IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2023] SGCA 36

Court of Appeal / Criminal Appeal No 29 of 2022

Between

Lee Zheng Da Eddie

… *Appellant*

And

Public Prosecutor

… *Respondent*

Court of Appeal / Criminal Appeal No 30 of 2022

Between

Yap Peng Keong Darren

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

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Lee Zheng Da Eddie
v
Public Prosecutor and another appeal

[2023] SGCA 36

Court of Appeal — Criminal Appeal Nos 29 and 30 of 2022
Judith Prakash JCA, Tay Yong Kwang JCA and Belinda Ang Saw Ean JCA
4 August 2023

3 November 2023 Judgment reserved.

Belinda Ang Saw Ean JCA (delivering the judgment of the court):

1 The appellants, Lee Zheng Da Eddie ("Lee") and Yap Peng Keong, Darren ("Yap"), were jointly tried for trafficking three packets containing a total of not less than 1352.8g of granular/powdery substance, which was analysed and found to contain a total of 24.21g of diamorphine (the "Three Bundles"). Lee was charged for being in possession of the Three Bundles for the purpose of trafficking, which is an offence under s 5(1)(*a*) read with s 5(2) and punishable under s 33(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (the "MDA"). Yap was charged for trafficking by delivering the Three Bundles to Lee, which is an offence under s 5(1)(*a*) punishable under s 33(1) of the MDA. The appellants were convicted on their respective charges by the trial judge (the "Judge"). As Lee did not qualify for sentencing under the alternative regime in ss 33B(1) and 33B(2) of the MDA, the Judge imposed the mandatory sentence of death under s 33(1) read with the Second Schedule to the MDA. As

for Yap, he qualified for sentencing under the alternative regime in s 33B of the MDA and was sentenced to life imprisonment and 15 strokes of the cane, with the sentence of life imprisonment backdated to 4 July 2018. In the present appeals, Lee has appealed against his conviction and sentence in CA/CCA 29/2022 ("CCA 29"), while Yap has appealed against his sentence only in CA/CCA 30/2022 ("CCA 30"). The Judge issued his judgment in *Public Prosecutor v Lee Zheng Da Eddie and another* [2022] SGHC 199 (the "Judgment").

Factual background

2 The facts of the present case have been set out in detail by the Judge in the Judgment. We provide a brief summary as context to the appeals.

3 It is undisputed that Lee consumed drugs and trafficked drugs to earn an income at around the time of the offence. Lee would purchase drugs, such as heroin, methamphetamine and cannabis, from his suppliers who were located in Malaysia. He retained part of the drugs for his personal consumption and sold the rest to his customers in Singapore.

4 Yap was Lee's customer. Yap held a job as a private hire driver and had use of a car.

5 On 4 July 2018, Lee checked into room 2613 (the "Room") of the Pan Pacific Singapore, a hotel located at 7 Raffles Boulevard (the "Hotel"), with his girlfriend, one Nomsutham Passara ("Passara").

6 Lee arranged for Yap to collect drugs that evening. At around 5.21pm, Lee sent Yap a Telegram message, which was a screenshot of a WhatsApp conversation Lee had with one "Kelvin Mama Ws" (also referred to as

"Kelvin"). Lee does not dispute that "Kelvin Mama Ws" is the name recorded in his handphone for his drug supplier in Malaysia, and that Yap did not know this drug supplier. The screenshot sent by Lee to Yap showed a photo of a signboard stating "METALL-TREAT INDUSTRIES PTE LTD 28/30 Gul Avenue".

7 Yap understood the Telegram message (see [6] above) to mean that Lee was instructing him to proceed to 28/30 Gul Avenue to collect drugs. Further messages were exchanged between Lee and Yap over Telegram, where Yap sought to confirm the time of the collection and Lee informed Yap to collect the drugs at 8.30pm that night at 28/30 Gul Avenue.

8 Prior to the collection of drugs at 28/30 Gul Avenue, Yap and Lee met at the Hotel for Yap to collect $16,000 in cash from Lee. Yap was instructed by Lee to hand the cash to the person who would pass him the drugs at 28/30 Gul Avenue. At about 7.22pm, Lee met Yap at the lift lobby of the Hotel. They proceeded to the Room where Lee gave Yap the cash in a sealed green bag as well as a green bag for the drugs that he was to collect later that night. Yap then left the Hotel.

9 Yap drove his car to 28/30 Gul Avenue, where he waited in his car. An unidentified male motorcyclist arrived and stopped his bike next to Yap's car. Yap passed the motorcyclist the cash, and the motorcyclist threw three bundles of heroin (*ie*, the Three Bundles), each wrapped in newspaper, and two blocks of cannabis, each wrapped in transparent packaging, onto the front passenger seat of Yap's car. Yap placed these drugs inside the green bag, and proceeded to drive back to the Hotel. The Three Bundles were later analysed by the Health Sciences Authority ("HSA") and were found to collectively contain not less than

1352.8g of granular/powdery substance, which was further analysed and found to contain 24.21g of diamorphine.

10 At around 9.51pm, Yap arrived at the Hotel. After parking his car at the carpark of the Hotel and placing one block of cannabis under the front passenger seat, Yap headed up to the Room with the remaining drugs in the green bag. From the Statement of Agreed Fact dated 19 July 2021, once in the Room, Yap took out the Three Bundles and the remaining block of cannabis from the green bag, and removed the newspaper wrapping around each of the Three Bundles. Lee weighed the Three Bundles using a weighing scale on the table.

11 Shortly afterwards, officers from the Central Narcotics Bureau ("CNB") entered the Room and arrested Lee, Yap and Passara. The CNB officers seized the Three Bundles and the block of cannabis. The CNB officers searched the Room and seized drug-related paraphernalia. Later, the forensic analysis showed, *inter alia*, that the three spoons found in the Room (later marked collectively as exhibit B3B) and one of the weighing scales (later marked as exhibit B4A) were stained with diamorphine and methamphetamine, and another two weighing scales (later marked as exhibits C1A and C1B respectively) were stained with diamorphine.

12 The CNB officers also searched Yap's car, and the other block of cannabis was discovered and seized by the CNB officers (see [10] above). A white envelope labelled "$5,000", which contained cash in the amount of $800, was recovered by the CNB.

13 Five handphones, a "Samsung" tablet and a SIM card were seized from Lee. Three handphones and a SIM card were seized from Yap. These devices were forensically analysed.

The decision below

14 The Prosecution proceeded on the following charges against Lee and Yap respectively:

> That you, [Lee] … , on 4 July 2018, at about 10.10pm, at room number 2613 of Pan Pacific Singapore, located at 7 Raffles Boulevard, Singapore, did traffic in a Class 'A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by having in your possession for the purpose of trafficking, three packets containing a total of not less than 1352.8g of granular/powdery substance, which was analysed and found to contain a total of not less than 24.21g of diamorphine, without authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(*a*) read with section 5(2) and punishable under section 33(1) of the said Act, and further, upon your conviction, you may alternatively be liable to be punished under section 33B of the said Act.
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> That you, [Yap] … , on 4 July 2018, at about 10.10pm, at room number 2613 of Pan Pacific Singapore, located at 7 Raffles Boulevard, Singapore, did traffic in a Class 'A' controlled drug listed in the First Schedule to the Misuse of Drugs Act (Cap 185, 2008 Rev Ed), *to wit*, by delivering three packets containing a total of not less than 1352.8g of granular/powdery substance, which was analysed and found to contain a total of not less than 24.21g of diamorphine, to one [Lee] (NRIC No. [redacted]), without authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(l)(*a*) and punishable under section 33(1) of the said Act, and further, upon your conviction you may alternatively be liable to be punished under section 33B of the said Act.

15 The Judge found that the elements of the respective trafficking charges were proven beyond a reasonable doubt for Lee and Yap (Judgment at [91]).

Lee

16 For Lee, the Judge held that his knowing possession of the Three Bundles which contained a total of not less than 24.21g of diamorphine was not put in dispute (Judgment at [35]). The Judge also considered that Lee's

knowledge of the nature of the drug (*ie*, that he knew the Three Bundles contained diamorphine) was not in dispute (Judgment at [36]). The Judge therefore found that the elements of possession and knowledge of the trafficking charge under s 5(1)(*a*) read with s 5(2) of the MDA were proven beyond a reasonable doubt against Lee (Judgment at [37]). As for Lee's defence that he had been mistakenly supplied with twice the amount of heroin as he had ordered (the "Oversupply Defence"), the Judge deemed that it only pertained to what Lee intended to do with the excess quantity of drugs and it went toward whether he had intended to traffic only half of the quantity of diamorphine (*ie*, not less than 12.105g of diamorphine) in the charge (Judgment at [35] and [37]).

17 On the issue of whether Lee proved the Oversupply Defence on a balance of probabilities, the Judge held that (a) Lee's account lacked credibility; (b) Lee's evidence at the trial that he had called Kelvin to inform him about the oversupply of heroin and the missed call purportedly from Kelvin could not be believed; and (c) Yap's evidence did not support the Oversupply Defence.

18 As regards the credibility of Lee's Oversupply Defence, the Judge noted that Lee did not raise the Oversupply Defence in his cautioned statement recorded under s 23 of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC") or any of his subsequent investigation statements, and only raised it in the Case for Defence filed on 14 June 2021 (the "Initial CFD") (Judgment at [48] and [51]). The Initial CFD was then amended three weeks later in the Case for Defence (Amendment No 1) filed on 6 July 2021 (the "Amended CFD"). The Judge noted that while an accused person is not required to minutely detail his defence, a material fact relied on at trial must be stated in the cautioned statement or else it is less likely to be believed if it is raised for the first time at trial (Judgment at [50]). The Judge also found that Lee was not credible because he had lied about Yap being his supplier in his statements (Judgment at [49]).

Further, Lee was unable to maintain a consistent account of the Oversupply Defence (Judgment at [52]–[58]).

19 As for Lee's evidence that he called Kelvin regarding the oversupply of drugs and the purported missed call from Kelvin to Lee, the Judge was unable to accept that these supported Lee's claim that he had been oversupplied with heroin on 4 July 2018 (Judgment at [60]). Lee claimed that he had informed Kelvin in the phone call he made to Kelvin at 9.59pm on the material day that he was oversupplied with heroin. It was not disputed that Lee used Phone A9 to communicate with Kelvin on the day of his arrest. The Judge considered that, despite his reliance on the call made to Kelvin using Phone A9, Lee downplayed the significance of the Phone A9 and ultimately never gave the CNB officers the correct password that would have allowed them to unlock the phone to examine its contents (Judgment at [62]–[63]). Lee also alleged that a missed call to Phone F2 was from Kelvin. The Judge noted that Lee did not provide the password to Phone F2 and the data from Phone F2 had been automatically erased upon being switched on by the CNB officers – there was therefore no evidence aside from Lee's assertion that the missed call was from Kelvin (Judgment at [64]–[67]).

20 The Judge further held that, contrary to the submission made by the counsel for Lee, Yap's evidence did not support the Oversupply Defence. Yap's evidence was limited to the alleged oversupply of cannabis where he stated that he was told by Lee to leave one "buku" of cannabis in the car because it had been mistakenly delivered and was to be returned to someone in Bendemeer or Kallang. For the alleged oversupply of heroin, Yap did not recall Lee saying or expressing any shock or surprise that the bundles were larger than what he had ordered. Moreover, Lee's submission that the alleged oversupply of cannabis was corroborative of his claim that there was an oversupply of heroin did not

get off the ground at all because Yap himself conceded under cross-examination that he had lied that the one "buku" of cannabis left in the car was to be returned to someone in Bendemeer or Kallang – the block of cannabis was for Yap himself and Lee had told him to leave it in the car for that reason (Judgment at [71]). The Judge did not accept Yap's evidence that Lee had weighed the Three Bundles before making a phone call as corroborative of the Oversupply Defence because Yap did not know who Lee had phoned, did not hear the conversation and could not recall whether Lee had expressed any surprise as to the Three Bundles being bigger than what he had ordered when they were unwrapped (Judgment at [72]).

21 Lee therefore did not successfully rebut the presumption under s 17(*c*) of the MDA (Judgment at [82]). The Judge sentenced Lee to the mandatory death penalty pursuant to s 33(1) read with the First Schedule to the MDA.

Yap

22 For Yap, the Judge noted that his evidence was that he had agreed to collect drugs for Lee, but he did not know what type of drugs he would be collecting, nor the quantity of those drugs (Judgment at [83]). The issue was therefore whether Lee successfully rebutted the presumption under s 18(2) of the MDA in respect of knowledge of the nature of the drugs in the Three Bundles (Judgment at [84]).

23 The Judge found that Yap accepted that he did not care how much drugs he was told by Lee to collect and deliver and did not bother to check (Judgment at [85]–[86]). The Judge held that Yap did not rebut the presumption under s 18(2) of the MDA as he was wholly indifferent as to the nature of the drugs he was transporting and the trafficking charge against him was proven beyond

a reasonable doubt (Judgment at [87]–[90]). Yap was sentenced to life imprisonment and 15 strokes of the cane pursuant to s 33B(1) as he was found to be a courier and had been issued with a certificate of substantive assistance ("CSA") under s 33B(2) of the MDA.

Lee's appeal

24 In CCA 29, Lee appeals against his conviction and sentence. Counsel for Lee submits that his arguments on appeal may be summarised into two broad categories: (a) the Judge erred in dismissing the Oversupply Defence on the basis that he lacked credibility; and (b) the Judge erred in dismissing the Oversupply Defence because he failed to consider key portions of Lee's evidence. In respect of (b), counsel for Lee explained at the hearing that his case was that the Judge had wrongly rejected certain points, rather than that he had overlooked them.

25 We observe that despite the indication in the Petition of Appeal, Lee did not make any arguments on sentence in his skeletal arguments, nor at the hearing.

Yap's appeal

26 In his Petition of Appeal, Yap states that he appeals against "[his] sentence of life imprisonment [and] not conviction". Although it seems that Yap confines his appeal to his sentence only, he raises two arguments which go towards his conviction.

27 The arguments made by Yap may be summarised as follows:

(a) Arguments pertaining to sentence:

(i) The punishment imposed on an offender with no prior conviction is "too harsh and heavy".[1] Yap seeks a "fair and reasonable sentence for a first-time offender".[2]

(ii) Yap fully cooperated with the CNB in his investigative statements, and has been consistent in his statements from the time of his arrest to his oral testimony during the trial. He has also "come clean and truthful" about the events pertaining to the charge of trafficking heroin.[3]

(iii) Yap is "remorseful for his actions" and hopes that this court "can reduce his sentence to a sentence with a fixed sentence". He seeks this sentence on the basis that there were "similar case[s] which the prosecution could reduce to a non-capital charge where else the appellant is not eligible despite writing in representation to the AGC to reduce the charge". Yap refers to "cases with higher amount of drugs found and with previous conviction of trafficking" and "cases where the accused lie and did not cooperate in the investigation[s] and statements" in which the charges against the offenders were allegedly reduced to a non-capital charge. He questions why he is ineligible for a non-capital charge despite his "role pertaining to [the] charge [being] of lower culpability".[4]

(b) Arguments pertaining to conviction:

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1 POA (Yap) at para 2; Skeletal arguments (Yap) at para 4.

2 Skeletal arguments (Yap) at para 8.

3 POA (Yap) at paras 3–5; Skeletal arguments (Yap) at paras 5–7.

4 POA (Yap) at paras 7–11.

(i) Yap states that he had "no intention of trafficking this [*sic*] 3 bundle to the market".[5]

(ii) The contention raised by Yap at [(a)(iii)] above seems to go towards the basis of his conviction as well. In arguing that the Prosecution ought to have proceeded on a reduced non-capital charge, Yap disputes the very charge he was tried on and the basis for his conviction.

28 In his skeletal arguments, Yap also questions why the Prosecution did not make him any plead guilty offer at all when there are cases where the quantity of drugs involved was much higher than the quantity involved in his case but plead guilty offers had been extended to accused persons involved in such cases. He claims that he had asked the Prosecution to make a plead guilty offer before the trial, but none was forthcoming.[6]

29 We note that save for the claim that he had no intention of trafficking "to the market" (at [27(b)(i)]), Yap did not raise these arguments below.

30 At the hearing before us, Yap indicated that he had "nothing to say".[7] We therefore proceed on the basis of the arguments made in his Petition of Appeal and the skeletal arguments tendered ahead of the hearing.

Issues to be determined

31 The issues before this court are as follows.

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5 POA (Yap) at para 6.

6 Skeletal arguments (Yap) at paras 9–10.

7 NE 4 Aug 2023 at 55:3.

32 In relation to Lee's appeal in CCA 29, the key question before us is whether the Judge was correct in rejecting the Oversupply Defence. We will address the following issues arising from CCA 29:

(a) Whether the Judge was correct in finding that Lee did not prove the Oversupply Defence.

(b) Whether the Judge erred in his assessment of Lee's credibility.

(c) Whether the Judge was justified in drawing an adverse inference against Lee for not mentioning the Oversupply Defence in the cautioned statement.

(d) Whether the Judge placed too much weight on the fact that Yap's evidence did not support the Oversupply Defence.

(e) Whether the sentence imposed on Lee was manifestly excessive.

33 As for Yap's appeal in CCA 30, the main issue on appeal is whether the sentence imposed on him is manifestly excessive. For completeness, we address all the matters raised by Yap. The issues are as follows:

(a) Whether the Judge was correct in finding that Yap did not rebut the presumption under s 18(2) of the MDA.

(b) Whether Art 12(1) of the Constitution of the Republic of Singapore (2020 Rev Ed) ("the Constitution") was engaged by the exercise of prosecutorial discretion to prefer a capital charge against Yap.

(c) Whether the sentence imposed on Yap is manifestly excessive.

Our decision

34 Before we turn to the merits of the appeals, we state briefly the law on the operation of the presumptions in ss 17 and 18 of the MDA. This is relevant background to the evidentiary burden of the Prosecution in proving its case, and correspondingly, the appellants' burdens of proof in answering the cases against them.

35 It is well established that the presumptions of trafficking and possession in ss 17 and 18(1) of the MDA respectively cannot run together, because the presumption of trafficking applies only where possession is proved: *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 ("*Ramesh*") at [57]. The presumption in s 17 may only be invoked where the fact of possession and the fact of knowledge of the nature of the item possessed are proved: *Ramesh* at [58]–[59]. Conversely, reliance on the presumptions in s 18 means that the Prosecution must prove the fact of trafficking, or the fact of possession for the purpose of trafficking: *Ramesh* at [59]. When applicable, a presumption allows the court to shift the burden of proof on a particular issue completely to the accused: *Munusamy Ramarmurth v Public Prosecutor* [2023] 1 SLR 181 at [54].

36 At the trial, the Prosecution relied on the presumption of trafficking under s 17(*c*) of the MDA in its case against Lee. It relied on the presumptions of possession and knowledge under ss 18(1)(*a*) and 18(2) of the MDA in its case against Yap.

Decision on Lee's appeal

37 To recapitulate, Lee does not contest his possession and knowledge of the Three Bundles which contained the Drugs. Lee, however, claims that he was

mistakenly supplied with *twice* the amount of drugs as he had ordered (*ie*, the Oversupply Defence). The crux of the challenges brought by Lee on appeal goes toward the credibility of the Oversupply Defence.

38 To repeat, since possession and knowledge of the Three Bundles containing the Drugs were not challenged, Lee bears the legal burden of proving, the Oversupply Defence on a balance of probabilities in order to rebut the presumption under s 17(*c*) of the MDA: *Ramesh* at [44]; *Roshdi bin Abdullah Altway v Public Prosecutor and another matter* [2022] 1 SLR 535 ("*Roshdi*") at [73] and [75]. While the evidential burden generally lies on the Prosecution to adduce sufficient evidence capable of establishing the charge beyond reasonable doubt, the evidential burden in respect of certain facts may lie on the Defence in the first instance depending on the nature of his defence and the fact in issue that is raised: *Roshdi* at [75].

Whether the Judge was correct in finding that Lee did not prove the Oversupply Defence

39 In our view, the Judge was correct in finding that Lee did not prove the Oversupply Defence on a balance of probabilities.

40 The main contention brought by Lee in CCA 29 is that the Judge had not placed sufficient weight on Lee's evidence in respect of the Oversupply Defence. He submits that the Judge erred in rejecting most of Lee's evidence pertaining to the Oversupply Defence on the basis that there was insufficient corroborative evidence. First, we address counsel's characterisation of the Oversupply Defence before turning to consider each strand of evidence that Lee points to.

41 Counsel for Lee characterised the Oversupply Defence as arising out of the choice made by Lee to reveal the truth that he trafficked in half the quantity of drugs after his initial lie that exculpated him entirely. At the hearing, counsel for Lee made the submission that Lee had only been reticent in his pre-trial statements in order to maintain the "feeble and hopeless excuse" he had provided to the CNB officers when the contemporaneous statement was recorded on 4 July 2018 following his arrest.[8] It is in this connection that counsel for Lee made the argument that while he had lied initially, Lee eventually "came clean and admitted to the truth".[9] Therefore, due credence should be given to Lee's Oversupply Defence.

42 We cannot accept the narrative presented by counsel. The version of events given by Lee at the first instance amounts to a complete denial of any involvement with the heroin found in the Room. In his contemporaneous statement dated 4 July 2018, Lee denied knowledge of who the heroin belonged to, but identified Yap as having brought the heroin to the Room. He also stated in his cautioned statement of 5 July 2018 that he "len[t]" the Room to Yap for the purpose of Yap packing the drugs. The submission that this blanket denial and the incrimination of Yap as his supplier was in totality a "feeble and hopeless excuse" presented by Lee is not convincing. This is particularly since Lee knew that there was a good chance that he could exculpate himself by pinning the possession of the heroin on Yap with the story that the heroin belonged to Yap. Prior to their arrest, Lee had made arrangements with Yap to communicate on Telegram because it had the "self-destruct" function where the messages could be automatically erased[10] and he had Yap save his contact

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8 NE 4 Aug 2023 at 9:23–32.

9 NE 4 Aug 2023 at 9:30–32.

10 ROP Vol 1 at p 368 (NE 19 Oct 2021 at 99:10–30).

number as "Edison Lim".[11] Lee also thought that Yap was tailed by the CNB to the Room. Given the circumstances, Lee had likely believed that pinning the blame on Yap would allow for him to be let off the hook. He therefore sought to maintain this version of events in his later statements. Lee explained Yap's presence in the Room by stating that he had intended to purchase "packets of heroin" from Yap and Yap had asked to pack the heroin Lee had ordered in the Room.[12] During the making of his long statement on 24 August 2018, Lee was confronted with the call log showing that there was a call made by him to Kelvin on 4 July 2018 at 8.47pm, Lee then stated that Kelvin was his supplier of "ice" (*ie*, methamphetamine). The call made to Kelvin was to confirm Lee's order of "ice" which he did not eventually manage to collect due to his arrest. Lee subsequently maintained this version of events up until and including his last investigation statement recorded on 24 August 2018, where he informed the CNB that Yap had sold the heroin to him.

43 However, Lee's initial account (at [42] above) became untenable. For the committal hearing on 13 January 2020, the Prosecution extended copies of *inter alia* the statements of Lee and Yap, and telephone company records for some of the phones seized, to both defence counsel. As it turned out, the Prosecution was also able to obtain some of the messages between Lee and Yap from Yap's phone. These messages included Lee sending Yap the details regarding the pickup of the drugs at Gul Avenue on the evening of 4 July 2018. The messages were annexed to the statement recorded from Yap on 23 August 2018, and a copy of this statement was extended to counsel for Lee at the time as part of the committal hearing bundle. These records and messages exposed

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11 ROP Vol 4 at p 1441 (Statement recorded from Yap on 23 August 2018 at para 117).

12 ROP Vol 5 at pp 1674 – 1675 (Statement recorded from Lee on 15 July 2018 at paras 31 – 33).

Lee's lie and rendered his initial position that Yap was his supplier and that the heroin belonged to Yap unsustainable. In our view that was the real reason for the switch in Lee's story and his subsequent disclosure and reliance on the Oversupply Defence. Although counsel for Lee argued that Lee stated his defence at the "first appropriate opportunity" in the Initial CFD,[13] in light of the stance taken in his statements (see [42] above) and from his silence up until that point, it may instead be concluded that he perpetuated the initial lie that Yap had been his supplier of heroin for close to three years.

44 We turn now to the objective evidence relied on by Lee to buttress the Oversupply Defence. First, Lee relies on the phone record from Phone A9 where there was an outgoing call spanning three minutes and 41 seconds to Kelvin at 9.59pm on 4 July 2018. The fact that the outgoing call to Kelvin was made is not in dispute. Lee claims that it was during this phone call that he informed Kelvin that he had been supplied with more drugs than he had actually ordered. In this connection, counsel for Lee submits that the missed call received in another one of Lee's phones at 2.56pm on 5 July 2018, Phone F2, would have been from Kelvin to arrange for the return of the excess drugs. Lee contends that the call records are corroborative of his evidence that he had been discussing arrangements as to the return of the oversupply of heroin to Kelvin. Further, in his submission, there is no evidence that contradicts this account. Lee also makes the point that "one could not reasonably expect [him] to provide any more evidence apart from stating what he recalled of that conversation".[14]

45 Like the Judge, we do not accept Lee's submission that the call records corroborate the Oversupply Defence, or that the Prosecution ought to have

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13 NE 4 Aug 2023 at 11:13.

14 Skeletal Argument (Lee) at para 41.

offered any alternative explanation for the call and elicited evidence from the others present (*ie*, Yap and Lee's then-girlfriend, Passara). In our view, the phone call made by Lee to his supplier, Kelvin, at 9.59pm on 4 July 2018 may have been made for any number of possible reasons. As we have emphasised at [38] above, the onus is on Lee to prove the Oversupply Defence on a balance of probabilities. It cannot be that the burden of proof shifts to the Prosecution to disprove Lee's account of the contents of the call on his unsubstantiated assertion of what was said in the phone conversation alone. It is also significant that despite his acknowledgment that the usual manner in which he placed orders with his supplier Kelvin was through a mix of phone calls and messages on the messaging platforms, WhatsApp and Telegram, Lee did not provide the CNB with the password to Phone A9 which was used to communicate with Kelvin. Given the nature of the Oversupply Defence it must have occurred to Lee that the rational and sensible thing to do was to disclose the correct password to Phone A9 to the CNB. That disclosure would have allowed the CNB to retrieve any possible message or call logs between himself and Kelvin on the quantum of drugs he had ordered for the delivery on 4 July 2018. Indeed, Lee's position at the trial was that he had done so. The evidence does not, however, support an inference that proper disclosure was made.

46 During the trial, following an opportunity for Lee and his counsel to examine Phone A9, counsel for Lee informed the court that his instructions were that Lee had given the password that he could recall for Phone A9, and if there was another password, he did not remember it. Lee was relying on the fact that during the investigations, he had provided the password "elzd" to a CNB officer, Deputy Superintendent Taufiq Abdul Azim bin Mohamed Azmai ("DSP Taufiq") on 5 July 2018, and later provided the same password in his statement

recorded on 11 July 2018 (the "11 July Statement"). However, this password did not unlock Phone A9.

47 It appears that Lee was not informed that the CNB was unable to unlock Phone A9 with the password he had provided until the trial. Even after learning at the trial that the password he provided to the CNB for Phone A9 was incorrect, Lee maintained his account that he had believed "elzd" to be the correct password for his phones, including A9. As for Phone F2, which is relevant as Kelvin left a missed call on that device on 5 July 2018, Lee informed the CNB that he was unable to remember the password for the phone in the 11 July Statement. When he was cross-examined on this, Lee admitted that it was a lie.

48 On the totality of the evidence provided by Lee on the passwords to the phones, we find it difficult to accept that he had genuinely believed the password for Phone A9 to be "elzd". Instead, this assertion appears to be a consistent attempt by Lee to prevent the CNB from accessing the phones to retrieve any communication logs between himself and Kelvin. That Lee only became aware at the trial that the CNB could not unlock Phone A9 with the password he had provided is immaterial to his case – it is clear that even at the point of being confronted with this at the trial, Lee did not offer up any other password to unlock the phone and maintained that he had thought that the password to his phones must have been "elzd". The submission that he had been deprived of the opportunity to unlock Phone A9 with other passwords at the material time of the investigations therefore rings hollow. There is no evidence to show that Lee had any other passwords he would offer up to the CNB to unlock Phone A9 during the course of investigations. This is at odds with the position Lee takes on the Oversupply Defence, particularly since it would be beneficial to Lee to retrieve the contents of the phones in order to prove his

version of events. The nature and quality of the phone records therefore do not serve as corroboration of the Oversupply Defence and there is no shift of the evidential burden of proof to the Prosecution to refute Lee's account of what had transpired in the phone call made to Kelvin on 4 July 2018.

49 Second, at the hearing, counsel for Lee submitted that the Oversupply Defence as set out in the Amended CFD in respect of the assertion that Kelvin was going to take back the excess diamorphine at a spot in either the Bendemeer or Kallang area was consistent with Yap's evidence at the trial that he was to deliver/return one block of cannabis to some unnamed person at the Bendemeer or Kallang area. It appears that counsel made this point in order to show that the location furnished by Lee in his Amended CFD and the alleged oversupply of heroin to him are materially corroborated by Yap's account on the delivery/return of one block of cannabis to the Bendemeer or Kallang area.

50 We are of the view that the significance of this should not be overstated, and the basis for the purported similarity must be examined. To begin, it is unclear why Lee had only furnished certain details, including the location where the purported return of the excess drugs was to take place, in the Amended CFD, which was filed three weeks after the Initial CFD. When confronted at the trial, Lee explained that he could not remember the reason for this position only being disclosed in the amendment, and postulated that he could have misspoken or that his counsel misunderstood. This explanation is hardly satisfactory. It is clear, however, that Lee would have already had sight of the statements made by Yap to the CNB on the date he filed the Initial CFD. The investigative statements were disclosed to their respective counsel in January 2020 as part of the committal hearing process (see [43] above). In Yap's statement recorded on 11 July 2018, he stated that after he informed Lee that he had arrived at the Hotel, Lee asked for him to leave one block of cannabis in the car as Lee wanted

him to "deliver it to another person" at either "Bendemeer or Kallang area".[15] But, Lee had not made any mention of the Oversupply Defence, or the location of Bendemeer or Kallang at any point prior to the Amended CFD.

51 As it subsequently turned out, Yap gave different versions of the evidence at different times. He initially stated in his statement that the one block of cannabis left in his car was to be delivered later to another person at either the Bendemeer or Kallang area. Despite there being some insistence on the use of the word "return" by Yap at the trial, he acknowledged in cross-examination that he had not told the recording officer that the one block of cannabis was to be returned. Later in cross-examination, Yap conceded that it could not have been true that Lee had told him on his arrival at the Hotel to leave one block of cannabis in the car as there were no other communications between them after Yap sent Lee a Telegram message stating that he was "down" and he had lied in his statement on 11 July 2018.[16] He then admitted at the trial that his evidence that the block of cannabis found in his car was to be delivered/returned to the Bendemeer or Kallang area was a lie. The block of cannabis in his car was meant for his own consumption. This admission is consistent with a Telegram message stating "125 and 1book" on 2 July 2018[17] in a chat between Yap and Lee.[18] Yap explained in his statement recorded on 23 August 2018 that "125" meant "125 grams of ice" and "1book" referred to "1 kilogram of cannabis" (*ie*, one block of cannabis).[19] Yap's admission undermines Lee's reliance on Yap's earlier

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15 ROP Vol 4 at p 1394 (Statement recorded from Yap dated 11 July 2018 at para 60).

16 ROP Vol 2 at p 670 (NE 1 Nov 2021 at 27:1–20 and 28–32).

17 ROP Vol 4 at p 1451.

18 NE 4 Aug 2023 at 60:21–30.

19 ROP Vol 4 at p 1441 (Statement recorded from Yap dated 23 August 2018 at para 116).

account on the delivery/return of one block of cannabis to the Bendemeer or Kallang area as evidence that materially corroborated his Oversupply Defence. Therefore, there is nothing beyond the mere call records to aid Lee in discharging his evidential burden to establish his version of the Oversupply Defence and prove the existence of factual evidence in his case that would enable him to rely squarely on the decision in *Ramesh*.

52 Third, Lee has not proven the truth of his story that he had ordered three half-pound packets of heroin for three customers, namely, King, Low and Hang. This contention was raised only at the trial, and it was not present in his Amended CFD. There is no evidence that these three customers had each ordered half a pound of diamorphine. As we have explained, it is for Lee to prove on a balance of probabilities the Oversupply Defence and the facts he relies on to buttress it.

53 Finally, Lee makes the argument that he would not have trafficked in the quantity of drugs supplied as he was intending to plead guilty to another drug consumption charge shortly after the date of the delivery of the drugs, on 10 July 2018. We have difficulty accepting this point. While there was a plead guilty mention fixed for 10 July 2018, without more corroboration of his intention, his contention is rhetorical and self-serving. In any case, even if he had intended to plead guilty to the drug consumption charge, this does not support or corroborate the Oversupply Defence. Whether Lee intended to plead guilty shortly after the receipt of the drugs on 4 July 2018 is a matter that is independent of whether Lee had in fact ordered the entire quantum of drugs for trafficking to the market.

54 Apart from the lack of corroboration of the Oversupply Defence, there is a key strand of evidence that undermines it. It is telling that there has been no attempt to account for this in Lee's case on appeal.

55 In our view, it is significant that the amount of cash Lee had directed Yap to hand over on delivery was commensurate with the value of the amount of drugs collected. The Prosecution adduced evidence at the trial of the prevailing market price of the drugs and the actual amount transacted. The CNB officer Inspector Tan Kheng Chuan ("Insp Tan") testified that the $16,000 in cash that Lee passed to Yap for the purpose of paying for the drugs was consistent with Lee having ordered and received three one-pound packets of heroin from Kelvin. According to Insp Tan, the price of three pounds of heroin and two kilograms of cannabis in 2018 (*ie*, what was collected by Yap) would have been in the range of $10,000 to $16,000. This is consistent with the fact that Lee had asked Yap to pass $16,000 cash to the motorcyclist who delivered the drugs to him.

56 Although Lee tried to explain at the trial how he could have paid $16,000 for the one and a half pounds of heroin and one kilogram of cannabis (*ie*, half the amount of drugs actually collected), he was ultimately unable to offer any reasonable explanation for this. Lee first explained that drug prices fluctuated widely and could be out of the range quoted by the expert. Subsequently, upon realising that that explanation could not account for the large difference in price (twice the amount), Lee then alleged that of the cash of $16,000, only $8,000 was meant as payment for the transaction on 4 July 2018, while the remaining $8,000 was payment for his previous order. Initially, Lee repeated this position in cross-examination. Later in the cross-examination, however, Lee claimed that a portion of the $8,000 was "rolled over" from a "previous, previous

order".[20] The shifting stance taken by Lee in his explanations to account for the mismatch in the amount of cash he instructed Yap to pay for the drugs and the quantum alleged in the Oversupply Defence is indicative of the defence being made up.

57 We therefore uphold the Judge's finding that Lee did not prove the Oversupply Defence on a balance of probabilities.

Whether the Judge erred in his assessment of Lee's credibility

58 One plank of Lee's arguments on appeal is that in coming to his conclusion that Lee was not a credible witness, the Judge had placed excessive weight on the fact that Lee was not forthcoming in his pre-trial statements. Lee urges this court to take into account the inner turmoil that a young person might face when experiencing the prospect of the capital punishment. In this connection, Lee also submits that the Judge placed insufficient weight on the fact that he came clean eventually. Lee takes the position that the totality of the circumstances show that his credibility has been redeemed and the veracity of his testimony at the trial should therefore not be affected.

59 Given our reasons for dismissing the Oversupply Defence (see [39]–[58] above), this submission by counsel does not come to Lee's aid in his case on appeal. While the narrative counsel seeks to persuade us to adopt paints Lee as eventually revealing the truth in his account of the Oversupply Defence, this characterisation must be premised on the Oversupply Defence being established on a balance of probabilities. We agree with the Judge's assessment of the

[20] ROP Vol 1 at pp 343 to 344 (NE 19 Oct 2021 at 74:24–75:4).

credibility of Lee based on the inconsistencies in the various versions provided by Lee on the events that transpired on 4 July 2018.

60 Another argument Lee mounts in this respect is that there are facts in his Amended CFD which correspond to certain factual or undisputed evidence and the Judge was wrong to consider that these facts were introduced by Lee to make the Oversupply Defence more believable. Lee contends that if the information provided turned out to be factual, the fact of delayed disclosure should not affect his credibility. He relies on the observation of this Court in *Ramesh* that the court "should not shut its mind to any defence which is reasonably available on the evidence, even where that defence is (in some respects) inconsistent with the accused person's own narrative". Thus, given that Lee provided a defence that is reasonably viable on the evidence, the court ought not to shut its mind to Lee's defence. At the hearing, counsel sought to convince us that the amendment of the Initial CFD to include that Lee had weighed the Three Bundles and the block of cannabis using a weighing scale in the Amended CFD was an amendment that tended towards Lee "getting the facts right" because it came into the Statement of Agreed Facts.[21] In counsel's submission, the amendment should therefore not be held against Lee.

61 The point is that Lee has not shown that the Oversupply Defence is reasonably viable on the evidence. Even if he has stated in his Amended CFD that he weighed the Three Bundles, this does not go towards *proving* the Oversupply Defence. Ultimately, even if it is undisputed that Lee weighed the Three Bundles, this is a long way from discharging the burden of proof in alleging that Lee discovered that an excess quantity of drugs had been delivered.

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[21] NE 4 Aug 2023 at 17:1–21 and 18:1–2.

Also absent is any corroborative evidence of the orders allegedly made by his three customers.

62 Moreover, Lee raised the Oversupply Defence belatedly. This is significant because the credibility of the Oversupply Defence is called into question with its omission from Lee's cautioned statement and its delayed presentation. We will touch on the effect of this omission pursuant to s 261 of the CPC below.

63 We deal first with the two explanations proffered by Lee to account for the delay in furnishing the Oversupply Defence.

64 The first explanation is that Lee laboured under the belief that he would have faced a capital charge under the MDA regardless of whether he had trafficked in one and a half pounds or three pounds of drugs. At the hearing, counsel for Lee stated that this belief led Lee to think that the fact that he had ordered less drugs was irrelevant because he did not think it would have made a difference. He directed us to the evidence of DSP Taufiq who testified that three half-pound bundles of diamorphine would have crossed the capital threshold rate for the seized exhibits to be classified as a capital case in 2018.

65 In our view, it is simply not believable that Lee would not have presented the Oversupply Defence at an earlier juncture on the basis that he had thought that it would have made no difference to his case. He was given multiple opportunities to do so in his statements to the CNB and in his recollection of the events to his psychiatrist from the Institute for Mental Health. The paucity of explanation for the delay in raising the Oversupply Defence renders the lapse of time concerning. As for DSP Taufiq's testimony, this must be seen in context –

this testimony pertained to CNB's guidelines on *classifying* capital cases in 2018. The relevant portion of his testimony is extracted below for reference:[22]

> Q Okay, moving on to another area. Now earlier in these proceedings, there was an issue where the HSA analyst said that for 5% of the capital cases, half-pound bundles were submitted to HSA for analysis. Now, I would like you to clarify if the arresting team had seized a single half-pound bundle of diamorphine, would it have been classified as a capital case under CNB's guidelines in 2018?
>
> A No, Your Honour.
>
> Q So it is reasonable to say that there must be more than one half-pound bundle to be classified as a capital case?
>
> A I would say it's two half-pound bundle and above.
>
> Q For CNB to classify it as a capital case?
>
> A Yes, Your Honour.
>
> …
>
> Q So in 2018, if it had been three half-pound bundles of diamorphine, would it have crossed the capital threshold rate for the seized exhibits to be classified as a capital case?
>
> A Three half-pound bundle, yes.

The parameters used by the CNB in the initial classification of the nature of the case are distinct from the eventual classification of the case as capital or non-capital after investigations, which factors in the results of the drug analysis by the HSA. This does not provide justification for Lee's alleged mistake that trafficking three half-pound bundles of heroin would necessarily attract capital punishment.

66 As for the second explanation, counsel for Lee argued at the hearing that Lee's omission of the Oversupply Defence in his recollection of the events to

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22 ROP Vol 1 at pp 226–227 (NE 12 Oct 2021 at 56:23–57:7.)

the CNB may be explained by Lee's "drug-addled" mind.[23] To substantiate his point, counsel relied on Lee's urine drug analysis report which stated that Lee was found to have consumed monoacetylmorphine, methamphetamine and nimetazepam. We cannot accept this submission. Although the urine drug analysis report constitutes evidence that Lee had consumed these drugs, this is not equivalent to evidence that these drugs had any effect on his faculties when he provided his contemporaneous statement on 4 July 2018 or on the next day. Indeed, in response to our query as to whether there was any evidence of the effect of the drug consumption, counsel for Lee accepted that there was no medical evidence to show that the drugs would have had any impact on Lee's capacity to take action and recount what had happened. He eventually conceded this point. We therefore say no more on this submission.

Whether the Judge was justified in drawing an adverse inference against Lee for his omission of the Oversupply Defence from cautioned statement

67 We turn next to the significance of the omission of the Oversupply Defence from the cautioned statement. The Judge considered Lee's omission of the Oversupply Defence from his cautioned statement to have undermined the credibility of the Oversupply Defence (see [18] above).

68 Counsel for Lee contended that this was incorrect because it ought to be understood in the context of how the events transpired. In his submission, it ought to be recalled that while Lee had wrongly committed to the position that Yap was the drug supplier in his contemporaneous statement and maintained this throughout his statements, he later came clean about his involvement as a drug trafficker and stated the Oversupply Defence once he was required to state his Case for Defence.

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[23] NE 4 Aug 2023 at 22:22.

69 We consider the Judge amply justified in drawing an adverse inference against Lee for his omission of the Oversupply Defence from his cautioned statement. It is trite that adverse inferences may be drawn from the accused person's failure to mention any fact or matter relevant to his defence in his cautioned statement: s 261 of the CPC; see also *Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 at [17]. Before a cautioned statement is recorded, the accused person is served with a notice informing him that any failure to mention any fact or matter in his defence at that juncture may result in a negative effect on his case in court pursuant to s 23(1) CPC. This notice was administered to Lee prior to the recording of the cautioned statement. It is clear on the face of the cautioned statement that Lee did not raise the Oversupply Defence. Instead, he ran a defence that pushed the blame on Yap. Therefore, there are no countervailing considerations that would weigh against drawing an adverse inference against Lee for his omission of the Oversupply Defence in his cautioned statement. We have rejected the explanations he provided for the delay in furnishing the Oversupply Defence (see [63]–[66] above).

Whether the Judge placed too much weight on the fact that Yap's evidence did not support the Oversupply Defence

70 The reasons we set out above are sufficient to dismiss Lee's appeal in CCA 29. For completeness, we deal briefly with the submission that the Judge placed too much weight on the fact that Yap's evidence did not support the Oversupply Defence.

71 We point out that the Judge addressed Yap's evidence in the manner he had because Lee sought to rely on Yap's evidence to buttress his case on the Oversupply Defence in his closing submissions at the trial. Contrary to Lee's submissions in the appeal, the Judge did not place undue weight on the fact that

Yap's evidence did not support the Oversupply Defence. Rather, the Judge found Yap's evidence that he did not hear the conversation in the phone call made by Lee to Kelvin and that he could not recall whether Lee was shocked by the quantity of heroin received to be of no assistance to Lee. This is not plainly wrong, nor against the weight of evidence.

Lee's sentence

72 As we have observed earlier (see [24] above), Lee makes no arguments on the sentence imposed on him. Given that Lee appeals against his sentence in his Petition of Appeal, we deal with the issue briefly. Pursuant to s 33(1) of the MDA read with its Second Schedule, the mandatory punishment prescribed for trafficking more than 15g of diamorphine under s 5(1) of the MDA is death. Lee did not qualify for the alternative sentencing regime under s 33B(1) of the MDA. The Judge therefore did not err in imposing the mandatory sentence of death on Lee.

73 We therefore dismiss Lee's appeal in CCA 29.

Decision on Yap's appeal

74 We turn now to Yap's appeal in CCA 30. Although Yap confines his appeal to sentence in his Petition of Appeal, two of the contentions he raises pertain to conviction (summarised at [27(b)] above). We address below the arguments going towards conviction as well.

Whether the Judge was correct in finding that Yap did not rebut the presumption under s 18(2) of the MDA

75 We begin first by interpreting his statement that he has "no intention of trafficking this [*sic*] 3 bundle[s] *to the market*" in his skeletal arguments

[emphasis added]. On close reading, this is consistent with Yap's position at the trial that his role was limited to transporting the Three Bundles to Lee and consequently does not go towards disputing the *mens rea* element of the trafficking charge. In Yap's cautioned statement recorded under s 23 of the CPC dated 5 July 2018 at 10.07pm, he stated as follows:[24]

> It does not belong to me. I am just purely the courier, transporting the 3 packets of heroin under the instigation of Eddie [*ie*, Lee] with beneficial gains for myself. I hope that I will be given leniency to this charge. *I did not have any intention to repack and distribute back into the market*, together with Eddie [*ie*, Lee].
>
> [emphasis added]

76 It may be seen from the comparison between the language Yap adopts in his Petition of Appeal and in his cautioned statement that he denies trafficking *to the market*. In other words, he reiterates on appeal that his role is limited to that of a courier. The fact that he is a courier is not disputed in this appeal.

77 For completeness, however, we consider also the other interpretation of Yap's statement that he did not have the intention of trafficking the drugs.

78 At the trial, Yap took the position that he knew he was transporting drugs for Lee, but was ignorant as to the nature of the drugs that he was transporting. Despite his lack of knowledge, Yap did not elect to check the Three Bundles. He testified as follows:[25]

> Q But for the newspaper-wrapped bundles, that's the mystery bundles, right? What do you think it was?
>
> A What do you think --- I don't know. I never ---

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24 ROP Vol 4 at p 1338.

25 ROP Vol 2 at p 675 (Transcript (1 Nov 2021) at p 32 lines 7–25).

> Q I'm asking you what do you think these three bundles wrapped with newspaper were.
>
> A Drugs, obviously drugs but I don't know what is inside.
>
> …
>
> Q Did you or did you not open the newspaper to check what drugs was inside? [*sic*]
>
> A No.
>
> Q Why not? You have every opportunity to check. You know you are ferrying drugs, why wouldn't you open the newspaper to check what exactly it is?
>
> A I didn't thought [*sic*] of it to check, I just know that whatever I receive, I tell him , that's all.

79 A mere assertion by an accused person that he is ignorant as to the nature of the drug found in his possession cannot suffice to rebut the presumption in s 18(2) of the MDA: *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*") at [65]. Yap's position that he did not check the Three Bundles is not believable. On his own evidence, Yap stated that Lee asked for him to "check what [he] received" and he told him that there were "three bundles of things and two blocks of cannabis.[26] He later also agreed that the logical thing for him to have done was to check the drugs, call Lee and then place them in the green bag before driving off. That Yap knew that he was transporting drugs but did not endeavour to check its contents amounts to indifference as to the nature of the drugs, and he therefore harboured no positive belief as to what was contained in the Three Bundles and cannot rebut the presumption under s 18(2) of the MDA. The Judge therefore was correct in finding that Yap did not successfully rebut the presumption of knowledge under s 18(2) of the MDA.

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[26] ROP Vol 2 at p 684 (Transcript (1 Nov 2021) at p 41 lines 14–30).

Whether Art 12(1) was engaged by the exercise of prosecutorial discretion to prefer a capital charge against Yap

80 As for Yap's argument that the Prosecution ought to have proceeded on a reduced non-capital charge, this argument is a non-starter. Pursuant to Art 35(8) of the Constitution, the Prosecution has the power to institute and conduct any proceedings for any offence at its discretion. It is settled law that the exercise of the prosecutorial discretion under Art 35(8) is subject to judicial review on two grounds, *viz*: (i) abuse of power (*ie*, an exercise of power in bad faith for an extraneous purpose); and (ii) breach of constitutional rights: *Yong Vui Kong v Public Prosecutor* [2012] 2 SLR 872 ("*Yong Vui Kong*") at [17].

81 In the present case, Yap's submission that there are other offenders who are similarly situated for whom the Prosecution reduced their capital charges to non-capital charges is equivalent to an argument mounting an Art 12(1) challenge. In the context of the exercise of prosecutorial discretion, Art 12(1) requires that the Prosecution must give unbiased consideration to every offender and must avoid taking into account any irrelevant considerations to ensure that like cases are treated alike: *Yong Vui Kong* at [17(c)]. As Yap has not pointed to any specific case and it is clear that his co-accused, Lee, was charged with the same charge, there is no basis to argue that the Prosecution had breached his Art 12(1) rights in preferring and maintaining the trafficking charge against him. Yap's conviction cannot, therefore, be disturbed.

Yap's mandatory sentence

82 For completeness, we turn to Yap's submission that his sentence is manifestly excessive (see [27(a)] above). There is no legal basis for this submission. In Yap's case, the Judge exercised his discretion under s 33B(1)(*a*) of the MDA to not impose the death penalty for the trafficking charge against

Yap as he satisfied the conditions under s 33B(2) of the MDA: his role was restricted to that of a courier and he was issued a CSA for assisting the CNB.[27] The Judge sentenced Yap to the mandatory life imprisonment and 15 strokes of the cane.

83 There is therefore no merit in Yap's appeal in CCA 30.

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27 Minute sheet for HC/CC 52/2021 dated 24 August 2022.

Conclusion

84 We dismiss the appeals in CCA 29 and CCA 30.

Judith Prakash
Justice of the Court of Appeal

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Abraham Vergis SC and Loo Yinglin Bestlyn (Providence Law Asia LLC) and Si Hoe Tat Chorng (Acacia Legal LLC) for the appellant in CA/CCA 29/2022;
The appellant in CA/CCA 30/2022 appearing in person;
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