IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 12

Criminal Appeal No 21 of 2019

Between

Abdoll Mutaleb bin Raffik

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 8 of 2020

Between

Mohd Noor bin Ismail

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 32 of 2018

Between

Public Prosecutor

And

(1) Mohd Zaini bin Zainutdin

(2) Mohd Noor bin Ismail
(3) Abdoll Mutaleb bin Raffik

JUDGMENT

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Procedure and Sentencing — Charge — Alteration]
[Criminal Procedure and Sentencing — Statements — Voluntariness]
[Criminal Procedure and Sentencing — *Voir dire*]

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v
Public Prosecutor and another appeal

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Court of Appeal — Criminal Appeals No 21 of 2019 and 8 of 2020
Sundaresh Menon CJ, Tay Yong Kwang JCA, Belinda Ang Saw Ean JCA
18 August 2020, 20 January 2021, 4 August 2022

26 April 2023 Judgment reserved.

Tay Yong Kwang JCA (delivering the judgment of the court):

Introduction

1 These are appeals against the decision of the High Court Judge ("the Judge") in HC/CC 32/2018 ("CC 32"). CC 32 was a joint trial of three accused persons, namely, Mohd Zaini bin Zainutdin ("Zaini"), Mohd Noor bin Ismail ("Noor") and Abdoll Mutaleb bin Raffik ("Mutaleb"). The three accused persons faced the following charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"):

(a) Zaini and Noor were each charged under s 7 of the MDA read with s 34 of the Penal Code (Cap 224, 2008 Rev Ed) ("Penal Code") for importing, in furtherance of a common intention between them, not less than 12 bundles of granular/powdery substance which was found to contain not less than 212.57g of diamorphine.

(b) Mutaleb was charged under s 7 read with s 12 of the MDA for abetting by engaging in a conspiracy with Zaini, Noor, one male known as "Apoi" and others, to import into Singapore not less than 12 bundles of granular/powdery substance which was found to contain not less than 212.57g of diamorphine.

2 The Judge convicted all three accused persons on their respective charges. Zaini and Noor were sentenced to life imprisonment with 15 strokes of the cane each as the Judge found that the conditions under s 33B of the MDA were satisfied. Mutaleb was sentenced to death as he could not fulfil the conditions under s 33B of the MDA in that he was found not to be a mere courier and he was not issued a certificate of substantive assistance.

3 Zaini did not appeal. Mutaleb appealed against his conviction and sentence in CA/CCA 21/2019 ("CCA 21"). Noor appealed against his conviction and sentence in CA/CCA 8/2020 ("CCA 8").

4 The Judge's grounds of decision on conviction for all three accused persons are set out in *Public Prosecutor v Mohd Zaini bin Zainutdin and others* [2019] SGHC 162 (the "*1st GD*"). The decision on sentence in respect of Mutaleb and Zaini can be found in the *1st GD*, while the decision on sentence in respect of Noor is found in *Public Prosecutor v Mohd Zaini bin Zainutdin and others* [2020] SGHC 76 (the "*2nd GD*") because Noor was sentenced later.

5 This court heard CCA 21 and CCA 8 on separate occasions because several issues arose, such as the need for Noor's allegations on appeal to be remitted to the Judge for the taking of further evidence as well as the issue of amendment of Mutaleb's charge. For the reasons set out below, we dismiss Noor's appeal and allow Mutaleb's appeal against conviction

on the original capital offence charge but substitute a charge of attempted possession of drugs against him.

Brief overview of CC 32

Facts

6 The facts have been set out comprehensively in the 1st GD. We would therefore state only the facts which are relevant for the appeals.

7 In a statement recorded on 19 September 2015 at 2.35pm, Zaini stated that on 10 September 2015, Noor, a man known as "Apoi" and him packed 15 bundles of diamorphine into Zaini's car, a Honda Civic bearing registration number JQR 6136 (the "Car") in Malaysia.

8 On the morning of 11 September 2015, Noor drove the Car from Malaysia to Singapore with Zaini as a passenger. They reached the Tuas Checkpoint sometime after 10am. Central Narcotics Bureau ("CNB") officers searched the Car and found 13 bundles of drugs in the Car's hidden compartments. Both men were arrested. A 14th bundle was recovered from the Car subsequently on 21 September 2015. These bundles were found to contain 6,434.8g of a granular or powdery substance. On analysis, the substance was found to contain not less than 249.63g of diamorphine (collectively, the "Drugs"): *1st GD* at [6].

9 Shortly after his arrest, Zaini received phone calls from Apoi and these were recorded by the CNB officers. During these phone calls, Zaini claimed to be at a casino and asked Apoi "how long [he would] have to wait roughly". Neither Apoi nor Zaini mentioned the name "Mutaleb" during the conversations.

10 When questioned by CNB officers, Zaini gave information about what he was supposed to do with the drugs. It was disputed whether Zaini informed the CNB officers that he was to deliver the drugs to Mutaleb at Chai Chee: *1st GD* at [7].

11 From about 6.00pm to 8.00pm, Zaini was instructed by SSSgt Ika Zahary Bin Kasmari to call Mutaleb. Three monitored and recorded phone calls were then made from Zaini's mobile phone to Mutaleb's mobile phone in the presence of CNB officers. Through the phone calls, Mutaleb and Zaini made an appointment to meet on the night of 11 September 2015 at the car park of Block 2 Chai Chee Road (the "Location") for Zaini to pass Mutaleb "thirteen" in exchange for a total of "thirty nine thousand Singapore money". During their phone conversations, neither Mutaleb nor Zaini said expressly that "thirteen" referred to 13 bundles of drugs.

12 Following this, two CNB officers went to the Location in the Car to wait for Mutaleb with a white plastic bag containing 13 bundles of mock drugs. The two CNB officers decided to hand over only 11 bundles, withholding two bundles, so as to delay the transaction and allow the arresting officers to move in to arrest Mutaleb.

13 They arrived at about 9.05pm. Mutaleb arrived at the Location about 35 minutes later. He accepted the plastic bag containing the mock drugs from the CNB officers in the Car. Shortly thereafter, Mutaleb dropped the plastic bag while he was walking away and he was then arrested by CNB officers in the vicinity.

14 Mutaleb was searched by the CNB officers and $1,600 was found in the left pocket of his shorts. The CNB officers subsequently searched Mutaleb's

unit at Block 23 Chai Chee Road and recovered four bundles of cash amounting to $34,950 in a haversack between the side table and the bed, along with three bundles of cash amounting to $2,050 in a pair of grey pants. The three amounts of cash added up to $38,600.

15 In an oral statement made by Zaini on 11 September 2015 at about 8.30pm, he said that he knew Mutaleb as "Boy Amy" or "Abang" and that the 13 bundles of drugs were to be passed to Abang. In a later statement recorded on 19 September 2015 at 2.35pm, Zaini explained that there was only one person from Singapore whom Apoi called Abang and that was Mutaleb. Zaini also knew Mutaleb as "Rafi".

The charges

16 The respective charges against the three accused persons are set out below. The charge against Zaini read:

> … on 11 September 2015, at about 10.54am, at Tuas Checkpoint, Singapore, together with one [Noor], and in furtherance of the common intention of you both, did import into Singapore **not less than twelve (12) bundles containing 5,520.4 grams of granular/powdery substance which was analysed and found to contain not less than 212.57 grams of diamorphine**, a Class A controlled drug listed in the First Schedule to the [MDA], without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the MDA read with Section 34 of the [Penal Code], and which offence is punishable under Section 33(1) of the MDA, or you may alternatively be liable to be punished under Section 33B of the MDA.
>
> [emphasis in original]

17 The charge against Noor read:

> on 11 September 2015, at about 10.54am, at Tuas Checkpoint, Singapore, together with one [Zaini], and in furtherance of the common intention of you both, did import into Singapore **not**

> **less than twelve (12) bundles containing 5,520.4 grams of granular/powdery substance which was analysed and found to contain not less than 212.57 grams of diamorphine**, a Class A controlled drug listed in the First Schedule to the [MDA] without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under Section 7 of the MDA read with Section 34 of the [Penal Code], and which offence is punishable under Section 33(1) of the MDA, or you may alternatively be liable to be punished under Section 33B of the MDA.
>
> [emphasis in original]

18 The charge against Mutaleb read:

> … between 10 September 2015 and 11 September 2015, in Singapore, did abet by engaging in a conspiracy with one [Zaini], one [Noor], one male known as "Apoi", and others, to do a certain thing, *to wit*, to import into Singapore a Class A controlled drug listed in the First Schedule to the [MDA], and in the pursuance of that conspiracy and in order to the doing of that thing, on 11 September 2015 at about 10.54am at Tuas Checkpoint, Singapore, the said [Zaini] and [Noor] did import into Singapore **not less than twelve (12) bundles containing 5,520.4 grams of granular/powdery substance which was analysed and found to contain not less than 212.57 grams of diamorphine**, without any authorisation under the MDA or the Regulations made thereunder, and you have thereby committed an offence under Section 7 read with Section 12 of the MDA, punishable under Section 33(1) of the MDA, or may alternatively be liable to be punished under Section 33B of the MDA.
>
> [emphasis in original]

19 It can be seen from the above that the eventual charges that were brought against the accused persons were in respect of 12 bundles of drugs. The Judge also noted this at [85] of the *1st GD*, observing that a total of 14 bundles were recovered while Zaini stated in his statement that Apoi had initially told Mutaleb that about 12 bundles of drugs would be delivered. The eventual arrangement was for Zaini to deliver 13 bundles to Mutaleb and the CNB officers handed over only 11 bundles of mock drugs to Mutaleb. The Judge found (at [86] of the *1st GD*) that these discrepancies were ultimately not material as it was not a

situation where Mutaleb rejected the delivery on the basis of the number of bundles that he was to receive or did actually receive. Further, an additional bundle would not have made a difference as to whether the delivered drugs crossed the threshold for capital punishment.

The parties' cases at trial

The Prosecution's case

20 In respect of Zaini and Noor, the Prosecution contended that Zaini's oral testimony, which was consistent with his statements in respect of his and Noor's roles, demonstrated that: (a) Apoi had given Zaini the bundles of Drugs which were recovered on 11 September 2015; (b) Zaini knew that the bundles of Drugs contained diamorphine; (c) Zaini and Noor had packed the Drugs into the Car; and (d) Zaini and Noor had, in furtherance of their common intention, imported the Drugs into Singapore.

21 The Prosecution submitted that an adverse inference should be drawn against Noor pursuant to s 291(3) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") as he had elected to remain silent when called upon to give evidence in his defence at the close of the Prosecution's case. It was contended that Noor's decision to remain silent meant that he accepted the Prosecution's case that: (a) he had assisted Zaini in packing and transporting the Drugs and; (b) he knew that the bundles of Drugs were diamorphine.

22 It was also argued in the alternative that the presumption of possession under s 21 of the MDA and the presumption of knowledge under s 18(2) of the MDA applied against both Zaini and Noor and they had not adduced any evidence to rebut these presumptions.

23 In respect of Mutaleb, during the reading of the Prosecution's Opening Statement on 23 October 2018, the Prosecution omitted the words "and others" when describing its case against Mutaleb:

> It is the Prosecution's case that Mutaleb had engaged in a conspiracy with Zaini, Noor and the male known as "Apoi" to import drugs and, in pursuance of that conspiracy, Zaini and Noor imported not less than 12 bundles of drugs containing not less than 212.57 grams of diamorphine.

This omission was noted by Mutaleb's counsel, who raised the issue to the Judge. The Judge asked the Prosecution whether it wished to amend either the charge or its Opening Statement. The Prosecution did not wish to amend either document and submitted that the evidence would demonstrate that there was indeed a conspiracy involving the three accused persons, "Apoi" and "other persons".

24 The Prosecution's case against Mutaleb was that the evidence, particularly Zaini's, showed that Mutaleb had engaged in a conspiracy with Zaini, Noor, Apoi and others to import drugs. First, Mutaleb knew that Zaini was coming from Malaysia into Singapore on 11 September 2015. This could be inferred from: (a) the communications between Zaini and Mutaleb; as well as (b) Zaini's evidence that he had overheard a phone conversation between Apoi and Mutaleb on the night of 10 September 2015, during which Mutaleb allegedly warned Apoi about coming to Singapore with the Drugs.

25 Second, Zaini had clearly identified Mutaleb as the intended recipient of the Drugs in his statements. However, he resiled subsequently from this position at the trial.

26 Third, the recorded phone conversations between Mutaleb and Zaini and the fact that Mutaleb was found with $38,600 on him pointed irresistibly to the

conclusion that Mutaleb was the only intended recipient of the Drugs. The $38,600 corresponded closely to the amount of $39,000 that was allegedly due for the Drugs.

27 Fourth, Mutaleb's evidence that he did not know why he was handed the mock drugs at the Location was contradicted by the evidence of the CNB officers who were present at the scene.

28 Finally, Mutaleb's inconsistent statements demonstrated that he was a witness unworthy of credit.

Zaini's defence

29 On the first day of the trial, Zaini indicated that he wished to plead guilty to the charge against him. However, as required under s 227(3) of the CPC, no plea of guilt was recorded by the Judge as the Prosecution had not led evidence to prove its case. During the trial, Zaini maintained that the charge against him had been made out but gave evidence to the effect that his involvement in the offence was restricted to the transportation of the drugs.

Noor's defence

30 Similar to Zaini, Noor also indicated that he wished to plead guilty. However, unlike Zaini, Noor did not give evidence and elected to remain silent when called upon to give evidence in his defence. He also raised no objection as to the voluntariness of the statements which were made by him in the course of the investigations.

31 In his closing submissions, Noor contended that he had no actual knowledge that the bundles in the Car contained Drugs. He claimed that he thought they contained cigarettes or electronic cigarettes. Nevertheless, he

accepted that it was "likely" that the presumption of knowledge under s 18(2) of the MDA would apply against him as he drove the Car into Singapore knowing that the bundles were in the Car. Noor also emphasised that his role in the drug transaction was that of a "mere courier".

Mutaleb's defence

32 Mutaleb's case was a complete denial that he was involved in any conspiracy. His arguments focused largely on the lack of reliability in Zaini's evidence against him. He asserted that Zaini had changed his evidence during the trial several times, particularly (a) what Zaini had supposedly overheard of the alleged conversation between Apoi and Mutaleb on the night of 10 September 2015; and (b) Apoi's instructions as to what Zaini should do with the Drugs upon reaching Singapore. The doubts in respect of Zaini's evidence affected the issue, among others, of whether Mutaleb was really the intended recipient of the drugs that Zaini had been instructed to deliver.

33 It was argued, in the alternative, that any conspiracy that involved Mutaleb was abandoned by the time of Zaini's and Noor's arrest. This was because new instructions had been given by Apoi to Zaini to await further instructions instead of delivering the drugs to Mutaleb.

34 Mutaleb also submitted that the form of the charge against him was problematic. First, the particulars of Mutaleb's charge stated that he had conspired with Zaini and Noor but the charges against Zaini and Noor did not allege any conspiracy between them to import drugs into Singapore. Second, Mutaleb's charge referred to his conspiring not only with Zaini, Noor and Apoi but also with several unknown "others". However, no evidence was adduced by the Prosecution of "others" involved in the alleged conspiracy. Further, as

Mutaleb did not know Apoi, it followed that there could not have been any conspiracy between Mutaleb and Apoi.

The decision of the trial Judge

Zaini

35 The Judge found that Zaini's evidence was consistent across his statements and his oral testimony that Apoi had passed him the 13 bundles of drugs that were recovered from the Car and that he knew that the bundles contained heroin. Further, the relevant presumptions in ss 21 and 18(2) of the MDA operated against Zaini and so his possession of the Drugs and his knowledge of the nature of the Drugs were presumed. As no attempt was made to rebut these presumptions, the Judge was satisfied that the charge against Zaini was made out: *1st GD* at [14].

36 The Prosecution had issued a Certificate of Substantive Assistance ("CSA") to Zaini for having assisted the Central Narcotics Bureau ("CNB") substantively in disrupting drug trafficking activities within and outside Singapore. The Judge found that Zaini was a courier and he therefore qualified for the alternative sentencing regime under s 33B(1)(*a*) of the MDA. Accordingly, the Judge sentenced Zaini to life imprisonment and 15 strokes of the cane: *1st GD* at [93].

Noor

37 Noor's conviction was founded on Zaini's evidence. An adverse inference was also drawn against Noor for not testifying in his own defence at the trial. Further, the presumptions in ss 21 and 18(2) of the MDA applied in his case: *2nd GD* at [17].

38 Zaini's evidence was that Apoi passed the Drugs to him and he knew they consisted of heroin. Noor assisted him in packing the Drugs into the Car and both of them, in furtherance of their common intention, imported the Drugs into Singapore. This evidence was not challenged substantially by Noor's defence counsel: *2nd GD* at [18] and [19].

39 Noor's statements, while insufficient to show his culpability on their own, supported the inference that he was culpable and went against his assertion that he thought that the bundles contained illegal cigarettes or that he did not know that the bundles contained drugs: *2nd GD* at [21] and [29].

40 Zaini's evidence, together with Noor's statements, indicated that Noor brought the Drugs into Singapore. Noor's knowledge of the Drugs can also be inferred from his involvement and his statements: *2nd GD* at [32]. Noor had to have known that at least three of the bundles in this case were not cigarettes. He was at Zaini's house where he saw Zaini wrapping clear plastic packets containing what seemed to him like brown fertiliser. There were three packets on the table and Noor wanted to help Zaini wrap them. Zaini declined his help and wrapped the packets himself: *2nd GD* at [26].

41 Noor confessed to helping Zaini hide drugs in the Car and following him to deliver them to Singapore on about four previous occasions. Noor described the bundles involved as "black bundles of drugs" and "clear packets of heroin" on his own accord: *2nd GD* at [27].

42 As the evidence presented against Noor called for an explanation by him and Noor decided not to testify in court, the court was entitled to draw an adverse inference against him, including the ultimate adverse inference of guilt: *2nd GD* at [37] and [38].

43 Further, the presumptions of possession and knowledge under ss 21 and 18(2) of the MDA respectively applied against Noor. He was therefore presumed to have possessed the Drugs and to have known of their nature. No evidence was adduced to rebut these presumptions. These, combined with Noor's act of driving into Singapore with the Drugs, fulfilled the elements of the charge of importing the Drugs into Singapore: *2nd GD* at [42]–[43].

44 Like Zaini, Noor was issued a CSA and the Judge also found that Noor was a courier. Noor therefore qualified for the alternative sentencing regime under s 33B(1)(*a*) of the MDA. Noor declined to say anything in mitigation and the Prosecution did not make any submissions on sentence. Noor was spared the death penalty and was sentenced instead to life imprisonment and 15 strokes of the cane, with the imprisonment backdated to the date of his arrest: *2nd GD* at [46]–[49].

Mutaleb

45 The Judge concluded that Mutaleb was a party to an agreement for at least 12 bundles of drugs to be brought into Singapore to be transferred to him in return for payment and that the Drugs were imported into Singapore pursuant to the conspiracy. These findings were premised on the following inferences of fact which the Judge drew from the evidence before him (*1st GD* at [89]):

(a) Mutaleb and Zaini were known to each other, both having stated in their statements that Zaini had previously delivered drugs to Mutaleb.

(b) Zaini and Noor entered Singapore on 11 September 2015 with the intention of delivering at least 12 bundles of drugs.

(c) Mutaleb knew that Zaini was coming into Singapore for illegal purposes, as borne out by their text messages.

(d) When Zaini called Mutaleb on 11 September 2015, Mutaleb broached the issue of delivery, asking Zaini, without being prompted, how many bundles were to be delivered. Zaini replied "thirteen" and Mutaleb confirmed that he would pay him $39,000 in exchange.

(e) Mutaleb intended to meet Zaini at the Location even though neither party had specified in their phone conversations where the exact meeting place was to be. Mutaleb had $1,600 on his person when he arrived at the Location and another $37,000 stored in bundles in a haversack and in a pair of pants in his flat.

(f) The drugs in question were diamorphine.

46 The evidence which the Judge relied upon in drawing these inferences of fact comprised the following:

(a) Zaini's evidence that he had overheard a telephone conversation between Mutaleb and Apoi on 10 September 2015 during which they discussed the drug delivery: *1st GD* at [33]–[35].

(b) The recorded telephone conversations between Zaini and Mutaleb from which it was evident that Zaini and Mutaleb had a "shared understanding" that Zaini would be meeting Mutaleb to deliver 13 bundles of drugs in exchange for $39,000: *1st GD* at [38]–[41].

(c) Zaini's implication of Mutaleb in his statements, which the Judge found to be truthful and corroborated by the objective evidence against Mutaleb: *1st GD* at [49].

(d) Telephone and text message records showing that Mutaleb knew that Zaini was coming into Singapore on 11 September 2015 and that he was keeping track of Zaini's movements: *1st GD* at [69].

(e) Mutaleb's conduct in the evening of 11 September 2015 which indicated that he knew that there was a drug shipment coming in from Malaysia and that it was intended for him: *1st GD* at [70].

(f) The total amount of money that was found in Mutaleb's possession, *ie*, $38,600, was substantial and corresponded closely to the amount that was to be paid for the bundles of drugs that Zaini was delivering. The money was also neatly packed and readily accessible in Mutaleb's flat: *1st GD* at [74].

(g) It was incriminating that material portions of Mutaleb's statements corroborated the version of events that Zaini had put forward in his statements: *1st GD* at [77].

47 The Judge also found that Mutaleb's alternative defence (that any conspiracy involving Mutaleb had been abandoned) could not have succeeded. There was no evidence that the original plan had been abandoned and even if there had been such a change in plans, the conspiracy would have been revived when the delivery of the mock drugs was made to Mutaleb: *1st GD* at [83].

48 Finally, the Judge held that there was no issue with the charge against Mutaleb. Any defence which raised a reasonable doubt that there was a conspiracy with Noor or Zaini or with Apoi would successfully defeat the charge, even if nothing was shown that Mutaleb did not conspire with anyone else. It was not his defence that there was any conspiracy with anyone else to do anything. His defence was a straight denial: *1st GD* at [28].

49 As for the defence's argument that the Prosecution did not lead evidence about "others" involved in the conspiracy, the addition of the word "others" merely left open the possibility of others having been involved in the conspiracy involving Mutaleb. It caused Mutaleb no prejudice: *1st GD* at [29]. In any event, the Prosecution argued that there was the possible involvement of another person named Erry who was apparently involved in the packing of the drugs into the Car, according to a further statement by Zaini.

50 The fact that the charges against Zaini and Noor did not allege any conspiracy between them to import drugs into Singapore was not fatal. The charges against Zaini and Noor were not incompatible or inconsistent with the charge against Mutaleb of conspiring with them and others: *1st GD* at [30].

51 Mutaleb was found not to be a mere courier. He was also not issued a CSA. As Mutaleb did not qualify for the the alternative sentencing regime under s 33B of the MDA, he was sentenced to suffer the mandatory death penalty: *1st GD* at [92]–[93].

The parties' cases on appeal

52 Only Noor and Mutaleb appealed against their respective convictions and sentences. Zaini did not appeal.

Noor's case on appeal

53 On appeal, Noor was initially unrepresented. In his written skeletal arguments dated 10 July 2020, Noor raised five primary points:

(a) First, Noor submitted that the Investigation Officer assigned to his case, namely Assistant Superintendent Prashant Sukumaran ("IO Prashant"), had asked Noor to admit that he knew that Zaini had brought

drugs into Singapore, failing which "[Noor] would be sentenced to hang and Zaini would be released".

(b) Second, Noor contended that "for the two years while [he] was in remand not even once did a counsel ever come to meet [him] for an interview". It was only on the day before Noor had to "attend the High Court" that "counsel came to meet [Noor] and told [Noor] not to fight the case".

(c) Third, Noor alleged that when his counsel finally came to see him, he advised Noor that he would be released if he admitted that he knew that Zaini had brought drugs into Singapore. Conversely, if he did not make such an admission, he would be "sentenced to hang". This resulted in Noor "request[ing] the IO to retake [his] statement at the 11th hour" when he was about to attend the trial.

(d) Fourth, Noor submitted that when it was his turn to give evidence during the trial, his counsel did not allow him to take the stand. His counsel informed him that everything that was important had already been put forth to the court by Zaini.

(e) Finally, Noor emphasised that he "[did] not know anything" as Mutaleb dealt with Zaini and not Noor. Moreover, he could not have known that the bundles contained drugs as Zaini had not paid him to transport the bundles to Singapore and he would not have "risk[ed] [his] life for free by following [Zaini]".

54 In essence, Noor contended that his counsel gave improper advice and visited him inadequately. He also alleged that there were threat, inducement and

promise ("TIP") from IO Prashant. He also claimed that he had no knowledge of the Drugs.

Mutaleb's case on appeal

55 Mutaleb made the following arguments on appeal:

(a) The Judge conceded that the case against Mutaleb was not without difficulties and shortcomings (*1st GD* at [90]). These "difficulties and shortcomings" were sufficient to raise a reasonable doubt as to Mutaleb's guilt.

(b) The Prosecution chose not to amend the charge against Mutaleb to remove the references to "Apoi" and/or "and others" despite having been given an opportunity to do so by the Judge. At the trial, no evidence was led on the identity of "Apoi" or the involvement of "others". In fact, the evidence suggested that Mutaleb did not know who "Apoi" was and therefore could not have been engaged in a conspiracy with him.

(c) Zaini had provided multiple versions of the events that took place on 10 September 2015 and what he was supposed to do when he arrived in Singapore on 11 September 2015. There was also a possibility that Zaini's implication of Mutaleb was motivated by his desire to obtain a CSA. Accordingly, Zaini was not a credible witness and little or no weight should be attached to his evidence against Mutaleb.

(d) The other evidence which the Judge relied on to convict Mutaleb was also wanting. In the recorded phone conversations between Zaini and Mutaleb, there was no mention of drugs at all. No weight could be placed on the fact that Mutaleb knew where the Location was, as it was undisputed that Mutaleb had purchased drugs from Zaini previously.

> What was disputed was whether he intended to buy drugs from Zaini on that particular day (*ie*, 11 September 2015). Further, Mutaleb had only $1,600 on his person when he was arrested, which was short of the $39,000 that was due to be paid for the Drugs. Finally, the inculpatory portions of Mutaleb's statements were unreliable and ought not to be given any weight.

Developments since the filing of the appeal

56 As set out above, there were several issues raised which could not be resolved immediately at the appeals. The first concerned Noor's allegations against his former defence counsel, Mr Nicholas Aw ("Mr Aw") and Mr Mahadevan Lukshumayeh ("Mr Mahadevan") as well as against IO Prashant. The second was in respect of the framing of Mutaleb's charge.

Developments in respect of Noor's allegations

57 On 14 August 2020, the Prosecution filed CA/CM 22/2020 ("CM 22") seeking leave to adduce evidence in the form of affidavits from Noor's former defence counsel and IO Prashant. At the first hearing of these appeals on 18 August 2020, we allowed CM 22 and directed that the affidavits be served on Noor so that he could respond to them. The Prosecution filed and served the affidavits accordingly.

58 In his written response to the affidavits dated 31 August 2020, Noor reiterated essentially his earlier allegations against Mr Aw and Mr Mahadevan and against IO Prashant. Noor acknowledged that Mr Aw had made seven interview bookings with him while he was in remand but contended that there were "two or three occasions" when he waited in the Singapore Prisons interview room but Mr Aw and Mr Mahadevan did not show up. Noor also

suggested that the court: (a) retrieve the recordings from the interview room; and (b) take evidence from the interpreters who were assigned to interpret Noor's evidence during the trial in order to ascertain the veracity of his allegations against his former defence counsel.

59 In the light of the above, we sent a letter dated 30 September 2020 to the Prosecution directing it to do the following, among other things:

(a) Obtain and verify attendance records from Prisons;

(b) Verify with Prisons as to the existence of recordings of interviews between Noor and his former defence counsel and also between Noor and IO Prashant; and

(c) Approach the interpreter(s) who were present during the trial and ask them to respond to Noor's allegations that his former defence counsel prevented him from testifying and to the allegations of improper advice given.

60 The Prosecution responded on 18 December 2020 and explained that the Prisons records confirmed that either one or both of Noor's former defence counsel interviewed him on seven occasions and Noor's allegations on this issue were therefore unsubstantiated. Mr Aw was present on seven occasions while Mr Mahadevan was present on five occasions.

61 In an affidavit, an Assistant Commander of the Singapore Prisons Service explained that while there was close-circuit television coverage in the interview rooms, there was no audio recording. In any case, the video recordings had been overwritten due to the passage of time.

62 In relation to the advice given by Noor's former defence counsel during the trial, the interpreters explained in their affidavits that counsel's instructions or advice were communicated directly between counsel and Noor. They did not communicate through the interpreters.

63 During the hearing on 20 January 2021, we rejected Noor's allegations pertaining to the inadequacy of visits by his former defence counsel. Prisons' records showed that Noor's former defence counsel made a number of attempts to visit him and did visit him on a number of occasions. However, we remitted CCA 8 to the Judge under s 392 of the CPC for him to take additional evidence on the veracity of Noor's allegations of improper advice given by his former defence counsel before and at the trial, as well as the veracity of Noor's allegations of TIP by IO Prashant.

64 The Judge's decision in respect of the remittal hearing is reported as *Public Prosecutor v Mohd Noor bin Ismail* [2022] SGHC 66 (the "*Remittal Judgment*"). We set out the Judge's findings in the *Remittal Judgment* in greater detail below.

Developments in respect of the framing of Mutaleb's charge

65 At the first hearing on 18 August 2020, we expressed our concern in respect of the Prosecution's case against Mutaleb and how the abetment by conspiracy charge against Mutaleb was framed. There was difficulty with the evidence adduced to prove that there was a conspiracy among Mutaleb, Zaini, Noor and Apoi to import the 12 bundles of drugs. In particular, the Prosecution's case on Apoi's role troubled us because: (a) the recorded phone calls between Zaini and Apoi did not give the slightest hint that a drug delivery was about to take place insofar as Apoi was concerned; and (b) there was no real objective evidence on the role of Apoi in the alleged conspiracy, save for Zaini's evidence

where he claimed that he overheard a phone conversation on speaker-phone between Apoi and Mutaleb on 10 September 2015. The evidence of Apoi's involvement in the conspiracy was wanting because although Zaini's evidence on this was pivotal, his evidence vacillated on a number of issues.

66 We therefore directed the Prosecution to consider whether it would be appropriate to amend the charge against Mutaleb and if so, the Prosecution was to identify the provision in the CPC under which the amendment was to be made and to set out the draft amended charge and the legal position on whether the amendment should be permitted. Mutaleb's counsel was also directed to furnish a written response within four weeks thereafter.

67 On 15 September 2020, the Prosecution invited this court to exercise its powers under s 390(4) of the CPC to alter the original charge against Mutaleb to one of attempted possession for the purpose of trafficking. For convenience, we will refer to the original charge against Mutaleb during the trial as the "Trial Charge".

68 On 13 November 2020, we directed the Prosecution to address the following issues in relation to the amendment of the Trial Charge to one for attempted possession for the purposes of trafficking:

> i. The Prosecution has suggested that the court may amend the charge to one of possession for the purpose of trafficking. In this connection, the parties are to address the court on these specific issues:
>
> > 1. Was the element concerning the purpose of trafficking an issue in the original trial?
> >
> > 2. If the answer to the previous question is "no", does the Prosecution contend that the course of the trial and the evidence would nonetheless have been the same if the accused had faced the charge of possession for the purpose of trafficking instead of the original charge of conspiring to import the drugs?

> 3. Did the Prosecution at any time in the trial put it to the appellant that he was in possession or attempting to possess the drugs for the purpose of trafficking?
>
> ii. If the court considers that the element concerning the purpose of trafficking was not directly in issue in the original trial, then it is likely that it would not be empowered or inclined to convict on the amended charge without a fresh trial. Is an order that the matter be remitted for a fresh trial permissible given the following consideration?
>
> 1. The accused should in the court's view have been acquitted of the original charge of conspiracy and this would be a trial on a fresh charge that could have been advanced initially but in the exercise of prosecutorial discretion was not.
>
> 2. This might entail a breach of Art 11 and the protection against double jeopardy and/or may constitute an abuse of process by the Prosecution.
>
> iii. If the court concludes that a remittal is not a permissible course in this case, is it open to the court to convict the appellant on a charge of possession *simpliciter* since the elements of knowledge and intention to possess were in issue in the original trial?
>
> iv. If the answer to question (iii) is “no" then is the appropriate order to acquit the appellant?
>
> v. The parties are encouraged to discuss their position and to advise the court in the event they have an agreed position on some or all of these questions. Written submissions are not required and parties may address the court on the above issues at the oral hearing.

69 In response to the above letter, the Prosecution in its letter of 19 January 2021 sought to amend the Trial Charge to one of attempted possession without the element of trafficking (the “Proposed Charge”):

> …
>
> 2. The Prosecution has reviewed the matter. Based on the records before the court, there is sufficient evidence to constitute a case of attempted possession of 13 bundles containing 5,973.7g of granular/powdery substance analysed and found to contain not less than 233.73g of diamorphine which the accused has to answer.

> 3. The Prosecution thus invites this Honourable Court to exercise its powers under s 390(4) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) to alter the original charge under s 7 read with s 12 of the Misuse of Drugs Act (Cap 184, 2008 Rev Ed) ("MDA") to one of attempted possession of the drugs under s 8(a) read with s 12 of the MDA.
>
> 4. For the avoidance of doubt, the Prosecution's earlier invitation to the court to proceed on an altered charge of attempted possession for the purpose of trafficking in our Further Submissions dated 15 September 2020 is superseded.

70 The Proposed Charge against Mutaleb reads:

> You … on 11 September 2015, in Singapore, did attempt to have in your possession 13 bundles containing 5,973.7g of granular/powdery substance found to contain not less than 233.73g of diamorphine, without any authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") or the Regulations made thereunder, and you have thereby committed an offence under Section 8(a) read with Section 12 of the MDA and punishable under Section 33(1) of the MDA.

71 At the hearing on 20 January 2021, we reserved our decision on the Prosecution's proposed amendment of the Trial Charge to the Proposed Charge against Mutaleb.

Issues to be determined on appeal

72 Against the backdrop of the above developments, there are four key issues to be determined:

(a) Whether Noor's allegations against his counsel and TIP by IO Prashant are made out ("**Issue 1**").

(b) Whether Noor's substantive appeal should be allowed ("**Issue 2**").

(c) Whether the Trial Charge against Mutaleb is made out ("**Issue 3**").

(d) Whether the Trial Charge against Mutaleb should be amended ("**Issue 4**").

The Remittal Judgment

73 Before turning to our decision in this appeal, we first consider the Judge's decision in the *Remittal Judgment*. In summary, the Judge found that:

(a) the conduct of Mr Aw did not breach the standards expected and that there was no real possibility of a miscarriage of justice; and

(b) there was no inducement, threat or promise made by IO Prashant. Even if any threat was made, there was no assertion that it led to the involuntary giving of any statement. This allegation was therefore immaterial and irrelevant.

Noor's allegations against his former defence counsel

74 Noor was represented by counsel at the remittal hearing. Noor made three broad complaints against his former counsel at the trial: (a) not giving proper advice; (b) not advising on the decision to testify and not allowing Noor to take the stand at the trial; and (c) insufficient visits. The Judge noted that the standard in determining whether there was inadequate legal assistance is the Court of Appeal's decision in *Mohammad Farid bin Batra v Public Prosecutor and another appeal and other matters* ("*Mohammad Farid*") [2020] 1 SLR 907 (at [134]) which laid down a two-step approach. Firstly, assess the previous counsel's conduct of the case and secondly, assess whether such conduct affected the outcome of the case in that it resulted in a miscarriage of justice: *Remittal Judgment* at [34]. Applying the test in *Mohammad Farid*, the Judge dismissed all three complaints made by Noor.

75 In relation to the allegation of not giving proper advice, the Judge found that Mr Aw failed to keep contemporaneous records of his meetings with Noor, which breached the Professional Conduct Rules ("PCR"). However, a breach of the PCR may not always amount to egregious or flagrant conduct leading to a real possibility of a miscarriage of justice: *Remittal Judgment* at [43]. After looking through the attendance notes and the written instructions, the Judge found that Mr Aw had advised Noor properly on his options and did not pressurize Noor into admitting that he had knowledge of the drugs. A strategic decision was made after an assessment that contesting the charge at the trial would entail a risk of an adverse finding. The Judge noted that deference and latitude would be given to counsel in the conduct of the case and the court would not question legitimate and reasonable strategic or tactical decisions. Ultimately, the determination made by Mr Aw was one based on a proper assessment of the law and evidence. Mr Aw's considerations were not wanting as there was evidence from his perspective pointing to the possible guilt of Noor: *Remittal Judgment* at [57]–[72].

76 In relation to the allegation of not allowing Noor to testify, the Judge found that Noor had made an informed decision, from advice given by Mr Aw, not to take the stand as he might undermine his own case if mistakes were made. Further, the Judge was inclined to believe Mr Aw's version of the events that Noor had chosen not to take the stand after witnessing Zaini being cross-examined in court: *Remittal Judgment* at [77]. Importantly, the Judge had also confirmed with Noor twice during the trial on 22 November 2018 that he did not wish to testify. If there had been any question on Noor's mind on the appropriate course of action, one would have expected him to have raised this in the open courtroom: *Remittal Judgment* at [80]. Even if Mr Aw did advise Noor not to take the stand, that could not be faulted as the standard applied is not whether the advice was objectively correct but whether the conduct fell so

far short of what was expected that it could be described as flagrant or egregious incompetence or indifference and there was a real possibility that a miscarriage of justice would result: *Remittal Judgment* at [81].

77 In relation to the allegation of insufficient visits, the Judge found that Mr Aw's failure to meet Noor for approximately ten months after being appointed as his Defence Counsel was somewhat lacking: *Remittal Judgment* at [84]. The failure to provide regular updates to the client on the progress of the matter regarding what was said at the various pre-trial conferences may potentially also amount to a breach of the PCR. Nevertheless, Mr Aw's overall conduct of the case could not fairly be described as involving flagrant or egregious incompetence or indifference: *Remittal Judgment* at [85].

Allegations of TIP by IO Prashant

78 Noor argued that although he was threatened or induced by IO Prashant, he did not give in but he was placed in a "dilemma". The Judge found that this meant that the TIP did not even operate on Noor's mind. The fact that he was in a "dilemma" had no legal significance and this "dilemma" would also not amount to oppression: *Remittal Judgment* at [94]–[96].

79 Noor also alleged that IO Prashant informed him on 21 September 2015 that they were made aware of the 14th bundle following a scan of the vehicle. Noor claimed that the results of the scan were already available much earlier and IO Prashant had lied to him. Apparently, the purpose of this lie was so that IO Prashant could try to deceive Noor into giving an explanation as to why there was this additional bundle in Zaini's car: *Remittal Judgment* at [98]. The Judge did not find IO Prashant's actions to be improper as it was the investigator's job to sift through and eliminate possibilities to determine reasonable suspicion of guilt. He had offered an incomplete account to Noor in order to allow Noor to

give his own account as to why there was the additional bundle in Zaini's car. In any event, Noor denied knowledge of the nature of the drugs during the recording of the statements: *Remittal Judgment* at [99]–[101].

80 The Judge also did not accept that IO Prashant made any exhortation or threat that Noor would be sentenced to hang if he did not admit that he knew that Zaini had brought drugs into Singapore. This was corroborated by evidence of the interpreter present: *Remittal Judgment* at [102]. In any case, IO Prashant would be simply laying out the consequences of the offence with the death penalty being the possible punishment. Even if this were a TIP, it did not operate on Noor's mind: *Remittal Judgment* at [108].

Our decision

Issue 1: Whether Noor's allegations against his former defence counsel and TIP by IO Prashant are made out

81 In respect of Noor's allegations against his former defence counsel, the standard to meet in order to establish inadequate legal assistance is a high one, as explained in *Mohammad Farid*. For the reasons given by the Judge, we do not think that Noor even came near to meeting that standard. Nevertheless, we repeat our observations in *Mohammad Farid* at [151] that "it is good practice for counsel and their assistants to record instructions from their clients and, where necessary, have the notes signed by them as confirmation. This will protect the lawyers against unwarranted allegations and help them present their side of the story especially when the allegations are made long after the trial and memory has become less reliable".

82 In respect of the allegations of TIP against IO Prashant, we agree with the Judge's finding that Noor had acknowledged that the TIP, if any, did not

operate on his mind. In the circumstances, we see no reason to disagree with the Judge's decision in the Remittal Judgment which is well supported by the evidence. We therefore dismiss Noor's allegations against his former defence counsel and IO Prashant.

Issue 2: Whether Noor's substantive appeal should be allowed

83 With Noor's allegations against his former defence counsel and IO Prashant dismissed, he has no real defence before the Court. The statutory presumptions in the MDA on knowledge under s 18(2) and on possession under s 21 operated against Noor. Having opted to remain silent during the trial, Noor had no substantive evidence to rebut these presumptions. In light of his decision not to testify, the Judge found rightly that an adverse inference should be drawn that Noor knew that the bundles contained drugs.

84 Without derogating from this, while Noor argued that he thought that the bundles in past transactions contained illegal cigarettes and hence had to be hidden, this defence could not apply to at least three bundles in the present case as he saw Zaini wrapping "clear plastic packets containing what seemed like brown fertiliser". Further, Noor had confessed in his statement that he had helped Zaini hide drugs in the Car and that he went along with Zaini to deliver the drugs to Singapore on previous occasions. He described the items that he had helped to hide as "drugs" and as "heroin" on his own accord.

85 Noor was also very familiar with Zaini's mode of operation. He had seen Zaini return home with three to four packets of heroin and some 40 rolls of black tape and had also seen him wrapping at least some of the bundles.

86 These findings by the Judge are clearly in accord with the available evidence. In the circumstances, Noor was correctly convicted of the charge of

importing not less than 12 bundles containing not less than 212.57g of diamorphine in furtherance of the common intention with Zaini. There was no dispute that Noor was a mere courier for the transaction in issue and he had the benefit of a CSA. His sentence of life imprisonment and 15 strokes of the cane was an appropriate one. We therefore affirm Noor's conviction and sentence and dismiss his appeal.

Issue 3: Whether the Trial Charge against Mutaleb is made out

87 The Trial Charge against Mutaleb was for abetment by engaging in a conspiracy with Zaini, Noor, Apoi and others. Although the alleged conspiracy in this case named at least four persons, in law, abetment by engaging in a conspiracy does not require more than two participants. Section 107(1)*(b)* of the Penal Code states that a person abets the doing of a thing "who engages with one or more other person or persons in any conspiracy for the doing of that thing".

88 For the reasons mentioned earlier, we do not think that the conspiracy alleged against Mutaleb at the trial was proved beyond reasonable doubt. On appeal, there was implicit acknowledgement of this by the Prosecution when it initially proposed, in response to the Court's concerns and queries, an amendment of the Trial Charge to one of attempted possession of drugs for the purpose of trafficking. Subsequently, again in response to the Court's queries about whether the issue of trafficking featured during the trial, the Prosecution applied to substitute this with the Proposed Charge for attempted possession of drugs without the element of trafficking. We first elaborate on why we do not think the Trial Charge against Mutaleb was proved beyond reasonable doubt.

89 As a preliminary point, we note that none of the statutory presumptions in the MDA applied against Mutaleb because he was never in possession of the

Drugs. Mutaleb was only in possession of the mock drugs handed over to him by the CNB officers. The Prosecution must therefore prove beyond reasonable doubt that Mutaleb had actual knowledge of the nature of the Drugs.

Zaini's evidence on the conspiracy

90 The key difficulty is that Prosecution's case on the Trial Charge hinged on Zaini's evidence that he had overheard a phone conversation between Mutaleb and Apoi. However, Zaini's evidence on this issue kept shifting. His inconsistencies in evidence were noted by the Judge.

91 In two statements dated 19 and 21 September 2015, Zaini stated that he had overheard a phone conversation between Apoi and Mutaleb on 10 September 2015, which was in essence the agreement to collect drugs from Zaini. However, there was no record of any conversation between Mutaleb and a telephone number that could have been Apoi's: *1st GD* at [37]. The Prosecution and Zaini pointed to Apoi's possible use of one of Zaini's mobile phones as the forensic records showed that a telephone conversation lasting two minutes and 37 seconds took place between Mutaleb's and one of Zaini's mobile phone numbers on 10 September 2015 at 10.37pm. However, this is not consistent with Zaini's account that Apoi's phone was used.

92 As found by the Judge, Zaini's recounting of that phone conversation varied. Zaini gave "multiple accounts of the conversation which he overheard, as to who called whom and whether he could hear the conversation" (*1st GD* at [51]). Zaini's evidence was "inconsistent across the trial" and no real explanation was proffered by him for the inconsistencies (*1st GD* at [54]).

93 In the recorded phone call between Zaini and Mutaleb on 11 September 2015 at about 6.30pm, it appeared that Mutaleb did not know who Apoi was or,

at the least, any illegal activity between Zaini and Mutaleb did not appear to involve Apoi.

Mutaleb:	Who is that?
Zaini:	Who is this? Zaini, Zaini.
Mutaleb:	Oh Zaini. … Hey, where are you?
Zaini:	I'm here at the casino.
Mutaleb:	Ah? At the casino, … Oh Allah, I thought you were here or what. I went back home straight yesterday, I haven't slept, my friend said oh my gosh.
Zaini:	Is it? Now waiting for Apoi.
Mutaleb:	Hah?
Zaini:	Been here waiting for Apoi then he didn't come you know.
Mutaleb:	Apoi?
Zaini:	Apoi, Apoi.
Mutaleb:	Which Apoi?
Zaini:	Apoi, Apoi, Apoi
Mutaleb:	Aah
Zaini:	Ok now Apoi didn't come.
Mutaleb:	What is it?
Zaini:	Are we going to meet Apoi straight away now or what?
Mutaleb:	Zai, didn't you say the other day that my waiting is complete, right?
Zaini:	Yes, ok
Mutaleb:	Today morning can't make it, what about tomorrow morning then?
Zaini:	Now how?
Mutaleb:	Hah?
Zaini:	Now can?
Mutaleb:	Now?

Zaini:	Yes
…	
Mutaleb:	Where are you now?
Zaini:	I'm here at the casino.
…	
Mutaleb:	Ok ok ok I'll wait for you now, [h]ow many are there altogether?
…	
Zaini:	There are thirteen, right?
Mutaleb:	Thirteen?
Zaini:	Ha
Mutaleb:	Ok you go and eat at the same place the other day. Now I come, I will go up, when I reach there, I will call, ok.
Zaini:	Ok, (inaudible) ok ok.
Mutaleb:	I'll pass you the full amount. I don't want to owe any money, that will be troublesome.

94 The recorded phone call between Zaini and Mutaleb did not indicate clearly that a drug delivery was about to happen but it hinted at 13 units of something and a payment of money. If there were a conspiracy involving Apoi and Mutaleb just the night before for Zaini to import drugs and hand them over to Mutaleb, Mutaleb would surely not have appeared to be confused at the mention of Apoi. He would have known immediately what Zaini was talking about. On the whole, we find that Zaini's evidence was not sufficient to prove the conspiracy alleged in the Trial Charge beyond reasonable doubt.

Mutaleb's evidence on the conspiracy

95 The only other evidence that suggested a conspiracy and showed Mutaleb's knowledge of the specific nature of the Drugs was Mutaleb's unsigned long statement of 17 September 2015 (the "Unsigned Statement")

recorded pursuant to s 22 of the CPC. However, after the statement was recorded by IO Prashant from about 7.20pm to 11.40pm, Mutaleb indicated that he did not wish to sign it because he had made up the whole story in the statement and it was not the truth. The full Unsigned Statement is set out below:

> **Mutaleb's Unsigned Statement dated 17 September 2015**
>
> 1 I am fine and ready to have my statement taken now. I have already had my dinner. I wish to have my statement taken in English. I am fluent in both Malay and English, but I prefer to have my statement taken in English.
>
> 2 I am also called "Rafi." I used to work at PSA as a trailer driver. I quit the job early this year, because it was quite taxing and the hours were very long. I was quite old and couldn't cope with the long hours.
>
> 3 I am ready to tell the truth about this case. On the day before I was arrested, on Thursday at 4.30pm, a guy called "Alex" called me on my phone. This phone was the phone that was recovered on me. He is my boss. He told me that there was a consignment of 5 balls coming in the next day in the morning. He did not tell me what time. When he told me 5 balls, I immediately know that it was heroin in the balls. One ball is usually half a kilogram. He told me the consignment was coming in from Johor. He also told me that someone will come and pass me S$35,000 for payment for the cosignment. Alex called me from a Malaysian number. I immediately said okay, and the conversation ended.
>
> 4 After the call, I stayed at home, smoked some drugs. I will smoke heroin with ice and some cannabis. At about 7 plus in the evening, I went out to have my dinner, and I came back home around 9.30pm. I usually try to say low profile because I am in the risky job dealing with drugs. I don't allow friends or anyone to come to my house. At about 12 am or 1am, I went to sleep. I wanted to sleep early because I know the next day I have the meet "Zaini" who will pass me the consignment.
>
> 5 On Friday the next day, at about 9am, a guy called "Ramesh" came to my house and knocked the door. He passed me a black bag with money inside. I have not seen this Ramesh before. He is in his twenties. After he passed me the bag of money, he left and I closed the door. I did not count the money. I just assumed that there was S$35,000. Ramesh is the money courier. Alex always sends different money couriers to give me money for the previous consignments.

6 After I closed the door, I just stayed at home and smoked drugs. I did not go out anywhere. At about 12pm, I went for lunch at the nearby coffeeshop. I came back at about 2pm. Then, I just stayed at home. I was waiting ~~for the call~~ for a very long time for Zaini's call, but he did not call. I was wondering why he did not call. At about 7 plus in the evening, I decided to go for dinner and then to a club called Nashville at Paramount at Katong area. I usually go to different clubs in Katong area. I took my bicycle from the multistorey carpark next to block 2 Chai Chee Road. I rode to Katong. When I reached, I had my dinner, and then went to the Nashville club and started drinking liquor. I also brought some ~~ganja~~ heroin and ice with me to the club. In between. I would go the toilet in the club and smoke ~~Ganja. Ganja is cannabis to me~~ heroin and ice. I mixed it together.

7 Before I left for the club, I wanted to off my phone because I knew something was not right. Zaini had taken too long to call me. But I had forgotten to do so and had brought it along. The phone that was with me is the phone I use for drug work. I'm not sure what time Zaini had called me first. I think it was when I was already in the club and I was drinking. Zaini told me he was already in Singapore waiting at the casino at Marina Bay. I do not know why I agreed to meet him. I knew something was wrong before. I think it was because I was drinking alcohol and I became very brave and careless. I asked him how many he had, and he replied 13. When I asked how many he had, I was referring to how many balls of heroin he had. When he said 13, I was shocked. I did not expect to receive so many balls. But because I was given the money already, I just agreed to receive them. I wasn't sure what the arrangement was between Alex and the Malaysian side. Alex only told me to receive 5 balls.

8 I know that Zaini called me the second time. This time, I was even more intoxicated. All I recall is that he told me he had reached, and I told him that I was coming down. I know I should not have gone down. But the liquor made me brave and careless. I got onto my bicycle and cycled back to the same multi-storey carpark and parked my bicycle. I then walked up a few floors and looked for the car. I could not see Zaini's car. Zaini usually drives a red car with license plate 6136. I am shown 2 photos of a car. Yes, this is the car that Zaini drives in to deliver drugs to me. Before it was all red in colour. I think he must have painted the front bonnet. (Recorder's note: Accused is shown ~~a photo~~ 2 photos of one Honda Civic with license plate JQR 6136, seized at Tuas checkpoint.)

9 When I was looking from the multi-storey car park, I saw some guys standing around. I suspected that they were CNB officers. I saw two guys in ~~the~~ a car. But having drank liquor, I

was stupid, and was feeling very brave. I went down to the road and walked towards the car. I asked the guy inside the car where Zaini was, and he said he was not around. The guy inside the car passed me a plastic bag. When I took the plastic bag, I saw officers walking towards me. I immediately dropped the bag and walked away. Officers then came and arrested me. I am shown 2 photos of a carpark area. Yes, this is the place I had received the plastic bag from the person in the car, thinking that I was receiving drugs. The car was parked head first into the car park on the left of the tree. I dropped the plastic bag on the grass patch under the tree. (Recorder's note: Accused is shown 2 photos of the location where he was arrested.) Looking back, I should not even have picked up my phone.

10 I am now shown a photo of a man in yellow shirt labelled Photo 1. This is Zaini. (Recorder's note: Accused is shown a photo of [Zaini]) I am now shown a photo of a man in a yellow shirt labelled Photo 2. I do not know this person. I have never seen him before. (Recorder's note: Accused is shown a photo of [Noor].)

11 I have collected heroin balls from Zaini twice before, excluding the day of my arrest. The first time was early August, and the second was late August. It was all through Alex.

12 I first met Alex early this year, between January to March at City square mall in Johor Bahru. I had gone to City Square to go shopping and eat. I met a friend of mine, Gopi, who is a Malaysian at City Square. I know Gopi because he was working at PSA as well before. I met him in the canteen quite a few times, and we became friends. Gopi was with Alex at city square mall. I was introduced to Alex at that time. We all ate at Macdonalds together. I had not met him for some time, so we were catching up and I got to know Alex. After an hour of conversation, Gopi asked me if I was interested to work with Alex, as Alex was smuggling drugs between Singapore and Malaysia. Gopi told me that Alex will pay me a certain amount of money for my services if I work for Alex. All this Gopi had told me. Alex didn't talk much. Gopi told me this because he knows that I have drug records and that I had just quit my job at PSA. So he proposed this idea to me.

13 Gopi told me that my part was just to collect the goods, pack it into packets, and give it to a courier who will come and collect the packets. He offered me S$1000 for packing 1 ball of heroin. I agreed when he gave me the proposal. Gopi told me that Alex is very experienced and a smart guy and the job will be very safe. I also needed money at that time, so I agreed on that day itself. I gave them my contact number and went back to Singapore.

14 About a month later, Alex called me. He asked me if I was sure If I wanted to do the job. He said if I did the job, and anything happened, I should not "pao toh." (Recorder's note: Pao Toh refers revealing the people that he works with.) He also asked me if I was okay to deliver the drugs straight to my house. I said okay, as long as I was being paid a good sum of money. He then said to wait for a call from his friend in Johor, and that they will pass me 5 balls to repack.

15 About 2 weeks later, someone called me from a Malaysian number. He asked me if I was working for Alex and I said yes. This was sometime in April this year. He asked if I was ready to receive the consignment. I asked if it is possible for me to pick it up somewhere other than my house, and we set the location at the Church at Changi Road ~~church~~. The courier who passed me the drugs was an Indian guy but I do not know his name. The transaction went on smoothly. At that time, I did not have to pass the courier any money. In 2 days, I packed all the heroin in packets, and called back Alex on his Malaysian number in the morning. He said he will send someone down to collect the packets of heroin, and pass me the cash for my work. The same day in the afternoon, someone came to my house to collect the drugs and pass ~~my~~ me $5000 cash for my work. It was another young guy. I felt really good when I received the cash.

16 I worked for Alex and received balls of heroin once every month. Each time I received a consignment it was 5 balls of heroin. After the first time in April, I also received in May, June and July. Each time I received S$5000.

17 In late July or early August, Alex called you and he said that another consignment will arrive the next day. The next day morning, someone called me. He asked me where I can meet him. I told him to meet me at Blk 59 in Chai Chee. I went down to meet him at Blk 59. That was when I first saw Zaini. I saw him waiting under the block. I did not see him driving any car. I was surprised. I was expecting an Indian courier. I didn't expect a Malay courier. He introduced himself as "Zai," and the first thing he asked me was "Abang, Melayu Boleh Tolong Melayu Abang?" (Recorder's note: Translated in English, it means Brother, can Malay help Malay Brother?) I told him that I will see how, and that this is not my stuff, this is my boss stuff and took the consignment. I left after that.

18 I just did my job to pack the heroin into packets. The next day in the afternoon, I called Alex and told him the stuff is ready. The same day in the evening, another young guy came to pass me the cash S$5000 and collect the packets. I did not ask Alex about Zaini. I just assumed it was a different courier.

> 19 One week after I met Zaini, Zaini called me up and offered to sell me 1 ball of heroin for S$310. He asked me to find my own clients. That was when I realized what he meant by "Melayu tolong Melayu." I agreed to the offer. This was because I did not need to pack. I just have to find someone who was willing to buy the balls of heroin and just sell it.

96 At the bottom of each of the first four pages of the statement, it was handwritten: "Accused does not wish to sign the statement because he says he made up the story and is not the truth". At the fifth and final page, after para 19 of the Unsigned Statement, the following was handwritten: "The whole statement of 19 paragraphs was made up by me. I need some time to think again and rest before I give my statement again. I am still under recovery. I was read back the whole statement". This final handwritten portion at the fifth and final page was signed by Mutaleb.

97 It can be seen from the above that the Unsigned Statement did not bear Mutaleb's signature but it contained his signed disavowal of the truth of the contents. Mutaleb's counsel therefore argued that the Unsigned Statement was inadmissible as evidence as it failed to comply with s 22(3)(*d*) (the equivalent of which is now s 22(4)(*c*) of the CPC which states that where a statement made by a person examined under that section is recorded in writing, the statement must be signed by the person.

98 The Judge dealt with this issue at [79] of the *1st GD*. He did not think that Mutaleb's failure to append his signature to the Unsigned Statement affected its admissibility. He decided that s 22 of the CPC must be read subject to s 258 of the CPC and that the clear wording of s 258(1) and Explanation 1 in s 258(3) indicated that questions of admissibility arose only where the voluntariness of the statement was affected by a threat, inducement or promise. He ruled therefore that the lack of Mutaleb's signature did not affect the

admissibility of the Unsigned Statement and that no ancillary hearing was required.

99 The Unsigned Statement was recorded some six days after Mutaleb's arrest and it recorded him at paragraph 3 as saying "I am ready to tell the truth about this case". In our view, this particular statement of readiness to tell the truth is significant because in Mutaleb's contemporaneous statement recorded on 11 September 2015, he stated that Zaini had called him to collect a "thing" which was to be passed on to another person in return for a commission but claimed not to know what the "thing" was. Further, he declined to disclose the identity of the person he was supposed to pass the "thing" to and the amount of the commission. In the Unsigned Statement, it appeared that he had decided to tell the "truth" that the "thing" was balls of heroin and that his commission was $1,000 per ball of heroin that he repacked or a total of $5,000 each time he worked for Alex.

100 The recording of the Unsigned Statement took more than four hours to complete. The Unsigned Statement was not filled with gibberish. Instead, the narrative was coherent and contained many details which were consistent with other evidence relating to the events on the day of Mutaleb's arrest. During Mutaleb's examination-in-chief at the trial, he merely confirmed that he made the Unsigned Statement and that he refused to sign it because he had made up the story and the story was not the truth. He did not explain why he had to concoct the story. He did not allege that he was coerced by someone to make the Unsigned Statement. He also did not claim that the recording process was procedurally flawed (other than his refusal to sign it to acknowledge that it was his statement). He was apparently content to continue with the recording for more than four hours before saying that he needed some time to think and to rest.

101 During cross-examination at the trial, he was asked by the Prosecution why he gave a "made up" statement to the recording officer. Mutaleb's answer was, "I was just giving the evidence to please the officer". There was no elaboration on why he needed to please the recording officer especially since he made no allegation of any inducement, threat or promise proceeding from the recording officer or anyone else. If Mutaleb really had needed or wished to please the recording officer, surely the recording officer would be greatly displeased by his disavowal of the truth of the entire statement and his refusal to sign it after having spent more than four hours recording it in detail. Yet there was not the slightest hint of the recording officer's displeasure in Mutaleb's testimony concerning the Unsigned Statement, especially when he refused to sign to acknowledge that that was his statement. In our judgment, Mutaleb had made the Unsigned Statement voluntarily and in an apparent effort to tell much more than what he was willing to disclose in the days immediately following his arrest. For some reason known only to him, he had a change of heart after more than four hours of recording the Unsigned Statement when he made his disavowal of the truth and refused to sign it.

102 Under s 258(1) of the CPC, any statement made by an accused person, whether orally or in writing, is admissible in evidence at his trial. Explanation 2 in s 258(3) provides that if a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the circumstances listed. In sub-paragraph (e) of Explanation 2, one of the circumstances listed is "where the recording officer or the interpreter of an accused's statement recorded under section 22 or 23 did not fully comply with that section". It follows that the Unsigned Statement could be admitted as evidence even if the recording officer, IO Prashant, had somehow forgotten to ask Mutaleb to sign the statement. Here, the case for admissibility of the Unsigned Statement is much stronger because it was the maker of the statement who refused to sign it

when asked to do so after more than four hours of recording of his voluntary disclosure of facts.

103 In our view, it cannot be right that an accused person who makes a formal statement in the course of investigation into an offence can glibly disavow all that he has said and refuse to sign the statement so as to render the statement inadmissible as evidence. Mutaleb did not give any credible reason why he would sit for more than four hours to make up a completely false story which incriminated himself with drug offences practically throughout the story. The fact that Mutaleb refused to sign the Unsigned Statement without good cause in such circumstances should therefore not affect its admissibility.

104 Mutaleb's Unsigned Statement is admissible under s 258(1) of the CPC as a record of his voluntary oral statement and it has probative value in that it showed that Mutaleb was no stranger to drugs. He admitted in the Unsigned Statement that he had consumed at least heroin and Ice (methamphetamine) and had actually engaged in drug trafficking activities. It also showed that he knew that "balls" meant heroin and that one ball usually contained about half a kilogram of heroin.

105 The Unsigned Statement also showed that Mutaleb knew that a consignment of five balls of heroin was coming into Singapore on 11 September 2015, the date of the transaction in issue in this case. The Unsigned Statement stated that Alex was his boss and that Alex had told him that someone would pass him $35,000 to pay for the five balls of heroin. Mutaleb therefore knew that he was supposed to receive five balls of heroin on 11 September 2015. However, there was no evidence about the identity of Alex.

106 Mutaleb claimed that when he spoke to Zaini over the phone, he was shocked to learn that Zaini had brought in 13 balls of heroin instead of five balls. Therefore, even though the recorded phone calls made no mention of heroin, the Unsigned Statement indicated that Mutaleb and Zaini were talking about heroin. Mutaleb explained in paragraph 7 of the Unsigned Statement that "because I was given the money already, I just agreed to receive them". The conversation between Zaini and Mutaleb therefore showed that Mutaleb knew he was going to receive heroin, although the amount was much more than what he was told by Alex the day before. However, the conversation did not explain how the $35,000 that he was to receive from Alex to pay for five balls would pay for the increased number of 13 balls of heroin.

107 Mutaleb told Zaini that he would pass Zaini the full payment amount as he did not want to owe any money and that paying in instalments would be troublesome. However, Mutaleb did not explain how the total payment would add up to $39,000 (or $3,000 for each of the 13 balls of heroin). Perhaps Mutaleb was not telling the whole truth in the Unsigned Statement when he stated that Alex mentioned only five balls would be involved in the consignment of drugs.

108 The Judge made no finding on whether he accepted Mutaleb's version of what happened at the Location or the CNB officers' version of events. Mutaleb's version was that the CNB officers simply shoved the plastic bag with the mock drugs in front of him and he therefore received the plastic bag involuntarily. He then dropped it and walked away. The CNB officers' version was that Mutaleb approached the Car, asked where Zaini and the "barang" (translated from Malay to "stuff") were, collected the plastic bag with the mock drugs, walked away from the Car and then dropped the plastic bag before he was arrested. The implication of the latter version was that Mutaleb believed he had collected 13 balls of heroin and then realised that it was a setup when he

saw some men approaching him. He therefore dropped the plastic bag that he was going to bring to his flat.

109 In any case, the Unsigned Statement supported the CNB officers' version of the events at the carpark. At paragraph 5, Mutaleb was recorded as saying:

> I asked the guy inside the car where Zaini was, and he said he was not around. The guy inside the car passed me a plastic bag. When I took the plastic bag, I saw officers walking towards me. I immediately dropped the bag and walked away. Officers then came and arrested me. I am shown 2 photos of a carpark area. Yes, this is the place I had received the plastic bag from the person in the car, thinking that I was receiving drugs.

The last sentence of the above quotation left no doubt that Mutaleb intended to receive the plastic bag which he thought contained the drugs and that he therefore took the plastic bag voluntarily with that belief as to its contents.

110 On the whole, it was obvious to us that Mutaleb had knowledge of the nature of the Drugs and was involved in illegal drug activities on the night in question. As his counsel said at the appeal, Mutaleb had consumed a cocktail of drugs before his arrest. Further, four kinds of drugs were found in his home after his arrest although these were not the subject of the Trial Charge proceeded against him.

111 Nevertheless, as explained earlier in this judgment, Zaini's evidence on the conspiracy was not consistent. As noted by the Judge at [90] of the 1st GD, the case against Mutaleb was "certainly not without difficulties and shortcomings" and there were "aspects of the Prosecution's case that were wanting". For instance, "Zaini's evidence against Mutaleb vacillated at trial" and there was "no direct evidence that a conspiracy to import drugs existed".

112 Even with the admission of the Unsigned Statement, the evidence was still insufficient to prove the conspiracy alleged in the Trial Charge beyond reasonable doubt. Noor was not mentioned at all. Zaini was mentioned as the courier but nothing was stated about how Mutaleb and Zaini agreed to import the Drugs into Singapore. As noted by the Judge at [21] of the *1st GD*, conspiracy requires an agreement to be shown. The Unsigned Statement made no mention of Apoi and certainly no hint of any conspiracy between him and Mutaleb. There was no evidence that Alex was Apoi. There was also no clear evidence of who might be the "others" implicated in the conspiracy alleged in the Trial Charge.

113 The Prosecution conducted the trial based on a conspiracy in which Mutaleb was a principal dealing with Zaini and Apoi but there was nothing in the Unsigned Statement that supported this allegation. Instead, the Unsigned Statement suggested at its highest that Mutaleb was a runner for Alex to collect 5 "balls" of heroin and that while intoxicated, he went to collect a larger shipment of drugs which would have resulted logically in some unpaid "balls". This would also contradict the phone call between Mutaleb and Zaini during which Mutaleb indicated that he wanted to pay in full for the drugs.

114 The totality of the evidence could not prove the alleged conspiracy beyond reasonable doubt. Accordingly, we hold that the Trial Charge was not proved beyond reasonable doubt because there was no convincing evidence of a conspiracy among the parties named.

Issue 4: Whether the Trial Charge should be amended

115 Following from our discussions above, we find that Mutaleb had knowledge of the nature of the Drugs that he was supposed to have received on the night in question and that he was involved in illegal drug activities. On the

totality of the evidence, including the Unsigned Statement, Mutaleb was clearly attempting to take possession of 13 bundles of drugs, which he knew contained diamorphine, from Zaini. The Prosecution was therefore justified in submitting that Mutaleb could be convicted on the Proposed Charge, which is one of attempted possession of drugs, instead of the Trial Charge.

116 Sections 390(4), (6) to (9) of the CPC provide:

> (4) Despite any provision in this Code or any written law to the contrary, when hearing an appeal against an order of acquittal or conviction or any other order, the appellate court may frame an altered charge (whether or not it attracts a higher punishment) if satisfied that, based on the records before the court, there is sufficient evidence to constitute a case which the accused has to answer.
>
> (5) .....
>
> (6) After the appellate court has framed an altered charge, it must ask the accused if the accused intends to offer a defence.
>
> (7) If the accused indicates that the accused intends to offer a defence, the appellate court may, after considering the nature of the defence –
>
> (*a*) order that the accused be tried by a trial court of competent jurisdiction; or
>
> (*b*) convict the accused on the altered charge (other than a charge which carries the death penalty) after hearing submissions on questions of law and fact and if it is satisfied that, based on its findings on the submissions and the records before the court, and after hearing submissions of the accused, there is sufficient evidence to do so.
>
> (8) If the accused indicates that the accused does not intend to offer a defence, the appellate court may –
>
> (*a*) convict the accused on the altered charge (other than a charge which carries the death penalty) if it is satisfied that, based on the records before the court, there is sufficient evidence to do so; or
>
> (*b*) order that the accused be tried by a trial court of competent jurisdiction, if it is not satisfied that,

> based on the records before the court, there is sufficient evidence to convict the accused on the altered charge.
>
> (9) At the hearing of the appeal, the appellate court may on the application of the Public Prosecutor, and with the consent of the accused, take into consideration any outstanding offences which the accused admits to have committed for the purposes of sentencing the accused.

In our judgment, there is sufficient evidence to invoke s 390(4) of the CPC and to proceed thereafter under ss 390(6) to (8) of the CPC against Mutaleb. We are satisfied that, based on the records before the court, there is clearly sufficient evidence to constitute a case which Mutaleb has to answer in respect of the Proposed Charge.

117 In respect of the Prosecution's original proposal to amend the Trial Charge against Mutaleb to one of attempted possession for the purpose of trafficking, we agree with Mutaleb's counsel that the issue of trafficking was not canvassed during the trial. That was because the element of trafficking was irrelevant for the purposes of the Trial Charge.

118 However, where the Proposed Charge is concerned, we disagree with Mutaleb's counsel that there was no evidence to show that Mutaleb had actual knowledge that the 13 bundles would contain diamorphine. Mutaleb's counsel submitted that the Prosecution's line of questions regarding knowledge of the nature of the drug bundles was in the context of the conspiracy alleged in the Trial Charge. He argued that since the Prosecution has failed to prove the conspiracy beyond reasonable doubt, that is to say, that Mutaleb ordered the drugs on 10 September 2015 from Apoi, it could not be said that Mutaleb had the requisite knowledge that the drugs contained diamorphine.

119 As we have explained above, the totality of the evidence, especially the Unsigned Statement, showed clearly that Mutaleb went to meet Zaini at the Location on 11 September 2015 in the belief that Zaini was going to deliver to him 13 bundles of drugs containing diamorphine. It was certainly not an innocuous, casual meeting as portrayed by Mutaleb. He had discussed with Zaini about the drugs before proceeding to meet him and he had taken all the necessary steps to receive the bundles from Zaini. There could be no doubt that when Mutaleb went to the Location and received the bundles of mock drugs from the CNB officers, he truly believed that he was receiving drugs containing diamorphine. Even though the bundles turned out to be mock drugs, the offence of attempted possession of drugs containing diamorphine was complete.

120 There remains the question of whether it would be fair to charge Mutaleb on the Proposed Charge which alleges 13 bundles of Drugs containing not less than 233.73g of diamorphine when the Trial Charge stated "not less than 12 bundles" containing "not less than 212.57g of diamorphine. The number of bundles is now specific and the amount of diamorphine involved has increased. It may be argued that no prejudice would be occasioned to Mutaleb because 13 bundles are still within the meaning of "not less than 12 bundles" and that even though the Proposed Charge states a higher amount of diamorphine than the Trial Charge, the Proposed Charge involves less severe punishment in law when compared to the punishment provided for the Trial Charge. However, in possession of drug offences, it is accepted that the amount of drugs involved would be a significant consideration in sentencing in that the larger the quantity of drugs, the more severe the sentence is likely to be. We note that s 390(4) of the CPC permits the framing of an altered charge which attracts a higher punishment than the original charge at the trial in any case. Nevertheless, the fact remains that the Prosecution is now proceeding on a new charge on appeal

(although with reduced severity in punishment) with a modified factual narrative after failing to prove the alleged conspiracy.

121 Therefore, in the overall circumstances of this case, while we allow the Trial Charge to be amended to the Proposed Charge, we would limit the amount of drugs in the Proposed Charge to that stated in the Trial Charge as that was the amount in issue throughout the trial. The Trial Charge against Mutaleb is therefore amended to the modified Proposed Charge as shown below:

> You, on 11 September 2015, in Singapore, did attempt to have in your possession not less than twelve (12) bundles containing 5,520.4 grams of granular/powdery substance found to contain not less than 212.57 grams of diamorphine, without any authorisation under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") or the Regulations made thereunder, and you have thereby committed an offence under Section 8(a) read with Section 12 of the MDA and punishable under Section 33(1) of the MDA.

Pursuant to s 390(6) of the CPC, we now ask Mutaleb whether he intends to offer a defence to the above modified Proposed Charge and if so, what the nature of the defence is.

122 As a matter of completeness, we do not think there would be violation of Art 11(2) of the Constitution even if we order a retrial on the modified Proposed Charge. It was not disputed in submissions that if we decide to proceed under s 390 of the CPC to order a retrial, the situation would fall within the exception specified in Art 11(2) which reads:

> A person who has been convicted or acquitted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered

> by a court superior to that by which he was convicted or acquitted.

Conclusion

123 For the reasons set out above, we dismiss Noor's appeal in CCA 8 and uphold the sentence imposed on him by the Judge. We allow Mutaleb's appeal against conviction on the Trial Charge in CCA 21 but amend the Trial Charge to the modified Proposed Charge as set out above. We will indicate our decision on the modified Proposed Charge after we hear the parties pursuant to s 390 of the CPC.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Hassan Esa Almenoar (R Ramason & Almenoar) and Diana Foo (Tan See Swan & Co) for the appellant in CA/CCA 21/2019;
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