IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 50

Criminal Appeal No 28 of 2021

Between

Chong Hoon Cheong

… *Appellant*

And

Public Prosecutor

… *Respondent*

In the matter of Criminal Case No 35 of 2019

Between

Public Prosecutor

And

Chong Hoon Cheong

JUDGMENT

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

Chong Hoon Cheong
v
Public Prosecutor

[2022] SGCA 50

Court of Appeal — Criminal Appeal No 28 of 2021
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Judith Prakash JCA
4 April 2022

5 July 2022 Judgment reserved.

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

Introduction

1 It is well-established that the Prosecution always bears the legal burden of proving each and every element of an offence against an accused person charged with such offence. To this end, the *standard* of proof borne by the Prosecution is higher than that borne by the Defence – and rightfully so where life and liberty are at stake. The Prosecution must prove its case *beyond a reasonable doubt*. This also necessarily means that the Defence need only raise a *reasonable* doubt (either within the case mounted by the Prosecution or on the totality of the evidence).

2 The present appeal in CA/CCA 28/2021 ("CCA 28") raises an issue as to whether an accused person should be acquitted when the Prosecution fails to prove its primary case beyond a reasonable doubt, which it mounted based on

admissions allegedly made by the accused person in his statements, even if it is thought to have succeeded on its secondary case, which it mounted based on certain statutory presumptions which the Defence evidently failed to rebut. Because of the way that Prosecution ran its case below, a seeming tension arose between the conclusions to be drawn from the Prosecution's primary case and its *alternative* secondary case. This gave rise to the apparent dilemma that an accused person's guilt (or innocence) might hinge upon the way in which Prosecution decides to pitch its case instead of on the satisfaction of the elements of an offence under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA") as such. As we explain in our reasoning below, this dilemma could have been avoided with a proper appreciation of the approach to be taken in such cases, including with respect to how prior statements made by an accused person in the course of investigations should be assessed. CCA 28 gives us the opportunity to clarify the position and to set out the approach that should be taken in such cases.

Background

3 The appellant, Chong Hoon Cheong, claimed trial to a capital charge (the "Charge") of having in his possession for the purpose of trafficking 27 packets containing granular/powdery substances (weighing a total of 848.69g), which was analysed and found to contain a total of 25.01g of diamorphine (the "Drugs"), an offence under s 5(1)(*a*) read with s 5(2) of the MDA. The Drugs contained in the 27 packets, that were exhibited in Exhibits "A1A", "A2", "A4A" and "D1A2" were recovered from the appellant's rented room at Room 7 of 26B Hamilton Road, Singapore ("Room 7"). Under the Second Schedule to the MDA, the mandatory punishment for trafficking more than 15g of diamorphine is death.

4 It is trite that three elements must be proved beyond a reasonable doubt to make out an offence under s 5(1)(*a*) read with s 5(2) of the MDA (*Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [59]; *Zainal bin Hamad v Public Prosecutor and another appeal* [2018] 2 SLR 1119 at [49]):

(a) possession of a controlled drug ("Possession Element") – which may be proved or presumed under s 18(1) of the MDA, or deemed under s 18(4) of the MDA;

(b) knowledge of the nature of the drug ("Knowledge Element") – which may be proved or presumed under s 18(2) of the MDA; and

(c) such possession of the drug was for the purpose of trafficking which was not authorised ("Purpose Element") – which must be proved if either or both of the Possession and Knowledge Elements have been presumed, or which may otherwise be presumed under s 17 of the MDA if both the Purpose and Knowledge Elements are proved.

5 At the trial below, the Possession and Knowledge Elements of the Charge were not in dispute and were therefore proved beyond a reasonable doubt. This meant that the respondent could have relied on the statutory presumption under s 17 to establish the Purpose Element, which the appellant challenged in part in that he denied that *all* of the Drugs had been in his possession for the purposes of trafficking. Instead, the appellant alleged that he had in his possession Exhibit D1A2, which contained 14.08g of diamorphine (also known as "heroin" in English, "Bai Fen" in Mandarin and "Pei Hoon" in Hokkien), for the purpose of his personal consumption (the "Consumption Defence"). The significance of the appellant's Consumption Defence, if it is made out, is that only the remaining 10.93g of diamorphine would have been in

his possession for the purpose of trafficking – which would be well under the statutory threshold of 15g for the imposition of the mandatory death penalty.

6 At the trial below, the respondent ran two cases. The respondent's primary case was that the evidence proved, beyond a reasonable doubt, that the appellant possessed the drugs in Exhibit D1A2 for the purpose of trafficking. In support of its primary case, the respondent relied only on the appellant's statements to submit that he had essentially *admitted* that Exhibit D1A2 was meant for repacking and delivery in his statements. *In the alternative*, the respondent ran a secondary case that the appellant was presumed to have possessed not less than 25.01g of diamorphine for the purposes of trafficking under s 17(*c*) of the MDA.

7 The High Court judge (the "Judge") who tried the matter rejected the respondent's primary case, disagreeing with the respondent that the appellant's statements could sustain the weight of his conviction. The Judge held that two factors – the *possibility* of the appellant having experienced drug intoxication when making his first statement *together with* a reasonable doubt as to the *proper interpretation* of the appellant's statements – combined to raise a reasonable doubt as to the appellant's guilt: *Public Prosecutor v Chong Hoon Cheong* [2021] SGHC 211 (the "Judgment") at [74]. On that basis, the Judge concluded that the appellant had successfully discharged his burden by raising a reasonable doubt within the respondent's primary case. But stated thus, it can be argued – as the appellant argues before us at the appeal – that the Judge erred in then convicting (and consequently sentencing) the appellant on the respondent's secondary case. If the appellant had successfully raised a reasonable doubt, he contends that he should then have been acquitted instead.

8 As it turned out, because of the way the respondent ran its case at trial, the Judge was constrained to consider whether the respondent succeeded on its *secondary* case. The Judge noted that the respondent "must therefore rely on the presumption under s 17(*c*) of the MDA" to succeed in proving the Charge against the appellant (Judgment at [74]). The appellant sought to rebut the statutory presumption by relying on his Consumption Defence. This did not turn on the contents or interpretation of his statements. The Judge, after a meticulous review of the evidence in respect of the appellant's allegations, found that the appellant failed to establish his Consumption Defence (Judgment at [192]). The statutory presumption under s 17(*c*) of the MDA thus remained unrebutted and the respondent succeeded in proving the appellant's guilt beyond a reasonable doubt.

The appellant's arrest and statements

9 On 8 December 2015, officers from the Central Narcotics Bureau ("CNB") positioned themselves at about 4.10pm in the vicinity of 26B Hamilton Road acting on information pertaining to drug-related activities. At about 6.50pm, a 47-year-old Malaysian national, Eng Kok Seng ("Mr Eng") entered the door leading to 26B Hamilton Road and left at about 7.25pm. The CNB officers arrested Mr Eng at a traffic junction at about 7.35pm. The appellant knows Mr Eng as "Heng Dai".

10 The appellant too was arrested on 8 December 2015 at 7.35pm at 26B Hamilton Road. On that day, the appellant had consumed both diamorphine and methamphetamine (also known as "ice"), prior to the arrest. Upon a search by CNB officers, the following packets of granular/powdery substance were retrieved from Room 7 which were analysed and found to contain diamorphine:

Exhibit	**Description Packet / Substance**	**Amount of Substance / g**	**Amount of Diamorphine (not less than) / g**
A1A	1 "Diamond" Ziploc bag / Brown granular	217.1	6.53
A2	15 packs / Brown granular	106.9	2.52
A3	1 translucent plastic bag / Brown granular	13.87	0.29
A4A	10 packets / Brown granular	75.99	1.88
B1C1	2 packets / White granular	2.06	0.08
B1C2	2 packets / Yellow granular	13.49	0.37
B1C3	2 packets / Pink granular	10.38	0.35
B1C4	1 packet / Brown granular	2.05	0.05
B1C5A	1 aluminium foil / Some granular/powdery substance	0.27	Unquantified amount
B1D1	3 packets / Brown granular	5.93	0.15
D1A2	1 packet / Brown granular/powdery substance	448.7	14.08
Total		896.74	26.30

11 In the course of investigations, seven statements were recorded from the appellant between 8 and 16 December 2015:

(a) On the day of the arrest, Inspector Eng Chien Loong Eugene ("Insp Eng") recorded the appellant's two contemporaneous statements pursuant to s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed)

("CPC") at 9.30pm (the "First Contemporaneous Statement") and at 11.20pm respectively (and referred to collectively as the "Contemporaneous Statements"). The appellant made these Contemporaneous Statements in Hokkien, which was translated into English by Insp Eng upon recording, at Room 7.

(b) The following day, on 9 December 2015 at 5.23pm, Insp Desmond Liang Duanting ("Insp Liang") recorded a cautioned statement pursuant to s 23 of the CPC (the "Cautioned Statement"). The appellant spoke in Mandarin and this was translated by the interpreter, Mr Wong Png Leong ("Mr Wong").

(c) Inspector Liang subsequently recorded four long statements pursuant to s 22 of the CPC (the "Long Statements"). On 15 December 2015, Insp Liang recorded two long statements from the appellant at 10.54am (the "First Long Statement") and at 3.10pm (the "Second Long Statement") respectively. On 16 December 2015, Insp Liang recorded two further long statements from the appellant at 11.34am (the "Third Long Statement") and at 4.16pm (the "Fourth Long Statement") respectively. For all the Long Statements, the appellant spoke in Mandarin and these were translated by Mr Wong. Photos were shown to the appellant and appended to the Long Statements, including photos of Exhibits "A1A", "A2", "A4A" and "D1A2".

12 According to the appellant, he agreed to work for a Malaysian known to him as "Ah Kiat" in or around October 2015. The work involved the appellant collecting diamorphine, repacking it and then waiting for "people to come and collect them". This work arrangement is not disputed by the parties.

The trial

13 The trial took place over several tranches between 13 August 2019 and 2 March 2021. The respondent adduced the evidence of the relevant persons involved in the investigations. At the close of its case, the Judge found that there was a case to answer and called upon the appellant to enter his defence. Apart from relying on his own testimony, the appellant also called four other witnesses:

(a) Dr Munidasa Winslow ("Dr Winslow"), a psychiatrist who assessed the appellant for about two hours on 2 December 2019 and communicated with the appellant in Mandarin through a translator (though at times Dr Winslow and the appellant lapsed into conversing in Hokkien);

(b) Dr Ng Beng Yong, the psychiatrist who assessed the appellant sometime in 2017 and testified that the appellant was more fluent in Hokkien; and

(c) Mr Chong Cheong Chai, the appellant's older brother who could only speak in Hokkien and testified that the appellant was only "a little" conversant in Mandarin; and

(d) Josiah Teh Choon Sin ("Mr Teh"), the appellant's acquaintance who had previously consumed drugs together with the appellant in the 1980s and again in April 2003.

14 The appellant made no mention of the Consumption Defence in the Cautioned Statement. The appellant's Consumption Defence was instead first noted expressly in a medical report dated 15 July 2019 prepared by Dr Julia Lam ("Dr Lam" and "Dr Lam's Medical Report" respectively). Dr Lam's Medical Report also records the appellant saying that he consumed four to five

straws or up to a gross weight of 8g of heroin per day. However, Dr Lam was not called as a witness and her report was not formally admitted into evidence, although it is in the parties' Agreed Bundle (Judgment at [135] and [140]).

15 Relatedly, it bears emphasising that the appellant reported an ever-increasing rate of consumption from the time of his arrest to the trial (Judgment at [139] and [141]–[143]):

> (a) In December 2015, the appellant stated in the First and Third Long Statements that he consumed about half a packet of heroin (or, about 4g of heroin) each day. A full packet contains 7.8–8g of heroin.
>
> (b) In 2015, after the Long Statements were recorded, the appellant was examined by Dr Kenneth Koh ("Dr Koh") on 24, 28 and 31 December 2015. Dr Koh's medical report dated 5 January 2016 ("Dr Koh's Medical Report") records the appellant as claiming to have taken about 5 to 6g of heroin a day. The appellant, however, contended that Dr Koh inaccurately recorded the appellant's consumption rate (as 5 to 6g of heroin *per day* instead of *per consumption*) due to a miscommunication potentially arising from the appellant's lack of proficiency in speaking and understanding Mandarin.
>
> (c) Dr Winslow first examined the appellant on 2 December 2019. Dr Winslow's medical report dated 31 January 2020 ("Dr Winslow's Medical Report") records that at the "height of his addiction in 2015, prior to his arrest for the index offences," the appellant stated that he would "consume about two packs, which approximated five to six long straws (with each straw containing about five to six grams) of heroin … per day".

(d) During his evidence-in-chief in March 2020, the appellant testified that at the time of his arrest, he consumed 16–20g of heroin per day, or about two packets of 7.8–8g each. During his cross-examination in November 2020, he claimed his consumption rate was at least 20g but less than 25g of heroin per day.

16 On 13 September 2021, the Judge delivered his decision and convicted the appellant of the Charge. The parties then addressed the Judge on sentence after which the Judge sentenced the appellant to the mandatory death penalty.

The parties' cases below

17 As mentioned earlier, the Possession and Knowledge Elements of the trafficking offence were not in dispute. The only matter in dispute was the Purpose Element. The respondent's primary case at trial was that the following evidence proved, beyond a reasonable doubt, that the appellant possessed the drugs in Exhibit D1A2 for the purpose of trafficking (Judgment at [11]):

(a) the general arrangement between the appellant and Ah Kiat was that the appellant would "collect heroin from dead-drops, repack it into smaller sachets, and deliver it to another location for collection by one of Ah Kiat's men" and keep the remaining amounts after repacking this for his own consumption as stated in the Second and Third Long Statements respectively;

(b) the appellant allegedly stated in the First Contemporaneous Statement that the purpose of Exhibit D1A2 was the "same" as Exhibit A1A (meaning to "repack [this] into smaller packets and pass it to Ah Kiat's friend"); and

(c) the appellant allegedly explained that he intended to "repack" Exhibit D1A2 "into 60 smaller sachets of 'Bai Fen'" in the Fourth Long Statement with the diamorphine remaining *after* such repacking being kept for his own consumption.

We briefly elaborate on each of the points in turn, all of which also have some bearing on the appellant's Consumption Defence. To be consistent with the appellant's choice of words and for reasons elaborated at [40] below, we use the word "heroin" in this judgment to mean the granular/powdery substance containing some diamorphine and not the pure diamorphine.

18 First, the work done by the appellant for Ah Kiat is not in dispute. What was in dispute, however, is the manner of *remuneration* for the appellant's work for Ah Kiat (Judgment at [21]). The respondent relied on the appellant's Second Long Statement to contend that he had accepted Ah Kiat's offer for work because he was "in need of cash". The appellant however, maintained that his work of packing the drugs was essentially remunerated *in kind only*. The diamorphine contained in Exhibit D1A2 was, according to the appellant, the remuneration for his work done in repacking the drugs since October 2015 (Judgment at [19]). The appellant testified that for every 7.8g sachet of heroin packed, he would be paid $10 *in kind* (Judgment at [21]). The respondent's case, as we have noted, is that the appellant was remunerated *in cash* and not in kind because he had stated that he had started working for Ah Kiat because he needed cash (Judgment at [16]).

19 The second and third points above are contingent upon the respondent's interpretation of the First Contemporaneous Statement and the last sentence in para 37 of the Fourth Long Statement (the "Disputed Para 37") respectively. The appellant gave the following answers in the First Contemporaneous

Statement, which the respondent interpreted to mean that the purpose of the bundle in Exhibit D1A2 was to repack it into smaller packets, which would in turn be passed to Ah Kiat's friend:

> Q1 What is this? (recorder's note: Accused was shown 01 box containing 01 packet of brown granular substance)
>
> A1 Pei Hoon
>
> …
>
> Q4 What are you suppose to do with the Pei Hoon?
>
> A4 I am suppose to do pack it into smaller packets and wait for Ah Kiat's friend to come and collect.
>
> …
>
> Q6 What is this? (recorder's note: Accused was shown 01 blue bag containing 01 bundle of brown granular substance)
>
> A6 Pei Hoon
>
> Q7 How much is inside the blue bag?
>
> A7 1 pound
>
> Q8 Whose does it belongs to?
>
> A8 It also belongs to Ah Kiat. It was left in my room together with the earlier packet.
>
> Q9 What are you suppose to do with it?
>
> A9 *Same, repack into smaller packets and pass it to Ah Kiat's friend.*
>
> [emphasis added]

The appellant disputed the respondent's interpretation, arguing that he was under the mistaken impression that he was being asked about Exhibit A1A *and not Exhibit D1A2* (Judgment at [24]).

20 The respondent likewise interpreted "this bundle of 'Bai Fen'" in the Disputed Para 37 to mean that the appellant intended to repack the bundle in

Exhibit D1A2 into 60 smaller sachets (Judgment at [73]). Paragraphs 36 and 37 of the Fourth Long Statement state as follows:

> 36. I am shown two photographs with the marking "Photo 20" and "Photo 21" and I can recogni[s]e that this is the cabinet that is in my room near the window. I can see that there are two markings, "D" and "E" in the photos and I remember that these two are the locations where I placed one bundle of 'Bai Fen' and a safe containing all the 'Ice' respectively. *The bundle of 'Bai Fen' is about 450 grams and I think there was some small packets of Ice which were* ***meant for my own consumption*** and a packet of 100 grams of Ice in the safe.
>
> 37. I am further shown one photograph with the marking "Photo 22" and I wish to say that *the blue bag marked "DI" belongs to me*. The bundle of 'Bai Fen' marked "DIA2" was originally wrapped with some clear plastic and the bundle were kept inside the bag. About two days ago before my arrest at about 7 plus in the evening, I had placed the empty blue bag at the vicinity of the back alley at my house downstairs. At about 8 plus in the evening, 'Da Ge' had called me and told me to collect the blue bag again. I remember that there were two bundles of 'Bai Fen' for this consignment. *I had then put one bundle of 'Bai Fen' into my safe, which was later opened for the repacking into smaller sachets while I kept the other bundle of 'Bai Fen' in the bag and then into my cabinet.* I did not keep both bundles of 'Bai Fen' into the safe as the safe was too small. ***I intend to repack this bundle of 'Bai Fen' into 60 smaller sachets of 'Bai Fen' and the remaining 'Bai Fen' will be for my own consumption***.
>
> [emphasis added in italics and bold italics]

21 The appellant submitted that his recorded response in the Disputed Para 37 was given in reference to Exhibit A1A, not Exhibit D1A2. In this connection, the Fourth Long Statement does not record that "this bundle" refers to Exhibit D1A2 (Judgment at [73]). In addition, he contends that the last sentence in para 36 of the Fourth Long Statement (the "Disputed Para 36") demonstrates that the diamorphine in Exhibit D1A2 was for his own consumption (Judgment at [23]). As such, according to the appellant, the Consumption Defence was mentioned as early as 16 December 2015.

22 Apart from the interpretation of the appellant's statements, the parties also dispute the weight that should be accorded to them. The respondent took the position that the appellant's admissions in his statements that Exhibit D1A2 was meant for repacking and delivery were to be accorded "full weight" (Judgment at [14]). The appellant, however, raised two objections and contended instead that his statements should be accorded little weight (Judgment at [24]).

23 The appellant's first objection regarding the Contemporaneous Statements was that he was under heavy drug intoxication at the time, having consumed heroin and methamphetamine approximately two and four hours before the recording of the Contemporaneous Statements. While it is undisputed that the appellant consumed both diamorphine and methamphetamine prior to his arrest, the quantities of drugs consumed as well as its effect on the appellant at the time he made the Contemporaneous Statements are disputed. As to this, the respondent contended that the appellant's allegation was not credible (Judgment at [14(b)]).

24 The appellant's second objection regarding the Long Statements was that they were inaccurate because he was not proficient in Mandarin (Judgment at [26]). The respondent however maintained, based on the evidence, that the appellant was conversant in both Hokkien and Mandarin (Judgment at [14(a)]).

25 The respondent mounted a secondary case in the alternative in that the appellant is presumed to have possessed the diamorphine for the purpose of trafficking under s 17(*c*) of the MDA. Section 17(*c*) of the MDA provides that:

> **Presumption concerning trafficking**
>
> **17.** Any person who is proved to have had in his possession more than —

> …
>
> (*c*) 2 grammes of diamorphine;
>
> …
>
> whether or not contained in any substance, extract, preparation or mixture, shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

However, regardless of which case the respondent proceeds on, in order to succeed, the respondent will have to defeat the appellant's Consumption Defence.

26 In response to both the primary and the secondary case, the appellant ran the Consumption Defence. Central to this was the question of what his daily rate of consumption was. At trial, the appellant contended that he was consuming between 16 and 20g of heroin a day by the time he started working for Ah Kiat in October 2015 (Judgment at [20]; see also [15(d)] above). In support of the amounts of heroin consumed, the appellant relied on Mr Teh's evidence that the appellant used to consume heroin from a straw of "7 to 8 inch at most 10 inch per day" in the 1980s. Mr Teh and the appellant used "normal drinking straw[s]" in the 1980s and 2003. Mr Teh did not know "what was the weight per inch". Inspector Daniel Yeo Kheng Wei ("Insp Yeo"), a team leader in the Intelligence Division of the CNB and has been with the CNB for slightly over 20 years, testified that drug addicts typically consume heroin from two types of straws: a long straw about the length of a disposable lighter and a short straw which is about half the length of a long straw. These straws contain approximately 0.6–0.8g and 0.3–0.4g of heroin respectively. Dr Winslow likewise testified that *sukus* (straws which are the length of a quarter of a normal transparent drinking straw) containing about 0.2–0.3g of heroin and lighter-size straws containing 0.5–0.6g of heroin are used by drug addicts in Singapore. It may be noted that there was no necessary correlation between Mr Teh's evidence as to the length

of the straws they were using in the 1980s, the length of the straws that Insp Yeo and Dr Winslow spoke of and the amounts involved. This meant that it was not possible to gauge from Mr Teh's evidence just how much they were consuming in the 1980s just by the length of straws used.

27 Mr Teh did, however, testify that he consumed "about one packet per day" of heroin, amounting to "8.3 grams", together with the appellant in 2003, and that in 2003, the appellant and Mr Teh consumed more than they had consumed in the 1980s because of "the poor quality of heroin". Although Mr Teh was aware that the appellant was still consuming drugs in 2015, Mr Teh did not know the *quantity* consumed by that time.

28 The respondent's position is that the alleged daily rate of consumption of between 16 and 20g of heroin a day, which first appeared in Dr Lam's Medical Report approximately a month prior to the commencement of the trial (Judgment at [14(c)]), is "incredible and an afterthought" (Judgment at [15]).

Decision below

29 The Judge held that the respondent failed to prove its primary case beyond a reasonable doubt (Judgment at [74]). The Judge accepted the respondent's interpretation of the Disputed Para 37 (to mean that the appellant intended to repack the bundle in Exhibit D1A2 into 60 smaller sachets) "*on the balance of probabilities*" [emphasis in original]. The Judge, however, acknowledged that the Disputed Para 37 was "poorly worded" and concluded that there was a "reasonable doubt as to the proper interpretation of the Disputed Para 37". The Judge held that the Disputed Para 37 together with A9 of the First Contemporaneous Statement were insufficient to prove the Purpose Element in relation to Exhibit D1A2 beyond a reasonable doubt.

30 Turning to the secondary case, the Judge held that the appellant was presumed, under s 17(*c*) of the MDA, to have had all the diamorphine in his possession for the purpose of trafficking (Judgment at [75]). The onus thus was on the appellant to prove that his possession of Exhibit D1A2 was *not* for the purpose of trafficking. Turning to the Consumption Defence, the Judge considered the overall circumstances of the case, including the following factors (Judgment at [76], citing *Muhammad bin Abdullah v Public Prosecutor and another appeal* [2017] 1 SLR 427 ("*Muhammad bin Abdullah*") at [29] and [31]):

(a) the rate of drug consumption;

(b) the frequency of supply;

(c) whether the accused had the financial means to purchase the drugs for himself; and

(d) whether he had made a contrary admission in any of his statements that the whole quantity of drugs was for sale.

31 In respect of the aforementioned four factors:

(a) the Judge disbelieved the appellant's evidence at trial as to his rate of consumption of 16 to 20g of diamorphine per day, which was close to a *fivefold* increase from the alleged consumption rate he had stated in the First and Third Long Statements of half a pack of diamorphine ((or about 4g) per day (Judgment at [138], [139(a)] and [145]). He also considered that Mr Teh's evidence ultimately did not advance the appellant's case because it lacked contemporaneity with the offence (Judgment at [150]);

(b) the appellant made no submission on the frequency of supply and whether such frequency could support the appellant's alleged consumption rate of 16 to 20g of diamorphine per day;

(c) the Judge held that the appellant failed to prove that his arrangement with Ah Kiat was for him to be remunerated in kind and found that Ah Kiat remunerated him in cash which the appellant desperately needed (Judgment at [184]); and

(d) the Judge found that the appellant had admitted (on the balance of probabilities) that Exhibit D1A2 was to be repacked for Ah Kiat in the First Contemporaneous Statement (as mentioned at [29] above; see also Judgment at [78]).

32 As to the weight to be accorded to the appellants' statements, the Judge agreed with the respondent's submissions. The Judge found that any effects of drug intoxication at the time of the Contemporaneous Statements could not have been so severe as to deprive his responses of all or most of their evidential value (Judgment at [65]). Likewise, the Judge found that the appellant was likely not suffering from drug withdrawal symptoms, or at least symptoms that were so serious as to diminish the reliability of the Cautioned Statement.

33 It was common ground that the appellant consumed drugs prior to his arrest (Judgment at [9]), which the appellant stated in his Contemporaneous Statement and Long Statements. What was in dispute, however, was whether the appellant had mentioned the Consumption Defence – that he possessed *Exhibit D1A2 in particular for his personal consumption only* and not merely a general statement to the effect that he had consumed drugs at the material time. The Judge accepted the appellant's submission that the first record of the Consumption Defence is in Dr Lam's Medical Report dated 15 July 2019

(which we have referred to at [14] above) (Judgment at [135]). Quite to the contrary of the appellant's allegation that he had raised the Consumption Defence at the Disputed Para 36, the Judge was of the view that the appellant did not say that Exhibit D1A2 was meant for his personal consumption (Judgment at [132]). The Judge also found that the appellant was unable to account for his failure to raise the Consumption Defence in the Cautioned Statement (Judgment at [91]). The appellant was also unable to account for the failure to mention the Consumption Defence in his other statements. Relatedly, the Judge found that the appellant was adequately proficient in Mandarin to understand questions being put to him during the recording of the Long Statements and to express his responses accurately and completely (Judgment at [96]). On the totality of the evidence, the Judge found the Consumption Defence had been raised by the appellant on the doorstep of trial, approximately a month before trial commenced, in Dr Lam's Medical Report (Judgment at [135]–[136]).

34 Having found that the appellant had failed to establish the Consumption Defence on the balance of probabilities, the Judge concluded that the presumption of trafficking in s 17(*c*) of the MDA was not rebutted and accordingly convicted him. The Judge imposed the mandatory death penalty on the appellant (Judgment at [194]). Since the appellant was neither merely a courier nor given a certificate of substantive assistance under s 33B(2)(*b*) of the MDA, the alternative sentencing regime under s 33B of the MDA did not apply.

The parties' cases on appeal

35 The appellant appeals against his conviction and sentence. As with his case at the trial below, the appellant's case on appeal is that he possessed Exhibit D1A2 for his personal consumption only. The appellant raises two

grounds for appeal: first, the Judge erred in fact and in law in finding that he had failed to rebut the presumption under s 17(*c*) of the MDA by means of the Consumption Defence; and secondly, the Judge erred in law by resolving a reasoned doubt in favour of the respondent on the balance of probabilities.

36 The respondent's case is that the Judge did not err in his Judgment. As against the first ground of appeal, the respondent submits that the Judge was correct in his findings of fact leading to the rejection of the appellant's Consumption Defence. As to the second ground of appeal, the respondent submits that the Judge did not resolve a reasoned doubt in its favour on the balance of probabilities. Rather, once the presumption under s 17(*c*) of the MDA was operative, the *legal* burden was on the appellant to rebut this on a balance of probabilities.

Issue to be determined

37 The sole issue before us is whether the Judge erred in finding that the appellant had not established the Consumption Defence and, accordingly, whether the Judge erred in sentencing the appellant to the mandatory death penalty. We determine that issue in two parts.

38 First, we address whether the Judge erred in finding that the appellant failed to rebut the presumption under s 17(*c*) of the MDA. This deals with the appellant's first ground of appeal.

39 Second, we address the tension between the two seemingly contradictory conclusions that arose because of the problematic way in which the respondent ran its primary and secondary cases at the trial below. This directly deals with the appellant's second ground of appeal. Finally (and

relatedly), we set out some guidance as to the proper approach to be taken in respect of statements made by an accused person.

Whether the Judge erred in rejecting the Consumption Defence

The relevance of the interpretation of the appellant's statements

40 The crux of the case (and this appeal) is whether the appellant made out his Consumption Defence. At the very least, the appellant must establish his *level* of consumption at the material time. To be clear, we take his claim of consuming between 16 and 20g of *heroin* a day to mean that he consumed that quantity of the *granular/powdery substance* ***containing*** *some diamorphine*. This must be so because in the first place, a consumer of such a quantity of pure diamorphine on a single occasion would likely suffer from the consequences of severe overdose, including the possibility of death. Further, the appellant did not have pure diamorphine in Room 7, the total amount of pure diamorphine in Room 7 was not less than 26.30g, and Exhibit D1A2 contained 448.7g of a brown granular/powdery substance containing not less than 14.08g of diamorphine.

41 In that light, we begin by disentangling the sub-issue of the *preferrable meaning* of the appellant's statements in A9 of the First Contemporaneous Statement (see [19] above) and paras 36–37 of the Fourth Long Statement (see [20] above) from the main issue. In our judgment, the entirety of the debate on the meaning of these statements (especially the Disputed Para 36 and Disputed Para 37) is not material in this case. This is because, in the final analysis, the true question is whether the appellant is able to make good the Consumption Defence – regardless of whether this is viewed from the perspective of rebutting the inference that he had the Drugs in his possession for the purposes of trafficking by reason of its very large quantity or by reason of statutory

presumption under s 17(*c*) of the MDA. If the appellant is able to prove the Consumption Defence, then he must be acquitted. As the Judge correctly noted, regardless of whether the respondent proceeded on its primary or secondary case, it had to "defeat the accused's Consumption Defence" (Judgment at [13]).

42 Much ink, however, was spilled on dealing with what, in our respectful view, was a red herring. This was unsurprising because of the way that the parties argued their respective cases (see our summary at [19]–[21] above). The Judge accordingly dealt with the dispute based on how it was put before him. We elaborate on this further below. It suffices to say, here, that the determination of the case (and this appeal) does not turn on an interpretation of A9 of the Contemporaneous Statement, the Disputed Para 36 or the Disputed Para 37.

43 We therefore turn to the crux of this present appeal and consider whether the appellant established the Consumption Defence.

Whether the appellant established the Consumption Defence on a balance of probabilities

44 Having considered the parties' submissions and the evidence before us, we agree with the Judge that the appellant failed to establish the Consumption Defence. The Judgment is very detailed, and the Judge exhaustively dealt with each and every allegation raised by the appellant, and ultimately rejected the Consumption Defence with cogent reasons. We need not repeat all of the points and will focus, instead, on the key issues raised by the appellant.

Applicable legal principles to a defence of consumption

45 The legal principles applicable to a defence of consumption are not in dispute. Following *Muhammad bin Abdullah* at [29] and [31], the court must

examine the totality of the circumstances to determine whether an accused person has rebutted the statutory presumption under s 17 of the MDA. The relevant circumstances in this regard include his rate of consumption, the frequency with which he obtained his supply, his ability to afford the drugs at the alleged rate of consumption, and whether there were admissions in any of the accused person's statements that the whole quantity of drugs was for sale (see [30] above).

46 In *A Steven s/o Paul Raj v Public Prosecutor* [2022] SGCA 39, this Court recently clarified that the "key pillar and essential foundation" of a consumption defence is the *rate of consumption*. Other factors such as the accused person's financial ability to support his drug habit, how he came to be in possession of the drugs, and his possession of drug trafficking paraphernalia are secondary factors (at [25]). The reason why it is the accused person's *rate of consumption* that is *foundational* is that all secondary factors flow from it. Put another way, the accused person's rate of consumption is *necessarily* ***anterior to*** *any analysis of the secondary factors*. An accused person's rate of consumption thus serves as the logical starting point for the inquiry. To that end, it is for the accused person alleging such rate of consumption to show his rate of consumption by credible evidence (*Sulaiman bin Jumari v Public Prosecutor* [2021] 1 SLR 557 at [117]).

The appellant's rate of consumption

47 With these principles in mind, we turn to the present case. We are satisfied that the Judge did, essentially, consider the following factors in reaching his conclusion that the appellant's rate of consumption was not believable. Pertinently, the Judge found that – on the appellant's own evidence – the appellant reported a rate of consumption at the material time *that*

implausibly and dramatically increased, almost with each telling (which we mention at [15] above):

(a) In December 2015, the appellant *twice* said (at para 4 of the First Long Statement and para 25 of the Third Long Statement) that he consumed about 4g of heroin each day.

(b) Dr Koh's Medical Report, which is based on an examination of the appellant on 24, 28 and 31 December 2015, records that the appellant claimed to have consumed about 5 to 6g of heroin a day. This was an *increase of about 50%* from the rate that he had reported just a few weeks earlier.

(c) Dr Lam's Medical Report, which was completed much later, records the appellant as saying that he consumed four to five straws of heroin with a gross weight of about 8g of heroin per day. Dr Lam examined the appellant on 7 June, 13 June and 4 July 2019. However, Dr Lam's Medical Report was not formally admitted into the evidence and the Judge thus did not take it into account for this issue. Nonetheless, we note that this was about *double the quantity* he had stated when he was arrested nearly three and a half years earlier, at a point that was much closer in time to his actual consumption.

(d) Dr Winslow's Medical Report, which is based on an examination of the appellant on 2 December 2019, records the appellant stating that he would consume "about two packs, which approximated five to six long straws (with each straw containing about five to six grams) of heroin … per day" at the height of his addiction in 2015. This was *at least six times* the original claimed rate of consumption on 15 and 16 December 2015.

(e) At the trial, the appellant initially maintained, in March 2020, that at the time of his arrest, he consumed 16 to 20g of heroin per day, or about two packets of 7.8 to 8g each. This was about four to five times higher than his original claim. Towards the end of the trial, in November 2020, he claimed that his consumption rate was at least 20g but less than 25g of heroin per day. This was approaching five to six times his original claim.

48 There is no explanation for this rapidly inflating account of his rate of consumption, which inevitably means that it will be viewed with considerable doubt. The Judge meticulously analysed the evidence before him and correctly and unsurprisingly found that the appellant ***drastically shifted*** *his position on his rate of consumption at the material time* between the time of the initial Long Statements in 2015 and the time of trial starting in 2020. We agree with the Judge that, while the appellant is not expected to "recall his consumption rates with scientific precision", what was "concerning is that his alleged consumption rate increased *fivefold*" [emphasis added] over the course of the investigation and trial (Judgment at [145]). That significant discrepancy was unaccounted for at the trial below, and remains unaccounted for before us.

49 The initial rate of consumption of 4g per day, in turn, cannot possibly support the appellant's Consumption Defence. Exhibit D1A2 contained 448.7g of heroin. If the appellant possessed Exhibit D1A2 for his personal consumption only, he would have possessed *more than 112 days' worth of supply* at the time of his arrest. The appellant offered no explanation for why he would have such a large amount. In our view, it is unbelievable that a person would possess such a large supply merely for his personal consumption. It is also untenable because he could not have afforded the luxury of stockpiling such a large quantity when it was clear on the evidence and not disputed that he was in considerable

financial difficulties: see further at [54] below. Before us, the appellant nonetheless maintained that his rate of consumption is "supported by evidence" and submitted that the Judge "had erred in failing to give sufficient weight" to such evidence.

50 The appellant emphasises two points, both of which were purportedly supported by Mr Teh's testimony. First, the Judge erred in "not giving sufficient weight to the evidence of [Mr Teh] that the [a]ppellant had used normal drinking straws to store heroin in the past" which would affect the amount of heroin per straw. Second, the Judge erred in "not considering and giving sufficient weight to [Mr Teh's] evidence about the lower quality of heroin in 2003 and its impact on the consumption rate".

51 We do not accept these arguments which rest on the premise that Mr Teh's evidence is not only *relevant* but also *to be accorded significant, if not conclusive, weight*. It is clear to us that the Judge did consider Mr Teh's testimony that the appellant had used long straws in the past (Judgment at [150]) and that the quality of heroin in 2003 was poorer than that in the 1980s which caused him to consume more heroin (Judgment at [170]). Crucially, however, we agree with the Judge on both points that Mr Teh's evidence lacks contemporaneity with the appellant's rate of consumption *at the material time of the offence*. Such contemporaneity is ***particularly*** *important* in the present case given that the Consumption Defence hinges upon whether the appellant possessed Exhibit D1A2 *on 15 December 2015* for his personal consumption. Mr Teh's testimony on the appellant's drug consumption *habits* from some 12 years earlier in 2003 thus does not aid the appellant in proving his rate of drug consumption between October and December 2015 which is the material time. Mr Teh's evidence thus has little corroborative value and thus could not be relied upon in support of the appellant's Consumption Defence. It is also of

little value given the appellant's own initial statement, much closer in time to his arrest as to how much he was actually smoking at the material time. Aside from this, as we have mentioned at [26] above, there are several types of straws used for the consumption of drugs, and it was not at all clear from Mr Teh's evidence, just how much the applicant was in fact consuming in the 1980s.

52 The appellant thus failed to prove the rate of his consumption. In our judgment, the failure to do so is fatal to his case since the rate of consumption is the essential foundation of a consumption defence (see [46] above).

Ah Kiat's remuneration for the appellant's work

53 Nevertheless, for completeness, we consider the third relevant factor (see [45] above). The essence of the third factor is that the court must consider whether the accused person raising a consumption defence had the *means* necessary to acquire a sufficient quantity of drugs to support his alleged rate of consumption.

54 Exhibit D1A2 containing 448.7g of heroin would be sufficient to last him some *20 to 28 days* at a consumption rate of 16 to 20g a day. However, as we mentioned at [49] above, at a consumption rate of about 4g a day, Exhibit D1A2 would be sufficient to support the appellant for the *extensive period of 112 days*. In our view, it is inconceivable that a person so desperately in need of cash such as the appellant could possibly afford to stockpile 112 days' worth of drugs. On the appellant's own evidence, he was "in need of cash" in October 2015. In his Second Long Statement, the appellant elaborated that he was "jobless" and had "no money". Prior to working for Ah Kiat, he was doing "odd job[s]" such as "painting" and was "paid S$50/- to S$60/-". Further still, his "health was not good … due to [his] piles". The appellant also elaborated in his Fourth Long Statement that "[a]ll the money that [he] earned from drugs were

just enough for [his] rental and daily needs" such that he did not have "any savings" from drug proceeds.

55 To take the appellant's case at its very highest, we consider his claim that the heroin in Exhibit D1A2 was his remuneration *in kind* for the work he did for Ah Kiat. We begin by summarising the parties' cases before us on the appellant's remuneration. The appellant maintains that Exhibit D1A2 was in fact the remuneration *in kind* that he received for the work he had done for Ah Kiat since October 2015. The appellant submits that he was remunerated in cash for *other* work done such as collecting betting money for horseracing. As to the latter point, the appellant notes that Mr Teh was not challenged on his evidence that he knew of the appellant's involvement in horseracing activities. The appellant submits that any reference to his receiving payment in cash from Ah Kiat "was not for the repacking of heroin". For that activity, he contends "he was remunerated in heroin instead of in cash". The respondent on the other hand, submits that the Judge correctly found on the totality of the evidence that Ah Kiat had remunerated the appellant for his work in cash and not in kind. Furthermore, the appellant's own testimony as to his remuneration for each of the five consignments which he accepted from Ah Kiat was inconsistent.

56 We agree that, on the totality of the evidence, the Judge correctly found that Exhibit D1A2 could not be the appellant's remuneration in kind for the work done in relation to the repacking of heroin (Judgment at [176]–[184]). We elaborate on two key points as follows:

(a) According to the appellant's own calculation, he should have been remunerated with a total of 700g of heroin for all of the consignments. That would have translated to a market value of between $6,125 and $8,730, which would have been a significant

overcompensation, not corresponding to the remuneration that would have been due to him for the number of sachets he allegedly packed in the previous four consignments (even assuming it included the number of sachets he was supposed to pack for the latest consignment). On the appellant's own evidence, the appellant packed a total of 210 sachets over the five consignments, and was remunerated $10 per sachet packed. On this basis, the appellant was to be provided with only a total of $2,100 worth of heroin as remuneration, if he was compensated in kind. Giving him 700g of heroin as remuneration would mean overcompensating the appellant *at least threefold*.

(b) The appellant's alternative explanation that Exhibit D1A2 was remuneration for packing Exhibit A1A into 60 sachets (of which he had packed 25 in Exhibits A2 and A4A) is even more unconvincing. Exhibit A1A was a smaller package containing considerably less diamorphine than Exhibit D1A2 and it is inconceivable that he was to receive a larger quantity of drugs as his remuneration for repacking a smaller quantity of drugs. Aside from this, Exhibit D1A2 had a cost price of about $1,000. Even assuming that Exhibit D1A2 was payment upfront for repacking Exhibit A1A *only*, by his account the accused would only be entitled to $600 worth of heroin (based on $10 per sachet repacked) as remuneration. On this scenario, the appellant would have received *almost double* what would have been due to him.

57 We further add a point that cuts against the appellant's submission that Mr Teh's evidence corroborated his case. In our judgment, the mere fact that Mr Teh knew of the appellant's *involvement* in collecting horseracing moneys says nothing about whether or not he was remunerated in cash for the work he did repacking the heroin for Ah Kiat. In our judgment, these were two wholly

separate matters and Mr Teh's evidence simply does not buttress the appellant's case on how he afforded the diamorphine he claims to have consumed. In any case, the appellant testified that, from late October 2015 onwards, he only earned a total of $200 for collecting horse racing moneys for Ah Kiat.

58 We therefore conclude by affirming, on the totality of the evidence, the Judge's finding that the appellant had failed to prove his Consumption Defence. Regardless of the meaning of the appellant's First Contemporaneous Statement and Fourth Long Statement, it is evident that two key parts of the Consumption Defence – the appellant's alleged rate of consumption and his means of acquiring sufficient drugs to support such a rate – are bare assertions without any evidentiary basis. We therefore reject the appellant's first ground of appeal. We agree with the Judge that the statutory presumption under s 17(*c*) of the MDA was not rebutted and the respondent had succeeded in proving the Purpose Element beyond a reasonable doubt. Consequently, the appellant's appeal against his conviction and against his sentence fails.

Whether the Judge erred in law by resolving a reasoned doubt in favour of the respondent

59 The appellant's second ground of appeal is that the Judge erred in law by resolving a reasoned doubt in favour of the *respondent*. We have framed the issue in this way because this was how the parties framed it (see for example at [35] and [36] above). However, for the avoidance of doubt, we explain that we understood the parties to use the term "reasoned doubt" in the same way as it was used in *Public Prosecutor v GCK* [2020] 1 SLR 486 in particular at [126]-[127] and following, where this court explained the nature of the legal term "reasonable doubt", and that is certainly how we use the term in this judgment. The basis for the appellant's second ground of appeal was the way in which the Judge resolved the parties' heated but ultimately irrelevant debate over the

interpretation of the appellant's statements. In particular, the Judge accepted the *respondent's* interpretation of the Disputed Para 37 on the balance of probabilities *despite* acknowledging that it was "poorly worded" and finding a "reasonable doubt as to the proper interpretation of the Disputed Para 37" (see [29] above). There are two parts to the appellant's second ground of appeal.

The interpretation of the Disputed Para 37

60 First, the appellant submits that the Judge erred in accepting the respondent's interpretation of the Disputed Para 37 on a balance of probabilities "after he had already recognised the presence of a reasonable doubt as to the proper interpretation". The respondent on the other hand submits that the appellant's argument is "legally misconceived".

61 We do not accept either submission.

62 In our judgment, the Judge did err in his analysis at [74] of the Judgment but he was led into error because of the way in which the respondent mounted its case before him. In finding that the Disputed Para 37 could not sustain the weight of the appellant's conviction, the Judge *incorrectly concluded that the ambiguity gave rise to* "a reasonable doubt as to the ***accused's guilt***" [emphasis added in bold italics]. If there was a reasonable doubt as to the appellant's *guilt*, then the appellant would have established his case and that would be the end of the matter. It would be incongruous to then hold that the respondent had nevertheless proved its case beyond reasonable doubt, by relying upon the statutory presumption under s 17(*c*) of the MDA.

63 This gave rise to the apparent tension between two differing conclusions which we alluded to at the outset. On the one hand, the Judge held that there was a reasonable doubt as to the appellant's *guilt*. Yet, on the other hand, the

Judge also held that the statutory presumption under s 17(*c*) of the MDA was *not rebutted* and the appellant was therefore found guilty. In our judgment, the Judge erred in finding that a reasonable doubt as to the appellant's *guilt* had been made out. The Judge was mistaken in focusing on the appellant's *statements* (and, in particular, the First Contemporaneous Statement together with the Disputed Para 37) in his analysis, *to the exclusion of all other evidence*. As we mentioned at [40] above, the true question to be determined was whether, *on the totality of the evidence*, the appellant made out his Consumption Defence. Had the Judge directed his analysis to answering that question instead, the conclusion that the Purpose Element was established beyond a reasonable doubt would have been reached *regardless* of whether the respondent sought to establish its case by relying on the statutory presumption or by relying on the evidence before the court. Put simply, a consideration of the totality of the evidence should not lead to a conclusion *contrary to* the conclusion that would otherwise be reached if the Prosecution were to rely on the statutory presumption.

64 However, as we have observed, the Judge was led into error *because* of the way in which the respondent ran its case, which was essentially, to the exclusion of the other evidence, founded upon its contention that the appellant *admitted in his statements* that Exhibit D1A2 was in his possession for the purpose of trafficking. The alternative case was that the appellant was presumed to have the Drugs in his possession for the purpose of trafficking under s 17(*c*) of the MDA. In our view, the respondent needlessly complicated the case at the trial below by advancing a case of direct proof of the Purpose Element *based on the appellant's statements alone*.

65 We emphasise, as we mentioned at the hearing, that the Prosecution should seriously consider whether it even needs to run an alternative case when

it is able to rely on the presumption. In most cases, whatever evidence the Prosecution thinks it has can be mounted to counter the accused person's efforts to rebut the presumption. In the present case, the respondent was entitled to rely on the statutory presumption under s 17(*c*) of the MDA and it was unclear to us *why* the respondent ran its primary case as it did. We found this especially puzzling because, given the quantity of drugs that was involved in this case, it would seem to have been an obvious ground for asking the court to infer as a fact that such a large quantity was held by the appellant for the purpose of trafficking: see for example, *Yeo Choon Huat v Public Prosecutor* [1997] 3 SLR(R) 450 at [34]. Had this been done, the inquiry would have shifted the focus back to the Consumption Defence. Yet this was not done.

66 As Yong Pung How CJ observed in *Jusri bin Mohamed Hussain v Public Prosecutor* [1996] 2 SLR(R) 706, "it must follow from the statutory presumption in s 17 of the [MDA] that an accused found in possession of a large quantity of drugs faces an uphill task" (at [63]). The respondent could therefore have run its primary case on this basis. Unfortunately, because the respondent erroneously ran its primary case *purely on the basis of the appellant's alleged admissions in his statements*, much time was wasted in addressing that irrelevant issue.

The proper approach to interpreting statements made by an accused person

67 The appellant also submits that when dealing with questions concerning the disputed interpretation of an accused person's statements, the Prosecution must prove that ***its interpretation is correct*** *beyond a reasonable doubt*. In particular, the *interpretation* of an accused person's statement should "always be dealt with on the standard of being proved beyond a reasonable doubt", which is "independent of whether a presumption has been triggered". The

respondent on the other hand, takes the position that the Judge did not err in resolving the question on a balance of probabilities.

68 In essence, the parties urged us to resolve the issue of the *interpretation* of the appellant's statement by applying an analysis as to the *standard* of proof. We begin by reiterating our foregoing analysis which shows that the present appeal *does not turn* on the interpretation of the appellant's statement.

69 In any case, we do not accept the submissions of either party on this point. In our judgment, a question as to the *interpretation* of an accused person's statement usually cannot be answered by reference to the standard of proof. The standard of proof concerns the *legal* threshold at which the Prosecution and Defence may be said to have established its respective cases. In this context, the court will consider the statements, made by an accused person or by other witnesses, as part of the case mounted by either party. Where the ***entirety*** *of the case rests* on an accused person's statements, it may be necessary to consider exactly what was said and meant in a statement and this may then have to be determined by applying the relevant standard of proof. However, such cases would likely be rare. In the vast majority of cases, an accused person's statements will form just one *part* of the whole evidence before the court. That was precisely the case in the present appeal. When that is so, the court should first decide on the admissibility of an accused person's statements and then consider its interpretation and weight *together with* all the other evidence before it to determine whether the parties have successfully made out their cases on the applicable standards of proof.

70 What, then, is the proper approach to be adopted in interpreting statements made by an accused person? In our judgment, this is best approached in two steps. The first step is to determine the precise content of the statement

that the accused person had made (whether orally or written). In general, this can likely be more easily determined where one has the benefit of a written statement, but as we have seen, even that may not be determinative. In the appropriate case, there may be a need to consider whether a written statement, in all of the circumstances including a potential language barrier, properly records what the accused person had said at the material time. The second step is to determine the intended *meaning* of that statement. Here, the court is concerned with the ***subjective intention*** *of the statement-maker* at the time the statement was made. The inquiry is not directed at whether the statement maker currently intends to stand by what he said earlier; but at what the court thinks he meant by what he said at the time he made the statement. Although this is an inquiry into the accused person's subjective intention in making the statement, the exercise of interpretation will necessarily be undertaken from an objective perspective but taking into account the accused person's circumstances, and the words used to convey his intended meaning. If there is a reasonable doubt as to the answer in *either* step, then the court should *not rely* on that statement in determining whether the parties have successfully proved their cases on the applicable standards of proof. That is, if there is a reasonable doubt as to *either* what the accused person actually stated *or* what the accused person *intended to mean when he made such statement*, the court should not place any weight on that statement, *simply because it cannot be satisfied as to what was in fact said or meant*.

71 In the present case, we are satisfied that no reasonable doubt arose at the first step. While the appellant alleged that there were some inaccuracies in his Long Statements due to his lack of proficiency in Mandarin (see [24] above), we agree with the Judge that the appellant was sufficiently proficient in Mandarin to understand the questions being put to him during the recording of the Long Statements and to express his responses accurately and completely

(see [32] above and Judgment at [102]–[104]). The appellant may have been "more *comfortable* conversing in Hokkien" (Judgment at [98]) but that does not establish that he had difficulty understanding the questions put to him during the recording of the Long Statements or expressing his answers accurately and completely.

72 However, there is some ambiguity and hence a reasonable doubt, at the second step in respect of the Disputed Para 37. The ambiguity arises because no identification was made as to the relevant bundles which the appellant was referring to when he was speaking respectively of the drugs he was packing and of those he was consuming. The appellant, in stating his intention to "repack *this* bundle of 'Bai Fen' into 60 smaller sachets" [emphasis added], could have been referring to Exhibit A1A only. Likewise, when he spoke of "the remaining 'Bai Fen'" being for his consumption, it was not clear if this did or did not refer to Exhibit D1A2. The Disputed Para 36 is similarly ambiguous. While it was undisputed that the "bundle of 'Bai Fen'" refers to Exhibit D1A2, it is not clear whether the words "were meant for my own consumption" refers to the "small packets of Ice" *only* (as the respondent contends) or the "bundle of 'Bai Fen'" as well (as the appellant contends).

73 However, we reject the appellant's contention that, in the light of the foregoing reasonable doubts as to the appellant's intended *meaning*, the Judge ought to have "given the benefit of the doubt to the [a]ppellant" by interpreting it in his favour. Rather, the correct approach would have been simply to disregard the Disputed Paras 36 and 37 and not place any weight on it.

Conclusion

74 As to the appellant's appeal against conviction, the question is whether the appellant was able to prove his Consumption Defence. The Judge, after a

careful review of all the evidence before him, meticulously explained why each and every allegation raised by the appellant was not supported by the evidence. In our judgment, the Judge did not err in holding that the appellant failed to establish the Consumption Defence. That puts an end to the appellant's appeal.

75 To the extent the Judge erred in his analysis because he focused on the interpretation of the appellant's statements, this was not material to his ultimate conclusion. Once the Judge concluded that there was a reasonable doubt as to the meaning of the statements, he should have ignored them; and once he directed his analysis to answering the real question, that is, whether the appellant possessed Exhibit D1A2 for the purpose of consumption on the totality of the evidence, he would have concluded, as he in fact did and as we have found, that the appellant possessed Exhibit D1A2 for the purpose of *trafficking* and not for his own consumption.

76 We accordingly dismiss CCA 28. We uphold the appellant's conviction and the sentence imposed upon him.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Judith Prakash
Justice of the Court of Appeal

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