 that was adduced by Home Team Specialist Toh Sin Ee, is a very thin white plastic bag.[52] C2A and C2B would have been obvious from an exterior view of the package. His taking

[52] NE 19 February 2019, p 28.

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no steps to investigate or even to look closely at the bag before he handed it over – all the while in pursuance of a plan to deliver cigarettes - was plainly not out of indolence, negligence or embarrassment but a deliberate desire to avoid legal liability (see *Adili* at [94]).

79 I should mention, for clarity, that the Prosecution concurrently relied on s 18(2) of the MDA, on the basis that the facts were sufficient to establish wilful blindness, and the presumption of actual knowledge under s 18(2) could not be rebutted. Again, these arguments were made prior to the Court of Appeal's decision in *Adili,* where the Court of Appeal, at [68]–[69], was of the view that there may be difficulties with this approach. In the present case, in view of my finding that wilful blindness was proved beyond a reasonable doubt, it followed that the aid of a presumption was not necessary. I therefore do not deal with this presumption in these grounds of decision.

80 As for common intention, this may be inferred from the accused persons' conduct and circumstances (see *Daniel Vijay* at [97]). In the Indian Privy Council decision of *Mahbub Shah v Emperor* AIR (32) 1945 PC 118, Sir Madhavan Nair, delivering the judgment of the Privy Council, stated as follows (at 120):

> … common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

81 In the present case, I inferred from the manner in which the delivery took place that there was a plan for one. Pragas and Tamil effected a coordinated system where Tamil would first seek out Imran and ascertain payment. Pragas

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would thereafter be summoned to deliver the package. I found it incredible that the persons involved would go to such lengths to concoct an elaborate two-man delivery system simply to deliver two cartons of contraband cigarettes. Imran's statements were, in addition, clear as to the purpose of their visit, which had been arranged in advance with Imran by Tamil and had been preceded by other similar deliveries. I was therefore satisfied that the delivery to Imran was pursuant to the common intention of Pragas and Tamil to jointly deliver the two bundles of heroin to Imran.

82 In this context, so long as the pre-arranged plan is clear, I am of the view that common intention may encompass actual knowledge on the part of Tamil and wilful blindness on the part of Pragas. In *Adili*, at [47]-[49] and [93], the Court of Appeal explained that wilful blindness is treated as the legal equivalent of actual knowledge because it is a highly culpable state of ignorance, where an accused person's careful skirting of actual knowledge undermines the administration of justice. At [49], Chief Justice Sundaresh Menon quoted Prof Glanville Williams, *Criminal Law: The General Part* (London: Sweet & Maxwell, 1961) at p. 159: "He suspected the fact; he realised its probability; but he refrained from obtaining the final confirmation because he wanted in the event to be able to deny knowledge. This, and this alone, is wilful blindness. It requires in effect a finding that the defendant intended to cheat the administration of justice." The same rationale compels the conclusion that common intention may be premised on the actual knowledge of one accomplice and the wilful blindness of another. An analogy of sorts may be drawn with the scenario explained in *Daniel Vijay* at [168](d). In this scenario, A, B and C have a common intention to rob D and if necessary, to kill him to facilitate the robbery. If D is then killed by A in the course of the robbery, B and C would be constructively liable. This scenario echoes *Barendra Kumar Ghosh v Emperor*

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AIR 1925 PC 1, cited in the same judgment at [103], where the Privy Council stated: "even if [BKG] did nothing as he stood outside the door, it is to be remembered that in crimes as in other things 'they also serve who only stand and wait'." The reason, as elucidated by Khundkar J in *Ibra Akandar v Emperor* AIR 1944 Cal 339*,* is that despite what was described by the learned judge as a "fractional act" on the part of [BKG], the common intention of [BKG] and his accomplices was a wide one, embracing both robbery and murder (see *Daniel Vijay*, at [104]). Where an accomplice is wilfully blind, he is affixed with the very knowledge which he has refused to investigate. It follows, then, that his shared intention must be sufficiently wide to include the actual knowledge that the law imputes to him.

The participation element

83 In this case, the act of participation was plain even on the defence's case. On Pragas's evidence, Tamil and Pragas entered Singapore together and met with a contact to obtain a package which he retained in his backpack and brought to the venue. Pursuant to a call from Tamil received through a mobile telephone on loan from Tamil, Pragas received his instructions from Tamil to walk up the stairs to the fourth storey to make delivery. Delivery was duly made when Pragas handed over the white plastic bag.

84 For completeness, I mention Pragas's evidence that he did not deal directly with Imran. In his seventh statement (fourth investigative statement) recorded on 13th February 2017 at about 10.23am, Pragas stated that he did not know Imran's name or number, and that he had never spoken to Imran. Tamil would communicate with Imran, and would always accompany Pragas when he made deliveries. In court, Pragas maintained that he was not involved in the

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communications between Tamil and Imran.[53] This was not relevant to his and Tamil's common intention to deliver heroin to Imran, the offence with which they were charged.

Alternative analysis

85 In *Ridzuan*, the Court of Appeal considered that although an analysis based on common intention was sufficient, an alternative analysis based on whether the elements of the offence of trafficking had been made out could also be considered out of an abundance of caution: see [24] above. In this case, such primary liability for trafficking is made out. Two elements must be established to make out an offence under s 5(1)(*a*) of the MDA: *Public Prosecutor v Ranjit Singh Gill Menjeet Singh and another* [2017] 3 SLR 66 at [34]. First, the act of trafficking in the controlled drug which was not authorised. Here I have found that Pragas delivered the two bundles. The second element is knowledge of the nature of the drug. Here I have found wilful blindness, which is the legal equivalent of actual knowledge: see *Adili* at [47] and [50].

Applicability of the decision of the Federal Court of Malaysia

86 I should mention, for completeness, that in further submissions filed before closing arguments, counsel for Pragas highlighted *Alma Nudo Atenza v Public Prosecutor* (5 April 2019, Federal Court) (Malaysia) ("*Alma*"), which was a decision of the Federal Court of Malaysia. He argued, relying on *Alma*, that the presumptions of possession and knowledge under ss 18(1) and (2) of the MDA should be considered unconstitutional.[54]

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53 NE 1 March 2019, pp 19-20; NE 5 March 2019, p 14.

54 Further Closing Submissions for the Second Accused, pp 4-6; NE 22 April 2019, p 36.

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87 These submissions were not apposite, for two reasons. First, s 18 was not a live issue because the presumptions were not necessary to my analysis. As is clear from the above, wilful blindness was evident on the facts of Pragas's case and that was sufficient.

88 Nevertheless, as the s 18(2) MDA presumption formed part of the Prosecution arguments against Pragas, I explain further the second reason, which is that the issue dealt with in *Alma* does not arise in the context of the MDA. *Alma* struck down as unconstitutional the *double* presumptions of "trafficking" and "possession and knowledge" in the Dangerous Drugs Act 1952 (No 234 of 1952) (M'sia). But in Singapore, such presumptions cannot be invoked together. The Court of Appeal in *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Zainal*") has determinatively pronounced on the interaction between the presumptions under s 17 of the MDA, the local provision that relates to trafficking, and s 18, the local provision that relates to possession and knowledge. To summarise, where the Prosecution seeks to rely on the presumption of trafficking under s 17 of the MDA, it must prove the facts of both possession and knowledge. Conversely, where the Prosecution intends to rely on either or both of the presumptions under s 18 of the MDA, it must prove the fact of trafficking, and where trafficking is proved, both the presumptions in ss 18(1) and (2) may be used together (see *Zainal* at [46] and [52]). In the present case, arising from the circumstances of Pragas's delivery, the Prosecution was of the view that trafficking and possession were proved, and sought to rely only on the presumption in s 18(2) of the MDA, coupled with their submissions on wilful blindness.

89 I was thus of the opinion that counsel for Pragas's arguments on *Alma* were of little merit.

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Conclusion on charge against Pragas

90 Hence, I found that the Prosecution had proven its case beyond a reasonable doubt against Pragas. I convicted him accordingly.

Tamil

Elements of common intention

91 As mentioned above at [22], the common intention charge that Pragas and Tamil faced required: (a) the criminal act element, in this case that of delivery of the heroin to Imran; (b) the common intention element, in this case the plan to do so; and (c) the participation element.

92 Tamil's defence at trial was aligned with Pragas's, and focused on the factual element of the delivery of heroin. They were there to deliver cigarettes, and cigarettes were indeed what they delivered on 8 February 2017. He did not deny that he facilitated and orchestrated a delivery to Imran; his defence was only that what he coordinated was a delivery of cigarettes.

The criminal act element

93 I have found that the act of delivery of heroin was committed (see [41] in the context of Imran and [68] in the context of Pragas).

94 Dealing then with the use of Imran's statement against Tamil, I considered Imran's motives for implicating Tamil. Tamil sought to argue that Imran was an unreliable witness, and that his testimony as to his receipt of heroin from Pragas was a lie. He raised the following key points: first, that Imran had changed his evidence regarding the provenance of certain drugs that were seized; second, that Imran had initially claimed that he had repacked drugs for

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sale to one "Apai" before later claiming that he was actually working for Tamil to deliver drugs to "55"; and finally, that Imran possessed strong reasons to lie to the CNB officers and the court due to his perception that he would be given a lighter sentence if he were to provide the CNB with fabricated statements.

95 In contrast to Pragas, Imran possessed an incentive to minimise his role in his dealings with Tamil, in view of his attempt to explain that he only ordered one pound of heroin, and the existence of "Apai" and "55" In this context, I earlier rejected these claims that he had been working for Tamil: see above at [48]. Nevertheless, these spurious claims did not detract from the admission that heroin was delivered. Imran's evidence on the delivery remained consistent in court. This heroin delivery was supported by the $6,700 found on Tamil and the absence of external evidence with regard to the two cartons of contraband cigarettes that were purportedly delivered, as highlighted above at [40] and [63].

The common intention element

96 On the issue of common intention, Imran's statements and evidence in court were clear that the intention of Tamil was to deliver heroin. My findings above, at [81], in the context of the common intention of Pragas and Tamil are also relevant.

97 In addition, as far as the charge against Tamil was concerned, while Tamil sought to argue that his intention was to deliver cigarettes, his own account of events was inconsistent. Tamil did not challenge the voluntariness of his six statements although at trial he sought to disown them at various junctures by contending that he had been stressed, shocked, confused, afraid or did not

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want to implicate others.[55] I turn to explain the inconsistencies between the various statements.

98 Tamil's first two contemporaneous statements were a denial:[56]

(a) In his first statement (first contemporaneous statement) recorded on 8 February 2017 at about 10.40am, Tamil claimed that he had gone to visit Imran in order to borrow a sum of $7,000 dollars. According to Tamil, he had gone to meet Imran alone, but Pragas "also went up" to Imran's lift lobby to meet Imran and Pragas. Tamil said that when he left, Pragas was still speaking to Imran. Tamil also said that he would sell cigarettes to Imran; their arrangement was for Tamil to borrow money from Imran first, before using that sum to purchase cigarettes for him from Malaysia. Typically, either Pragas or Tamil would bring in the contraband cigarettes from Malaysia.

(b) In his second statement (second contemporaneous statement) recorded on 8 February 2017 at about 11.30am., Tamil was shown some pictures of seized exhibits recovered from Imran. Tamil claimed that he did not recognise them, and that he did not deliver anything to Imran that morning.

99 It was only from 9 February 2017, *the same date that Pragas started to advance his narrative about cigarette delivery*, that Tamil did the same:

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55 NE 5 March 2019, p. 59, line 19; NE 5 March p. 42, line 10; NE NE 5 March 2019, p. 59, line 1; NE 5 March 2019, p. 4, line 18; NE 5 March 2019, p. 6 lines 20-21.

56 AB282–292.

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(a) In his third statement (first cautioned statement) recorded on 9 February 2017 at about 4.10am, Tamil stated that he had known Imran for more than a year and that Imran would always purchase cigarettes from him. He claimed that Imran would usually order one or two cartons of cigarettes per week, and that he had met Imran to borrow money from him on the morning of 8 February 2017. He reiterated that when he left, Pragas and Imran were still speaking to each other. Tamil only realised that Pragas was following him a while later. Tamil reiterated that he did not deliver anything to Imran that morning.[57]

(b) In his fourth statement (first investigative statement) recorded on 12 February 2017 at about 2.20pm, Tamil claimed that he had met Imran while they were working at the same factory in Tuas, and that he had started to purchase cartons of cigarettes for Imran from Malaysia then. Over time, Imran only paid Tamil about $70 to $80 for a carton of cigarettes. Tamil would order between one to four cartons of cigarettes at a time. Their *modus operandi* was for Tamil to deliver the cigarettes to Imran at his home, whereupon Imran would pay Tamil in cash.[58]

(c) In his fifth statement (second investigative statement) recorded on 13 February 2017 at about 10.45am, Tamil stated he had introduced Pragas to Imran sometime in 2016, as he intended for Pragas to help him with the delivery of contraband cigarettes. Tamil claimed that he was only able to smuggle two cartons of cigarettes in his bag at a time, and that he required Pragas's assistance to smuggle an additional two cartons. He also stated that he had previously instructed Imran to call

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57 AB338.

58 AB368–371.

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Pragas directly to arrange for the delivery of cigarettes when he had personal matters to attend to. On 7 February 2017, Imran had offered to lend a sum of $6,700 to $6,800 to Tamil for the latter to purchase cigarette cartons. That same night, Pragas had called Tamil to inform him that he was delivering two cartons of cigarettes to Imran the next morning. On 8 February 2017, Tamil had met Imran at his lift lobby on the fourth storey, where he received a stack of money from Imran that was wrapped in a rubber band. When Tamil was about to leave, Pragas appeared. Tamil parted ways with Imran then, and did not notice what Pragas and Imran were doing. Afterwards, when Tamil was walking to his motorcycle, he noticed that Pragas was walking behind him.[59]

(d) In his sixth statement (third investigative statement) recorded on 14 February 2017 at about 10.45am, Tamil claimed that he had been helping his friend, "Prakash" who resided in Johor Bahru, to sell illegal cigarettes. On average, Tamil would purchase 100 cartons of cigarettes at a time, which would cost him RM15,000. Tamil stated that that was the reason he needed to borrow so much money from Imran. He claimed that he would borrow a sum of $4,000 to $7,000 from Imran once every two weeks to buy his stock of cigarettes. Tamil said that he did not have the handphone number of "Prakash" stored in any of his handphones that were seized from him. He also stressed that both Imran and Pragas did not know about the existence of "Prakash".[60]

100 His changes of position may be summed up as follows. Tamil, in his first

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59 AB373–376.

60 AB378–381.

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two statements on 8 February 2017, initially denied that he was involved in delivering any goods to Imran on 8 February 2017 and claimed ignorance of Pragas's purpose in meeting Imran. From his third statement on 9 February 2017, he changed his account of events, stating that he had introduced Pragas and Imran to each other in order for Pragas to deliver cigarettes to Imran; he claimed that Pragas had informed him on 7 February 2017 that he would be delivering cigarettes to Imran on 8 February 2017. Tamil nevertheless insisted that he was not involved in any delivery of goods to Imran on 8 February 2017. Subsequently, at trial, Tamil changed his evidence yet again to align himself with Pragas. When he was brought through his statements by his counsel, he requested to make amendments to all six of them, in order to reflect that he and Pragas had, together, handed two cartons of cigarettes to Imran.[61]

101 Further, despite having never mentioned this in his first five statements, Tamil, in his sixth statement, alleged that he required large sums of money once every fortnight in order to purchase large quantities of cigarettes from his friend, "Prakash".[62] Apart from the fact that this crucial fact was not mentioned in his prior statements, it made little sense that Imran would agree to loan Tamil large sums of money for him to purchase 100 cartons of cigarettes at a time, especially when, as stated by Tamil, neither Imran nor Pragas knew of the purported existence of "Prakash". At trial, Tamil further complicated his account, claiming instead that he would borrow money from Imran "whenever [he] needed money",[63] rather than once every fortnight, and that the amount of $6,700 that he received from Imran went towards the purchase price for an order of 400

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61 NE 5 March 2019, pp 3–9.

62 AB378.

63 NE 5 March, p 9.

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cartons of cigarettes placed by Imran.[64] This contention was raised for the first time during Tamil's examination-in-chief at trial, and his counsel conceded at closing arguments that the fresh allegation was not put to Imran, who testified first. Further, on Tamil's own evidence, past transactions ranged from one to four cartons per delivery. The 400 cartons were a wholly anomalous amount that was necessitated by the mathematics of dividing $6,700 by the price of a carton of cigarettes. These were mere assertions to justify his receipt of $6,700, the clearest nexus with his having arranged the delivery of the heroin.

102 Tamil's account was not supported by any surrounding evidence. He claimed that he had agreed to deliver one carton of Gudang Garam cigarettes and one carton of Marlboro Light cigarettes.[65] But no such contraband cigarettes were found in the Unit. After a lengthy search, the CNB officers only recovered eight packets of contraband Marlboro Red cigarettes. Although Imran's father gave evidence that he found an additional packet of contraband cigarettes with red and white packaging within the storeroom while cleaning up the storeroom,[66] this did not support any inference that the officers had missed a carton of Gudang Garam and a carton of Marlboro *Light* in their search. Red and white packaging is used for Marlboro *Red* cigarettes. In further contradiction of Tamil's account, the officers found the empty white plastic bag, consistent with Imran's evidence that he put the contents of the white bag into C2, the black plastic bag, in order to evade detection from his parents (because the storeroom was a common use area).

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[64] NE 5 March, p 10.

[65] NE 5 March 2019, p 10.

[66] NE 21 February 2019, pp 53-54.

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103 I was therefore satisfied that the common intention of Tamil and Pragas were clearly that of delivery of two bundles of heroin.

Participation element

104 Tamil's evidence alluded to his role as the person who planned the delivery with Imran, albeit of cigarettes which I did not accept. His coordination with Pragas was reflected in the agreed statement of facts. He first went up to check on Imran, and then telephoned Pragas, who then, duly summoned, delivered the drugs.

105 The concept of deemed possession under s 18(4) of the MDA also applied to the issue of Tamil's participation. This provision reads:

> Where one of 2 or more persons with the *knowledge and consent* of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them. [emphasis added in italics]

106 "Consent" was explained by the Court of Appeal in *Ridzuan* at [63], as having "power or authority over the object in question" [emphasis omitted]. In *Ridzuan*, the court found that the accused had been instrumental in putting his co-accused in actual physical possession of the drugs; he had made the necessary arrangements for his co-accused to receive the drugs from their supplier (see [65] of *Ridzuan*). The element of consent, as well as knowledge, was thus readily satisfied. Similarly here, Tamil had orchestrated the sale of heroin to Imran and recruited Pragas to assist him. As Pragas had the heroin in his possession with the knowledge and consent of Tamil, Tamil would also be deemed to be in possession of the heroin. Tamil's participation element would in that case be characterised as a delivery to Imran made jointly by Pragas and himself.

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Alternative analysis

107 I also considered the alternative analysis for Tamil's primary liability under s 5(1)(*b*) of the MDA. The first element, that of trafficking, was made out as the delivery of the heroin was pursuant to Tamil's plan. Section 18(4) applied in this context. The second element would be knowledge of the nature of the drug. From my findings as to Tamil's role and the chain of events which culminated in Tamil's receipt of $6,700, it is clear that Tamil possessed actual knowledge of the drugs for which he coordinated the delivery.

Conclusion on charge against Tamil

108 I found that Tamil's charge was proved beyond a reasonable doubt and convicted him.

Sentence for Imran, Pragas and Tamil

109 Under s 33B(1) of the MDA, an alternative sentencing regime is available where the requirements under s 33B(2) are satisfied. The first requirement is the accused's role as a courier. I held that Imran and Tamil were not couriers. Pragas was a courier, in view of his limited delivery role. The second requirement is a certificate of substantial assistance from the Public Prosecutor. This was not furnished in respect of all three accused persons. I therefore sentenced all three accused persons to the mandatory sentence of death.

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Valerie Thean
Judge

Lau Wing Yum, Chin Jincheng and Shana Poon (Attorney-General's Chambers) for the Prosecution;
Masih James Bahadur (James Masih & Company), Koh Choon Guan Daniel (Eldan Law LLP) and Lum Guo Rong (Lexcompass LLC) for the first accused;
Singa Retnam (I.R.B. Law LLP) and Gino Hardial Singh (Abbotts Chambers LLC) for the second accused;
Dhanaraj James Selvaraj (James Selvaraj LLC), Mohammad Shafiq bin Haja Maideen (Abdul Rahman Law Corporation) and Sheik Umar bin Mohamed Bagushair (Wong & Leow LLC) for the third accused.

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