IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2021] SGCA 113

Criminal Appeal No 1 of 2021

Between

Jumadi Bin Abdullah

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 2 of 2021

Between

Shisham Bin Abdul Rahman

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 3 of 2021

Between

Salzawiyah Binte Latib

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act]
[Criminal Procedure and Sentencing] — [Statements] — [Voluntariness]
[Criminal Procedure and Sentencing] — [Sentencing]

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v
Public Prosecutor and other appeals

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Court of Appeal — Criminal Appeals Nos 1, 2 and 3 of 2021
Andrew Phang Boon Leong JCA, Judith Prakash JCA and Steven Chong JCA
11 October 2021

30 November 2021

Steven Chong JCA (delivering the judgment of the court):

Introduction

1 Section 33B of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") offers courts the discretion to impose life imprisonment in lieu of the death penalty if drug couriers offer substantive assistance to enforcement agencies upon their arrest. The specific mechanisms and legal requirements of the provision were vigorously debated in parliament – what would constitute "substantial assistance"; who decides cooperation and by what criteria; and whether couriers (*ie*, persons in a drug syndicate who served functions which rendered them less culpable in the drug trafficking operation, such as delivery of the drugs or preparatory work) could ever meaningfully take advantage of these provisions – but one thing was clear and unchallenged: s 33B MDA is a "cooperation mechanism". And much like similar provisions found in other jurisdictions, it was ultimately intended to incentivise cooperation, "giving

[couriers] an incentive to tell the truth, to help [Singapore], and to help [themselves]": *Singapore Parliamentary Debates, Official Report* (14 November 2012) vol 89 (Mr K Shanmugam) at p 1234 ("2012 Debates"). Indeed, it seeks not only to incentivise cooperation but to incentivise *early* and *timeous* cooperation to ensure that information provided is fresh and useful for investigations. That is why the accused is informed of the conditions under which the alternative sentence of life imprisonment may be applicable, *upon his arrest*.

2 The accused is put on notice not just to incentivise early cooperation but also to be properly apprised of the legal effect of s 33B MDA. The "Notice of requirements that would satisfy s 33B(2) of the Misuse of Drugs Act" ("the MDP Notice") includes a disclaimer that it is "purely for [the accused's] information, and should not be construed as a threat, inducement or promise" ("the Disclaimer"). This Disclaimer, together with amendments made to s 258(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC"), are part of the measures taken to pre-empt potential legal challenges to the voluntariness of statements obtained after an MDP Notice has been administered. Parliament was alive to the possibility of such challenges and took clear steps to statutorily provide that the MDP Notice is not a representation capable of amounting to a threat/inducement/promise under s 258(3) of the CPC.

3 Notwithstanding this, there have been continued creative attempts by accused persons to challenge the voluntariness of statements obtained after administration of the MDP Notice. The present case is the latest in the series of such attempts.

Facts

The charges

4 The accused persons' charges were amended at the end of trial. All their charges were amended to reflect a lower gross weight and analysed weight of diamorphine: *Public Prosecutor v Salzawiyah bte Latib and others* [2021] SGHC 16 ("the First Judgment") at [5].

5 The amended charge against the first appellant ("Jumadi") was framed as follows:

> You, [Jumadi Bin Abdullah]
>
> …
>
> are charged that you, on 22 June 2017, at about 2.15 pm, at unit 02-04 Leville iSuites, 28 Ceylon Road, Singapore, together with one Shisham Bin Abdul Rahman, NRIC No S[xxxx]197F, and one Salzawiyah Binte Latib, NRIC No S[xxxx]495J, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) **('MDA')**, *to wit*, by having in your possession, 127 packets containing not less than 3,280.06g of granular/powdery substance, which was analysed and found to contain **not less than 41.86g of diamorphine**, for the purpose of trafficking, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(*a*) read with s 5(2) of the MDA and read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), which is punishable under s 33(1) of the MDA, and further, upon your conviction for the said offence, you may alternatively be liable to be punished under s 33B of the MDA.
>
> [emphasis in original]

6 The amended charge against the second appellant ("Shisham") was framed as follows:

> You, [Shisham Bin Abdul Rahman]
>
> …
>
> are charged that you, on 22 June 2017, at about 2.15 pm, at unit 02-04 Leville iSuites, 28 Ceylon Road, Singapore, together with one Jumadi Bin Abdullah, NRIC No S[xxxx]319J, and one Salzawiyah Binte Latib, NRIC No S[xxxx]495J, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) **('MDA')**, *to wit*, by having in your possession, 127 packets containing not less than 3,280.06g of granular/powdery substance, which was analysed and found to contain **not less than 41.86g of diamorphine**, for the purpose of trafficking, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(*a*) read with s 5(2) of the MDA and read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), which is punishable under s 33(1) of the MDA, and further, upon your conviction for the said offence, you may alternatively be liable to be punished under s 33B of the MDA.
>
> [emphasis in original]

7 The amended charge against the third appellant ("Salzawiyah") was framed as follows:

> You, [Salzawiyah Binte Latib]
>
> …
>
> are charged that you, on 22 June 2017, at about 2.15 pm, at unit 02-04 Leville iSuites, 28 Ceylon Road, Singapore, together with one Jumadi Bin Abdullah, NRIC No S[xxxx]319J, and one Shisham Bin Abdul Rahman, NRIC No S[xxxx]197F, in furtherance of the common intention of you all, did traffic in a Class A controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) **('MDA')**, *to wit*, by having in your possession, 127 packets containing not less than 3,280.06g of granular/powdery substance, which was analysed and found to contain **not less than 14.99g of diamorphine**, for the purpose of trafficking, without authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under s 5(1)(*a*) read with s 5(2) of the MDA and read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed), which is punishable under s 33(1) of the MDA.

[emphasis in original]

8 Jumadi and Shisham were found guilty and sentenced to death. They are seeking acquittals on appeal. Salzawiyah was also found guilty and sentenced to 29 years' imprisonment. She is contesting only her sentence.

The factual background

9 The facts have already been extensively covered in the First Judgment. We set out only the salient details which are necessary for context and for determination of the issues on appeal.

10 On the morning of 22 June 2017, Jumadi and Shisham brought about $11,000 to Changi South Lane ("the Collection Point") to purchase some drugs. The precise amount of drugs they sought to purchase and when it was purchased is in dispute. What is undisputed however, is that on 22 June 2017 at 2.13pm, officers from the Central Narcotics Bureau ("CNB") raided the one bedroom unit which Jumadi shared with his girlfriend Salzawiyah ("the Unit"). Jumadi and Salzawiyah were arrested in the living room while Shisham was arrested in the toilet that he had locked himself in. At 2.25pm, SSSgt Muhammad Fardlie Bin Ramlie ("SSSgt Fardlie") recorded a statement from Jumadi ("the First Contemporaneous Statement").

11 During their search of the Unit, the officers found a haul of drugs, located variously in the living room and in the bedroom. They also found various drug trafficking paraphernalia such as weighing scales, sachets, scissors and spoons, as well as a notebook ("the Notebook") which was essentially a ledger detailing how much Jumadi paid per *batu* of diamorphine. The accused persons were frisked, and the drugs were taken into custody. These are the drugs which form the subject of the abovementioned charges, as well as the raw

weight and analysed weight of the same *per* the Health Sciences Authority ("HSA"):

S/No	Exhibit Name	Description	Location (where the drugs were found)	HSA Raw weight measured (g)	HSA Analysed weight (g)
1	A1A1	One packet of diamorphine	Red Bag (A1), near living room television console	436.5	4.87
2	A1B1	One packet of diamorphine	Red Bag (A1), near living room television console	429.6	4.61
3	A1C1	One packet of diamorphine	Red Bag (A1), near living room television console	432.1	5.83
4	A1D1	One packet of diamorphine	Red Bag (A1), near living room television console	420.3	3.73
5	A1E1	32 sachets of diamorphine	Red Bag (A1), near living room television console	241.7	2.77
6	A1F1	30 sachets of diamorphine	Red Bag (A1), near living room television console	225.4	2.41
7	A2A1	One packet of diamorphine	Camouflage Bad (A2), near television console	427.1	7.83
8	B1A1	10 sachets of diamorphine	Pink Box (B1), beside living room sofa.	75.35	0.89
9	D1A	5 sachets of diamorphine	Silver Bag (D1), on bed located inside bedroom	34.48	0.73

10	D2A	10 sachets of diamorphine	Silver Bag (D1), on bed located inside bedroom	75.34	1.30
11	D3A	5 sachets of diamorphine	Silver Bag (D1), on bed located inside bedroom	37.82	0.72
12	D4A	Three sachets of diamorphine	Silver Bag (D1), on bed located inside bedroom	22.35	0.29
		Two sachets of diamorphine		15.10	0.31
13	D5A	Five sachets of diamorphine	Silver Bag (D1), on bed located inside bedroom	34.27	0.55
		Six sachets of diamorphine		45.25	1.08
14	E1B1	One packet of diamorphine	Silver Bag (E1B), in wardrobe compartment located inside the bedroom	224.5	2.56
15	E1E	13 sachets of diamorphine		102.9	1.38

Issues to be determined

12 On appeal, four main issues arose:

(a) Whether the Judge had erred in holding that the eleven statements recorded from Jumadi ("Jumadi's Statements") were given voluntarily;

(b) Whether the Judge had erred in rejecting Jumadi's defences at trial;

(c) Whether the Judge had erred in rejecting Shisham's defence at trial; and

(d) Whether the Judge had imposed a manifestly excessive sentence on Salzawiyah.

The decision below

13 We set out the trial judge's ("the Judge") findings and conclusions in relation to each of these aforementioned issues.

Voluntariness of Jumadi's Statements

14 Jumadi alleged that all his statements had been made pursuant to a promise given to him by SSSgt Fardlie, which was subsequently reinforced and perpetuated by Investigation Officer Station Inspector Yip Lai Peng ("IO Yip"). This promise was to the effect that, if Jumadi cooperated with the CNB and admitted ownership of the drugs, he would not receive the death penalty ("the Promise").

15 The Judge found that Jumadi's Statements had been made voluntarily. Involuntariness had to be established on both an objective basis (in that there was objectively a threat, promise or inducement) and on a subjective basis (in that the threat, promise or inducement had actually operated on the mind of the particular accused person through hope of escape or fear of punishment connected with the charge): *Chai Chien Wei Kelvin v Public Prosecutor* [1998] 3 SLR(R) 619 ("*Kelvin Chai*") at [53].

16 Objectively speaking, the Promise could not have been made at the time that Jumadi claimed it had been made: First Judgment at [90]–[93] and [96]–[97]. This was based on SSSgt Fardlie's field diary, SSgt Phang Yee Leong

James' ("SSgt Phang") field diary, the contents of the First Contemporaneous Statement itself, and the fact that Jumadi failed to call any witnesses to back up his account – in fact, it was at odds with Salzawiyah's and Dr Derrick Yeo Chen Kuan's testimony (Dr Yeo being the doctor who Jumadi later told about the Promise).

17 Still on the objective limb, the Judge found that the MDP Notice was objectively not a promise, threat or inducement either. To be clear, this MDP Notice was different from that found in *Public Prosecutor v Sibeko Lindiwe Mary-Jane* [2016] SGHC 199 ("*Sibeko*"). It had an additional paragraph beginning with the line stating "You are hereby invited to provide information...". The Judge found that the additional paragraph was merely a "neutral invitation to provide information" and that it "did not contain any substantive reason which could potentially operate as an inducement, threat or promise". This was especially so considering the Disclaimer at the end of the MDP Notice which made clear that there was no guarantee that cooperation would result in a certificate of substantive assistance being issued: First Judgment at [105].

18 Turning to the subjective limb, the Judge found that the promise, inducement or threat (assuming it existed) would not have operated on Jumadi's mind. The Judge found Jumadi to be a shrewd and intelligent man, who was unlikely to have simply believed the Promise or misconstrued the MDP notice at the time of the raid. Moreover, the Judge found it incredible that the Promise and/or MDP Notice would have caused such a rapid change of mind, as Jumadi claimed: First Judgment at [112].

Jumadi's defences at trial

19 Jumadi had two defences at trial:

(a) The first, the Mistake Defence, pertained to the bundles marked A1B1, A1C1 and A2A1 (collectively, "the Three Bundles"). He claimed that these had been mistakenly delivered by his supplier, Vishu. They were not his; he was just arranging an opportunity to return them to Vishu. He claimed that he had only intended to purchase two *batu* on 22 June 2017 and had only made arrangements on 21 June 2017 to purchase 2 *batu* of diamorphine (One *batu* refers to one bundle of approximately 450g of unwashed diamorphine).

(b) The second, the Ownership Defence, pertained to the packets marked D1A, D2A, D3A, D4A, D5A, E1B1 and E1E (which were found inside the *bedroom* as opposed to the *living room*). He claimed that these were purchased before 22 June 2017 and actually belonged to Salzawiyah. Those packets ("the Bedroom Bundles") were for Salzawiyah to sell to her own customers.

20 Central to Jumadi's Mistake Defence was a certain chronology of the events of 21 June 2017 and 22 June 2017. This chronology differed from the Prosecution's chronology of events in four key respects.

(a) First, the Prosecution claimed that Jumadi and Shisham had together called Vishu, and placed an order for five *batu* on 21 June 2017 at 4pm ("the 4pm Call"). Jumadi claimed that the call had never connected.

(b) Second, the Prosecution claimed that at 6.57pm, 7.27pm and 11pm on 21 June 2017, Shisham *alone* had received calls from Vishu with details of the *batu* collection the next day. Jumadi claimed that he and Shisham were *together* during those calls and that although Vishu

had attempted to sell them more *batu*, both of them had eventually placed an order for only two *batu*.

(c) Third, the Prosecution claimed that the *batu* ordered was collected sometime around 10am on 22 June 2017. In contrast, Jumadi claimed that it was picked up around 8am instead and at that point, they had received an extra three *batu* by mistake.

(d) Fourth, the Prosecution pointed to a call Jumadi received from a man named Baba on 22 June 2017. The Prosecution's theory was that Baba had called asking to purchase two packets of diamorphine. Jumadi had agreed and had dispatched Shisham to deliver those packets around noon of 22 June 2017. Jumadi's version was that the sale to Baba had been cancelled, and that Shisham had left the Unit around noon to search for a place to hide the Three Bundles which they had mistakenly received.

21 The Judge found that the chronology put forward by the Prosecution was the one substantiated by the evidence:

(a) Regarding the 4pm Call, Jumadi's claims (that the call had never connected) were made on the basis that, in a tabulation of Shisham's phone call records, the box indicating the "Duration" of the 4pm call was left blank. To confirm whether the 4pm Call had connected and its duration, the Judge authorised the Prosecution to break open the sealed envelope containing Shisham's mobile phone in the presence of the accused persons' respective counsel, and it was found that the 4pm Call had connected and had lasted one minute and 36 seconds: First Judgment at [182]. The Judge reasoned that the court was entitled to turn on the phone and examine its content in this manner because (i) the phone had

already been produced in evidence, suggesting that the contents of the phone were open for inspection as well; (ii) there was no need for additional processing by a technician or expert in order to access the information on the phone; and (iii) there was no prejudice thereby occasioned to Jumadi: First Judgment at [180] and [181].

(b) As for the 6.57pm, 7.27pm and 11pm calls on 21 June 2021, the Judge found that Jumadi and Shisham had not been in the same location at those times. This was clear from the calls and text messages between them at that time. Therefore, Jumadi's version of events (where he and Shisham had received calls from Vishu *together*), could not have happened: First Judgment at [173] and [176].

(c) As for the timing of the *batu* collection, the Judge rejected Jumadi's version as it was directly contradicted by Salzawiyah's evidence and contemporaneous phone records. It also contradicted his Fourth Long Statement and Jumadi was not able to explain why he would lie about the drug collection times in his Fourth Long Statement: First Judgment at [183]–[190].

(d) Finally, regarding Baba, the Judge found that Jumadi's account was refuted by contemporaneous phone records and Shisham's statements to the CNB: First Judgment at [192].

22 As for the Ownership Defence, the Judge rejected it because:

(a) Jumadi clearly stated in his Second Contemporaneous Statement that the drugs found in the bedroom belonged to him, going so far as to explain where they originated from ("old stuffs which have been packed"): First Judgment at [208];

(b) The Bedroom Bundles were found in the bedroom which Jumadi was known to share with Salzawiyah: First Judgment at [209]; and

(c) Salzawiyah's text messages suggested that the deals she was making were an extension of Jumadi's drug trafficking operations: First Judgment at [213].

Shisham's Defence

23 Shisham's Defence was that he was a mere addict who stayed with Jumadi and Salzawiyah at the Unit. Strikingly, his defence was entirely contained in his statements – Shisham chose not to testify at trial. Ultimately, the Judge rejected his defence because:

(a) Shisham's defence was inherently incredible. Indeed, Shisham's statements (which his counsel confirmed were given voluntarily without promise, threat or inducement) could not properly explain why Jumadi would provide drugs and lodging for *free* to Shisham ("I can't explain why Jumadi is so good to me"): First Judgment at [255]–[257].

(b) Jumadi's statements identified Shisham as the person who (i) "gave the contact to order the stuff from Malaysia", (ii) liaised with the supplier over the phone; and (iii) was his business partner ("we pool our customers together, shared money to buy our heroin supply and split our profits equally"): First Judgment at [226]. This was confirmed by Jumadi's testimony in court: First Judgment at [228].

(c) Salzawiyah's statements (which her counsel confirmed were given voluntarily without promise, threat or inducement) detailed Shisham's involvement in the drug operations. He got "a good price" for the drugs, liaised with the supplier, collected the drugs, packed the drugs

and sold them: First Judgment at [238]. Salzawiyah maintained her account of Shisham's general involvement in the trafficking operation as well as his involvement in collecting the five *batu* on 22 June 2017, in her court testimony: First Judgment at [239];

(d) Objective evidence such as Shisham's messages, and the Notebook's entries showed Shisham's involvement in the drug trafficking operation: First Judgment at [243]–[253].

Salzawiyah's Sentence

24 Applying the framework set out in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 ("*Vasentha*"), the Judge found that the indicative starting point for a first time offender, trafficking in 13–15g of diamorphine would be 26–29 years' imprisonment and 15 strokes of the cane: *Public Prosecutor v Salzawiyah bte Latib and others* [2021] SGHC 17 ("the Second Judgment") at [8].

25 The next step in the *Vasentha* framework was to examine the accused person's culpability and any relevant mitigating/aggravating factors to adjust the indicative starting point accordingly.

(a) The Judge found that Salzawiyah had a high degree of culpability as the drug trafficking operation had been run for personal profit and because she had been heavily involved in the trafficking operations. She helped to pack the diamorphine, recorded drug-related transactions, managed the accounts of the drug trafficking operation, taught Jumadi how to keep the accounts of the drug trafficking activities, safekept the sale proceeds of the diamorphine, sold drugs, delivered

drugs, coordinated deliveries, recruited runners for deliveries, and dealt with customer complaints.: Second Judgment at [11]–[12].

(b) The Judge took into account three aggravating factors: Salzawiyah's relevant criminal antecedents, her consent to having certain charges being taken into consideration for purposes of sentencing, and the fact that she was involved in trafficking a variety of drugs: Second Judgment at [14]–[17].

(c) The Judge gave very little mitigating weight to any assistance that Salzawiyah gave to the authorities. She struggled upon arrest, was not fully truthful in her statements, and denied the charge brought against her at trial, admitting only to possession of 9.81g of diamorphine for the purpose of trafficking. Moreover, she claimed to have ceased her involvement in the drug trafficking operation by June 2017 but that ultimately turned out to be untrue. All these suggested that Salzawiyah was not truly remorseful for her actions: Second Judgment at [19].

26 Finally, the Judge did not consider it necessary to increase the sentence in lieu of caning. Such additional imprisonment would have had very little marginal deterrent value: Second Judgment at [23]. In the circumstances, the Judge decided to sentence Salzawiyah to 29 years imprisonment which was backdated to 22 June 2017, the date of Salzawiyah's arrest: Second Judgment at [25].

Issue 1: Voluntariness of Jumadi's Statements

The applicable law

27 The Judge applied the correct test of voluntariness in the proceedings below (see [15] above) namely, involuntariness must be established on both an

objective and a subjective basis: *Kelvin Chai* at [53]. It also bears repeating that there is a high threshold for appellate intervention where findings of fact are based on a trial judge's assessment of the witnesses' credibility and demeanour at trial: *ADF v Public Prosecutor* [2010] 1 SLR 874 at [16]. Here, that reluctance is particularly pronounced since assessing the voluntariness of a statement is a highly fact-sensitive exercise. An appellate court, without the benefit of the trial or any fact-finding exercise, would be slow to overturn such findings of fact by the trial judge.

28 We turn now to Jumadi's two main arguments about the involuntariness of his statements.

The Promise

29 As stated above at [14], Jumadi claimed that SSSgt Fardlie had made him a promise to the effect that if Jumadi cooperated with the CNB and admitted ownership of the drugs, he would not receive the death penalty:

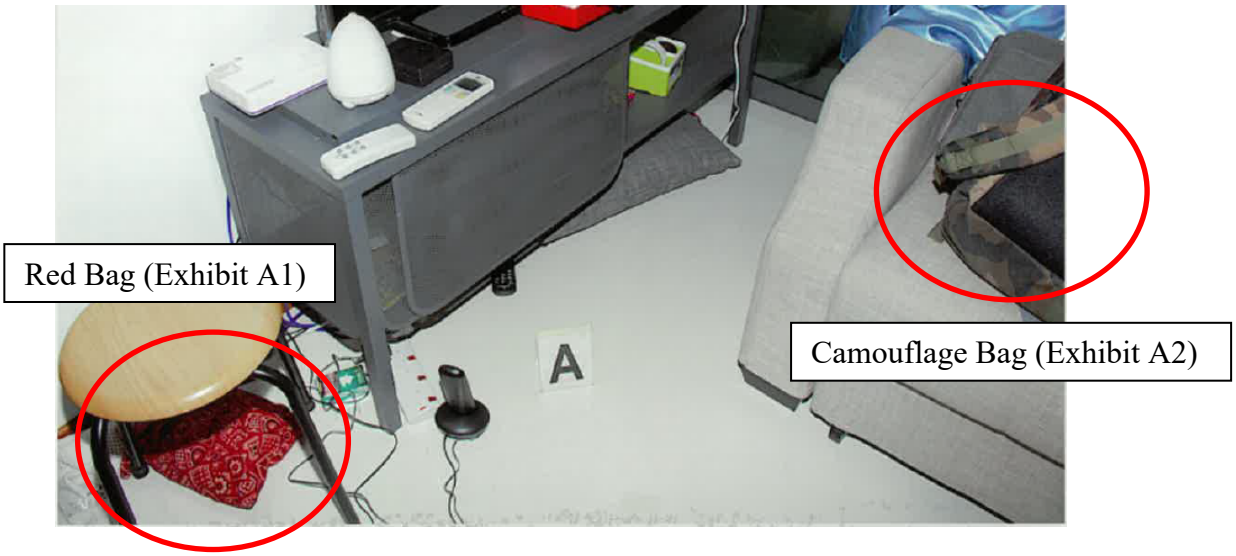
> Jumadi: I told Officer Fardlie that I do not know who these items belong to.
>
> Cheong (Jumadi's Counsel):
>
> And after you said that, what did Officer Fardlie do?
>
> Jumadi: Officer Fardlie said, "You don't make my work difficult. I know that all these can receive the death penalty. If you help me, I promise that I can help you."
>
> Cheong: And when you heard that, what did you say?
>
> Jumadi: I said, "Okay, I admit only to 3 *batu* belong to me".
>
> Cheong And after you said that, what was Officer Fardlie's response?
>
> Jumadi: Officer Fardlie said, "How about the rest, who does it belong to?" And he---and Officer Fardlie

> said, "Okay, Jumadi, just now I told you that I would help you." If you admit that all these items belong to you, I promise that I will let you off the gallows."
>
> Cheong: And after you heard that, what was your response?
>
> Jumadi: I said to Officer Fardlie, "If that is true, then I---you"---sorry. "Okay, this is what you promise, is it?" Okay, I repeat. I told Officer Fardlie, "Sure this is what you promise, right?"
>
> Cheong: And after you said that, what was Officer Fardlie's response?
>
> Jumadi: I saw Officer Fardlie nodded his head twice.
>
> Cheong: And after he nodded his head, what happened after that?
>
> Jumadi: I saw Officer Fardlie took out a book.
>
> Cheong: And after he took out the book, what did Officer Fardlie do?
>
> Jumadi: Officer Fardlie started to ask me to make a statement.
>
> Cheong: So at that point in time, did you give a statement?
>
> Jumadi: Yes
>
> Cheong: Why did you give the statement?
>
> Jumadi: I gave that statement because in my mind Officer Fardlie had promised me if I admit that all these items belong to me, and if I cooperate with CNB, I would be let off from the gallows.

30 We agree with the Judge that Jumadi's account of events was unbelievable. Jumadi's account was that SSSgt Fardlie had conducted a search of the premises, found the drugs and had then *used* the Promise to get Jumadi to admit to ownership of the incriminating items in his First Contemporaneous Statement. But as the Judge correctly pointed out, there was simply no evidence of any search or any conversation prior to the recording of the First Contemporaneous Statement. If anything, the contemporaneous evidence (such as SSSgt Fardlie's and SSgt Phang's field diaries) suggested that searches had

been conducted *after* the First Contemporaneous Statement had been taken: First Judgment at [91]–[93]. There were individuals who, by Jumadi's own account, were at the scene and could therefore have corroborated his account. None of them were called to testify. Jumadi had also supposedly told Shisham and Dr Yeo about the Promise. Again, neither of them was called to the stand. The Judge found this telling: First Judgment at [96]–[97]. We agree.

31 This fundamental aspect of Jumadi's narrative – that an earlier search of the Unit had equipped SSSgt Fardlie with the ammunition for the Promise – remained doubtful on appeal. Jumadi stressed that it was suspicious that SSSgt Fardlie had known to look in the Red Bag for the drugs. The implication was that Jumadi had *directed* SSSgt Fardlie where to look in a conversation prior to the recording of the First Contemporaneous Statement. That argument, however, contradicted Jumadi's entire narrative. By Jumadi's own account, SSSgt Fardlie had, *on his own initiative*, searched the Unit and found the incriminating drugs. Indeed, Jumadi's entire account at trial rested on a very specific chronology of events. First there was the search. Drugs were found. Then there was the conversation where the Promise was conveyed. And finally the First Contemporaneous Statement was recorded to capture the supposedly involuntary confession. Jumadi's argument on appeal suggests, instead, that the conversation *preceded* the search. We found this to be another in a long line of inconsistencies in Jumadi's testimony (see First Judgment at [147]–[196] where the Judge exhaustively listed the numerous inconsistencies in Jumadi's testimony). In any case, there was nothing suspicious about SSSgt Fardlie beginning his search of the Unit with a red bag lying conspicuously on the living room floor. For reference, this is a photograph taken of the scene at the time of arrest:



32 We would go further. On whichever version of Jumadi's narrative is accepted, the Promise simply could not have been made. If the conversation had *preceded* the search, SSSgt Fardlie would have had nothing to offer in exchange for a confession. He would, presumably, have no knowledge of the amount of drugs that was in the Unit and whether the amount crossed the capital threshold, such that he could "offer" Jumadi an escape from the gallows in exchange for a confession. If the conversation had taken place *after* the search, Jumadi's account was equally unbelievable. Shisham's arrest (which took longer than Jumadi's), the search, the conversation and the subsequent Promise – all this, according to Jumadi, had supposedly happened within a short 12 minute window between Jumadi's arrest (at 2.13pm) and the time when the First Contemporaneous Statement was first taken (at 2.25pm). This was incredible. In fact, there was no reason for a CNB officer to extend such a promise in those circumstances. The officers were at the flat precisely to search for drugs. The search was not an exercise which required any (more) information from Jumadi especially given the modest size of the flat. All this made Jumadi's narrative(s) difficult to believe, much less accept.

33 And finally, even if a conversation *had* taken place before the First Contemporaneous Statement was taken, it does not follow that SSSgt Fardlie would necessarily have made any promises during the conversation. This point was specifically put to Jumadi's counsel at the appeal hearing. Counsel was unable to offer any response.

34 In the circumstances, we affirm the Judge's finding that the Promise had not in fact been made at any point in time.

The MDP Notice

35 Jumadi's second challenge to the voluntariness of his statements centred on the MDP Notice and Explanation 2(*aa*) of s 258(3) of the CPC ("Explanation 2(*aa*)"). Specifically, Jumadi's submissions focus on the penultimate paragraph of the MDP Notice ("the Invitation") while the Prosecution's response centres on the Disclaimer found in the last paragraph of the MDP Notice. We reproduce them here for reference. The MDP Notice states:

> Your attention is hereby brought to section 33B(2) of the Misuse of Drugs Act.
>
> This provision, read with section 33B(1)(a) Misuse of Drugs Act, gives the courts the discretion to sentence an accused person convicted of trafficking, importing and exporting of controlled drugs to life imprisonment (and caning, for males under 50), instead of death, if both the following conditions are met.
>
> First, the accused person's involvement in the offence is restricted to:
>
> (a) transporting, sending or delivering a controlled drug;
>
> (b) offering to transport, send or deliver a controlled drug;
>
> (c) doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or

> (d) Any combination of the activities listed in (a), (b) and (c).
>
> AND
>
> Second, the Public Prosecutor certifies to the court that, in his determination, the accused person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore.
>
> **You are hereby invited to provide information to the Central Narcotics Bureau for the purposes of disrupting drug trafficking activities within or outside Singapore.** A delay in providing such information would usually affect its effectiveness in substantively assisting the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore. The mere fact that you provide information, however, does not mean that you will eventually be certified as having provided substantive assistance.
>
> **This notification is purely for your information, and should not be construed as a threat, inducement or promise** for you to give evidence about the involvement of you and any other person in the commission of an offence.
>
> [emphasis in bold added]

36 Explanation 2(*aa*) reads as follows:

> *Explanation 2* – If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:
>
> …
>
> *(aa)* where the accused is **informed** in writing by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act (Cap 185) under which life imprisonment may be imposed in lieu of death;
>
> …
>
> [emphasis in bold added]

37 Jumadi claimed that the MDP Notice was both an "independent occasion of promise" and something which reinforced his existing beliefs about his prospects for escaping the gallows. He argued that notwithstanding the Disclaimer, the Invitation had changed the character of the MDP Notice. It now

went beyond simply bringing ss 33B(1) to 33B(4) of the MDA to the attention of the accused person (which would be perfectly permissible under Explanation 2(*aa*)) and was instead an exhortation to provide information to the authorities. This took the MDP Notice out of the statutory exception carved out in Explanation 2(*aa*).

38 Insofar as Jumadi claimed that the MDP Notice reinforced his *own* beliefs about escaping the gallows, that argument is a non-starter. Self-induced notions of the existence of a promise do not render statements inadmissible: see *Amran Bin Eusuff and another v Public Prosecutor* [2002] SGCA 20 at [36] (in the context of self-induced threats). As for his claim that the MDP Notice was a promise by itself, we do not accept his submissions. In our view, the MDP Notice cannot be taken to be a threat, inducement or promise for the purposes of s 258(3) of the CPC.

39 Objectively, the MDP Notice is not a promise, inducement or threat within the meaning of s 258(3) of the CPC. It is ultimately an *informational* document intended to give fair notice of the law to accused persons. This much is clear from both the *language* of the MDP Notice and the *circumstances* in which it is administered.

> (a) Read in its entirety, the MDP Notice is largely couched in explanatory language. The document itself is titled "Notice of requirements that would satisfy s 33B(2) of the Misuse of Drugs Act". It begins by bringing s 33B of the MDA to the accused person's attention, outlining in broad strokes the discretion that it gives to the courts to sentence a drug trafficker to life imprisonment rather than death. The specific requirements are then set out. Namely, the accused person must (i) be involved in some sort of less culpable activity such

as being a courier or doing preparatory work for the trafficking operation (even if it legally amounts to trafficking), and (ii) have received a certificate of substantial assistance from the Public Prosecutor. It is in *that* context that the "offending" invitation is extended: "You are hereby invited to provide information to the Central Narcotics Bureau for the purposes of disrupting drug trafficking activities within or outside Singapore." If understood in the larger linguistic schema and tone of the MDP Notice, the invitation is really just an extension of the *explanations* which the MDP Notice seeks to provide.

(b) Moreover, the factual context in which the MDP Notice is administered is also important. As alluded to above (at [2]) and explained in *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 ("*Abdullah*") at [54], notices such as this are "[as] a matter of practice, [administered] shortly after [the accused person's] arrest if the offence that he is alleged to have committed carries the death penalty under the MDA". The MDP Notice, in other words, is intended to give the accused fair notice of the laws which might be at play upon his arrest. In that regard, it again makes sense that the MDP Notice is more informational than invitational, more explanation than exhortation.

40 Jumadi urged the court to place more emphasis on the Invitation than the Disclaimer, to put aside the express Disclaimer in favour of recognising the MDP Notice for what it truly is – an inducement that lies outside the statutory carveout in Explanation 2(*aa*). It is, in other words, an invitation to take the substance of the MDP Notice over its form. But that argument cuts both ways. The Invitation and the Disclaimer are equally express and equally present in the MDP Notice. And in choosing which to give more weight to, the court is

mindful of the language used in the notice and factual context in which it is administered. Those, as stated above, point *away* from Jumadi's interpretation.

41 Of course, it may well be that the MDP Notice is a *literal* inducement. The *legal* effect of that, however, is neutralised by Explanation 2(*aa*) and the Disclaimer in the MDP Notice. This much was also recognised by Lee Seiu Kin J in *Sibeko* (at [13]):

> … Indeed, the MDA Notification is an inducement or promise, in that it holds out a possibility to an accused person that if he, being a mere courier, provides useful information to the CNB, he would escape the death penalty and be sentenced instead to life imprisonment with caning. To the extent that the MDA Notification is an inducement or promise, Explanation 2(*aa*) to s 258(3) of the CPC has taken it outside the scope of that subsection so that statements recorded subsequent to the MDA Notification are not inadmissible on this ground alone.

42 Granted, the MDP Notice in the present case differs from that administered in *Sibeko*. The MDP Notice, unlike the MDA Notification in *Sibeko*, also includes the Invitation, which arguably takes it further away from the carveout in Explanation 2(*aa*). But it does not take the MDP Notice *out* of Explanation 2(*aa*)'s ambit. It is not enough that the MDP Notice is notionally an invitation to provide information. *All* such notices are, in some form or another, invitations to provide information. It is in their nature, as mechanisms designed to incentivise cooperation, to invite accused persons to provide information that could assist the authorities. That is precisely why Explanation 2(*aa*) to s 258(3) of the CPC exists at all. Implicit in it, is the acknowledgment that the law – due to the punishments and attendant reliefs available – may well solicit cooperation from accused persons. But it cannot be that every mention of such a law would be unacceptable; every cooperation secured consequentially, impermissible; and every statement thereby acquired, involuntary.

43 Indeed, s 33B of the MDA is part of a very specific system of incentives designed to promote cooperation with the authorities and at the very minimum, Explanation 2(*aa*) seeks to maintain that system's efficacy and objective. As stated by this court in *Abdullah* at [60]:

> … The Parliamentary debates leading to the enactment of s 33B of the MDA showed that the purpose of the amendments was to give an accused person the incentive to "come clean" (*PP v Chum Tat Suan* [2015] 1 SLR 834 ("Chum Tat Suan") at [81]) at the earliest opportunity **so that the operational effectiveness of the CNB may be enhanced and the accused may thereby "earn" the Certificate**.
>
> [emphasis in bold added]

44 This was not only contemplated but also accepted by Parliament. As Minister K Shanmugam observed in the context of a discussion on s 33B of the MDA, that provision was an incentive to tell the truth.

> Asst Prof Eugene Tan asked whether the mechanism creates a risk of self-incrimination? There is that risk. But let me throw back the question: what does that mean? Should we, therefore, not have this exception?
>
> If we believe that the [death penalty] should be abolished, then I can understand Professor Tan's argument. But if that is not argued, and he is not arguing that, then you have to weigh between sticking to the current position – you prove the actus reus *and the* mens rea, trafficking in 15 grams or more, and the person faces capital punishment unless he provides substantial assistance. Should you not give him that option?
>
> I think Asst Prof Tan also makes the point: would CNB officers pressure the accused to self-incriminate? That raises questions outside of issues that we are discussing today, as to whether we should or should not have such an exception.
>
> So, really the question is: if the accused knows something, and has to decide between trying to run a false defence that he knows nothing, and telling the truth and assisting the CNB – **I do not think Members will argue against giving him an incentive to tell the truth, to help us, and to help himself.**
>
> [emphasis in bold added]

45 Finally, on a more *conceptual* level, we fail to see how the MDP Notice *by itself* could be construed as a threat, inducement or promise. This is the logical consequence of the conditions stipulated in ss 33B(1)(*a*) and 33B(2) of the MDA:

> **Discretion of court not to impose sentence of death in certain circumstances**
>
> **33B.**–(1) Where a person commits or attempts to commit an offence under section 5(1) or 7, being an offence punishable with death under the sixth column of the Second Schedule, and he is convicted thereof, the court –
>
> > (*a*) may, if the person satisfies the requirements of subsection (2), instead of imposing the death penalty, sentence the person to imprisonment for life and, if the person is sentenced to life imprisonment, he shall also be sentenced to caning of not less than 15 strokes; …
> >
> > …
>
> (2) The requirements referred to in subsection (1)(*a*) are as follows:
>
> > (*a*) the person convicted proves, on a balance of probabilities, that his involvement in the offence under section 5(1) or 7 was restricted –
> >
> > > (i) to transporting, sending or delivering a controlled drug;
> > >
> > > (ii) to offering to transport, send or deliver a controlled drug;
> > >
> > > (iii) to doing or offering to do any act preparatory to or for the purpose of his transporting, sending or delivering a controlled drug; or
> > >
> > > (iv) to any combination of activities in sub-paragraphs (i), (ii) and (iii); and
> >
> > (*b*) the Public Prosecutor certifies to any court that, in his determination, the person has substantively assisted the Central Narcotics Bureau in disrupting drug trafficking activities within or outside Singapore

46 Essentially, there are two conditions to fulfil. The first is that the accused person must be a courier. This is retrospective in that it concerns events that

have happened in the past and more specifically, events that only the accused can truly speak to; knowledge of the extent of his/her past involvement in the trafficking operation lies exclusively within the accused person's mind. The second is that the accused must offer substantive assistance to the CNB. This is prospective in that it concerns something in the future (*ie*, the assistance that an accused person can potentially render). But this too – the information that can be offered by the accused person – is something that resides exclusively within the accused person's mind. In other words, *every* condition necessary for eligibility under s 33B MDA's alternative sentencing regime, is beyond the control of the CNB or any of its officers. They have no say over whether the accused person is a courier (such being a fact already established and in the past) and no control over what sort of information the accused person can offer (such being something only the accused person would know). If so, the MDP Notice *by itself* cannot represent a threat, promise or inducement from the relevant authorities. If anything, the accused person is the *only one* in a position to assess whether he/she may take advantage of what the law offers as a potential way to escape the gallows at the time when the MDP Notice is administered.

47 Bringing all this together – the language of the MDP Notice, the context in which it is administered, the nature of s 33B of the MDA as a cooperation mechanism, the nature of the MDP Notice itself and the explicit parliamentary debates confirming all the above – fortifies our view that the MDP Notice is objectively not a threat, inducement or promise.

Issue 2: Jumadi's defences

48 Preliminarily, we note that Jumadi's counsel rightly acknowledged at the appeal hearing that his case depended heavily on proving that Jumadi's statements had been made involuntarily. Having affirmed the Judge's holding

that the Statements had been made voluntarily, our findings above would sufficiently dispose of Jumadi's appeal. However, for the sake of completeness, we address Jumadi's defences as well. In short, we find his defences meritless and affirm the Judge's rejection of the same.

The Mistake Defence

49 As stated earlier, Jumadi's Mistake Defence was that some of the drugs found in the Unit were received by mistake. He was keeping them with a view to returning them to his supplier, Vishu. He makes two main arguments on appeal:

(a) First, he contended that Shisham's failure to take the stand should be construed in his favour. He relied on s 291 of the CPC and claims that it should be construed broadly to allow inferences to be drawn "regarding the circumstances of an offence allegedly committed by common intention among the co-accused persons jointly tried, and not restricted only to the determination of the guilt of the accused who elected to remain silent" ("the s 291(3) CPC Argument").

(b) Second, he argued that he was the only one who could have spoken to what his calls with Shisham meant. There were various calls with Vishu through Shisham's mobile phone on 21 June 2017 and 22 June 2017. Since the only other person who could have testified as to the contents of those calls (Shisham) chose not to take the stand, Jumadi argued that his testimony should be accepted instead ("the Sole Testimony Argument").

50 We reject the s 291(3) CPC Argument. Section 291(3) of the CPC reads as follows:

> If an accused –
>
> > (*a*) after being called by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or
> >
> > (*b*) having been sworn or affirmed, without good cause refuses to answer any question,
>
> the court, in deciding whether the accused is guilty of the offence, may draw such inferences from the refusal as appear proper.

51 The plain language of s 291(3) of the CPC simply does not support this argument. This provision can only be used to draw inferences about *the accused person who has elected to remain silent*. Jumadi's argument therefore misses the point. The issue was never about whether s 291(3) of the CPC could have been used to invite inferences about *things other than guilt*. Instead, the essential point was always that the section cannot be used to invite inferences to be drawn against *another person*. Even if it could be used in the manner that Jumadi contended (*ie,* not just to draw inferences about someone *other* than the silent accused person, but also to draw inferences about circumstantial matters other than the guilt of the silent accused person), it is not clear what inferences Jumadi was suggesting that this court should draw, and why they should be drawn at all.

52 The Sole Testimony Argument holds no water either. The court is always entitled to reject a witness' testimony, provided that there are good reasons for the same. Here, Jumadi's testimony was internally inconsistent and ultimately unreliable (see [31] above and the First Judgment at [147]–[196]). Moreover, it was against the weight of the evidence. Jumadi's (somewhat simplistic) argument overlooks the fact that the Judge had rejected Jumadi's version of events based on many other factors: the Notebook found at the unit charting the amount of drugs Jumadi typically purchased, the objective text

messages between him and Shisham, and Salzawiyah's testimony and contemporaneous phone records. The Judge's conclusion, in other words, was amply supported by other (more reliable) evidence. The fact that Shisham elected not to testify does not, by itself, mean that the court should accept Jumadi's evidence and in that process ignore all the other objective evidence against Jumadi.

The Ownership Defence

53 The Ownership Defence pertained to the Bedroom Bundles. Jumadi's argument was that these were not his. They were Salzawiyah's, and intended for her customers. Central to this defence was his assertion that the two were running separate drug trafficking operations. Though they had worked together before, their business partnership had deteriorated as their romantic relationship soured. He made four points in support:

(a) Certain pages of the Notebook only contained his handwriting and none of Salzawiyah's. This supposedly showed Jumadi running his own drug business; separately from Salzawiyah's;

(b) The Judge had misunderstood his defence at trial below, and had erroneously held that "[what] is important is to sell the drug rather than to know the identity of the customers": First Judgment at [214]. The identities of the customers were important because they went towards demonstrating *whose* customers they were and in turn, whether Salzawiyah was running a drug business separate from Jumadi's, with its own supply of drugs;

(c) The lack of Jumadi's DNA evidence on any of the exhibits found in the Bedroom, save for Exhibits D1A and D5A; and

(d) Salzawiyah's cautioned statement stated that Jumadi had told her there were "six *batus* in the house". This was consistent with the First Contemporaneous Statement where Jumadi stated that he only knew of six *batu* in the house, and supposedly confirmed that he "truly did not know anything about any drugs in the bedroom".

We found none of these points persuasive.

54 First, regarding the Notebook, Jumadi's argument selectively relied on a single page in the Notebook which was written in his handwriting. Given that Salzawiyah had usually kept accounting records when they were working together, Jumadi's argument was that those records demonstrated him striking it out on his own – their businesses had separated. But one needs only look further in the Notebook to see that subsequent entries showed Salzawiyah's handwriting again. In fact, there was a mix of Salzawiyah's and Jumadi's handwriting. These directly contradict Jumadi's account.

55 Second, the Judge had understood Jumadi's defence perfectly well at trial below. Again, Jumadi has been mischievously selective. The part of the First Judgment he takes issue with is nestled in a larger analysis *squarely* addressing Jumadi's Ownership Defence. There, the Judge relied on Salzawiyah's text messages which suggested that the deals she was making were an extension of Jumadi's drug trafficking operations. Our review of the messages led us to a similar conclusion. The messages in Salzawiyah's phone suggested that she was peddling drugs to her own customers *as well as* to customers that she shared with Jumadi. Salzawiyah and Jumadi may well have had their own customers, and they may well have not known of each other's customers but that ultimately did not take away from the fact that they worked together to serve these customers.

56 Third, regarding the DNA evidence, we would only point out that this had already been explored at trial. Dr Pook Sim Hwee ("Dr Pook"), an analyst at HSA's DNA profiling laboratory, offered explanations for why most of the exhibits found in the bedroom of the Unit did not have Jumadi's DNA: First Judgment at [215]. The lack of DNA could have been because the amount of DNA deposited might have been insufficient for it to be detected, or the DNA could have been degraded. The Judge accepted Dr Pook's evidence and this reasoning was, in our view, unobjectionable and perfectly in line with our observations in *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 at [82], which, in essence, is that the absence of the accused person's DNA on an object is not, in itself, evidence that the accused person did not come into contact with, or handle, that object. In any case, Jumadi clearly stated in his Second Contemporaneous Statement that the drugs found in the bedroom belonged to him, going so far as to explain where they originated from ("old stuffs which have been packed").

57 Finally, the fact that Jumadi informed Salzawiyah about the six *batu* purchased could equally go towards showing that they were working jointly for their trafficking operations.

58 For these reasons, we reject the Ownership Defence as well.

The 4pm Call

59 We should also highlight some of the issues which arose around the 4pm Call. We emphasise that nothing turned on these contentions for this appeal, but we consider it necessary to record some of our observations about the proceedings below.

60 The disputes arose in the context of Jumadi's Mistake Defence (see above at [20]). The Prosecution claimed that Jumadi and Shisham had called Vishu together, and placed an order for five *batu* on 21 June 2017 at **4pm**. Jumadi claimed that call had never connected. Instead, Jumadi claimed that the orders were only placed during *later* calls with Vishu. Jumadi claimed that during those later calls, he only ordered 2 *batu* of diamorphine.

61 The evidence, as it was initially adduced at trial, did not conclusively show that the 4pm Call had connected. In a tabulation of Shisham's phone call records collated by IO Yip and produced by the Prosecution, the box indicating the "Duration" of the 4pm call was left blank. There were also no screenshots of the call from the phone showing that the call had connected. Jumadi claimed both at trial below and on appeal that this formed a gap in the Prosecution's case.

62 As we stated above at [21(a)], the Judge's response was to authorise the Prosecution to break open the sealed envelope containing Shisham's mobile phone in the presence of the accused persons' respective counsel: First Judgment at [182]. It was found that the 4pm call had connected and had lasted one minute and 36 seconds. This confirmed the Prosecution's account. The Judge justified his decision in three parts (see First Judgment at [180]–[181]):

(a) The phone had already been produced in evidence, suggesting that the contents of the phone were open for inspection as well;

(b) there was no need for additional processing by a technician or expert in order to access the information on the phone; and

(c) there was no prejudice thereby occasioned to Jumadi.

63 On appeal, Jumadi challenged the Judge's decision to authorise access to the phone. He claimed that this was impermissible and that the contents of these call records (including whether the call had connected at all) should have been proven by an application under s 283(1) of the CPC. Under that provision, the court could summon witnesses of its own motion, presumably those who could explain the gaps in the call records.

64 In our view, Jumadi's arguments missed the point. The real question is whether the 4pm Call was material at all. Put another way, would the failure to prove that the 4PM Call had connected amount to a gap in the Prosecution's case? In our view, it does not.

65 The 4pm Call was not necessary to prove the elements of the charge. Jumadi was charged with an offence of trafficking in a controlled drug under s 5(1)(*a*) of the MDA. The first two elements – that he was in possession of the drugs and that he knew of the nature of the drugs – are not contested. Jumadi's arguments about the 4pm Call go only towards challenging the third element *ie*, whether he had the additional drugs for the purposes of trafficking or for the purpose of returning them to Vishu. But this element could have been (and was indeed proven) by reference to other objective factors:

(a) Jumadi's pattern of purchases (as recorded in the Notebook) showed that he was ramping up operations;

(b) Jumadi admitted that he had gone to the Collection Point with far more money than was necessary to buy two *batu* of diamorphine;

(c) During the arrest, the drugs were found haphazardly arranged – the supposed mistaken deliveries were not kept separately as one might expect if Jumadi's defence was true;

(d) Beyond this, there were also Jumadi's statements (wherein he admitted to purchasing five *batu*) and Salzawiyah's statements (wherein she recounted hearing Jumadi and Shisham discussing a large purchase in view of the upcoming Hari Raya celebrations).

66 Even if the 4pm Call had not connected, it did not follow that he only intended to purchase two rather than five *batu*. In fact, whether the 4pm Call had connected or not, the Prosecution would still have satisfied its burden of proof on its alternative case. The Prosecution's primary case sought to prove that Jumadi possessed the drugs for the purpose of trafficking. Its alternative case sought to satisfy that element of the charge through reliance on the presumption in s 17(*c*) of the MDA:

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

67 The undeniable fact remains that he was caught in possession of 41.86g of diamorphine. The 4pm Call does not and cannot change this objective fact. This disposes of the issues surrounding the 4pm Call.

68 We would only make two passing observations about the Judge's approach in the proceedings below. First, it was admittedly a very practical solution. The Judge effectively treated the phone as one would any piece of real evidence. Here, we mean "real evidence" in the sense that if faced with

questions about "the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection": *Halsbury's Laws of Singapore* vol 10 (LexisNexis, 2021) at para 120.254. The call records in the phone were in doubt. The phone was in evidence. And so, the phone was examined to resolve the questions about those call records. This approach is practical but ultimately treats the phone and its contents as one and the same; the admission of one into evidence, necessitates the admission of the other.

69 This brings us to our second observation. There may, at least on a *conceptual* level, be a difference between the phone and its contents. One is physical and tangible, while the other is digital and intangible. One is also a mere object, representing to the world nothing more than the physical properties which are perceptible by the five senses. The other may involve records, logs or other data that can speak to *other* events that have occurred. For that reason, there might be some possible competing considerations when determining whether approaches like the one taken in proceedings below are ultimately permissible:

(a) the possibility of contamination of evidence when digital receptacles such as phones are turned on. This is especially so since the Prosecution's traditional practice has been to examine digital evidence in faraday cages and ultimately to produce separate, digital forensic reports produced by experts

(b) the point in time at which these exhibits are reopened and any attendant prejudice possibly experienced by the accused.

70 We stress that these are merely passing observations and that this is not a point which this court is minded to consider at this appeal. We reserve our full

views for another occasion when the court has had the benefit of full arguments on this precise issue.

Issue 3: Shisham's Defence

71 At the appeal hearing, Shisham's counsel rightly acknowledged that much of Shisham's conviction depended on this court's view of the voluntariness of Jumadi's statements (particularly so because Shisham had not taken the stand in the proceedings below). With the court's finding that Jumadi's statements had been made voluntarily, Shisham's case on appeal was effectively bereft of substance. That said, for completeness we address his arguments on appeal as well. We reject them and affirm his conviction.

72 Shisham's dissatisfaction largely stems from the Judge's reliance on Jumadi's statements. Shisham claims that due to Jumadi's (a) admissions that the statements were fabricated, (b) challenges to their voluntariness and (c) inconsistent testimony as to Shisham's role in the trafficking operation, these statements should be treated with caution pursuant to s 116 of the EA.

73 But as the Judge rightly pointed out, Jumadi's statements were broadly consistent in describing Shisham's role in the trafficking operation. The Judge comprehensively listed every instance of Jumadi's statements inculpating Jumadi at [226] of the First Judgment. These statements, at least in describing Shisham's involvement in the trafficking operation, all sang the same tune: Shisham's involvement was extensive and consistent. He "gave the contact to order the stuff from Malaysia", liaised with the supplier over the phone, and was in every sense, Jumadi's business partner ("we pool our customers together, shared money to buy our heroin supply and split our profits equally"). Specifically regarding the drugs found during the raid, Jumadi's statements also confirmed that (a) Shisham helped him order two *batu* on 16 June 2017, these

batu being the ones from which the Bedroom Bundles originated; and that (b) Shisham had accompanied him to purchase the drugs on 21 June 2017.

74 The one wrinkle – an inconsistency in Jumadi's Eighth Long Statement – was explained away by Jumadi satisfactorily, and accepted by the Judge as well. In his Eighth Long Statement, Jumadi had stated the following:

> 'Sham' is not involved in my drug trafficking activities, he is just a drug addict. It just happens that he is with me when the CNB officers came to visit me.

But as the Judge found, the context of the Eighth Long Statement was entirely different from the rest of the statements. That was a statement concerning the financial investigations related to the operation. When recording that statement, Jumadi was concerned that Shisham would not be able to keep the money seized from him during the arrest, fearing that it would be confiscated if found to be "drug money". Jumadi lied to keep that money out of the hands of the authorities. This was the explanation given by Jumadi (and ultimately accepted by the Judge) at trial. We see no reason to take a different view.

75 Moreover, there was ample evidence that supported Shisham's conviction, even without reference to Jumadi's statements. For one, the objective evidence confirmed Shisham's involvement in the drug operation. Shisham's text messages and the Notebook, respectively showed Shisham's involvement in drug transactions and/or drug suppliers, and the fact that he shared in the profits of the operation with Jumadi. Beyond that, Salzawiyah, the only witness whose credibility was not seriously questioned in the trial below and a co-accused who stood little to gain from implicating Shisham, confirmed all the above in both her statements and in court. Specifically, her testimony detailed Shisham's involvement in getting "a good price" for the drugs, liaising with the supplier, collecting the drugs, packing the drugs and finally, selling

them. The Judge noted as much at [238]–[253] of the First Judgment. We fully agree with his assessment of the evidence.

76 Most importantly, Shisham's defence was inherently incredible. His defence, it will be remembered, was that he was a mere addict who lived with the other two co-accused persons at the Unit. He was simply the happy recipient of *free* lodging and drugs from Jumadi. This defied belief, particularly considering that he had, by his own account, only known Jumadi for three weeks. Moreover, the Unit was not even Jumadi's to offer – it belonged to Salzawiyah's late father. Shisham himself offered no credible explanation for why Jumadi would have been so magnanimous:

> I don't know why Jumadi will give me heroin and 'ice' for free or let me smoke drugs for free. Even though we only knew each other for about 3 weeks, Jumadi allowed me to stay at his apartment for free and let me smoke drugs for free. I can't explain why Jumadi is so good to me.

77 For these reasons, we dismiss Shisham's appeal as well.

Issue 4: Salzawiyah's sentence

78 Finally, as for Salzawiyah's sentence, we could not see any merit in the factors that Salzawiyah discussed in her submissions:

(a) While we agree that the length of time Salzawiyah had spent crime-free after her last incarceration is a factor for consideration, her criminal behaviour had not only resurfaced but *worsened* since her last conviction. She had progressed from mere possession and consumption, to trafficking in drugs.

(b) Salzawiyah's assertion that she had only trafficked in small quantities, had not been involved in safekeeping such large amounts of

drug money as suggested at trial, had no actual knowledge of some of the drugs that were found in the house, and had not given Jumadi the $10,000 he had used to purchase the drugs all pertained to factual findings forming the basis for her criminal liability. Having accepted her conviction, it was not for Salzawiyah to attempt to reopen factual findings in her submissions on sentence.

(f) The fact that she had a fifteen-month old child and the fact that she would not be able to secure any sustainable employment upon release from prison after such a long imprisonment term were ultimately examples of hardship that will be experienced by any accused person convicted of drug trafficking. Absent exceptional hardship, these are not ordinarily mitigating factors.

79 For these reasons, we affirm the Judge's decision and dismiss Salzawiyah's appeal against sentence as well.

Conclusion

80 We fully affirm the Judge's decisions in both the First and Second Judgments and his finding that the amended charges against the accused persons were proven beyond a reasonable doubt. Their sentences (the death penalty for Jumadi and Shisham, and 29 years' imprisonment for Salzawiyah) are accordingly affirmed.

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Cheong Jun Ming Mervyn (Advocatus Law LLP) and Subir Singh Grewal (Aequitas Law LLP) for the appellant in CA/CCA 1/2021;
Kishan Pratap (Kishan Law Chambers LLC) and Nirmal Singh s/o Fauja Singh (CrossBorders LLC) for the appellant in CA/CCA 2/2021;
The appellant in CA/CCA 3/2021 in person;
Terence Chua and Samuel Yap (Attorney-General's Chambers) for the respondent in CA/CCA 1/2021, CA/CCA 2/2021 and CA/CCA 3/2021.
