IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 102

Criminal Motion No 3 of 2020

Between

Gobi a/l Avedian

… *Applicant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Elements of crime]
[Criminal Law] — [Statutory offences] — [Misuse of Drugs Act (Cap 185, 2008 Rev Ed)]
[Criminal Procedure and Sentencing] — [Review of concluded criminal appeals]

Gobi a/l Avedian
v
Public Prosecutor

[2020] SGCA 102

Court of Appeal — Criminal Motion No 3 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JA, Judith Prakash JA, Tay Yong Kwang JA and Steven Chong JA
16 June 2020

19 October 2020 Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 In HC/CC 13/2017, the applicant in the present criminal motion, Gobi a/l Avedian ("the Applicant"), claimed trial to a capital charge of importing not less than 40.22g of diamorphine ("the Drugs"), an offence under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). At his trial, the sole issue was whether he had rebutted the presumption of knowledge under s 18(2) of the MDA. The High Court judge ("the Judge") accepted the Applicant's defence that he believed the Drugs to be a mild form of "disco drugs" mixed with chocolate, rather than diamorphine, which is a controlled drug under Class A of the First Schedule to the MDA. In the circumstances, the Judge held that the Applicant had rebutted the s 18(2) presumption and acquitted him of the capital charge under s 7 of the MDA ("the capital charge").

However, the Judge found that on the basis of the Applicant's own defence, he was guilty of an offence of attempting to import a controlled drug under Class C of the First Schedule to the MDA. The Judge therefore convicted the Applicant of a reduced non-capital charge in these terms ("the amended charge") and sentenced him to 15 years' imprisonment and ten strokes of the cane: see *Public Prosecutor v Gobi a/l Avedian* [2017] SGHC 145 ("*Gobi (HC)*") at [11], [53], [54], [55] and [70].

2 In CA/CCA 20/2017 ("CCA 20/2017"), the Prosecution appealed against the Judge's decision to acquit the Applicant of the capital charge. We allowed the Prosecution's appeal because we disagreed with the Judge's finding that the Applicant had rebutted the s 18(2) presumption: see *Public Prosecutor v Gobi a/l Avedian* [2019] 1 SLR 113 ("*Gobi (CA)*") at [52]. On the issue of sentence, although we found that the Applicant could qualify to be considered for the alternative sentencing regime because his involvement was limited to the activities specified in s 33B(2)(*a*) of the MDA, the Public Prosecutor did not issue a certificate of substantive assistance. Accordingly, we imposed the mandatory death sentence.

3 On 25 February 2020, the Applicant filed the present criminal motion, CA/CM 3/2020 ("CM 3/2020"), pursuant to the newly enacted s 394I of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) ("the CPC") for us to review our decision in CCA 20/2017. The Applicant had earlier obtained leave to make this application under s 394H of the CPC on 20 February 2020.

4 In CM 3/2020, the Applicant contends, among other things, that the continuing correctness of our decision in CCA 20/2017 has been called into question by our subsequent decision in *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*"). There, we held that wilful blindness cannot be the

subject of the presumption of possession under *s 18(1)* of the MDA, and, further, that the doctrine of wilful blindness has no relevance to and so should not feature at all in considering whether the s 18(1) presumption has been rebutted. Instead, whether or not an accused person is wilfully blind in that context falls to be determined as part of a distinct inquiry that does not involve recourse to the presumption (see [42] below). The Applicant submits that our holdings in *Adili* in relation to the s 18(1) presumption ought to be *extended* to the *s 18(2)* presumption, which concerns the accused person's knowledge of the nature of the drugs in his possession, as opposed to his knowledge of the presence of the thing in his possession that turns out to be drugs. On that basis, the Applicant contends that since the Prosecution's case against him at the trial was, at its highest, one of wilful blindness to the nature of the Drugs, the Prosecution could not have invoked the s 18(2) presumption in the first place. In these circumstances, the Applicant contends that it was not correct for us to have considered in CCA 20/2017 whether the s 18(2) presumption had been rebutted. Instead, a separate inquiry to determine whether he was wilfully blind to the nature of the Drugs should have been undertaken. On the evidence, the Applicant submits that he was not wilfully blind in this regard and should therefore have been acquitted of the capital charge.

5 This review application presents us with the opportunity to consider, in the light of our decision in *Adili*, the law in respect of the s 18(2) presumption and the doctrine of wilful blindness in the context of the element of knowledge of the nature of the drugs. It also requires us to examine, in the light of the applicable legal position, just how the Prosecution's case at the Applicant's trial was run. We will first determine the applicable legal position and then ascertain the nature of the Prosecution's case at the trial, before considering whether there was a change in the Prosecution's case on appeal, and if so, whether the

Applicant's conviction on the capital charge remains safe in all the circumstances.

Background facts

6 The material facts have been sufficiently set out in *Gobi (CA)* ([2] *supra*) at [4]–[14] and it suffices for us to restate them briefly. In doing so, we largely use the account given by the Applicant at the trial, which was consistent with the contents of his statements to the Central Narcotics Bureau ("CNB").

7 The Applicant is a Malaysian citizen who was working as a security guard in Singapore at the time of the offence. He lived in Johor Bahru and commuted to Singapore for work. Sometime in 2014, he approached his friend, "Guru", for some suggestions or recommendations as to a part-time job because he needed funds for his daughter's operation, which was scheduled for January 2015. Guru introduced the Applicant to one "Vinod", who told the Applicant that he could earn some money by delivering drugs to Singapore. Vinod further told the Applicant that the drugs involved were mixed with chocolate and were to be used in discos, and that they were "ordinary" and "not serious". The Applicant was assured that if he was apprehended, he would receive "just a fine or a small punishment". Notwithstanding these assurances, the Applicant initially refused Vinod's offer because he was "scared" and thought that delivering drugs for Vinod would be a "problem".

8 As the date of his daughter's operation approached, the Applicant became "desperate" because he had not managed to raise enough money. He decided to consult another friend, "Jega". The Applicant informed Jega of what Vinod had told him about the drugs and asked Jega "if it would be a problem". Jega informed him that such drugs were "not … very dangerous" and "should

not be a problem". According to the Applicant, he had no reason to disbelieve Jega given that Jega frequented discos and had no motive to lie to him. Jega did not know either Vinod or Guru.

9 On the basis of the separate assurances he had received from Vinod and Jega, the Applicant decided to accept Vinod's offer and proceeded to deliver drugs for Vinod on eight or nine occasions (including the delivery which led to his arrest). He was paid RM500 for each delivery. On each occasion, the Applicant would collect the packets of drugs from Vinod's brother. He would then wrap the packets of drugs with a black rubbish bag as instructed by Vinod. In the course of doing so, he observed that the drugs did indeed look like they had been mixed with chocolate. After wrapping the packets of drugs, the Applicant would place them in a storage compartment in his relative's motorcycle which he used to travel to Singapore. After entering Singapore, he would hand over the drugs to the relevant individuals in accordance with Vinod's instructions.

10 On 11 December 2014, the Applicant received and handled the Drugs in the manner described above. At about 7.50pm, he was stopped at Woodlands Checkpoint because he had been identified as a person of interest. Although the Applicant initially stated that he had nothing to declare, he later directed the CNB officers to the Drugs in the motorcycle. He was then placed under arrest.

The presumptions under s 18 of the MDA

11 It is well established that the following elements must be proved by the Prosecution in order to make out the offence of drug importation under s 7 of the MDA (see *Adili* ([4] *supra*) at [27]):

(a) the accused person was in *possession* of the drugs;

(b) the accused person had *knowledge* of the nature of the drugs; and

(c) the accused person intentionally brought the drugs into Singapore without prior authorisation.

12 To satisfy the first and second elements of possession and knowledge respectively, the Prosecution is generally entitled to rely on the presumptions provided for in s 18(1) and s 18(2) of the MDA, which read as follows:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.**—(1) Any person who is proved to have had in his possession or custody or under his control —
>
> (*a*) anything containing a controlled drug;
>
> (*b*) the keys of anything containing a controlled drug;
>
> (*c*) the keys of any place or premises or any part thereof in which a controlled drug is found; or
>
> (*d*) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,
>
> shall, until the contrary is proved, be presumed to have had that drug in his possession.
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.
>
> …

13 The legal effect of the s 18 presumptions is that they reverse the burden of proof such that it falls on the accused person to displace what has been presumed against him (see *Adili* at [99]). Where the presumptions apply and the accused person: (a) elects to remain silent and does not make his defence, or (b) elects to make his defence but calls no evidence or evidence that is not adequate to rebut the presumptions, he can be convicted of the relevant charge

on the basis of the presumptions that operate against him: see *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng*") at [38].

14 In the present case, it was and remains common ground that the Applicant was in possession of the Drugs and knew this, even though he disputes the extent of his knowledge as to their precise nature. As such, there is no need for the Prosecution to invoke the s 18(1) presumption. Further, there is no dispute that the Applicant was not authorised to bring the Drugs into Singapore. The only element in dispute is that of the Applicant's *knowledge* of the nature of the Drugs. As we have noted at [1] above, the sole issue at the Applicant's trial was whether he had rebutted the s 18(2) presumption. In that light, we turn to summarise the decisions of the High Court and this court in *Gobi (HC)* ([1] *supra*) and *Gobi (CA)* ([2] *supra*) respectively.

Procedural history

The decision in Gobi (HC)

15 At the outset of his decision in *Gobi (HC)*, the Judge noted that "[t]he Prosecution's case was essentially that the [Applicant] *should have known* that the packets contained drugs attracting the death penalty" [emphasis added] (at [12]). We will elaborate on the Judge's characterisation of the Prosecution's case at [116] below. For present purposes, it suffices for us to point out that the Judge held that the Applicant had rebutted the s 18(2) presumption for the following reasons:

(a) The Applicant's evidence was consistent. He had maintained in all his statements to the CNB and throughout the trial that he did not know that the Drugs were diamorphine (at [35]).

(b) The Applicant was a truthful witness based on his demeanour in the witness box. He was essentially consistent in his evidence. His testimony had the "ring of truth" when he said that he believed the Drugs were "a mild form of drugs mixed with chocolate for [use] in discos" (at [43]).

(c) The Prosecution did not challenge the Applicant's testimony that he had inspected the Drugs and had observed that they were "in the colour of chocolate". The Judge did not give much weight to the Prosecution's submission that the Applicant could have tasted the Drugs, and that if he had done so, he would have realised that they were not chocolate (at [51]–[53]).

16 In the circumstances, the Judge acquitted the Applicant of the capital charge and convicted him of the amended charge of attempting to import a Class C controlled drug. The Applicant was sentenced to 15 years' imprisonment and ten strokes of the cane (see [1] above).

The decision in Gobi (CA)

17 The Prosecution appealed by way of CCA 20/2017 against the Judge's decision to acquit the Applicant of the capital charge. In essence, we held in *Gobi (CA)* ([2] *supra*) that the Judge erred in finding that the s 18(2) presumption had been rebutted. There were two main strands to our decision.

18 First, the Applicant failed to account for what he believed the Drugs to be. Instead, he only identified them according to their likely place of use (namely, in discos) and the legal consequences that he believed he would face if he was arrested with them (namely, a fine or a light sentence). In our judgment, this was insufficient to rebut the s 18(2) presumption since the

penalties that a particular type of drug attracts cannot be used as a proxy for identifying the drug itself. We held that if the Applicant's professed intention was to refuse to carry drugs that attracted the death penalty, it was incumbent on him to find out what sorts of drugs would lead to such a penalty and how he could identify them, and to then show that he had taken adequate steps to ensure that he was not carrying such drugs (at [31]–[37]).

19 Second, we had "grave reservations" about the Applicant's evidence – in particular, that he believed what Vinod and Jega had told him (at [38]):

> (a) We considered that the Applicant did not in fact believe what Vinod had told him. In coming to this view, we took into account the Applicant's evidence that he had only met Vinod once in person, knew little about Vinod and had not made any inquiries about Vinod's background or reputation. He had also initially turned down Vinod's offer to earn money by delivering drugs to Singapore because he thought that doing so would be a "problem", agreeing only when his daughter's operation drew near and he remained unable to raise the funds needed (at [41]). This reflected his growing despair rather than a changed view of the potential risks inherent in the enterprise.
>
> (b) Where Jega was concerned, the Applicant had not mentioned Jega's purported assurances to him in his statements to the CNB. This suggested that his evidence as to what Jega had told him was an afterthought. Further, while Jega might have been familiar with discos, there was nothing to suggest that he was familiar with drugs (at [44] and [45]).

20 For these reasons, we held that the Applicant had failed to rebut the s 18(2) presumption. We were satisfied that all three elements of the offence of drug importation under s 7 of the MDA (see [11] above) had been proved. Accordingly, we allowed the Prosecution's appeal and convicted the Applicant of the capital charge.

Application to review an earlier decision in a concluded criminal appeal

21 Before turning to the main issues in the present case, it is helpful to outline the statutory framework which governs applications to reopen concluded criminal appeals. The relevant statutory provision is s 394J of the CPC, which states as follows:

> **Requirements for exercise of power of review under this Division**
>
> **394J.**—(1) This section —
>
> (*a*) sets out the requirements that must be satisfied by an applicant in a review application before an appellate court will exercise its power of review under this Division; and
>
> (*b*) does not affect the inherent power of an appellate court to review, on its own motion, an earlier decision of the appellate court.
>
> (2) The applicant in a review application must satisfy the appellate court that there is sufficient material (being evidence or legal arguments) on which the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.
>
> (3) For the purposes of subsection (2), in order for any material to be 'sufficient', that material must satisfy all of the following requirements:
>
> (*a*) before the filing of the application for leave to make the review application, the material has not been canvassed at any stage of the proceedings in the criminal matter in respect of which the earlier decision was made;

> (*b*) even with reasonable diligence, the material could not have been adduced in court earlier;
>
> (*c*) the material is compelling, in that the material is reliable, substantial, powerfully probative, and capable of showing almost conclusively that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made.
>
> (4) For the purposes of subsection (2), in order for any material consisting of legal arguments to be 'sufficient', that material must, in addition to satisfying all of the requirements in subsection (3), be based on a change in the law that arose from any decision made by a court after the conclusion of all proceedings relating to the criminal matter in respect of which the earlier decision was made.
>
> (5) For the purposes of subsection (2), the appellate court may conclude that there has been a miscarriage of justice in the criminal matter in respect of which the earlier decision was made, only if —
>
> (*a*) the earlier decision (being a decision on conviction or sentence) is demonstrably wrong; or
>
> (*b*) the earlier decision is tainted by fraud or a breach of the rules of natural justice, such that the integrity of the judicial process is compromised.
>
> (6) For the purposes of subsection (5)(*a*), in order for an earlier decision on conviction to be 'demonstrably wrong' —
>
> (*a*) it is not sufficient that there is a real possibility that the earlier decision is wrong; and
>
> (*b*) it must be apparent, based only on the evidence tendered in support of the review application and without any further inquiry, that there is a powerful probability that the earlier decision is wrong.
>
> …

22 Section 394J is largely a codification of the framework laid down by this court in *Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 ("*Kho Jabing*") at [77], as noted by the then Senior Minister of State for Law, Ms Indranee Rajah, during the second reading of the Criminal Justice Reform Bill (Bill No 14/2018) (see *Singapore Parliamentary Debates*, *Official Report* (19 March 2018)

vol 94). This Bill was subsequently enacted as the Criminal Justice Reform Act 2018 (Act 19 of 2018), which introduced, among other provisions, s 394J.

23 In our judgment, having regard to the text of s 394J, there are two stages to the court's inquiry in a review application.

24 At the first stage, the court considers whether it should exercise its power of review to *reopen* a prior decision in a concluded criminal appeal. The legal test set out in s 394J(2) is whether there is "sufficient material (being evidence or legal arguments) on which the appellate court may conclude that there has been a miscarriage of justice". This legal test comprises two elements:

(a) The first element is that the material put forward in the review application must be "sufficient". In this connection, the material must satisfy the requirements in s 394J(3). Further, where the material consists of *legal arguments*, these arguments must be based upon a *change in the law* that arose from any decision made by a court *after* the conclusion of all proceedings relating to the criminal appeal that is sought to be reopened (see s 394J(4)).

(b) The second element is a *substantive requirement* that the material put forward in the review application reveals a potential "miscarriage of justice". In this regard, it is not necessary for the court to *conclude* that there has in fact been a miscarriage of justice in the criminal appeal that is sought to be reopened. The legal test in s 394J(2) is satisfied as long as there is sufficient material on which the court "may" conclude that there has been a miscarriage of justice. Leaving aside cases of fraud or a breach of the rules of natural justice (as to which, see s 394J(5)(*b*)), the court may come to that conclusion only if

> the decision in the criminal appeal that is sought to be reopened is "demonstrably wrong" (see s 394J(5)(*a*)), in that the court finds it apparent, based only on the evidence tendered in support of the review application and without any further inquiry, that there is a "powerful probability" – and not just a "real possibility" – that that decision is wrong (see ss 394J(6)(*a*) and 394J(6)(*b*)).

25 The present application in CM 3/2020 is mounted on the assertion that the law has changed arising from our decision in *Adili* ([4] *supra*), which was handed down after our decision in *Gobi (CA)* ([2] *supra*). To be clear, *Adili* analysed and restated a number of points pertaining to *the presumption of possession under s 18(1)* of the MDA and the relevance (or lack thereof) of the doctrine of wilful blindness in that context. The present application is concerned with broadly similar questions in relation to *the presumption of knowledge under s 18(2)*, most of which questions had been expressly left open in *Adili*. Nonetheless, the Applicant contends that *Adili* is a case of such significance that it sheds light on the proper approach to be taken even in respect of the s 18(2) presumption.

26 We emphasise that the mere fact that there has been a change in the law does not, in and of itself, justify the reopening of a concluded criminal appeal. A similar observation was made by the UK Supreme Court in *Regina v Jogee* [2016] 2 WLR 681 ("*Jogee*"), which we referred to in *Kho Jabing* ([22] *supra*) at [58]. In *Jogee*, the UK Supreme Court stated at [100]:

> The effect of putting the law right is not to render invalid all convictions which were arrived at over many years by faithfully applying the law as laid down … The error identified … is important as a matter of legal principle, *but it does not follow that it will have been important on the facts to the outcome of the trial or to the safety of the conviction.* Moreover, *where a conviction has been arrived at by faithfully applying the law as*

> *it stood at the time, it can be set aside only by seeking exceptional leave to appeal to the Court of Appeal out of time. That court has power to grant such leave, and may do so if* ***substantial injustice*** *be demonstrated, but it will not do so simply because the law applied has now been declared to have been mistaken.* … Nor is refusal of leave limited to cases where the defendant could, if the true position in law had been appreciated, have been charged with a different offence. … [emphasis added in italics and bold italics]

27 In our judgment, the principle underpinning the importance of establishing "substantial injustice" under the English position is reflected in the substantive requirement under s 394J(2) of the CPC that there be a potential "miscarriage of justice" in order to justify a review of an earlier decision in a concluded criminal appeal. We emphasise here, as we did in *Kho Jabing* at [49], that the right balance must be struck between the prevention of error and the principle of finality.

28 If the court is satisfied that it should exercise its power of review, then at the second stage of the inquiry, it considers whether the conviction or sentence in the previous decision can stand in the light of the material put forward in the review application.

29 Finally, we note that notwithstanding the requirements set out in s 394J, this provision is not intended to proscribe the court's inherent power to review, on its own motion, concluded criminal appeals (see s 394J(1)(*b*)).

30 For present purposes, it is not necessary for us to consider or invoke the court's inherent power to review CCA 20/2017. This is because we are satisfied that CCA 20/2017 can be reopened on the basis of legal arguments premised on the changes in the law that arose from our decision in *Adili* ([4] *supra*). Before turning to elaborate on these changes in the law, which we set out at [45] below,

we briefly comment on the initial submissions that the Applicant filed in support of his application in CM 3/2020.

The present application to reopen CCA 20/2017

The Applicant's initial submissions

31 The Applicant initially submitted that CCA 20/2017 ought to be reopened on two bases.

32 First, he argued that this court had, in CCA 20/2017, "departed from established legal precedent" in the following three ways:

(a) in holding that his belief that he was importing "a less serious drug than diamorphine" did not suffice to rebut the s 18(2) presumption;

(b) in convicting him on the basis of a "reckless or negligent state of mind"; and

(c) in failing to give due deference to the factual findings made by the Judge.

33 We do not see any merit in these submissions and are amply satisfied that we did not depart from precedent in arriving at our decision in CCA 20/2017. As is plain from the summary of our judgment in *Gobi (CA)* ([2] *supra*) at [17]–[20] above, the Applicant was *not* convicted on the basis that he was reckless or negligent. Rather, we held that in rebutting the s 18(2) presumption, an accused person is not permitted to use the legal penalties that the drug in question attracts as a proxy for identifying the drug. More importantly, we did not accept that the Applicant believed Vinod's and Jega's representations about the nature of the Drugs. Finally, there was nothing

remarkable in our rejecting some of the Judge's factual findings. It is well established that although an appellate court will be slow to overturn findings of fact that hinge upon the trial judge's assessment of the witnesses' credibility and demeanour, appellate intervention may be justified if the trial judge's findings are found to be "plainly wrong or against the weight of [the] evidence" (see *ADF v Public Prosecutor and another appeal* [2010] 1 SLR 874 at [16(a)]).

34 In any event, as a matter of general principle, even if the Applicant were correct in submitting that we had "departed from established legal precedent" in CCA 20/2017, this cannot in itself constitute grounds to reopen that appeal. As stated in s 394J(4) of the CPC, a legal argument based on a "change in the law" may form the basis for reopening a concluded criminal appeal only where the change in the law "arose from any decision made by a court ***after*** *the conclusion of all proceedings* relating to the criminal matter in respect of which the earlier decision was made" [emphasis added in italics and bold italics]. There is nothing to proscribe the Court of Appeal from departing from precedent in any given criminal appeal, and a change in the law arising from that very criminal appeal cannot constitute sufficient grounds for reviewing the decision in that appeal.

35 We turn to the second main plank of the Applicant's initial submissions, namely, that in the light of our decision in *Adili* ([4] *supra*), wilful blindness has "no application" to the s 18(2) presumption. *On the premise that we had, in CCA 20/2017, found him to be wilfully blind to the nature of the Drugs*, the Applicant submitted that we erred in holding that he had failed to rebut the s 18(2) presumption.

36 The Applicant's submission on this point is not correct. In the first place, our decision in CCA 20/2017 was *not premised* on the Applicant being wilfully

blind to the nature of the Drugs. It is also wrong to suggest that it was *decided* in *Adili* that wilful blindness is not relevant in considering whether the *s 18(2)* presumption has been rebutted. Indeed, as noted at [25] above, in *Adili*, we explicitly confined our holdings on the interplay between the s 18 presumptions and the doctrine of wilful blindness to the element of *knowing possession under s 18(1)*, as opposed to the element of *knowledge of the nature of the drugs under s 18(2)* (see *Adili* at [42], [62], [67]–[69] and [72]). At the hearing before us, counsel for the Applicant, Mr Ravi s/o Madasamy, accepted that there had been, as he put it, a "slight misapprehension" on the Applicant's part as to what exactly had been decided in *Adili*.

37 Be that as it may, we are satisfied that there are *legal arguments* based on the changes in the law arising from our decision in *Adili* that provide the basis for us to reopen CCA 20/2017. To set out the relevant context, we first summarise our judgment in *Adili.*

The changes in the law arising from the decision in Adili

38 In *Adili*, the appellant, a Nigerian national, had travelled to Singapore from Nigeria with a suitcase. Two packages containing not less than 1,961g of methamphetamine were found in the inner lining of the suitcase. The appellant was arrested and subsequently charged with an offence of drug importation under s 7 of the MDA. His defence was that he did not know there were bundles of drugs hidden within the suitcase. He had merely agreed to deliver the suitcase along with some money to a person in Singapore in exchange for financial assistance from an acquaintance in Nigeria. At the trial, the main issue was whether the appellant had rebutted the s 18(2) presumption. The High Court judge held that he had failed to do so and, in the circumstances, imposed the mandatory death sentence (at [2] and [3]).

39 On appeal, we noted that it was common ground between the parties that the element of *possession* was made out. However, we highlighted that the Defence's concession that the appellant had possession of the drugs appeared to be *inconsistent* with his case that he did not know that the two packages of drugs were hidden in the suitcase. This was because it is well established that an accused person must *know* of the presence of the thing that turns out to be the controlled drug in question before he can be said to "possess" it (although, for the purposes of being found in possession of the thing, he need not know that it *was in fact* a controlled drug). Put another way, the mere fact that an accused person appears to be in physical possession or custody of the thing that turns out to be a controlled drug is insufficient to satisfy the element of possession at law if he was not in fact aware of the presence of that thing (at [28] and [34]).

40 Moreover, we also doubted whether the Prosecution could have invoked the s 18(1) presumption when its case had been advanced on the basis that the appellant *did not know* that the items found to be drugs were in his possession, but had been wilfully blind to that fact. Accordingly, the focus ought to have been on whether the appellant was in fact and as a matter of law in *possession* of the two packages of drugs, and we framed the relevant issues in the appeal in that light (at [28] and [29]).

41 We set out the following propositions that were decided in *Adili* which are relevant for present purposes:

(a) The s 18(1) presumption is an *evidential tool* which has the effect of reversing the burden of proof, such that where it is relied on, it becomes the accused person who must establish that he was *not in possession* of the drugs (at [40]).

(b) The term "wilful blindness" had been used in the case law in two distinct senses (at [44]):

(i) The first may be described as the *evidential sense* of the term – where the accused person's suspicion and deliberate refusal to inquire are treated as evidence which, together with all the other relevant evidence, sustains a factual finding or inference that he had *actual knowledge* of the fact in question (at [45]).

(ii) The second may be described as the *extended conception* of wilful blindness. This describes a mental state which ***falls short of actual knowledge***, but is nevertheless treated as the legal equivalent of actual knowledge. An accused person who does not in fact know the true position but sufficiently suspects what it is and deliberately refuses to investigate further should, in certain circumstances, be treated as though he did know (at [47]).

(c) The doctrine of wilful blindness is "separate and distinct" from the concept of actual knowledge, and the line between the two "must … be clearly drawn" (at [93]). The term "wilful blindness" should be used to denote only the extended conception. The evidential conception is more accurately described as a finding or inference of actual knowledge – in other words, that the accused person *actually knew* the truth of the matter, as opposed to being *wilfully blind* to it (at [50]).

(d) The knowledge presumed under s 18(1) refers exclusively to *actual knowledge* and does not encompass knowledge of matters that the accused person is said to be wilfully blind to (at [67]). As we explained at [66]:

> The s 18 presumptions, in common with other such presumptions in the MDA, are evidential tools – meaning they are presumptions of *fact* – and are designed to mitigate the practical difficulty faced by the Prosecution in proving possession and knowledge on the part of the accused person … What is presumed under s 18(1) is the *fact* that the accused person was knowingly in possession of the thing that turns out to be a drug. In our judgment, it would therefore seem inappropriate to speak of a presumption that the accused person had been *wilfully blind*. This is because wilful blindness is not a discrete state of mind that can be proved or disproved as a matter of *fact*. Rather, as we have explained, the doctrine of wilful blindness is a *legal concept or construct* which exists as a limited extension of the legal requirement of actual knowledge in circumstances where the accused person has deliberately refused to make inquiries in the face of suspicion in order to cheat the administration of justice. This being the case, whether or not an accused person was wilfully blind is not a mere question of fact that lends itself to being made the subject of a presumption, but a question of *mixed law and fact* which involves an intensely and inevitably fact-sensitive inquiry covering a range of diverse considerations. Such a question cannot ordinarily be the subject of an *evidential* presumption. Further, as we have already noted, wilful blindness is a state falling a little short of actual knowledge. The presumption, on the other hand, where it addresses any aspect of knowledge, is concerned with actual knowledge. A presumption cannot, as a matter of logic, be invoked to establish a fact which is accepted not to be true. [emphasis in original]

(e) We acknowledged that our holding in respect of the s 18(1) presumption appeared to vary from the prior observations of this court in *Tan Kiam Peng v Public Prosecutor* [2008] 1 SLR 1 ("*Tan Kiam Peng*") and *Masoud Rahimi bin Mehrzad v Public Prosecutor and another appeal* [2017] 1 SLR 257 ("*Masoud*") which suggested that the s 18(2) presumption encompasses the doctrine of wilful blindness. We suggested, provisionally, that a possible way to reconcile this apparent inconsistency might be to find that the doctrine of wilful blindness is relevant in analysing whether the s 18(2) presumption has been *rebutted*.

> An accused person may be unable to rebut the s 18(2) presumption if he has been shown to be wilfully blind. Nonetheless, we acknowledged that there might be difficulties even with this view and left this question to be considered in an appropriate case (at [67]–[69]).

42 Applying the legal framework set out above, we held in *Adili* ([4] *supra*) that the Prosecution's case had been mounted on the basis that the appellant *did not actually know* the contents of the suitcase and the existence of the two packages of drugs therein, and that he had been *wilfully blind* to their existence (at [74] and [79]). Thus, it was not open to the Prosecution to invoke the s 18(1) presumption of *actual knowledge*, and it was not necessary to consider whether this presumption had been rebutted on the evidence (at [81]). Instead, to make out its case of wilful blindness, the Prosecution had to prove beyond a reasonable doubt that the appellant was wilfully blind to the existence of the two packages of drugs in the suitcase. In the context of the element of *possession* of the drugs, we held that three requirements had to be satisfied before a finding of wilful blindness could be made: (a) a clear, targeted and grounded suspicion of the existence of the thing which turned out to be controlled drugs; (b) the availability of reasonable means of inquiry which, if taken, would have led to the discovery of the truth; and (c) a deliberate refusal to pursue those means of inquiry (at [51] and [83]).

43 On the facts of *Adili*, the Prosecution's case of wilful blindness failed on the second requirement because there were no reasonably available means of inquiry which would have led the appellant to the truth. Even if the appellant had opened and checked the suitcase, he would not have discovered the two packages of drugs because they were hidden in the *inner lining* of the suitcase and were uncovered only after the inner lining was cut open (at [85]). Further, we were satisfied that the individuals who had handed the appellant the suitcase

would not have told him the truth. As such, any inquiries directed at them would have been futile (at [86]). In the circumstances, we held that the appellant was not wilfully blind to the existence of the two packages of drugs, and acquitted him of the capital charge against him.

Whether CCA 20/2017 should be reopened

44 We now return to the case at hand. In our judgment, there are legal arguments based on the changes in the law that arose from our decision in *Adili* on which we may conclude that there has been a miscarriage of justice in CCA 20/2017 if our decision on conviction in that appeal is reconsidered in the light of those changes in the law. To use the language of s 394J of the CPC, there is a "powerful probability" that our decision in CCA 20/2017 is "demonstrably wrong" in the light of those legal arguments, which are now but were not then available (see s 394J(5)(*a*) read with s 394J(6)).

45 We first identify the changes in the law that are relevant in the present case. As we observed at [36] above, and as argued by the Prosecution in its initial submissions, the Applicant was incorrect to submit that our decision in *Adili* changed the law in respect of whether wilful blindness can be the subject of the *s 18(2)* presumption and whether wilful blindness has a role in analysing whether that presumption has been rebutted. We reiterate that in *Adili*, we expressly confined our holdings on the interplay between the s 18 presumptions and the doctrine of wilful blindness to the *s 18(1)* presumption of knowing possession. That said, in our judgment, our decision in *Adili* did restate the law in two relevant respects (see [41(c)] and [41(d)] above):

(a) First, we highlighted the need to keep the concepts of actual knowledge and wilful blindness "separate and distinct" (see *Adili* at [93]).

(b) Second, we held that the doctrine of wilful blindness is "a legal concept or construct" [emphasis in original omitted] that involves "a question of mixed law and fact" [emphasis in original omitted], whereas the s 18 presumptions are "presumptions of fact" [emphasis in original omitted] (see *Adili* at [66]).

46 On the face of it, these conclusions seem likely to also apply to the s 18(2) presumption. In this light, we reviewed the record and observed a seeming inconsistency between the Prosecution's case at the trial and its case on appeal in respect of the Applicant's knowledge of the nature of the Drugs. This issue was not raised by the Applicant in CCA 20/2017 or in the initial submissions which he filed in support of CM 3/2020. We therefore invited the parties to file further submissions on the following issues that were set out in a letter dated 20 April 2020:

(a) First, the interplay, if any, between the s 18(2) presumption and the doctrine of wilful blindness. In particular:

(i) whether wilful blindness has any relevance in considering whether the s 18(2) presumption has been rebutted;

(ii) the threshold to rebut the s 18(2) presumption; and

(iii) the requirements of wilful blindness in the context of knowledge of the nature of the drugs, as opposed to knowing possession of the thing that turns out to be drugs.

(b) Second, whether there was a change in the Prosecution's case in CCA 20/2017. In particular, the key inquiry was to be directed at the Prosecution's case *at the trial* as the basis for comparison, since it is

common ground that the Prosecution's case on appeal was that the Applicant had actual knowledge that the Drugs were diamorphine.

(c) Third, in the light of the issues set out above, and in the event we conclude that our findings in CCA 20/2017 cannot stand, the consequential orders that should be made.

47 The parties duly filed further submissions addressing these three issues. In essence, the Applicant's position on these issues is as follows:

(a) The legal position concerning the s 18(2) presumption and the doctrine of wilful blindness should be aligned with that in respect of the s 18(1) presumption. This would mean that the doctrine of wilful blindness should be irrelevant to and excluded from any attempt to invoke the s 18(2) presumption, and therefore also from the analysis of whether the presumption has been rebutted. The Prosecution would thus not have been entitled to invoke the s 18(2) presumption against the Applicant if its case at the trial was one of wilful blindness, as opposed to actual knowledge.

(b) The Prosecution's case at the trial was not one of actual knowledge premised on the Applicant's lack of belief in Vinod's and Jega's representations as to the nature of the Drugs – in other words, the Prosecution's case at the trial was not that the Applicant *did not in fact believe* Vinod and Jega. Rather, its case was, at most, one of wilful blindness, premised on the contention that the Applicant had *no reason to believe* either Vinod or Jega and therefore *ought not* to have believed them. Thus, the Prosecution could not have invoked the s 18(2) presumption.

(c) Notwithstanding the Prosecution's change in its case on appeal, no prejudice was caused to the Applicant. This is because in CCA 20/2017, we regarded the case against the Applicant to be that put forward by the Prosecution at the trial. (We digress to observe that this is incorrect because, as noted at [36] above, we did not decide CCA 20/2017 on the basis of wilful blindness.) In any case, the Applicant submits that we should now proceed on the basis of the Prosecution's case at the trial. That case was that he was reckless or negligent, or otherwise wilfully blind to the nature of the Drugs. Recklessness and negligence are not sufficient to make out the *mens rea* for the capital charge, and wilful blindness was not made out. The Applicant accordingly submits that we should set aside his conviction on the capital charge and instead convict him of the amended charge of attempting to import a Class C drug.

48 The Prosecution takes a similar view as regards the appropriate legal position concerning the s 18(2) presumption and the doctrine of wilful blindness. However, it maintains that its cases at the trial and on appeal were both premised on the Applicant's actual knowledge of the nature of the Drugs. There was therefore no change in the case it ran on appeal, and it was entitled to invoke the s 18(2) presumption. The Prosecution contends that even if its case against the Applicant at the trial was one of wilful blindness, wilful blindness has been established beyond a reasonable doubt on the present facts. But in the event the Applicant is found not to have been wilfully blind, he should nonetheless be convicted of attempting to import a Class C drug.

49 In our judgment, the Applicant's legal arguments at [47] above, which were made in response to the two issues we framed at [46(a)] and [46(b)] above and which are based on the changes in the law that arose from our decision in

Adili ([4] *supra*), do satisfy the requirement of "sufficiency" in s 394J of the CPC (see [24(a)] above). These legal arguments were not canvassed in CCA 20/2017 because, given the state of the law as it then stood, they could not have been raised even with reasonable diligence. It is also clear to us that the substantive requirement of a potential miscarriage of justice has been satisfied (see [24(b)] above). If we decide in this criminal motion that we should apply the principles laid down in *Adili* in relation to the doctrine of wilful blindness to the s 18(2) presumption and hold that wilful blindness is not encompassed within that presumption, and if we find that the Prosecution's case at the trial was indeed one of wilful blindness, then the Prosecution could not have invoked the s 18(2) presumption against the Applicant. In that light, applying the principles that have since been developed to our decision in CCA 20/2017, that decision could, on that basis, be considered to be demonstrably wrong in so far as we arrived at it on the ground that the Applicant had failed to rebut the s 18(2) presumption. Such a result would flow from the application of the review process to capture changes in the law subsequent to the earlier decision that is sought to be reopened and to assess whether that decision might be unsafe in the light of those subsequent changes. To be clear, our assessment that our decision in CCA 20/2017 might be demonstrably wrong is not based on the arguments that were in fact made in CCA 20/2017 or that could have been made in view of the legal position as it was understood then. Rather, in the light of the *subsequent* decision of this court in *Adili*, which did not directly address the issues that arose in CCA 20/2017 but which could do so by way of analogous reasoning, there is, in our judgment, a need to reconsider CCA 20/2017 and to assess whether the outcome in that appeal would still be the same despite the subsequent developments in the law, having regard to two material issues in particular: first, whether to extend the approach laid down in *Adili* regarding the s 18(1) presumption to the issues that arose in CCA 20/2017; and, second, if the

Prosecution's case at the trial was indeed one of wilful blindness, whether the Prosecution is able to prove beyond a reasonable doubt that the Applicant was wilfully blind to the nature of the Drugs.

50 For these reasons, we are satisfied that we should exercise our power of review under s 394J of the CPC. We turn to the second stage of the analysis, which is to examine the *merits* of the legal arguments advanced by the Applicant and to consider whether there has been a miscarriage of justice in CCA 20/2017 if our decision in that appeal is reconsidered in the light of the changes in the law that we have referred to, and if so, the consequential orders that should be made.

The issues to be determined in respect of the decision in CCA 20/2017

51 This judgment is broadly structured to address the three issues that we directed the parties to file further submissions on (see [46] above), namely:

(a) first, the interplay, if any, between the s 18(2) presumption and the doctrine of wilful blindness;

(b) second, whether there was a change between the Prosecution's case at the trial and its case on appeal in respect of the Applicant's knowledge of the nature of the Drugs; and

(c) third, whether the Applicant's conviction in CCA 20/2017 is safe, and if not, whether there is a need for any consequential orders.

Issue 1: The s 18(2) presumption and the doctrine of wilful blindness

The relevance of wilful blindness to the s 18(2) presumption

52 As stated at [41(d)] above, we held in *Adili* that the knowledge that is presumed under s 18(1) is limited to actual knowledge only, and does not encompass knowledge of matters which the accused person does not have actual knowledge of, but to which he is said to be wilfully blind (at [67]). We did not then extend this holding to the s 18(2) presumption because, as we noted (likewise at [67]), this might appear to vary from our prior observations in *Tan Kiam Peng* ([41(e)] *supra*) at [139] and *Masoud* ([41(e)] *supra*) at [50] and [55]. In those cases, it was considered that the s 18(2) presumption encompassed knowledge of matters falling within the ambit of wilful blindness, and not just actual knowledge (see *Adili* at [67]).

53 The question of whether the knowledge that is presumed under s 18(2) is confined to actual knowledge of the nature of the drugs in the accused person's possession is squarely raised in the present case, and both parties submit that there is no reason in principle why our holdings in respect of the s 18(1) presumption should not be *extended* to the s 18(2) presumption. We agree for the following two reasons.

54 First, as a matter of analytical coherence, the inquiry as to whether an accused person is wilfully blind to certain matters should be kept separate from the question of whether he has rebutted the presumption under s 18(2) that he has actual knowledge of those matters. The statutory presumptions under s 18(1) and s 18(2) of the MDA are *evidential* presumptions that operate to presume ***specific facts*** (see *Adili* at [66] and [98]). The s 18(2) presumption specifically operates to presume the *fact* that the accused person had *actual*

knowledge of the nature of the drugs in his possession. By contrast, as we have noted at [41(d)] and [45(b)] above, whether or not an accused person is wilfully blind is a question of ***mixed law and fact*** which involves an intensely and inevitably fact-sensitive inquiry covering a range of diverse considerations. Such a question cannot ordinarily be the subject of an *evidential* presumption. Furthermore, wilful blindness is a state which *falls short* of actual knowledge, but is nevertheless treated as the *legal equivalent* of actual knowledge (see *Adili* at [47]). As a matter of logic, an evidential presumption which is concerned with actual knowledge cannot be invoked to establish a fact which is accepted not to be true (see *Adili* at [66]). These points, which were all noted in *Adili* in the context of the presumption under s 18(1), apply with equal force to the presumption under s 18(2).

55 Second, keeping the two inquiries separate and distinct is important in order to ensure that an accused person knows the case he has to meet. This goes towards the importance of ensuring procedural fairness in criminal proceedings, a point we recently reiterated in *Public Prosecutor v Aishamudin bin Jamaludin* [2020] SGCA 70 at [59]. An accused person should not be placed in the position of having to run a potentially inconsistent defence in an attempt to address undifferentiated allegations of both actual knowledge and wilful blindness. Without expressing a conclusive view, it seems to us that while it may be possible in principle for the Prosecution to run *alternative* cases of actual knowledge and wilful blindness, subject to there being no prejudice to the accused person, this is quite distinct from the position that obtains where the two inquiries are conflated into a single aggregated one. We leave this issue open for determination in a future case because, as we explain below, we are satisfied that the Prosecution did not run alternative cases against the Applicant at the trial.

56 Accordingly, we hold that the knowledge that is presumed under s 18(2) is confined to *actual knowledge* of the nature of the drugs in the accused person's possession, and does not encompass knowledge of matters to which the accused person is said to be wilfully blind. It follows that the Prosecution is not permitted to invoke the s 18(2) presumption to presume that the accused person was wilfully blind to the nature of the drugs in his possession, and the doctrine of wilful blindness is therefore irrelevant to and should not feature in the analysis of whether the s 18(2) presumption has been rebutted. Where the Prosecution's case is that the accused person was wilfully blind to the nature of the drugs in his possession, it must prove beyond a reasonable doubt that the accused person was wilfully blind to that fact, such that he should be treated at law *as though* he had actual knowledge of that fact. These are discrete inquiries which ought not to be conflated. We discuss the elements of wilful blindness in the context of knowledge of the nature of the drugs at [76]–[96] below.

The nature of the inquiry into whether the s 18(2) presumption has been rebutted

57 We turn to consider the nature of the inquiry in considering whether the s 18(2) presumption has been rebutted. Both parties agree that to rebut this presumption, the accused person is only required to establish that he *did not know the nature of the drugs* in his possession (see *Obeng* ([13] *supra*) at [37]). As we stated in *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [23], "[t]o rebut the presumption of knowledge, all the accused has to do is to prove … that he *did not know* the nature of the controlled drug referred to in the charge" [emphasis in original]. In our judgment, the following key principles may be distilled from our examination of the case law:

(a) As a matter of common sense and practical application, an accused person who seeks to rebut the s 18(2) presumption should be

able to say what he thought or believed he was carrying, and a claim that he simply did not know what he was carrying would not usually suffice: see *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 ("*Zainal*") at [23(b)]; *Obeng* at [39].

(b) The inquiry into the accused person's state of mind or knowledge is ultimately a subjective inquiry (see *Masoud* ([41(e)] *supra*) at [56]–[59]).

(c) However, the court will assess the veracity of the accused person's assertion as to his subjective state of mind against the objective facts and examine his actions and conduct relating to the item in question in that light in coming to a conclusion on the credibility of his assertion. This will invariably be a highly fact-specific inquiry, and the relevant considerations might include the physical nature, value and quantity of the item and any reward that was to be paid for transporting it (see *Obeng* at [40]; *Masoud* at [55]) or, for that matter, any amount that was to be collected upon delivering it. We raise these purely as examples to emphasise the overarching fact-sensitive nature of the inquiry.

(d) Where an accused person's defence is found to be patently and inherently incredible, then that will not impose any evidential burden for the Prosecution to rebut: see *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 ("*Nabill*") at [70] and [71]. To put it simply, a hopeless defence is no defence and raises nothing to rebut. In such circumstances, the court should find that the s 18(2) presumption remains unrebutted.

(e) In assessing the evidence, the court should bear in mind the inherent difficulties of proving a negative, and the burden on the accused

person should not be so onerous that it becomes virtually impossible to discharge (see *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 at [2] and [24]).

58 It is clear that the common thread underlying the past cases is that where the accused person seeks to prove that he *lacked* the actual knowledge presumed under s 18(2), it is incumbent on him to adduce *sufficient evidence* disclosing the basis upon which he claims to have arrived at that subjective state of mind. To be clear, it is not necessary for the accused person to establish that he held a firm belief as to, or actually knew, what the thing in his possession *specifically* was. Of course, where the accused person is able to establish that he specifically thought or believed the thing was something other than the drug he is proved or presumed to have had possession of, he will have rebutted the presumption. But the true inquiry for the court is whether, upon considering all the evidence, the s 18(2) presumption has been rebutted because the accused person did not in fact know that the thing in question was the specific drug in his possession.

59 As a starting point, the accused person should be able to give an account of what he thought the thing in his possession was (see *Obeng* at [39]). This stands to reason because by the time the court is faced with the inquiry under s 18(2), it will already have been established that the accused person *knew* that he was in *possession* of that thing. We elaborate on this at [70] below. In that light, it will be apparent that the cases in which an accused person has successfully rebutted the s 18(2) presumption can broadly be divided into two categories:

(a) First, where the accused person is able to prove that he believed he was carrying something *innocuous*, even if he is unable to specify exactly what that was. Such a belief, by definition, excludes a belief that

he was in possession of a controlled drug, let alone the specific drug in his possession.

(b) Second, where the accused person is able to prove that he believed he was in possession of *some contraband item or drug other than* the specific drug in his possession.

60 Ultimately, the s 18(2) presumption will be rebutted where the court accepts that the accused person formed a positive belief that was *incompatible* with knowledge that the thing he was carrying was the specific drug in his possession. We illustrate this with reference to the following cases.

61 The first category of cases referred to at [59(a)] above can be illustrated by the majority judgment in *Harven a/l Segar v Public Prosecutor* [2017] 1 SLR 771 ("*Harven*"). There, the majority held that the s 18(2) presumption was rebutted even though the appellant could not give a positive and specific account of what he believed he was carrying, save that he thought it was something innocuous. The majority accepted his defence that "he did not know that the [bundles in his possession] contained controlled drugs" (at [6]). In our judgment, correctly understood, *Harven* is a case where the appellant did not suspect that anything was amiss or that he had been asked to do anything illicit. The appellant, who lived in Johor Bahru, claimed that his colleague, who also lived there, had asked him to deliver some bundles to a friend in Singapore. He agreed to do this as a favour because he did not think that there was anything sinister in the request, or that his colleague was involved in any illicit activities. Apart from the fact that the appellant's eight statements and evidence during cross-examination were generally consistent (at [19]), the majority found it strongly exculpatory that there was no evidence or suggestion that he received any reward, whether monetary or otherwise, for his involvement in what he

described as a "favour" (at [64]). As explained by the appellant, he thought his colleague's request pertained to something routine and innocuous, in part because his colleague had told him that he had lost his passport and could not enter Singapore himself. The appellant did not know what was in the bundles he was to deliver for his colleague and, in the circumstances, did not even see any need to ask what was in them (at [26] and [27]). The majority accepted his defence and found that he had rebutted the s 18(2) presumption (at [71]). The key point we emphasise for present purposes is that there was no need for the appellant to establish a positive state of knowledge as to the contents of the bundles. His task was to establish a negative, namely, that he did not believe the bundles contained the drugs in question. He succeeded in doing this by establishing that he believed he had been asked to carry out an innocuous favour for a colleague, which belief was incompatible with a belief that the bundles contained controlled drugs, much less the specific drugs in question.

62 The second category of cases referred to at [59(b)] above is illustrated by our decision in *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*"). There, the appellant had a consistent pattern of dealing in drugs of a sort that either were not punishable by the death penalty or were in a quantity that would not attract the death penalty. The appellant had previously assisted in importing only erimin, ketamine, ecstasy and "Ice", and not diamorphine. This was clear from the appellant's statements, and the Prosecution did not lead any evidence to the contrary. The appellant also had a close and personal relationship with "Tony", the person for whom he was acting as a courier. As the appellant was afraid of the death penalty, he sought assurances from Tony that the deliveries in question did not involve diamorphine. We accepted the appellant's claim that it was because of these assurances that he had proceeded with the deliveries. The appellant trusted Tony's assurances and so did not

check the contents of the package that Tony handed to him (at [21], [23] and [27]). We found in the circumstances that the appellant had no reason to suspect that the package contained diamorphine, and that his failure to check its contents constituted, at best, negligence or recklessness. This did not amount to wilful blindness (at [20] and [24]). We concluded that given the particular factual matrix, the appellant had succeeded in rebutting the s 18(2) presumption (at [29]).

63 We turn to *Saravanan Chandaram v Public Prosecutor and another matter* [2020] 2 SLR 95 ("*Saravanan*") as an example of a case where the s 18(2) presumption was *not* rebutted. The appellant in *Saravanan* was found to be in possession of cannabis, but claimed that he believed he was only transporting contraband tobacco. The evidence showed that he had agreed to transport bundles for a man, "Aya", whom he knew to be a drug syndicate leader; he had previously done jobs for Aya in connection with Aya's drug deals; and he had been promised substantial monetary rewards for bringing the bundles in question into Singapore. In these circumstances, we held that it was simply incredible that the appellant would have accepted at face value Aya's alleged statement that the bundles only contained contraband tobacco, and rejected his contention that he believed he was merely transporting contraband tobacco. We thus found that he had failed to rebut the s 18(2) presumption (at [31] and [37]–[40]).

64 It is clear from these cases that whether or not an accused person's defence is accepted ultimately depends on the strength of the evidence led. An assertion or finding of *ignorance* alone would not suffice. As we observed in *Obeng* ([13] *supra*) at [39]:

> … 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. …

65 In this light, it also follows that an accused person who is *indifferent* to what he is carrying cannot be said to believe that the nature of the thing in his possession is something other than or incompatible with the specific drug he is in possession of. This is because an accused person who is indifferent is simply nonchalant about what the thing in his possession is, and therefore cannot be said to have formed any view as to what it *is* or is *not*. Such indifference can usually only be inferred from the objective circumstances. In this connection, we consider that in the context of rebutting the s 18(2) presumption, an accused person may be said to be indifferent to the nature of the thing in his possession if he had the ready means and opportunity to verify what he was carrying, but failed to take the steps that an ordinary reasonable person would have taken to establish the nature of the thing, and also fails to provide any plausible explanation for that failure. Of course, this is a conclusion to be arrived at in the light of all the evidence in the case. In this regard, we stated in *Obeng* at [37]:

> … *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. … 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. [emphasis added in italics and bold italics]

66 As suggested in the above passage, an accused person in this situation may persuade the court that there were "reasons special to [him] or to his

situation" as to why he did not take the sort of steps that an ordinary reasonable person would have taken to establish the nature of the thing he was carrying. Where an accused person fails to show such reasons, it may be appropriate to conclude that he was indifferent to the nature of what he was carrying. We emphasise that this inquiry is entirely separate from the question of wilful blindness, which looks at whether the accused person had a clear, grounded and targeted *suspicion* of the fact to which he is said to have been wilfully blind, as opposed to mere *indifference* (see [77(a)] and [79(a)] below). We are concerned here with how the presumption that the accused person had actual knowledge of the nature of the drugs in his possession may be rebutted and whether it has been rebutted. In this context, if the Prosecution invokes the presumption and the court concludes that the accused person was in fact indifferent to the nature of what he was carrying, then he will be treated as not having rebutted the presumption.

67 An accused person who is in a position to verify or ascertain the nature of what he is carrying but who chooses not to do so in the following types of situations may be described as being indifferent to the nature of what he is carrying:

(a) An accused person who is in fact wholly indifferent to what he is carrying.

(b) An accused person who knows that the thing he is carrying is a contraband item, but who does not care to find out what that contraband item is or is not.

(c) An accused person who identifies the drugs in his possession by some idiosyncratic or colloquial name, but who does not know what that means and does not bother to ascertain the meaning. For example, in

Obeng, the appellant referred to the drugs as "shine shine", but did not know what that meant and did not take steps to inquire further (at [51]).

68 In each of these cases, the accused person is *able* to verify or ascertain the nature of the thing he is carrying but *chooses* not to do so. The proper inference to be drawn in the circumstances is that he is in truth indifferent to what that thing is. The difference between these cases is, if anything, essentially one of *degree*. We consider that in these situations, the presumption of actual knowledge will generally be found not to have been rebutted because of the need to give full purposive effect to the policy underlying the MDA, which is to stem the threat that drug trafficking poses: see *Tan Kiam Peng* ([41(e)] *supra*) at [23]–[28], citing *Singapore Parliamentary Debates, Official Report* (20 November 1975) vol 34 at cols 1379–1381 (Mr Chua Sian Chin, Minister for Home Affairs and Education). To this end, the s 18 presumptions were enacted to mitigate the difficulty faced by the Prosecution in proving the elements of possession and knowledge (see *Tan Kiam Peng* at [55]). An accused person is unlikely to admit to actual knowledge of the nature of the drugs in his possession and, in fact, can easily disavow such knowledge, given the surreptitious nature inherent in drug offences and the severe penalties that are imposed on conviction (see *Tan Kiam Peng* at [104]).

69 The s 18(2) presumption addresses the difficulties of establishing the element of knowledge of the nature of the drugs by placing the *burden* on the accused person in limited circumstances to adduce evidence in relation to matters which are peculiarly within his knowledge. To recapitulate, s 18(2) states that any person who is proved or presumed to have had a controlled drug in his possession shall be presumed to have known the nature of that drug, ***unless the contrary is proved***. The question for present purposes is whether Parliament intended for the s 18(2) presumption to be rebutted by an accused

person whose defence is simply that he was indifferent to what he was carrying. In our judgment, the answer to this is in the negative because, as we have explained above, the s 18(2) presumption will only be rebutted where the accused person is able to establish that he *did not know the nature of the drugs* in his possession, and an accused person who is indifferent to the nature of the thing he is carrying cannot be said to have formed any view as to what the thing *is* or *is not* (see [65] above).

70 We also consider it principled to draw a distinction between the precise way in which the s 18(1) and s 18(2) presumptions operate. It is significant, as we have noted at [59] above, that the question of the accused person's *knowledge of the nature of the drugs* in his possession only arises after it has already been established that he *had possession of the thing that turns out to be drugs*, *and knew that he had possession* (see *Adili* ([4] *supra*) at [42]). In the natural course of things, it is reasonable to assume that a person who knows that he is in possession of a thing will take steps to find out what the thing is and will usually be aware of its nature (see *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 at [62]).

71 This does not apply in the same way to the question of whether the accused person knew, in the first place, that he was in possession of the thing that turns out to be drugs. That is the very thing that is presumed under s 18(1), and that presumption in turn is rebutted where the accused person is able to show that he did not even know of the existence of the thing in his possession that turns out to be drugs.

72 In our judgment, the precedents are consistent with our conclusion that the s 18(2) presumption will not be rebutted by an accused person who is

indifferent to what he is in possession of. In *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 ("*Dinesh Pillai*"), this court stated at [21] that to rebut the s 18(2) presumption, "it is for the [accused person] to prove … that he did not know or *could not reasonably be expected to have known* that the [thing in his possession] contained diamorphine" [emphasis added]. The appellant in *Dinesh Pillai* claimed that he had been instructed to deliver "food" wrapped in brown packets. He was found in possession of a brown packet containing diamorphine. In evaluating the evidence, this court explained at [21]:

> … [In the context of s 18(2) of the MDA], it is for the appellant to prove on a balance of probabilities that he did not know or could not reasonably be expected to have known that the Brown Packet contained diamorphine. In our view, the appellant has failed to rebut the s 18(2) MDA presumption by his mere general assertions that he did not know what was in the Brown Packet as: (a) the nature of the controlled drug in that packet could easily have been determined by simply opening the packet; and (b) there was no evidence to show that it was not reasonably expected of him, in the circumstances, to open the packet to see what was in it. In short, the appellant has failed to prove the contrary of what s 18(2) of the MDA presumes in the present case as he neglected or refused to take reasonable steps to find out what he was asked to deliver to Ah Boy on 19 December 2009 in circumstances where a reasonable person having the suspicions that he had would have taken steps to find out (*viz*, by simply opening the Brown Packet to see what was in it).

73 In *Dinesh Pillai*, the court held that the appellant had failed to rebut the s 18(2) presumption because he had turned a *blind eye* to what the brown packet he was delivering contained, despite *suspecting* that it contained something illegal (at [21]). To the extent that the decision in *Dinesh Pillai* rested on a finding that the appellant was wilfully blind, we have explained at [54]–[56] above that wilful blindness is not relevant in analysing whether the s 18(2) presumption has been rebutted. In our judgment, correctly understood, *Dinesh Pillai* is a case where the appellant failed to rebut the s 18(2) presumption because he was *indifferent* to what was contained in the brown packet. Given

that the appellant could easily have verified what he was carrying simply by opening the brown packet, as would reasonably have been expected of him in the circumstances, the inference that should have been drawn was that he was indifferent to what the brown packet contained. On this basis, the court was justified in concluding that the s 18(2) presumption had not been rebutted.

74 For completeness, we note that the references in *Dinesh Pillai* to the accused person's burden of proving that he "could not *reasonably be expected* to have known" [emphasis added] the nature of the drugs in his possession should not be misunderstood to mean that the s 18(2) presumption encompasses an *objective* inquiry that examines whether the accused person acted reasonably. Such an inquiry would impermissibly introduce elements of negligence or recklessness into the analysis. We reiterate the point made in *Obeng* ([13] *supra*) at [37]: *Dinesh Pillai* did not modify the test of knowledge in s 18(2) such that *mere negligence or constructive knowledge* on the part of the accused person suffices to convict him. We emphasise that the inquiry remains a subjective one in so far as the court's focus is on the reasons behind the failure of the particular accused person before the court to make inquiries when this course of action was readily available to him and would have been taken by the ordinary reasonable person.

75 It is evident from the foregoing that our analysis of the nature of the inquiry in considering whether the s 18(2) presumption has been rebutted does not involve any material departure from the position taken in *Dinesh Pillai* and *Obeng*. However, we would encourage prosecutors, Defence counsel and the courts to frame the second limb of *Dinesh Pillai* – that an accused person is required to prove that he could not reasonably be expected to have known the nature of the specific drug in his possession – correctly; and that is to consider

whether, on the facts, the accused person was indifferent to what he was carrying such that he cannot be held to have rebutted the s 18(2) presumption.

The requirements of wilful blindness in the context of knowledge of the nature of the drugs

76 We turn to consider the doctrine of wilful blindness in the context of the element of knowledge of the nature of the drugs. As we explained in *Adili* ([4] *supra*) at [49], the doctrine of wilful blindness is justified by the need to deal with accused persons who attempt to escape liability by deliberately avoiding actual knowledge. Such attempts must be defeated because they undermine the administration of justice, and the most effective way to achieve this is to affix the accused person with the very knowledge that he has sought deliberately to avoid.

77 We held in *Adili* at [51] that in relation to the element of *knowing possession*, for an accused person to be found to have been wilfully blind, the following requirements must be proved:

(a) First, the accused person must have had a clear, grounded and targeted suspicion of the fact to which he is said to have been wilfully blind.

(b) Second, there must have been reasonable means of inquiry available to the accused person which, if taken, would have led him to discovery of the truth.

(c) Third, the accused person must have deliberately refused to pursue the reasonable means of inquiry available so as to avoid such negative legal consequences as might arise in connection with his discovering the truth.

78 We also provisionally observed in *Adili* at [42] and [62] that the operation of the doctrine of wilful blindness might be different where the fact in question is *knowing possession* and where the fact in question is *knowledge of the nature of the drugs*. Having considered the specific issue in this case, we are satisfied that there is a difference in the operation of the doctrine in the context of the element of knowledge of the nature of the drugs, and we now elaborate on this. In the context of the element of *knowing possession*, where the Prosecution runs a case of wilful blindness, the court starts from the premise that the accused person does not actually know that he is in possession of the thing in question. The Prosecution then bears the burden of establishing beyond a reasonable doubt that the accused person had a clear, grounded and targeted suspicion that he was in possession of that thing. However, as we have explained at [70] above, the starting position in relation to the element of *knowledge of the nature of the thing* is quite different. By this stage of the analysis, the accused person has already been found to be in *possession, custody or control* of the thing in question and to *know* that he is in possession of it. Where an accused person suspects that the thing in his possession is not what he has been told or led to believe it is, then in certain circumstances, he will be expected to verify what that thing is. The considerations are different precisely because the accused person not only knows that he is in possession of something on behalf of another, but will also invariably have formed some idea of what that thing is or is not.

79 In our judgment, in order to establish that an accused person was wilfully blind to the nature of the drugs in his possession, the Prosecution must prove beyond a reasonable doubt that:

(a) the accused person had a *clear, grounded and targeted suspicion* that what he was told or led to believe about the nature of the thing he was carrying was untrue;

(b) there were *reasonable means of inquiry* available to the accused person which, if taken, would have led him to discover the truth, namely, that his suspicion that he was carrying something other than what he was told the thing was or believed it to be was well founded; and

(c) the accused person *deliberately refused to pursue the reasonable means of inquiry* available to him because he wanted to avoid any adverse consequences of being affixed with knowledge of the truth.

80 We first observe that this is distinct from the analysis and question of indifference, a point we will return to later. We elaborate on each of the elements of wilful blindness below.

Clear, grounded and targeted suspicion

81 We first discuss the requirement of suspicion, which is "a central as well as integral part of the entire doctrine of wilful blindness" [emphasis in original omitted] (see *Tan Kiam Peng* ([41(e)] *supra*) at [125]). As we held in *Adili* at [53], wilful blindness is concerned with the accused person's *subjective* state of mind: he must have *personally* suspected the truth and, for that reason, *deliberately* chosen not to investigate his suspicions. We also note at the outset that in formulating the requirement of suspicion, we are concerned with the *circumstances* under which an accused person ought to be under a duty to exhaust the reasonable means of inquiring into the nature of the thing he was carrying.

82 The Applicant contends that to satisfy the requirement of suspicion, the Prosecution has to prove beyond a reasonable doubt that the accused person suspected that he was carrying the specific controlled drug that forms the subject matter of the charge ("the Narrow Conception"). In contrast, the Prosecution takes the position that it is sufficient for it to prove that the accused person suspected that he was in possession of contraband items ("the Broad Conception").

83 We first consider the merits of the Narrow Conception. We acknowledge that the Narrow Conception appeared to have been adopted by this court in *Khor Soon Lee* ([62] *supra*) at [24]:

> … *[T]he Appellant had no reason*, in light of the specific facts and (especially) consistent pattern that had been established (which we will explain below), *to strongly suspect that the package contained diamorphine*. The same could also be said about the fact that the Appellant and Tony travelled separately on their own instead of travelling together as had been the case on numerous previous occasions. A mere suspicion it could have been, but it was far from being a distinct enough peculiarity (in and of itself) to raise a strong suspicion. *At the very least, the suspicion must bear a reasonable connection to the specific drug at issue*. In both instances, [the Appellant's] failure to check the contents of the package would, at best, constitute only negligence or recklessness. As we have indicated above at [20], these instances are insufficient to amount to wilful blindness. [emphasis in original omitted; emphasis added in italics]

84 These views were expressed on the premise that the doctrine of wilful blindness is relevant to the analysis of whether the s 18(2) presumption has been rebutted. Having now clarified that the doctrine of wilful blindness stands apart from the operation of the s 18(2) presumption, we consider that there is no reason in principle why an accused person who more generally suspects that he is in possession of a contraband item or a controlled drug should not be under

an obligation to inquire into the nature of that item in certain circumstances. The Narrow Conception does not account for these scenarios.

85 Moreover, we agree with the Prosecution that if the Narrow Conception were to be adopted, the Prosecution will face substantial difficulties in proving suspicion to such a fine degree. Short of an admission by the accused person that he suspected that the thing he was carrying was a specific drug, or any other direct evidence of the same, it is unclear to us how such suspicion could ever be said to be proved beyond a reasonable doubt. Accordingly, adopting the Narrow Conception would frustrate the purpose and the underlying policy objectives of the MDA.

86 We turn to the Broad Conception. Adopting the Broad Conception would be consistent with previous decisions that have held that an accused person may be said to be wilfully blind to the nature of the drugs in his possession where he suspected that he was carrying something *illegal* but failed to take steps to verify what he was carrying: see, for example, *Dinesh Pillai* ([72] *supra*) at [21] (excerpted at [72] above). However, an accused person might have been told that the specific drugs he was carrying were some other contraband item such as contraband cigarettes. In such a case, applying the Broad Conception could be overinclusive because the requirement of suspicion would seemingly be satisfied even where an accused person knows or suspects that he is in possession of contraband cigarettes but *has no reason to suspect that he was not told the truth* about the nature of the thing in his possession.

87 It seems to us that neither conception is adequate. Instead, in our judgment, the requirement of suspicion in the context of knowledge of the nature of the drugs should be formulated as follows: the Prosecution must prove beyond a reasonable doubt that the accused person had a clear, grounded and

targeted suspicion that what he was told or led to believe about the nature of the thing he was carrying was untrue.

88 We elaborate. Where possession has been proved or presumed, the circumstances in which the accused person came into possession of the thing in question would have led him to form a view as to what it was or was not. Depending on the facts, this might be because he had been given specific verbal assurances as to what the thing was, or because assurances to that effect had been made through some other person's conduct. The surrounding circumstances might also have led him to form a view of what the thing was or was not. However, notwithstanding the accused person's claim that he had a certain view of the nature of the thing he was carrying, in the event that the Prosecution proves that he nonetheless harboured a suspicion that he had not been apprised of the truth, he will be found to have the requisite level of suspicion such that he ought to have investigated further.

Availability of reasonable means of inquiry

89 We turn to the second requirement that there be reasonable means of inquiry available to the accused person which, if taken, would have led him to the truth he sought to avoid (see *Adili* ([4] *supra*) at [56] in relation to the fact of knowing possession). The Prosecution contends that this requirement is not necessary in the context of knowledge of the nature of the drugs, and that an accused person may be found to be wilfully blind to the nature of the drugs in his possession "even if he did not have *any* means of inquiry available" [emphasis added].

90 We cannot accept this. As we held in *Adili* at [59], the third requirement of a *deliberate* refusal to inquire is what distinguishes wilful blindness from

recklessness. This third requirement presupposes that there were reasonable means of inquiry that the accused person could have taken, but chose not to take. We articulated the rationale for the second requirement in the context of knowing possession in *Adili* at [58], and we see no reason why it should not also apply in a somewhat similar manner in the context of knowledge of the nature of the drugs:

> … As we have noted, the doctrine of wilful blindness requires that the *essential* reason the accused person did not end up with actual knowledge was that he chose to look away. In other words, the true facts must have been readily available to anyone disposed to discover them. This must entail that had the accused person looked, he would have uncovered those facts. We do not think it right to impute to an accused person, by reason of his refusal to inquire, knowledge of things that would *not* have been evident even to one who *had* undertaken those inquiries – one cannot be said to be *wilfully blind* to a fact when that fact was, in the circumstances, not reasonably discoverable. [emphasis in original]

91 For the second requirement to be made out, it must be established that: (a) there were means of inquiry reasonably available to the accused person; and (b) if taken, those means of inquiry would have led him to the truth he sought to avoid (see *Adili* at [56]). In the context of knowledge of the nature of the drugs, the truth in question relates to whether the accused person's suspicion that he was carrying something other than what he was told the thing was or believed it to be was well founded. We highlight two further points as to how this requirement would apply in this context.

92 First, the expectations of the inquiry that is to be undertaken in this context would generally be more robust than in the context of knowing possession. This is justified because an accused person who knows that he is carrying something *and* suspects that he is being kept in the dark as to what he is carrying should be expected to make sufficiently robust inquiries to ascertain

what that thing is. The extent of these inquiries would depend on what the accused person claims to have believed the thing to be and the nature of his suspicions. In many cases, it appears to us that this would minimally require him to visually inspect the thing he is carrying (see *Tan Kiam Peng* ([41(e)] *supra*) at [129]). Further, the stronger the accused person's suspicions, the more he would be expected to inquire into the truth of what he suspects.

93 Where the accused person's suspicions are triggered by the circumstances surrounding his possession of the thing (for instance, circumstances relating to the physical nature, value and quantity of the thing, and any reward that was to be paid for transporting it or any amount that was to be collected upon delivering it), he would generally be required to seek further information about the thing and the transaction, whether from the person he is transacting with or from some other source. However, where the accused person's suspicions directly arise from his concern that he cannot trust the person on whose behalf he is carrying the thing, reasonable means of inquiry would not include simply continuing to make inquiries of that same person. In such a situation, it seems to us that the accused person should be expected to check his suspicions against some other source.

94 Further, it would not suffice for an accused person to claim that he would not have been able to verify the proper name or the precise scientific name or formulation of the controlled drug in his possession. This is similar to the principle that an accused person will not be able to rebut the s 18(2) presumption by merely claiming that he did not know the proper name or the scientific name of the controlled drug in his possession (see *Obeng* ([13] *supra*) at [39]).

Deliberate refusal to inquire

95 The final element in establishing wilful blindness is that the accused person must have *deliberately* refused to avail himself of the reasonable means of inquiry available to him to establish the truth as to what he was carrying. In the context of knowledge of the nature of the drugs, we consider that this requirement will be satisfied where the Prosecution proves that the accused person chose not to have recourse to the reasonable means of inquiry available to him because he wanted to avoid any adverse consequences of being affixed with such knowledge.

96 It bears reiterating that the accused person in this context already *knows* that he is carrying an item and, further, *suspects* that the truth as to its nature is being hidden from him. Where these factual conditions obtain, the accused person would generally anticipate that grave and adverse legal consequences will follow from the fact of his possession of that item. In these circumstances, he should not be entitled to refuse to make inquiries just so that he can profess an ultimately implausible denial of knowledge of the nature of the item. In our judgment, where the accused person fails to make inquiries simply because he wishes to avoid any adverse consequences of doing so, he should be affixed with the very knowledge he seeks to avoid. As in the context of knowing possession, the accused person's refusal to inquire must have been *deliberate* and not merely because of, for instance, indolence, negligence or embarrassment (see *Adili* at [60]).

97 Before we leave this section, we emphasise the distinction between the analysis of whether the s 18(2) presumption of actual knowledge has been rebutted and the analysis of whether a finding of wilful blindness should be made. While both analyses may entail general consideration of the means of

inquiry available to the accused person, they differ in significant ways. The question of indifference arises in the context of rebutting the s 18(2) presumption. An accused person who is indifferent to what he was carrying will not be able to displace the presumption. This is because he will not be able to establish that he had a belief as to what the thing he was carrying was or was not, and therefore will not be able to satisfy the court that he had a positive belief about the nature of the thing which was incompatible with knowledge that that thing was the specific drug in his possession. Wilful blindness does not arise in relation to the presumption at all. Instead, wilful blindness comes into play where the accused person claims that he was led to believe something about the nature of the thing he was carrying and the court finds that he *suspected* that what he was told or led to believe was untrue but nonetheless chose not to investigate his suspicions because he wanted to avoid any adverse consequences of doing so.

Summary of the key propositions

98 For ease of reference, we summarise the key propositions in respect of the s 18(2) presumption and the doctrine of wilful blindness:

(a) **Wilful blindness is irrelevant in the context of the s 18(2) presumption** (see [56] above):

(i) The knowledge that is presumed under s 18(2) is confined to actual knowledge of the nature of the drugs in the accused person's possession, and does not encompass knowledge of matters to which the accused person is said to be wilfully blind.

(ii) Thus, the Prosecution is not permitted to invoke the s 18(2) presumption to presume that the accused person was

wilfully blind to the nature of the drugs in his possession. The doctrine of wilful blindness is irrelevant to and should not feature in the analysis of whether the s 18(2) presumption has been rebutted.

(b) **The rebuttal of the s 18(2) presumption**:

(i) To rebut the s 18(2) presumption, the accused person has to establish that he did not know the nature of the controlled drug in his possession. Generally, he can do so by showing either that he believed he was in possession of something innocuous, even if he is unable to specify exactly what that was, or that he believed he was in possession of some contraband item or drug other than the specific drug in his possession. Ultimately, the s 18(2) presumption will be rebutted where the court finds that the accused person formed a positive belief that was incompatible with knowledge that the thing he was carrying was the specific drug in his possession (see [57], [59] and [60] above).

(ii) While the inquiry into the accused person's state of mind or knowledge is a subjective inquiry, the court will assess the veracity of his assertion as to his subjective state of mind against the objective facts and examine his actions and conduct relating to the thing in question in that light in coming to a conclusion on the credibility of his assertion (see [57(b)] and [57(c)] above).

(iii) Where an accused person's defence is found to be patently and inherently incredible, it does not impose any

evidential burden for the Prosecution to rebut and the s 18(2) presumption remains unrebutted (see [57(d)] above).

(iv) An assertion or finding of ignorance or indifference on the accused person's part to the nature of the thing in his possession will not, on its own, suffice to rebut the s 18(2) presumption. An accused person can be said to be indifferent if he had the ready means and opportunity to verify what he was carrying, but failed to take the steps that an ordinary reasonable person would have taken to establish the nature of the thing and also fails to provide any plausible explanation for that failure (see [64] and [65] above).

(c) **The requirements of wilful blindness in the context of knowledge of the nature of the drugs:** In order to establish that an accused person was wilfully blind to the nature of the drugs in his possession, the Prosecution must prove beyond a reasonable doubt that (see [79] above):

(i) the accused person had a clear, grounded and targeted suspicion that what he was told or led to believe about the nature of the thing he was carrying was untrue;

(ii) there were reasonable means of inquiry available to the accused person which, if taken, would have led him to discover the truth, namely, that his suspicion that he was carrying something other than what he was told the thing was or believed it to be was well-founded; and

(iii) the accused person deliberately refused to pursue the reasonable means of inquiry available to him because he wanted

to avoid any adverse consequences of being affixed with knowledge of the truth.

Issue 2: The Prosecution's case in respect of the Applicant's knowledge of the nature of the Drugs

99 Having set out the law on the s 18(2) presumption and the doctrine of wilful blindness in relation to the element of knowledge of the nature of the drugs, we next consider whether the Prosecution *could* have relied on the s 18(2) presumption in CCA 20/2017. There is no dispute that the Prosecution *did* rely on this presumption both at the trial and on appeal. Further, there is no dispute that the Prosecution's case on appeal was one of actual knowledge, premised on the contention that the Applicant did not in fact believe the assurances he had been given by Vinod and Jega as to the nature of the Drugs. The key point of contention is what the Prosecution's case *at the trial* was, and whether it ran its case in a way that unwittingly foreclosed recourse to the s 18(2) presumption in the light of the principles summarised at [98] above.

100 Before us, the learned Deputy Public Prosecutor ("DPP"), Mr Mohamed Faizal Mohamed Abdul Kadir SC ("Mr Faizal"), submitted that if one were to examine the entirety of the evidence, the Prosecution's case at the trial was in fact no different from the case it ran on appeal. He submitted that in the light of the suspicious circumstances surrounding the entire transaction, the Prosecution's case at the trial was in fact one of actual knowledge, and it had not accepted that the Applicant believed Vinod's and Jega's assurances as to the nature of the Drugs. On this basis, he contended that the Prosecution's reliance on the s 18(2) presumption was entirely consistent with the case advanced against the Applicant.

101 As against this, the Applicant contends that at the trial, the Prosecution did not challenge, but instead accepted, his claim that he *believed* Vinod's and Jega's assurances as to the nature of the Drugs. The Prosecution's case, the Applicant submits, was that it was *not reasonable* for him to have believed these assurances. This amounted to an implicit acceptance by the Prosecution that the Applicant did not have actual knowledge of the Drugs. The Prosecution therefore could not have invoked the s 18(2) presumption to establish a fact which it had accepted not to be true. Accordingly, the Prosecution's case at the trial was one of wilful blindness, premised on the contention that the Applicant had no reason to believe Vinod and Jega and ought not to have believed them.

102 We turn to examine the evidence and the Prosecution's submissions at the trial to determine this issue.

The Prosecution's case at the trial

The Prosecution's put questions and the Judge's clarification of the Prosecution's case

103 We begin by setting out the questions that were put by the Prosecution to the Applicant towards the end of his cross-examination, in the course of which the Judge raised a clarification with regard to the Prosecution's case. As we observed to Mr Faizal at the hearing of the present criminal motion, this extract of the record of proceedings is instructive as to the true nature of the Prosecution's case because by the end of cross-examination, a party would have crystallised its case and formed a view on how it intends to make that good.

104 The relevant put questions were as follows:

1	Q: … Mr Gobi, I put it to you that you knew the black bundle A1 contained diamorphine.

2	Q: … I put it to you that you knew this black bundle A1 contained heroin.
3	Q: … Mr Gobi, I put it to you that both black bundles, A1 and A2---that you knew both bundles, A1 and A2, contained heroin or diamorphine.
4	Q: I put it to you that by---after Deepavali of 2014 you were in desperate need for cash.
5	Q: … Mr Gobi, I suggest to you that Guru is involved in the illegal drug business as Vinod's middleman.
6	Q: I put to you that Guru introduced you to Vinod to work in the drug business.
7	Q: … I put it to you that you had no reason to trust Vinod when he told you that the drugs you were bringing in were only chocolate drugs.
8	Q: … I'm putting it to you that you did not ask Vinod whether the two black bundles you were caught with on the 11th of December contained diamorphine or heroin.
9	Q: I … put that [the] diamorphine you brought in was meant for delivery to another person. …

105 The Prosecution relied on the first three put questions to submit that its case was one of actual knowledge. We disagree. In our view, these were no more than *pro forma* put questions which were not inconsistent with the Prosecution's reliance on the s 18(2) presumption. It does not follow from the parties' and the Judge's acceptance that the s 18(2) presumption was relied on and had to be rebutted that the Prosecution's case at the trial must have been one of *actual knowledge*. This is because the legal position then was that the s 18(2) presumption encompassed the doctrine of wilful blindness (see [41(e)] and [52] above). The question is not whether the Prosecution did rely on the s 18(2) presumption. As we have already noted at [99] above, it plainly did. Rather, the question is whether that is now adjudged to be impermissible given the development of the law as regards the interplay between the s 18(2)

presumption and the doctrine of wilful blindness, which we have set out above. In this light, we consider the following two points to be especially significant:

(a) First, in the seventh put question, the Prosecution "put it to [the Applicant] that [he] had *no reason* to trust Vinod when [Vinod] told [him] that the drugs [he was] bringing in were only chocolate drugs" [emphasis added]. This seemed to be an implicit acceptance by the Prosecution that the Applicant *did* believe Vinod's representations as to the nature of the Drugs, although (as the Prosecution saw it) he *should not* have done so. If so, this was inconsistent with the case of actual knowledge that the Prosecution ran on appeal.

(b) Second, the Prosecution failed to put to the Applicant that he did not in fact believe what Vinod and Jega had told him about the nature of the Drugs. Indeed, Mr Faizal accepted that this point was never put to the Applicant in the course of cross-examination. In line with our recent observations in *Nabill* ([57(d)] *supra*) at [134], this was a point of such importance that, under the rule in *Browne v Dunn* (1893) 6 R 67, it should have been put to the Applicant so as to give him the opportunity to address it before it was advanced as a submission by the Prosecution.

106 Mr Faizal nonetheless submitted that the put questions were not representative of the Prosecution's case in its entirety. He urged us to consider the entirety of the record, including the Prosecution's opening address, closing submissions, reply submissions and the "overall tenor" of the cross-examination. In particular, he contended that the seventh put question (see [105(a)] above) should be interpreted to mean that the objective circumstances suggested that the Applicant *subjectively* did not believe Vinod's assurances as to the nature of the Drugs.

107 We are unable to accept Mr Faizal's submission, ably put though it was. This was not merely a case of the Prosecution omitting to put to the Applicant that he did not believe what he had been told by Vinod and Jega. Significantly, immediately following the seventh put question, the Judge asked the Prosecution to clarify its case:

> Ct: You said---you're---are you submitting that, well, you have no reason to believe Vinod and---
>
> DPP: Or no basis to believe Vinod.
>
> Ct: Okay, and therefore *you should not have believed him or you did not believe him*?
>
> DPP: ***You should not have believed him.*** Or you---
>
> Ct: But if he did then he did---I mean what else is there?
>
> DPP: Okay. Fair enough, I stand guided.
>
> Ct: Yes. I mean, you're going to submit to me that---I mean, I imagine you're going to submit to me that it is not true when he said---yes, one of the submission is that---I'm not sure what your submission is but in relation to the Vinod part, right, his evidence is that, 'Well, I believe what he told that it was, you know, a drug that was a very minor drug'---
>
> DPP: Yes.
>
> Ct- --'not---doesn't attract heavy punishment'. *So you are saying that, 'Well, it's not reasonable for you to believe him'.*
>
> DPP: *Yes, because he had no business, yes.*
>
> Ct: Yes, but then, reasonable or not, he believed. I mean---people---
>
> DPP: Oh, I understand.
>
> Ct: ---a lot of people---other people get cheated. There's no reason for you to be cheated but they got cheated, so---
>
> DPP: I understand, Sir.
>
> Ct: Right. So I'm not sure where it gets you.
>
> DPP: Fair---
>
> Ct: Yes.

> DPP: I understand. Agree, Your Honour. Fair enough, Sir. Point taken.
>
> [emphasis added in italics and bold italics]

108 Mr Faizal submitted that although the DPP at the trial had told the Judge that the Prosecution's case was that the Applicant "should not have believed [Vinod]", the DPP was in the midst of clarifying the Prosecution's case before the parties moved on without the matter being fully ventilated.

109 With respect, we do not accept this characterisation. As is plain from the full exchange between the DPP and the Judge, the point was fairly and squarely raised by the Judge, who was alive to the difference and its consequences. The Prosecution was given ample opportunity to clarify its position if the Judge had misunderstood it. In our judgment, it is clear when the exchange is seen in its entirety that the Prosecution's position was *not* that the Applicant *disbelieved* Vinod and Jega, but that, objectively speaking, he had *no reason to believe* them.

110 In fairness to the parties, we reiterate our earlier observation that at the time of the trial, they did not have the benefit of the guidance subsequently set out in *Adili* ([4] *supra*). In formulating the Prosecution's case, the DPP might thus have operated on the premise that actual knowledge and wilful blindness were not distinct concepts, and that the doctrine of wilful blindness was relevant in considering whether the s 18(2) presumption had been rebutted. We have now held that this is incorrect, and that wilful blindness is irrelevant in the context of the s 18(2) presumption (see [53]–[56] and [98(a)] above), which position the parties agree with. It stands to reason that the Prosecution's case at the trial should now be assessed in that light.

The Prosecution's opening address, closing submissions and reply submissions

111 We turn to consider the Prosecution's opening address, closing submissions and reply submissions at the trial (collectively, "the Submissions"). We propose to deal with this only briefly. This is because *even if* the Submissions suggest that the Prosecution's case at the trial was one of actual knowledge, the Prosecution's case must, in the final analysis, be informed by what was put to the Applicant and how the Prosecution crystallised its case at the end of the cross-examination. That said, we do not think there is anything in the Submissions which detracts from our earlier analysis.

112 The Prosecution relies on its references to "actual knowledge" and its invocation of the s 18(2) presumption in the Submissions to contend that its case at the trial was that the Applicant had actual knowledge of the nature of the Drugs. With respect, we do not place much emphasis on the Prosecution's use of the label "actual knowledge".

113 First, as we have already highlighted, the line between actual knowledge and wilful blindness (as delineated at [41(c)] and [41(d)] above) was not clearly drawn before our decision in *Adili*. It is therefore understandable that the parties (and the court) would not have been sufficiently alert to the fact that the Prosecution might have run a case that was substantively founded on wilful blindness even as it used the term "actual knowledge" in the Submissions.

114 Second, although the Prosecution put forward a number of reasons in its closing submissions at the trial in support of its contention that the Applicant had not rebutted the s 18(2) presumption, these reasons were not inconsistent with a case of wilful blindness. This too is understandable, given that the prevailing legal position at the time was that the s 18(2) presumption

encompassed the doctrine of wilful blindness. In any case, the Prosecution's first four reasons – that the Applicant knew that: (a) he was carrying drugs into Singapore; (b) the Drugs were "highly valuable"; (c) he was working for a drug syndicate; and (d) there were risks of importing drugs into Singapore – were not at all inconsistent with the Applicant's claim that he believed the Drugs were not diamorphine. The fifth reason that the Prosecution put forward was that the Applicant *ought* to have been suspicious of the highly illegal nature of the Drugs, but this points away from actual knowledge and in fact falls short even of wilful blindness. The Prosecution also submitted that the Applicant failed to make a genuine effort to allay his suspicions and was unable to substantiate his belief as to what the Drugs were. This again points to a case of wilful blindness and away from actual knowledge. Finally, the Prosecution relied on the fact that the Applicant cried during a phone conversation with Guru after his arrest. This, the Prosecution contended, gave rise to "the strong inference that the [Applicant] knew the nature of the [D]rugs … and that the game was up". With respect, only this last reason might be seen as demonstrative of the Applicant's actual knowledge that the Drugs were diamorphine, or that this, in essence, was the Prosecution's central case at the trial. Yet, we consider this a slender basis for concluding that the Applicant knew the nature of the Drugs, especially in the light of the Judge's findings as to why he cried during the aforesaid phone conversation (see *Gobi (HC)* ([1] *supra*) at [17] and [39]–[41]). The Applicant's evidence in this regard was that after he was arrested, he was instructed by the CNB officers to return a missed call from Guru. During the course of the ensuing phone call, Guru "was responding as if he did not know what [the Applicant] was saying", which "made [the Applicant] realise that something was wrong, that [was] why [he] cried". The Judge accepted the Applicant's account that he cried "because he had been arrested by the CNB officers and Guru had essentially abandoned him" (see *Gobi (HC)* at [41]). He also took into

consideration (likewise at [41]) "the backdrop of [the] impending operation on [the Applicant's] daughter for which [the Applicant] needed money" as another of the "stresses that could have operated on the mind of the [Applicant]" at that time. Significantly, in holding in *Gobi (CA)* that the Applicant had failed to rebut the s 18(2) presumption, we did not rely on the fact that he cried during his phone conversation with Guru after his arrest.

115 In the circumstances, we agree with the Applicant that the structure of the Prosecution's closing submissions indicates that its case at the trial was one of wilful blindness in substance, and that it sought to establish this *through* the s 18(2) presumption. Taken in the round, the Submissions in fact strengthen rather than detract from our view that the Prosecution's case at the trial was *not* one of actual knowledge.

116 As a final point, we note that the Judge likewise understood that the Prosecution's case was not one of actual knowledge. As we have stated at [15] above, in *Gobi (HC)*, the Judge summarised the Prosecution's case as being that "the [Applicant] *should have known* that the packets contained drugs attracting the death penalty" [emphasis added] and that the circumstances "ought to have made him highly suspicious" (at [12]). The Judge also elaborated that the Prosecution's case was that "the [Applicant] did not take sufficient steps to satisfy himself that these [drugs] were not drugs attracting the death penalty"; "[t]he [Applicant] had no basis to trust Vinod"; "[i]t was also insufficient for the [Applicant] to consult Jega"; and "the [Applicant] also had no reason to believe Jega" (at [13] and [14]). In our judgment, it was clear from this that the Judge understood the Prosecution's case to be that the Applicant *trusted* Vinod's and Jega's assurances as to the nature of the Drugs, even though he *ought not* to have done so. On the Judge's understanding, this was, at best, a case of wilful blindness.

The change in the Prosecution's case on appeal

117 For these reasons, we are satisfied that the Prosecution's case against the Applicant *at the trial* was *not* one of actual knowledge, but one of wilful blindness. On the other hand, it is undisputed that the Prosecution's case *on appeal* was one of actual knowledge, and we therefore need not examine this point further. However, the fact that there was a change in the Prosecution's case on appeal is not the end of the inquiry. Rather, we need to go further to examine whether any *prejudice* was caused to the Applicant by this.

118 This is illustrated by our decision in *Zainal* ([57(a)] *supra*). There, the two appellants were each charged with trafficking in not less than 53.64g of diamorphine. At the trial, the Prosecution's primary case against one of the appellants, "Zainal", was that the s 18(1) and s 18(2) presumptions applied (and had not been rebutted) and that the *fact of trafficking* was proved. However, on appeal, its primary case was that the *facts of possession and knowledge* were proved, and it sought to rely on the presumption of trafficking under s 17 of the MDA. We held that there was undoubtedly a change in the Prosecution's case on appeal. However, this ultimately did not cause any prejudice to Zainal, and we were satisfied that his conviction was safe on either case (at [54] and [55]).

119 Nonetheless, in *Zainal*, we alluded to the importance of the Prosecution running a consistent case so as to "give the accused a fair chance of knowing the case that is advanced against him and what evidence he has to adduce (and to what standard of proof) in order to meet that case" (at [53]). We also made similar observations in our recent decision in *Public Prosecutor v Wee Teong Boo and other appeal and another matter* [2020] 2 SLR 533 at [113], where we held that the Prosecution is not permitted to seek a conviction on a factual

premise which it has never advanced, and which it has in fact denied in its case against the accused person.

120 In the present case, the change between the case that was run by the Prosecution at the trial and the case that it ran on appeal was not a point that was raised by the Applicant. As we have noted (see [46] above), it was brought up by us, having considered the potential significance of *Adili* ([4] *supra*). Having reviewed the submissions that were made on this in response to our invitation, and in the light of the change in the legal position effected by this judgment, we are satisfied that the Prosecution's change in the case that it ran on appeal, as compared to the case that it ran at the trial, prejudiced the Applicant. According to the Applicant, Vinod had told him that the Drugs were "a mild form of drugs mixed with chocolate for [use] in discos" (see *Gobi (HC)* ([1] *supra*) at [43]) and would not attract the death penalty. He believed that this was true in the light of Jega's subsequent assurance that the Drugs were "not … very dangerous" and "should not be a problem" (see [7]–[8] above). This description of the Drugs is not compatible with being understood as a reference to diamorphine. There is also nothing to suggest that the Applicant subjectively believed the Drugs to be diamorphine. While we disbelieved the Applicant's case on this point in CCA 20/2017, that was in the context of considering whether the presumption of actual knowledge under s 18(2) had been rebutted. That conclusion can no longer stand because it is now clear that the Applicant was faced at the trial not with a case of *actual knowledge*, but with one of wilful blindness. As a result, he was never squarely confronted with the case that he did not in fact believe what he had been told by Vinod and Jega, and so could not have responded to such a case. Indeed, when the DPP at the trial was asked by the Judge to clarify the Prosecution's case, he responded that its case was that the Applicant "*should not have believed* [Vinod]" [emphasis added], and

not that the Applicant *did not in fact believe* Vinod (see [107] above). In these circumstances, it was ultimately prejudicial for the Applicant to have been faced with a case of actual knowledge on appeal, premised on the contention that he did not in fact believe the assurances he had been given by Vinod and Jega as to the nature of the Drugs.

121 Moreover, given that the Prosecution's case at the trial was run on the basis that the Applicant did *not* have actual knowledge of the nature of the Drugs but was wilfully blind in this regard, recourse to the s 18(2) presumption was foreclosed to the Prosecution (see [56] above). However, our decision on conviction in CCA 20/2017 was *premised* on the holding that the Applicant had failed to rebut the s 18(2) presumption (see [2] and [17]–[20] above). That holding can no longer form the basis of the Applicant's conviction on the capital charge. As Mr Faizal fairly accepted, if we were to find that the Prosecution's case at the trial was not one of actual knowledge but one of wilful blindness, a separate inquiry based on the framework outlined at [79] above would have to be undertaken to determine whether the Applicant was wilfully blind to the nature of the Drugs such that his conviction on the capital charge remains safe. We turn now to that inquiry.

Issue 3: The Applicant's conviction in CCA 20/2017 and consequential orders

122 As a preliminary point, both parties agreed that this matter ought not to be remitted to the Judge, given that there is no suggestion that any further evidence has to be adduced. Rather, the only thing that remains is for us to apply the applicable legal principles as regards the doctrine of wilful blindness to the evidence led by the Prosecution in support of its case at the trial. We reiterate

that the s 18(2) presumption is irrelevant to this inquiry because the Prosecution's case at the trial was not one of actual knowledge.

The Applicant's conviction in CCA 20/2017

123 Under the framework outlined at [79] above, in order to establish that the Applicant was wilfully blind to the nature of the Drugs, the Prosecution must prove beyond a reasonable doubt that:

(a) the Applicant had a clear, grounded and targeted suspicion that what he was told or led to believe about the nature of the Drugs was untrue;

(b) there were reasonable means of inquiry available to the Applicant which, if taken, would have led him to discover the truth, namely, that his suspicion that he was carrying something other than what he was told the Drugs were or believed them to be was well founded; and

(c) the Applicant deliberately refused to pursue the reasonable means of inquiry available to him because he wanted to avoid any adverse consequences of being affixed with knowledge of the truth.

124 In our judgment, the first element relating to suspicion is not made out. Here, the Applicant had made certain inquiries into the nature of the Drugs. Vinod had told him that the Drugs were a mild form of "disco drugs" mixed with chocolate and were "not serious" (see [7] above), and subsequently, when he consulted Jega, Jega had informed him that the Drugs were "not … very dangerous" and "should not be a problem" (see [8] above). On the basis of the separate assurances he had received from Vinod and Jega, the Applicant was

led to believe that this was true. As we pointed out at [120] above, the description of the Drugs did not objectively correspond to diamorphine, and there was no evidence to suggest that the Applicant subjectively understood the Drugs to be diamorphine. The Applicant had also inspected the Drugs and had observed that they looked like they had been mixed with chocolate. In these circumstances, the Prosecution had to prove beyond a reasonable doubt that the Applicant nonetheless *suspected* that he had not been apprised of the true nature of the Drugs. However, as we have noted above, this line of inquiry was not explored at the trial because the Applicant was never squarely confronted with the case that he did not in fact believe what Vinod and Jega had told him. Rather, the Prosecution's position was that it was *not reasonable* for the Applicant to have believed Vinod's and Jega's representations as to the nature of the Drugs. In our judgment, given that the Prosecution did not establish or even suggest that the Applicant in fact disbelieved what he had been told about the nature of the Drugs or suspected that what he had been told was untrue, his failure to make further inquiries amounts, at its highest, to negligence or recklessness. This is insufficient to constitute the *mens rea* of the capital charge.

125 The three requirements of wilful blindness set out at [79] above must be cumulatively established in order for a finding of wilful blindness to be made. Since the first requirement of wilful blindness is not satisfied, it is not necessary for us to consider whether the second and third requirements are made out on the evidence. We therefore find that the Applicant was not wilfully blind to the nature of the Drugs. In the circumstances, the Applicant's conviction on the capital charge cannot stand, and we set aside that conviction. We highlight the coming together of three circumstances that have led to this outcome:

(a) the nature of the case that was run by the Prosecution at the trial, which was that the Applicant was wilfully blind to the nature of the Drugs, and not that he had actual knowledge of their nature;

(b) the different case that the Prosecution ran on appeal, namely, that the Applicant had actual knowledge of the nature of the Drugs, a difference that was not pointed out by the Defence in the course of the appeal and that was likely not thought to be material by either the Prosecution or the Defence at that time, given the prevailing legal position then; and

(c) the change in the legal position in respect of the doctrine of wilful blindness that was effected by this court in *Adili* after CCA 20/2017 was decided, and that we have, in this criminal motion, decided should apply to the interplay between the s 18(2) presumption and the doctrine of wilful blindness and, specifically, the question of the Applicant's knowledge of the nature of the Drugs.

126 It is likely that if any of these three circumstances had been absent, the outcome in this criminal motion might well have been different. That the legal position may change from time to time, including as a result of case law development, is not controversial. It is generally the case that the correctness of a decision is determined by reference only to the legal position as it stood at the time of the decision. It is a reflection of the robustness of our legal framework that the court may in limited circumstances take into account subsequent changes in the legal position to reassess previously made decisions, even if they were correct at the time they were made. That is precisely what has happened in this exceptional case.

Whether the Applicant's conviction on the amended charge should be reinstated

127 We turn to consider whether the Applicant's conviction on the amended charge (as set out at [1] above) should be reinstated. We begin by noting that the parties agreed that the Applicant's conviction on the amended charge should be reinstated if his conviction on the capital charge were set aside. We further note that in CCA 20/2017, the Applicant did not appeal against the Judge's decision to convict him of the amended charge. He therefore has always accepted that his conviction on the amended charge was sound.

128 In any case, we see no grounds for refusing to reinstate the Applicant's conviction on the amended charge. We note that in *Gobi (CA)* ([2] *supra*), we referred to the "high degree of artificiality" in stating that the Applicant believed he was importing a Class C drug when he did not mention a single drug name or drug class throughout his testimony (at [50]). We remain of this view, given that "drugs mixed with chocolate for [use] in discos" (see *Gobi (HC)* ([1] *supra*) at [43]) and that would not attract the death penalty – which were the type of drugs that the Applicant believed the Drugs to be – could equally refer to a Class A drug in a quantity that does not attract the death penalty, or to Class B or Class C drugs generally. Hence, it would seem that the Applicant could also be found guilty of an offence of attempting to import a Class B drug or a Class A drug in a quantity that does not attract the death penalty.

129 As against this, where an accused person is faced with the prospect of an amended charge after being acquitted of the original charge, and where both the Prosecution and the Defence agree on what the amended charge should be, it seems to us that in the absence of special reasons, the court should be guided by the parties' views as long as that is in line with the law.

130 Here, on the Applicant's own case, he knew that the Drugs were illegal and would attract penal consequences. Accordingly, the Drugs must have been regulated under the MDA. On that premise, the court is faced with two options: the first is to convict the Applicant of attempting to import a drug that falls into a category that does not attract the death penalty; the second would be to not convict him of any amended charge at all. In our judgment, the former option ought to be taken, given that the Applicant has, on his own defence, admitted to engaging in some form of activity that would, at the minimum, involve importing a Class C drug. Notwithstanding the artificiality stated at [128] above, convicting the Applicant of the amended charge is the option that is both consonant with the admitted illegality of his actions and least prejudicial to him.

Conclusion

131 In summary, in the light of our holdings and observations in *Adili* ([4] *supra*), we find that the Prosecution's case against the Applicant at the trial was one of wilful blindness to, and not actual knowledge of, the nature of the Drugs. Accordingly, the Prosecution could not have invoked the s 18(2) presumption. In so far as our decision in CCA 20/2017 was premised on a finding that the Applicant had failed to rebut this presumption, that can no longer form the basis of his conviction on the capital charge.

132 The Applicant's conviction on the capital charge would remain safe only if the Prosecution proves beyond a reasonable doubt that he was wilfully blind to the nature of the Drugs. However, the Prosecution did not challenge the Applicant's defence that he relied on the assurances provided by Vinod and Jega, and believed that the Drugs were a mild form of "disco drugs" mixed with chocolate and would not attract the death penalty. At the trial, the Prosecution only contended that it was *not reasonable* for the Applicant to have believed

Vinod and Jega. In the absence of any suggestion that the Applicant in fact disbelieved Vinod's and Jega's assurances or suspected that their assurances were untrue, there was no duty on his part to make further inquiries, and we find that he was not wilfully blind to the nature of the Drugs.

133 For these reasons, we set aside the Applicant's conviction on the capital charge. We are also satisfied that the Applicant's conviction on the amended charge by the Judge is sound and accordingly reinstate that conviction. Finally, we reinstate the sentence of 15 years' imprisonment and ten strokes of the cane that the Judge imposed in respect of the amended charge, and backdate the sentence to the date of the Applicant's remand.

Sundaresh Menon Chief Justice	Andrew Phang Boon Leong Judge of Appeal	Judith Prakash Judge of Appeal

Tay Yong Kwang Judge of Appeal	Steven Chong Judge of Appeal

Ravi s/o Madasamy (Carson Law Chambers) for the applicant;
Mohamed Faizal Mohamed Abdul Kadir SC, Chin Jincheng and
Chong Kee En (Attorney-General's Chambers) for the respondent.