**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2026] SGCA 15**

Court of Appeal / Criminal Appeal No 7 of 2023

Between

Mustaqim bin Abdul Kadir

… *Appellant*

And

Public Prosecutor

… *Respondent*

Court of Appeal / Criminal Motion No 11 of 2025

Between

Mustaqim bin Abdul Kadir

… *Applicant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 44 of 2022

Between

Public Prosecutor

… *Prosecution*

And

Mustaqim bin Abdul Kadir

… *Defendant*

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# GROUNDS OF DECISION

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[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Procedure and Sentencing — Appeal — Adducing fresh evidence]
[Abuse of process — Inconsistent positions — Appellant seeking to adduce fresh evidence that he elected not to adduce at trial]
[Abuse of process — Collateral purpose — Appellant seeking retrial under guise of application to adduce fresh evidence]

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## [2026] SGCA 15

Court of Appeal — Criminal Appeal No 7 of 2023 and Criminal Motion No 11 of 2025
Tay Yong Kwang JCA, Steven Chong JCA and Judith Prakash SJ
5 March 2026

24 March 2026

**Steven Chong JCA (delivering the grounds of decision of the court):**

### Introduction

1 CA/CCA 7/2023 ("CCA 7") was the appellant's appeal against his conviction and sentence in respect of a single capital charge of possession of not less than 56.8g of diamorphine ("Drugs") for the purpose of trafficking ("Charge") under s 5(1)(*a*) read with s 5(2) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA").

2 The appellant's central defence at the trial was that some 42.62g of diamorphine were part of two bundles of drugs he had mistakenly received from one "Zack" and that he had intended to return to Zack ("Unwanted Drugs").

3 The appellant also challenged the admissibility of seven statements he had given to the Central Narcotics Bureau ("CNB") in the course of investigations. These statements comprised:

(a) the first contemporaneous statement recorded by Staff Sergeant Muhammed Fardlie bin Ramlie ("SSgt Fardlie") on 26 January 2018 at about 5.55pm ("First Contemporaneous Statement");

(b) the second contemporaneous statement recorded by Assistant Superintendent Muhammad Aliff bin Abdul Rahman ("ASP Aliff") on 26 January 2018 at about 11.20pm ("Second Contemporaneous Statement");

(c) the cautioned statement recorded by Assistant Superintendent Yang Weili ("ASP Yang") on 27 January 2018 at about 5.46pm ("27 January Cautioned Statement"); and

(d) four long statements recorded by ASP Yang, with Mohammad Faiz bin Mohammad Isa ("Mr Faiz") as interpreter, from 30 January to 2 February 2018 ("Four Long Statements").

4 The appellant challenged the admissibility of the CNB statements on the basis of alleged promises or inducements made by the CNB officers ("Inducement Defence"). These comprised:

(a) the allegation that SSgt Fardlie told the appellant that "the stuff in the car was above the capital limit and so, if [the appellant] had cooperated with [SSgt Fardlie] and [the appellant] was found to be a courier, [the appellant] could get life imprisonment" ("Alleged MDP Notice Representation");

(b) the allegation that during the recording of the First Contemporaneous Statement, SSgt Fardlie told Mustaqim to "[j]ust say that this stuff is to be sent to Zack's customer" ("Alleged Contemporaneous Statement Representation"); and

(c) the allegation that before the recording of the first long statement on 30 January 2018 ("First Long Statement"), the appellant referred back to the Alleged MDP Notice Representation, and that ASP Yang purportedly replied in English that he knew that the appellant had cooperated, but that ASP Yang needed to take the statement on 30 January 2018 to know whether the appellant was truly a courier and whether the appellant would provide information or not ("ASP Yang's Alleged Representation").

5 We have adopted the definitions used by the trial judge ("Judge") in the judgment ("Judgment").

6 CA/CM 11/2025 ("CM 11") was the appellant's application to adduce further evidence, comprising psychiatric evidence that the appellant claimed would raise a reasonable doubt as to his state of mind at the time of his arrest and when his statements were recorded, such that the statements ought to be excluded.

**Application to adduce further evidence**

7 We deal first with CM 11, the appellant's application to adduce fresh evidence in this appeal. The appellant sought to rely on the following pieces of evidence:

(a) the A&E Discharge Summary from Changi General Hospital ("CGH") dated 6 February 2018 ("A&E Discharge Summary");

(b) the Singapore Prison Service Clinical Notes ("SPS Clinical Notes"); and

(c) the psychiatric report prepared by Dr Jacob Rajesh dated 8 April 2018 ("Dr Rajesh's Report").

8 As the A&E Discharge Summary was already admitted and marked as "P329" at the trial below, strictly speaking only the SPS Clinical Notes and Dr Rajesh's Report were fresh evidence. However, we refer to all three documents collectively as the "Further Evidence" for convenience.

9 The purpose of the Further Evidence was to explain the appellant's failure to mention his Unwanted Drugs defence in his CNB statements, and show that those statements ought to have been excluded due to the appellant's state of mind when they were recorded ("State of Mind Defence"). The Further Evidence was said to explain his disorientation, confusion and irrelevant speech at the time of his discharge from CGH.

***The law on adducing further evidence on appeal***

10 The admission of further evidence on appeal is governed by the three conditions laid down in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") (*Azuin bin Mohd Tap v Public Prosecutor* [2025] 1 SLR 259 ("*Azuin*") at [15]):

(a) the evidence must not have been available in that it could not have been obtained with reasonable diligence for use in the lower court (the "non-availability" condition);

(b) the evidence must be material in the sense that it would probably have an important influence on the result of the case, although it need not be decisive (the "materiality" condition); and

(c) the evidence must be reliable, as in apparently credible, although it need not be incontrovertible (the "reliability" condition).

11 The *Ladd v Marshall* conditions, particularly the condition of non-availability, are not applied with their full rigour in criminal proceedings. Instead, an appellant court exercising criminal jurisdiction generally admits additional evidence which is favourable to the accused person and fulfils the conditions of relevance and reliability (*Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 (*"Anan*") at [50], citing *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 at [16]). This does not mean that the non-availability condition is dispensed with. Rather, the correct approach is to assess the non-availability condition holistically in the light of the other two conditions of materiality and reliability (*Azuin* at [16], citing *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 at [32]).

12 In our view, irrespective of whether the further evidence the appellant sought to adduce was reliable, it would not satisfy the non-availability and materiality conditions.

***The Further Evidence was available or obtainable at the trial***

13 The appellant submitted that the non-availability requirement had been satisfied as it was not reasonably apprehended that the Further Evidence would or could have had a bearing on the case. The appellant argued that the A&E Discharge Summary provided limited details and nothing about drug-related symptoms, and that the evidence of Dr Kenneth Koh ("Dr Koh"), an Institute of

Mental Health psychiatrist who had examined the appellant, did not indicate anything was amiss either. The significance of the appellant's state of mind was only brought into focus by the reference to "drug induced psychosis" in the SPS Clinical Notes and Dr Rajesh's Report.

14 We disagreed. The central point that the appellant sought to make based on the Further Evidence was that he was possibly in an abnormal state of disorientation, confusion and irrelevant speech after his discharge from CGH and at the time the Four Long Statements were recorded. But he could have made this point, or sought to obtain an expert opinion, based on the information available at the trial. The A&E Discharge Summary stated, among other things:

> …
>
> - was taken to court today morning and noted was talking to himself and walls / also noted to be aggressive last few days
>
> - last drug take (ICE) 2 days ago
>
> …
>
> … last admission similar episode 2014 for drug withdrawal
>
> …
>
> - Noted abnormal behavior on sat night
>
> - Agitated, throwing urine at other people
>
> - Not oriented to [time, place and person] in the prison, claimed that he is at hougang
>
> - Said he was in a dream
>
> …

15 Dr Koh likewise testified that from 6 to 11 February 2018, the appellant appeared to be disoriented and confused. He was examined at CGH on 6 February 2018 before returning to Changi Prison, where he continued to have some confusion until 11 February 2018. But he improved over time until he was lucid by 12 February 2018.

16 This was essentially the same clinical information on the basis of which Dr Rajesh opined that the appellant may have been suffering from drug withdrawal after his discharge from CGH, and possibly also before 6 February 2018 when the Four Long Statements were recorded.

17 Most importantly, it was clear from the record that evidence concerning the appellant's alleged drug withdrawal symptoms could have been obtained during the trial. The Defence expressly considered whether to adduce such evidence in relation to the admissibility or the weight to be given to the Four Long Statements, but ultimately did not do so. While the appellant was on the witness stand, the Prosecution indicated that it would use the Four Long Statements in cross-examination. Mr Ramesh Tiwary ("Mr Tiwary"), who was the appellant's counsel at the trial, then sought permission to take instructions from his client regarding the voluntariness and accuracy of those statements, including specifically in relation to drug withdrawal, on which a psychologist and a psychiatrist had been consulted:

> Tiwary: … while I was prepping this case, the prosecution indicated to me that they are not using the long statement as part of the prosecution's case. *I had been in consultation with a psychiatrist---psychologist and a psychiatrist in relation to withdrawal as well as whether there was any inducement, threat or promise.* Now---but when the---my learned friend said she was not going to use it, I stopped taking instructions on the long statement and concentrated on the other aspects of the case. And honestly, I have not completed taking instructions. My client has told me that there was some inducement. And so, it's not just a question of accuracy; it's a question of voluntariness. … [emphasis added]

18 It appeared that a psychologist, Dr Julia Lam ("Dr Lam"), had seen the appellant in prison, and the Defence was at least considering whether to call her to testify as to whether the appellant was suffering from drug withdrawal

symptoms, which would go to the weight of the statements. Mr Tiwary stated that he would inform the court and the Prosecution of any witness the Defence was going to call in relation to the weight and voluntariness of the Four Long Statements. The Defence ultimately did not call Dr Lam or any other psychiatric expert to testify about the appellant's drug withdrawal symptoms or his mental state during the recording of the Four Long Statements.

19 This was therefore a case where the Defence not only had access to the relevant psychiatric evidence, but was fully alive to the issue of the appellant's alleged drug withdrawal symptoms during the recording of the Four Long Statements. Yet, the Defence elected not to run the State of Mind Defence or adduce evidence in support of that defence. This was unsurprising. It would have been challenging, if not impossible, for the appellant to run both the Inducement Defence and State of Mind Defence at the same time. He would have been hard pressed to explain how he had the presence of mind to understand ASP Yang's Alleged Representation and concoct detailed lies to "get the role of the courier" in response, if he was disoriented or confused at the time due to drug withdrawal or hypoglycaemia (*ie*, low blood sugar). The natural inference was that the Defence's decision not to adduce the Further Evidence at the trial was a tactical one. In any case, whatever the Defence's reasons for choosing not to do so, it could not seek a second bite of the cherry. A disappointed party will not be allowed to retrieve lost ground by relying on evidence he should have put before the court below, *especially when he has expressly elected to withhold that evidence* (*Anan* at [45]).

20 Indeed, this was one of most troubling aspects of the appellant's criminal motion, which led us to agree with the respondent that the application was an abuse of process.

21 The respondent submitted that the present application was an application for a retrial in order to run a contradictory defence to the one relied on at trial, similar to *Masri Bin Hussain v Public Prosecutor* [2025] SGCA 9 ("*Masri*"). In that case, the applicant's defence at trial was that *all* drugs found in his possession were *entirely* for his personal consumption (at [2]). Subsequently, the applicant filed an application to adduce: (a) evidence that the drugs found in his possession were mainly for his personal consumption but he was open to selling some of the drugs where an opportunity to do so arose; and (b) evidence by way of further examination and cross examination of witnesses who had already testified about the applicant's purported state of drug withdrawal during the recording of his contemporaneous statement (at [4]).

22 Although it might have been said that the appellant in this case has not resiled from the Unwanted Drugs defence, his attempt to challenge the admissibility of his CNB statements on the basis of his confused state of mind, as opposed to the inducement of the CNB officers, was incongruous if not outright contradictory (as explained at [19] above). We were especially troubled by the manner in which the appellant had pursued a course of action on appeal that had been so clearly forgone at the trial. This was especially since, as in *Masri*, the appellant's real aim appeared to be to secure a retrial in order to pursue a different defence, under the guise of an application to adduce further evidence. It is an abuse of process for a party to deliberately proceed without certain evidence, and then after losing the case to seek to adduce that evidence on appeal (*Khetani v Kanbi* [2006] EWCA Civ 1621 ("*Khetani*"), cited with approval in *Anan* at [45]). In fact, this can be the case even if the *Ladd v Marshall* conditions are technically satisfied. This was illustrated by the facts of *Khetani*, where the appellant deliberately chose to proceed with the trial notwithstanding that certain relevant documents were unavailable before the trial, and yet sought to adduce those documents on appeal when they became

available thereafter. The appellate court categorised this conduct as an abuse of process and declined to receive the new evidence even though the *Ladd v Marshall* test was technically satisfied (at [29]).

23 In the present case, we did not think that even an attenuated version of the requirement of non-availability has been satisfied. We also found that the application was an abuse of process for the reasons explained above. Nevertheless, we proceed to explain why, in our view, the Further Evidence was also not material.

***The Further Evidence was not material***

24 To begin with, the Further Evidence was limited in scope. The appellant's submissions and Dr Rajesh's Report were premised on medical records that showed the appellant behaving abnormally between 6 and 11 February 2018. The SPS Clinical Notes record that on 6 February 2018 at or about 7.45am, the appellant "[c]ame in ambulatory" and was "[a]lert" but "[i]ncoherent", had "visual hallucinations" and was "[d]isoriented to time place and person". He was referred to the CGH emergency department the same day, treated for hypoglycaemia, and sent back to Changi Prison Complex Medical Centre ("CMC") for monitoring. He continued to be confused for a few days, but slowly recovered. Indeed, the SPS Clinical Notes state that as of 9 February 2018 at around 10.23am, the appellant exhibited coherent speech, was oriented to time, place and person, had no medical complaints and had no issues overnight. Thereafter, the clinical notes for 10 and 11 February 2018 reveal no further issues, instead regularly recording that the appellant was alert, stable, coherent and not disoriented.

25 The appellant tried to overcome this by extending both the starting and ending point of this period of abnormal behaviour. The appellant claimed that

there was a "possibility" that this abnormal state was subsisting at the time the statements were recorded, relying on a remark in the A&E Discharge Summary that the appellant was "noted to be aggressive [the] last few days". Dr Rajesh's Report likewise stated that it was "unclear" when the symptoms started and suggested obtaining medical notes for 30 January to 6 February 2018, when the appellant was in lock up, as well as the details about an assault the appellant was said to have committed against an Auxiliary Police Officer during this time. Further, Dr Rajesh suggested that it was "possible" that the appellant was suffering from drug withdrawal, and stated that benzodiazepine withdrawal could last up to ten to fourteen days after last use. Referring to a scientific article cited by Dr Rajesh, the appellant suggested that a longer time than the three days of drug withdrawal monitoring would have been needed to ensure effective discontinuation of the effects of benzodiazepines.

26 The key difficulty with these claims was that they were speculative, and contradicted by evidence of the *actual* condition and behaviour of the appellant at or around the time that the various statements were recorded. ASP Aliff testified that during the recording of the Second Contemporaneous Statement, the appellant's demeanour was normal and there was nothing significant in terms of his expression. ASP Yang testified that during the recording of the 27 January Cautioned Statement, there was nothing out of the norm in terms of the appellant's demeanour. The appellant also underwent medical examinations before and after the recording of the 27 January Cautioned Statement. The examining doctor, Dr Lin Hanjie, gave evidence that the appellant was found in both cases to have no acute issues, normal vital signs, no obvious abnormalities and no other complaints, including no complaints regarding the statement taking process. From 28 to 30 January 2018, the appellant was referred to CMC for drug withdrawal observation, and did not complain of any drug withdrawal symptoms or show any signs of drug withdrawal throughout this period,

ultimately being assessed as negative for non-opioid drug withdrawal. As for the appellant's psychiatric evaluation on 12, 15 and 26 February 2018, the examining psychiatrist, Dr Koh, gave evidence that by the time of the first interview on 12 February 2018, the appellant was fully coherent and relevant in speech, and was no longer confused or lacking in orientation to time, place and person. None of this evidence was challenged at the trial.

27 We found it extremely contrived that the appellant was seeking to admit the Further Evidence to explain why he *omitted* to mention a vital and specific fact in all of his statements to the CNB. There was no positive evidence to support the appellant's bare assertion that he had intended to return the two bundles of Unwanted Drugs. There was no evidence in the WhatsApp messages to support this defence. In fact, the evidence in the WhatsApp messages was to the contrary (see [28] below). The appellant relied on two phone calls he made at 3.24pm and 3.46pm to the person who passed him the drugs, Munusamy Ramamurth ("Munusamy"), and a call to Zack that he made at 3.38pm, all on 26 January 2018. He submitted that the only plausible explanation for these calls was to tell Munusamy that he had received more drugs than he had ordered, that Munusamy said he would have to check with Zack, and that Zack informed him to return the Unwanted Drugs to Munusamy. However, as the Judge rightly observed, there was no evidence apart from the appellant's assertions to shed light on the contents of these calls (Judgment at [233]). We agreed with the respondent that these calls could possibly have concerned other topics unrelated to this delivery, and it was not true that they could *only* have been made for the purpose of returning the Unwanted Drugs. Thus, these calls did not support the appellant's Unwanted Drugs defence. The Further Evidence proffered by the appellant also would not have gone towards proving the appellant's Unwanted Drugs defence. At best, it would have explained why the appellant failed to mention in any of his statements that he

intended to return the Unwanted Drugs. Yet, this explanation was highly contrived because it related to the specific quantity of 46.62g of diamorphine – a quantity that would bring the drugs in the appellant's possession below the capital threshold. The explanation had to be so contrived because the appellant had admitted in his statements to the CNB that he knew what the drugs in his possession were and that he was planning to traffic them. Therefore, he could no longer claim that he wanted to return *all* the drugs.

28 Even if the Further Evidence was accepted, it could not explain away the other key pieces of evidence that the Judge rightly relied on in convicting the appellant, and the veracity of which were not challenged on appeal. The appellant's phone records showed that he was actively involved in trafficking drugs in the days leading up to his arrest (Judgment at [206]–[212]). On the day of his arrest, he was also actively trying to sell diamorphine (Judgment at [213]). In this context, the appellant in his voice note to Zack on 26 January 2018 at 11.54pm clearly said, "Never mind, settle 'Panas' 3 tablets 7500. Come back later OK." This was a reference to a message from Zack to the appellant on 25 January 2018 at 11.43pm, in which Zack had quoted a price of $7,500 for three tablets of "panas". "Panas" is the street name for diamorphine. It seemed clear that, far from intending to return the two bundles of the diamorphine, the appellant had in fact confirmed the order for the three bundles. As to his alleged mistaken receipt of the Unwanted Drugs, the appellant admitted that, after receiving the bag of drugs ("Hari Raya bag") from Munusamy, he realised after "two or three steps" that it was heavier than he expected. Yet he had no convincing explanation for immediately walking away without asking Munusamy about the discrepancy. After returning to his car, the appellant repacked several bundles of drugs by placing them in other plastic bags. This included some of the Unwanted Drugs. There was however no indication that he was breaking bulk, *ie*, breaking down the bundles into smaller packets. He

repacked some of the bundles in additional plastic bags. He then placed some of these bundles back into the Hari Raya bag, and placed others on the floorboard of the car (Judgment at [237]–[258]). If the appellant wanted to return all the Unwanted Drugs to Zack, there was no reason for him to repack them in this manner or to further conceal them, as he claimed to be doing (see Judgment at [253]). In our view, the Judge was correct to conclude from this conduct that there was no intention on the appellant's part to return the Unwanted Drugs, and that the appellant's intention was instead to traffic these drugs (Judgment at [259]). It was because the appellant intended to traffic all the drugs that he did not mention in any of his statements that he wanted to return the Unwanted Drugs; it was not because the appellant was suffering from drug withdrawal symptoms when his statements were recorded.

29 In view of the above, the Further Evidence could not possibly have an important influence on the appellant's conviction. It did not satisfy the materiality condition.

30 We therefore dismissed CM 11.

**Appeal against conviction and sentence**

31 We turn to consider the appellant's appeal against his conviction and sentence. In our view, the appeal ought to be dismissed.

32 To begin with, the appellant has accepted that he was in possession of the Drugs and that he knew they contained diamorphine. The appellant has also admitted that he intended to traffic a portion of the Drugs, that contained a net weight of 12.68g of diamorphine (Judgment at [172]–[173]). The appellant's defence was that he intended to return the Unwanted Drugs, and that some of

the drugs that contained a net weight of 1.50g of diamorphine were for his own personal consumption.

33 However, the appellant's Unwanted Drugs defence was not mentioned in any of his seven CNB statements, and was clearly an afterthought. It followed from our dismissal of CM 11 that we did not accept the appellant's attempt to impugn the CNB statements on the basis of his drug withdrawal symptoms or confused state of mind.

34 The appellant relied on the phone calls he made to Munusamy and Zack to support his Unwanted Drugs defence. However, as we have explained above at [27], these calls do not lend any support to his Unwanted Drugs defence.

***The appellant's statements to the CNB***

35 The appellant also raised the following arguments in relation to his CNB statements in this appeal:

(a) First, the appellant submitted that Dr Koh's evidence regarding the lack of inducement by SSgt Fardlie could not bear the *weight* placed on it by the Judge.

(b) Second, the appellant submitted that SSgt Fardlie had admitted that he (the appellant) could have understood the Mandatory Death Penalty notice ("MDP Notice") in the manner he claimed.

(c) Third, the appellant submitted that the Judge erred in accepting that ASP Yang did not make the ASP Yang's Alleged Representation, and in admitting the appellant's statements.

*Dr Koh's evidence*

36 The appellant relied on *Public Prosecutor v Gunasilan Rajenthiran* [2022] 3 SLR 861 ("*Gunasilan*") at [81], where the court said:

> … Police statements are admissible under s 258 of the CPC because they are recorded in a specific manner provided for under ss 21 and 22 of the CPC. Statements to psychiatrists do not have the same safeguards and are admitted for the specific purpose of obtaining the psychiatrist's opinion. The details of interviews are important to explain the basis of the psychiatrist's opinion and should be considered in their proper context. Interviews recorded by way of history by psychiatrists assessing soundness of mind should not carry the same weight and would not be as reliable as admissions made in statements to the police. Notwithstanding, such statements could be used in cross-examination in the assessment of an accused's credibility and as a reference point to test the evidence. …

37 However, in our view, the Judge did not err in the weight that was placed on Dr Koh's evidence.

38 First, the Judge did not rely solely or primarily on Dr Koh's evidence, but treated it as *corroborative* of SSgt Fardlie's evidence that the Alleged MDP Notice Representation and the Alleged Contemporaneous Statement Representation had not been made during the recording of the First Contemporaneous Statement (Judgment at [93]). Dr Koh's evidence was used in the manner envisioned in *Gunasilan* – in cross-examination in the assessment of the appellant's credibility (see [39] below), and as a reference point to test the evidence of the appellant.

39 More importantly, even if little to no weight was placed on Dr Koh's evidence, that was in our view immaterial. *The appellant's own evidence* under cross-examination was that he told Dr Koh that the CNB officers did not make any promises.

> Q: Okay, so when he took the stand, he indicated that he asked you whether CNB made you any promise if you were to just, for instance, sign the statement blindly. So in other words, he asked you whether you were promised anything in return for you signing the statement blindly.
>
> A: Yes.
>
> Q: Okay, and he said that you told him CNB did not make such promises.
>
> A: Yes.
>
> Q: Okay, so this conversation did indeed take place between you and Dr Koh, right?
>
> A: Yes.

40 In other words, it was undisputed (or admitted) that the appellant told Dr Koh that the CNB did not make him any promises, and *that fact* – which was established not just by Dr Koh's but also the appellant's own evidence – was what supported the inference that the alleged representations did not take place.

*Effect of the MDP Notice*

41 SSgt Fardlie's evidence was that he just read the Malay version of the MDP Notice to the appellant, word for word. However, SSgt Fardlie acknowledged that the notice could have had the effect of conveying that if the appellant cooperated and he was only a courier, he could get a certificate of substantive assistance and life imprisonment instead of the death sentence. The appellant sought to rely on this admission to argue that he could have understood the MDP Notice in the manner he claimed.

42 However, SSgt Fardlie's evidence as to how the MDP Notice could be understood was irrelevant. The established law is that objectively, the MDP Notice is not a threat, inducement or promise within the meaning of s 258(3) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("CPC") (*Jumadi bin*

*Abdullah v Public Prosecutor* [2022] 1 SLR 814 ("*Jumadi*") at [39]). Even if it is a literal inducement, the legal effect of that is neutralised by Explanation 2(*aa*) to s 258(3) of the CPC (*Jumadi* at [41]):

> Explanation 2 — If a statement is otherwise admissible, it will not be rendered inadmissible merely because it was made in any of the following circumstances:
>
> …
>
> (*aa*) where the accused is informed in writing by a person in authority of the circumstances in section 33B of the Misuse of Drugs Act 1973 under which life imprisonment may be imposed in lieu of death;

43 Therefore, it is irrelevant how the MDP Notice was understood or might have been understood by an accused person.

44 The Judge recognised the above and rightly held that the MDP Notice was not an inducement, threat or promise (Judgment at [106]). The Judge also rightly found that even if the MDP Notice was paraphrased in the manner alleged by the appellant, it would have been substantively the same as the information contained in the MDP Notice. Therefore, even if the Alleged MDP Notice Representation was made by SSgt Fardlie, this could not objectively be considered an inducement (Judgment at [107]–[109]).

*ASP Yang's evidence*

45 The appellant alleged that when he entered the interview room on 30 January 2018, he said to the interpreter, Mr Faiz, words to the effect of, "The other day, there was an officer who informed me that if I were to be found to be a courier and had provided information, that I could get life imprisonment. So can I get that?" The appellant said that ASP Yang told him that he knew he had cooperated but that the CNB needed to take a further statement to establish whether he was truly a courier and whether he would provide the necessary

information. At the trial, ASP Yang denied that this exchange took place. Mr Faiz could not remember if this exchange took place.

46 The appellant submitted that the effect was that his testimony and ASP Yang's testimony "cancelled each other out", and the only witness who could prove the exchange did not happen was Mr Faiz, who could not remember. Thus, the Prosecution had not proved beyond a reasonable doubt that the words were not said.

47 In our view, this submission was unmeritorious.

48 To begin with, the appellant adopted an unduly mechanical approach in the assessment of the witnesses' evidence. It is not the case that where a factual dispute turns on one witness's word against another's, they "cance[l] each other out". Neither is it the case that, because a third witness cannot remember what happened, the burden of proof is not met. No particular number of witnesses is required for the proof of any fact (s 136 of the Evidence Act 1893 (2020 Rev Ed)). In our view, Mr Faiz's evidence was neutral, and advanced neither side's case. Between ASP Yang's and the appellant's evidence, the Judge was entitled to form a view as to whose evidence was more credible and should be accepted. In deciding this issue, the following circumstances were relevant.

49 First, as the Judge rightly observed, ASP Yang had no motive to lie about the events relating to the recording of the First Long Statement (Judgment at [135]). By contrast, the appellant's account was self-interested.

50 Second, ASP Yang was in general a more credible witness than the appellant. The Judge found ASP Yang to be clear and consistent when he gave evidence pertaining to how he recorded the Four Long Statements (Judgment

at [135]). By contrast, although the Judge did not point this out explicitly in this context, the appellant's evidence as a whole suffered from various internal inconsistencies, and he had shown a propensity to lie to avoid punishment. The appellant had by his own admission lied repeatedly in his statements to the CNB officers in order to escape capital punishment (Judgment at [197]).

51 Third, the Judge rightly held that even if what the appellant had said about ASP Yang's Alleged Representation was true, it did not amount to an inducement or promise (Judgment at [136]). ASP Yang's statement, as alleged by the appellant, appeared to indicate no more than a wish to record more information from the appellant about his role in the drug delivery and his cooperation, without any promises or inducements attached. To the extent that the alleged inducement or promise was that if the appellant was a courier, and was issued a certificate of substantive assistance for his cooperation, he would get life imprisonment, this was in substance the same as the Alleged MDP Notice Representation, which was objectively not an inducement or promise for the same reasons as outlined at [42]–[44] above.

52 Fourth, the Judge's findings regarding ASP Yang's Alleged Representation were consistent with the Judge's findings regarding SSgt Fardlie's Alleged MDP Notice Representation and Alleged Contemporaneous Statement Representation. To recapitulate, the Alleged MDP Notice Representation and Alleged Contemporaneous Statement Representation were made before ASP Yang's Alleged Representation. Since the Judge rightly found that the former two representations were not made, it would have been illogical to accept the appellant's account of ASP Yang's Alleged Representation. This was because the appellant claimed he *referred back* to what SSgt Fardlie had told him (*ie*, the Alleged MDP Notice Representation). This could not logically have happened if the earlier statements were not made.

***Munusamy's statement***

53 We have explained above at [28] how key pieces of evidence support the Judge's conclusion that the appellant intended to traffic the Drugs. We now address the appellant's remaining contention that Munusamy's statement to the CNB on 26 January 2018 (marked "D2"), and Munusamy's lack of candour in court, supported the appellant's account of the facts, *ie*, the Unwanted Drugs defence.

54 At the trial, Munusamy testified that he only collected money from the appellant, and did not admit to passing any drugs to the appellant.

55 However, in D2, he was recorded as saying that he had given a package of "panas" to "abang", who was established to be the appellant:

> Q1 Before you were arrested earlier, what were you doing?
>
> A1 Today, in the evening, I met with a Malay man who I called 'abang'. 'Abang' … 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 'hot' [*ie*, 'panas'].
>
> …

56 Under cross-examination, Munusamy was confronted with D2, but denied having told the CNB officer that he passed any packages to the appellant. He maintained that he had only said he had collected money twice.

57 We did not accept that Munusamy's statement in D2 lent any support to the appellant's defence that he was *mistakenly* handed more drugs than he had ordered. D2 simply corroborated the undisputed fact that the appellant received

drugs from Munusamy in the male toilet on the first floor of the Singapore Cable Car Building. Munusamy's inconsistent statements undermined his credibility, as the Judge rightly found (Judgment at [179]). However, this discrepancy did not shed light on whether the appellant had received more drugs than he had ordered. Even if D2 was accepted, it could not possibly establish that some of the drugs were delivered by mistake.

**Conclusion**

58 For the above reasons, we dismissed CM 11 and the appeal in CCA 7.

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

Judith Prakash
Senior Judge

Andre Darius Jumabhoy and Aristotle Eng (Andre Jumabhoy LLC) for the appellant in CCA 7 and the applicant in CM 11;
Claire Poh and Benedict Chan Wei Qi (Attorney-General's Chambers (Criminal Justice Division)) for the respondent in CCA 7 and CM 11.