IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 14

Criminal Appeal No 30 of 2020

Between

Dzulkarnain bin Khamis

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 32 of 2020

Between

Sanjay Krishnan

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Motion No 23 of 2022

Between

Sanjay Krishnan

… *Applicant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Procedure And Sentencing — Appeal — Adducing fresh evidence]

Dzulkarnain bin Khamis
v
Public Prosecutor and anor appeal and anor matter

[2023] SGCA 14

Court of Appeal — Criminal Appeals Nos 30 and 32 of 2020 and Criminal Motion No 23 of 2022
Sundaresh Menon CJ, Judith Prakash JCA and Steven Chong JCA
19 January 2023

27 April 2023

Sundaresh Menon CJ (delivering the grounds of decision of the court):

Introduction

1 The present appeals and criminal motion arose out of the prosecution and subsequent conviction of the appellants, Mr Dzulkarnain bin Khamis ("Dzulkarnain") and Mr Sanjay Krishnan ("Sanjay") (collectively, the "appellants"), in respect of charges involving their possession of not less than 2375.1g of cannabis (the "Drugs"). Dzulkarnain claimed trial to a capital charge under s 5(1)(*a*) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA") for delivering the Drugs to Sanjay, while Sanjay claimed trial to a capital charge under s 5(1)(*a*) read with s 5(2) of the MDA for having the Drugs in his possession for the purpose of trafficking.

2 The appellants were each initially charged with a second offence concerning the trafficking of 2329.1g of cannabis mixture. Following our

decision in *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 ("*Saravanan Chandaram*"), the judge of the General Division of the High Court (the "Judge") who heard the appellants' joint trial granted the Prosecution's application for these charges to be stood down.

3 At the end of the joint trial, the Judge rejected all the defences raised by the appellants and convicted them on the charge that was pressed against each of them: see *Public Prosecutor v Dzulkarnain bin Khamis and another* [2021] SGHC 48 (the "GD"). The Judge found that Dzulkarnain's involvement was limited to the activities specified in s 33B(2)(*a*) of the MDA. Because the Prosecution had issued Dzulkarnain a certificate of substantive assistance ("CSA"), the Judge imposed the alternative sentence of life imprisonment on Dzulkarnain. Since Dzulkarnain was above 50 years of age, he was not liable for caning (GD at [119]). As for Sanjay, while the Judge found that his involvement was similarly limited, the Prosecution did not issue Sanjay a CSA. Accordingly, the Judge imposed the mandatory sentence of death on him (GD at [124]).

4 CA/CCA 30/2020 ("CCA 30") and CA/CCA 32 ("CCA 32") were Dzulkarnain's and Sanjay's respective appeals against the Judge's decision in respect of both conviction and sentence. On appeal, Dzulkarnain contended that the Judge erred in finding that a box containing the Drugs, which Sanjay had collected from a certain location prior to his arrest, was the same box that Dzulkarnain had left at that location. As for Sanjay, he raised three main grounds of appeal. The first two were procedural in nature. First, he contended the Judge erroneously relied on statements that were not admissible when she made her findings. Second, he maintained that the Prosecution's case did not present a unified case theory but consisted of inconsistent and incompatible parts and that this prejudiced his Defence. Third, he argued that the Judge erred

in finding that he had failed to rebut the presumption under s 18(2) of the MDA, and therefore that he knew the nature of the drugs (the "s 18(2) presumption").

5 Sanjay also filed CA/CM 23/2022 ("CM 23") seeking leave to adduce fresh evidence that was available to and/or readily obtainable by him at trial, but that he did not then adduce. That evidence was Sanjay's own account of the location of a duffel bag containing the drug exhibits that had been seized from him. Sanjay argued that his evidence would contradict the testimony of a Central Narcotics Bureau ("CNB") officer concerning his custody over that duffel bag and that this was material to whether the chain of custody of the drug exhibits had been satisfactorily established. Sanjay sought an order that the matter be remitted to the Judge to take further evidence on this point and to set out her findings on remittal.

6 Following the hearing of these appeals and the criminal motion, we dismissed Sanjay's application in CM 23 and the appellants' appeals in CCA 30 and CCA 32, and upheld the Judge's decision to convict the appellants on the charges that were brought against them. Accordingly, we upheld the sentences imposed by the Judge on the appellants. We now give the detailed grounds for our decisions.

Background

The events leading up to the arrest of the appellants

7 We begin by setting out the facts. On the afternoon of 23 February 2015, Dzulkarnain drove a van to a bus stop near Tuas Checkpoint (the "Tuas Bus Stop"), where he collected a brown box (the "Brown Box"). Later that same day, at around 4.00pm, Dzulkarnain drove the van to Lorong 21 Geylang ("Lorong 21"), and thereafter to Lorong 37 Geylang, Singapore ("Lorong 37").

8 Dzulkarnain's van was initially tailed by a team of CNB officers in an unmarked CNB operations vehicle. The officers were Senior Staff Sergeant Eng Chien Loon Eugene ("SSSgt Eng") and Sergeant Muhammad Hidayat bin Jasni ("Sgt Hidayat"). However, SSSgt Eng and Sgt Hidayat lost sight of Dzulkarnain's van at some point along the way. Another team of CNB officers, comprising Inspector Muhammad Faizal bin Baharin ("Insp Faizal"), Staff Sergeant Ace Ignatius Siao Chen Wee and Staff Sergeant Azman bin Mohd Saleh, tailed Dzulkarnain's van as it was driven to Lorong 21 and then to Lorong 37.

9 At Lorong 37, Insp Faizal and his team saw Dzulkarnain place the Brown Box behind a green dustbin which had the number "14" marked in white on it (the "Green Bin"), before driving off in the van. The Green Bin was located next to No 14, Lorong 37 Geylang, Singapore ("14 Lorong 37" or the "drop-off point"). Insp Faizal and his team continued to tail the van.

10 About five minutes after Dzulkarnain left Lorong 37, Sanjay drove to Lorong 37 in his car. SSSgt Eng and Sgt Hidayat saw Sanjay's car turning into Lorong 37 and followed him. Sanjay stopped beside the Green Bin, alighted from his car and retrieved a brown box from behind the Green Bin at the drop-off point (the "SKP Box"). He then returned to his car and drove off.

11 Sanjay was subsequently apprehended by a team of CNB officers at around 4.35pm near Lorong 36 Geylang. At around 4.40pm, Dzulkarnain too was arrested by Insp Faizal and his team at an Esso petrol kiosk.

Sanjay's arrest

12 Following his arrest, Sanjay was led by Senior Staff Sergeant Wong Kah Hung (Alwin) ("SSSgt Alwin") and Sgt Hidayat to the rear passenger seat of

his car. Sergeant Dadly bin Osman ("Sgt Dadly") then drove Sanjay's car to a multi-storey carpark at Block 56A Cassia Crescent (the "MSCP").

13 At the MSCP, a body search was conducted on Sanjay, and a handphone, later marked as "SK-HP1", was recovered. Station Inspector Tay Cher Yeen (Jason) ("SI Tay") and Sgt Hidayat then searched Sanjay's car in his presence. The following exhibits, amongst others, were retrieved:

(a) the SKP Box containing five bundles of vegetable matter which, following analysis by the Health Sciences Authority ("HSA"), were found to contain not less than 2375.1g of cannabis and 2329.1g of cannabinol and tetrahydrocannabinol;

(b) four handphones, later marked by the CNB as "SK-HP2", "SK-HP3", "SK-HP4" and "SK-HP5";

(c) a blue notebook (the "Blue Notebook") and a black notebook (the "Black Notebook"), which contained handwritten entries relating to various drug transactions and prices; and

(d) two samurai swords and a 30-cm knife.

14 Before the SKP Box was opened, Sanjay was asked by SI Tay about its contents. Sanjay purportedly shrugged and did not verbalise his answer. His reaction was recorded by SSSgt Alwin in the CNB operation field book (Sanjay's "oral statement" and the "CNB field book" respectively). SI Tay then tore away the masking tape sealing the SKP Box and removed five bundles of vegetable matter from within. He then handed each bundle to Sgt Hidayat, who packed and sealed each of the bundles into separate polymer bags, and placed the seized drug exhibits into a green duffel bag (the "drug exhibits" and the "duffel bag"), before handing the duffel bag to SI Tay. From around 7.45pm

until about 8.30pm, SI Tay recorded a contemporaneous statement from Sanjay under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("CPC") (Sanjay's "contemporaneous statement"). In Sanjay's contemporaneous statement, he informed SI Tay that he did not know what the SKP Box contained.

15 Apart from Sanjay's contemporaneous statement, eight other statements were recorded from him during the course of the investigations. In Sanjay's cautioned statement recorded on 24 February 2015 by the Investigation Officer, Senior Staff Sergeant Ranjeet Ram Behari (Sanjay's "cautioned statement" and "IO Ranjeet" respectively), Sanjay informed IO Ranjeet that he believed the SKP Box contained "illegal cigarettes" based on what he had been told by someone he referred to as "Malaysia Boy". Sanjay did not sign his cautioned statement, though the Judge was satisfied that it was an accurate record of what Sanjay had said to IO Ranjeet (GD at [30] and [84]). In any case, this point was not taken on appeal.

16 In Sanjay's fifth long statement, which IO Ranjeet recorded on 8 March 2015, almost two weeks after the arrest, Sanjay departed from his earlier account and said that he had been told by one "Boy Lai" to take delivery of some collectors' hunting knives and that "there *may* also be contraband … cigarettes" [emphasis added]. This was the *first time* he mentioned his purported belief that the SKP Box contained collectors' hunting knives and *possibly* contraband cigarettes, and was a departure from his earlier account that he believed the SKP Box contained contraband cigarettes based on what Malaysia Boy had told him.

Dzulkarnain's arrest

17 Following Dzulkarnain's arrest, the CNB officers escorted him to a multi-storey carpark at Block 54 Cassia Road. Upon their arrival, the CNB officers conducted a search of Dzulkarnain and his van. Amongst other things, a handphone was seized and later marked by the CNB as "DBK-HP1".

18 At around 5.15pm, Dzulkarnain was served the Mandatory Death Penalty Notice by Staff Sergeant Muhammad Fardlie bin Ramlie ("SSgt Fardlie"), whereupon Dzulkarnain furnished his statement in response, which was recorded by SSgt Fardlie at about 5.25pm (the "MDP Statement"). In the MDP Statement, Dzulkarnain said that he did not know what the Brown Box contained, that he believed it likely contained cigarettes, and that he was paid $250 to collect and deliver the Brown Box. From about 5.30pm to 6.00pm, SSgt Fardlie recorded a contemporaneous statement from Dzulkarnain under s 22 of the CPC, in which Dzulkarnain maintained his position that he did not know the contents of the Brown Box.

19 Apart from the MDP Statement and his contemporaneous statement, a cautioned statement and four long statements were recorded from Dzulkarnain during the course of the investigations. In these other statements, Dzulkarnain admitted that he knew he was supposed to deliver drugs to Sanjay, and also explained the circumstances surrounding his involvement in the collection and delivery of drugs to Sanjay. To summarise, one "Bala Luk Kor", who was Dzulkarnain's friend and a member of a gang known as "369", knew that Dzulkarnain was in financial difficulty and offered to pay him $500 for delivering drugs. On 22 February 2015, Bala Luk Kor informed Dzulkarnain that Sanjay had a drug delivery for him to carry out, and that Sanjay would contact him directly in this connection. In the early morning of

23 February 2015, Sanjay met Dzulkarnain at People's Park Complex in Chinatown and informed him that he would be paid $250 initially, and another $250 upon completion of the job. Later that afternoon, Sanjay called Dzulkarnain and instructed him to collect the Brown Box from the Tuas Bus Stop. Dzulkarnain did as he was told, and eventually delivered the Brown Box to the drop-off point at Lorong 37.

The events following the appellants' arrest

20 A team of CNB officers comprising SI Tay, SSSgt Alwin and Sgt Dadly ("Sanjay's Arrest Group"), then accompanied Sanjay to his unit at 9H Yuan Ching Road to conduct a search. On the way there, the duffel bag containing the drug exhibits was placed in the boot of the CNB vehicle. When they arrived at Yuan Ching Road at about 9.30pm, Sanjay's Arrest Group proceeded to search Sanjay's unit in his presence. Throughout this time, it appears from the evidence that SI Tay was holding the duffel bag.

21 The search concluded at 9.45pm, and they all then returned to the vehicle. SI Tay placed the duffel bag in the boot of the CNB vehicle, and they then proceeded to Tuas Checkpoint to carry out some checks on Sanjay's car. At Tuas Checkpoint, the duffel bag remained in the boot of the CNB vehicle.

22 Following these checks, they departed for Alexandra Hospital, and arrived there at about 10.50pm. At about 11.10pm, a relief team of CNB officers comprising SSSgt Eng, Staff Sergeant Goh Jun Xian, Sgt Hidayat and SSgt Au Yong Hong Mian arrived in another vehicle. Both vehicles were parked side by side at the open-air car park at Alexandra Hospital. Sanjay's Arrest Group handed over custody of Sanjay and the duffel bag to SSSgt Eng's team. SSSgt Eng's team then departed for the CNB headquarters ("CNB HQ") with

Sanjay, and it was SSSgt Eng's evidence that the duffel bag was in his possession at all times throughout the journey to the CNB HQ. At the CNB HQ, SSSgt Eng retained possession of the duffel bag until he handed it to IO Ranjeet at 3.24am on the following morning, 24 February 2015, so that the exhibits could be photographed.

23 At about 6.47am on the same day, after photographing, swabbing and weighing the drug exhibits in the presence of Sanjay and Dzulkarnain, IO Ranjeet placed the drug exhibits in a locked safe in his office, before later transferring them to the CNB store. On 2 March 2015 at around 5.20pm, IO Ranjeet delivered the drug exhibits to the HSA for analysis.

The trial

24 The trial was conducted in several tranches between June 2017 and July 2019. Sanjay gave evidence in his own defence, and also called one Billy Chu Jun Kuan, one Shankiri d/o Danakodi ("Shankiri") (who was Sanjay's girlfriend), and one Graceson Ang as factual witnesses. Dzulkarnain did not call any factual witness in support of his defence and elected to remain silent at the trial. This meant that, in respect of Dzulkarnain's case, the Judge only had Dzulkarnain's statements and the cross-examination conducted and the submissions made by his counsel at trial, Mr Eugene Thuraisingam ("Mr Thuraisingam"), to assist her.

Prosecution's case

25 As the charge against Dzulkarnain was for the offence of trafficking in a controlled drug under s 5(1)(*a*) of the MDA, the Prosecution was required to prove that Dzulkarnain: (a) committed the act of trafficking in a controlled drug

without any authorisation; and (b) knew what the drug was (see *Saravanan Chandaram* at [185]).

26 The Prosecution relied on the s 18(2) presumption to prove that Dzulkarnain knew the nature of the Drugs. And to establish their case that Dzulkarnain was trafficking in the Drugs, the Prosecution relied on the fact that Dzulkarnain had delivered the Brown Box to Sanjay. The Prosecution's case on the latter point rested on proving that the Brown Box was the SKP Box (that contained the Drugs).

27 As for Sanjay, the charge against him was one of possession for the purpose of trafficking under s 5(1)(*a*) read with s 5(2) of the MDA, and the Prosecution had to prove that Sanjay: (a) was in possession of a controlled drug; (b) knew the nature of the controlled drug; and (c) possessed the controlled drug for the purpose of trafficking which was not authorised (see *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]).

28 The Prosecution's case against Sanjay was that he was in possession of the SKP Box and therefore of its contents. The Prosecution relied on the s 18(2) presumption to prove Sanjay's knowledge that he was in possession of the Drugs. As to whether such possession was for the purpose of trafficking, the Prosecution submitted that this was proved beyond a reasonable doubt by Sanjay's own evidence that he intended to deliver the Brown Box (which contained the Drugs) to a third party.

Dzulkarnain's defence

29 There were two aspects to Dzulkarnain's defence at trial. First, he contended that the SKP Box which contained the Drugs may not have been the

Brown Box which he had picked up from the Tuas Bus Stop and delivered at the drop-off point. It was not disputed that there was a gap between the time Dzulkarnain left the Brown Box at 14 Lorong 37 and the time the SKP Box was collected by Sanjay from the same location, and during this gap, the Brown Box was not monitored by any CNB officers (GD at [12]). Dzulkarnain submitted that this constituted a break in the chain of custody of the Drugs. Dzulkarnain further submitted that on this basis, the Prosecution had not established, beyond a reasonable doubt, that the Brown Box contained the Drugs.

30 Second, Dzulkarnain contended that he had rebutted the s 18(2) presumption, relying on the account he gave in the MDP Statement to the effect that he did not know what the contents of the Brown Box were, and that it was Sanjay who had instructed him to collect the Brown Box. At trial, Dzulkarnain's counsel suggested that Dzulkarnain thought he was delivering cigarettes (GD at [43]), but this was dropped in Dzulkarnain's closing submissions (GD at [44]).

Sanjay's defence

31 As for Sanjay, he disputed all three elements of the offence. First, in respect of the element of knowing possession, Sanjay argued that it was not sufficient for the Prosecution to show that he knew the SKP Box contained something. Rather, the Prosecution had to establish that he knew there were "5 wrapped-up packages" inside the SKP Box. Since he honestly believed the SKP Box contained hunting knives and possibly contraband cigarettes, he contended that the element of possession was not made out.

32 Second, Sanjay sought to rebut the s 18(2) presumption with this same claim that he believed he was delivering collectors' hunting knives and possibly some contraband cigarettes. Essentially, Sanjay claimed that Boy Lai (see [16]

above) had asked him to collect some hunting knives and possibly some contraband cigarettes that he had ordered from Malaysia Boy. Sanjay was to collect these items from Dzulkarnain, before delivering them to Boy Lai at Hotel La Mode at Lorong 10 Geylang ("Lorong 10"). Sanjay agreed to assist Boy Lai because he, like Boy Lai, was a knife collector and because Boy Lai had promised him a payment of $300. Sanjay maintained that he did not know that the SKP Box in fact contained five bundles of cannabis.

33 Third, Sanjay argued that even assuming he was in possession of the Drugs, he had been tasked to deliver them to Boy Lai, and since Boy Lai had arranged the delivery and collection of the said Drugs, his act of delivering the Drugs to Boy Lai did not fall within the scope of the offence of trafficking.

34 Sanjay also disputed the accuracy of the recording of his oral statement and his cautioned statement by the CNB officers. Amongst other things, Sanjay contended that he had told SI Tay and SSSgt Alwin at the MSCP and prior to SI Tay opening the SKP Box, that it contained "knives and cigarettes" (GD at [29(a)]). He further claimed that this was inaccurately recorded by SSSgt Alwin in the CNB field book, when he instead recorded Sanjay as having shrugged without giving a verbal response (see [14] above). This was a point that Sanjay raised on appeal, and one which his appeal counsel, Mr Andre Jumabhoy ("Mr Jumabhoy"), vigorously canvassed before us as the central plank of Sanjay's case in rebutting the s 18(2) presumption.

35 Following the conclusion of the main tranche of the trial on 15 February 2019, Sanjay raised a challenge in respect of the chain of custody of the drug exhibits following their seizure by SI Tay. An application was made by Mr Peter Keith Fernando ("Mr Fernando"), Sanjay's counsel at trial, to convene a further hearing to explore an issue pertaining to the chain of custody

of the exhibits. The Judge granted Mr Fernando's application, and the further hearing took place on 16 July 2019 (the "further hearing"). In the course of the further hearing, Mr Fernando raised two contentions on Sanjay's behalf in respect of the chain of custody issue.

36 The first, which was the main purpose for which the further hearing was convened, was Sanjay's contention that there was an inconsistency between the evidence of the various CNB officers regarding who had handed over the duffel bag to SSSgt Eng at Alexandra Hospital. While SSSgt Eng and SI Tay both said in their conditioned statements that it was SI Tay who handed the seized exhibits to SSSgt Eng, Sgt Dadly stated in his conditioned statement that *he* had handed the seized exhibits to SSSgt Eng (GD at [70]).

37 The second contention was not initially raised by Sanjay in his application for a further hearing, but it was nevertheless pursued by Mr Fernando at the further hearing. This related to SSSgt Eng's account of the movements and location of the duffel bag from when he took custody of it until he handed it over to IO Ranjeet at the CNB HQ. In particular, SSSgt Eng did not, in his conditioned statement, explicitly identify the location of the duffel bag during this period. Mr Fernando therefore contended that there was a break in the chain of custody (GD at [73]).

The decision below

Dzulkarnain

38 As against Dzulkarnain, the Judge was satisfied that the elements of the charge against him had been proved beyond a reasonable doubt (GD at [60]), and duly convicted him (GD at [62]).

39 The Judge rejected Dzulkarnain's allegation that the Brown Box was not the SKP Box (GD at [59]). The Judge did not think this concerned the integrity of the chain of custody at all, though she noted that it remained the Prosecution's burden to prove beyond a reasonable doubt that the Brown Box was the SKP Box (GD at [46]–[47]).

40 In particular, the Judge noted that there was a coincidence of time, place and subject matter in the delivery and collection of the Brown Box and the SKP Box and concluded that Sanjay could not possibly have picked up a different box at the drop-off point (GD at [51]). As for Dzulkarnain's theory that the Brown Box may have been switched with the SKP Box, the Judge thought this was implausible and against the weight of the evidence. The incredibility of Dzulkarnain's theory was further compounded by the fact that the Drugs contained in the SKP Box were valuable with an estimated street value of between $9,000 and $14,000 (GD at [55]–[57]). Finally, the Judge found that the absence of Dzulkarnain's DNA on the SKP Box was a neutral factor because it was possible for Dzulkarnain to carry the box without leaving traces of DNA that could be identified as his (GD at [58]).

41 The Judge was also satisfied that Dzulkarnain had not rebutted the s 18(2) presumption (GD at [61]). Having considered all the investigative statements furnished by Dzulkarnain, the Judge preferred Dzulkarnain's admissions in his cautioned statement and long statements that he knew the Brown Box contained drugs (GD at [44]). She therefore convicted Dzulkarnain of the charge.

42 On sentencing, the parties agreed that Dzulkarnain was a courier within the meaning of s 33B(2)(*a*)(i) of the MDA. Further, the Prosecution had issued Dzulkarnain a CSA under s 33B(2)(*b*) of the MDA. The Judge, having

considered all the circumstances, exercised her discretion to impose the alternative sentence of life imprisonment pursuant to s 33B(1)(*a*) of the MDA. As Dzulkarnain was above 50 years of age, he was not liable for caning (GD at [119]).

Sanjay

43 In relation to Sanjay, the Judge was also satisfied that the elements of the charge against him had been proved beyond a reasonable doubt (GD at [114]).

44 As to the first element, the Judge found that Sanjay was in possession of the Drugs because he was in possession of the SKP Box which he knew contained something, which later turned out to be a controlled drug (GD at [80]). Beyond this, it was not necessary for the Prosecution to prove that Sanjay knew the SKP Box contained the five wrapped-up packages. What he did or did not know about the essence or nature of the contents of the SKP Box would be an issue when considering the question of his knowledge of the nature of the drugs.

45 Turning to the second element, namely knowledge, the Judge found that Sanjay had failed to rebut the s 18(2) presumption. We summarise the Judge's decision in this regard at [124] below, but, for the moment, it may be noted that the Judge, having considered the evidence, disbelieved Sanjay's claim that he thought he was delivering collectors' hunting knives and possibly contraband cigarettes.

46 Next, the Judge found that Sanjay did possess the Drugs for the purpose of trafficking. By collecting the SKP Box containing the Drugs from Dzulkarnain with the intention of delivering it to Boy Lai, Sanjay in fact

intended to deliver the Drugs to a third party and this satisfied the purpose element (GD at [113]).

47 Finally, the Judge found there was no break in the chain of custody of the drug exhibits (GD at [75]). While the Judge acknowledged that there appeared to be an inconsistency between the evidence of SI Tay and Sgt Dadly in their conditioned statements regarding the identity of the individual who handed over the drug exhibits to SSSgt Eng, the Judge accepted SI Tay's explanation (see [55] below) which she found to be credible (GD at [71]–[72]). The Judge also found, contrary to Mr Fernando's suggestion, that SSSgt Eng had satisfactorily explained how he handled the drug exhibits during the relevant time (GD at [73]).

48 The Judge accordingly convicted Sanjay. While the Judge found that Sanjay's role was that of a courier as provided for in s 33B(2)(*a*)(i) of the MDA, the Prosecution did not issue him a CSA. Accordingly, the Judge found that the alternative sentencing regime under s 33B(1)(*a*) of the MDA was not available, and imposed the mandatory death sentence on Sanjay (GD at [124]).

CM 23

49 Before dealing with the merits of the two appeals, we address the motion filed by Sanjay in CM 23 seeking leave to adduce evidence that had been readily available at trial but was not adduced. The evidence in question was Sanjay's own affidavit ("Sanjay's Affidavit") in which he sought to contradict the testimony of SSSgt Eng that the duffel bag containing the drug exhibits was placed on his lap while he drove the CNB vehicle from Alexandra Hospital to the CNB HQ (the "further evidence"). Sanjay sought an order that the matter be

remitted to the Judge to take Sanjay's further evidence and to set out her findings on remittal.

50 We should mention that CM 23 was not the first criminal motion Sanjay had filed seeking leave to adduce further evidence to aid his appeal. By an earlier application made in CA/CM 26/2021 ("CM 26"), Sanjay sought leave to adduce some other evidence that he admitted was available to him at trial but which had not been adduced, and which he contended was material and might bear on the soundness of his conviction. We heard and dismissed CM 26 on 2 March 2022: *Sanjay Krishnan v Public Prosecutor* [2022] SGCA 21. In CM 26, Sanjay did not attempt to also adduce the further evidence that is now before us. This suggested that Sanjay was seeking to develop his case in a piecemeal fashion.

Sanjay's Affidavit

51 The further evidence in Sanjay's Affidavit pertained to what he contended had occurred after the duffel bag was handed over by Sanjay's Arrest Group to SSSgt Eng's team at Alexandra Hospital. This issue arose during the further hearing before the Judge on 16 July 2019 (see [36] above). SSSgt Eng testified then that after the duffel bag was handed to him, he placed it on his lap while he was driving to the CNB HQ. SSSgt Eng also testified that the duffel bag was "more than a metre" in length, "2 feet" wide and "1 1/2 feet" tall.

52 Sanjay claimed in his affidavit that had he been asked about this aspect of SSSgt Eng's evidence, he would have contested SSSgt Eng's account because he did not accept that the duffel bag was on SSSgt Eng's lap while he was driving the CNB vehicle. Sanjay argued that this could potentially

undermine the Judge's findings on the chain of custody and the identity of the drug exhibits that were eventually sent to the HSA for analysis.

The law

53 The admission of further evidence on appeal is governed by the well-established cumulative requirements laid down in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*"), namely that the evidence: (a) could not have been obtained with reasonable diligence for use in the lower court (the "non-availability" condition); (b) would probably have an important influence on the result of the case, although it need not be decisive (the "materiality condition"); and (c) must be apparently credible, although it need not be incontrovertible.

54 In *Public Prosecutor v Mohd Ariffan bin Mohd Hassan* [2018] 1 SLR 544 ("*Ariffan*"), we held that where the application is made in a criminal matter by the Defence, the "non-availability" condition should be applied in an attenuated way (*Ariffan* at [43]–[49]). We clarified in *Miya Manik v Public Prosecutor* [2021] 2 SLR 1169 ("*Miya Manik*") that our statement in *Ariffan* did not mean that the "non-availability" condition would be displaced as a relevant consideration whenever the court is faced with such an application brought by the Defence. The "non-availability" condition remained relevant, though it would be applied in an attenuated way in favour of the Defence, and this meant it would be necessary to consider the non-availability condition holistically in the light of the other conditions of materiality and reliability (*Miya Manik* at [32]).

The "non-availability" condition was not satisfied in this case

55 At the start of the further hearing, the Judge specifically asked whether Sanjay wished to give evidence, and was told that Sanjay did not wish to do so. The Judge, in the event, accepted the evidence of the CNB officers that as far as SI Tay and SSSgt Eng were concerned, when they said in their conditioned statements that the drug exhibits were handed by one of them to the other, they were referring to the handover from one team lead by SI Tay to the other team led by SSSgt Eng, and that this was not inconsistent with the fact that the particular individual who did this was Sgt Dadly, acting on the instructions of SI Tay.

56 In the course of being cross-examined on his evidence, SSSgt Eng was asked where the duffel bag was when Sanjay was being driven to the CNB HQ. He replied that he had placed it on his lap. This evidently surprised Mr Fernando who then specifically cross-examined him on this issue:

> Q: You had the duffel bag with you?
>
> A: Yes, Your Honour.
>
> Q: Where did you keep it or put it when you reached your CNB vehicle?
>
> A: Your Honour, upon boarding the vehicle, I put it on my lap.
>
> Q: Where did you sit in the vehicle?
>
> A: The front passenger seat, Your Honour.
>
> …
>
> A: Yes, Your Honour. Your Honour, I made a mistake. I was the driver of the car…
>
> Q: *So you couldn't have had the duffel bag on your lap. Do you agree with me?*
>
> A: I disagree.

> Q: *You drove with the duffel bag on your lap from Alexandra to CNB Headquarters?*
>
> A: Yes, Your Honour.
>
> Q: *A duffel bag which is a metre long which is in the description you gave, more than 1½ feet wide and about 1½ feet in height, you drove with this duffel bag on your lap to CNB Headquarters?*
>
> A: Yes, Your Honour.
>
> Q: Is there anything in the [CNB field book] or diary that states that you had the duffel bag with you when you left Alexandra Hospital?
>
> A: No, Your Honour.
>
> [emphasis added]

57 Sanjay accepted that any challenge to the evidence of SSSgt Eng in respect of the location of the duffel bag when returning to the CNB HQ could have been made at the further hearing. Indeed, Sanjay himself was more than capable of giving the evidence, and there would have been no difficulty with his doing so. Mr Jumabhoy, accepted that the "non-availability" condition was not met in relation to the further evidence. In our view, this concession was rightly made. It was abundantly clear that the issue of where the duffel bag was during the drive to the CNB HQ, although not the issue that the further hearing had been convened to examine, was not simply a throwaway issue that was left by the side. On the contrary, not only was it picked up in cross-examination by Mr Fernando, but it also occupied the Judge who specifically considered the issue and made her findings on this at [73] of the GD. The question of the integrity of the chain of custody of the drug exhibits, including SSSgt Eng's custody of the duffel bag containing the said exhibits, was thus squarely raised at the further hearing.

58 The first difficulty with Sanjay's case in CM 23 was that he took no steps to engage that issue then and there, when SSSgt Eng was giving evidence.

There was no suggestion that Sanjay did not hear the evidence, or that he was unaware of what was being said. In these circumstances, it was incumbent on Sanjay to explain why the evidence was not produced when it could and should have been. In this connection, we emphasise the following passage from *Ariffan* (at [68]):

> … As a matter of law, however, we consider that when the court determines whether the requirement of non-availability has been satisfied, it should also turn its mind to the issue of whether the evidence sought to be admitted on appeal was reasonably not thought to be necessary at trial. *If a party ought reasonably to have been aware, either prior to or in the course of trial, that the evidence would have a bearing on its case, and that party fails to make a sufficient attempt to adduce the evidence at trial, this should militate against permitting the party to subsequently have that evidence admitted on appeal.* But where it was reasonably not apprehended that the evidence would or could have a bearing on the case at hand, a different result should ensue. Counsel cannot be expected to consider things that, objectively and reasonably, would not have been thought to be relevant to the case. The determination of whether a party would reasonably not have thought the evidence to be necessary at trial naturally *requires consideration of the issues that the party would reasonably have become aware of either before or during the course of trial.*
>
> [emphasis added]

Accordingly, where a party becomes aware of an issue that is raised in the course of the trial, and is in possession of evidence which he claims to be relevant to the determination of that issue, it is incumbent on that party to seek to adduce the relevant evidence at trial. A failure to do so would weigh against it being raised at a later stage of the proceedings.

59 In the present case, there was nothing preventing Sanjay from testifying on this aspect of the chain of custody. Indeed, Mr Jumabhoy seemed to agree that the opportunity was simply not taken. However, he sought to overcome this by emphasising that the hearing was concerned with a different aspect of the

chain, namely the seeming discrepancy in the handover from SI Tay to SSSgt Eng. Further, the issue of the precise location of the duffel bag after it had been handed over to SSSgt Eng was not set out in SSSgt Eng's conditioned statements, nor in any of the CNB officers' statements. In these circumstances, Mr Jumabhoy submitted that it was not reasonable to expect Sanjay to have appreciated that SSSgt Eng's evidence raised a further, distinct issue as regards the chain of custody.

60 We did not agree with this. In our judgment, Sanjay could have and did in fact appreciate the point. We make three points. First, and broadly speaking, the central issue in the further hearing was the integrity of the chain of custody. Sanjay knew and appreciated that this was the focus of that hearing since he had discussed this with Mr Fernando before the hearing. This much was undisputed. He also knew, at least, that this entailed accounting for the whereabouts of the duffel bag throughout the material time, since this was why the question of who had delivered the duffel bag to SSSgt Eng was being investigated at the further hearing.

61 Second, and relatedly, as is evident from Mr Fernando's cross-examination of SSSgt Eng, the issue pertaining to the location of the duffel bag when SSSgt Eng was driving the CNB vehicle was not referred to fleetingly. It occupied Mr Fernando who pressed the point. And as we have noted, it even featured in the GD at [73]. Upon hearing this aspect of SSSgt Eng's evidence and the ensuing line of questioning by Mr Fernando, the contradiction between SSSgt Eng's evidence and Sanjay's own evidence, assuming for the moment that it is true, would have been glaringly obvious. It concerned a matter entirely within Sanjay's personal knowledge. It must therefore have struck Sanjay that SSSgt Eng's evidence that he had placed the duffel bag on his lap was untrue based on Sanjay's own recollection of what had

transpired. Yet, he did not raise the issue, which undermined the credibility of his present claim.

62 Third, the nub of the evidence in Sanjay's Affidavit was that Sanjay *was aware* that this was a significant point. He claimed he raised it with his then-counsel, Mr Ramesh Tiwary ("Mr Tiwary"), just after Mr Tiwary filed CM 26 but before that was heard. This undermined Mr Jumabhoy's submission that Sanjay could not be expected to have appreciated the significance of the point.

63 Mr Jumabhoy described the fact that Sanjay had raised it with Mr Tiwary as a double-edged sword; but in our view it cut against Sanjay's case on both sides. First, it was Sanjay who appreciated the point and yet, apparently, did not raise it with Mr Fernando, either earlier at the further hearing or at any time before the Judge issued the GD. Second, at no time up to the filing of CM 26 by Mr Tiwary did Sanjay seek to include the further evidence in that application. It was only after the filing of CM 26 when Mr Tiwary asked Sanjay for the second time whether he had any further matter to discuss, that Sanjay raised the evidence that he sought to admit in CM 23. Yet, inexplicably, even after the filing of CM 26 up to the time that application was heard and disposed of in March 2022, he never pursued the point. Ultimately, as we put to Mr Jumabhoy, this was not a complex point of law. It was simply a factual issue that was within Sanjay's ability to canvass at trial.

64 Once we disbelieved Sanjay's explanation as to why the issue regarding SSSgt Eng's evidence had not been raised earlier, it was clear to us that CM 23 was doomed to fail because no other explanation had been put forward to justify why he could not have adduced the further evidence with reasonable diligence.

The "materiality" condition was not satisfied

65 In any event, we also found that the "materiality" condition was not satisfied for the purposes of admitting the fresh evidence.

66 As mentioned above, Mr Fernando had suggested to SSSgt Eng during cross-examination that the duffel bag was not on his lap. Mr Fernando's line of questioning plainly brought to the Judge's attention a possible issue regarding the veracity of SSSgt Eng's account, which was whether the duffel bag was in fact on SSSgt Eng's lap at the relevant time. It was not suggested that anything more could have been put to SSSgt Eng based on what Sanjay might have testified. The Judge was therefore alive to the point, and she made her findings as noted in the GD.

67 Sanjay's evidence was in substance a bare denial of SSSgt Eng's account. Coupled with the Judge's eventual finding that Sanjay was not a credible witness given his lies and his evasive behaviour at trial (GD at [92]), it was difficult to see the impact that his further evidence could have had on the Judge's analysis. Accordingly, we did not think the "materiality" condition was met.

CM 23 was an abuse of process

68 Aside from the substantive requirements set out in *Ladd v Marshall*, we also considered that the procedural history leading up to Sanjay's application in CM 23 and his approach to adducing the further evidence constituted an abuse of the court's process.

69 In *Miya Manik*, we recognised (at [64]) that the doctrine of abuse of process is applicable in criminal proceedings. The rationale, as we noted, is

premised on the court's power to prevent abuses of its processes arising from its inherent jurisdiction, such jurisdiction being vested in the court so that it may "uphold, protect and fulfil the judicial function of administering justice according to law in a regular, orderly and effective manner" (see *Miya Manik* at [66], citing *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [30]). An application to adduce further evidence may be dismissed on the ground that it amounts to an abuse of process (see *BLV v Public Prosecutor* [2019] 2 SLR 726).

70 The circumstances of the present case led us to conclude that Sanjay was drip-feeding procedural applications, which was an impermissible abuse of the process of the court. At the outset, the chronology of the events leading up to the filing and hearing of CM 23 should be noted:

(a) The main evidentiary potion of the trial concluded on 15 February 2019.

(b) A few months thereafter, the chain of custody issue was raised by Mr Fernando. An application was made, and subsequently granted by the Judge, to convene a separate hearing to deal with this matter. That hearing was convened on 16 July 2019.

(c) More than two years later, CM 26 was filed by Mr Tiwary on 2 September 2021. That application was heard on 2 March 2022, and we issued our brief oral grounds dismissing that application on the same day.

(d) It was not until slightly more than half a year later that CM 23 was filed on 7 October 2022.

71 As we pointed out to Mr Jumabhoy, the manner in which CM 23 came to be placed before the court clearly illustrated the wholly unacceptable manner in which the issue had been raised. Sanjay's treatment of the further evidence was simply at odds with his assertion in CM 23 as to the importance of that evidence.

72 Our criticism as to how CM 23 was brought is not directed at Mr Jumabhoy, who was only instructed by Sanjay sometime after the conclusion of CM 26. In this regard, Mr Jumabhoy was bound to raise any points he thought he could or should. But in the same vein, Mr Jumabhoy also conceded, rightly in our view, that the purpose of CM 23 was to ask for the entirety of the trial involving the chain of custody issue to be reopened. The Defence simply could not be permitted to abuse the process in this way.

Conclusion on CM 23

73 For these reasons, we dismissed CM 23. The evidence contained in Sanjay's Affidavit was readily available at trial, and there was no reason why it should not have been adduced then. We were also not persuaded as to its materiality. And putting that aside, we were satisfied that CM 23 should be dismissed on the basis that it amounted to an abuse of process.

74 We turn to the substantive appeals, beginning with Dzulkarnain's appeal in CCA 30.

CCA 30

Dzulkarnain's case

75 The crux of Dzulkarnain's appeal was directed against the Judge's finding that the Brown Box which Dzulkarnain dropped off at the Green Bin

was the same as the SKP Box that Sanjay picked up. It was undisputed that, for a short period of around five minutes or so between the time Dzulkarnain dropped the Brown Box off at the Green Bin and the time Sanjay picked up the SKP Box, there was no CNB officer monitoring the drop-off point. On this premise, Dzulkarnain raised two contentions.

76 The first was that because there was no CNB officer observing the Brown Box at the Green Dustbin after it was delivered by Dzulkarnain, there was a break in the chain of custody of the drug exhibits. Dzulkarnain's first contention was thus framed as an issue relating to the chain of custody of the drug exhibits.

77 Even if this did not amount to a gap in the chain of custody, Dzulkarnain argued that there was simply no positive evidence confirming that he had delivered the SKP Box. Dzulkarnain first argued the Judge had placed excessive weight on the similarity between Dzulkarnain's description of the Brown Box and the features of the SKP Box. In this regard, Dzulkarnain pointed out that he was not shown the SKP Box or any photographs of the same during his statement recordings. Nor had he been asked whether he had delivered the SKP Box to the drop-off point. Further, Dzulkarnain relied on the fact that he had informed Dr Jerome Goh Hern Yee ("Dr Goh") from the Institute of Medical Health that he remembered the measurements of the Brown Box to be 90cm by 100cm by 110cm, which were different from those of the SKP Box, which were 43cm by 23cm by 9cm.

78 Dzulkarnain further argued that the Judge failed to accord due weight to the discrepancies and seeming inconsistencies in the evidence surrounding the delivery and collection of the Drugs:

(a) The first related to the inconsistency in the CNB officers' description of the placement of the Green Bin relative to the roadside kerb in their evidence. Insp Faizal had described the Green Bin as being placed "a bit further away from the kerb". On the other hand, SSSgt Eng's evidence was that the Green Bin was "on the double yellow line and just beside the kerb". And Sgt Hidayat's evidence was that the Green Bin at the drop-off point was "in front of the kerb". Dzulkarnain thus suggested that the Green Bin appeared to have been moved during the time-gap.

(b) The second was the difference between Insp Faizal's and Sanjay's evidence regarding the position of the Brown Box and the SKP Box. Insp Faizal said he was able to see a brown box when he was driving past the Green Bin to follow Dzulkarnain's van. Sanjay, on the other hand, said that he could not see the box from his car when he had parked beside the Green Bin.

79 On this basis, Dzulkarnain suggested that the Brown Box could have been removed by some unknown person who placed the SKP Box at that location instead. He also pointed to the fact that 14 Lorong 37 was accessible to the public. Given the absence of any CNB officer monitoring the drop-off point during those minutes, he suggested that had this happened, it would not have been detected.

80 Finally, he also relied on the fact that his DNA was not identified anywhere on the SKP Box or its contents.

Prosecution's case

81 The Prosecution, on the other hand, maintained that the Judge had correctly concluded that there could be no question of a break in the chain of custody of the drug exhibits prior to the SKP Box being taken into custody by the CNB officers. The Prosecution also relied on the Judge's finding, reached after a careful and detailed analysis of the evidence, that the Brown Box was the SKP Box.

The issues raised in CCA 30

82 The issues in CCA 30 were as follows:

(a) Was the Judge correct that the applicable principles relating to the chain of custody only apply from the time the CNB officers take the drug exhibits into custody?

(b) Was the Judge correct that the Prosecution had proved beyond a reasonable doubt that the SKP Box containing the Drugs was the Brown Box that Dzulkarnain had delivered?

The principles relating to the chain of custody only apply from the time drug exhibits are seized by the police

83 In our judgment, the question of whether the Brown Box was the same as the SKP Box was not an issue relating to the chain of custody. As the Judge correctly noted, the latter inquiry pertains to the handling of exhibits from the point they are taken into custody by the police (GD at [47]). This much is clear from our holding in *Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 (at [39]):

> **It is well established that the Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits**

> **analysed by the HSA are the very ones that were initially seized by the CNB officers from the accused**. Much of the discussion in this area has been framed in terms of whether such a doubt has been raised as to a possible break in the chain of custody. *But this obscures the fact that it is first incumbent on the Prosecution to establish the chain.* **This requires the Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis**. In the context of the Prosecution establishing the chain of custody, the Defence may also seek to suggest that there is a break in the chain of custody. This refers not necessarily to challenging the Prosecution's overall account but to showing that at one or more stages, there is a reasonable doubt as to whether the chain of custody may have been broken. Where this is shown to be the case and a reasonable doubt is raised as to the identity of the drug exhibits, then the Prosecution has not discharged its burden … To put it another way, the Prosecution must show an *unbroken chain*. There cannot be a single moment that is not accounted for if this might give rise to a reasonable doubt as to the identity of the exhibits: *PP v Chen Mingjian* [2009] 4 SLR(R) 946 … at [4].
>
> [original emphasis in italics; our emphasis in bold]

84 The Judge also correctly recognised that as far as the applicable burden and standard of proof was concerned, the "heavy onus remained for the Prosecution to prove beyond a reasonable doubt that the brown box [delivered by Dzulkarnain] was the 'SKP' box [picked up by Sanjay]" (GD at [47]). The charge against Dzulkarnain was that he had delivered the Drugs to Sanjay. It was therefore incumbent on the Prosecution to prove, beyond a reasonable doubt, that the Drugs seized from Sanjay in the SKP Box were the contents of the Brown Box that Dzulkarnain had delivered because the two boxes were one and the same. The Prosecution did not dispute that it bore this burden. We therefore dismissed this aspect of Dzulkarnain's appeal.

The Judge was correct to find that the SKP Box was the Brown Box

85 As against the Judge's finding that the Brown Box left behind by Dzulkarnain at the Green Bin was the SKP Box that was found in Sanjay's

possession upon his arrest, Dzulkarnain's decision not to take the stand or give evidence in the main evidentiary portion of the trial below limited the lines he could pursue in his appeal. In the event, the Judge only had Dzulkarnain's statements and Mr Thuraisingam's submissions and cross-examination of the Prosecution's witnesses to assist her in evaluating the merits of Dzulkarnain's defence. It was plainly an uphill task for Dzulkarnain to show that the Judge erred in her finding that the Brown Box was the SKP Box.

86 The Judge was fully cognisant of the fact that, for a short period of around five minutes or so, the location of the drop-off point was not monitored by the CNB. Despite this, she found it highly improbable, indeed fanciful, for Dzulkarnain to have suggested that the Brown Box was not the SKP Box. In coming to this conclusion, the Judge weighed the absence of any surveillance by the CNB officers at the drop-off point during that short period against the following facts:

(a) Dzulkarnain described the Brown Box as a "box which was sealed with tape" that felt like it weighed 5kg. As the Judge observed, this matched the description of the SKP Box, which when it was first retrieved was sealed with masking tape, and weighed 4,993.68g (GD at [48]).

(b) Dzulkarnain mentioned in his police statements that he knew the Brown Box contained drugs, and this was consistent with the contents of the SKP Box seized by the CNB officers, which was found to contain the Drugs (GD at [48]).

(c) The location was identical in terms of where the Brown Box was to be dropped off and the SKP Box was to be collected, and where they were in fact dropped off and collected, namely behind the Green Bin at

14 Lorong 37. The Judge further found that this was a pre-arranged location which Sanjay and Dzulkarnain had agreed on (GD at [49]).

(d) The CNB officers tailing Dzulkarnain into Lorong 37 saw him leave the Brown Box at the Green Bin, though they could not positively identify it as the SKP Box. Other CNB officers then saw Sanjay drive into the same street, about five minutes later and collect the SKP Box (GD at [50]–[51]).

(e) The Judge accepted Insp Faizal's evidence that there was no other brown box at the Green Bin (GD at [52]).

(f) There was a specific arrangement between Dzulkarnain and Sanjay for the delivery and collection, and there was a coincidence of time, place and subject matter of the delivery (GD at [51]).

87 As against all this, Dzulkarnain argued that the Judge failed to accord due weight to two points. The first was that Dzulkarnain was not asked by the police at the time his statement was being recorded whether the SKP Box was the box that he delivered to the drop-off point, or to estimate the dimensions of the Brown Box. Dzulkarnain pointed to his statement to Dr Goh regarding the said dimensions, which were different from the actual dimensions of the SKP Box (see [77] above). The second was that there were minor discrepancies in the CNB officers' description of the precise location of the Green Bin relative to the kerb, and between Insp Faizal's and Sanjay's evidence regarding the location of the Brown Box relative to the Green Bin.

88 As to the first point, this was immaterial. The fact was that Dzulkarnain was able to describe the appearance, weight, colour and expected contents of the Brown Box in terms that matched those of the SKP Box without having been

told any of this in respect of the latter. In any event, there was no need for the CNB officers to have asked Dzulkarnain to describe the Brown Box in light of Dzulkarnain's admission in his cautioned statement and his long statements that he had delivered the Drugs in the Brown Box. Finally, the fact that Dzulkarnain provided a different description of the Brown Box to Dr Goh was a neutral point. It could equally have been a self-serving attempt to distance himself from the SKP Box or the result of his inability to correctly estimate dimensions.

89 On the second point, the Judge had applied her mind to consider the apparent inconsistencies in the evidence before her and did take them into account in weighing them against the other evidence, as was evident from her analysis in the GD. Having done this, the Judge concluded that these discrepancies were insufficient to affect, and hence could not and did not displace, her conclusion that the Brown Box was the SKP Box (GD at [54]–[56]). We agreed with the Judge's analysis. As we pointed out to Dzulkarnain's counsel, Mr Suang Wijaya ("Mr Wijaya"), most of the seeming discrepancies raised in respect of the relative positioning of the Green Bin and the Brown Box or the SKP Box turned very much on the location and perspectives of the viewers, and it was common ground that those who testified on these matters had viewed the drop-off point from different places and with different fields of vision.

90 Mr Wijaya then submitted that it remained a possibility that someone else might have replaced the Brown Box in the same spot during the intervening gap of five minutes. He suggested that there could have been other drug syndicates operating in Lorong 37 on that day, or that someone could have taken the Brown Box and walked away with it given the accessibility of Lorong 37 to the general public, and the presence of others there on that day. As the Judge noted, the real question was whether this was sufficient to raise a reasonable

doubt or whether it was just a fanciful possibility. In the end, she considered it incredible that a complete stranger might have happened to pass by during that small gap of five minutes, noticed the Brown Box without having had any reason to think it was there, replaced it with the SKP Box in the very location that had been arranged between Dzulkarnain and Sanjay, and that this new box too just happened to have drugs with a high street value (GD at [57]). We agreed with her.

91 The simple point was that Mr Wijaya's hypothesis rested on a very shaky tower of coincidences stacked one upon another. The incredibility of this hypothesis was exacerbated by the fact that the drop-off location was a random location which was chosen on the spur of the moment. Dzulkarnain explained that after he had picked up the Brown Box from the Tuas Bus Stop, Sanjay called and directed him to go to Lorong 21. When Dzulkarnain arrived there, Sanjay told him to place the Brown Box at a lorry which was parked nearby, but Dzulkarnain resisted this "because there was [a] Mitsubishi car with one person inside nearby the lorry ... [and he] felt that it was not safe … [and he] did not want the guy in the Mitsubishi car to see [him] putting the [Brown Box] there as [Dzulkarnain] did not know who he was". Sanjay then directed Dzulkarnain to go to Lorong 37, and told him to place the Brown Box at the Green Bin. In this connection, we emphasise Mr Wijaya's concession that there was an admitted arrangement between Dzulkarnain and Sanjay for the Brown Box to be dropped off and to be picked up, and that what Dzulkarnain expected the Brown Box to contain matched what was found in the SKP Box. For all these reasons, we agreed with the Judge that the hypothesis put forward by Dzulkarnain was fanciful.

92 As to the absence of Dzulkarnain's DNA on the SKP Box, in our judgment, the Judge correctly found that this was a neutral factor (GD at [58]).

The expert testimony of the Prosecution's expert witness, Dr Chuah Siew Yeam ("Dr Chuah"), was that the presence of multiple DNA samples on the SKP Box meant that it was not possible to specifically isolate and identify Dzulkarnain's DNA as being present on the SKP Box. Dr Chuah's evidence was *not* that Dzulkarnain's DNA was definitely absent from the SKP Box; rather, his evidence was that there were multiple, unidentifiable, DNA samples present on the SKP Box, such that it was not possible to conclude that Dzulkarnain's DNA was present on the box.

93 In any event, as we observed in *Mui Jia Jun v Public Prosecutor* [2018] 2 SLR 1087, the absence of a subject's DNA from an exhibit can be due to a variety of reasons, including the degradation of DNA traces or even a conscious attempt to clean the relevant surfaces (at [62]). Dr Chuah also testified that it was possible for Dzulkarnain to carry the SKP Box without leaving traces of his DNA.

94 We therefore dismissed Dzulkarnain's appeal in CCA 30. We turn to Sanjay's appeal in CCA 32.

CCA 32

Sanjay's case

95 Sanjay raised three main arguments on appeal. The first was that Dzulkarnain's statements, which were inadmissible against him as a matter of law, had been relied upon extensively by the Prosecution in cross-examining Sanjay and allegedly by the Judge in her analysis of the case against Sanjay. Sanjay said he had been prejudiced by this because he did not have the opportunity to test Dzulkarnain's evidence at trial since the latter elected not to testify.

96 The second was that the Prosecution had shifted its case regarding Boy Lai's existence. This ostensibly raised the issue of procedural fairness because it deprived Sanjay of the opportunity to know with certainty what case he had to meet.

97 Finally, Sanjay submitted that the Judge erred in finding that he had failed to rebut the s 18(2) presumption. In particular, the Judge erred in rejecting Sanjay's claim that the CNB officers had wrongly recorded his response when he was asked about the contents of the SKP Box. Had the Judge accepted this, the Judge would likely have accepted Sanjay's claim that he believed the SKP Box contained collectors' hunting knives and possibly contraband cigarettes.

The issues raised in CCA 32

98 Three key issues were raised in respect of Sanjay's appeal in CCA 32:

(a) First, did the Prosecution impermissibly rely on Dzulkarnain's statements in cross-examining Sanjay during the trial? And relatedly, did the Judge impermissibly rely on Dzulkarnain's statements in coming to her findings against Sanjay on the element of possession of the Drugs for the purpose of trafficking?

(b) Second, did the Prosecution advance alternative and inconsistent cases regarding the existence of Boy Lai during the trial?

(c) Third, did the Judge err in her finding that Sanjay failed to rebut the s 18(2) presumption?

The Judge and the Prosecution did not rely on Dzulkarnain's statements

99 Sanjay suggested that Dzulkarnain's evidence contained in his police statements, which he argued was in the nature of a confession, had been impermissibly relied on by the Prosecution in cross-examining Sanjay. That evidence, he argued, was then impermissibly relied upon by the Judge in coming to her findings. Sanjay submitted that he had been prejudiced by this because he had no opportunity to challenge Dzulkarnain's evidence contained in his statements because Dzulkarnain had elected not to take the stand.

100 In support of his argument that Dzulkarnain's confession contained in his statements had been *impermissibly* admitted against Sanjay for the purposes of cross-examination, Mr Jumabhoy referred us to s 258(5) of the CPC, which reads:

> **Admissibility of accused's statements**
>
> **258.**—…
>
> …
>
> (5) When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.

101 Mr Jumabhoy sought to rely on our decision in *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh a/l Perumal*") to ground his submission that a co-accused person's confession cannot be relied upon against another co-accused person under s 258(5) of the CPC for the purposes of cross-examination, where the two were not facing charges for the identical offence.

102 We did not accept Mr Jumabhoy's submission *in the context of this case*. We make three points.

103 First, s 258(5) of the CPC is a statutory provision that regulates the *admissibility* of a confession made by a co-accused person who has been charged with the same offence into evidence in the context of a joint trial (see *The Criminal Procedure Code of Singapore - Annotations and Commentary* (Jennifer Marie & Mohamed Faizal Mohamed Abdul Kadir gen eds) (Academy Publishing, 2012) at para 14.012 and 14.036). The section applies where: (a) the co-accused person is being "jointly tried for the same offence"; and (b) the statement that the Prosecution seeks to rely on can properly be characterised as a "confession". We pause to observe that, following the passing of the Criminal Justice Reform Act 2018 (No. 9 of 2018) by Parliament on 19 March 2018, s 258(5) of the CPC was amended to provide for three situations in which a court hearing a joint trial may take into consideration the confession of a co-accused person against the other accused person. Accordingly, the post-amended s 258(5) in the Criminal Procedure Code 2010 (2020 Rev Ed) is not confined in its application only to where the co-accused person is being jointly tried for the same offence. Our statement above on the requirements for invoking s 258(5) of the CPC therefore applies in respect of the pre-amended version of that provision.

104 Returning to our analysis, s 258(5) of the CPC does not on its terms apply to situations where reference is made to the statements of a co-accused person when cross-examining an accused person. This is consistent with the fact that the purpose of cross-examination is to elicit evidence from the witness, in this case the accused person, and generally, this is done to support the cross-examiner's case (see Jeffrey Pinsler SC, *Evidence and the Litigation Process* (LexisNexis, 7th Ed, 2017) ("*Evidence and the Litigation Process*") at

paras 20.006 and 20.007). Such evidence being given by the witness in the form of his or her testimony is meant to "explain something not yet understood: to elicit something which was not the intent of the examination in chief", in other words, to assist the court with "getting to the truth" (see *Teo Wai Cheong v Crédit Industriel et Commercial and another appeal* [2013] 3 SLR 573 at [25], citing *The Attorney General v Davison* (1825) M'Cel & Y 160 at 169). It follows that when a document is placed before a witness in the course of cross-examination, that document is not itself being admitted as evidence. Indeed, it generally *precedes* the admission of the evidence, which is the witness's testimony provided in response to the questions asked. We therefore do not accept as a general proposition that s 258(5) regulates the manner in which cross-examination is carried out. On the contrary, as we held at [103] above, that provision is directed towards when a co-accused person's statements may be admissible as evidence against another co-accused person.

105 We also note that nothing in the EA imposes such a restriction on the use of a co-accused person's statement to cross-examine an accused person in a joint trial. The starting point is s 140(2) of the EA, which states:

> **Order of examinations and direction of re-examination**
>
> **140.**—…
>
> (2) The examination and cross-examination *must relate to relevant facts*, but the cross-examination *need not be confined to the facts to which the witness testified on his or her examination-in-chief*.
>
> [emphasis added]

106 Accordingly, save that any question asked must relate to relevant facts, the Prosecution's cross-examination of an accused person may include, in the context of a criminal trial, other facts that were uncovered following police investigations, including a statement given by a co-accused person to the police.

107 In this connection, we did not agree with Mr Jumabhoy's reliance on *Ramesh a/l Perumal*. That case did not concern the question of whether the statement of a co-accused person may be used for the purposes of cross-examining the accused person. Instead, our observation there pertained to the attempt by the Prosecution essentially to rely on a co-accused person's confession to try to make out its case against another accused person. In *Ramesh a/l Perumal*, charges were brought against two accused persons in respect of four bundles containing not less than 29.96g of diamorphine. One of the co-accused persons, Chander Kumar a/l Jayagaran ("Chander"), faced one charge under s 5(1)(*a*) of the MDA of trafficking by giving these bundles to the other co-accused person, Ramesh a/l Perumal ("Ramesh"). Ramesh, on the other hand, faced one charge under s 5(1)(*a*) read with s 5(2) of the MDA of being in possession of these bundles for the purpose of trafficking. At trial, the Prosecution sought to rely on a statement made by Chander, to the effect that Ramesh had asked him for a portion of the bundles of the drugs, to make out the charge against Ramesh. The trial judge disallowed the Prosecution's attempt to rely on Chander's statement in this way because the two accused persons there were not being tried for the same offence, and that was a pre-requisite for invoking s 258(5) of the CPC. This aspect of the trial judge's reasoning was not challenged on appeal, and in any case, we agreed with the judge. Section 258(5) precludes the use of the confession of a co-accused person against the accused person in a joint trial, where both persons are being tried for distinct and independent offences (*Ramesh a/l Perumal* at [60]–[62]). That simply never happened in the present case. If we were to accept Mr Jumabhoy's suggestion that the scope of the pre-amended s 258(5) extends to the use of any statement made by a co-accused person in the course of cross-examining an accused person, it would render it extremely difficult, if not impossible, for a joint trial

involving two or more accused persons charged with different offences to be conducted.

108 We therefore rejected Mr Jumabhoy's submission that the Prosecution had impermissibly relied on Dzulkarnain's statements when it cross-examined Sanjay.

109 Second, and more importantly, it became apparent during the course of the appeal that Mr Jumabhoy's real objection was that the proceedings should not have been conducted as a joint trial, because Sanjay had allegedly suffered "a whole deluge of prejudice" arising from his inability to refute certain statements made by Dzulkarnain in his long statements which the Prosecution relied on in its line of questioning at trial. We disagreed with Mr Jumabhoy as we were satisfied that this objection is misconceived – the issue is not one of prejudice as Dzulkarnain's statements were simply not used as evidence, either by the Prosecution or the Judge.

110 The Prosecution had only relied on Dzulkarnain's statements to ask questions of Sanjay during cross-examination (see [112] below). And as we observed during the hearing, any objection against the Prosecution's line of questioning should have been taken at trial; yet none was taken, which was unsurprising in our view given, as we have explained above, that there was no conceivable procedural basis upon which such an objection could be sustained. In any event, the Prosecution did not put forward any specific statements made by Dzulkarnain to make out its case against Sanjay. On the contrary, the Prosecution's case in respect of the elements of knowing possession and possession for the purposes of trafficking was based on *Sanjay's* undisputed admission in his police statements that he was in possession of the SKP Box, and that he intended to deliver the SKP Box to Boy Lai. Indeed, the Prosecution

explicitly stated in its written submissions that it "[would] not be relying on Dzulkarnain's statements given that Dzulkarnain and Sanjay [were] charged with different offences". Accordingly, there was no basis for the suggestion that the Prosecution's case was "evidently reliant" on Dzulkarnain's purported confession to begin with.

111 Turning to the Judge's analysis as set out in the GD, Mr Jumabhoy candidly accepted that the Judge had not in fact relied on any such evidence in arriving at her decision. He could not do otherwise because as the Judge emphasised in the GD, the focus of her analysis was on identifying the "inherent problems with Sanjay's account" and with the evolving nature of his evidence in various material aspects (GD at [111]). In the Judge's analysis of the elements of knowing possession and possession for the purposes of trafficking, there was no reference to Dzulkarnain's statements (GD at [80] and [113]). As for the Judge's analysis of the s 18(2) presumption, and Sanjay's presumed knowledge of the nature of the Drugs, the Judge's analysis focused on pointing out the internal contradictions and logical gaps in Sanjay's account that he believed he was delivering collectors' hunting knives and possibly contraband cigarettes. The Judge also took pains to emphasise at various points throughout the GD (see for example GD at [99(a)] and [109]) that she did not rely on the contents of Dzulkarnain's statement in her analysis. The Judge thus went out of her way to avoid relying on any of Dzulkarnain's evidence in considering the case and evidence against Sanjay. Accordingly, there simply was no basis for Sanjay to allege that the Judge had impermissibly relied on Dzulkarnain's statements to support her analysis. We thus concluded that that there was no question of any impermissible use of Dzulkarnain's statement in contravention of s 258(5) of the CPC.

112 Finally, and in any event, we considered that Mr Jumabhoy's objection, which was framed in terms that Dzulkarnain's statements were confessions and could not be used at all by virtue of s 258(5) of the CPC because this was a joint trial where both accused persons were facing different charges, to be misconceived. This is because the portions of Dzulkarnain's statements that the Prosecution relied upon in cross-examining Sanjay were not in the nature of a confession, such that s 258(5) of the CPC had no application at all. Mr Jumabhoy referred us to an example of what he claimed was the Prosecution seeking to rely on a purported confession made by Dzulkarnain in his long statement when it was cross-examining Sanjay:

> Q: I apologise. The information given by Mr Dzulkarnain to---when he describe to CNB officers how this transaction came about is because you are all in the same gang, you, Bala Luk Kor and him under 369 gang. According to your evidence, that is not true?
>
> [Sanjay]: Not true, Your Honour.

113 The Prosecution's question to Dzulkarnain was premised on the following statement made by Dzulkarnain in his first long statement dated 3 March 2023:

> I had known 'Bala Luk Kor' for about ten years. I knew him from prison. 'Bala Luk Kor' is also a secret society member of '369'. … I told 'Bala Luk Kor' that I was willing to do any legal or illegal job to earn fast money because I was desperate. …

114 We cannot see how this portion of Dzulkarnain's long statement can be said to be a confession on his part. A confession is statutorily defined in s 17(2) of the Evidence Act 1893 (2020 Rev Ed) ("EA"):

> **Admission and confession defined**
>
> **17.**—…
>
> (2) A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that the person committed that offence.

115 In *Chin Seow Noi and others v Public Prosecutor* [1993] 3 SLR(R) 566, we held (at [47], citing *Anandagoda v R* [1962] MLJ 289) that the test for whether a statement amounts to a confession:

> … is an objective one, whether to the mind of a reasonable person reading the statement at the time and in the circumstance in which it was made it can be said to amount to a statement that the accused committed the offence or which suggested the inference that he committed the offence. The statement must be looked at as a whole and it must be considered on its own terms without reference to extrinsic facts … The appropriate test in deciding whether a particular statement is a confession is whether the words of admission in the context expressly or substantially admit guilt or do they taken together in the context inferentially admit guilt?
>
> [emphasis in original]

116 The portion of Dzulkarnain's statement that the Prosecution relied upon in cross-examining Sanjay was plainly *not* in the nature of a confession, simply because it was not possible to infer from a plain reading of the relevant portion of the statement that Dzulkarnain had admitted to trafficking the Drugs. Rather, it merely related to background information that Dzulkarnain provided to the police explaining how he came to be involved in the delivery of the Brown Box which was later found to contain the Drugs, a point which Mr Jumabhoy appeared to have accepted at the hearing. We therefore did not agree with Mr Jumabhoy that s 258(5) of the CPC had any relevance in the present case.

117 We thus concluded that there was no merit in this aspect of Sanjay's appeal.

The Prosecution did not advance inconsistent cases

118 The second point that Sanjay raised was one of procedural fairness. Sanjay asserted that the Prosecution had changed its position on the question of Boy Lai's existence. It was suggested that in establishing its case that Sanjay could not rebut the s 18(2) presumption, the Prosecution had allegedly taken the position that Boy Lai was a fictional character created by Sanjay to support his defence. Yet in making out its case that Sanjay possessed the Drugs for the purposes of trafficking, the Prosecution argued that Boy Lai did in fact exist and was the intended recipient of the SKP Box. This, Sanjay submitted, made it extremely difficult for him to know with certainty, and hence be in a position to meet, the Prosecution's case regarding the existence of Boy Lai.

119 In our judgment, there was nothing in this point. Even if we assumed in favour of Sanjay that the Prosecution did in fact change its position on the issue of Boy Lai's existence, that was simply immaterial to the two central issues that the Judge was required to consider, and which Sanjay's case had to respond to. The first related to Sanjay's ability to discharge his burden in rebutting the s 18(2) presumption. This required the Judge to consider whether she should accept Sanjay's evidence that he honestly thought that the SKP Box contained collectors' hunting knives and possibly contraband cigarettes and did not know that it in fact contained the Drugs. The second related to the element of possession for the purposes of trafficking. This turned on whether Sanjay intended the SKP Box to be delivered to a third party.

120 As to the first issue, the Judge took Sanjay's defence at face value and analysed the merits of that defence, based on the evidence he had put forward. The Judge ultimately concluded that Sanjay's defence could not be believed. In reaching this conclusion, the Judge did not make any finding as to Boy Lai's existence. It was simply not relevant or necessary for her to come to a decision on Boy Lai's existence, since this would neither add to nor detract from the credibility of Sanjay's account that he believed that the SKP Box contained collectors' hunting knives and cigarettes.

121 As to the second issue, it was never part of Sanjay's defence that the contents of the SKP Box were meant for him. Rather, his case was that he was asked by Boy Lai to collect and deliver the SKP Box (which was later discovered to contain the Drugs) to him. The identity of the ultimate recipient was irrelevant in analysing Sanjay's defence on this point. This was noted by the Judge, and her analysis set out in the GD showed that there simply was no attention directed to the *identity* of the recipient of the Drugs, because it was always Sanjay's case that he was delivering the items to a third party (GD at [113]). Accordingly, there was no merit in Sanjay's contention that he was prejudiced as a result of the Prosecution's running of inconsistent cases regarding the existence of Boy Lai.

122 In any event, as we explained to Mr Jumabhoy in the course of the appeal, once we affirmed the Judge's finding that Sanjay knew the SKP Box contained the Drugs, there was no room to dispute the conclusion that his possession of the Drugs was for the purposes of trafficking. The logical and inexorable conclusion that flowed from accepting the Judge's finding that Sanjay knew the SKP Box contained the Drugs, coupled with the fact that Sanjay never suggested that the Drugs were meant for his own consumption,

was that the Drugs must have been intended for a third party, and this was what Sanjay had maintained at all times.

The Judge did not err in finding that Sanjay failed to rebut the s 18(2) presumption

123 We turn finally to consider whether the Judge erred in her analysis that Sanjay failed to rebut the s 18(2) presumption.

124 The Judge rejected Sanjay's claim that he believed he was delivering collectors' hunting knives and possibly contraband cigarettes. It is helpful for us first to set out how the Judge came to this finding. In summary, she arrived at this finding based on a multitude of factors:

(a) The Judge first noted the evolving versions of what Sanjay said about the contents of the SKP Box. In particular, she noted that Sanjay's account that he believed the SKP Box contained collectors' knives and *possibly* contraband cigarettes emerged for the first time only in his fifth long statement given on 8 March 2015. Sanjay's earlier claim, that he believed the SKP Box contained cigarettes, had by then receded into a possibility (GD at [83]). She found this to be troubling since it was the centrepiece of Sanjay's defence at trial (GD at [85]).

(b) The Judge also was troubled by the fact that Sanjay's account of Boy Lai's involvement in asking him to collect the hunting knives which, as a fellow knife collector, he agreed to do, emerged quite some time later in the long statement he furnished on 8 March 2015. By then, four long statements had already been recorded by the police. Sanjay had mentioned Boy Lai in various other contexts in the earlier statements but he never tied Boy Lai to the knife story (GD at [86]–[88]). The Judge

found this aspect of Sanjay's account did not have the ring of truth (GD at [90]).

(c) Significantly, the Judge found that Sanjay's entire narrative of the facts and events detailing the arrangement between him and Boy Lai was inconsistent and did not make sense (GD at [90]). It did not make sense because, amongst other reasons, Sanjay had allegedly offered to assist Boy Lai on account of Boy Lai having purportedly claimed that he would be busy at the time and so could not collect the knives himself. Yet, according to Sanjay, both Boy Lai and Sanjay were driving around for some hours until the time came for collecting the hunting knives, at which point Boy Lai asked to be dropped off at Lorong 10, a short distance away from the location of the delivery. It was also noteworthy that Sanjay was supposed to be paid a rather substantial sum of $300 for what appeared to be a simple task of collecting an innocuous package from just a short distance away (GD at [89]).

(d) The Judge also noted the unusual nature of the delivery, which involved a separate leg performed by Dzulkarnain. The Judge was further of the view that Sanjay had no reason to believe any assurance he might have been given by Boy Lai that the delivery was just of collectors' hunting knives and possibly contraband cigarettes. Sanjay had been introduced to Boy Lai just about three months before his arrest, and had described Boy Lai as a "hi-bye" friend and a mere acquaintance in trial (GD at [91]).

(e) Finally, the Judge found that Sanjay's credibility was diminished in light of his lies and evasive responses on three matters:

(i) The first was Sanjay's account of how he came to be in possession of the three handphones marked SK-HP1, SK-HP2 and SK-HP3. Sanjay claimed these belonged to Boy Lai. The Judge disbelieved Sanjay and found it incredible that Boy Lai would leave three such devices with Sanjay ostensibly because he thought they might need to communicate with each other, when all they had to do was to exchange numbers. The Judge also accepted IO Ranjeet's evidence that Sanjay had admitted that SK-HP1 belonged to him when the photographs were being taken at the CNB HQ. The Judge also noted that in Dzulkarnain's phone (DBK-HP1), the numbers of SK-HP2 and SK-HP3 were saved under the names "Bro Sanjay" and "Sanjay 2" respectively, while Shankiri's number was saved in SK-HP3. In respect of the latter, it made no sense at all that Boy Lai would have saved Shankiri's number given her evidence that she did not know Boy Lai (GD at [93]–[100]).

(ii) The second was Sanjay's denial of any connection with the Blue Notebook and the Black Notebook. The Judge disbelieved Sanjay's evidence that the Black Notebook and Blue Notebook, which contained various references to drugs and drug transactions, belonged respectively to Boy Lai and to some other person who had allegedly rented his car previously. She noted that it would suggest that by pure chance Sanjay had rented the car to an unknown person who, like Boy Lai, was allegedly involved in drugs. The notebooks contained various entries of places that were frequented by Sanjay and included a reference to Geylang Lorong 37, which was the site of the drop. More importantly, there was a handwritten entry in the Black

Notebook which described a payment to settle an accident allegedly involving Sanjay's brother. Since Sanjay's brother had been away at the time of the accident, the Judge thought this entry was most likely an attempt by Sanjay to settle an accident that he had been involved in when driving without a licence (GD at [101]–[106]).

(iii) The third was Sanjay's involvement in the transfers of money to the bank account of one Ms Nur Ratnawati, who was Dzulkarnain's wife. Sanjay claimed that he had nothing to do with the payment of money to Dzulkarnain (GD at [107]). The Judge disbelieved Sanjay. While the evidence was unclear as to whether Sanjay was the person who transferred the money to Nur's bank account, it was undisputed that Sanjay was present at the two locations where the transfers of money were effected using an ATM. The Judge therefore found that Sanjay had a role to play in the transfers of the money, even if he "might not have been the one who actually effected the transfers" (GD at [108]).

125 As against these findings, the main contention that Sanjay vigorously pursued on appeal was that the Judge erroneously failed to consider the oral statement that he allegedly gave to the CNB officers shortly after his arrest. Specifically, in his oral statement made in response to questions posed by SI Tay, which was recorded by SSSgt Alwin in the CNB field book (see at [14] above), Sanjay claimed that he said he thought the SKP Box contained collectors' hunting knives and cigarettes, and that SSSgt Alwin had *inaccurately* recorded in the CNB field book that Sanjay had given non-verbal responses by shaking his head and shrugging his shoulders. SSSgt Alvin also did not read back what he had recorded or obtain Sanjay's signature to confirm what had

been recorded. Not only was there a defect in so far as the procedures regarding the taking of statements under the CPC were concerned, but this was said to support Sanjay's case that he had maintained a consistent account from the start.

126 Dealing first with the alleged procedural defect, it was undisputed that SSSgt Alwin did not read back the statement he recorded to Sanjay, and also did not obtain Sanjay's signature in the CNB field book. Nonetheless, the failure to abide by any requirement as to formalities does not automatically render a non-compliant statement inadmissible. Explanation 2(*e*) in s 258(3) of the CPC provides that if a statement is otherwise admissible, it will not be rendered inadmissible just because the recording officer or interpreter did not "fully comply" with the requirements of ss 22 or 23 of the CPC. In any event, the Judge was cognisant of this procedural irregularity but dealt with this as a question of weight (GD at [30]). Ultimately, the Judge concluded that there was no basis for her to conclude that the CNB officers had inaccurately recorded what Sanjay had said to them (GD at [84]). We saw no basis to interfere with the Judge's analysis.

127 In any event, we did not accept that Sanjay's contention that the alleged mis-recording of the oral statement would, in itself, displace the Judge's finding that Sanjay's story (that he was collecting collectors' hunting knives and possibly contraband cigarettes) was untrue.

128 To begin with, it was unsatisfactory that the Defence never put it to SSSgt Alwin in cross-examination at trial that he had deliberately ignored Sanjay's alleged oral statement. It was not then open to Sanjay to raise this allegation at this belated stage of the proceedings. But more importantly, if Sanjay had raised this explanation at the start and if it was true, it is inexplicable why he did not maintain this account in the subsequent police statements. In his

contemporaneous statement recorded by SI Tay after his arrest and after his car had been searched, Sanjay claimed that he did not know what the SKP Box contained. And in his cautioned statement, Sanjay changed his position by claiming that the box contained illegal cigarettes, without mentioning any collectors' hunting knives.

129 As we emphasised to Mr Jumabhoy at the hearing, the Judge's key concern was that Sanjay had given different versions regarding his belief as to the contents of the SKP Box – which was the centrepiece of Sanjay's defence. Beyond this, the Judge's finding that Sanjay's account could not be believed was based on a variety of grounds which we have summarised above (GD at [124]).

130 Ultimately, the Judge's finding that she disbelieved Sanjay's account of his knowledge of the contents of the SKP Box was one of fact and, in our judgment, it could not possibly be said to be against the weight of the evidence.

Conclusion

131 For these reasons, we dismissed Dzulkarnain's appeal in CCA 30 and Sanjay's criminal motion and appeal in CM 23 and CCA 32 respectively. We therefore also upheld the sentences the Judge imposed on the respective appellants.

Sundaresh Menon
Chief Justice

Judith Prakash
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

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