

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2021] SGHC 255

Criminal Case No 29 of 2021

Between

Public Prosecutor

And

Munusamy Ramarmurth

GROUND OF DECISION

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

TABLE OF CONTENTS

INTRODUCTION.....	1
PROSECUTION’S CASE	2
EVENTS LEADING UP TO MUNUSAMY’S ARREST	2
ESCORTING MUNUSAMY TO THE CARPARK AND OPENING THE BOX.....	3
PROCEEDING TO CNB OFFICE AT WOODLANDS CHECKPOINT AND CNB HEADQUARTERS.....	5
EXHIBIT PROCESSING, ANALYSIS OF DRUGS, URINE SAMPLE.....	6
MUNUSAMY’S STATEMENTS	7
PROSECUTION’S CASE	8
CLOSE OF THE PROSECUTION’S CASE.....	9
THE DEFENCE	9
APPLICABLE LAW	12
WHETHER ELEMENT OF POSSESSION OF THE DRUGS MADE OUT	14
THE STATEMENTS	14
1ST STATEMENT	15
2ND STATEMENT	16
3RD STATEMENT	23
4TH STATEMENT	24
WHETHER PRESUMPTION OF KNOWLEDGE REBUTTED	25
JULY 2017 INCIDENT	26

FAILURE TO CHECK THE CONTENTS OF THE RED BAG.....	29
WHETHER THE RED BAG WOULD BE RETRIEVED BY THE BOY	30
WHETHER THE BOX OF THE BIKE WAS LOCKED OR UNLOCKED	32
POSSESSION OF THE DRUGS FOR THE PURPOSE OF TRAFFICKING	37
CONCLUSION.....	39
IO WONG’S CONDUCT DURING TRIAL	39
SENTENCE	42

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

Public Prosecutor
v
Munusamy Ramarmurth

[2021] SGHC 255

General Division of the High Court — Criminal Case No 29 of 2021

Audrey Lim J

4 – 7 May, 23, 27–30 July, 5–6 August, 19 October, 10 November 2021

15 November 2021

Audrey Lim J:

Introduction

1 The accused (“Munusamy”), a 39-year-old Malaysian, faced one charge of possessing diamorphine for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”).

2 The Charge is as follows:

That you, **MUNUSAMY RAMARMURTH**,

on 26 January 2018, at about 4.05pm, in Singapore, 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 fourteen (14) packets containing not less than 6,316.1g of granular/powdery substance, which were recovered from the rear box of the motorbike bearing registration number JSF6072 parked at the Keppel Bay Tower open-air carpark, 1 Harbourfront Avenue, Singapore, and

which were analysed and found to contain not less than 57.54g 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 Section 5(1)(a) read with Section 5(2) and punishable under Section 33(1) of the MDA, and further, upon your conviction, you may alternatively be liable to be punished under Section 33B of the MDA

[emphasis in original]

3 At the conclusion of the trial, I found that the Prosecution had proved beyond a reasonable doubt the charge, and I convicted Munusamy on the charge. Under s 33(1) of the MDA, read with the Second Schedule to the MDA, the prescribed punishment is death. However, the court has a discretion not to impose the death penalty if the requirements set out in s 33B(2) are satisfied. I found that Munusamy’s role in the offence was restricted to that of a courier. As the Prosecution did not issue him with a certificate of substantive assistance under s 33B(2)(b) of the MDA, I passed the mandatory death sentence on him.

Prosecution’s case

4 I set out the Prosecution’s case based on the testimony of the witnesses and the Statement of Agreed Facts (“ASOF”).

Events leading up to Munusamy’s arrest

5 On 26 January 2018, sometime after 1.00pm, officers from the Central Narcotics Bureau (“CNB”) proceeded to the vicinity of Harbourfront Avenue to keep observation on Munusamy. They included SSI Tony Ng (“Tony”), SSgt James Phang (“James”), Sgt Dadly bin Osman (“Dadly”) and Sgt Mohammad Nasrulhaq (“Nasrulhaq”).¹

¹ Statement of Agreed Facts dated 4 May 2021 (“ASOF”) at [2].

6 Sometime before 1.40pm, Munusamy rode his motorbike (“the Bike”) and parked at the Keppel Bay Tower open-air carpark located along Harbourfront Avenue (“the Carpark”). At about 1.40pm, he walked towards the Bike and opened the rear box (“the Box”), then he closed it and left the Carpark with a package (“the White Package”). This is not disputed by Munusamy and the event was captured on the in-car camera of a vehicle parked at the Carpark.²

7 At about 4.05pm, Tony and Nasrulhaq entered the cleaners’ room at Harbourfront Centre Tower 2 (“Tower 2”) and arrested Munusamy. A bunch of three keys (“the Keys”) was recovered from a shelf. Munusamy informed Tony that the Keys were the keys to the Bike.³ Tony attested that at the cleaners’ room, he posed some questions to Munusamy which he replied to, and the conversation was in English (“the Conversation”). At that time, Dadly had arrived at the cleaners’ room to assist the other officers.⁴

Escorting Munusamy to the Carpark and opening the Box

8 Tony stated that at about 4.13pm, Dadly, Nasrulhaq and he escorted Munusamy to the Carpark. James was then at the Carpark, and Tony narrated the Conversation to James who recorded it in his field diary. James then passed the field diary to Tony who read the contents back to Munusamy in English; Munusamy acknowledged it and signed on the field diary and Tony also signed.⁵ Munusamy does not dispute the Conversation had taken place earlier, but only

² ASOF at [3]; 27/7/21 NE 55–58; Exhibit D.

³ ASOF at [4]–[5].

⁴ AB 208 (Tony’s Statement at [6]); AB 236 (Dadly’s Statement at [6]).

⁵ AB 208 (Tony’s Statement at [7]); AB 231 (James’ Statement at [6]); 5/5/21 NE 118.

the exact contents of it.⁶ The Conversation as recorded in James’ diary is as follows (“1st Statement”):⁷

Tony: The keys belonged to who?
Munusamy: Mine key.
Tony: What key is this?
Munusamy: Motor Bike keys.
...
Tony: Where is your bike parked at?
Munusamy: Carpark.
Tony: Anything inside your bike?
Munusamy: One man put a plastic bag inside the Bike box,
 but I no check.

9 There was some uncertainty as to whether Munusamy was driven from Tower 2 to the Carpark in a CNB car. I accepted Nasrulhaq’s evidence that Munusamy was. It was also not disputed that Munusamy was present when the Box was opened.⁸ Munusamy claimed however, that it was James who drove the CNB car to the Carpark. I accepted the evidence of Tony, Dadly and Nasrulhaq that it was the three of them who escorted Munusamy to the Carpark where James was,⁹ but again who had driven Munusamy there was immaterial.

10 It was also undisputed that the Bike (including the Box) was searched in Munusamy’s presence, and that Nasrulhaq recovered the following items (“the

⁶ 27/7/21 NE 38–40.

⁷ AB 212.

⁸ 5/5/21 NE 133, 6/5/21 NE 76–77; 135; 27/7/21 NE 46.

⁹ 28/7/21 NE 45; AB 208–209 (Tony’s Statement at [7]); AB 214 (Nasrulhaq’s Statement at [6]); AB 231 (James’ Statement at [5]–[6]).

Items”) from the Box, namely a tied up red plastic bag (Exhibit H1 or “Red Bag”) which was subsequently found to contain the following:¹⁰

- (a) four black bundles wrapped with black tape (Exhibits H1A, H1B, H1C and H1D);
- (b) six black plastic bags containing granular substances (Exhibits H1E, H1F, H1G, H1H, H1J, H1K); and
- (c) one clear plastic bag containing two bundles (Exhibit H1L).

11 Nasrulhaq placed the Items into tamper-proof polymer bags, which were sealed by Tony. Tony then placed the polymer bags in a black duffel bag (“Duffel Bag”). Munusamy’s personal properties were also seized. At about 4.35pm, Tony handed the Duffel Bag containing the Items to Nasrulhaq. Inside the CNB Car, Nasrulhaq recorded a statement from Munusamy (“2nd Statement”). Nasrulhaq then handed the Duffel Bag back to Tony.¹¹

Proceeding to CNB office at Woodlands Checkpoint and CNB Headquarters

12 At about 5.50pm, Munusamy was driven to the CNB office at Woodlands Checkpoint. In an interview room, Tony handed the Duffel Bag containing the Items and Munusamy’s personal properties to James. James cut open the polymer bags, cursorily inspected the Items and found that they contained granular substances believed to be diamorphine. James then resealed

¹⁰ ASOF at [7]; 5/5/21 NE 125; 23/7/21 NE 1; 28/7/21 NE 32.

¹¹ ASOF at [8]–[9]; AB 215 (Nasrulhaq’s Statement at [9]); 28/7/21 NE 13–14; AB 219–223.

the Items into new tamper-proof polymer bags, placed them inside the Duffel Bag and handed the bag to Tony. Munusamy observed the inspection.¹²

13 At about 8.58pm, Tony handed the Duffel Bag containing the Items to Nasrulhaq for the purpose of recording a further statement from Munusamy (“3rd Statement”).¹³

14 Thereafter, Tony, James and Nasrulhaq escorted Munusamy in a CNB car to CNB Headquarters. Whilst in the CNB car, at about 9.30pm Nasrulhaq asked Munusamy some questions which he answered and the conversation was in Malay (“4th Statement”). The 4th Statement was taken on Tony’s instructions to ask Munusamy some further questions.¹⁴

Exhibit processing, analysis of drugs, urine sample

15 It was undisputed that the Items and other items seized from Munusamy were processed. The drugs seized from the Red Bag (the subject of the charge), Exhibits H1A1, H1A2, H1B1, H1B2, H1C1, H1D1, H1E1, H1F1, H1G1, H1H1, H1J1, H1K1, H1L1 and H1L2 (“the Drugs”), were sent to the Health Sciences Authority (“HSA”) for analysis. They were found to contain not less than 57.54g of diamorphine. The Defence did not dispute the chain of custody of the Items and Drugs or the veracity of HSA’s analysis of the Drugs and amount of diamorphine subsequently found. An HSA analysis of Munusamy’s urine sample showed that it contained methamphetamine.¹⁵

¹² ASOF at [10]–[11].

¹³ ASOF at [12]; AB 223–224.

¹⁴ ASOF at [12]; AB 217 (Nasrulhaq’s Statement at [16]); AB 229; 23/7/21 NE 47, 49.

¹⁵ ASOF at [14]–[19]; 5/5/21 NE 125; 23/7/21 NE 1, 58; AB 163.

Munusamy's Statements

16 The Prosecution tendered nine statements recorded from Munusamy (“the Statements”). Munusamy agreed that they were voluntarily given.¹⁶ The Statements are as follows:

(a) The 1st Statement recorded by James, of the Conversation between Tony and Munusamy on 26 January 2018 at about 4.05pm;¹⁷

(b) The 2nd Statement (contemporaneous statement) recorded under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) by Nasrulhaq on 26 January 2018 at about 4.55pm;¹⁸

(c) The 3rd Statement (contemporaneous statement) recorded under s 22 of the CPC by Nasrulhaq on 26 January 2018 at about 8.58pm;¹⁹

(d) The 4th Statement (contemporaneous statement) recorded under s 22 of the CPC by Nasrulhaq on 26 January 2018 at about 9.30pm;²⁰

(e) A cautioned statement recorded under s 23 of the CPC by Assistant Superintendent Yang Weili (“IO Yang”) on 27 January 2018 at about 6.34pm (“5th Statement”);²¹

¹⁶ ASOF at [27]–[28].

¹⁷ AB 212.

¹⁸ AB 219–223, AB 262.

¹⁹ AB 223–224, AB 263.

²⁰ AB 229, AB 265.

²¹ AB 285–287.

- (f) An investigative statement recorded under s 22 of the CPC by IO Yang on 31 January 2018 at about 8.53am (“6th Statement”);²²
- (g) An investigative statement recorded under s 22 of the CPC by IO Yang on 31 January 2018 at about 8.54pm (“7th Statement”);²³
- (h) An investigative statement recorded under s 22 of the CPC by IO Yang on 2 February 2018 at about 9.41am (“8th Statement”);²⁴ and
- (i) An investigative statement recorded under s 22 of the CPC by IO Yang on 2 February 2018 at about 11.31am (“9th Statement”).²⁵

17 At trial Munusamy did not dispute that he gave the 1st, 2nd and 3rd Statements but claimed that their contents were inaccurate. He claimed that he did not give the 4th Statement and that it was pre-prepared by Nasrulhaq and which he signed.²⁶ He did not dispute the contents and accuracy of the 5th to 9th Statements (save for some minor errors in dates in the 7th Statement which for the purposes of this case were immaterial).²⁷

Prosecution’s case

18 The Prosecution relied on s 21 of the MDA that provides that an individual is presumed to be in possession of the controlled drug if it was found

²² AB 288–293.

²³ AB 294–310.

²⁴ AB 311–329.

²⁵ AB 330.

²⁶ 28/7/21 NE 10–13, 24.

²⁷ 28/7/21 NE 26; 29/7/21 NE 8–9, 14.

in his vehicle.²⁸ It was not disputed that the Drugs were found in the Red Bag which was in the Box of the Bike belonging to Munusamy.

19 The Prosecution further relied on s 18(2) of the MDA, which provides that any person who is proved or presumed to have had a controlled drug in his possession is presumed to have known the nature of that drug. In the 2nd Statement, Munusamy claimed that a Malaysian man (or “the Boy”) had put the Red Bag and the Items in the Box and told him that they were “panas” items and that one Saravanan (“Sara”) an Indian Malaysian would call Munusamy and tell him what to do with them.²⁹ Munusamy claimed that a “panas” item meant a “stolen item”, although defence counsel (Mr Lukshumayeh) did not dispute that “panas” as a term could also refer to illegal drugs.³⁰ Finally, there was intention to traffic the Drugs as they were not for Munusamy’s consumption but were intended to be moved into the possession of another person.

Close of the Prosecution’s case

20 At the close of the Prosecution’s case, I found that there was sufficient evidence against Munusamy for him to be called upon to give evidence in his defence. Munusamy chose to testify but did not call other witnesses.

The Defence

21 I set out Munusamy’s testimony in court. Munusamy was working as a cleaning supervisor at Tower 2 and had worked in Singapore for about 14 years. He came to know Sara, who resides in Malaysia, for about a year before his

²⁸ Prosecution’s Closing Submissions (“PCS”) at [28].

²⁹ AB 262 (2nd Statement, Answers 5 and 6).

³⁰ 6/5/21 NE 87.

arrest. Sara first asked Munusamy to collect money on his behalf in 2017, and Munusamy would receive RM200 to RM300 payment from him. Since July 2017 Sara had stopped entering Singapore as he was involved in criminal activities. However, Munusamy claimed that Sara was not a drug supplier.³¹

22 In July 2017, Sara and the Boy had visited Munusamy's workplace and asked him for space to place a plastic bag of "panas" items. Munusamy told them about his Bike Box and brought them to the Carpark to view his Bike. He then asked Sara and the Boy what the "panas" items were, and Sara told him that they were "stolen items". Munusamy then asked Sara to open the plastic bag to show him the contents, and when it was opened he saw a "bungkus" (Malay word for "package") of items. Munusamy asked Sara and the Boy to open up the "bungkus" and he saw handphone boxes which contained handphones. The plastic bag was then tied up and Sara and the Boy left the bag inside the Box. In the evening of the same day, Sara called Munusamy to inform him that he had removed the plastic bag, and Munusamy assumed it was Sara and the Boy who had done so.³² I will refer to this as the July 2017 Incident.

23 On 26 January 2018, Munusamy rode his Bike to the Carpark and parked it at about 11.50am. At that time, the Box was not locked. He then took out his personal belongings from the Box and closed the Box without locking it and went off to work.³³

24 Around 12 noon, Sara phoned him and asked for help to place an item with him and take it later, just like the "previous incident", which Munusamy

³¹ 27/7/21 NE 36–37, 62; 29/7/21 NE 24–25, 55; AB 297 (7th Statement at [28]–[29]).

³² 27/7/21 NE 51–54, 62.

³³ 27/7/21 NE 49, 54–57.

understood to mean the July 2017 Incident. Sara told him that it would be “panas” items.³⁴ At about 1.00pm, Sara called Munusamy to inform him that an item had been placed in the Box – this was the first time he knew that the Red Bag was inside the Box of the Bike.³⁵ Sara had also earlier told Munusamy that the Boy would place the item in the Box and take it later; but Munusamy was not present to witness the Boy putting the Red Bag in the Box.³⁶ Munusamy would always leave the Box unlocked so that it would be easier for the Box to be checked by the Customs officers when he entered Singapore. Sara also informed him on that call that there was a “bungkus” for him and that the Boy had locked the Box. Munusamy assumed that the Boy must have pushed down the cover of the Box hard, causing the Box to be locked.³⁷

25 Hence at about 1.40pm, Munusamy went to the Bike to unlock the Box so that the Boy could return to collect the Red Bag and to retrieve the “bungkus” (the White Package) that Sara had left for Munusamy. When he unlocked the Box with one of the Keys, he saw the Red Bag and the White Package. He took the White Package and then closed the lid of the Box but did not lock the Box. He did not check what was in the Red Bag because Sara had already informed him that it contained “panas” items just like in the previous incident. Munusamy subsequently found out that the White Package contained a handphone when he returned to the cleaners’ room at Tower 2 and opened it.³⁸

³⁴ 27/7/21 NE 54, 56, 61–62; 29/7/21 NE 2.

³⁵ 27/7/21 NE 48, 55

³⁶ 27/7/21 NE 50–51.

³⁷ 27/7/21 NE 57; 28/7/21 NE 2.

³⁸ 27/7/21 NE 58–62, 65–67; 28/7/21 NE 2; 29/7/21 NE 3, 34.

26 At about 3.30pm, Munusamy met with the Boy. Sara had earlier instructed him to collect money from another person to hand over to the Boy, and Munusamy had collected \$8,000 from “Abang” (subsequently established to be one Mustaqim). When the Boy took the \$8,000 from Munusamy, he told Munusamy that the Red Bag contained “panas” items and that he would hand over the money to Sara in Malaysia and thereafter return to Singapore to take the “panas” items. Munusamy stated that Sara had also earlier informed him of that arrangement.³⁹

27 Munusamy thought that the Red Bag contained illegal/stolen items or stolen handphones as Sara had told him that it contained “panas” items. He allowed Sara to store the Red Bag temporarily in the Box because Sara told him that the Boy would return to collect it. He did not receive any reward for helping Sara.⁴⁰ When Munusamy was first arrested, he did not know what offence he was being arrested for. He came to know that the Red Bag contained drugs when he was read a charge for drug trafficking before recording the 5th Statement.⁴¹ In the 7th Statement, Munusamy claimed that he came to know that the Red Bag contained drugs when the CNB officers mentioned that word when he was at Woodlands Checkpoint, where he was brought to after his arrest.⁴²

Applicable law

28 The elements to be proved for a charge of drug trafficking under s 5(1)(a) read with s 5(2) of the MDA are: (a) possession of a controlled drug; (b)

³⁹ 27/7/21 NE 63; 28/7/21 NE 65; 29/7/21 NE 34, 38, 43–44.

⁴⁰ 27/7/21 NE 62; 29/7/21 NE 53–55.

⁴¹ 27/7/21 NE 44; 28/7/21 NE 39; 29/7/21 NE 17.

⁴² AB 294 (7th Statement at [20]); AB 292 (6th Statement at [11]).

knowledge of the nature of the drug; and (c) that the possession of the drugs was for the purpose of trafficking which was not authorised.

29 To prove the fact of possession, the Prosecution must prove that the accused was in possession of the container or package and knew that it contained something, which may later be established to be the drugs in question. There is no need to prove that the accused specifically knew that he was in possession of drugs or even something that turns out to be contraband. To prove knowledge, the accused must be shown to know not only of the existence of the thing which is later found to be a drug, but also knowledge of the specific drug. (See *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 at [32], [34] and [35]; *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 at [54].)

30 The Prosecution also relied on the presumptions of knowledge and possession under ss 18(2) and 21 of the MDA. In particular, s 18(2) provides 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.

31 To rebut the presumption under s 18(2), the accused must prove on a balance of probabilities that he did not know of the nature of the drug. The presumption may be rebutted by proving that the accused genuinely believed that he was in possession of something innocuous or of some contraband item or drug other than the specific drug in possession. He has to adduce sufficient evidence disclosing the basis upon which he claims to have arrived at that subjective state of mind (*Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 (“*Gobi*”) at [58]–[59]). However, an accused who is indifferent to what he

is carrying cannot be said to believe that the nature of the thing in his possession is something other than or incompatible with the specific drug he is in possession of. Where he is in a position to ascertain the nature of what he is carrying but chooses not to do so, he may be said to be indifferent to the nature of what he is carrying: (a) where he is in fact wholly indifferent to what he is carrying; or (b) where he knows that what he is carrying is a contraband item, but does not care to find out what that item is or is not (*Gobi* at [65] and [67]).

Whether element of possession of the Drugs made out

32 I found that possession was made out. Munusamy accepted that he was in possession of the Red Bag which contained the Drugs and did not dispute the chain of custody of the Items. He did not challenge the presumption under s 21 of the MDA.⁴³ He agreed to Sara leaving the Red Bag in the Box, he saw the Red Bag when he opened the Box to retrieve the White Package, and he knew that it contained “panas” items or stolen/illegal goods.⁴⁴

The Statements

33 I deal here with the 1st to 4th Statements, as they would be material to Munusamy’s knowledge of the contents of the Red Bag and to his defence that it was stored temporarily in the Box for the Boy to collect. Munusamy had, at the commencement of the trial, agreed that all the Statements were made voluntarily and there was no threat, inducement or promise made to him in recording the Statements.⁴⁵ At trial, Munusamy then claimed that the 1st, 2nd

⁴³ Defence’s Reply Submissions (19 October 2021) at [10]–[11].

⁴⁴ 27/7/21 NE 48–49, 57–58.

⁴⁵ ASOF at [27]–[28].

and 3rd Statements were inaccurately recorded and the 4th Statement was a fabrication.

1st Statement

34 Munusamy admitted to signing the 1st Statement but claimed that it did not capture all the questions and answers that took place in the cleaners' room between Tony and him. He claimed that Tony had also asked him where his passport and work permit were, whether there was anything in his locker, and whether he had passed anything to someone earlier; and he had answered these questions. Pertinently, for the last answer in the 1st Statement (see [8] above), he claimed that he told Tony that someone would put a bag inside the Box *and that person said that he would take it away*, but he did not check.⁴⁶ It was undisputed that the conversation between Munusamy and Tony was in English and they could understand each other.⁴⁷ Munusamy further claimed that whilst inside the CNB car at the Carpark, Tony handed the field diary (where the 1st Statement was recorded) to Nasrulhaq and it was Nasrulhaq who had asked him to sign on it; that he signed without reading it; that no one read the contents to him; and that he was never informed that he could make amendments to it.⁴⁸

35 I rejected Munusamy's assertions. I disbelieved that no one had read the contents of the field diary (containing the 1st Statement) to Munusamy before he signed it or that the statement was inaccurate as he claimed. In particular, I rejected Munusamy's claim that he had informed Tony that the man who put the bag in the Box would return to collect it.

⁴⁶ 5/5/21 NE 109, 128; 27/7/21 NE 38–40; 28/7/21 NE 41–42.

⁴⁷ 28/7/21 NE 1, 38.

⁴⁸ 5/5/21 NE 127–128; 27/7/21 NE 42–43; 28/7/21 NE 43.

36 I accepted Tony's evidence. He stated that at the Carpark, he narrated to James the conversation that he had with Munusamy in the cleaners' room and which James recorded in his field diary. Although the 1st Statement was not immediately recorded when Tony and Munusamy were in the cleaners' room, it was nevertheless a fairly contemporaneous record made shortly after they had the Conversation and Munusamy was then brought to the Carpark. Tony had explained that he did not record the Conversation immediately because he did not have a field book with him at that time. In any event, I accepted Tony's account that after James had recorded the Conversation in his field diary, James handed the diary to Tony, and Tony read it back to Munusamy and asked him if he wished to make any amendments to which Munusamy declined. Munusamy then acknowledged the contents and signed on the field diary.⁴⁹

37 What transpired in relation to the recording of the 1st Statement was corroborated by James, who was beside Tony and Munusamy at that time.⁵⁰ I had no reason to disbelieve Tony's and James' accounts. I did not believe that Munusamy would have signed on the 1st Statement without knowing its contents; and it was also not put to Nasrulhaq in his cross-examination that it was he who had asked Munusamy to sign on the 1st Statement.

2nd Statement

38 The 2nd Statement was recorded by Nasrulhaq in the CNB car, and the conversation took place in Malay. I set out the questions ("Q1" to "Q7") and answers ("A1" to "A7"), as translated into English:⁵¹

Q1: Before you were arrested earlier, what were you doing?

⁴⁹ AB 209 (Tony's Statement at [7]); 5/5/21 NE 122, 130.

⁵⁰ AB 231 (James' Statement at [6]); 5/5/21 NE 83–84.

⁵¹ 28/7/21 NE 70; AB 262–263.

- A1: Today, in the evening, I met with a Malay man who I called 'abang'. 'Abang' called me using the number '82535802', **instructed me to bring the package and meet him near the men toilet at tower two. There, I give the package to 'abang' and 'abang' place the package in a yellow bag.** After that, he walked out.
- Q2: What is in the package?
- A2: I do not know what is in the package. The Malaysian man put all the packages in my motor and he said it is ['panas'].
- Q3: Who is the Malaysian man?
- A3: I do not know who he is. I do not know his name either. I only know that he is Indian, skinny, rides a black 'LC 135' motor. Do not remember the plate number. I do not know his handphone number.
- Q4: How many times have you given 'abang' the package and did 'abang' give you anything today?
- A4: It has been 2-3 times. **Earlier, after I gave 'abang' the package, he gave me \$8,000. After that,** the Malaysian man took the money outside of the tower 2 toilet. ('Abang' is established to be Mustaqim ...)
- Q5: What are all these and whose? (Pointing to 4 black bundles wrapped with black tape, 6 black plastic bags containing granular substance, 1 clear plastic bag containing 2 bundles)
- A5: I do not know what all these things are but the Malaysian man said these are ['panas']. These things are not mine. The Malaysian man was the one who placed these things in my motor.
- Q6: What are you going to do with these things?
- A6: **All these things, an Indian Malaysian man, his name is 'Saravanan', who will call me and tell me what to do with the things.** His handphone number is '+60149471734'. He cannot enter Singapore. He is staying at 4/10 house no. 3 bukit indah. I always meet him near his house. **From what I know, he always instructs his man to bring in drugs into Singapore. That is what he told me.**
- Q7: Do you know anyone? (Subject shown a photo board of male subject)
- A7: 'Abang' is number 13.

[emphasis added in bold and italics]

39 The word “panas” in A2 and A5 was the original Malay word used by Munusamy in the 2nd Statement, although he claimed that he said “barang panas”⁵² – I found this was not material since he claimed that both words referred to stolen items. It was not disputed that “Abang” was Mustaqim, and Munusamy claimed that the “Malaysian man” was the Boy.⁵³ In relation to A7, he identified Abang as the person in a photo (“Photo 13”) from a photo board that Nasrulhaq showed him, and next to that photo, Nasrulhaq had recorded Munusamy’s answer in Malay which is “Ini ‘abang’ yang tadi saya kasi itu bungkusannya”. In court, the translator (Faiz) clarified that the translation into English should read, “This is the ‘abang’ that I gave the bundle earlier” (“the Sentence”).⁵⁴ The accuracy of this translation is not disputed.

40 Munusamy claimed the following in relation to the 2nd Statement:

- (a) He did not say to Nasrulhaq all the words which I had bolded and italicised at [38].
- (b) For A1, he told Nasrulhaq that it was Abang who had a yellow bag and Abang took out a package from that bag and handed it to him.⁵⁵
- (c) He understood Q2 to be asking about the Red Bag. When he answered A2, he used the word “package” as referring to the Red Bag.⁵⁶

⁵² 28/7/21 NE 17–18, 20.

⁵³ 23/7/21 NE 29, 39; 28/7/21 NE 76.

⁵⁴ AB 215 (Nasrulhaq’s Statement at [9]); AB 264; 6/5/21 NE 23.

⁵⁵ 28/7/21 NE 16.

⁵⁶ 28/7/21 NE 62.

(d) What he was asked in Q4 was “How many times did the ‘abang’ give you the [package]”? and not “How many times have you given ‘abang’ the package ...”⁵⁷

(e) Nasrulhaq did not point to anything when he asked Munusamy Q5.⁵⁸

(f) Munusamy accepted that it was his signature beside the Sentence next to Photo 13 but claimed that what he said was “[t]hat is the ‘abang’ who gave me the package.” Mr Lukshumayeh had put it to Faiz that what Munusamy had said was “Ini abang tadi *kasi saya* bungkusan” (meaning the Abang gave Munusamy the package), and not what was written as the Sentence next to Photo 13.⁵⁹

41 Munusamy claimed that he did not *sign* the 2nd Statement in the CNB car although it was recorded in the car; that whilst having his meal at the CNB office, Nasrulhaq had asked him to sign on the notebook (where the 2nd Statement was recorded); that the statement was not read to him before he signed it; that he was not offered the opportunity to make any amendments; and that he was very stressed at that time.⁶⁰ I disbelieved that the 2nd Statement was inaccurately recorded as Munusamy claimed at [40] above; that he only signed it at the CNB office; or that it was not read to him nor was he offered an opportunity to make any amendments. I found his claims to be an afterthought.

⁵⁷ 28/7/21 NE 18–19.

⁵⁸ 28/7/21 NE 21.

⁵⁹ 6/5/21 NE 28; 28/7/21 NE 23, 68.

⁶⁰ 28/7/21 NE 11–12, 69–71.

42 I accepted Nasrulhaq’s testimony that he had recorded all the questions posed to Munusamy and Munusamy’s responses; that he had then read the contents of the 2nd Statement back to Munusamy; that Munusamy had affirmed the statement to be true and correct and that he did not wish to make any amendments; and that Munusamy had then signed the statement in the CNB car before the CNB officers and Munusamy proceeded to the CNB office at Woodlands Checkpoint.⁶¹ Munusamy could speak and understand Malay and he could read some Malay. Pertinently, Munusamy’s assertion that he only signed the 2nd Statement at the CNB office when Nasrulhaq told him to do so, was not put to Nasrulhaq in his cross-examination although Nasrulhaq had testified that it was signed in the CNB car.⁶²

43 An examination of the contents of the 2nd Statement and Munusamy’s explanations as to the alleged inaccuracies therein, also showed that his assertions could not be believed.

44 First, his claim that the “package” referred to in Q2 and his answer to it was the Red Bag, was unconvincing and did not make sense.

(a) Munusamy claimed that he understood Q2 about a “package” pertained to the Red Bag because Nasrulhaq was only referring to the Red Bag when he asked questions about a “package” (or “bungkusan” in Malay).⁶³ But this was not borne out by Q2 itself (which Munusamy did not challenge as inaccurate). Pertinently, it was Munusamy who first referred to and used the word “bungkusan” in A1, which he agreed was

⁶¹ AB 215–216 (Nasrulhaq’s Statement at [9]–[10]); 6/5/21 NE 100.

⁶² 27/7/21 NE 53; 28/7/21 NE 36, 70.

⁶³ 28/7/21 NE 61.

not a reference to the Red Bag.⁶⁴ It can be seen from Q2 that Nasrulhaq was asking a follow-up question about the “bungkusan” or “package” that Munusamy had mentioned in A1; this was attested to by Nasrulhaq.⁶⁵ That Q2 pertained to a “package” that was referred to in A1 by Munusamy can also be seen from Q3 where Nasrulhaq then asked about a “Malaysian man” which Munusamy had mentioned in A2.⁶⁶

(b) It was only when the court asked Munusamy whether he had understood that the “package” in Q2 referred to the Red Bag because Nasrulhaq had pointed to the Red Bag when asking that question, that he then claimed that Nasrulhaq had pointed to the back of the CNB car towards the boot (where he claimed the Red Bag was placed) when Q2 was posed.⁶⁷

(c) I found Munusamy’s claim that Nasrulhaq had pointed to the back of the car when Q2 was posed to be a fabrication and an attempt to explain how he understood that Q2 referred to the Red Bag. It was never put to Nasrulhaq in his cross-examination that he had pointed to anything (let alone the back of the car) when Q2 was asked. In fact, Mr Lukshumayeh had put to Nasrulhaq that he had pointed to the rear or the boot of the CNB vehicle when he asked Q5.⁶⁸

(d) Munusamy’s assertion above and his instructions to Mr Lukshumayeh (for the purposes of cross-examining Nasrulhaq) were

⁶⁴ 28/7/21 NE 17, 61–62.

⁶⁵ 23/7/21 NE 33–35.

⁶⁶ 6/5/21 NE 91.

⁶⁷ 28/7/21 NE 62.

⁶⁸ 6/5/21 NE 92; 23/7/21 NE 60–61.

also inconsistent. Munusamy stated in examination-in-chief that no one pointed to anything when Q5 was asked.⁶⁹ This was inconsistent with the position that Mr Lukshumayeh had earlier put to Nasrulhaq at least twice. Then in cross-examination, Munusamy claimed that Nasrulhaq had pointed to the back of the CNB car when he asked Q2 *and* Q5 and had pointed “a few times” while they were conversing in the car.⁷⁰

(e) Munusamy’s inability to give a coherent account of when Nasrulhaq had pointed to the rear or boot of the CNB car showed that his testimony could not be believed and that he was attempting to justify why he had answered A2 the way he did.

(f) I accepted Nasrulhaq’s testimony that it was only at Q5 that he pointed to the items in the Red Bag which were all placed in the Duffel Bag at the centre console of the CNB car and not in the boot.⁷¹

45 Second, I disbelieved that Munusamy had not said the words in bold and italics in A1, A4 and A6. There was no reason for Nasrulhaq to have fabricated Munusamy’s answers. In particular, Munusamy claimed that he did not say the first sentence in A6, whereas Mr Lukshumayeh had put it to Nasrulhaq that Munusamy had answered the first sentence as “[a]ll these things belonged to an Indian Malaysia man, his name is Saravanan” but did not then say that Sara “would call me and tell me what to do with the things”.⁷² Mr Lukshumayeh also put to Nasrulhaq that Munusamy had used the word “barang” (meaning “thing” or “item”) instead of “drugs” (or “dadah” in the original Malay version) in the

⁶⁹ 28/7/21 NE 21.

⁷⁰ 28/7/21 NE 64, 66–67.

⁷¹ 23/7/21 NE 39–41.

⁷² 23/7/21 NE 43; 28/7/21 NE 22.

last sentence of A6.⁷³ When asked to clarify whether Munusamy had said the last sentence in A6 except that he used the word “thing” or “item” and not “drugs”, he initially confirmed that position but later said that he never uttered the entire sentence at all.⁷⁴ Munusamy’s inability to make up his mind as to what he had or had not told Nasrulhaq in the 2nd Statement showed up his lack of credibility in relation to what happened during the statement taking.

46 Third, Munusamy claimed that the Sentence recorded next to Photo 13 was wrong, in that he said that Abang gave him the package (“kasi saya” in Malay) whereas Nasrulhaq had recorded it as Munusamy gave Abang the package (“saya kasi”).⁷⁵ I disbelieved that the Sentence was wrongly recorded. Munusamy did not dispute that he signed next to the Sentence which was a very short one and he could read simple Malay.

47 In the round, I found that Munusamy’s claims in relation to how the 2nd Statement was recorded and its inaccuracies were not made out. I was satisfied that the 2nd Statement was accurately recorded.

3rd Statement

48 The 3rd Statement was recorded in Malay by Nasrulhaq at the CNB office at the Woodlands Checkpoint (see [12]–[13] above) as follows:⁷⁶

Q8: How much did you give ‘abang’ before you were arrested at the men toilet of tower two?

A8: I only remembered one package. I am not sure.

⁷³ 23/7/21 NE 64.

⁷⁴ 23/7/21 NE 65–67; 28/7/21 NE 23.

⁷⁵ 28/7/21 NE 68.

⁷⁶ AB 216 (Nasrulhaq’s Statement at [13]–[14]); AB 223–224, 263.

49 Munusamy claimed that what Nasrulhaq asked in Q8 was “How many bungkus did Abang hand over to you in the toilet”, and his answer in A8 was “I remember I ... was only given one bungkus”.⁷⁷

50 I disbelieved that the 3rd Statement was inaccurately recorded. I accepted Nasrulhaq’s testimony that after recording the 3rd Statement he read it back to Munusamy in Malay; that Munusamy affirmed the statement to be true and correct; and that Munusamy did not wish to make any changes to the statement. In fact, Mr Lukshumayeh did not put to Nasrulhaq in cross-examination that Q8 was wrongly recorded, but only claimed that Munusamy’s reply in A8 was “one package, I’m not sure” and that *A8 was not in answer to Q8*.⁷⁸ I found that Munusamy’s claim that Q8 was actually about how many packages the Abang had handed to Munusamy was an attempt to align to his earlier assertion that his answer in A1 (in the 2nd Statement) was about Abang handing a package to him; as otherwise Q8 and A8 (as reflected in the 3rd Statement) would not make sense in light of his claim pertaining to A1.

4th Statement

51 Nasrulhaq attested that the 4th Statement was recorded at about 9.30 pm in the CNB car when he, Tony, James and Munusamy were on their way to CNB Headquarters (see [14] above). Munusamy claimed that this never happened as he was sleeping in the CNB car at that time, and that the 4th Statement was thus fabricated.⁷⁹ He had signed on the 4th Statement at the CNB office and whilst having his meal. He claimed that Nasrulhaq asked him to sign on a notebook but he did not know what he was signing and did not bother to read its contents

⁷⁷ 28/7/21 NE 24.

⁷⁸ 23/7/21 NE 46.

⁷⁹ 23/7/21 NE 51, 62–63; 28/7/21 NE 10, 12, 78.

or ask Nasrulhaq about it. He claimed that at that time he was very worried and stressed as he had by then discovered that drugs were found on him.⁸⁰

52 I rejected Munusamy's assertions above and found that the 4th Statement was a record of the conversation between Nasrulhaq and Munusamy when they were in the CNB car. This was corroborated by Tony who was in the same car and who had given Nasrulhaq instructions to further question Munusamy. Tony attested that he did not pay attention to the conversation between Nasrulhaq and Munusamy in the CNB car but he knew that Nasrulhaq was at that time recording a statement from Munusamy.⁸¹ Whilst Mr Lukshumayeh had questioned Tony at some length regarding the recording of the 4th Statement, he did not suggest to Tony that there was no such recording taking place in the CNB car or that there was no conversation with Munusamy because he was asleep. Pertinently, in the ASOF filed at the commencement of the trial, Munusamy had stated that the 4th Statement (as with all the Statements) had been given voluntarily. Hence, I agreed with the Prosecution that Munusamy's claim in court that it was fabricated was an afterthought.

Whether presumption of knowledge rebutted

53 I turn to the element of knowledge. Having considered all the evidence, I found that Munusamy had failed to rebut the presumption of knowledge under s 18(2) of the MDA. Munusamy claimed that he thought the Red Bag contained illegal items or stolen goods which were handphones because of the July 2017 Incident. He also claimed that he was merely helping Sara to store the stolen

⁸⁰ 28/7/21 NE 10, 12–13, 76–77.

⁸¹ AB 211 (Tony's Statement at [16]); 5/5/21 NE 99, 119–120.

goods temporarily as the Boy would return to collect the Red Bag. However, I found that his assertions were not credible.

July 2017 Incident

54 Munusamy claimed that he believed the Red Bag contained stolen handphones because of the July 2017 Incident where Sara had asked for his help to store stolen handphones. He also claimed that when he saw the Red Bag for the first time at around 1.40pm on 26 January 2018, that it looked like a packet of the same size and was tied in the same way as the package that was stored in the Box in July 2017 and hence the Red Bag did not seem suspicious to him.⁸²

55 I disbelieved Munusamy's account for the basis of his belief that the Red Bag contained stolen handphones. I found that he had made up the July 2017 Incident to support his purported belief. He did not show any evidence of the occurrence of the July 2017 Incident and that incident was never mentioned in any of the Statements despite him having had multiple opportunities to do so. I found his claim that he thought the Red Bag contained handphones or stolen handphones was an afterthought which emerged only at the trial.

56 In the 2nd Statement when Nasrulhaq asked Munusamy what the items in the Red Bag were (in Q5), he did not reply that he thought they were handphones but instead said that he did not know what they were. Munusamy accepted that his answer in A5 was correctly recorded.⁸³ Indeed, Munusamy claimed that his answer in A2 also pertained to the Red Bag (which I had disbelieved). Even if that were true, he similarly failed to mention that he thought the Red Bag contained handphones but instead said that he did not know

⁸² 29/7/21 NE 34–35, 54–55.

⁸³ 28/7/21 NE 21–22.

what was in the package. In both A2 and A5, he merely said that he was told by the Boy that they were “panas” items. According to Munusamy, when the 2nd Statement was recorded, he did not know that the Red Bag contained drugs,⁸⁴ hence there was no reason why he could not have informed Nasrulhaq that he thought it contained handphones.

57 Munusamy claimed that he did not mention to Nasrulhaq in the 2nd Statement that he thought the items in the Red Bag were handphones because he “was not asked” about it. But this was untrue, given that Q5 was a specific question about what the contents of the Red Bag were, and going by Munusamy’s case so was Q2. Munusamy could even say that he thought they were “panas” items. I found that Munusamy had failed to mention that he thought the contents of the Red Bag were handphones because he had no real basis for that belief at that time.

58 In the 5th Statement, Munusamy again failed to mention that he thought the items in the Box were handphones. Munusamy confirmed that the contents of the 5th Statement were accurate.⁸⁵ His explanation that he did not inform IO Yang at the recording of the 5th Statement of this was because he already came to know by then that they were drugs, was unconvincing. By that time, he knew he was facing a capital charge for drug trafficking and that the Red Bag contained drugs as he had seen the contents.⁸⁶ Yet he did not explain that he believed the Red Bag contained handphones, despite mentioning in the statement both Sara’s and the Boy’s involvement in the Red Bag (of the Drugs).

⁸⁴ 28/7/21 NE 32–34.

⁸⁵ 28/7/21 NE 5–6.

⁸⁶ 28/7/21 NE 7–8, 18.

59 In the 6th Statement, Munusamy had narrated about how Sara had instructed him on 26 January 2018 to collect \$8,000 to pass to the Boy. He did not further mention that Sara had also asked for his assistance to store stolen items in his Box on that day, much less that he agreed to this because he thought the items were handphones due to the July 2017 Incident. Instead, he reiterated that he did not know what was in the Red Bag.⁸⁷

60 Likewise, in the 7th Statement, Munusamy narrated at some length about how he came to know Sara and helped Sara to collect money in the past, and how he collected \$8,000 for Sara on 26 January 2018. Despite mentioning how he had assisted Sara to collect money, he did not mention that he had also assisted Sara to store stolen items or handphones previously or in July 2017. Specifically, he stated in the 7th Statement that he did not know who the items in the Red Bag belonged to, which he acknowledged in court was inconsistent with his claim that they belonged to Sara.⁸⁸

61 I disbelieved Munusamy that he failed to mention that the Red Bag and items therein belonged to Sara or that he thought it contained handphones because he was “emotional” or “confused” during the recording of the Statements.⁸⁹ After all, he was able to narrate and describe in some detail his relationship with Sara and provide information on Sara, what he did for Sara in the past, and how he came to collect \$8,000 for Sara on 26 January 2018.

62 His failure to mention in the Statements of what he thought the Red Bag contained or of the July 2017 Incident led me to conclude that he had made up

⁸⁷ AB 292 (6th Statement at [10]).

⁸⁸ 29/7/21 NE 11.

⁸⁹ AB 294 (7th Statement at [20]); 29/7/21 NE 7, 11–12, 29–30.

a story that he thought the Red Bag contained handphones and of the July 2017 Incident to support his purported belief. Indeed, he initially claimed that Sara had expressly told him that the Red Bag contained handphones, then changed his evidence to state that Sara did not tell him as such and that he had merely assumed they were handphones because of the July 2017 Incident.⁹⁰

Failure to check the contents of the Red Bag

63 On the contrary, I found that Munusamy knew what was in the Red Bag. First, based on his own account, he claimed that Sara wanted his help to place “panas” items in the Box, and he knew that “panas” items were illegal items or stolen goods. Second, he knew that Sara was involved in illegal or criminal activities.⁹¹ Third, I found that Munusamy knew that Sara was involved in drug activities. In the 2nd Statement (at A6), Munusamy stated that Sara had told him that Sara “always instructs his man to bring drugs into Singapore”. I had earlier found that the 2nd Statement was accurately recorded. In court, Munusamy stated that Sara was not a drug supplier which I disbelieved and it was inconsistent with the 2nd Statement. I found that he was trying to disassociate himself from being incriminated in any drug dealings.⁹²

64 Yet, Munusamy did not check the contents of the Red Bag when he saw it at about 1.40pm on 26 January 2018; this is despite that he was told that it contained “panas” items but was not told what these “panas” items were. He admitted he could and should have checked the contents of the Red Bag and that he did not care what was in it despite knowing that it contained illegal or stolen

⁹⁰ 27/7/21 NE 61–62; 29/7/21 NE 2, 53–54.

⁹¹ 29/7/21 NE 24–25.

⁹² 29/7/21 NE 55.

items and that Sara was involved in criminal activities.⁹³ Munusamy's claim that he did not give much thought as to why he would help Sara to keep stolen goods,⁹⁴ was unconvincing. I inferred that he did not care to check the contents of the Red Bag because he knew what was in it. At the very least, given his indifference, he could not be said to believe that the nature of the items in the Red Bag was something other than the specific drug that was in it (see [31] above). Hence the presumption under s 18(2) of the MDA was not rebutted.

65 Indeed, Munusamy's failure to find out the contents of the Red Bag is to be contrasted with what he claimed he had done during the July 2017 Incident. Assuming the July 2017 Incident occurred (which I had rejected), Munusamy claimed that he had insisted on checking what was in the "bungkus" that Sara had intended to store in the Box then. Munusamy's deliberate failure to check the contents of the Red Bag must also be looked in the light that on 26 January 2018, Sara did not mention what the "panas" items were but Munusamy merely *assumed* they were handphones.⁹⁵

Whether the Red Bag would be retrieved by the Boy

66 I also rejected Munusamy's claim that Sara had informed him that the Red Bag would be stored in the Box temporarily and would be collected by the same person (the Boy) who put it there. I found this claim to be a fabrication. Munusamy did not mention in any of the Statements that the Red Bag or items therein would be collected by someone later.

⁹³ 29/7/21 NE 24–26.

⁹⁴ 27/7/21 NE 62; 29/7/21 NE 35.

⁹⁵ 29/7/21 NE 2, 53–54.

67 In the 1st Statement, Munusamy mentioned that a person put a plastic bag inside the Box but did not go further. Munusamy knew as much, which was why in court he then claimed that the 1st Statement had omitted certain words that he had said to Tony, namely that “the person said that he would take it away” and which I had disbelieved (see [34]–[37] above).

68 In the 2nd Statement at A5, Munusamy stated that it was the Boy who placed the Red Bag in his Bike. Munusamy then went on to say (in A6) that Sara would call him *and tell him what to do with the things*; and again reiterated in the 4th Statement that *Sara did not say anything with regard to the items in the Box but that he was to “wait for [Sara] to call”*. His statements directly contradicted his claim in court that Sara had informed him that the Boy would return to retrieve the items after placing them in the Box. Again, in court Munusamy sought to challenge the accuracy of the 2nd and 4th Statements, which I had rejected. I found that he was attempting to refute their contents because he knew it would run contrary to his defence in court that Sara had said that the Boy would return to retrieve the Red Bag.

69 As for the 5th Statement, he again did not mention that the Boy would return to collect the Red Bag although he had mentioned the Boy having left it in the Box. By this time, Munusamy knew he was facing a very serious charge of drug trafficking and yet he omitted to inform IO Yang of such a material point, if indeed it were true. I disbelieved Munusamy’s explanation that he could have forgotten to mention this because by that time he knew that it contained drugs and he was very “emotional”.⁹⁶ He could explain in that statement who had put the drugs in the Box, he could even say that the Box was not locked, and he could narrate about collecting money and passing it to Sara and even

⁹⁶ 29/7/21 NE 29–30.

explain Sara's relationship to the Boy. Even if Munusamy had forgotten to mention in the 5th Statement that the Boy would retrieve the Red Bag because he was at that time very emotional, he had opportunities to do so in the 6th, 7th and 8th Statements, where he narrated matters pertaining to Sara, the Boy and even Mustaqim, and where the Red Bag or its contents were also mentioned. Yet he never once mentioned that the Boy would return to retrieve the Red Bag.

70 Munusamy's failure to mention that the Boy would retrieve the Red Bag from the Box, in any of his Statements and until he testified in court, led me to conclude that his story in this regard was made up.

Whether the Box of the Bike was locked or unlocked

71 That Munusamy's claim that the Boy would return to retrieve the Red Bag was a fabrication was supported further by the fact that the Box was locked when Nasrulhaq first attempted to open it after Munusamy's arrest.

72 During the trial, Munusamy claimed that he had left the Box of the Bike unlocked when he arrived at the Carpark on 26 January 2018 and went to work. Munusamy claimed that the Boy had locked the Box after he put the "panas" item (the Red Bag) inside it, and Munusamy went to the Bike at about 1.40pm to unlock it for the Boy to be able to retrieve the Red Bag. Hence after taking out the White Package from the Box, he closed the lid of the Box but did not latch the lid to the Box much less lock the Box.⁹⁷

73 A relevant issue was thus the mechanics of locking the Box. During an examination of the Bike and Box in the course of the trial, the following were

⁹⁷ 30/7/21 NE 25.

undisputed.⁹⁸ Essentially, the Box is not necessarily *locked* when it is *closed* or when the lid is *latched*. Whether the Box can be locked depends on the position of the keyhole of the Box, and one must insert the key into the keyhole to change the keyhole position. The following were observed:

- (a) For the Box to be *completely closed*, some pressure must be applied to push the lid of the Box downwards until it is *latched* to the Box.
- (b) For the Box to be locked after the lid is latched to it, the keyhole must be in a vertical position, either before or when the lid of the Box is latched to the Box or by turning the keyhole from a horizontal to vertical position after latching the lid to the Box.
- (c) The Box is *not locked* even if the lid is closed and latched, if the keyhole is in a horizontal position. In this scenario, the Box can be opened by unlatching the lid and lifting the lid up. The lid is unlatched by pressing the red button (“the Button”) above the keyhole.
- (d) If the Box is *locked* (ie, the lid is latched with the keyhole in a vertical position) it cannot be opened by merely unlatching the lid or pressing the Button. To open the Box, it must first be unlocked by inserting the key into the keyhole to turn the keyhole to the horizontal position.

74 The Prosecution claimed that Munusamy had locked the Box after he took out the White Package and that his assertion that he left the Box unlocked was made up to support his defence that the Boy would return to collect the Red

⁹⁸ 30/7/21 NE 7–16.

Bag.⁹⁹ I found Munusamy's claim that he left the Box unlocked (after retrieving the White Package) to allow the Boy to retrieve the Red Bag to be a fabrication and contradicted by the evidence.

75 Nasrulhaq attested that the Box was locked because when he first attempted to pry open it, he found it locked; and thus he had to insert a key into the keyhole, turn the keyhole and then open the Box. I accepted Nasrulhaq's testimony. This is supported by James and Tony who attested that they saw Nasrulhaq use a key to open the Box.¹⁰⁰ Nasrulhaq would not have needed to use the key to turn the keyhole if the Box was indeed unlocked.¹⁰¹ If the Box was unlocked but latched, it could be open just by pressing the Button and lifting the cover of the Box. But that was not even Munusamy's case. Munusamy claimed that after retrieving the White Package, he had closed the lid down "lightly" and *did not even latch* the lid to the Box. If that were true, Nasrulhaq would have had even less difficulty opening the Box because (and it was undisputed) little strength would be required to do so as the lid could be easily lifted off the Box with one finger.¹⁰²

76 Mr Lukshumayeh suggested that Nasrulhaq could have accidentally pushed the lid down and caused the Box to be locked, when he first attempted to pry open the Box.¹⁰³ I rejected this suggestion as it was without basis. It was unlikely that Nasrulhaq would have pushed the lid *downwards* (which would also have required some pressure to latch the lid to the Box and cause it to lock)

⁹⁹ 28/7/21 NE 80.

¹⁰⁰ AB 209 (Tony's Statement at [9]); AB 231 (James' Statement at [7]); 5/5/21 NE 76.

¹⁰¹ 6/5/21 NE 50–51, 80–81; 23/7/21 NE 14–15.

¹⁰² 30/7/21 NE 16–17, 25.

¹⁰³ 23/7/21 NE 15; 30/7/21 NE 31.

whilst attempting to move the lid *upwards* to open the Box. In any event, if Munusamy claimed that he had not even latched the Box, Nasrulhaq would have had little, if any, difficulty lifting the lid off the Box. Yet, Nasrulhaq had attested that when he first attempted to lift the lid, he could not.

77 Next, for Munusamy to unlock the Box at around 1.40pm, he would have had to turn the keyhole from vertical to horizontal position. If the keyhole had been in a horizontal position, the Box could have been opened merely by unlatching the lid. The keyhole would have remained in the same position as Munusamy left it, as there would have been no reason for it to be turned back to vertical position, given his claim that he did not even latch the Box let alone lock it after he removed the White Package.

78 However, the photographs taken of the Box showed otherwise – that the Box was locked when Munusamy was arrested and first brought to the Bike. Tony attested that before Nasrulhaq attempted to open the Box, he took a photo (Photo 68) of the Box.¹⁰⁴ Photo 68 showed the lid of the Box to be closed and the keyhole in a vertical position. Tony attested that after Nasrulhaq had unlocked and opened the Box, he took another photo (Photo 69). Photo 69 showed the key inserted into the keyhole, which is in a horizontal position. The Defence did not challenge Tony’s evidence on the condition of the Box and keyhole before and after Nasrulhaq inserted the key to unlock and open the Box.

79 In support of his claim that the Box was unlocked when he first parked the Bike at the Carpark and also after he retrieved the White Package and closed the Box, Munusamy claimed that he *always* left the Box unlocked as it would

¹⁰⁴ AB 209 (Tony’s Statement at [9]).

be easier for Customs officers to do checks when he entered Singapore.¹⁰⁵ However, his testimony that he always left the Box unlocked was inherently inconsistent. In court, Munusamy claimed that after he had parked the Bike at the Carpark, he opened the Box by *unlocking* it to take out his personal belongings and then he closed the Box without locking it.¹⁰⁶ He also stated that he would keep the Box unlocked *unless there was an item inside the Box*.¹⁰⁷ Strangely, Munusamy's claim that he would always leave the Box unlocked to facilitate checks by Customs officers did not seem to apply to another box at the front of the Bike which he claimed he would lock.¹⁰⁸

80 I thus found that, contrary to his claim, Munusamy had locked the Box after he had retrieved the White Package. The evidence, particularly Photo 68, showed that the Box was locked at the time the CNB officers sought to search the contents. This would thus demolish his defence that the Boy (or someone else) would return to retrieve the Red Bag. If Munusamy had locked the Box, no one else would have been able to open it to retrieve the Red Bag.

81 It also bears mentioning that Munusamy's credibility in relation to the mechanics of the Box left much to be desired. He claimed that he did not know that he could open the Box (if latched but the keyhole was in horizontal position) merely by pressing the Button without using a key, and he claimed that he only knew this during the examination conducted of the Box at trial. He further claimed that he did not know that if the lid was latched to the Box and it was locked (because the keyhole is in vertical position) that it could not be opened

¹⁰⁵ 27/7/21 NE 57; 28/7/21 NE 49.

¹⁰⁶ 27/7/21 NE 55–56.

¹⁰⁷ 28/7/21 NE 54.

¹⁰⁸ AB 294 (7th Statement at [21]).

without using a key (to turn the keyhole to the horizontal position).¹⁰⁹ This was unbelievable and contradicted by his own evidence that he had to use a key to unlock the Box (at about 1.40pm on 26 January 2018) after he claimed the Boy had accidentally locked it. Also, Munusamy had had the Bike for around six months prior to his arrest, he rode it regularly to work, and I had found that he would sometimes lock the Box (see [79] above). I found that he attempted to feign ignorance of the mechanics of the Box to support his story that he closed the Box without latching so as to enable the Boy to open it subsequently.

Possession of the Drugs for the purpose of trafficking

82 I was also satisfied that the Prosecution had proved beyond a reasonable doubt that Munusamy was in possession of the Drugs for the purpose of trafficking. The Drugs were not for Munusamy's consumption and Munusamy himself stated that he did not consume diamorphine.¹¹⁰ Prosecution submitted that in any event, the intention to traffic could be inferred from the sheer amount of the Drugs (diamorphine) found in Munusamy's possession.¹¹¹

83 The definition of "traffic" under s 2 of the MDA means "to sell, give, administer, transport, send, deliver or distribute" or to offer to do anything as such. The Court of Appeal in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*") held (at [108]–[110]) that Parliament's intention was to target those involved in the supply and distribution of drugs, and it was not simply concerned with addressing the movement of drugs *per se*, but its movement along the supply chain towards end-users. Hence a person who holds drugs intending only to return them to the person who

¹⁰⁹ 30/7/21 NE 13–14.

¹¹⁰ 29/7/21 NE 27–28, 46.

¹¹¹ PCS at [63]–[65].

originally deposited them with him would not ordinarily come within the definition of “trafficking” and would not be in possession of the drugs “for the purpose of trafficking”. The important question is whether the accused’s acts in relation to the drugs were part of the process of moving the drugs along a chain in which they will eventually be distributed to the final consumer.

84 I rejected Munusamy’s claim that he was merely a “bailee” of the Red Bag (and Drugs) in the sense that he did not have in possession the Drugs for the purpose of trafficking.¹¹² I had rejected his claim that he was told that the Boy would return to collect the Red Bag. Although the Prosecution was not required to prove that Munusamy was moving the drugs closer to their ultimate consumer (*Ramesh* at [114]), I add that what Munusamy did or did not reveal in the Statements showed that he was not a mere “bailee” as in *Ramesh*, but that he was involved in the “movement of drugs along a supply chain towards end-users”. He knew that Sara could not enter Singapore as Sara was involved in criminal or illegal activities, and by his account in the 2nd and 4th Statements he was awaiting Sara’s instructions on what to do with the Red Bag. I had earlier found no evidence to support that the Red Bag was meant to be returned or moved back to Sara (or the Boy). Munusamy’s act of storing the Red Bag and Drugs for Sara thus constituted part of the process of moving the Drugs along a chain to eventually be distributed to their final customer.

85 Even if I accepted Munusamy’s evidence that he was informed that the Boy would return to collect the Red Bag (which I did not), I would have found that Munusamy was facilitating the process of the distribution of the Drugs along a chain and that he was aware of this. His case, at the highest, is that he was told that the Boy would return to collect the Red Bag and he was not told

¹¹² Defence’s Submissions (13 September 2021) at [57].

where the Boy would take it to. His case was not that the Boy would collect the Red Bag *and return it to Sara*.¹¹³ On the contrary, he claimed that when he met the Boy, the Boy told him that he would hand over the \$8,000 to Sara in Malaysia first before returning to Singapore to retrieve the “panas” items (see [26] above). This suggested that the Boy was not intending to return the Red Bag to Sara, as otherwise there was no reason why he could not have taken the Red Bag together with the \$8,000 to bring to Malaysia for Sara. Hence, there was no evidence to show that the Drugs, even if collected by the Boy, were intended to be returned to the owner (namely Sara, according to Munusamy). Munusamy agreed that the contents of the Red Bag belonged to Sara, that Sara was the Boy’s boss (see the 5th Statement), and he claimed that it was Sara who told him on 26 January 2018 that Sara was sending the Boy to put a package in the Bike Box.¹¹⁴ In the 2nd and 4th Statements, Munusamy stated that Sara would tell him what to do with the items in the Red Bag and that he was to wait for Sara’s phone call. Munusamy thus knew that the Boy was merely Sara’s agent. Hence, Munusamy could not avail himself of the “bailee” defence.

Conclusion

86 To conclude, I found that the elements of the charge against Munusamy were made out and the Prosecution had proved its case beyond a reasonable doubt. I thus convicted Munusamy on the charge.

IO Wong’s conduct during trial

87 At this juncture, I make some observations about the conduct of IO Derek Wong (“IO Wong”) at trial. IO Wong was seated behind the Prosecution

¹¹³ 29/7/21 NE 38, 44–45.

¹¹⁴ 29/7/21 NE 11.

in court, as it is usual for the investigating officer to be present in court (and to which Mr Lukshumayeh had no objections). IO Wong admitted that he signalled to Nasrulhaq on two occasions when the latter was testifying. First, he picked up the field diary and showed it to Nasrulhaq when the latter was being asked about whether the handover of the Duffel Bag was recorded. Second, he had mouthed the word “diamorphine” towards Nasrulhaq when the latter was asked by the court what the term “heroin” referred to.

88 I rejected IO Wong’s explanation that he did the above “subconsciously”. As he admitted, he was anxious when the question regarding the chain of custody of the exhibits was raised by Mr Lukshumayeh and he was concerned about the integrity of the custody of the exhibits. IO Wong admitted that he raised the field diary to “point the witness” which must mean pointing Nasrulhaq to answer the question that was posed to him.¹¹⁵ Whilst IO Wong’s actions may not have been pre-meditated, it was clear that they were intentional. Indeed, IO Wong initially denied that these two incidents occurred claiming he could not recall,¹¹⁶ and it was only after the video footage of the courtroom was viewed by the parties and the court that he admitted to them.

89 Additionally, IO Wong admitted that after Nasrulhaq had finished testifying for the day on 6 May 2021, he had spoken to Nasrulhaq. Mr Lukshumayeh stated that this conversation lasted about three to four minutes, although IO Wong stated that he did not know for how long but that what he had done was merely to remind Nasrulhaq to return to court on the next occasion¹¹⁷ (as Nasrulhaq’s testimony had not been completed yet).

¹¹⁵ 6/8/21 NE 19.

¹¹⁶ 27/7/21 NE 15–18.

¹¹⁷ 27/7/21 NE 12, 13, 16, 33.

90 I found that IO Wong’s conduct did not affect Nasrulhaq’s credibility or the veracity of his testimony nor did it prejudice Munusamy’s case. First, Nasrulhaq had already given substantial evidence in court before he stood down on 6 May 2021. He had completed his examination-in-chief and cross-examination had begun. Second, when the court asked Nasrulhaq which drug “heroin” referred to, as Nasrulhaq had used the term “heroin” in his testimony, this was after his cross-examination had completed. But it is undisputed that “diamorphine” is commonly known as “heroin”. Third, it was undisputed that the chain of custody of the Red Bag and exhibits therein were recorded in the field diary, which the Prosecution had shown a copy to Mr Lukshumayeh subsequently.¹¹⁸ In any event, the Defence did not dispute the chain of custody of the drug exhibits nor that the Red Bag was found to contain the Drugs. Munusamy’s defence was that he thought the Red Bag contained handphones.

91 It goes without saying that IO Wong’s conduct was inappropriate and unacceptable. Attempting to prompt a witness who is testifying, even on a point which may turn out to be immaterial or inconsequential, is improper and unbefitting of an enforcement officer. Whilst I found IO Wong’s conduct to be unacceptable, it did not prejudice Munusamy’s case. However, the same might not be said in other instances, where the prompting of or the interfering with a witness may be prejudicial to an accused’s case and cause a miscarriage of justice. I had directed the Public Prosecutor to raise the matter to the attention of the CNB to take appropriate measures and to ensure that officers who are involved in investigations are properly briefed and made aware of the boundaries of their conduct in relation to cases pending in court.

¹¹⁸ 6/8/21 NE 11.

Sentence

92 Given the quantity of drugs, the prescribed punishment under s 33(1) of the MDA, read with the Second Schedule to the MDA, is death. Section 33B of the MDA gives the court the discretion to impose a sentence of life imprisonment (with caning), provided the accused satisfies the requirements under s 33B(2)(a) and receives a certificate of substantive assistance from the Public Prosecutor.

93 The Prosecution did not dispute that Munusamy was a courier, and I was satisfied that this was the case. However, it did not issue Munusamy with a certificate of substantive assistance. As Munusamy could not avail himself of the alternative sentencing regime under s 33B of the MDA, I therefore passed the mandatory death sentence on him.

Audrey Lim
Judge of the High Court

Chin Jincheng, Chong Yong and Benedict Chan Wei Qi (Attorney
General's Chambers) for the Prosecution;
Mahadevan Lukshumayeh (Lukshumayeh Law Corporation) and
Josephine Iezu Costan (David Nayar and Associates) for the accused.
