IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2017] SGCA 17

CA/Criminal Appeal No 12 of 2016

Between

NORASHAREE BIN GOUS

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

CA/Criminal Appeal No 13 of 2016

Between

KALWANT SINGH A/L JOGINDAR SINGH

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

CA/Criminal Motion No 22 of 2016

Between

KALWANT SINGH A/L JOGINDAR SINGH

… *Applicant*

And

PUBLIC PROSECUTOR

… Respondent

JUDGMENT

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

[Criminal Procedure and Sentencing] — [Appeal] — [Adducing fresh evidence]

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Norasharee bin Gous
v
Public Prosecutor and another appeal and another matter

[2017] SGCA 17

CA/Court of Appeal — Criminal Appeals Nos 12 and 13 of 2016; Criminal Motion No 22 of 2016
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
27 October 2016

10 March 2017 Judgment reserved

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

1 Three accused persons, Mohamad Yazid bin Md Yusof ("Yazid") aged 36 at the material time in October 2013, Norasharee Bin Gous ("Norasharee") then aged 39 and Kalwant Singh a/l Jogindar Singh ("Kalwant") then aged 23, were convicted in the High Court after a joint trial involving various charges under the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). The trial judge ("the Judge") sentenced Yazid to life imprisonment and to receive 15 strokes of the cane. The Judge imposed the mandatory death penalty on Norasharee and Kalwant as neither received a certificate of substantive assistance under s 33B of the MDA. Further, Norasharee's role in the drug transaction did not qualify him as a courier within the meaning of s 33B. The

High Court's judgment is published in *Public Prosecutor v Mohamad Yazid bin Md Yusof and others* [2016] SGHC 102 (the "Judgment").

2 The present appeals before us were lodged by only Norasharee and Kalwant. Yazid did not appeal against the Judge's decision. On the eve of the hearing of these appeals, Kalwant filed Criminal Motion No. 22 of 2016 ("the CM") seeking to adduce further evidence. This application was granted by us at the start of the appeals. It will be discussed later in this judgment. In essence, Kalwant's appeal concerns the operation of the presumption of knowledge under s 18(2) of the MDA while Norasharee's appeal involves the issue of the Prosecution's reliance on the confessions or statements of a co-accused person to prove its case against another co-accused person.

Background facts

3 At about 7am on 24 October 2013, Yazid met Kalwant at a multi-storey car park in Woodlands. Yazid was standing in front of his motorcycle when Kalwant arrived on another motorcycle and parked it next to Yazid's motorcycle. Kalwant alighted and the two men interacted for a few minutes before officers from the Central Narcotics Bureau ("CNB"), who had been waiting in ambush, arrested them. The officers recovered a total of nine bundles wrapped with black tape with each containing two packets of brown substance. Out of the nine bundles, three (which contained not less than 60.15*g* of diamorphine in total) were found in the haversack that Kalwant was carrying. The other six bundles (which contained not less than 120.90*g* of diamorphine in total) had been placed by Kalwant in the container box of Yazid's motorcycle. Yazid had slit one of these six bundles open at one end using a paper cutter to confirm its contents, which he expected to be diamorphine.

4 Yazid claimed that he had been instructed to traffic in drugs by one "Boy Ayie", whose phone number he had saved in his own mobile phone under the name "Eye". Either Boy Ayie or his partner (one "Bujang Hawk") would place orders for diamorphine from Kalwant's boss in Malaysia. Boy Ayie would then instruct Yazid to receive the drugs from the sender from Malaysia and to hold them until he was told who the specific recipients were. Yazid would then deliver the drugs as instructed and would subsequently be paid by Boy Ayie for the service. Yazid said that he met Boy Ayie in the vicinity of VivoCity shopping centre ("VivoCity") in the afternoon on 23 October 2013 (*ie*, the day before Yazid was arrested). There, Boy Ayie told Yazid that there would be a delivery of drugs from Malaysia the next day and instructed him to collect some bundles from a Malaysian courier (who turned out to be Kalwant). On 1 July 2015 (some 20 months after the drug transaction), Norasharee was arrested at his home. This was the man Yazid identified as Boy Ayie.

The proceedings below

The charges

5 The charges against Yazid, Kalwant and Norasharee were as follows.

(a) Yazid faced one charge under s 5(1)*(a)* read with s 5(2) of the MDA for possessing not less than 120.90*g* of diamorphine for the purpose of trafficking;

(b) Kalwant faced one charge under s 5(1)*(a)* read with s 5(2) of the MDA for possessing not less than 60.15*g* of diamorphine for the purpose of trafficking (in respect of the three bundles in his haversack) and another charge under s 5(1)(*a*) of the MDA for trafficking in not

less than 120.90*g* of diamorphine (in respect of the six bundles delivered to Yazid); and

(c) Norasharee faced one charge under s 5(1)(*a*) read with s 12 of the MDA for abetting, by instigation, Yazid to traffic in not less than 120.90*g* of diamorphine.

The parties' cases

6 At the trial, Yazid practically admitted the offence but asserted that he was a mere courier. He accepted that he received the six bundles from Kalwant. He also admitted that he knew they contained diamorphine and that he had them for the purpose of trafficking. A large part of the Prosecution's case against Kalwant and Norasharee was based on Yazid's statements. As regards Kalwant, Yazid made a statement on 29 October 2013 recounting a conversation he claimed he had with Kalwant when they were remanded in the same cell at the Cantonment Police Complex after their arrest. According to Yazid, these were the matters that Kalwant mentioned:

(a) Kalwant delivered "*obat*" within Singapore only as he had stopped delivering drugs from Malaysia to Singapore after he saw his friend arrested at the Woodlands Checkpoint for what he thought could be a capital case. Kalwant's boss loved him and therefore allowed him to pick up drugs only within Singapore for delivery within Singapore;

(b) Yazid was to tell the investigating officer that the bundles contained only tobacco and *panparak*;

(c) Kalwant picked up the drugs from a friend in Singapore and packed four out of the nine bundles, without wearing gloves while his friend packed the remainder;

(d) after his arrest, Kalwant was allowed to answer a call from his boss (whom Kalwant had told the CNB was called "Anna" – probably should have been spelt as "Anneh", meaning elder brother in Tamil) and he spoke to his boss in Tamil; and

(e) Kalwant led the CNB to the Toh Guan area but that did not result in any arrests.

7 Kalwant accused Yazid of falsely implicating him to save himself from the death penalty. Kalwant also claimed to have believed Anna's instruction that he was being made to carry *panparak*, a kind of Indian betel nut mixed with tobacco. *Panparak*, according to Kalwant, usually comprised small, broken, light brown or whitish-brown pieces with a powdery texture. Kalwant said that he assumed that the substance he was caught with, which comprised large, dark brown pieces, was *panparak* in which the betel nuts or leaves had not yet been broken and to which white lime powder had not yet been added. For convenience, we will call this "unprocessed *panparak*".

8 Norasharee's defence was also that Yazid was trying to implicate him falsely. Two reasons were cited. First, Yazid wanted to save himself from the death penalty and second, they were members from rival gangs and Yazid wanted to rid himself of an enemy. It was undisputed that Yazid belonged to the "Omega" gang (at least in the past) while Norasharee belonged to the "369" gang. In support of this, Norasharee claimed that he had won a fight with an Omega headman at Telok Blangah House in 1998 ("the 1998 Fight")

at which Yazid was present and Yazid bore a grudge against him because of that. Omega members took revenge by stabbing Norasharee the following year at Northpoint ("the 1999 Stabbing") and by causing trouble for him while he was working as a bouncer at Club 7 (a nightclub at Concorde Shopping Centre) between 2011 and 2013.

The Judge's decision

Yazid

9 Yazid was found guilty and convicted on the charge against him (Judgment at [6] and [35]). The Judge sentenced Yazid to life imprisonment and to receive 15 strokes of the cane as he was found to be a courier (Judgment at [8]) and was given the certificate of substantive assistance by the Public Prosecutor.

Kalwant

10 The Judge found that Kalwant had actual knowledge that the bundles contained diamorphine (Judgment at [16]). Based on Yazid's statement dated 29 October 2013, Kalwant knew he was carrying "*obat*" which was the street name for diamorphine and which Kalwant knew meant "narcotic drugs" (Judgment at [13]). The Judge found that Yazid was truthful in his evidence despite having an incentive to frame Kalwant to save himself. This was because:

> (a) First, the DNA recovered from the bundles corroborated Yazid's claim that Kalwant had packed four bundles without gloves. Kalwant's contrary claim that he had packed only three bundles and that he merely touched the fourth bundle (*ie*, exhibit B1A) at one spot,

was rejected as Kalwant could not explain why his DNA was found on the interior of the fourth bundle.

(b) Second, on 30 October 2013, Yazid retracted a portion of his contemporaneous statement made on 24 October 2013 involving Kalwant, on the basis that he had made a mistake because he was nervous at the earlier time. Yazid had stated that Kalwant told him at the car park before their arrest that he was passing Yazid six bundles of "*beh hoon*" (meaning white powder in Hokkien) but he later clarified that Kalwant did not mention the words "*beh hoon*", "drugs", "*obat*" or "heroin" on that particular occasion. Instead, Kalwant mentioned "chocolate colour from pandan".

(c) Third, unless Kalwant had told him, Yazid could not have known that Kalwant received a call from his boss "Anna" and that Kalwant led the CNB to the Toh Guan area in the failed attempt to arrest the intended recipient of the rest of the bundles because that person did not show up (Judgment at [15]).

11 In any event, Kalwant could not rebut the presumption of knowledge. His suspicions would have been aroused by virtue of the significant visual differences between *panparak* (which he said he thought he was given) and the dark brown granular/cubed substance found in the bundles. The Judge rejected Kalwant's claim that he thought the substance was *panparak* for which the betel leaves had not yet been broken as the substance did not even resemble unbroken betel leaves. Kalwant's counsel's suggestion that Kalwant might not have been able to see the colour differences clearly as it was early in the morning was rejected by the Judge because Kalwant did not raise this in evidence (Judgment at [21]–[22]). The Judge found that Kalwant, despite his

suspicions, failed to confront Anna when he should have done so. The Judge further found his claim that he trusted Anna to be "not credible" because, according to Kalwant, Anna was a gangster who was involved in various illegal businesses and had threatened previously to beat Kalwant up when he could not pay his debts. Kalwant also said that Anna had lied to him on a previous occasion that he was carrying tobacco when he was actually carrying *panparak* (Judgment at [22]).

12 Accordingly, Kalwant was found guilty and convicted on both charges against him. Although he was found to be a courier within the meaning of s 33B of the MDA, he was sentenced to death as he did not receive a certificate of substantive assistance.

Norasharee

13 The Judge found that the *actus reus* of abetment by instigation was satisfied when Norasharee told Yazid when they met on 23 October 2013 in the vicinity of VivoCity that there was going to be a delivery of drugs from Malaysia the next day and instructed Yazid to collect the bundles from the Malaysian courier.

14 The Judge found Yazid to be truthful despite having an incentive to frame Norasharee to save himself. First, his testimony was corroborated by VivoCity's car park records which showed a car registered in Norasharee's name entering at 1.07pm and leaving at 1.40pm on 23 October 2013. Norasharee claimed that he went to VivoCity because he met a colleague called "Lolo" for lunch there but did not call that colleague to testify in court. Norasharee denied meeting Yazid at VivoCity but could not explain how Yazid would have known that Norasharee was present if they had not met

there. Second, "Ayie" and "Eye" (a name which Yazid called his boss) and "Ayi" (a name by which Norasharee said he was known to family and friends) sounded similar (Judgment at [30]).

15 Similarly, Norasharee failed to prove that Yazid would lie and frame him by reason of a personal vendetta against him. Yazid denied being present during the 1998 Fight which, in any event, took place some 18 years before the trial. Although Yazid admitted that he was a gang member of Omega, he claimed that he had left the gang since 2008. Norasharee accepted that Yazid was not involved in the 1999 Stabbing or in any altercation between Omega and Norasharee and that Yazid had not talked to, argued with or fought with Norasharee while at Club 7 (Judgment at [27]–[29]).

16 Although Yazid did not mention the meeting at VivoCity until June 2015 (*ie*, almost two years after he was arrested but before Norasharee was arrested), he had in his statement on 29 October 2013 (*ie*, 5 days after his arrest) stated that his boss was "Boy Ayie" and given a physical description of him that largely matched Norasharee. In contrast, Norasharee changed his position frequently regarding Yazid. For instance, he denied that he knew Yazid when he was shown Yazid's photograph repeatedly soon after his arrest on 1 July 2015. However, at the trial, Norasharee claimed that from the moment of his arrest when he was shown Yazid's photograph, he recognised Yazid immediately as his enemy and knew that he was being framed by Yazid (Judgment at [31]–[32]).

17 The Judge found that the *mens rea* of abetment was satisfied because Norasharee, having placed the order from Kalwant's boss, would have actual knowledge of the quantity of diamorphine that Yazid was to traffic in. It was

not necessary for Norasharee to know the exact time at which Yazid was to meet the Malaysian courier (Judgment at [33]).

18 Accordingly, Norasharee was found guilty and convicted on the charge against him. Norasharee was also sentenced to death as he was found not to be a courier but to be an instigator and one who had control in drug trafficking operations (Judgment at [34]). Further, he did not receive the certificate of substantive assistance.

The submissions on appeal

Kalwant's appeal and criminal motion

19 Kalwant disputed having actual knowledge that the substance in the bundles was diamorphine. First, he said it was unclear from Yazid's statement whether Kalwant knew that "*obat*" meant narcotic drugs (because he could have learnt it from his conversation with Yazid) and, even if Kalwant knew that "obat" meant narcotic drugs, it did not follow that the narcotic drugs referred to was necessarily heroin.[1] Next, he disagreed with all three reasons given by the Judge to say that Yazid was truthful when making his statement:

> (a) On the fact that Kalwant's DNA was found on the interior of Exhibit B1A, *ie*, the exhibit he said he touched but did not pack, Kalwant said it merely corroborated itself (*ie*, the fact that he packed four bundles without gloves) but not anything else in Yazid's statement. The Judge ignored the fact that Kalwant accepted that he did part of the packing.[2]

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1 Kalwant's Petition of Appeal, para 7(I).

2 Kalwant's Petition of Appeal, para 8(I)–(II).

(b) As regards the fact that Yazid later retracted part of his statement which was adverse to Kalwant, Kalwant said that the Judge failed to consider that Yazid lied in the first place and that Yazid could have retracted his statement because he was tailoring what Kalwant told him to suit his own story.[3]

(c) In respect of the fact that Yazid knew the details of what Kalwant did post-arrest, Kalwant said that Yazid's knowledge of the phone call from "Anna" did not prove that Kalwant knew the contents of the bundles to contain diamorphine. Yazid, who made his statement five days after that call, could have learnt about it from one of the many others who were present when the call was taken.[4]

20 Kalwant also argued that the presumption of knowledge was rebutted. To this end, he submitted that:

(a) The Judge erred in law and in fact in saying that he was "not convinced" by Kalwant's account because Kalwant only needed to raise a reasonable doubt.[5]

(b) The Judge gave insufficient weight to the evidence that showed that Kalwant was satisfied that he was carrying tobacco or unprocessed *panparak*. Kalwant was not a drug consumer and had experience with *panparak* only and not with diamorphine.[6]

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3 Kalwant's Petition of Appeal, para 8(III), (IV), (VI), (VII).

4 Kalwant's Petition of Appeal, paras 8(VIII), 9 and 10.

5 Kalwant's Petition of Appeal, para 12.

6 Kalwant's Petition of Appeal, paras 13–14 and 16.

(c) The Judge erred in saying that Kalwant did not trust Anna. The fact that Anna had come clean after initially lying could be a factor that restored the trust between them.[7]

21 Kalwant, in support of his claim that he thought he was carrying unprocessed *panparak*, filed a criminal motion on the eve of the hearing of the appeals seeking to adduce further evidence in the form of photographs of a packet of unbroken betel nuts and a receipt for its purchase in Singapore. We will say more about this later.

Norasharee's appeal

22 Norasharee, essentially, attempted to make good his argument that Yazid was trying to frame him.

23 Norasharee argued that the Judge was wrong to find that Yazid had no personal vendetta against him or no reason to frame him despite the alleged gang rivalry, whereas the Prosecution argued that Norasharee was not able to prove that there was a personal vendetta. Norasharee raised the following matters:

(a) First, Yazid was not forthcoming about his gang activities. Yazid lied about having left Omega in 2008 as Kalwant, who was a disinterested party, testified that Yazid was "boasting" about his gang "leader" even in 2013.[8] Yazid's evidence that he knew "Sum Chartered" (a prominent member of Omega) only recently and in

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7 Kalwant's Petition of Appeal, para 15.

8 Norasharee's Petition of Appeal, para 5(ii) and (v). Norasharee's Submissions, paras 32–35.

prison was incredible, given that he should have known the headmen in his gang and that he knew another headman called "Babat".[9] Yazid also denied meeting or having an altercation with Norasharee at Club 7, even though he acknowledged having gone to that pub.[10] The Prosecution's reply was that the evidence showed that Yazid left the gang in 2008.[11]

(b) Next, the Judge failed to give weight to the contention that there was long-term gang rivalry and in any event, ex-gang members would not work together.[12]

(c) The Judge was wrong to find that his claim (*ie*, that Yazid was trying to frame him) was an afterthought; Norasharee only realised that Yazid was an enemy later and it was conceivable that Norasharee did not want to mention anything about the gang rivalry until he had access to counsel even though this case concerned a capital charge.[13] In response, the Prosecution submitted that Norasharee failed to contend clearly that he was being framed (or at least that he and Yazid were enemies) in clear terms, when doing so would have been in his self-interest.[14]

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9 Norasharee's Petition of Appeal, para 5(ii). Norasharee's Submissions, paras 36–37.

10 Norasharee's Petition of Appeal, para 5(ii). Norasharee's Submissions, para 38.

11 Prosecution's Submissions, para 22.

12 Norasharee's Petition of Appeal, para 5(iv) and (vi). Norasharee's Submissions, para 40.

13 Norasharee's Petition of Appeal, para 5(viii), (ix), (xi). Norasharee's Submissions, paras 41–44.

14 Prosecution's Submissions, paras 28–33.

(d) Yazid mentioned the meeting at VivoCity very belatedly—it was only in June 2015 that he stated this.[15] Such a personal meeting was also a departure from Norasharee's purported *modus operandi*.[16]

24 Norasharee then argued that the Judge was wrong in finding that he was the person whom Yazid identified as his boss and whom Yazid met at VivoCity on 23 October 2013.

(a) Norasharee said that the Judge erred in finding that he was "Boy Ayie" or "Eye" based on an aural similarity to "Ayi" as there was no legal basis for attaching evidential weight to such.[17]

(b) The Judge was wrong to say that Norasharee must have met Yazid just because Norasharee's car was parked at VivoCity that day.[18] The Prosecution argued that this aspect of the evidence objectively corroborated Yazid's account and that it would be fanciful to think that Yazid was either there by coincidence or had tracked the location of Norasharee's car to frame him.[19]

(c) Yazid's description of Norasharee's physique could have come from his observations of Norasharee in gang rivalry situations (as Norasharee was a prominent member of a rival gang) or at Club 7 as Yazid patronised it while Norasharee was working as a bouncer there.[20]

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15 Norasharee' Submissions, paras 49 and 54–58.

16 Norasharee' Submissions, para 50.

17 Norasharee's Petition of Appeal, para 5(i); Norasharee's Submissions, paras 12–16.

18 Norasharee's Petition of Appeal, para 5(x). Norasharee's Submissions, paras 24–28.

19 Prosecution's Submissions, paras 23–25.

20 Norasharee's Petition of Appeal, para 5(vii). Norasharee's Submissions, paras 17–23.

Kalwant's appeal and criminal motion

The test for rebutting the presumptions in s 18 of the MDA

25 In our recent decision in *Obeng Comfort v PP* [2017] SGCA 12 (at [34] to [41], we said the following about s 18 of the MDA:

> 34 Section 18(1) lists certain circumstances under which a person is presumed to have had a controlled drug in his possession. For the purposes of s 18(1), what we are concerned with is whether the thing in issue exists and whether the accused in fact has possession, control or custody over the thing in issue. The thing in issue is the container, the key or the document of title. In this sense, this provision deals with secondary possession of the drug in that the accused possesses, controls or has custody of something which has the drug or which relates to the title in, or delivery of, the drug. As is evident in s 18(3), the accused does not need to be in physical possession of the drug, *ie* primary possession. At this stage, we are also not concerned with the qualities of the drug. In this regard, we respectfully disagree with the observations of the High Court in *Public Prosecutor v Mohsen bin Na'im* [2016] SGHC 150 at [115(a)(i)] in so far as the court suggested that knowledge that the item was a controlled drug is necessary to satisfy the requirement of possession. Once the prosecution proves that the thing in issue exists and that the accused has possession, control or custody of the thing in issue, the effect of s 18(1) is to raise a presumption of fact, which is that the accused, by virtue of his possession, control or custody over the thing in issue, is presumed to possess the drugs which are contained in or are related to the thing in issue.
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> 35 To rebut the presumption in s 18(1), the accused has to prove, on a balance of probabilities, that he did not have the drug in his possession. In this context, the most obvious way in which the presumption can be rebutted is by establishing that the accused did not know that the thing in issue contained that which is shown to be the drug in question. Thus, for instance, the presumption could be rebutted successfully if the accused is able to persuade the court that the drug was slipped into his bag or was placed in his vehicle or his house without his knowledge. The inquiry under s 18(1) does not extend to the accused's knowledge of the *nature* of the drug. That is dealt with under the presumption of knowledge in s 18(2) where a person who is proved or presumed to be in possession of a controlled drug is

presumed to have known "the nature of that drug". As clarified by this court in *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*") at [23]–[24], the nature of the drug refers to the specific controlled drug found in his possession (for instance, methamphetamine or diamorphine).

36 Where the presumption in s 18(1) of the MDA is invoked by the Prosecution and is then rebutted successfully by the accused, the Prosecution would have failed to prove that the accused was in possession of the drug. There would be no need to consider the next issue of whether the accused had knowledge of the nature of the drug. However, if an accused is either (a) proved to have had the controlled drug in his possession; or (b) presumed under s 18(1) of the MDA to have had the controlled drug in his possession and the contrary is not proved, the presumption under s 18(2) that he has knowledge of the nature of the drug would be invoked. This follows because an accused person, who, it has been established, was in possession of the controlled drug should be taken to know the nature of that drug unless he can demonstrate otherwise. To rebut the presumption in s 18(2), the accused must prove, on a balance of probabilities, that he did not have knowledge of the nature of the controlled drug (in effect, that he did not have the *mens rea* of the offence). In *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 ("*Dinesh Pillai*"), this court observed (at [18]) that the accused can do so by showing that "he did not know or could not reasonably be expected to have known the nature of the controlled drug".

37 Contrary to the concerns in some quarters that *Dinesh Pillai* has modified the test of knowledge in s 18(2) such that mere negligence or constructive knowledge on the part of the accused suffices to convict him, we do not think that the above-mentioned pronouncement in that case purported to do anything of that sort. This has already been made clear in the recent decision of this court in *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2016] SGCA 69. The court assesses the accused's evidence as to his subjective knowledge by comparing it with what an ordinary, reasonable person would have known or done if placed in the same situation that the accused was in. If such an ordinary, reasonable person would surely have known or taken steps to establish the nature of the drug in question, the accused would have to adduce evidence to persuade the court that nevertheless he, for reasons special to himself or to his situation, did not have such knowledge or did not take such steps. It would then be for the court to assess the credibility of

the accused's account on a balance of probabilities. The onus on the accused has not changed after *Dinesh Pillai*. His duty is still the same. To rebut the presumption in s 18(2), he must lead evidence to prove, on a balance of probabilities, that he did not have knowledge of the nature of the drug.

38 When the presumptions in ss 18(1) and 18(2) of the MDA apply, the accused stands before the court presumed to have been in possession of the drug and to have known the nature of the drug that he was carrying and, in the present case, importing. If the accused elects to remain silent and does not make his defence, he can be convicted on the relevant charge on the basis of the presumptions that operate against him. If he elects to make his defence but calls no evidence or inadequate evidence to rebut the presumptions, he can similarly be convicted.

39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax. It would not suffice for the accused to claim simply that he did not know what he was carrying save that he did not know or think it was drugs. If such a simplistic claim could rebut the presumption in s 18(2), the presumption would be all bark and no bite. Similarly, he would not be able to rebut the presumption as to knowledge by merely claiming that he did not know the proper name of the drug that he was asked to carry. The law also does not require him to know the scientific or the chemical name of the drug or the effects that the drug could bring about. The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of and to rebut this, he must give an account of what he thought it was.

40 Where the accused has stated what he thought he was carrying ("the purported item"), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item. This assessment will naturally be a highly fact-specific inquiry. For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country of receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court

> would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. Ultimately, what the court is concerned with is the credibility and veracity of the accused's account (*ie*, whether his assertion that he did not know the nature of the drugs is true). This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.
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> 41 Of course, apart from availing itself of the presumptions, the Prosecution may also prove that the accused had actual possession and actual knowledge of the drugs. In such a case, the presumptions are still operable even though they need not be invoked (*Tan Kiam Peng* at [54]). It is also clear from previous cases that a finding of wilful blindness is simply the inference of actual knowledge that is drawn because it is the only rational and therefore irresistible inference on the facts.

26 We will now apply these legal principles to the facts of the present case.

Whether Kalwant had actual knowledge that the bundles contained diamorphine

27 For easy reference, we set out the salient portion of Yazid's statement dated 29 October 2013 (at [16]) where Yazid was recounting "small talk" between him and Kalwant in the same cell in Cantonment Police Complex sometime in the afternoon of 28 October 2013 ("Burn" refers to Kalwant while "Steven" refers to Kalwant's boss):

> Burn told me that his boss loves him and that was why *he was made to only deliver the obat from Singapore to me and another person in Singapore, and he is not made to bring the obat from Malaysia to Singapore*. Burn ***used the word "obat"*** and spoke to me in English and Malay. Burn also shared with me that *once he was sending drug to Singapore on motorcycle and he saw his friend being arrested at Woodlands Checkpoint and he thinks that it may be a capital case that his friend is*

> *facing. He did not tell me his friend's name. After that occasion, Burn told me he stopped for a while until the boss called him back and asked him how he wanted it to be done*. Burn told his boss that he did not want to bring in anymore. He told his boss that bring in let other people do and he just pick up and deliver in Singapore. Burn also told me to *make sure to tell the IO that what we were doing was tobacco*. I ask Burn how can I say that as I know it is heroin. Burn insisted that I tell the IO that it is tobacco and panparak. Burn told me that *actually the nine bundles were packed by him and another friend of his and out of the nine bundles he had done four of the bundles without using gloves while his friend was using gloves. I remember also that Burn told me that after he was arrested, Steven called him …* Burn told me that *he was allowed to answer the call*. When Burn answered the call, Burn told me that he spoke to his boss in Tamil that "Boss I kenna caught already. Boss please understand, I been caught already. Tell the Integra to leave the place" Burn told me that his boss hung up the phone after that. Burn told me that *he led the CNB to Toh Guan but of course they did not manage to catch anyone*. Burn also told me that he had told the IO that his boss name is called "Anna" and had just gave a fake address to the IO claiming that it is where his boss "Anna" stays. That is all that I remember Burn telling me. Today, just before I was called out to the interview room, Burn reminded me to "know what to say".
>
> [emphasis added in italics and bold italics]

28 Kalwant's arguments were made at two levels. First, he contended that the Judge was wrong to find that Yazid was truthful in saying that Kalwant had referred to "*obat*". Second, he contended that even if Yazid's statement was true, it did not clearly show that he knew that "*obat*" meant narcotic drugs (because he could have learnt it, for example, from conversation with Yazid while they were in remand in the same cell). It did not show at all that "*obat*" meant diamorphine.[21]

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[21] Kalwant's Petition of Appeal, para 7(I).

29 We are not persuaded by Kalwant's arguments. We begin by addressing the Judge's three reasons for finding that Yazid was truthful.

30 In respect of the first reason (*ie*, the fact that the DNA evidence corroborated Yazid's claim that Kalwant had packed four bundles), Kalwant argued in his petition of appeal that the Judge ignored the fact that Kalwant accepted that he did part of the packing — he said that an Indian man had given him six bundles (each containing two packets) and a further six packets of brown granular substance (which he packed into three bundles).[22]

31 Kalwant abandoned this argument in his written and oral submissions. In any event, we would not be moved by this argument. Kalwant's DNA was found on four bundles. On three of these, Kalwant's DNA was found on the exterior surface of the packets, the surface of the newspaper and the non-sticky side of the tape. On the fourth bundle, the only surface where Kalwant's DNA had a positive match was the interior surface of the packet. Given that it was never suggested that there was a mistake or contamination in the analysis, we conclude that Kalwant must have been involved in packing the fourth bundle. The fact that Kalwant accepted that he packed three bundles does not lead to the conclusion that he was more truthful than Yazid.

32 As for the Judge's second reason (*ie*, the fact that on 30 October 2013, Yazid retracted a portion of his contemporaneous statement of 24 October 2013 by clarifying that, just before their arrest, Kalwant said he was carrying "chocolate colour from pandan" instead of "*beh hoon*", "drugs", "obat" or "heroin"), Kalwant contended that the Judge was wrong to characterise it as an

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[22] See 2 ROP 279–280 (Kalwant's s 22 CPC Statement dated 26 October 2013), para 14.

act that evidenced truthfulness. He submitted that the Judge should have given weight to the fact that Yazid lied while giving a statement and should have found that he was motivated by a desire to tailor what Kalwant said to suit his own account of events, namely, that he was merely a courier for "Boy Ayie". This, he argued, would explain why Yazid suddenly claimed that Kalwant mentioned one "*Abang Besar*" at the time they met in Woodlands. Also, the fact that "Jang" (*ie*, Bujang Hawk, "Boy Ayie's" partner) had asked Yazid, during a call that took place in the CNB vehicle just after arrest, whether the bundles were "chocolate colour from pandan" would explain why Yazid said that "chocolate colour from pandan" originated from Kalwant. His point, it seems, was that Yazid wanted to appear as if he did not know what it meant.

33 Ultimately, we are not moved by this argument. First, Yazid gave a plausible explanation of why he had said "*beh hoon*" instead of "chocolate colour from pandan" on 24 October 2013. He has consistently maintained, since his statement dated 30 October 2013, that he used the words "*beh hoon*" because he was nervous and because he was speaking with a Chinese officer.[23] Thus, we do not think that Yazid was deliberately telling an untruth. Second, Yazid would not have achieved anything in terms of tailoring his statement to suit his case by clarifying what Kalwant had told him. In either case, Yazid would have had no difficulty showing that he was a mere courier. Third, we take the view that Yazid was truthful when he said that "chocolate colour from pandan" originated from Kalwant. Based on what counsel put to Yazid, Kalwant's position must have been that he did not talk to Yazid before they were arrested. Kalwant then admitted in examination-in-chief that he did

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[23] 2 ROP 350–351 (Yazid's s 22 CPC Statement dated 30 October 2013), paras 29–30; Transcripts, Day 6, pp 14:22–15:22 (EIC of Yazid); Transcripts, Day 5, pp 7:24–9:5 (XX of PW34 Ong Wee Kwang by DC1, confirming what Yazid had told him).

speak with Yazid before they were arrested, albeit not in connection with the bundles of drugs.[24] In cross-examination, Kalwant admitted to having described to Yazid the contents of the bundles as being "chocolate in colour" but claimed that this was said in the lock-up and in response to Yazid's question as to what *panparak* was[25]. However, we find Kalwant's explanation hard to believe because chocolate colour was neither an intuitive nor a precise way to describe *panparak* and also because it was not put to Yazid that he had asked Kalwant while in the lock-up what *panparak* was.

34 As for the Judge's third reason (*ie*, the fact that Yazid knew the details of what Kalwant did after they were arrested), Kalwant argued that Yazid could have learnt of the phone call made by "Anna" to Kalwant from someone else since there were many persons present when the phone call was taken. Further, Yazid made his statement five days after the call.

35 In our judgment, it is highly unlikely that any of the police officers could have given Yazid all these details. Our inference, therefore, is that Yazid learnt of the events from no one other than Kalwant.

36 On the basis that Yazid's statement was true, Kalwant also submitted that the first and third reasons did not prove that Kalwant had actual knowledge that the bundles contained heroin. In our view, this is too myopic a view of the evidence. The point is that these facts, taken collectively, show generally that Yazid was truthful while Kalwant was not and this increased the likelihood that Yazid was truthful specifically in relation to what Kalwant had told him about the contents of the bundles.

[24] Transcripts, Day 8, pp 17:16–17:20, 18:16–18:20 (EIC of Kalwant).

[25] Transcripts, Day 8, pp 63:31–64:21 (Cross-examination of Kalwant).

37 It is clear to us that Kalwant knew that "*obat*" referred to narcotic drugs. Kalwant said in his statement dated 27 October 2013 (at [26]):

> 26 Since I was arrested until now, I have spoken to Abang once about the case. On the way back from court, I asked Abang whether he knew what was in the black packet and he told me that he also did not know what was inside. Abang told me that when he opened it to see just before we were arrested, he was surprised that it was "obat". *Obat means narcotic drug.* Abang told me that he was about to tell me on the morning of 24 October 2013 when the police arrested us. *I asked Abang how he recognized that it is a drug and Abang told me that he had used it before. I smiled and told Abang that our lives are finished.* Abang also smiled and said nothing. I did not say anything to him after that.
>
> [emphasis added]

Kalwant's account of the conversation that he had with Yazid (whom he addressed as "Abang" when giving the statement) after they were arrested showed clearly that he knew "*obat*" referred to narcotic drugs. Further, after Yazid supposedly expressed his surprise that the bundles contained "*obat*", Kalwant's supposed reaction was not to ask what "*obat*" meant but to ask how Yazid recognized that it was a drug.

38 We are also satisfied that Kalwant knew that "*obat*" meant diamorphine in particular. In our view, the Judge was entitled to find that "*obat*" is the street name for diamorphine in Malay, just as heroin is its English equivalent. In any event, there was further support for such a finding. First, Kalwant claimed in his statement dated 27 October 2013 that after Yazid told him that the substance in the bundles was "*obat*", he said that "our lives are finished". Kalwant must have realised that being caught with "*obat*" could lead to serious consequences which follow the possession of certain drugs only. Second, Yazid claimed that Kalwant told him sometime in the afternoon of 28 October 2013 that he (Kalwant) was hopeful that he would be sentenced

to five years' imprisonment and he hoped that "the grade of the heroin will be low".[26] Although Kalwant denied having said this during examination-in-chief[27] (he was not cross-examined on this further), he admitted in his statement dated 30 October 2013 that he had said it.[28] His reference to the "grade of the heroin" betrayed his knowledge about the drug trade, *ie*, that the drug he was carrying was heroin and that it had varying grades of purity.

39 In our view, the Judge was fully justified in finding that Yazid was truthful and that the contents of Yazid's statements showed that Kalwant had actual knowledge that the bundles contained diamorphine. There is therefore no basis for appellate intervention.

Whether Kalwant rebutted the presumption of knowledge

40 As we agree with the Judge on the issue of actual knowledge, the issue of whether Kalwant has rebutted the presumption of knowledge, strictly speaking, becomes moot. However, we now explain why we also agree with the Judge that Kalwant has failed to rebut the presumption of knowledge which the Prosecution invoked below.

41 To recapitulate, Kalwant claimed that he believed that he was carrying duty-unpaid, unprocessed *panparak* and was helping his boss to evade tax in doing so. To this end, Kalwant filed Criminal Motion No. 22 of 2016 seeking to adduce further evidence about *panparak* on appeal. This comprised two photographs of a packet of unbroken betel nuts together with a receipt for its

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26 2 ROP 315 (Yazid's s 22 CPC Statement dated 29 October 2013), para 16.

27 Transcripts, Day 8, pp 36:1–36:5 (EIC of Kalwant).

28 2 ROP 348 (Kalwant's s 22 CPC Statement dated 30 October 2013) at [63].

purchase showing that the packet was bought for S$6.40 on 13 October 2016 from a shop in Buffalo Road, Singapore. We allowed this further evidence to be adduced at the start of the appeal as it has some relevance and could be easily dealt with by way of submissions.

42 In our judgment, the evidence during the trial did not support Kalwant's contention and the further evidence on appeal served to confirm our view. We agree with the Judge's assessment that Kalwant did not genuinely think that he was carrying *panparak* on 24 October 2013 as his suspicions would have been aroused by the fact that the substance in the bundles looked different from the *panparak* that he had encountered previously.

43 First, despite the significant visual differences between *panparak* and the substance that Kalwant was carrying, Kalwant was happy to assume that he was carrying *panparak* for which the betel leaves had not been broken and to which lime powder had not been added. However, he did not testify that he had ever encountered *panparak* in such a form. Kalwant's first encounter with *panparak* was around 2005–2006 when he took "a few small brownish rice grains" from his grandmother's friend.[29] His second encounter was during his third delivery for "Anna" when he claimed that he saw "brown grainy substance … about the size of rice grains" that "looked more like grains of sand but in whitish brown".[30] These quite accurately described the pictures of *panparak* (as commercially produced and marketed) which were placed before the Judge[31] but not the brown cubes of substance in the packets that Kalwant

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29 2 ROP 274 (Kalwant's s 22 CPC statement dated 26 Oct 2013), para 2.

30 2 ROP 278 (Kalwant's s 22 CPC statement dated 26 Oct 2013), para 11.

31 2 ROP 519–525 (Exhibit D2).

was carrying. While the unbroken betel nuts look a little more similar to the substance that Kalwant was carrying, there were still noticeable differences even at a cursory glance. The substance that Kalwant was carrying was shaped like regular cubes with a grainy appearance while the betel nuts were flatter and had a woody appearance with a distinct radial pattern.

44 Second and more importantly, it would have made no sense at all to pay a Malaysian courier RM100 per bundle to transport *panparak* from one location in Singapore to another location in Singapore (we elaborate on this at [46] – [48] below). According to Kalwant in his cautioned statement under s 23 of the Criminal Procedure Code ("CPC") (Cap 68, 2012 Rev Ed), after he starting questioning Anna about what he was really being asked to deliver, Anna "raised my salary" from RM50 to RM100 for each bundle delivered. In his statement of 26 October 2013, he elaborated on this. He said that after the third or fourth deliveries, he told Anna that he had opened a packet to look at its contents and they did not look like tobacco. Anna then told him that he was actually delivering *panparak* as tobacco was not in demand and *panparak* was more in demand. Anna said that he had forgotten to inform Kalwant about the change in the type of goods for delivery, that *panparak* was "more expensive" and "so he will increase my pay to RM100 for each packet that I deliver". Kalwant was happy with the increase in pay because he would be able to clear his debts earlier.

45 In a further statement on 27 October 2013, Kalwant was asked by the investigating officer whether he thought it logical that Anna would pay him RM100 for each packet of *panparak* which would be sold to low-salaried foreign workers. Kalwant replied that he thought that Anna "was evading tax and his profit will be a lot. If one packet can fetch S$200 which is RM450 and

he pays me RM100, he still makes RM350 per packet." When Kalwant was asked what he thought Anna's cost price was, he replied that it was maybe RM150 per packet, "so he will still make RM200 per packet." Kalwant went on to explain that *panparak* was popular and very saleable and "many persons will buy it". He did not know anyone who consumed this but had seen many foreign workers in Tekka Market in Singapore taking it.

46 *Panparak* is legally and easily available in Singapore, as the further evidence in the CM and the events described below showed. There was no evidence to show that the situation was any different in October 2013. The receipt and the two photographs of the betel nuts adduced as further evidence on appeal through Kalwant's sister did not show the weight of the *panparak* costing $6.40. After the hearing of the appeals and during our deliberations, when we wanted to look at the packet of *panparak* that was shown in the two photographs, we were informed by the registry of the Supreme Court ("the registry") that no physical exhibit had been tendered. We then directed the registry to inform Kalwant's solicitors to deliver the said packet of *panparak* to the registry and to state its weight in a letter. In his letter of 1 March 2017, Mr R S Bajwa, counsel for Kalwant, informed us that Kalwant's sister informed his law firm that the original packet that she had purchased for $6.40 "has been disposed of by her along with whatever remained in the packet". He went on to state that Kalwant's sister explained "that she had taken out some of the betel nuts and placed them on the table taken a picture and then put these into a transparent plastic bag and took another picture of the transparent plastic bag with the contents." These two pictures were the ones exhibited in her affidavit in the CM. Mr Bajwa also stated that the said transparent plastic bag with its contents was in his law firm's possession in the same form as it was when received from Kalwant's sister and he tendered it to the registry. As

a result of what had happened, he was not able to tender the original packet of *panparak* bought or to state its weight.

47 Following from this, we instructed the registry to arrange with Kalwant's solicitors, Norasharee's solicitors and the Public Prosecutor's office for a lawyer from each of their offices to go with an Assistant Registrar of the Supreme Court to the shop in Buffalo Road, where Kalwant's sister had purchased the *panparak*, to buy $6.40 worth of the same item stated in the receipt dated 13 October 2016 exhibited in the CM. This was done in the afternoon of 6 March 2017, as reported to this court by Assistant Registrar Paul Chan ("the AR"). A group of seven persons went together to the shop in three cars. Mr Bajwa and Mr Satwant Singh represented Kalwant, Mr Amarick Gill represented Norasharee and DPP Chan Yi Cheng represented the Public Prosecutor. The AR and two registry staff members also went to the shop. The AR showed a copy of the receipt exhibited in the CM to the sales staff in the shop, highlighting the product's serial number and description. The shop sold *panparak* in unpacked form by weight at S$12 for one kilogram. It was stored in a blue plastic tub or pail. The group then asked for S$6.40 worth of *panparak*. The sales staff took some *panparak* and put it in a red plastic bag. He then weighed the *panparak* together with the red plastic bag on an electronic weighing scale. At S$6.40 worth, the *panparak* weighed 535g. After everyone in the group had verified the weight, Mr Satwant Singh, Mr Amarick Gill and DPP Chan Yi Cheng signed on a document prepared by the registry earlier confirming that they had witnessed the purchase of $6.40 worth of *panparak* as shown in the shop's receipt and that it weighed 535g, with the weight handwritten by the AR. Mr Satwant Singh paid for the packet of *panparak*. The said packet, the shop's receipt and the signed document were

handed over to the AR and the group then left the shop. These items have been forwarded by the AR to the court.

48 As seen above, one kilogram of *panparak* costs S$12 and 535g of *panparak* cost $6.40 in Singapore. There was no evidence that the cost of *panparak* was significantly different in October 2013. Further, at the time of the incident in October 2013, S$1 was worth about RM2.6. One pound in weight is about 454g. A bundle of *panparak* weighing about a pound or 454g (*ie*, the approximate weight of one bundle of the drugs in this case) would therefore have cost no more than S$6.40 (which is for 535g or 81g more) or roughly RM16.64 (6.40 x 2.6). To be paid RM100 (or even RM50 before Anna doubled Kalwant's pay) each time to deliver a pound of substance worth about RM16.64 and which was legally and easily available in Singapore must surely be ridiculous to any normal thinking person. Kalwant's answers in his statements showed that he was familiar with *panparak*. Yet, he could claim that he thought it cost so much more in Singapore although it was consumed by foreign workers in Tekka Market who would generally not be high wage earners. In our opinion, he was untruthful. It must have been obvious to Kalwant that he could not have been delivering *panparak* but something worth a lot more.

49 Finally, we also do not believe Kalwant's claim that he thought he was helping his boss evade tax. He was obviously not carrying the goods across borders but was merely carrying them from one place to another within Singapore.

50 In our opinion, the Judge was correct to say that Kalwant could not have trusted Anna or believed Anna's earlier instructions or assurances

because he must have suspected that he could have been carrying something other than *panparak*. Anna was engaged in a spectrum of illegal activities and he had threatened to beat Kalwant up when he could not repay the money he owed Anna from illegal betting. Anna had also shown himself to be untrustworthy. Based on Kalwant's version of events, Anna had told him "not to worry" when Kalwant confronted him after his third delivery. However, he later admitted that the substance was *panparak* only when Kalwant confronted him again after having examined the contents of a bundle. In our judgment, it was unbelievable that the trust between them was restored by the fact that Anna supposedly came clean about the contents of the bundles in the manner described. Kalwant certainly did not appear to be a naïve and easily manipulated man despite his relative youth at the material time.

51 Finally, we find no merit in the contention that the Judge erred in law in saying that he was "not convinced" by Kalwant's account (see Judgment at [22]) when Kalwant only had to raise a reasonable doubt. Once the presumption in s 18(2) of the MDA applies, the burden falls on Kalwant to rebut the presumption of knowledge of the nature of the drug by adducing evidence to persuade the Judge on a balance of probabilities. The onus is not merely to raise a reasonable doubt. The Judge's use of the words "not convinced" therefore clearly meant he was not convinced on a balance of probabilities.

52 In the premises, the Judge was correct in finding that the presumption of knowledge was not rebutted. We therefore find no basis for disagreeing with the Judge in convicting Kalwant on his charges.

Norasharee's appeal

53 We now turn to Norasharee's appeal. As the Judge noted, the case against Norasharee rested almost entirely on Yazid's statement. In Norasharee's case, the Prosecution must prove the charge against him beyond reasonable doubt without the assistance of the twin presumptions in s 18 of the MDA as Norasharee had no ostensible link with the drugs in question where possession was concerned and was not even present during the drug transaction.

The court's approach in convicting an accused person solely on the basis of a co-accused's statement

54 Here, the Prosecution was seeking to prove Norasharee's guilt on the basis of a co-accused person's statement. In the following discussion, we will use X to denote the accused and Y to denote the co-accused (in the present context, Norasharee and Yazid respectively). It is clear that the Court may consider Y's confession against both X and Y, if they are being tried jointly for the same offence (s 258(5) of the CPC). The Court may convict X *solely* on Y's confession. Thus, the court in *Chin Seow Noi and others v Public Prosecutor* [1993] 3 SLR(R) 566 ("*Chin Seow Noi*") held that s 30 of the Evidence Act (Cap 97, 1990 Rev Ed) ("EA 1990"), which is the predecessor of s 258(5) of the CPC, permitted the Court to convict X solely on the basis of Y's confession, provided that the evidence emanating from Y's confession satisfied the court beyond reasonable doubt of X's guilt (at [84] *per* Yong Pung How CJ). We think this is correct as s 30 of the EA 1990 does not impose any further limits on the use of a co-accused's statement and, as Yong CJ pointed out, any narrower construction would emasculate the provision.

55 The decision in *Chin Seow Noi* was given somewhat negative treatment by the Court of Appeal in *Lee Chez Kee v Public Prosecutor* [2008] 3 SLR(R) 447 (CA) ("*Lee Chez Kee (CA)*"). In the High Court (*Public Prosecutor v Lee Chez Kee* [2007] 1 SLR(R) 1142 (HC) ("*Lee Chez Kee (HC)*")), when X was tried for murder, Y, an accomplice who had alleged in his statement that X strangled the deceased, had been convicted and executed by the time of X's trial.

56 The High Court held that s 30 of the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") could not apply to admit Y's statement but that the exception to hearsay in s 378(1)(*b*)(i) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC 1985") applied to admit Y's statement. That section allowed a statement to be admitted if its maker was dead "subject to [ss 378–379 of the CPC 1985] and to the rules of law governing the admissibility of confessions". The High Court held that a blanket exclusion would lead to manifest absurdity as exculpatory statements would be admissible whereas inculpatory statements (which were generally more reliable as they were made against the maker's interest) would not (at [44]). The High Court cautioned against placing too much weight on Y's statement given Y's interest in incriminating X to exculpate himself and given Y's unavailability for cross-examination (at [68]). Ultimately, the High Court used the statements merely to "reinforce the already compelling inference" that X was inextricably involved in the murder. In the event, the statements were not strictly necessary to convict X because both X and Y were charged for committing murder with common intention and it was not necessary to prove that X was involved in strangling or stabbing the deceased or even that X was physically present at the scene of crime (*Lee Chez Kee (HC)* at [60]; *Lee Chez Kee (CA)* at [253(b)]).

57 On appeal, Rajah JA held that the High Court was wrong to have admitted the statement, since s 378(1)(*b*)(i) of CPC 1985 was expressed to be subject to the law governing admissibility of confessions, which would include s 30 of the EA. Outside the context of a joint trial, the law would place considerable emphasis on the danger of the unreliability of Y's confessions. The fact that Y was dead did not make the statements more reliable since they could have been made in circumstances conducive to fabrication (at [103]–[117]). He also cautioned that a confession by Y relating to X's guilt was inherently less reliable than one relating to Y's own guilt because the statement was made not against but in the interest of its maker (at [102]). The danger was potentially compounded by the fact that X may not have the chance to cross-examine Y since Y may elect not to testify (although this concern did not arise in our case). Rajah JA even suggested *obiter* that *Chin Seow Noi* should be reconsidered, on the basis that the law was concerned with the unreliability of Y's statement and that it would therefore be odd for Y's confession to be given so much weight such that it could on its own secure a conviction of X (at [113]). The other two Judges in the Court of Appeal, Choo Han Teck J and Woo Bih Li J, delivered separate judgments in *Lee Chez Kee (CA)*. It appeared that they agreed broadly with Rajah JA's *dictum*. Choo J agreed with the "grounds and reasoning … in respect of the legal issues concerning s 378(1)(*b*) of the [CPC 1985]". His disagreement related to the final order (at [270]). Woo J disagreed with Rajah JA's analysis of s 378(1)(*b*)(i) CPC 1985 and instead held that Y's statement was admissible but that no weight should be given to it because it was self-serving and untested by cross-examination (at [274]–[276]).

58 In the context of sexual offences, the courts often face a similar problem. The line of cases concerning the conviction of an accused person

solely on the basis of a complainant's testimony was most recently revisited in *Haliffie bin Mamat v Public Prosecutor & other appeals* [2016] 5 SLR 636 at [27]–[32]. This Court held that a complainant's testimony could constitute proof beyond reasonable doubt if it was so "'unusually convincing' as to overcome any doubts that might arise from the lack of corroboration" — meaning that the testimony, "when weighed against the overall backdrop of the available facts and circumstances, contains that ring of truth which leaves the court satisfied that no reasonable doubt exists in favour of the accused". In this regard, the relevant considerations would be his or her demeanour and the internal and external consistency of his or her testimony (*AOF v Public Prosecutor* [2012] 3 SLR 34 at [111] and [115]; *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [38]).

59 In our view, *Chin Seow Noi* is correct in so far as it stands for the principle that X may be convicted solely on Y's testimony. However, the foregoing discussion shows that Y's confession has to be very compelling such that it can on its own satisfy the court of X's guilt beyond a reasonable doubt. In this regard, it would be relevant to consider the state of mind and the incentive that Y might have in giving evidence against X. If X alleges that Y has a motive to frame him, then this must be proved as a fact (see Judgment at [28], citing *Khoo Kwoon Hain v Public Prosecutor* [1995] 2 SLR(R) 591). Of course, Y may well be truthful despite having an incentive to lie or could be untruthful despite not having such an incentive.

60 With these principles in mind, we turn to the facts in Norasharee's appeal. In this case, the maker of the statement against Norasharee was Yazid, a co-accused being tried at the same trial and who was available for cross-examination.

Analysis of the facts

61 After assessing the evidence, we were led to the inescapable conclusion that Yazid was truthful when he claimed to have taken instructions from Norasharee at VivoCity on 23 October 2013 regarding the drug transaction that was to take place the next day. Yazid's evidence was clear and consistent. On the other hand, the alternatives presented in Norasharee's defence are too fanciful to raise any reasonable doubt in Yazid's testimony. Norasharee's evidence failed in three critical aspects—his failure to explain why Yazid would want to frame him, how Yazid knew he was at VivoCity on 23 October 2013 and why he denied previously that he knew Yazid.

The factual starting point

62 It is clear that Yazid was instructed in the drug transaction by a person whose phone number was saved in Yazid's mobile phone under the name "Eye". The phone records show that "Eye" had called Yazid's mobile phone several times on 24 October 2013, both before and after Yazid's arrest. After Yazid's arrest, a CNB officer (WSSgt Norizan binte Merabzul) allowed Yazid to return a missed call from Eye at 11.33am and to answer two incoming calls from Eye at 12.28pm and 2.06pm. According to Yazid, Eye had told him to "relax" as there were no "orders" for the day.

63 It is also clear to us that Yazid had Norasharee in mind when he said that he was instructed by Boy Ayie. This was borne out by his statements:

(a) In Yazid's contemporaneous statement, taken on 24 October 2013 from 7.33am (*ie*, about half an hour after arrest) to 8.15am, Yazid said that he was instructed by Boy Ayie, a Singaporean Malay male.

(b) In Yazid's cautioned statement, taken in the evening on the same day, Yazid reiterated that he was instructed by Boy Ayie to collect drugs from a person who turned out to be Kalwant. He said that he did not know Boy Ayie's real name.

(c) Yazid's next statement was taken on 29 October 2013 (*ie*, five days after arrest). In it, he gave a detailed account of how he entered the drug trade and the circumstances under which he came to work for Boy Ayie. According to him, Boy Ayie was a 40-odd-year old Malay who was tall, big (with a tummy), muscular and dark-skinned. He had tattoos on his arms and chest but no facial hair. He liked to wear caps but did not wear glasses. He drove a black Honda Civic with the registration number 5471. Yazid said he could not remember the prefix and the suffix of the registration number. Yazid also said that Boy Ayie was rumoured to stay in Lengkok Bahru. The Judge observed that Norasharee matched the physical description of Boy Ayie. Norasharee turned 40 years old in 2013. Most tellingly, Norasharee drove a black Honda Civic with the registration number SGF5471B[32]. The fact that Norasharee was actually staying in Yishun did not affect Yazid's credibility materially because Yazid had stated that he was unsure about Norasharee's address.

(d) In Yazid's long statement taken on 30 October 2013, Yazid said that Boy Ayie told him in the afternoon on 23 October 2013 that "Burn" would call Yazid to ask Yazid to take the thing from him.

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[32] See 2 ROP 363 (Certified true copy of the Register of Motor Vehicles).

(e) Yazid gave three more statements, one in mid-2014 and two in mid-2015. The statement taken in 2014 is of little relevance because it mostly concerned Bujang Hawk. On 10 June 2015, Yazid identified Boy Ayie from a set of nine photographs. He reiterated that he did not know Boy Ayie's real name and that he did not know how to contact Boy Ayie other than by telephone. Finally, on 22 June 2015, he added that Boy Ayie had *met him in person at VivoCity on 23 October 2013 to say that there would be work for him the next day*. Yazid understood this to mean that he was to stand by to collect heroin from a Malaysian courier. Yazid did not say that Norasharee drove to VivoCity. He had mentioned earlier the numerals in the registration plate of Boy Ayie's car and that helped link Boy Ayie to Norasharee. Yazid probably did not know whether Norasharee did or did not drive to the meeting at VivoCity because all he said in the later statement was that he met Norasharee there on the day in question. It was the investigators who then went to check the car park records at VivoCity and that was when they found out that Norasharee's car entered VivoCity's car park at 1.07pm and left at 1.40pm that day. In addition to this fact, the record of the phone calls showed no calls between Yazid and Norasharee in the window of time that Norasharee's car was there, save for a missed call from "Eye" to Yazid's phone at 1.38pm. This could not be sheer coincidence. We discuss this issue further at [94] – [97] below.

64 It is apparent that Yazid's accounts of who Boy Ayie was and of his encounter with Boy Ayie were internally and externally consistent. Given also the proximity of the statements to the date of arrest, Yazid did not appear to have manufactured a character out of thin air.

65 Two matters appeared to cast a shadow on Yazid's testimony. One was the fact that Yazid mentioned the meeting with Norasharee in VivoCity only close to two years after the event. The other was that Yazid did not speak about his gangland experience in his statements. However, for reasons which we will explain below, these do not change our views on Yazid's credibility and ultimately on Norasharee's guilt.

66 At this juncture, it is important for the evidence to show that Eye, Boy Ayie and Norasharee were one and the same person. However, the crucial fact that the evidence must show was that Yazid was truthful in saying that Norasharee was the person from whom he had been taking instructions on drug transactions.

The parties' statements and state of mind when giving evidence

67 Here we set out our views on Yazid's failure to mention his gangland links in his statements and Norasharee's denial that he knew Yazid in his statements. It will be helpful to first outline the parties' mentality and motivations when their statements were being recorded or when they were conducting their defence. This will set the context against which their credibility can be assessed.

68 At the investigation stage, Yazid clearly had an incentive in making claims which might secure him a certificate of substantive assistance under s 33B of the MDA, possibly including falsehoods about Kalwant or Norasharee. Yazid could possibly also have an interest in framing Norasharee out of a personal vendetta or because of general gang rivalry. It was undisputed that Yazid belonged to the Omega gang while Norasharee belonged to the "369" gang. In this regard, Yazid might also have an incentive to suppress any

gangland history if he truly wanted to frame Norasharee. It would probably have made it easier for the CNB to identify and arrest Norasharee if Yazid had said that Boy Ayie was a senior member of "369".

69 However, we do not take an adverse view of Yazid's failure to mention his gangland history. Yazid said he left the Omega gang since about 2008. That was about five years before his arrest in this case. He started working for Boy Ayie through one "Juna" because of his financial difficulty although he had legitimate employment as a UV light technician. In response to a question by Kalwant's counsel that Yazid mentioned various names in his statements because he wished to secure a certificate of substantive assistance under the MDA, Yazid replied that, "All this information that I informed the CNB were what was informed by me by [Juna]. Those are the gang members of Boy Ayie.[33]" That showed that he was not averse to talking about gang matters when asked. Further, Yazid and Kalwant were arrested together while Norasharee was only arrested some two years later. It was therefore natural that Yazid's statements focused more on his dealings with Kalwant. It was also highly probable that Yazid did not talk about gangland matters because of fear of repercussions to his family. In Yazid's long statement of 30 October 2013, when asked whether he was willing to testify against Kalwant in court, he said, "I will try my best because I will tell the truth and nothing more than what I know. Nevertheless, I am also worried about the safety and future of my family members if I were to openly confront [Kalwant] in court."[34] This suggests that Yazid would have been even more concerned if he were asked to testify in court against Norasharee, a senior member of a past rival gang. He

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33 Transcripts, Day 7, pp 11:4–11:9 (XXN of Yazid by DC2).

34 2 ROP 353 (Yazid's 30 Oct 2013 long statement, Q36).

claimed in court, just as he was about to leave the witness box, that Norasharee's gang members in prison had threatened him in prison for the cooperation he had given by identifying Norasharee and that he had to be moved to another prison for his protection.[35]

70 On the other hand, Kalwant and Norasharee would have a common incentive to discredit Yazid. Norasharee, in particular, would have a specific incentive to exaggerate his and Yazid's gangland involvement. First, both Kalwant and Norasharee must have found Yazid's statements highly adverse to them because if the claims in those statements were accepted as true, then both Kalwant's *mens rea* (*ie*, actual knowledge of the nature of the drugs) and the entirety of Norasharee's offence would be proved. Second, their prospect of facing the death sentence was very real. Kalwant would have been concerned about not receiving the certificate of substantive assistance because the Prosecution had made serious allegations during the trial that he had obstructed the course of justice by tipping off the suspects that the CNB had planned to arrest at the Toh Guan area. Norasharee would have similar concerns because he appeared to have given practically no information to the CNB in his statements and because his role would have been more than a mere courier as he was the one giving instructions to Yazid.

71 Norasharee's denial that he knew Yazid and his failure to allege in his statements that Yazid was framing him were even more telling. Norasharee gave three statements in total. The first was a contemporaneous statement recorded at 12.50pm on 1 July 2015. Norasharee was shown a picture of Yazid but he denied knowing Yazid or being involved in any drug trafficking with

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[35] Transcripts, Day 7, pp 38:7–38:13.

him.[36] The second was a cautioned statement recorded at 5.00pm on the same day. All that Norasharee said was, "I do not know anything. I will hand over to my lawyer. I do not plead guilty."[37] The third was a long statement taken the next day, where Norasharee, upon being shown Yazid's photograph, once again denied knowing Yazid by claiming that, "I do not know the person that is shown to me and I have never seen him before and I am not involved in any drug activities."[38] However, Norasharee kept vacillating on his position at trial. He first said that, even when his contemporaneous statement was being recorded in his bedroom, he recognised Yazid as an enemy who was framing him.[39] When the inconsistency between his oral testimony and his two statements was pointed out to him, he said that he was "shocked" and "blur" and that he recalled that Yazid was his enemy only after meeting his lawyer on 3 July 2015. Indeed, on appeal, Norasharee's counsel conceded that Norasharee lied on this point when giving his statement. The following is the trial transcript:

> Q And your answer [in your 2 July 2015 long statement] is: "I do not know this person." Clearly, that is a lie, correct?
>
> A When I was arrested, this case was about 2 years ago. *I was quite shocked. When I recall back, then I met my lawyer, Mr Amarick Gill, then I recall that this Mohamad Yazid was my enemy.* My s---my statement, I refer to my lawyer.

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36 2 ROP 385 (Norasharee's 1 Jul 2015 Contemporaneous Statement).

37 2 ROP 391 (Norasharee's 1 Jul 2015 Cautioned Statement).

38 2 ROP 392 (Norasharee's 2 Jul 2015 Long Statement, para 2).

39 Transcripts, Day 9, pp 21:1–21:6 (XXN of Norasharee by DPP). *Cf* 2 ROP 510 (Statement of ASP Nicholas Quah, paras 25–29), confirming that Norasharee was arrested at home and his contemporaneous statement at 2 ROP 385 was recorded before escorting Norasharee back to CNB.

Q But earlier, you just testified that when you were arrested on 1st July 2015, you already knew this Mohamad Yazid was trying to frame you because he was your enemy, correct?

A I was not---I did not expect---when I was being caught, *I was blur. When I recall back, then I realise that this is my enemy***.**

Q When did you realise this?

A When I went to CMC and met my lawyer, I told him everything about this problem. So I told him about this person who is my enemy and he tried to frame me.

Q When did you go to CMC?

…

A I went to CMC on 3rd of July 2015.

Q So you are now saying that it was only from 3rd of July 2015 that you realised that you were being framed by Mr Yazid?

A Yes.

Q In any event, it is not true that you do not know this person, Mr Yazid, correct?

A When they showed me the photo of Yazid, it was not a coloured photo, it was in black and white.

Q The original coloured photo has your signature. Are you maintaining that you were shown a black and white photo?

A They showed me like the one in this picture.

Q So now you accept it was a colour photo, correct?

A Yes.

[emphasis added in italics]

72 In our judgment, Norasharee's failure to mention anything about the alleged gang rivalry in his statements suggested strongly that this was an afterthought. It would have been in Norasharee's interest to say that Yazid was a member of a rival gang since it would have supplied a motive on Yazid's part to frame him. However, as shown above, he denied even knowing Yazid.

We therefore agree with the Judge that Norasharee denied knowing Yazid because he knew that Yazid had been caught for drug trafficking and he did not want to be associated with Yazid in any way (Judgment at [32]).

Whether Yazid had any motive to frame Norasharee

73 After reviewing the evidence on Yazid's and Norasharee's gangland history, we conclude that Yazid had no reason to frame Norasharee.

(1) The duration and extent of Yazid's involvement in Omega generally

74 The possibility that Yazid was involved in gang activities until close to the time of his arrest was only a weak one. When cross-examined by Norasharee's counsel, Yazid claimed that he had been an Omega member "previously" but could not recall when he joined.[40] Later, when cross-examined by the Prosecution, he said he left Omega since 2008.[41] These two claims are consistent with each other.

75 Some portions of the evidence were relied on to suggest that Yazid's involvement with gangs had been a continuing one. First, Yazid stored Boy Ayie's number as "Eye" because he knew Boy Ayie was a "recognised gangster member".[42] If this was true, it suggested that Yazid had something to hide from the people who were close to him in 2013 and the people most likely to recognise "Boy Ayie" as a gang-linked name would be those who were themselves involved in gang activities, *ie*, his fellow Omega members.

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40 Transcripts, Day 7, pp 17:5–17:9 (XX of Yazid by DC3).

41 Transcripts, Day 7, pp 31:12 (XX of Yazid by DPP).

42 Transcripts, Day 7, pp 23:10–17 (XX of Yazid by DC3).

However, this alone was insufficient to prove that Yazid was involved in gang activities even up to 2013.

76 Second, Yazid tried to downplay his gang involvement to that of everyday social activities, twice denying that he was designated as a fighter in Marsiling:[43]

> Q And your designation in that gang was a fight---was as a fighter in the Marsiling area, correct?
>
> A No.
>
> Q Well, what was your designation in the gang then?
>
> A I just mix with them.
>
> Q What do you mean by "mix with them"?
>
> A We went to disco together.
>
> Q What else?
>
> A Drink at the coffee shop.
>
> Q Sounds like a social outing, going to discos and drinking at coffee shops.
>
> A I just mix with them. We---I'm friends with them.
>
> Q I'm putting it to you and you may agree or disagree with me, Mr Yazid. I'm putting it to you that you were designated as a fighter in the Marsiling area where Omega operated from.
>
> A I disagree.

The suggestion was that Yazid was hiding something because he gave a vague, indirect answer when asked what his designation was, after having been given an example of a gang designation. However, we do not think that Yazid was being evasive about his gang activities when cross-examined by

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[43] Transcripts, Day 7, pp 17:10–17:24 (XX of Yazid by DC3). *Cf* Transcripts, Day 9, pp 7:3–7:11 (EIC of Norasharee).

Norasharee's counsel. We do not find anything unusual about Yazid's claim that he left Omega in 2008 but continued to engage in social activities with gang members who were also his friends. Yazid was arrested for drug consumption in 2008 and was released from the drug rehabilitation centre in 2009. After that, he was involved in a program with Singapore Corporation of Rehabilitative Enterprises until 2010. Since then, he was gainfully employed until his arrest in the present case.[44]

77 Third, Yazid admitted to knowing that "Yan Bai" was a "big man" in Omega and that he was probably a headman.[45] Counsel for Kalwant, in further cross-examination, put to Yazid that, on one occasion before the date of their arrest, Yazid showed Kalwant (upon Kalwant's inquiry) a tattoo on his wrist and an article in the *Berita Harian* newspaper dated 12 October 2013 featuring Yan Bai and said that "this is my boss and we all have this tattoo somewhere in the region [of our wrist]". Kalwant testified both in examination-in-chief and in cross-examination by Norasharee's counsel that Yazid said that Yan Bai was "the gang leader" but the testimony on this point was not the most precise.[46] Yazid said he could not recall that occasion, that the tattoo on his wrist had "nothing to do with Omega" and that Kalwant probably saw it because he normally wore short-sleeved shirts.[47] The exchange went like this:

> Q Now Yazid, on an earlier occasion, not the 24th of October 2013 when you were arrested, you recall there was an occasion when my client, the 2nd accused came to see you, you were reading a newspaper and my

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44 2 ROP 310–311 (Yazid's 1st Long Statement dated 29 Oct 2013, para 2).

45 Transcripts, Day 7, pp 17:25–17:30 (XX of Yazid by DC3).

46 Transcripts, Day 8, pp 44:21–44:24 (EIC of Kalwant); pp 54:29–55:25 (XX of Kalwant by DC3).

47 Transcripts, Day 7, pp 28:1–29:12 (FXX of Yazid by DC2).

client asked you: "What are you reading?" Do you remember that occasion?

A I couldn't recall.

Q All right. Well, my client instructs me. Therefore I need just to put to you that there was such an occasion when you were reading a newspaper and my client asked you what are you reading and you showed him the photograph of a gentleman sitting down with sunglasses and the important thing is you told my client that: "This is my boss and we all have this tattoo somewhere in the region" of your wrist. That's the Omega tattoo you said. You recall that now specifically that I referred you to what transpired?

…

A I'm not sure.

Q … Why are you not sure? Either it happened or it didn't happen. When you say "not sure", I mean you make me feel uneasy, you know, like you are trying to hide something?

A I'm not trying to hide anything.

Q Okay. So when you say you are not sure, you are saying it could have happened?

A What do you mean?

Q That means this incident could have taken place. There was a newspaper you were reading. My client did ask you and you did show him a photograph of a man to say: "That's your boss and you are from Omega. You all have this thing on your wrist."

A No.

Q … Do you have any mark on your wrist? Can we take a look? …

A Yes.

Q All right. Can you tell the Court what mark is that, please?

A Vibes.

…

Q And it's got nothing to do with … Omega?

> A Yes, nothing to do with Omega.
>
> Q … my instructions are that you showed that to my client.
>
> A No, probably the 2nd accused saw it on my wrist because I normally wear short sleeve.
>
> Q Okay. But I'm instructed, I have already put to you. You disagree, so fine.

78 In our judgment, it is an exaggeration for Norasharee to contend that Yazid was "boasting" about Yan Bai and that this alone proved that Yazid was an active gang member even in 2013. Assuming that the conversation did take place, such casual conversation should not be scrutinised as if it were an important pronouncement. After all, again assuming that the conversation took place, Yazid could simply have recognised the face in the newspapers from the period during which he was involved in gang activities.

79 Finally, Norasharee's counsel put to Yazid that Yazid knew one "*Abang Besar*" who was supposedly an Omega headman operating in the Marsiling area.[48] Yazid denied this. The said *Abang Besar*, first mentioned in Yazid's 29 October 2013 statement, was said to be a drug boss. According to Yazid, *Abang Besar* had ousted Boy Ayie's predecessor (Upu) because one of Upu's men had run away with money meant for the drug supplier (Steven). Kalwant purportedly told Yazid that the six bundles that Kalwant handed to Yazid on 24 October 2013 were ordered by *Abang Besar* from Steven. Norasharee argued that Yazid had manufactured this *Abang Besar* figure to create the story that he was a courier for Kalwant and the other people in the drug syndicate. On the evidence, we do not think that Yazid did that. If he had wanted to lie that he was a mere courier, all he needed to say was that he was

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[48] Transcripts, Day 7, pp 18:13–18:15.

instructed by someone through mobile phone on the where, when and what of each drug delivery and give some particulars about that someone. It would not serve his purpose to spin a complicated story with many fictitious characters because he would be easily caught out if questioned further. In our opinion, Yazid was merely trying to cooperate with the CNB and was providing whatever information he had or could recall.

80 In conclusion, we are not satisfied that the evidence showed that Yazid was involved in gang activities up to the time of his arrest or that he was consciously trying to hide his past gangland involvement.

(2) The possibility of any gang-related animosity between Yazid and Norasharee before late 2013

81 We are also of the view that it was highly unlikely that Yazid had any gang-related animosity against Norasharee. According to Norasharee, Yazid bore a grudge against him arising out of the 1998 Fight. Subsequent to this fight, "Sum Chartered and his boys" took revenge on Norasharee at the 1999 Stabbing[49] and Norasharee retaliated by picking fights with "the Omega boys" at "Clarke Quay, Boat Quay, Jams 2000" in 2000 until he was arrested and detained under the Criminal Law (Temporary Provisions) Act for four years. Norasharee also claimed that, between 2011 and 2013, when he was working for Club 7 (at Concorde Shopping Centre) as a bouncer, Yazid visited Club 7 with Omega members to cause trouble for him. Norasharee conceded that the only two instances when he had face-to-face contact with Yazid were the 1998 Fight and when Yazid patronised Club 7 around 2012.[50]

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[49] Transcripts, day 9, pp 7:28–8:14 (EIC of Norasharee). "Northpoint" only appears in the cross-examination of Yazid: Transcripts, day 7 p 19:29 (XX of Yazid by DC3).

[50] Transcripts, Day 9, pp 19:31–20:3 (XX of Norasharee by DPP).

82 Yazid's story was very different. He testified about his relationship with Norasharee thrice in his statements and twice in oral evidence in court. On 29 October 2013, he stated that it was in late September 2013 that he became acquainted with Boy Ayie, after having complained directly to Boy Ayie that he was unhappy with the arrangements he had with "Juna" (who had introduced him to the drug trade).[51] Boy Ayie had stepped into the shoes of one "Upu", a middle-level drug boss who had been excluded from drug dealings because one of his subordinates had absconded with money meant for the drug syndicate.[52] In his statement dated 10 June 2015, he stated that he "had been working for 'Boy Ayie' for the past one month before [he] was arrested".[53] In his statement dated 22 June 2015, he stated that he "had known Boy Ayie for about a month before [he] was arrested".[54] In cross-examination, Yazid told Norasharee's counsel that he learnt from Juna that Norasharee was from "369".[55] He later told the Prosecution that he knew Norasharee through Juna only sometime after July 2013.[56]

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51 In July 2013, Yazid was introduced by an acquaintance to Juna, who employed him as a driver for Juna's drug trafficking transactions in return for pocket money and some heroin. In early September, Juna introduced Yazid to one "Alan", for whom he delivered drugs in return for S$200 per bundle. However, Alan's boss, "Upu", was ousted from the drug trade by "*Abang Besar*" as Alan had run away with $30,000 meant for one "Steven". In the wake of this, Boy Ayie stepped into Upu's shoes. Yazid continued to ferry Juna for $50 per trip but was unhappy because he could earn up to $200 per bundle delivered. This led to his complaint: 2 ROP 317 (Yazid's 29 Oct 2013 long statement, para 20).

52 2 ROP 317 (Yazid's 29 Oct 2013 long statement, para 20).

53 2 ROP 369 (Yazid's 10 Jun 2015 long statement, para 2).

54 2 ROP 373 (Yazid's 22 Jun 2015 long statement, para 5).

55 Transcripts, Day 7, pp 18:16–18:22 (XX of Yazid by DC3).

56 Transcripts, Day 7, pp 31:13–31:17 (XX of Yazid by DPP).

83 In our judgment, the likelihood of Yazid having formed a grudge against Norasharee arising out of the 1998 Fight was virtually non-existent. His evidence was as follows:

> Q … I want to bring you back to an incident in 1998 which occurred at the basement pub at Telok Blangah House. …
>
> …
>
> Q … do you know who is Sum Chartered …?
>
> A I just got to know this person in prison.
>
> Q Wasn't he the same person who committed a robbery at the Standard Chartered Bank?
>
> A I do not know.
>
> Q … I'm putting it to you … that you know Sum Chartered very well and back in 1998.
>
> A I disagree.
>
> Q Sometime in [1998], Mr Norasharee went to this basement pub at Telok Blangah House, you were present and Sum Chartered was present.
>
> A I disagree. This is a fabrication.
>
> Q And this is when Mr Norasharee first met you.
>
> A This is not true.
>
> Q What happened was somebody came up to Mr Norasharee and asked him to sit together at Sum Chartered's table where you were seated.
>
> A Not true.
>
> Q And when Mr Norasharee went to the table, Sum Chartered told him that only people with names can sit there? And that was when Norasharee responded, "My mother gave birth to me, I have a name." Sum Chartered was insulted, and there it all began. A fight broke out between Sum Chartered who is a member of Omega and Mr Norasharee who is a member of Sah Lak Kau, and you were present during this fight.
>
> A That is not true.

> Q Mr Norasharee won the fight and that was when Sum Chartered and Omega ordered an attack on him. In 1999.
>
> A I know nothing of this.
>
> Q Are you aware that Mr Norasharee was viciously stabbed in 1999 by Omega gang members? …
>
> A I do not know.
>
> Q … The Omega members confronted him at Northpoint and they shouted "*Budak Jahat*" … and they attacked Mr Norasharee with a samurai sword and another one with a dagger into Mr Norasharee's neck. Sum Chartered was one of the attackers. Are you aware of this incident?
>
> A I do not know. Your Honour, *I wish to make clarification.*
>
> Q You can explain that in re-examination, this is cross. … Are you aware that "*Budak Jahat*" is Norasharee's gang name? Have you heard of that before?
>
> A I know that his name is Boy Ayie.
>
> Q … After this attack of Mr Norasharee, Mr Norasharee began taking revenge on Omega members. And Mr Norasharee and his juniors, junior gang members, would attack Omega members in clubs such as Jams 2000(?), Gents(?), Rumours(?), Strong Pub(?), these are pubs located at Boat Quay, Clarke Quay and Orchard Road, where you and your Omega gang members frequent.
>
> A I disagree.
>
> Q In fact, the revenge attacks by Mr Norasharee on Omega was so vicious and rampant that Mr Norasharee was picked up by the SSB and detained under the criminal law detention, are you aware of that?
>
> A I do not know.
>
> [emphasis added]

84 Yazid's counsel did not re-examine Yazid and what he wished to clarify remains unknown. Even so, the 1998 Fight could hardly prove any

vendetta between Yazid and Norasharee. Yazid denied being present at the 1998 Fight or at subsequent altercations between Omega and "369" arising from that incident and there was nothing to show that he could be lying. In any event, Yazid and Norasharee were not involved in any direct altercation.[57] Further, those events took place about 14–15 years before Yazid's arrest and when Yazid was about 21 years old and there was no evidence to show that Yazid continued to bear a long-standing grudge against Norasharee to the extent that he would accuse him falsely of being his boss in the drug transaction here.

85 It is also highly improbable that Yazid formed or fuelled a grudge against Norasharee arising out of any incident that may have taken place at Club 7. On these matters, Yazid's evidence was as follows:

> Q … Mr Yazid, are you aware of two pubs located at the Concorde Shopping Centre called Pegasus(?) and Club Seven(?)?
>
> A I know Club Seven(?).
>
> Q … Do you also know that Mr Norasharee was working as a bouncer at these two pubs from 2011 to 2013?
>
> A I do not know, this is not true.
>
> Q I'm instructed that you frequented Pegasus(?) and Club Seven(?) with your Omega gang members.
>
> A I disagree.
>
> Q And you and your gang members---
>
> A I went there with my colleagues.
>
> Q … I'm instructed that you and your gang members would go there and caused trouble for Mr Norasharee.
>
> A These are all fabrication, Your Honour, these are not true.

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[57] Transcripts, day 7, pp 18:25–22:1 (XX of Yazid by DC3).

Q You are aware that there would be altercations between Omega and Three-six-nine gang members at the B3 car park of Concorde Shopping Centre.

A This is not true.

Q I'm instructed that you have been present before at such altercations at the B3 car park. You may agree or disagree.

A I disagree.

Q And further there would be times when Mr Norasharee would be outnumbered five-to-one, four-to-one, and he would have to resort to using a baseball bat that he would take out of his car which is always parked at B3. You may agree or disagree.

A These are all made-up stories. I disagree.

Q Sometime there would be a full-blown fight in a car park or sometimes the Omega members would just leave and vowed to return, and you are aware of this.

A I disagree with all these.

Q After 2013 when the two pubs shut down, Mr Norasharee went to work as a boat cleaner at Marina Keppel Bay.

…

Q You're aware of that? No.

A I do not know.

Q But you did send word through your Omega boys that you had a vendetta with Mr Norasharee for the Sum Chartered incident years earlier.

A I disagree; these are all made-up stories.

Q And Mr Norasharee through his boys sent word out to you that you were going to be the next victim of a vicious attack by Three-six-nine on Omega.

A I do not do anything wrong towards them and why should I be the victim.

86 We believe Yazid's account. It is possible that Norasharee saw Yazid at the pubs whereas Yazid did not see Norasharee.[58] After all, as mentioned

earlier, no altercation or confrontation took place between Yazid and Norasharee. Yazid also never denied that he had been to Club 7 but explained that he went with his colleagues.

87 In contrast, Norasharee position was internally inconsistent or implausible for several reasons. His counsel was instructed to put to Yazid that Yazid would frequent Club 7 and Pegasus with Omega members to cause trouble for Norasharee and that Norasharee would direct them to the basement car park at level B3 where the gang fights eventually took place and at which Yazid was present. However, Norasharee admitted in cross-examination by the Prosecution that Yazid was not involved at all in the many fights that supposedly took place at the basement of Concorde Shopping Centre. He even testified in evidence-in-chief that Yazid went to Club 7 and not Pegasus and that they did not speak or fight because they refrained from doing so.[59] In our view, it was most likely that Yazid did not go to Club 7 with Omega members. It was strange too that Yazid would nurse such a deep grudge about a fight that happened some 15 years ago which did not involve him personally. If Yazid's animosity with Norasharee was so intense that Yazid would unhesitatingly frame him for a capital offence, it was strange that Norasharee and Yazid could refrain from fighting or even confronting each other at Club 7 or elsewhere all those years. Further, if Yazid had indeed borne a grudge all those years since 1998, it was strange that Yazid did not even know what Norasharee's real name was. If he did, surely he would have informed the CNB about it so that the CNB could identify and arrest Norasharee.

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58 Transcripts, Day 9, pp 9:19 (EIC of Norasharee).

59 Day 9, pp 9:2–9:19 (EIC of Norasharee); p 16:14–16:20 (XX of Norasharee by Yazid's counsel); 19:31–20:10 (XX of Norasharee by DPP).

88 Beyond those two alleged incidents, Yazid and Norasharee had little opportunity to interact or to form grudges against each other anyway. Norasharee had been largely out of circulation. He was imprisoned in 1997 for drug consumption and imprisoned again in 1999 for absconding from urine tests. He was detained for four years in 2000 for gang activities and released with one year's police supervision thereafter. In 2006, he was imprisoned for five years for drug consumption.[60] He held gainful employment after he was released in 2004 from detention and in 2011 from prison.

89 At the very highest, the evidence suggested that while Yazid could have known who Norasharee was in the 1990s, they had no interaction at all between 2000 and 2011. Even between 2011 and 2013, the most that could be said was that Yazid possibly saw Norasharee at Club 7 but the two men did not interact at all at Club 7 or elsewhere and Yazid certainly did not fight in the alleged gang fights in the basement car park of Concorde Shopping Centre. The fact remained that Yazid had no reason at all to frame Norasharee.

Whether "Boy Ayie" was "Eye"

90 The next line of evidence concerned Yazid's claim that he was working for "Boy Ayie". In our judgment, the evidence showed that "Eye" was Boy Ayie or Norasharee. Both "Eye" and "Ayie" sounded the same phonetically and also with "Ayi", the name by which Norasharee was known to his family and friends. Yazid first mentioned "Boy Ayie" in his contemporaneous statement taken about half an hour after arrest and in his first cautioned statement taken in the evening on that same day.[61] Norasharee

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60 Transcripts, Day 9, pp 5:25–6:8 (EIC of Norasharee).

61 2 ROP 247 and 272.

first mentioned "Ayi" during his s 22 CPC statement taken on 2 Jul 2015 (*ie*, a day after his arrest).

91 "Ayie" and "Ayi" may be spelt differently but the spelling for "Ayie" in Yazid's statement did not come from Yazid. It was a transliteration by SI Kua Boon San, the officer who recorded the contemporaneous statement from Yazid.[62] There is nothing sinister about using short forms and nicknames in one's mobile phone. For example, "Bujang Hawk" was stored as "Jang",[63] "Kalwant" was stored as "Burn" and there were many references to "Abg", which means "*abang*" or brother.[64]

92 Norasharee contended that he was widely known was "*Budak Jahat*", not "Boy Ayie" or "Eye", having been given this bad-boy nickname from the staff at the drug rehabilitation centre in 1994 for climbing the fence and quarrelling with the staff.[65] However, this made no material difference to the case here. Norasharee was known to family and friends as "Ayi". Next, as the Prosecution pointed out, if Norasharee was really known as *Budak Jahat*, Yazid could have easily pointed fingers at *Budak Jahat* instead of Boy Ayie if he truly wanted to frame Norasharee. Yazid said he was introduced to Boy Ayie by Juna. Even if Norasharee retained the nickname *Budak Jahat*, it was still possible that he was introduced as "Ayie" because that nickname was not said to be his only name.

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62 Transcripts, Day 3, pp 11:13–11:15 (EIC of PW27 Kua Boon San); pp 12:2–12:16 (XX of PW27 Kua Boon San by DC3).

63 2 ROP 129–134 (Contacts in Yazid's Phone), Entry No 176 and 185.

64 See 2 ROP 239 (Translator's note for SMSes sent/received from Yazid's phone).

65 Transcripts, Day 9, pp 5:13–5:24 (EIC of Norasharee).

93 In summary, we are of the view that Boy Ayie was introduced as such to Yazid and not by another name. We are also satisfied that Boy Ayie, Eye and Ayi all referred to Norasharee.

Norasharee's presence at VivoCity

94 The final matter concerns Norasharee's presence at VivoCity, which was the most compelling piece of evidence that Yazid was truthful in his statements (*ie*, that the two of them met there in the afternoon of 23 October 2013). We also discuss this issue at [63(e)] above.

95 The phone records showed that there was communication or attempted communication between Yazid and "Eye" before and after but not during their alleged meeting. Before the meeting, the last connected call was placed by Yazid at 9.35am, after which there were three missed calls from Eye at 11.37am, 12.07pm and 12.36pm. The next two records were a missed call from Eye at 1.38pm and a call placed by Yazid (that was connected but immediately aborted) at 3.08pm. These records are not inconsistent with the hypothesis that Norasharee and Yazid met sometime between 1.07pm and 1.38pm on 23 October 2013.

96 Norasharee claimed that he was at VivoCity with a colleague "Lolo" on 23 October 2013 and that he did not meet Yazid at VivoCity or in its vicinity that day. He identified "Lolo" as Mohamed Faizal Bin Zainab, a 30-year-old or so male. It was possible that Norasharee had lunch at VivoCity with Lolo as they were colleagues at Marina Keppel Bay, which was a ten-minute drive from VivoCity. However, the remaining gaps were fatal to Norasharee's story. His testimony was that he would also go to VivoCity with other colleagues and that he could not recall how frequently he went to

VivoCity.[66] However, he could not explain why he was sure that he was there with Lolo since it would have been an uneventful day almost two years before his arrest and about two and a half years before the trial. Further, Norasharee did not call Lolo as his witness and did not explain his failure to do so, despite having conferred with his counsel on this matter when preparing for trial and once more after re-examination.[67]

97 There was also no explanation why Yazid knew of Norasharee's presence at VivoCity that day. In examination-in-chief[68], Norasharee made a feeble allusion to the possibility that Yazid could have seen his car in the car park because "Everybody knows me. I drive a car and they know what type of car I drive. They know my plate number. That was how they can describe me and also my car." However, we think it would be entirely fanciful to believe that Yazid was at VivoCity coincidentally at about the same time one day before the drug transaction, that he spotted Norasharee's car in the car park and recalled this fact almost two years later in his statement. There could be no doubt that Yazid was truthful when he stated that they met at VivoCity one day before the drug transaction and that he received instructions from Norasharee to be prepared to receive drugs the next day. Yazid recalled this meeting because it did occur and the objective evidence backed up his statement and his testimony.

98 We now address two matters which were said to raise doubts about the veracity of Yazid's evidence. One of them is the fact that Boy Ayie departed

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66 Transcripts, Day 9, pp 29:25–30:18 (XX of Norasharee by Prosecution).

67 Transcripts, Day 9, pp 32:15–33:2 (after RX of Norasharee).

68 Transcripts, Day 9, pp 11:9–11:11 (EIC of Norasharee by D3)

from his usual practice by meeting Yazid in person on 23 October 2013. According to Yazid, Boy Ayie would usually call, and would never send SMS to, Yazid to tell him to whom he was to deliver the drugs.[69] The only times they met in person were at night after each delivery for Boy Ayie to pay Yazid for his services.[70] We do not see why meeting the courier before the drug transaction on that occasion should be regarded as being so exceptional when Norasharee and Yazid had been meeting after such transactions anyway for Norasharee to pay Yazid for his delivery work. The meeting at VivoCity was in the day rather than at night but it was a short meeting where words, not drugs or money, were exchanged.

99 The other matter is the fact that Yazid did not mention the meeting in VivoCity until 22 June 2015, especially since the Investigating Officer testified that Yazid was cooperative and volunteered information freely during the recording of his statements in October 2013.[71] In our judgment, Yazid's statements focused on the events involving Kalwant as he was not questioned further about Boy Ayie. It was a fact that Yazid and Kalwant were arrested together while Boy Ayie remained free. As early as 30 October 2013, Yazid mentioned that he was expecting Kalwant to call him because Boy Ayie had told him in the afternoon of 23 October 2013 that Kalwant might call him the next morning to take the drugs from him. There was therefore an allusion to the 23 October 2013 meeting already. Following that, there appeared to be a period of about nineteen months in the investigations in which no further

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69 2 ROP 247 (Yazid's Contemporaneous Statement); 2 ROP 318 (Yazid's 29 Oct 2013 Long Statement, para 21); Transcripts, Day 6, pp 12:27–12:28 (EIC of Yazid).

70 2 ROP 351 (Yazid's 30 October 2013 Long Statement, para 34); 2 ROP 369 (Yazid's 10 June 2015 Long Statement, para 3).

71 Transcripts, Day 5, pp 4:12–4:31 (EIC of PW34 ASP Ong Wee Kwang).

clarification was sought from Yazid and he therefore did not have an earlier opportunity to elaborate on the said meeting.

100 If Yazid did not take instructions from Norasharee in person that day in VivoCity, then there were only a few hypotheses that could possibly explain how Yazid knew that Norasharee was at VivoCity:

(a) Yazid met Norasharee at VivoCity but they did not talk about drugs. We reject this hypothesis because Norasharee did not take the position that there was a meeting.

(b) Yazid saw Norasharee at VivoCity fortuitously. If so, why did Yazid not volunteer information about Norasharee's presence at VivoCity earlier to help the CNB track Norasharee down, especially if his alleged intent was to frame an enemy from a rival gang?

(c) Yazid learnt subsequently that Norasharee had gone to VivoCity in the afternoon of 23 October 2013. This raised the question as to how Yazid came across this information despite being in remand and although Norasharee was in VivoCity for only 33 minutes. There was also the issue of how he could state very early during the investigations that he had taken instructions from Boy Ayie in the afternoon of 23 October 2013.

(d) Yazid was telling lies that turned out to be consistent with objective facts.

101 We find that all the above hypotheses contain no merit and create no doubt as to the truthfulness of Yazid's evidence. Further, all these hypotheses

rest on the premise that Yazid lied about meeting Norasharee on 23 October 2013. However, in our judgment, Yazid had virtually no reason to do so:

(a) We reject the theory that Yazid nursed a long-standing grudge against Norasharee because it was highly improbable that such a grudge arose from the 1998 Fight or any meeting at Club 7 and because Yazid's conduct was inconsistent with having held such a grudge.

(b) We also reject the theory that Yazid found Norasharee to be a convenient scapegoat. Yazid would have been extremely foolish to try to frame a self-proclaimed senior member of a rival gang because that would probably result in retribution for him and/or his family.

(c) It would be astounding if Yazid could formulate such a consistent plan to frame Norasharee almost immediately after being arrested in a drug transaction.

102 In the overall analysis, we find that the only conclusion is that Yazid was truthful in respect of the 23 October 2013 meeting and of what was discussed with Norasharee. We therefore agree with the Judge that the Prosecution's case against Norasharee, similarly with its case against Kalwant, was proved beyond reasonable doubt.

Conclusion

103 As mentioned earlier, we allowed Kalwant's criminal motion to adduce further evidence about the *panparak* during the hearing. For the reasons set out above, we now dismiss Kalwant's and Norasharee's appeals.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal

Amarick Gill (Amarick Gill LLC), Mohamed Baiross and Anand George (IRB Law LLP) for the appellant in CCA 12/2016; Ragbir Singh Bajwa (Bajwa & Co), Satwant Singh, Ravleen Kaur (Satwant & Associates) and Joseph Chen (Joseph Chen & Co) for the appellant in CCA 13/2016 and the applicant in CA/CM 22/2016; Ng Cheng Thiam and Marcus Foo (Attorney-General's Chambers) for the respondent in CCA 12/2016, CCA 13/2016 and CA/CM 22/2016.
