IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 110

Criminal Appeal No 38 of 2020

Between

Chandroo Subramaniam

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 39 of 2020

Between

Kamalnathan a/l Muniandy

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 40 of 2020

Between

Pravinash a/l Chandran

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

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Chandroo Subramaniam
v
Public Prosecutor and other appeals

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Court of Appeal — Criminal Appeals Nos 38, 39 and 40 of 2020
Andrew Phang Boon Leong JCA, Steven Chong JCA and Belinda Ang Saw Ean JAD
18 October 2021

26 November 2021 Judgment reserved.

Andrew Phang Boon Leong JCA (delivering the judgment of the court):

Introduction

1 The appellant in CA/CCA 38/2020, Chandroo Subramaniam ("Chandroo"), the appellant in CA/CCA 39/2020, Kamalnathan a/l Muniandy ("Kamalnathan") and the appellant in CA/CCA 40/2020, Pravinash a/l Chandran ("Pravinash") were charged, tried and convicted in the High Court for drug trafficking offences under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") in respect of three blocks of vegetable matter containing not less than 1,344.5g of cannabis ("the Drugs").

2 The charges for which the appellants were tried and convicted are as follows.

(a) Pravinash was charged under s 5(1)(*a*) read with s 5(2) of the MDA for having the Drugs in his possession for the purpose of trafficking.

(b) Chandroo and Kamalnathan were each charged under s 5(1)(*a*) read with ss 5(2) and 12 of the MDA for abetment by conspiracy with Pravinash to engage in the trafficking of the Drugs.

3 The High Court judge ("the Judge"), having convicted the appellants on the charges they faced, sentenced Chandroo and Kamalnathan to the mandatory death penalty. For Pravinash, the Judge accepted the Prosecution's submission that he was a mere courier of the Drugs within the meaning of s 33B(2)(*a*) of the MDA. As the Prosecution had also tendered a certificate of substantive assistance under s 33B(2)(*b*) of the MDA in respect of Pravinash, the Judge sentenced him to life imprisonment and 15 strokes of the cane, with the sentence backdated to the date of his arrest (5 March 2016).

4 Chandroo, Kamalnathan and Pravinash appealed against their convictions and sentences.

The background facts

5 On 5 March 2016, at around 5.27pm, Kamalnathan and Pravinash, who are Malaysians, entered Singapore through Woodlands Checkpoint on Kamalnathan's motorcycle, bearing the registration number KCP8801. Pravinash rode pillion, and was carrying a black Adidas haversack ("the Haversack"). After crossing Woodlands Checkpoint into Singapore, they proceeded to Kranji MRT station, and Pravinash, either alone or (according to him) accompanied by Kamalnathan, entered the public toilet there. According to Pravinash, in the public toilet, he and Kamalnathan removed the three blocks

of Drugs which they were carrying on their bodies, and put them into the Haversack.

6 Both Pravinash and Kamalnathan then went to a nearby coffee shop ("the Kranji MRT station coffee shop"). Kamalnathan contacted one "Suren" using his handphone, and continued to do so at various points throughout their visit to Singapore. They waited at the Kranji MRT station coffee shop for one to two hours, then went to a different coffee shop ("the second coffee shop"), where they again waited. At around 9.17pm, they proceeded to Kranji Road on Kamalnathan's motorcycle.

7 At Kranji Road, they established contact with Chandroo, who was riding his motorcycle bearing the registration number FBG1274J. What transpired at this meeting is disputed. However, what is undisputed is that in the course of the meeting, Chandroo handed S$20 and one or two empty white plastic bags to Kamalnathan and Pravinash. Thereafter, Chandroo, on the one hand, and Kamalnathan and Pravinash on the other, split up from Kranji Road. According to Pravinash, they did so because Kamalnathan had noticed the presence of police in the vicinity. Chandroo proceeded to the Kranji MRT station coffee shop and waited. Pravinash and Kamalnathan went to the vicinity of the Kranji MRT station coffee shop but did not regroup with Chandroo. Chandroo then rode off on his motorcycle.

8 At this point, officers from the Central Narcotics Bureau ("CNB") moved in to arrest the three of them. Pravinash was arrested at the overhead bridge outside Kranji MRT station, still carrying the Haversack. The Drugs were found inside. Kamalnathan was arrested near the bus stop in front of Kranji MRT station. Chandroo was arrested in the vicinity of Lian Hup Building.

9 The following items were seized from the appellants at the time of their arrest.

(a) From Pravinash: the Haversack, which contained, among other things, a white plastic bag containing the three blocks of Drugs, his mobile phone, a red plastic bag containing T-shirts, and an envelope containing certificates;

(b) From Kamalnathan: one Lenovo tablet, one Nokia mobile phone and S$20.55 in cash.

(c) From Chandroo: two mobile phones, one brown envelope containing S$4,000 in cash, all in S$50 notes secured together with a single rubber band.

10 After the arrest of the appellants, the following statements ("police statements") were taken from them:

(a) From Pravinash:

(i) A contemporaneous statement recorded by Senior Station Inspector ("SSI") Tony Ng Tze Chiang on the day of Pravinash's arrest on 5 March 2016;

(ii) A cautioned statement pursuant to s 23 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") on 6 March 2016;

(iii) Long statements pursuant to s 22 of the CPC:

(A) On 9 March 2016; and

(B) On 10 March 2016.

(b) From Kamalnathan:

(i) A contemporaneous statement recorded by Staff Sergeant Muhammad Fardlie bin Ramlie ("SSgt Fardlie") on the day of Kamalnathan's arrest on 5 March 2016;

(ii) A s 23 CPC cautioned statement on 6 March 2016;

(iii) Long statements pursuant to s 22 of the CPC:

(A) On 8 March 2016;

(B) On 10 March 2016;

(C) On 12 March 2016;

(D) On 25 August 2016; and

(E) On 7 October 2016.

(c) From Chandroo:

(i) A contemporaneous statement recorded by Sergeant Yogaraj s/o Ragunathan Pillay ("Sgt Yogaraj") on the day of Chandroo's arrest on 5 March 2016;

(ii) A s 23 CPC cautioned statement on 6 March 2016;

(iii) Long statements pursuant to s 22 of the CPC:

(A) On 9 March 2016;

(B) On 11 March 2016 at 11.10am;

(C) On 11 March 2016 at 4.24pm; and

(D) On 18 July 2016.

The appellants' accounts of events

11 Pravinash, Kamalnathan and Chandroo each gave very different accounts of the events at trial. We briefly summarise their accounts as follows.

(a) In his police statements and at trial, ***Pravinash*** admitted that he had entered Singapore on 5 March 2016 for the purpose of delivering the Drugs to a customer in Singapore. When he and Kamalnathan crossed Woodlands Checkpoint, he carried one of the three blocks of Drugs, while Kamalnathan carried the other two. Kamalnathan took the lead in the delivery; it was he who received instructions from "Boss" (Suren) through his handphone, established contact with Chandroo at Kranji Road, and received money and two empty plastic bags from him. Kamalnathan suggested, in the course of the Kranji Road meeting, that the trio regroup at the Kranji MRT station coffee shop due to the presence of police in the vicinity, and left with Pravinash for the Kranji MRT station where they were arrested. Pravinash, however, denied knowing the nature of the Drugs.

(b) ***Kamalnathan***, in his police statements, admitted to keeping in contact with, and taking instructions from Suren, and to knowing that Pravinash had drugs on him on 5 March 2016 because he had been paid a significant sum of RM200 to bring Pravinash to Singapore. However, he asserted that it was Pravinash who had identified Chandroo who in turn gave Pravinash some white plastic bags and told them to go to Kranji MRT for an unknown reason, where they were arrested. At trial however, his account of the events changed: he asserted that he had entered Singapore to help Pravinash find a job and that the three blocks of Drugs contained "certificates" to be passed to "uncle". It was Pravinash who told him to take instructions from Suren, which was to

meet "uncle" along "the side of a road". At Kranji Road, Kamalnathan made contact with Chandroo despite not knowing who "uncle" was and what he looked like. Chandroo handed him two plastic bags without being prompted and gave Pravinash S$20. However, Suren called him and informed him that Chandroo was not "uncle", who was waiting at the overhead bridge outside Kranji MRT station. Both he and Pravinash then headed there, whereupon they were arrested.

(c) ***Chandroo*** denied *all* knowledge of drug trafficking and of the Drugs. According to his contemporaneous statement, he was on his way to Malaysia to pass the S$4,000 found on him to his friend to pay for his (Chandroo's) house. He met Kamalnathan and Pravinash fortuitously for the first time along Kranji Road when Pravinash stopped and asked him for directions to Tekka. That was the sum total of the Kranji Road meeting. Subsequently, in his long statements and at trial, Chandroo claimed that he was at Kranji Road to pass money to a friend of his friend, "Sathish". Of the S$4,000 he had on him, S$3,000 was to be passed to Sathish's "friend" for various purposes (such as the repayment of a S$2,000 loan from his friend "Kumar" and payments for his house) and he would keep the remainder. Sathish did not identify this "friend" to him or give any contact details. At Kranji Road, both Kamalnathan and Pravinash established contact with him. The former asked him why he was late, and Pravinash asked him for directions to Tekka. Kamalnathan also asked him for a plastic bag (for an unknown reason), which he obliged. He also gave Kamalnathan S$20. Kamalnathan then suggested that they adjourn to a "Tamil coffeeshop" in the vicinity to receive the money to be passed to Sathish as Kranji Road was "rather dark". When Chandroo arrived at the Kranji MRT station coffee shop,

he observed Kamalnathan and Pravinash passing by without stopping. He left and was subsequently arrested.

The decision below

The purpose of the Kranji Road meeting

12 In *Public Prosecutor v Chandroo Subramaniam and others* [2020] SGHC 206 ("the Judgment"), the Judge found that there was an agreed arrangement between Kamalnathan, Pravinash and Chandroo to meet each other on 5 March 2016 for the delivery of the Drugs to Chandroo (see the Judgment at [46]). The Judge relied on Pravinash's evidence that both he and Kamalnathan had acted as they had done on three prior drug deliveries to Singapore on 1 March, 2 March and 4 March 2016 ("the Previous Drug Deliveries"), which were corroborated by ICA records recording their entry into Singapore on those dates (see the Judgment at [48]–[49]). The Judge considered it irrelevant that Pravinash did not know of Chandroo's identity prior to the planned delivery of the Drugs along Kranji Road. This was because Kamalnathan's phone records, immigration records and toll records all showed that he was in constant contact with Suren which indicated that Suren would instruct him in identifying the intended recipient of the Drugs (see the Judgment at [50]–[51]). This was supported by the fact that the meeting between the appellants along Kranji Road was not serendipitous or unplanned since Kamalnathan had established contact with, spoke to and received money and plastic bags from Chandroo (see the Judgment at [53]).

13 The Judge also accepted Pravinash's account of the events as he found that it had been consistent throughout the proceedings (see the Judgment at [61]). Pravinash also did not have a reason to lie because his account was

inculpatory in that he had accepted that he was involved in a drug-related transaction (see the Judgment at [62]).

14 In contrast, the Judge disbelieved Kamalnathan's and Chandroo's account of the events. He found that Kamalnathan's account was inconsistent and self-serving and was not borne out on the objective evidence on record (*ie*, the phone records, toll records and the mobile phones seized from him and Pravinash) (see the Judgment at [66]), observing that if the account he offered at trial was true, then the account of the events in his police statements must have been self-incriminating lies, which beggared belief (see the Judgment at [63]). His allegations of fabrication of evidence and omissions by the police officers who had recorded his police statements were also unsupported by evidence and were not put to the officers in question during the trial (see the Judgment at [64]). This significantly impacted Kamalnathan's credibility (see the Judgment at [67]).

15 As regards Chandroo, the Judge found that his evidence was not even consistent on what the S$4,000 found on him was for and that this inconsistency could not be satisfactorily explained (see the Judgment at [69]). It was unclear why Chandroo felt the need to repay Kumar by (on his own evidence) taking out an interest-bearing loan when Kumar had not asked for repayment and the loan was interest-free. It was also unclear why Chandroo could not have repaid Kumar on one of his frequent trips to Malaysia and instead chose to do so via a person whom he may not have been acquainted with (see the Judgment at [71]–[72]). His bare assertion of complete ignorance as to why Kamalnathan asked him for a plastic bag was also unsatisfactory (see the Judgment at [82]).

16 The Judge also accepted Pravinash's and Chandroo's evidence that they, together with Kamalnathan, agreed to regroup at the Kranji MRT station coffee

shop. The Judge found that this cast "serious doubt" on Kamalnathan's and Chandroo's account of the events, as there would have been no need to regroup if the purpose of the meeting was to hand over certificates or money (see the Judgment at [79]). There would also have been no need for Chandroo to hand over plastic bags if the purpose was for the handover of certificates or money (see the Judgment at [80]), but the use of plastic bags would be consistent with the handover of drugs to Chandroo (see the Judgment at [83]).

17 Lastly, the Judge found that Chandroo intended to receive the Drugs for the purpose of trafficking them because the weight of the Drugs made it unlikely that they were solely for his personal consumption. Chandroo also led no evidence of his heavy cannabis consumption and, in fact, had not even run a defence based on consumption to begin with (see the Judgment at [123]).

18 For these reasons referred to above, the Judge concluded that the purpose of the Kranji Road meeting was for Pravinash and Kamalnathan to deliver the three blocks of Drugs to Chandroo (see the Judgment at [83]) and that all three had intended to traffic the Drugs to someone else.

Whether the appellants had knowledge of the nature of the Drugs

19 The Judge next considered whether each of the appellants had the requisite knowledge of the nature of the Drugs.

Pravinash

20 As regards Pravinash, the Judge accepted the Prosecution's argument that Pravinash, when questioned by CNB officer Senior Staff Sergeant Kannan s/o Radhamani ("SSSgt Kannan") on the contents of the Haversack, mentioned that the Haversack contained "ganja" which demonstrated his actual

knowledge of the nature of the Drugs (cannabis), despite that fact being absent from any of Pravinash's signed police statements (see the Judgment at [87] and [89]) and despite it being attested only by an entry in the CNB field diary by another CNB officer which was in itself based on what SSSgt Kannan had told him, as well as the conditioned statements of SSSgt Kannan and two other CNB officers which were *also* based on what SSSgt Kannan had told them. The Judge nevertheless took the view that the evidence of the other CNB officers was not hearsay because they were admitted for the purpose of proving that SSSgt Kannan had informed the other CNB officers of what Pravinash had told him (see the Judgment at [90]). The Judge also found that SSSgt Kannan's evidence of Pravinash's mentioning of "ganja" was corroborated by the evidence of the other CNB officers (see the Judgment at [93]). The Judge thus found that Pravinash had actual knowledge of the nature of the Drugs (see the Judgment at [95]). Alternatively, the Judge found that Pravinash had failed to rebut the statutory presumption of knowledge under s 18(2) of the MDA (see the Judgment at [96]).

21 The Judge also rejected Pravinash's allegation that he had been taken to the Singapore Turf Club after his arrest which in turn affected the chain of custody of the Drugs, because this had no bearing on who had possession of the Haversack, which remained with the arresting officers throughout (see the Judgment at [94]).

Kamalnathan

22 The Judge found that Kamalnathan had actual knowledge of the nature of the Drug for three reasons:

(a) The Judge accepted Pravinash's evidence of the Previous Drug Deliveries which was supported by the objective evidence (see the

Judgment at [107]). The evidence pointed to Kamalnathan's extensive involvement in drug trafficking activities; specifically, it was he who had retrieved the Drugs for the purposes of delivery. It was thus inconceivable that Kamalnathan did not know of the nature of the Drugs (see the Judgment at [108]–[109]).

(b) Kamalnathan admitted in his own police statements that he knew that the Haversack contained what he termed "books", which was a street name for cannabis (see the Judgment at [110]).

(c) Kamalnathan's DNA was found on the adhesive side of the tapes used to secure one of the blocks of Drugs, which showed that he had extensively handled the Drugs by wrapping them. This also indicated that he would have seen and known of the nature of the Drugs prior to them being wrapped (see the Judgment at [111]).

23 Alternatively, the Judge found that Kamalnathan was in joint possession of the Drugs because he (a) shared the intention to traffic the Drugs with Pravinash; (b) knew that the Haversack contained illicit drugs of some kind; and (c) according to Pravinash, was in charge of the trafficking. Furthermore, there was also "incontrovertible evidence" of Kamalnathan's DNA on the adhesive side of the tapes used to secure one of the blocks of Drugs (see the Judgment at [12] and [99]–[104]). Thus, the statutory presumption of knowledge under s 18(2) of the MDA applied to Kamalnathan. The Judge found that Kamalnathan would have failed in any case to rebut that presumption of knowledge (see the Judgment at [113]).

Chandroo

24 The Judge observed that his finding that there was an arrangement among the appellants to traffic the Drugs to Chandroo meant that Chandroo intended to receive the Drugs from the other two (see the Judgment at [116]). The Judge accepted the Prosecution's case that Chandroo was the intended recipient and purchaser of the Drugs, and thus must have known that the Drugs were cannabis (see the Judgment at [119]–[120]). The fact that there were no communications between Chandroo and Pravinash and/or Kamalnathan before 5 March 2016 did not assist Chandroo because he could have been in indirect communication with them through a third party, *ie*, Suren, instead (see the Judgment at [117]).

25 For these reasons, the Judge convicted Chandroo, Kamalnathan and Pravinash of the charges they faced (see the Judgment at [125]). On 23 November 2020, the Judge sentenced Pravinash to life imprisonment and 15 strokes of the cane as he accepted the Prosecution's submission that Pravinash was a mere courier of the Drugs within the meaning of s 33B(2)(*a*) of the MDA and because the Prosecution had tendered a certificate of substantive assistance under s 33B(2)(*b*) of the MDA in respect of Pravinash. The Judge sentenced Chandroo and Kamalnathan to suffer the mandatory death penalty.

26 At this juncture, it suffices for us to note that the Judge's conviction of the appellants rested, in large part, on his acceptance of Pravinash's account of the events and his rejection of those of Kamalnathan and Chandroo.

The parties' cases on appeal

27 We now set out the respective parties' cases on appeal. We first observe that the Prosecution generally aligned itself with the grounds delivered by the Judge in the Judgment. The cases run by the appellants, however, differed significantly among themselves.

Chandroo

28 On appeal, Chandroo contended that the Judge had erred in finding that there was an agreed arrangement between the appellants to meet each other on 5 March 2016 for the delivery of the Drugs to him, and in finding that he had knowledge of the nature of the Drugs even though the said finding was unsupported by the objective evidence. In particular, before us, Chandroo emphasised that the only evidence that inculpated him was his handing over of the S$20 and plastic bags to either Pravinash or Kamalnathan, and there was no evidence such as phone messages, communications, or drug paraphernalia, connecting him to the alleged drug trafficking operation. Chandroo also contended that the fact that after the Kranji Road meeting, he went to a nearby brightly-lit coffee shop to wait for Kamalnathan and Pravinash indicated that his purpose was not to collect drugs. The Prosecution also had not, in the course of trial, put to Chandroo that he knew that the three blocks contained cannabis, though Chandroo acknowledged that it had been put to him that the purpose of the Kranji Road meeting was for him to collect cannabis from Pravinash and Kamalnathan.

29 In his written submissions, Chandroo further argued that Pravinash's evidence was unreliable and the Judge ought not to have accepted it. This was because Pravinash had been given a certificate of substantive assistance by the

Prosecution and had a clear motive to implicate him in order to obtain such a certificate.

30 Chandroo also contended that the Judge had erred in finding that he had intended to on-traffic the Drugs in the absence of objective evidence. In this connection, Chandroo pointed out that the Prosecution had failed to put the fact of his on-trafficking to him, and had also failed to disclose the statements of one Abdul Rahman bin Mohamed Ibrahim ("Ibrahim") at trial. Ibrahim was identified by the CNB as the intended end recipient of the Drugs and was arrested together with the appellants as part of the same CNB operation. The failure to disclose Ibrahim's statements was a breach of the Prosecution's disclosure obligations, and an adverse inference ought to be drawn against the Prosecution in so far as its case against Chandroo is concerned.

Kamalnathan

31 Kamalnathan argued that the Judge had erred in convicting him because there was a reasonable doubt over Pravinash's account of how he and Pravinash had brought the Drugs into Singapore, and that Pravinash's account was inconsistent and went against the weight of the evidence. We shall set out these alleged inconsistencies in greater detail below.

32 Kamalnathan also challenged various findings of *fact* the Judge made which served as the basis for his conviction. In particular, Kamalnathan pointed out that he had, as early as 23 and 30 March 2016, told Dr Jerome Goh ("Dr Goh"), the psychiatrist at the Institute of Mental Health ("IMH") who examined him, that the purpose of his visit to Singapore on 5 March 2016 was to deliver "certificates" and not the Drugs. The Judge had therefore erred in disbelieving his account of the events. Kamalnathan also asserted that his

reference to the three blocks of Drugs as "books" (which, as we observed above, was a street name for cannabis) in his contemporaneous statements was a gloss put by SSgt Fardlie on what he had actually said, and/or was his (Kamalnathan's) response on seeing the three blocks of Drugs, and therefore was not probative of the fact that he actually knew, at the material time, what the three blocks contained.

33 Kamalnathan also argued that the Judge had erred in relying on the fact that his DNA was found on the adhesive side of the sticky tapes used to secure one of the blocks of drugs. As support for this argument, Kamalnathan reiterated his explanation in his 25 August 2016 police statement, namely, that his fingers had come into contact with an exposed portion of the sticky tape that was used to secure the Drugs when he was pushing the plastic bag containing T-shirts he had bought into the Haversack.

Pravinash

34 In Pravinash's handwritten submissions, he repeated the contention, which he had previously made before the Judge, that the Prosecution's case was defective due to his being taken to the Turf Club for eight minutes, during which time the Haversack was in the possession of SSSgt Kannan, and this cast reasonable doubt on the actual contents recovered from the Haversack. Pravinash also alleged that the Judge had "pre-judged" him and engaged in improper judicial interference by asking questions of the Prosecution, such that the Prosecution's case was run on the basis that the trafficking of the Drugs was to happen at Sungei Kadut (*ie*, along Kranji Road) instead of what it was originally, which was that the trafficking of the Drugs was to happen at the overhead bridge outside Kranji MRT. Before us, Pravinash also repeatedly

asserted that the Prosecution had failed to prove that he had actual knowledge of the nature of the Drugs, and thus that his conviction could not stand.

The applicable legal principles

35 It is not disputed that for a charge of possessing a controlled drug for the purposes of trafficking under ss 5(1)(*a*) read with 5(2) of the MDA to be made out against an accused person, it must be proved that (a) the accused was in possession of a controlled drug, (b) for the purposes of unauthorised trafficking, while (c) having knowledge of the nature of the drug (see the decision of this court in *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]). As for the offence of *abetting* in a drug trafficking offence under s 5(1)(*a*) read with ss 5(2) and 12 of the MDA, it must be shown that (a) the abettor had intended to be a party to an agreement to traffic in the drugs; (b) the abettor must have known the general purpose of the common design (*ie*, to traffic the drugs), and the fact that the act agreed to be committed (*ie*, drug trafficking) is unlawful; and (c) the drugs trafficked must not have been intended for the abettor's own consumption (see the decision of this court in *Ali bin Mohamad Bahashwan v Public Prosecutor and other appeals* [2018] 1 SLR 610 at [34] and [75]). Additionally, the abettor must also have had knowledge of the nature of the drugs trafficked (see the decision of this court in *Mohammad Rizwan bin Akbar Husain v Public Prosecutor and another appeal and other matters* [2020] SGCA 45 at [2] read with [76]).

Issues to be determined

36 We note, as a preliminary observation, that none of the appellants denies that they knew that drug trafficking was unlawful. As such, from the parties' cases and the elements of the charges faced by the appellants as set out above, the following issues arise for our consideration:

(a) Whether the Judge had erred in accepting Pravinash's account of the events, and rejecting that of Kamalnathan and Chandroo;

(b) Whether the Judge had erred in finding that the purpose of the Kranji Road meeting was for the three blocks of Drugs to be handed over by Kamalnathan and Pravinash to Chandroo;

(c) Whether the Judge had erred in finding that the appellants knew of the nature of the Drugs; and

(d) Whether the Judge had erred in finding that the appellants intended to traffic in the Drugs.

We shall deal with each of these issues in turn.

Issue 1: Whether the Judge had erred in accepting Pravinash's account of the events

37 As observed above, the principal basis for the Judge's conviction of the appellants was his acceptance of Pravinash's account of the events. It follows that if the Judge had erred in so doing, the convictions of the appellants would be unsafe and ought to be overturned.

38 It is trite law that an appellate court has a limited role in assessing a trial judge's findings of fact. This court, in *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874, set out the following guiding principles (at [16]):

(a) Where the finding of fact hinges on the trial judge's assessment of the credibility and veracity of witnesses based on the demeanour of the witness, the appellate court will interfere only if the finding of fact can be shown to be plainly wrong or against the weight of the evidence.

An appellate court may also intervene if, after taking into account all the advantages available to the trial judge, it concludes that the verdict is wrong in law and therefore unreasonable.

(b) Where the trial judge's finding of fact is based on inferences drawn from the internal consistency of the content of witnesses' testimony or the external consistency between the content of their testimony and the extrinsic evidence, an appellate court is in as good a position as the trial court to assess the veracity of the witness' evidence. The real tests are how consistent the story is within itself, how it stands the test of cross-examination, and how it fits in with the rest of the evidence and the circumstances of the case. If a decision is inconsistent with the material objective evidence on record, appellate intervention will usually be warranted.

(c) Generally, an appellate court is as competent as any trial judge in drawing any necessary inferences of fact from the circumstances of the case.

39 Additionally, the mere fact that a witness's evidence is inconsistent at times does not mean that that witness was lying or should not be believed as to the other parts of his or her testimony. Witness evidence need not be believed in its entirety or not at all; such evidence may nevertheless be believed notwithstanding the fact that it is inconsistent, so long as the inconsistencies are minor in nature or relate to minor issues. In other words, the question of whether inconsistent witness evidence ought to be believed is, in essence, one of degree, and depends on whether the inconsistencies undermine the witness's evidence in respect of the key issues (see the High Court decision of *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 2 SLR(R) 253 at [40]). It is open to a

trial judge, having considered the circumstances of the case, to believe the evidence of any witness, so far as its essentials are concerned, without having to accept as true everything which that witness says (see the High Court decision of *Public Prosecutor v Singh Kalpanath* [1995] 3 SLR(R) 158 at [88]).

40 In determining, therefore, whether the Judge had erred in accepting Pravinash's account, it thus becomes necessary for us to examine any inconsistencies in that account and to determine the extent to which such inconsistencies, if any, undermine the essential parts of that account. As Pravinash's account is also directly contradicted by the competing accounts put forward by Kamalnathan and Chandroo, it is also necessary to determine whether the Judge had erred in rejecting them. We shall consider each of these issues in turn.

Whether the Judge had erred in accepting Pravinash's account of the events

41 We turn to the inconsistencies which *Kamalnathan* alleges were present in Pravinash's evidence (see [31] above). These alleged inconsistencies are set out below.

> (a) First, Pravinash had, in his cautioned statement dated 6 March 2016 and long statement dated 9 March 2016, claimed that the blocks of Drugs were tucked in his and Kamalnathan's pants. However, at trial, Pravinash then asserted that the Drugs were *taped* onto his and Kamalnathan's bare bodies (the "concealment inconsistency"). This did not comport with the DNA evidence which showed that no interpretable DNA profile was obtained from two of the three blocks of Drugs, nor with the lack of indicators that any tapes had been removed from the exterior of the blocks of Drugs in the process of transferring them to the

Haversack. Pravinash's explanation at trial for this inconsistency, that he "must have forgotten", was unsatisfactory.

(b) Second, Pravinash had, in his 9 March 2019 long statement, stated that he saw Kamalnathan retrieve the three blocks of Drugs from the ceiling of an apartment in Skudai, which he assumed to be drugs. At trial, however, Pravinash retracted this and stated that he had "made a mistake" as he in fact did not see Kamalnathan retrieving the three blocks of Drugs from a ceiling (the "ceiling inconsistency").

(c) Third, during his psychiatric evaluation, Pravinash had said to Dr Charles Mak, an IMH psychiatrist, that he met "uncle" (*ie*, Chandroo) at a coffee shop. This was contradicted by the undisputed fact that he and Kamalnathan met Chandroo at Kranji Road, not at a coffee shop (the "meeting location inconsistency").

(d) Fourth, Pravinash had, in his police statements and oral evidence, claimed that Kamalnathan was the person who had requested him to bring the three blocks of Drugs to Singapore on the afternoon of 5 March 2016. However, on 4 March 2016, Pravinash had sent a phone message to one "Jesan Sivam" stating that three "books" were to be delivered to Singapore (the "knowledge of the delivery inconsistency").

42 In our view, none of these alleged inconsistencies detracts from the essential veracity of Pravinash's evidence. We say this for the following reasons.

43 First, it is undisputed that the three blocks of Drugs were contained in the Haversack and that they were brought into Singapore from Malaysia on Kamalnathan's motorcycle. In our view, therefore, it mattered not how the

Drugs were retrieved in Malaysia or how they were concealed in entering Singapore through the Woodlands Checkpoint. Indeed, this fact did not form the basis for the Judge's finding that Kamalnathan jointly possessed the Drugs with Pravinash (see [23] above). In our judgment, the concealment inconsistency and the ceiling inconsistency did not materially detract from the veracity of Pravinash's account.

44 Secondly, the meeting location inconsistency is, in our judgment, similarly immaterial. There is no apparent reason why Pravinash would intentionally lie as regards where the hand-over of the Drugs was intended to take place because the incriminating element of the meeting was not so much *where* it took place, but *what* took place. On this point, Pravinash's evidence consistently remained that the meeting took place for the purpose of handing over the Drugs to a customer in Singapore and it was not disputed that the meeting between the appellants took place at Kranji Road. It is thus difficult to see how this inconsistency undermined the essential parts of Pravinash's account of the events of 5 March 2016 on which the appellants' convictions were based.

45 Thirdly, the knowledge of the delivery inconsistency is, in our judgment, without merit. In Pravinash's police statements and in his oral evidence, he had said that it was Kamalnathan who, on 5 March 2016, asked him to bring the Drugs into Singapore. The objective evidence on record also showed that one day before on 4 March 2016, Pravinash had, in a phone message to "Jesan Sivam", referred to a scheduled delivery of three "books" (*ie*, cannabis) to Singapore. The two pieces of evidence are not, in our view, inconsistent; Pravinash could, on 4 March 2016, well have known of an upcoming delivery of three "books" to Singapore and to have been informed, one day later, that *he* was to make that delivery together with Kamalnathan.

46 We now turn to *Chandroo's* submission that Pravinash's evidence was unreliable because Pravinash had a motive to implicate him (and, effectively, Kamalnathan as well) in order to obtain the certificate of substantive assistance from the Prosecution. We do not accept this submission. Chandroo bears the burden of establishing that Pravinash had a motive to falsely implicate him by adducing sufficient evidence of this motive so as to raise a reasonable doubt in the Prosecution's case (see the decision of this court in *AOF v Public Prosecutor* [2012] 3 SLR 34 ("*AOF*") at [215]–[216]). We are not persuaded that this burden had been discharged. First, the certificate of substantive assistance was tendered by the Prosecution only *after* the Judge had convicted the appellants, which was more than three years *after* Pravinash had given his account of the events in his police statements (which, as we noted above, was largely consistent with his oral testimony). There was no evidence indicating that the Prosecution had agreed to tender the certificate to Pravinash in exchange for his implicating Chandroo and Kamalnathan.

47 For these reasons, we are not persuaded that the Judge had erred in accepting Pravinash's evidence as a basis for convicting the appellants. The next sub-issue that arises for our consideration is whether the Judge had erred in *rejecting* the competing accounts put forward by Kamalnathan and Chandroo.

Whether the Judge had erred in rejecting Kamalnathan's account of the events

48 As observed above at [14], the Judge rejected Kamalnathan's account because, in his view, it was inconsistent, self-serving and was not borne out by the objective evidence on record. To recapitulate, Kamalnathan's case at trial was that he had entered Singapore with Pravinash in order to hand over certificates to help the latter secure a job and that the Kranji Road meeting was

a case of mistaken identity since Chandroo was not the person who was supposed to receive the certificates. We are of the view that the Judge had not erred in rejecting this account for the following reasons.

49 Firstly, Kamalnathan's assertion that he was in Singapore to deliver certificates, and not drugs, was not believable. If this was the truth, we would have expected him to mention such an important (and exculpatory) detail to the CNB officers who arrested him. That assertion, however, was simply absent from *all* of his police statements, which he had signed. On the evidence before us, it was only during the period 23 March 2016 to 30 March 2016 that Kamalnathan informed Dr Goh that he was in Singapore to deliver certificates, and not drugs. This, Kamalnathan submits, was the "essence" of his defence. However, the importance of this detail simply did not square with its omission by Kamalnathan in the *five* police statements made *before* Dr Goh's examination of him. For instance, in his police statement dated 10 March 2016, Kamalnathan stated as follows:

> On 5 March 2016, I met up with the boy [*ie*, Pravinash] at about 5.30pm at the bus stop at Tun Aminah. After I picked up the boy, I called Suren and told him that I had picked up the boy. I then rode the motorcycle with the boy as the pillion. The boy was wearing a jacket and carrying a black bag. I noticed that it was the same Adidas bag. The boy placed the black bag on his lap when he was on my motorcycle. *I knew that the boy has drugs on him.* I had my first suspicion when I was paid the first time I sent the boy to Singapore. *I suspected because the money was too much just purely for sending the boy into Singapore.* Moreover when I told my wife about the money, she had also suspected that it had something to do with wrong things. That was how my suspicion came about. *And so when I was asked the second time to send the boy to Singapore, I knew that it must have something to do with drugs. I then knew that the boy must have drugs on him.* However as I needed the money, I still continue to send the boy to Singapore on the second time. To me, it was easy money. [emphasis added]

50 Thus, on 10 March 2016, Kamalnathan had, in narrating his account of the events leading up to his arrest, mentioned some degree of knowledge that he entered Singapore for the purpose of bringing drugs into Singapore but *completely omitted all mention of "certificates"* which, according to him, formed the "essence" of his defence. This indicates that the assertion that he entered Singapore for the purpose of delivering "certificates" and not drugs was likely an afterthought. As the Judge observed, there was no reason for Kamalnathan to have given self-incriminating lies in his police statements – namely, that he had suspected that he was bringing drugs into Singapore – if the truth was that he merely thought that he was entering Singapore for the purpose of delivering certificates. In our judgment, this detracted from Kamalnathan's credibility and the Judge did not err in disbelieving his account in this regard.

51 Secondly, in his 10 March 2016 police statement, Kamalnathan asserted that Chandroo was the *correct* party to whom both Pravinash and himself, on the instruction of Suren, were to hand the three blocks, which he suspected contained drugs:

> 35 We left the coffee shop in my motorcycle. It was about 5 to 10 minutes ride to the food court at Sungei Kadut. After I arrived at the food court, I called Suren and told him that I had arrived. Suren told me to wait there for a while and the uncle will come. Once uncle come, I was to leave the boy with uncle and leave the place … The boy and I waited for about 20 minutes. After that I called Suren again and told him that the uncle is not here yet. Suren told me to wait for a while more and that the uncle is on the way. The boy and I then continued to wait. About 15 minutes later, Suren called me. He told me that the uncle has arrived and that he is near the Chinese temple.
>
> 36 I then left the food court with the boy as pillion. The boy was holding his bag in front of himself. *While we were leaving the food court in my motorcycle, the boy pointed to the direction in front and told me that the uncle is waiting there.* I saw uncle was seated on a motorcycle with some blue LED light flickering near the brake light. I then rode my motorcycle towards the

> uncle. I then stopped my motorcycle on the uncle's right side. I saw uncle gave some plastic bags to the boy. I saw that the plastic bags were white in color. I could not see how many plastic bags uncle gave. He had it crumpled in his hand. Uncle then told the boy in Tamil to go to Kranji MRT and *not to give here*. The meet up was very brief, about 2 to 3 seconds. I do not know why the uncle told us to go to Kranji MRT.
>
> [emphasis added]

52 This account of the events, which casts Chandroo's role as the person whom Pravinash and Kamalnathan were to meet, was very different from the one Kamalnathan subsequently advanced at trial, which was that Chandroo (the "uncle" whom he met along Kranji Road) was *not* the person to whom the certificates were to be passed. If Kamalnathan's account of the events at trial was in fact the truth, it begs the question why he would not have stated that from the outset in his police statements, and instead advanced a different version of the events which did not appear to bear much resemblance to what Kamalnathan claimed had *actually* happened. This, again, casts doubt on the veracity of Kamalnathan's account at trial and, for all the reasons set out above, we are of the view that the Judge did not err in rejecting it.

53 In this connection, we now deal with Kamalnathan's challenge to the Judge's reliance on the fact that his DNA was found on the adhesive side of the sticky tapes used to secure one of the blocks of Drugs (see [33] above). As we alluded to above, the heart of this challenge was Kamalnathan's explanation, in his 25 August 2016 police statement, as to how his DNA was found on the adhesive side of the tapes used to secure one of the blocks of Drugs. According to Kamalnathan, this was because the adhesive side of the tapes had become exposed and had come into contact with his fingers when he pressed a plastic bag containing T-shirts that he had bought into the Haversack. This explanation was, in our view, a convenient one principally supported only by Kamalnathan's

credibility, which in our judgment was doubtful for the reasons we have already set out above. We are therefore of the view that this argument is without merit.

Whether the Judge had erred in rejecting Chandroo's account of the events

54 Chandroo's case is that the purpose of the Kranji Road meeting was for handing over money to repay a loan from his friend, Kumar, and for his house in Malaysia, to persons whose identities or identifying characteristics were not known to him. The Judge disbelieved his account principally because he was not even consistent as to what the S$4,000 found on him was for (see [15] above). We can see no basis for interfering with the Judge's finding in this regard. In his contemporaneous statement, Chandroo claimed that *all* of the S$4,000 was intended for his "friend at Malaysia as need to pay money for [his] house" and that he was intending to go to Malaysia *personally* that day, on 5 March 2016, "to give my friend the S$4,000 and come back to work at 11.00pm". This story had clearly and substantially changed by the time Chandroo took the witness stand, as he then claimed that of the S$4,000 found on him, S$2,000 was for repaying the loan from Kumar, S$1,000 was for payments for his house in Malaysia, both of which were to be handed over to friends of Sathish; and the remaining S$1,000 was for himself. There was no mention at all about his going to Malaysia personally to hand over the money. Chandroo's inability to give consistent evidence on such a simple and fundamental point of what the money in his own possession was intended for is, in our view, a difficulty he would likely not have had if he had been telling the truth throughout, and showed that he was being deliberately economical with the truth. As this court observed in *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33, the "evidence of a witness who is deliberately economical with the truth *without any good reason* ought to be treated with a healthy level of caution, *a fortiori*, if it indicates a propensity to

change his evidence as the trial proceeded" [emphasis in original]. Further, a court may also rely on such lies to "reach a finding that an accused person's evidence lacks creditworthiness" (at [62]). It follows that the Judge could not be said to have erred in finding that Chandroo's account lacked credibility and in rejecting the said account accordingly.

55 In his written submissions, Chandroo argued that he had been consistent throughout his *long statements* and his oral testimony and sought to explain away the inconsistencies between his contemporaneous statement and the version of the events advanced in his long statements and at trial by asserting that the recorder of his contemporaneous statement, Sgt Yogaraj, had recorded what he had said inaccurately. Chandroo did not notice the discrepancy when it was read back to him because he was scared of the consequences of conviction for drug trafficking and also could not fully understand the Tamil which Sgt Yogaraj spoke. These appear to be bare allegations which are, in our view, without merit. First, the fact remains that Chandroo did sign the contemporaneous statement and if he did not understand the Tamil which Sgt Yogaraj spoke, he could simply have refused to sign it. Secondly, the differences between Chandroo's versions of the events in his contemporaneous statement and at trial are stark; for instance, the difference between Chandroo's intention to go to Malaysia to personally hand over the S$4,000 to his friend, per his contemporaneous statement, and his intention to give part of the S$4,000 to persons who he was to meet at Kranji Road, per his police statements, could not in any conceivable way be attributed to a mere loss in translation. We therefore do not accept Chandroo's explanation for the glaring discrepancies between his contemporaneous statement and his account at trial.

56 To summarise our views thus far, we are of the view that the Judge did not err in rejecting the accounts advanced by Kamalnathan and Chandroo and

in accepting that of Pravinash. With this, we turn to the next issue, which concerns whether the Judge had erred in finding that the purpose of the Kranji Road meeting was for the three blocks of Drugs to be handed over by Kamalnathan and Pravinash to Chandroo, on the basis of Pravinash's evidence.

Issue 2: The Judge's findings on the purpose of the Kranji Road meeting

57 The Judge's finding of fact that there was an arrangement between the appellants to meet along Kranji Road to deliver the Drugs to Chandroo was principally based on Pravinash's evidence of the *modus operandi* adopted with regard to such deliveries, namely, that he, along with Kamalnathan, was to deliver Drugs to a customer in Singapore who would be identified by Kamalnathan on Suren's instructions, given via phone. The Judge found that this was in line with Pravinash's evidence of the *modus operandi* adopted by the pair with regard to their previous deliveries of drugs to strangers in Singapore on 1, 2 and 4 March 2016, which were corroborated by their ICA records reflecting their entry into Singapore on those dates and Kamalnathan's phone and toll records which showed that he was in constant contact with Suren after his entries into Singapore on the abovementioned dates (see the Judgment at [51]). The Judge found that the delivery of the Drugs on 5 March 2016 was therefore no different from these previous deliveries of drugs in that the *modus operandi* was followed (see the Judgment at [49]–[52]), and thus Chandroo was, pursuant to the aforementioned *modus operandi*, likely to be the intended recipient of the Drugs.

58 The evidence of past drug deliveries on 1, 2 and 4 March 2016 appears to be similar fact evidence which ought generally to be excluded because to allow it in every instance would risk the conviction of an accused person not on the evidence relating to the facts but because of past behaviour or disposition

towards crime, which undoubtedly has a prejudicial effect against the accused (see the decision of this court in *Tan Meng Jee v Public Prosecutor* [1996] 2 SLR(R) 178 ("*Tan Meng Jee*") at [41]). However, as this court noted in *Rosman bin Abdullah v Public Prosecutor* [2017] 1 SLR 10 at [32]:

> … However, it is well-established that there is no *blanket* rule against the admission of "similar fact evidence"; such evidence may be utilised in the *limited* manner envisaged within a *strict* application of, for example, ss 14 and 15 of the Evidence Act (Cap 97, 1997 Rev Ed) (see Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 5th Ed, 2015) at para 3.001). That this is so is evident from, for example, the decision of this court in *Tan Meng Jee v PP* [1996] 2 SLR(R) 178. Hence, for example, in so far as the present appeal is concerned, it could possibly have been argued that it was appropriate for the court to take the First Transaction into account for the *limited* purpose of demonstrating a *specific* state of mind on the part of the Appellant to the effect that (as the Judge found at [22] of the GD) he did intend to assist Mayday in repacking the heroin for sale in the Second Transaction as well, especially when regard is also had to the fact that the First Transaction and the Second Transaction were *just a few days apart*. In this regard, s 14 of the Evidence Act and (in particular) Explanation 1 thereof are potentially relevant. Explanation 1 reads as follows:
>
> > Explanation 1.—A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists not generally but in reference to the particular matter in question.
>
> [emphasis in original]

59 The above observations were cited by this court in *Muhammad Abdul Hadi bin Haron v Public Prosecutor and another appeal* [2021] 1 SLR 537 at [53]. In that case, this court considered whether the Prosecution could rely on evidence of prior transactions involving the transportation of large quantities of drugs to prove that one of the appellants had no reservations over the quantity of drugs that he was to collect (at [51]). This court considered that the trial judge did not place undue emphasis or reliance on such evidence (at [54]). Such evidence was, in any event, admissible similar fact evidence pursuant to s 14 of the Evidence Act (Cap 97, 1997 Rev Ed); as the court observed (at [55]), "[t]his

[entailed] a balancing exercise between the probative weight and prejudicial effect of the evidence, with such similar fact evidence being admitted only if the former outweighs the latter; the three factors being that of cogency, strength of inference, and relevance" (citing *Tan Meng Jee* at [48]). The evidence was admissible because they were not only relevant but also highly significant to the question of whether the appellant in question was content with transporting *any* quantity of drugs (even a large amount). The similar fact evidence thus could be taken into account for the "limited purpose" of demonstrating the *specific state of mind* in respect of the offence with which that appellant was charged. This court further observed that the strength of the inference (that the appellant in question was content with transporting any quantity of drugs) was heightened by the contemporaneity of the similar fact evidence to the offence in question (at [56]).

60 In the present case, we are of the view that Pravinash's evidence of his and Kamalnathan's previous deliveries of drugs to customers in Singapore on 1, 2 and 4 March 2016 and the specific *modus operandi* employed on those occasions would be relevant evidence of, and give rise to an inference that on 5 March 2016 when the same *modus operandi* was employed, both Pravinash and Kamalnathan knew that they were delivering the Drugs to a customer in Singapore and that, for them, the Kranji Road meeting was for the purpose of delivering the Drugs to the said customer. The strength of such an inference is also in our view heightened by the close contemporaneity of the similar fact evidence, which was of instances of drug deliveries to Singapore mere days before the drug trafficking operation on 5 March 2016.

61 Whilst Pravinash's similar fact evidence of the *modus operandi* employed in past drug deliveries to Singapore by Pravinash and Kamalnathan is relevant, the relevant evidence must be present so as to prove, on the precise

facts and circumstances of the case (and beyond a reasonable doubt), that Chandroo was indeed *correctly* identified as the recipient of the drugs (particularly in light of the conflict between Pravinash's and Kamalnathan's evidence).

62 We are satisfied beyond a reasonable doubt that, on the totality of the evidence before us, Chandroo was the intended recipient of the Drugs from Kamalnathan and Pravinash at Kranji Road on 5 March 2016. We say this for the following reasons.

(a) First, the evidence before us (and in particular Pravinash's account of the events, which, as we noted above, the Judge did not err in accepting) showed that Chandroo had a reason to meet with Kamalnathan and Pravinash at Kranji Road on the night of 5 March 2016. There would otherwise have been no reason for him to hand the $20 and plastic bags to them if they were merely random strangers he had met. In a similar vein, Kamalnathan and Pravinash likely had a reason to meet with Chandroo; otherwise, they would likely not have had any reason to establish any kind of contact with him at all.

(b) Secondly, as noted above, Kamalnathan and Pravinash were following the *modus operandi* they had employed in previous deliveries of drugs to customers in Singapore, which, while not determinative in itself, does lend support to the allegation that Chandroo, with whom they established contact along Kranji Road, was the "customer" for the Drugs.

(c) Thirdly, Kamalnathan and Pravinash appear to have been engaged in illicit activities that would not withstand the scrutiny of the police. This was the only reasonable explanation for Kamalnathan

wishing to adjourn to another location owing to the presence of police in their vicinity.

(d) Fourthly, the sum of S$4,000 carried by Chandroo, or part of that sum, does not appear to have been intended by Chandroo to be handed to Kamalnathan and Pravinash without more. If that were the case, Chandroo would have completed the transaction at Kranji Road without needing to adjourn to another location "owing to the presence of police". It was therefore likely that there was a *reciprocal act* expected in exchange for the money and that such a reciprocal act would likely not withstand the scrutiny of the police. The fact that Chandroo handed Kamalnathan plastic bags, which ordinarily serves the function of storage of physical subject-matter, indicates that such a reciprocal act involved physical subject-matter.

(e) Fifthly, the only physical items carried by Pravinash and Kamalnathan which could reasonably have been the subject-matter of a transaction and which would not withstand the scrutiny of the police were the three blocks of Drugs.

63 Chandroo, in his written submissions, argued that the plastic bags he handed over were translucent and that this indicated that the plastic bags were not intended to contain the Drugs, because "any recipient of the drugs would certainly not arrive at a drug handover meeting with a view to walking/riding away with the 3 wrapped bundles of drugs in such a plastic bag". Chandroo also argued that if Kamalnathan and Pravinash intended to hand over the Drugs to him, they could simply have done so by handing over the Haversack instead. Further, the Haversack already contained a red plastic bag, which could have contained the Drugs instead of the white plastic bags he had handed over. In our

view, none of these arguments appears to have much if any force. The Kranji Road meeting took place at night and any handover of the Drugs would have been in private, as evidenced by the need to adjourn the meeting to another location owing to presence of police in the area. There was also nothing in the evidence which suggested that the Drugs would have been handed over in full view of the public. In such circumstances, the appearance of the plastic bags would not have mattered.

64 For the foregoing reasons, we are of the view that the Judge did not err in finding that the purpose of the Kranji Road meeting was for the delivery of the Drugs by Pravinash and Kamalnathan to Chandroo. It follows that in so far as Pravinash was concerned, he was in possession of the Drugs for the purposes of unauthorised trafficking (as he intended to pass them to Chandroo), and in so far as Kamalnathan was concerned, he was (a) a knowing party to an agreement to traffic in the Drugs; (b) intended to pass the Drugs to Chandroo and (c) did not intend to consume them himself. In so far as Chandroo was concerned, he was, as the recipient of the Drugs from Pravinash and Kamalnathan, a knowing party to an agreement to traffic in the drugs.

65 We now take the opportunity to deal briefly with some of Pravinash's arguments which were made in his written submissions and repeated during oral submissions before us. First, as we noted above (see [34] above), Pravinash alleged, in his written submissions, that the Judge had "pre-judged" him and supplemented gaps in the Prosecution's case by asking him questions which "could be helpful" to the Prosecution and "lead the Prosecution to prove the case against [him]", such that the Prosecution's case was run on the basis that the trafficking of the Drugs was to happen at Sungei Kadut (*ie*, along Kranji Road) instead of what it was originally, which was that the trafficking of the Drugs was to happen at the overhead bridge outside Kranji MRT. Having

examined the transcript of the trial most carefully, the only part of the transcript which, in our view, could conceivably serve as the basis for Pravinash's allegations was the following exchange:

> Q So, Mr Pravinash, on your evidence, you only climbed up the bridge after Kamalnathan told you to go there and wait, and he will call his customer to come, correct?
>
> A Yes. Because he told me such a lie.
>
> Q Now, I put it to you that you followed his instructions to go up the bridge until he calls the customer.
>
> A I disagree.
>
> Q And further that your purpose in going up the bridge with the three books was for the three books to eventually get to the customer.
>
> Court: Is that your case? Is that the DPP's case? One of them is to wait for customer to come. Really? Is that your case?
>
> Tay: Not necessarily, Your Honour. But that he's following the Kamalnathan's instructions. So ---
>
> Court: But you are saying your case is that so that the customer who come and all that, are you showing that's the case?
>
> Tay: That was what was represented to him and he acted on those instructions.
>
> Court: But nevertheless, I mean, you must have a certain case, right?
>
> Tay: Just a moment, Your Honour.
>
> …
>
> Court: This other fellow was running away already, what.
>
> …
>
> Q So Mr Pravinash, I put it to you that you acted on mis --- on Kamalnathan's instructions when you went up the bridge holding on to the three books in the haversack.
>
> A Yes. Kamalnathan was the one who told me to go up to the bridge and because of that, I went up.

66 From the above, we can see *no* improper judicial interference by the Judge in Pravinash's prosecution. As we observed in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") at [167]–[168], there is nothing wrong or objectionable in a trial judge asking questions of witnesses in order to correctly understand the evidence and clarify the parties' cases. This was, in our view, *precisely* what the Judge did in the extract quoted above. In any case, it is difficult to see how this was in any way material to Pravinash's conviction and sentence. Pravinash had himself admitted that he had the Drugs in his possession in the Haversack and his own evidence was that the Drugs were brought into Singapore for the purposes of being handed over to a customer in Singapore. That was sufficient to inculpate him in with regard to a drug trafficking charge. His defence, as we noted above, was that he had no knowledge of the nature of the Drugs. Whether he had gone to the overhead bridge on Kamalnathan's instructions to wait for the customer or not was therefore completely irrelevant to his or the Prosecution's case. Pravinash's allegation of improper judicial interference against the Judge was accordingly wholly without merit.

67 Next, Pravinash argued that that the Prosecution's case was defective due to his being taken to the Turf Club for eight minutes, during which time the Haversack was in the possession of SSSgt Kannan, which cast reasonable doubt on the actual contents recovered from the Haversack (see [34] above). In our judgment, this argument is also wholly without merit since Pravinash did not dispute that the three blocks of Drugs were in his possession. Furthermore, one of the blocks of Drugs was found to have contained Kamalnathan's DNA on the adhesive side of the tapes used to package them. If, as Pravinash appears to insinuate, the three blocks of Drugs had been planted by SSSgt Kannan, it would have been extremely improbable that Kamalnathan's DNA would have been

found on *any* of the blocks of Drugs since Kamalnathan had already been arrested by the CNB by that time. We therefore reject this argument.

Issue 3: Whether the Judge had erred in finding that the appellants had knowledge of the Drugs

68 We now turn to the issue of whether the Judge erred in finding that each of the appellants had knowledge of the nature of the Drugs.

Pravinash

69 We note that the Judge's finding that Pravinash had actual knowledge of the nature of the Drugs was principally based on SSSgt Kannan's evidence that, Pravinash had, when questioned on the contents of the Haversack, informed him that the Haversack contained "ganja" which was a street name for cannabis. It is not disputed that Pravinash's admission to knowing that the Haversack contained "ganja" was not recorded in his contemporaneous statement and was only attested to directly by SSSgt Kannan himself in his conditioned statements, as well as in the CNB field diary recorded by SSgt Helmi bin Abdul Jalal ("SSgt Helmi") and the conditioned statements taken by Station Inspector Mohammad Abdillah bin Rahman ("SI Abdillah") and SSI Chin Chee Hua ("SSI Chin"), all of which were not independent evidence as they were based on what SSSgt Kannan himself had told them (see the Judgment at [88]). Nevertheless, while the Judge expressed some reservations with the fact that Pravinash's admission was not recorded in his contemporaneous statement given its significance (see the Judgment at [92]), he nevertheless accepted SSSgt Kannan's evidence of the fact that Pravinash had told him that the Haversack contained "ganja", which was "corroborated" by the evidence of the three other CNB officers (see the Judgment at [93]).

70 With respect, we disagree with the Judge's finding of Pravinash's actual knowledge of the nature of the Drugs on the *sole* basis of SSSgt Kannan's evidence. Pravinash's admission of his knowledge of the nature of the Drugs, if it had been made to SSSgt Kannan, was a very significant one which would eminently be a fact worthy of recording in his contemporaneous statement. The fact that it was not casts a reasonable doubt as to whether the admission had in fact been made. The evidence of the three other CNB officers (SSgt Helmi, SI Abdillah and SSI Chin) did not, in our view, have much evidential value in corroborating SSSgt Kannan's evidence. Their evidence was not independent and was based *entirely* on what SSSgt Kannan had told them. In *AOF* at [177], this court cited with approval Yong Pung How CJ's observation in *Lee Kwang Peng v Public Prosecutor* [1997] 2 SLR(R) 569 at [80] that "corroboration", not being independent, could only be of "little additional evidential value", and ought to be given little weight. This principle applies with full force to the evidence of SSgt Helmi, SI Abdillah and SSI Chin for the reasons we have already stated. We are therefore of the view that the Judge had, with respect, erred in finding that Pravinash *actually* knew that the Drugs were "ganja" based on SSSgt Kannan's evidence.

71 However, we agree with the Judge's finding that the statutory presumption of knowledge under s 18(2) of the MDA applied to Pravinash and had not been rebutted on the evidence. Section 18(2) of the MDA states as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**— …
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

72 The statutory presumption of knowledge in s 18(2) of the MDA undoubtedly applies to Pravinash since it is undisputed that the Haversack containing the Drugs was in his possession for some time before his arrest. As the Judge observed, Pravinash had failed to rebut the presumption of knowledge as he did not offer any plausible explanation as to what he thought the Drugs were (see the Judgment at [97]; see also the decision of this court in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 at [39]). We are in complete agreement with the Judge's conclusion on this point.

Kamalnathan

73 The Judge found, on the basis of Pravinash's evidence, that Kamalnathan also had actual knowledge of the nature of the Drugs as he had been involved in previous drug consignments to customers in Singapore in the days preceding his arrest and also because he played a pivotal role in the drug trafficking operation on 5 March 2016. In addition, the Judge observed that in Kamalnathan's 12 March 2016 police statement, he knew that the "jaman" carried by Pravinash on that day was illegal drugs to be delivered to someone in Singapore. Further, the DNA evidence suggested that he was involved in packaging the Drugs (see the Judgment at [106]–[111]).

74 The Judge also relied on Kamalnathan's concession in his 12 March 2016 police statement that he knew that the Drugs were "books", which was a street name for cannabis (see the Judgment at [110]). We have, however, some reservations on this finding. Kamalnathan's evidence in his police statement was that, *after* the Kranji Road meeting:

> I then alighted from the motorcycle and asked Pravin[ash] what things inside. Pravin[ash] said "books" inside. When I heard "books", I knew it was drugs but I did not know what drugs it was. I told him to give the "books" to the Uncle once he comes. I told him that I was going to the toilet. When I returned from

> the toilet, I saw Pravin[ash] climbing up the stairs of the overhead bridge and walking along the overhead bridge in the direction of opposite the MRT station. I saw that he was carrying the Adidas bag. I was smoking cigarette near the bus stop at the Kranji MRT station. While I was smoking, Suren called me again … While I was still talking to Suren, someone pushed me from behind … I was handcuffed behind by some people in plainclothes. Those people said they are police.

75 From the above, it appears that Kamalnathan's admission that he knew the Drugs were "books" was made in the context that he only discovered this *after* the Kranji Road meeting, shortly before he was arrested. This does not appear to demonstrate that he knew that what he intended to deliver to Chandroo in the course of the Kranji Road meeting was "books".

76 That being said, this did not call into question the soundness of the Judge's other findings on Kamalnathan's actual knowledge of the nature of the Drugs. In any case, we agree with the Judge that the statutory presumption of knowledge under s 18(2) of the MDA applied to Kamalnathan as the joint possessor of the Drugs and that Kamalnathan had failed to rebut this presumption because he, like Pravinash, had failed to offer any plausible explanation as to what he thought the Drugs were. Let us elaborate.

77 Section 18(4) of the MDA sets out the requirements of joint possession in the following terms:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**— …
>
> (4) 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.

78 In *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 ("*Azli*"), this court observed that two elements would have to be proved in order to establish joint possession:

> (a) The alleged joint possessor must have a degree of power and authority over the drugs (the "consent element"). Mere acquiescence, condonation or a minimal or distant role in the drug transaction would not suffice. There must be some dealing between the parties in relation to the drugs, such as an agreement to buy it or help in concealing it (at [52]); and
>
> (b) The alleged joint possessor must know that the drug is a controlled drug in general (the "knowledge element") (at [70]).

79 Relying principally on Pravinash's evidence, the Judge found that the consent element was satisfied in relation to Kamalnathan. This was because Kamalnathan had been part of an arrangement to traffic the drugs to Chandroo; indeed, he was in fact the person in charge of the same (see the Judgment at [102]). As for the knowledge element, the Judge found that Kamalnathan had, in his contemporaneous statement, admitted to knowing that the three blocks contained illicit substances: in his own words (given in Malay but translated into English), he knew that it was "chocolate but I do not know what thing. But I know it is a wrong thing but do not know what it is" (see the Judgment at [101]). We agree entirely with the Judge's findings. We would also add that the Judge's finding on the knowledge element is fortified by Kamalnathan's admission, in his 10 March 2016 police statement, that he "knew that [Pravinash] has drugs on him" when he met Pravinash at the Tun Aminah bus stop before entering Singapore on 5 March 2016 (see [49] above). In our

judgment, therefore, the Judge did not err in finding that Kamalnathan was in joint possession of the Drugs. The statutory presumption of knowledge of the nature of the Drugs under s 18(2) of the MDA thus applied to him (see *Azli* at [70]) and, as we stated above at [76], we are satisfied that the presumption had not been rebutted by Kamalnathan as he had not plausibly explained what he thought the Drugs were.

Chandroo

80 We now turn to consider the question of whether the Judge erred in finding that Chandroo had *actual* knowledge of the nature of the Drugs. It was not the Prosecution's case that Chandroo had possessed the Drugs, nor was there any evidence to that effect. The statutory presumption of knowledge of the nature of the Drugs under s 18(2) of the MDA thus did not apply to him. The Judge's finding as regards Chandroo's actual knowledge that the Drugs were cannabis was based on his finding that Chandroo was the intended recipient of the Drugs and therefore must have known that the Drugs were cannabis (see the Judgment at [116] and [119]–[120]).

81 Before us, counsel for Chandroo argued strenuously that the burden of proving Chandroo's knowledge of the nature of the Drugs lay on the Prosecution and there was no evidence which directly linked Chandroo to the Drugs and that, notwithstanding the fact that Chandroo's defence was an outright and complete denial of involvement in any drug trafficking activity, in the event that he was found to have been the intended recipient of the Drugs, he did not know what the Drugs were.

82 We accept that the legal burden of proving that Chandroo had knowledge of the nature of the Drugs rested on the Prosecution throughout. The

first question, therefore, is whether the Prosecution had established, on the evidence before us, a *prima facie* case of knowledge on the part of Chandroo. We are satisfied that the Prosecution had discharged that evidential burden. As we have found, Chandroo was the intended recipient of the Drugs and Pravinash's evidence was that he and Kamalnathan were to pass the Drugs to a *customer* in Singapore. This meant that Chandroo was likely either the end-consumer of the Drugs *or* a link in the supply of the Drugs who was in either case to *pay* Pravinash and Kamalnathan for the Drugs. In either case a strong inference could, in our judgment, be drawn that Chandroo knew what the Drugs were. The evidential burden thus shifted to Chandroo to persuade us otherwise.

83 We first observe that Chandroo's defence was an "all or nothing" one: it was a complete denial of *any* involvement whatsoever in drug trafficking. While Chandroo's "all or nothing" defence did not preclude him from raising an *inconsistent* alternative defence, namely, that he did not know of the nature of the Drugs despite being the intended recipient, such an alternative defence must, nevertheless, be reasonably made out on the evidence at trial (see the decision of this court in *Public Prosecutor v Mas Swan bin Adnan and another* [2012] 3 SLR 527 ("*Mas Swan*") at [68] and [78]; see also the decision of his court in *Mohd Suief bin Ismail v Public Prosecutor* [2016] 2 SLR 893 at [34]). In other words, something *more* than a *bare denial* of knowledge is necessary to establish the alternative defence. In contrast, in the present case, there was *nothing* on the evidence which indicated to us that Chandroo misapprehended or was completely ignorant of what the Drugs actually were. We therefore do not see any reason to doubt the correctness of the Judge's finding that Chandroo had actual knowledge of the nature of the Drugs.

Issue 4: Whether the Judge had erred in finding that the appellants intended to traffic in the Drugs

84 We now turn to the issue of whether the Judge erred in finding that the appellants intended to traffic (*ie*, to "sell, give, administer, transport, send, deliver or distribute" (see s 2 of the MDA) the Drugs. We shall deal with this point in relation to Pravinash and Kamalnathan shortly. The Judge having found (in our view correctly) that the purpose of the Kranji Road meeting was for Pravinash and Kamalnathan to hand the Drugs to Chandroo, it follows as a matter of course that Pravinash and Kamalnathan must have intended to traffic in the Drugs. The Judge accordingly did not err in so finding.

85 As regards Chandroo, and as alluded to at [17] above, the Judge found that Chandroo led no evidence that he was a heavy consumer of cannabis and that the considerable weight of the Drugs, 1,344.5g, indicated that they could not have been solely for his personal consumption (see the Judgment at [123]). We agree with the Judge's findings.

86 Before us, Chandroo argued that an adverse inference ought to be drawn against the Prosecution on the issue of whether he intended to traffic in the Drugs as they had failed to disclose the statements of one Abdul Rahman bin Mohamed Ibrahim ("Ibrahim") to him. Ibrahim was the person whom the CNB had identified as Chandroo's customer for the Drugs, and he was arrested as part of the same CNB operation which resulted in the arrest of the appellants. After the Judge had handed down judgment, Chandroo requested for Ibrahim's statements and these were disclosed to him on 22 July 2021. Chandroo submitted that Ibrahim was a crucial witness for his defence, because he would have been able to testify as to whether Chandroo intended to supply the Drugs to him. Had Ibrahim's statements been disclosed to him at trial, he would have

considered calling Ibrahim as a witness. Thus, the Prosecution's failure to disclose Ibrahim's statements was a breach of their disclosure obligations under the rules laid down by this court in *Nabill* and *Muhammad bin Kadar and another v Public Prosecutor* [2011] 4 SLR 791 ("*Kadar*").

87 We accept that, as set out in *Nabill* and *Kadar*, the Prosecution has a duty to disclose to the Defence: (a) unused material that is likely to be admissible and that might reasonably be regarded as credible and relevant to the guilt or innocence of the accused; (b) unused material that is likely to be inadmissible, but which would provide a real and not merely fanciful chance of pursuing a line of inquiry that leads to material that is likely to be admissible and which might reasonably be regarded as relevant to the guilt or innocence of the accused (see *Kadar* at [113]), as well as (c) statements of a material witness (defined as a witness who can be expected to confirm or contradict the accused's defence in material respects), regardless of whether the statement was favourable, neutral or adverse to the accused (see *Nabill* at [4], [41(a)] and [43]). However, we do not think that these principles assist Chandroo. This was because Ibrahim's evidence was not, in our view, material to the charges faced by Chandroo. Ibrahim was not a party to the Kranji Road meeting. Even assuming that his evidence was that Chandroo was not his supplier of drugs, this in no way meant that Chandroo could not have obtained the Drugs for trafficking to *someone else*. In other words, Ibrahim's evidence did not have much if any probative value to Chandroo's case. Accordingly, the Prosecution did not breach their duty of disclosure in not making Ibrahim's statements available to Chandroo at or before trial and there is no basis for us to draw an adverse inference against the Prosecution in respect of Chandroo's intention to traffic in the Drugs.

88 For the foregoing reasons, we affirm the Judge's convictions of Chandroo, Kamalnathan and Pravinash and dismiss the appeals against conviction.

The appeals against sentence

89 Having dismissed the appeals against conviction for drug trafficking, there is no basis for us to set aside the *mandatory* sentence of death passed by the Judge in respect of Chandroo and Kamalnathan in accordance with s 33(1) read with the Second Schedule of the MDA, and the *mandatory* sentence of life imprisonment and 15 strokes of the cane passed by the Judge in respect of Pravinash in accordance with ss 33B(1) read with 33B(2) of the MDA. We therefore dismiss the appeals against sentence.

Conclusion

90 For the reasons set out above, we dismiss the appeals against conviction and sentence in CA/CCA 38/2020, CA/CCA 39/2020 and CA/CCA 40/2020.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

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The appellant in CA/CCA 40/2020 in person;
John Lu, Chin Jincheng and Jotham Tay (Attorney-General's Chambers) for the respondent in CA/CCA 38/2020, CA/CCA 39/2020 and CA/CCA 40/2020.
