IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 33

Court of Appeal / Criminal Appeal No 1 of 2024

Between

Lim Wei Fong Nicman

… *Appellant*

And

Public Prosecutor

… *Respondent*

GROUNDS OF DECISION

[Criminal Law — Statutory offences — Misuse of Drugs Act]
[Criminal Law — General exceptions — Duress]

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Lim Wei Fong Nicman
v
Public Prosecutor

[2024] SGCA 33

Court of Appeal — Criminal Appeal No 1 of 2024
Tay Yong Kwang JCA, Belinda Ang Saw Ean JCA and See Kee Oon JAD
6 May 2024

26 August 2024

See Kee Oon JAD (delivering the grounds of decision of the court):

Introduction

1 This was the appellant's appeal against his conviction in relation to one charge under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA") and punishable under s 33(1) of the MDA for having in his possession four packets containing not less than 367.2 g of methamphetamine for the purpose of trafficking (the "charge"). The trial judge (the "Judge") imposed a sentence of life imprisonment and 15 strokes of the cane. The grounds of decision of the Judge are set out in *Public Prosecutor v Lim Wei Fong Nicman* [2024] SGHC 3 (the "GD")).

2 We dismissed the appeal on 6 May 2024 after hearing the parties' submissions. The grounds of our decision are set out below.

Undisputed background facts

Events relating to the appellant's arrest

3 On 11 August 2020, at about 10.05pm, a party of officers from the Central Narcotics Bureau ("CNB") arrested the appellant in a car bearing the licence plate SMP7468Y ("the Car") at the junction of Jalan Besar and Petain Road.[1] The appellant, a Singaporean male, was then 26 years old.[2]

4 At about 10.20pm, two CNB officers searched the Car in the presence of the appellant and seized various exhibits.[3] During the search, the appellant informed Inspector Tay Cher Yeen Jason ("Insp Tay") that he was staying in Room 603 of a hotel, later ascertained to be ST Signature Bugis Beach Hotel at 85 Beach Road ("the Hotel"), and that his girlfriend, Ms Chee Min Hui ("Ms Chee"), was in Room 603 at the time.[4] This led to the arrest of Ms Chee in the Hotel at about 10.48pm.[5]

5 At about 11.00pm, the appellant was brought to Room 603.[6] Sometime after 11.15pm, Sergeant (3) Yogaraj Ragunathan Pillay ("Sgt Yogaraj") commenced a search of Room 603 in the presence of the appellant and Ms Chee. Sgt Yogaraj recovered many exhibits from a black luggage that he had found on the floor beside the bed. This included four packets containing crystalline substances, which were later marked during exhibit processing as "A1B1A",

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1 Statement of Agreed Facts dated 27 June 2023 ("SOAF") at paras 2 and 3; 3ROP at pp 62–63.

2 SOAF at para 1; 3ROP at p 62.

3 SOAF at para 4; 3ROP at p 63.

4 SOAF at para 5; 3ROP at p 63–64.

5 SOAF at para 6; 3ROP at p 64.

6 SOAF at para 7; 3ROP at p 64.

"A1B1B", A1B2A" and "A1C1A", and which the Judge referred to as the "Drug Exhibits".[7] Senior Staff Sergeant Muhammad Fardlie bin Ramlie assisted to place and seal all the exhibits in tamper proof bags, which were then placed in a black duffle bag (the "Black Duffle Bag"). At about 1.08am, Sgt Yogaraj handed the Black Duffle Bag containing the exhibits to Insp Tay.[8]

6 At about 1.19am, in Room 603, Senior Staff Sergeant Phang Yee Leong James ("SSS Phang") recorded a contemporaneous statement from the appellant, during which the appellant said that he had collected the drug consignment from Tampines Storhub Self Storage located at 37 Tampines Street 92 ("Storhub").[9]

7 At around 2.13am, a party of CNB officers, consisting of Insp Tay, SSS Phang and Sergeant (2) Mohammad Nasrulhaq bin Mohd Zainuddin ("Sgt Nasrulhaq"), escorted the appellant to Storhub. At Storhub, the appellant led the CNB officers to Storage Room No 4117 (the "Store") and informed them of the PIN to unlock the padlock on the door to the Store. Nothing was seized from the Store.[10]

8 The CNB officers then escorted the appellant to his official residence, a flat located in Tampines (the "Unit"). The Unit was also the home of the appellant's mother, Mdm Cheng Ee Lan ("Mdm Cheng"), and his sister, Ms Lim Xing En Rinda ("Ms Lim"). The party of CNB officers and the appellant arrived at 3.12am. Both Mdm Cheng and Ms Lim were in the Unit at

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7 SOAF at paras 8–9 and 17; 3ROP at pp 64–65, 67–68.

8 SOAF at para 9; 3ROP at p 65.

9 SOAF at para 11; 3ROP at p 66.

10 SOAF at para 12; 3ROP at p 66.

the time. Staff Sergeant Goh Bai Lin ("SSgt Goh") conducted a search of the Unit and seized one drug exhibit.[11]

9 At about 3.33am, the party of CNB officers escorted the appellant out of the Unit to a carpark at Blk 827A Tampines Street 81 (the "Carpark"). Between 3.42am and 5.30am, in the CNB car at the Carpark, SSS Phang recorded another contemporaneous statement from the appellant. This was the third such statement made after the appellant's arrest (the "third contemporaneous statement").[12]

10 The appellant was then brought to the headquarters of the CNB ("CNB Headquarters") by the party of CNB officers. They arrived at about 5.55am.[13] At about 8.42am, at the Exhibit Management Room of CNB Headquarters and in the presence of the appellant, Investigation Officer Muhammed Ridlwan bin Mohamed Raffi and Woman Inspector Tan Lye Cheng Michelle processed the seized exhibits with the assistance of other CNB officers. Photographs were taken of the exhibits, and markings were assigned to them. The Drug Exhibits *ie,* the four packets, were marked as "A1B1A", "A1B1B", A1B2A" and "A1C1A", and captured in the photographs "P47", "P48" and "P52".[14]

11 Analysis by the Health Sciences Authority ("HSA") revealed that the Drug Exhibits contained a total of not less than 367.2g of methamphetamine. The appellant was not authorised to possess or traffic in methamphetamine.[15]

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11 SOAF at para 13; 3ROP at p 66.

12 SOAF at para 13; 3ROP at p 66.

13 SOAF at para 14; 3ROP at p 67.

14 SOAF at paras 15–17; 3ROP at pp 67–69.

15 SOAF at paras 20–22; 3ROP at pp 69–70.

12 DNA matching the appellant's DNA profile was found on, among other things, the following exhibits:[16]

(a) the interior of one brown envelope with the marking "255" marked as "A1B1", which originally contained two of the Drug Exhibits, *ie*, A1B1A and A1B1B;

(b) the interior and exterior of the foil packaging and flap of a yellow-coloured packet marked as "A1B2" which originally contained the Drug Exhibit, A1B2A;

(c) the interior of one white plastic bag marked as "A1C1", which originally contained the drug exhibit, A1C1A; and

(d) the interior and exterior of one red plastic bag marked as "A1C", which originally contained the white plastic bag, A1C1, which in turn originally contained the Drug Exhibit, A1C1A.

Events giving rise to the charge

13 The following aspects of the appellant's account of events were not challenged by the Prosecution. The appellant admitted that he began working for a person whom he referred to as "Boss" in the middle of July 2020, and would collect and deliver drugs for "Boss".[17] "Boss" offered this arrangement to help the appellant clear an online betting debt of $50,000 which he owed to "Boss". "Boss" and the appellant would communicate via WeChat, with the number belonging to "Boss" saved in the appellant's phone as "boyboy7799".[18]

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16 SOAF at paras 8, 17, 25–26; 3ROP at pp 64–65, 68–69, 71–72.

17 Transcript (6 July 2023) at p 127 ln 13–22; 1ROP at p 354.

18 P218 at p 258 and 303; 3ROP at p 338 and 383; Closing Submissions of the Defence dated 18 August 2023 ("DS") at para 31.

14 After working for "Boss" for about a month, the appellant no longer wanted to work for "Boss" as he felt it was dangerous to do so and he found out that Ms Chee was pregnant with their child.[19] On 7 August 2020, the appellant and Ms Chee decided to go into hiding. He switched off his phone. Then, the appellant abandoned the Car (which was a rental car he used for drug deliveries).[20] One packet of drugs belonging to "Boss", either A1B1A or A1B1B, remained in the Car.[21] Three other packets of drugs (either A1B1A or A1B1B, A1B2A and A1C1A) belonging to "Boss" remained with the appellant. The next day, the appellant and Ms Chee checked into the Hotel.[22]

15 The appellant remained uncontactable until late into the night of 9 August 2020. Meanwhile, on 8 and 9 August 2020, an unknown man visited the Unit twice and, according to Mdm Cheng and Ms Lim, demanded to see the appellant about money the appellant owed.[23] On 9 August 2020, the appellant became aware of attempts to contact him by unknown individuals.[24] One such individual, using the name "SoundsoFaiths Hurt", sent him threatening messages via Facebook Messenger on 9 and 10 August 2020. These messages included a photograph of the Unit and messages relating to the Unit.[25] The appellant understood that these demands were for him to return the drugs and cash from past deliveries to "Boss".[26] On 10 August 2020, at around 12.48pm,

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19 Transcript (6 July 2023) at p 66 ln 23–28; 1ROP at p 293.

20 Transcript (6 July 2023) at p 67, ln 21–29; 1ROP at p 294.

21 Transcript (6 July 2023) at p 68, ln 7–9; 1ROP at p 295.

22 Transcript (6 July 2023) at p 69, ln 24–27; 1ROP at p 296.

23 Transcript (7 July 2023) at p 61, ln 1–17, p 68 ln 12 to p 69 ln 7; 2ROP at pp 419 and 426–427.

24 Transcript (6 July 2023) at p 74, ln 19–22; 1ROP at p 301.

25 D1 at pp 409–416; 3ROP at pp 489–496.

26 DS at para 11.

with Ms Chee's assistance, the appellant returned the drugs to "Boss" by leaving them at the Store.[27] The appellant also informed "Boss" of the whereabouts of the Car.[28] By 8.34pm that day, the appellant had also returned the cash to "Boss" through an ATM machine.

16 Thereafter, the appellant and "Boss" continued communicating via WeChat. The next day, on 11 August 2020, the appellant resumed working for "Boss" and completed multiple drug deliveries. Among other things, he collected the Drug Exhibits from the Store. He was arrested later that day.

17 It was undisputed that the appellant was in possession of the Drug Exhibits and that he knew that they contained methamphetamine.[29]

The proceedings below

18 In the proceedings below, the elements of the offence of drug trafficking under s 5(1)(*a*) read with s 5(2) of the MDA were uncontested. The trial centred on two issues raised by the defence: (a) whether the chain of custody of the Drug Exhibits was broken; and (b) whether the appellant had possessed the Drug Exhibits for the purpose of trafficking under duress.

19 On the chain of custody, the appellant claimed that the movement of the Drug Exhibits from the point of seizure to the point of HSA analysis was not fully accounted for. The appellant submitted that there was reasonable doubt over the chain of custody of the Drug Exhibits between 2.13am and 5.55am on 12 August 2020 (the "Relevant Period"), *ie*, the period between the party of

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27 Transcript (6 July 2023) at p 82, ln 3–22; 1ROP at p 309.

28 Transcript (6 July 2023) at p 83, ln 1–3; 1ROP at p 310.

29 Respondent's written submissions dated 8 April 2024 ("RWS") at para 7.

CNB officers and the appellant leaving the Hotel and them arriving at CNB Headquarters. In particular, the appellant submitted that the Black Duffle Bag had not remained in Insp Tay's possession throughout the entire operation after it was handed to Insp Tay.[30]

20 The Prosecution's case was that the Black Duffle Bag had remained in Insp Tay's custody throughout the Relevant Period:[31]

(a) Between 2.13am and 2.31am, Insp Tay travelled to Storhub with the party of CNB Officers escorting the appellant. Insp Tay testified that the Black Duffle Bag was stored in the boot of the CNB car he was in.[32]

(b) Between 2.31am and 2.53am, Insp Tay brought the Black Duffle Bag to Storhub.[33]

(c) Between 2.53am and 3.12am, Insp Tay travelled to the Unit with the party of CNB officers escorting the appellant.

(d) Insp Tay then carried the Black Duffle Bag up to the Unit for the search.[34] He placed the exhibit seized in the Unit into the Black Duffle Bag.[35] When they left the Unit, Insp Tay was holding on to the Black Duffle Bag.[36]

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30 DS at para 32.

31 Closing submissions of the Prosecution dated 18 August 2023 ("PS") at paras 25 and 29.

32 Transcript (27 June 2023), p 17 ln 22–27; 1ROP at p 20.

33 Transcript (27 June 2023), p 17 ln 30; 1ROP at p 20.

34 Transcript (27 June 2023), p 18 ln 18; 1ROP at p 21.

35 Transcript (27 June 2023), p 27 ln 22–24; 1ROP at p 30.

36 Transcript (28 June 2023), p 3 ln 22–29; 1ROP at p 130.

(e) Between 3.33am and 3.42am, Insp Tay travelled to the Carpark with the party of CNB officers escorting the appellant. The Black Duffle Bag was placed in the boot of the CNB car.[37]

(f) Between 3.42am and 5.30am, when SSS Phang was recording the third contemporaneous statement from the appellant in the CNB car, Insp Tay stood outside of the vehicle, and the Black Duffle Bag remained in the boot throughout this period.[38]

(g) Between 5.30am and 5.55am, Insp Tay travelled to CNB Headquarters with the party of CNB officers escorting the appellant. The Black Duffle Bag remained in the boot of the CNB car.[39]

(h) Between 5.55am and 6.15am, while at CNB Headquarters, Insp Tay was holding on to the Black Duffle Bag.[40]

(i) About 6.15am, Insp Tay handed over the Black Duffle Bag to Staff Sergeant Muhammad Helmi bin Abdul Jalal.

21 For the defence of duress, the appellant submitted that he had been compelled to return to working for "Boss" as a result of the threatening messages sent to him by "SoundsoFaiths Hurt" and the unknown man visiting the Unit on 8 and 9 August 2020. According to the appellant, after he had returned the drugs and cash to "Boss", there was still some concern as to whether he had returned *everything* to "Boss". The appellant thought that the best way to prove to "Boss" that he had not stolen any of the drugs was to deliver

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37 Transcript (28 June 2023), p 3 ln 22–29; 1ROP at p 130.

38 Transcript (28 June 2023), p 4 ln 1–7; 1ROP at p 131.

39 Transcript (28 June 2023), p 4 ln 12–13; 1ROP at p 131.

40 Transcript (28 June 2023), p 4 ln 15–18; 1ROP at p 131.

the drugs completely, so that the eventual customers could verify that all the drugs were accounted for.[41] The appellant also claimed that he did not willingly place himself in the situation of duress as he had wanted to stop working for "Boss" and had "disappeared" to cease all illegal dealings.[42]

22 Conversely, the Prosecution submitted that the threatening messages only demanded that the appellant return the drugs and cash to "Boss". None of the threats (against the appellant, Mdm Cheng and Ms Lim) forced him to resume drug deliveries and collections.[43] In any event, these threats would not result in the appellant reasonably apprehending harm that amounted to "instant death". Further, the appellant had known that "Boss" was involved in the drug trade, yet willingly joined the criminal enterprise.[44]

Decision below

23 The Judge rejected the appellant's defences. The Judge held that the Prosecution had proved the chain of custody of the Drug Exhibits. No doubt was raised as to the identity of any of the Drug Exhibits (GD at [42]). The Judge gave the following reasons:

> (a) First, the Judge highlighted that the *identity* of the Drug Exhibits was simply not put in issue. When the appellant was shown photographs of the Drug Exhibits captured in P47, P48 and P52, he agreed that they belonged to him (GD at [34]).

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41 PS at para 85.

42 DS at para 87.

43 PS at paras 33–35.

44 PS at paras 30–32

(b) Second, the Judge accepted Insp Tay's account of how he remained in custody of the Black Duffle Bag throughout the Relevant Period to be reliable. The details provided by Insp Tay during his examination-in-chief were *not* inconsistent with the contents of his conditioned statement of 27 May 2022. However, the Judge observed that it was of some concern that Insp Tay did not set out the details of how he remained in custody of the Black Duffle Bag in his conditioned statement. Insp Tay only stated how he took over custody of the Black Duffle Bag at 1.08am, and how he then relinquished control of it at 6.15am, leaving the details to be filled during his examination-in-chief (GD at [35]).

(c) Third, the inability of the other CNB officers to recall that Insp Tay was the one carrying the Black Duffle Bag was a neutral factor. The CNB officers had been assigned to different roles during the operation and, by the time of the trial, almost three years had passed since the appellant's arrest. Further, no CNB officer observed any other CNB officer carrying the Black Duffle Bag (GD at [36]).

(d) Fourth, the Judge did not give much weight to the appellant's recollection of the events (*ie*, that the appellant did not see Insp Tay with the Duffle Bag when they proceeded to the Store and to the Unit, as well as in the Store and in the Unit). The appellant could not have been paying much attention to these details of the operation that morning (GD at [37]).

(e) Fifth, contrary to the appellant's claim that SSS Phang showed the appellant the physical Drug Exhibits during the recording of the third contemporaneous statement, the Judge found that SSS Phang had only

shown the digital photographs of the Drug Exhibits and that the appellant had made a belated claim otherwise (GD at [38]–[40]).

(f) Sixth, the Judge did not consider Mdm Cheng and Ms Lim's evidence to be accurate. The Judge highlighted that: (i) it was past 3.00am when the appellant was brought back to the Unit; (ii) both of them were awoken from their sleep; (iii) they had a lot on their minds; (iv) it was their first experience dealing with a search by CNB officers; (v) their interactions with Insp Tay were brief; (vi) there were other CNB officers moving around in the Unit at the time; and (vii) it had been three years since the arrest when they testified in court (GD at [41]).

24 The Judge also held that the appellant was not entitled to rely on the defence of duress (GD at [57]). The Judge agreed with the Prosecution that none of the threats sought to force the appellant to resume drug deliveries and collections. They only compelled him to return the drugs and cash to "Boss". The appellant's claim of wanting to prove that he had not stolen the drugs was a belated concoction and it was, in any event, illogical that the appellant would think that delivering drugs was the only way to account for the drugs (GD at [44]–[48], [55]–[56]). The threats did not threaten instant death and did not result in the appellant reasonably apprehending instant death to him, Mdm Cheng or Ms Lim. At most, they could only be interpreted as causing hurt or harm (GD at [49]–[53]). Moreover, the appellant had placed himself in that situation as he willingly worked for "Boss" to clear his gambling debt. He knew that "Boss" was involved in the drug trade and had previously carried out drug deliveries for "Boss". In so far as the appellant argued that he had tried to leave the criminal enterprise, but that he was compelled to return to work for "Boss", the Judge reiterated that the threats made did not seek to coerce the appellant to continue working for "Boss" (GD at [54]–[56]).

25 The Judge thus convicted the appellant and sentenced him to life imprisonment and 15 strokes of the cane (GD at [1]). The sentence imposed was the minimum possible under the MDA. The Judge found that the appellant's role in relation to the Drug Exhibits was that of a courier; the Prosecution had also issued a certificate of substantive assistance to the appellant (GD at [59]).

Issues to be determined

26 On appeal, the appellant maintained his defence that the chain of custody of the Drug Exhibits was broken during the Relevant Period and that he had acted under duress. The Prosecution concurred with the findings and conclusions of the Judge.[45] Two primary issues arose for the determination of this court:

(a) First, whether there was reasonable doubt as to the chain of custody of the Drug Exhibits, especially during the Relevant Period.

(b) Second, whether the appellant was entitled to rely on the defence of duress.

Issue 1: Whether the chain of custody of the Drug Exhibits was broken

The applicable legal principles

27 The principles in relation to establishing the chain of custody are well-established. The Prosecution bears the burden of proving beyond a reasonable doubt that the drug exhibits analysed by the HSA are the very ones that were initially seized by the CNB officers from the accused. Crucially, it is first incumbent on the Prosecution to establish the chain. This requires the

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[45] RWS at para 2.

Prosecution to account for the movement of the exhibits from the point of seizure to the point of analysis. The defence may seek to suggest a break in the chain of custody, by showing that at one or more stages, a reasonable doubt has been raised as to the identity of the exhibits. However, speculative arguments that seek to raise a theoretical possibility of a break in chain of custody would not suffice. Neither must the chain of custody be laboriously proved by calling witnesses to testify to each step in every case (*Mohamed Affandi bin Rosli v Public Prosecutor and another appeal* [2019] 1 SLR 440 ("*Affandi*") at [39] and [42]).

DNA evidence on the packaging of the Drug Exhibits

28 In our judgment, the Judge was correct to hold that the Prosecution had proved the chain of custody of the Drug Exhibits.

29 One crucial, yet undisputed fact appeared not to have been emphasised below and on appeal: the appellant's DNA was found on the interiors and/or exteriors of the packaging of the Drug Exhibits which the HSA had analysed (*ie*, A1B1, A1B2, A1C, A1C1) (see [12] above; GD at [13]). This formed part of the Statement of Agreed Facts dated 27 June 2023. In fact, in the appellant's sixth statement recorded under s 22 of the Criminal Procedure Code (the "CPC") dated 31 March 2021, he gave an account of why his DNA was found on the packaging of the Drug Exhibits. He explained that his DNA was found on the interior of the brown envelope (*ie*, A1B1) because he "placed Ice inside the said envelope". Similarly, for the yellow-coloured packet (*ie*, A1B2), he explained that he "used the packet to store Ice". For the red plastic bag (*ie*, A1C), the appellant stated that he may have touched its exterior, and the interior contained his DNA "[p]erhaps … because [he] placed the plastic marked A1C1 into A1C". The appellant also explained that his DNA was found on the Drug

Exhibit, A1C1A, because "this [was] the packet of Ice which [he] had touched before."[46] During the appellant's cross-examination, he also confirmed that this statement was accurate.[47]

30 Based on the DNA evidence, there could be no question about the *identity* of the Drug Exhibits – the Drug Exhibits analysed by the HSA must have been the same packets of substances that the appellant had in his possession during his arrest. Given that the appellant did not handle the Drug Exhibits (contained in their packaging) during the Relevant Period, there was no other plausible reason why the appellant's DNA would be found on the packaging of the Drug Exhibits. In our view, the presence of the appellant's DNA on the packaging containing the Drug Exhibits put paid to the defence that the chain of custody of the Drug Exhibits had been broken.

31 This conclusion was reinforced by the fact that the appellant consistently accepted that the Drug Exhibits, *ie*, A1B1A, A1B1B, A1B2A and A1C1A, captured in the photographs P47, P48 and P52 belonged to him. At paragraph 17 of the appellant's second statement recorded under s 22 of the CPC dated 15 August 2020, the appellant stated:[48]

> … A1B1 (with marking '255') is an envelope initially meant for an order of 50 sets and it kept the two packets labelled A1B1A and A1B1B; Exhibit A1B2 is gold coloured packet which contain the one packet of "Cold" and it was meant for delivery as well. … Exhibit A1C is a red plastic bag which contained exhibit A1C1 which is a white plastic bag used to carry Exhibits A1C1A and A1C1B. … Exhibit A1C1A contained 'Cold' and a plastic spoon. …

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46 6ROP at p 1365.

47 Transcript (6 July 2023) at p 57 ln 15–20; 1ROP at p 284.

48 3ROP at p 340.

Similarly, during his cross-examination, the appellant readily admitted that the drugs photographed in P47, P48 and P52 were *all his*.[49] He had no reason to believe that the exhibits in P47, P48 and P52 were *entirely* different packets from the Drug Exhibits seized in Room 603. Throughout his testimony, the appellant consistently referenced the drugs photographed in P47, P48 and P52 as the same drugs that were in his possession.[50] At the very minimum, the appellant accepted that the photographed exhibits bore the same characteristics and appearance as the Drug Exhibits (*eg*, in terms of the type of packets used to carry the drugs, the colour, form and amount of crystalline substances in each packet).

32 The appellant emphasised that the Drug Exhibits were clear packets containing white powder with no other distinguishing features, it would be difficult to identify signs of tampering or contamination.[51] Plainly, any such suggestion was mere speculation without an iota of evidence. There was nothing before the court to suggest that the packaged Drug Exhibits had been removed from the Black Duffle Bag and tampered with, and subsequently placed back into the Black Duffle Bag during the Relevant Period. As held by the Court of Appeal in *Affandi*, speculative arguments regarding the mere possibility of contamination are insufficient to raise a reasonable doubt as to the identity of the exhibits (*Affandi* at [118]; see also, *Parthiban a/l Kanapathy v Public Prosecutor* [2021] 2 SLR 847 at [14]).

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49 Transcript (7 July 2023) at p 14 ln 24 to p 16 ln 27; 2ROP at pp 372–374.

50 Transcript (6 July 2023) at p 104 ln 3–5; 1ROP at p 331.

51 AWS at para 56.

Other evidence

33 Next, turning briefly to the other aspects of the evidence, these had been comprehensively analysed by the Judge. At its highest, the appellant's case was that Insp Tay's evidence was uncorroborated by the other witnesses (*ie*, the other CNB officers, the appellant, Mdm Cheng and Ms Lim). Aside from Insp Tay, none of the witnesses gave a positive account of the whereabouts of the Black Duffle Bag during the Relevant Period. There was also no evidence before the court that there was *another* black duffle bag during the CNB operation that could have been mistaken for the Black Duffle Bag containing the Drug Exhibits.

34 In our judgment, the Judge was correct not to give too much weight to the appellant's recollection of the events. The appellant's evidence was imprecise, and he himself admitted that he was not "specifically looking for whoever [was] holding the [Black Duffle Bag]",[52] and did not know who was carrying the Black Duffle Bag. We also agreed with the Judge's decision not to accord much weight to Mdm Cheng and Ms Lim's evidence, given the circumstances of their encounter with the CNB officers at the Unit that early morning. We also emphasised that at that point in time, Ms Lim and Mdm Cheng did not know the significance of the Black Duffle Bag. Therefore, they would not have had any reason to consciously make a note of whether Insp Tay or any of the other CNB officers were carrying it. In our view, the Judge correctly concluded that the other CNB officers' failure to notice Insp Tay carrying the Black Duffle Bag during the Relevant Period was a neutral factor, given that the CNB officers were assigned to different tasks and

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52 Transcript (7 July 2023) at p 5 ln 8; 2ROP at p 363.

roles during the operation. Only Insp Tay was tasked to take custody of the seized exhibits.

35 We noted the Judge's concern that Insp Tay did not set out the details of how he remained in custody of the Black Duffle Bag in his conditioned statement of 27 May 2022. However, we agreed that Insp Tay maintained a consistent account of the whereabouts of the Black Duffle Bag during the Relevant Period. The details he provided during his evidence-in-chief were consistent with the contents of his conditioned statement. We highlighted paragraph 20 of Insp Tay's conditioned statement, which was not considered by the Judge:[53]

> 20. At about 3.12a.m., our party arrived at the Unit. [Ms Lim] opened the door and [SSS Phang], [SSgt Goh] and I escorted [the appellant] into the Unit. A search was conducted by [SSgt Goh] in the Unit and he seized the following item: …
>
> [SSgt Goh] packed the seized exhibit into a tamper-proof bag and handed it over to me. *I then placed the tamper-proof bag into the [Black Duffle Bag] containing the other case exhibits.*
>
> [emphasis added]

This statement supported Insp Tay's evidence on the stand that the Black Duffle Bag was with him in the Unit and that he placed an exhibit into the Black Duffle Bag following a search of the Unit. This aspect of Insp Tay's testimony was also somewhat corroborated by paragraph 9 of SSgt Goh's conditioned statement, where SSgt Goh recounted that he had handed the exhibit seized from the Unit to Insp Tay.[54] This evidence lent support to Insp Tay's testimony that he was in custody of the Black Duffle Bag throughout the Relevant Period. Further, if the Black Duffle Bag was with Insp Tay in the Unit, he was likely

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53 3ROP at p 240.

54 3ROP at pp 268–269.

carrying the Black Duffle Bag in the lift going up and coming down from the Unit. That would discredit the appellant's claim that Insp Tay was *not* carrying the Black Duffle Bag during the lift rides.

36 Based on the totality of the evidence, there was no basis to impugn the chain of custody of the Drug Exhibits. In *Affandi*, the Court of Appeal opined that "[t]here cannot be a single moment that is not accounted for *if this might give rise to a reasonable doubt as to the identity of the exhibits* [emphasis added]" (*Affandi* at [39]). In the present case, Insp Tay's evidence, evaluated with the other evidence, showed no reasonable doubt whatsoever as to the identity of the Drug Exhibits. A holistic assessment of the evidence and arguments must be undertaken to determine whether the Prosecution has established the chain of custody. In the present case, the significance of the DNA evidence was blindsided by the various witness accounts. This was understandable, given that the testimonies of the witnesses formed the main plank of the parties' cases. However, the presence of the appellant's DNA on the packaging of the Drug Exhibits put it beyond reasonable doubt that the chain of custody had been established.

Issue 2: Whether the appellant had acted under duress

The applicable legal principles

37 The defence of duress is set out under s 94 of the Penal Code, which reads as follows:

> **Act to which a person is compelled by threats**
>
> 94. Except murder and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person or any other person will otherwise be the consequence:

> Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.
>
> *Explanation* 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins gang-robbers knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.
>
> *Explanation 2.*—A person seized by gang-robbers, and forced by threat of instant death to do a thing which is an offence by law — for example, a smith compelled to take his tools and to force the door of a house for the gang-robbers to enter and plunder it — is entitled to the benefit of this exception.

38 Section 94 of the Penal Code has largely remained unchanged since it first appeared in the Indian Penal Code 1860 (Act 45 of 1860) (the "IPC") (see Stanley Yeo, Neil Morgan & Chan Wing Cheong, *Criminal Law in Malaysia and Singapore* (LexisNexis, 3rd Ed, 2018) ("*Criminal Law in Malaysia and Singapore*") at para 22.5). Pursuant to the Penal Code (Amendment) Act 2007 (Act 51 of 2007), the scope of the defence was expanded to its current form with the insertion of the words "or any other person" to include the threat of instant death to any other person other than the accused himself (*Public Prosecutor v Nagaenthran a/l K Dharmalingam* [2011] 2 SLR 830 ("*Nagaenthran (HC)*") at [23]).

39 The five elements required to establish this defence, which an accused must prove on the balance of probabilities, were summarised in *Nagaenthran (HC)* at [16], [17] and [28]:

(a) the harm that the accused was threatened with was death;

(b) the threat was directed at the accused or other persons which would include any of his family members;

(c) the threat was of "instant" death, which was "imminent, persistent and extreme";

(d) the accused reasonably apprehended that the threat will be carried out; and

(e) the accused had not, voluntarily or from a reasonable apprehension of harm to himself short of instant death, placed himself in that situation.

40 In our judgment, the defence of duress was plainly not available to the appellant.

The threats did not compel the appellant to commit the offence

41 To rely on the defence of duress, an accused must be compelled by the threats to carry out the acts in question for which he is being charged. The Judge correctly found that none of the threats levelled against the appellant, Mdm Cheng and Ms Lim compelled the appellant to resume the drug deliveries (GD at [44]). Instead, the threats were only for the appellant to return the drugs and cash in his possession. At [45]–[46] of the GD, the Judge rightly analysed the messages from "SoundsoFaiths Hurt" to show that they did not compel the appellant to continue working for "Boss". In relation to the threats allegedly made by the unknown man that visited the Unit, Mdm Cheng and Ms Lim testified that he was concerned about the appellant owing "Boss" money. The unknown man also accused the appellant of running away with the money. However, no threats were made by the unknown man for the appellant to continue delivering drugs for "Boss". In fact, the appellant understood the threats as compelling him to return the items, and not to compel him to continue working for "Boss" (GD at [47]).

42 Before this court, the appellant maintained his case that even after he had returned the drugs and cash to "Boss", there was still some concern as to whether he had returned *everything* to "Boss". Therefore, according to the appellant, the best way to prove to "Boss" that he had not stolen any of the drugs was to deliver the drugs completely, so that the customers could confirm with "Boss" that they had received their orders. We agreed with the Judge that it was illogical that this was the *only* solution for the appellant to account for the drugs.

The threats were not of death

43 In any event, the appellant, Mdm Cheng and Ms Lim were not threatened with death. At most, the threats would reasonably cause the appellant to apprehend harm. We concur with the analysis of the Judge set out at [49]–[53] of the GD.

44 On appeal, the appellant submitted that the Judge wrongly required that each message from "SoundsoFaiths Hurt" specifically threaten death. The appellant relied on the decision of *Public Prosecutor v Ng Pen Tine and Another* [2009] SGHC 230 ("*Ng Pen Tine*") for the proposition that an accused should be able to avail himself of the defence of duress where he had been "implicitly threatened" death.[55]In *Ng Pen Tine*, the second accused passed 61 packets of heroin to the first accused and was charged with an offence of drug trafficking (*Ng Pen Tine* at [2]). The second accused claimed that he had been instructed to do so by one "Ah Xiong" and was forced by Ah Xiong to drive his car from Malaysia to Singapore with the drugs hidden without his knowledge inside the rear signal compartments of the car boot (*Ng Pen Tine* at [82] and [152]). Chan Seng Onn J (as he then was) found that "Ah Xiong had implicitly threatened the

[55] AWS at para 89.

second accused with the remark that he could easily use $3000 to 'buy [the second accused's] life and the lives of [his] family members'". Chan J held that the second accused was entitled to rely on the defence of duress and acquitted him (*Ng Pen Tine* at [156], [163]–[164]).

45 In our judgment, without necessarily agreeing with the eventual outcome in *Ng Pen Tine*, the threats levelled at the second accused in *Ng Pen Tine* were distinguishable from those in the present case. The threats in the present case simply did not go so far as to imply that failure to comply would result in the death of the appellant, Ms Lim or Mdm Cheng. The appellant relied on various messages from "SoundsoFaiths Hurt" which referenced, among other things, Mdm Cheng's "house" being burnt and the appellant "[lying] down in hospital". However, as the Judge explained, there was no threat that someone would actually set the Unit on fire in such circumstances as to cause "instant death" to Mr Lim, Mdm Cheng or Ms Lim. The other threats also pointed more towards acts of causing hurt or harm.

The threats were not of "instant" death

46 As explained at [45] above, the threats made against the appellant, Mdm Cheng and Ms Lim were hardly of death. The appellant relied on *Ng Pen Tine* to submit that, although s 94 of the Penal Code requires that the threat must be one of "instant death", a time lapse between the accused's refusal to break the law and the coercer's execution of the threat is allowed (*Ng Pen Tine* at [155]–[157]):[56]

> 155 *PP v Goh Hock Huat* [1995] 1 SLR 274 ("*Goh Hock Huat*"), *Wong Yoke Wah v PP* [1996] 1 SLR 246, and *Shaiful Edham bin Adam v PP* [1999] 2 SLR 57 have further interpreted "instant" to mean "imminent, persistent and extreme". *The word*

[56] AWS at para 93.

> *"imminent" suggests that the threatened harm need not be carried out immediately or within a very short time span. Instead, there could be a time lapse between the accused's refusal to break the law and the coercer's execution of the threat.*
>
> 156 In the present instance, I am satisfied that the 2nd accused was indeed threatened with "instant" death within the meaning of s 94. Whilst the 2nd accused was at Ah Zhong's house, Ah Xiong had implicitly threatened the 2nd accused with the remark that he could easily use $3000 to "buy [the 2nd accused's] life and the lives of [his] family members". This struck fear in the 2nd accused. It led the 2nd accused to believe that if he did not follow Ah Xiong's instructions, Ah Xiong would kill him and his family members.
>
> 157 *The prosecution contended that there was no imminent threat of death because Ah Xiong did not himself do or say anything that made it clear that he (Ah Xiong) was going to kill the 2nd accused on the night of 3 October 2007 or the morning of 4 October 2007. I am of the view that the law allows a time lapse (between the accused's refusal to break the law and the coercer's execution of the threat) greater than that which the prosecution has submitted.* This, coupled with the fact that Ah Xiong had conveyed to the 2nd accused the relative ease at which he would be able to hire a killer, suggested that the 2nd accused was faced with a threat within the meaning of s 94.
>
> [emphasis added]

According to the appellant, the threats would be executed within a short time of him failing to comply with "Boss'" directions and the appellant did not subjectively think that there was a reasonable opportunity for him to escape or neutralise the threat to his family. As the unknown man had visited the Unit on 8 and 9 August 2020, and "SoundsoFaiths Hurt" had sent the appellant a photograph of the Unit, the appellant knew that his family was being watched.[57]

47 On the facts, we did not accept that the cumulative threats were of instant death, or that they could reasonably have caused the appellant to apprehend instant death. The threats in question were made between 8 and 10 August 2020. It was undisputed that the appellant chose to comply by 12.48pm on

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[57] AWS at para 93.

10 August 2020 with the directions given by "Boss" to return the drugs[58]. He then resumed his drug deliveries for "Boss" the next day, on 11 August 2020. The appellant clearly had sufficient time to escape or take necessary steps to neutralise the threats, including making a police report by 9 August 2020. There was no palpable threat of "instant death" which would have compelled him to act as he did.

48 Furthermore, interpreting the word "imminent" as Chan J did in *Ng Pen Tine* to allow more than a very short time lapse between the accused's refusal to break the law and the coercer's execution of the threat would unjustifiably water down the requirement of "instant death" in s 94 of the Penal Code. The appellant's argument relied solely on *Ng Pen Tine*, but the line of authorities cited in that case stems from *Tan Seng Ann v Public Prosecutor* [1949] MLJ 87 ("*Tan Seng Ann*"). In this case, the Court of Appeal of the Federation of Malaya considered s 94 of the Penal Code of Malaya, which was identical with s 94 of the then-Penal Code and held that "duress to be pleaded successfully must be imminent, extreme and persistent". According to the authors of *Criminal Law in Malaysia and Singapore*, this was the first case in the legal history of Singapore's Penal Code that the term "imminent" "crept" into the judicial authorities (*Criminal Law in Malaysia and Singapore* at para 22.17). This statement of law in *Tan Seng Ann* was subsequently affirmed by the Court of Appeal in *Mohd Sairi bin Suri v Public Prosecutor* [1997] SGCA 57 and *Shaiful Edham bin Adam and another v Public Prosecutor* [1999] 1 SLR(R) 442 at [66].

49 In *Wong Yoke Wah v Public Prosecutor* [1995] 3 SLR(R) 776, the Court of Appeal also observed that the authorities had interpreted the words "instant death" in s 94 to mean "imminent, extreme and persistent" (at [22], citing *Tan*

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58 3ROP at p 472.

Seng Ann; *Subramaniam v Public Prosecutor* [1956] MLJ 220 and *Public Prosecutor v Goh Hock Huat* [1994] 3 SLR(R) 375). In various other local cases, the High Court had similarly opined that the threat of death must be imminent, extreme and persistent (see *Public Prosecutor v Wong Yoke Wah* [1995] SGHC 213; *Teo Hee Heng v Public Prosecutor* [2000] 2 SLR(R) 351 at [11]; *Public Prosecutor v Siva a/l Sannasi* [2015] SGHC 73 at [23]; *Public Prosecutor v Khartik Jasudass and another* [2015] SGHC 199 at [98]–[99]).

50 The word "imminent" is defined as "[i]mpending threateningly, hanging over one's head; ready to befall or overtake one; close at hand in its incidence; coming on shortly": see The Oxford English Dictionary vol VII (Clarendon Press, 2nd Ed, 1989). This, in our view, is not very far off from the meaning of "instant", which is defined to mean "[t]he point of time now present, or regarded as present with reference to some action or event" and "[a]n infinitely short space of time" (*Nagaenthran (HC)* at [25]).

51 To rationalise the approaches that have been adopted in the subsequent decisions with the plain words in s 94 of the Penal Code, we accepted that there can be a very short time interval between the accused's refusal to break the law and the coercer's execution of the threat. After all, it is unrealistic and impractical to expect that in every case, "instant death" will necessarily mean that the threat will be carried out at once, in a matter of mere seconds or even minutes. Nevertheless, the threatened harm would still have to be carried out in a very short time span should the accused fail to comply, such that the accused could not seek help from the authorities or otherwise avoid doing what he was being coerced to do. To this extent, we disagreed with Chan J's statements to the contrary in *Ng Pen Tine* (at [155]). With respect, we did not think that these statements represent good law.

52 In any event, in *Nagaenthran (HC)*, which was decided by Chan J after his decision in *Ng Pen Tine*, it was held that the requirement of "instant" death referred to the period between the accused's refusal to comply with the coercer's order and the coercer carrying out the threat, and that this time interval would be extremely short (*Nagaenthran (HC)* at [28]; see *Criminal Law in Malaysia and Singapore* at para 22.18). By these statements, Chan J himself appeared to have revised his earlier suggestion in *Ng Pen Tine* (at [155]) that the law can contemplate more than a very short time lapse between the accused's refusal to break the law and the coercer's execution of the threat. This coheres with the notion that the defence of duress is available only in very limited circumstances (*Criminal Law in Malaysia and Singapore* at para 22.7).

53 We were also cognisant that in *Nagaenthran (HC)*, Chan J reasoned (at [28]) that there are three discrete points in time where "the thought or mental processes going on within the accused's mind … have to be examined for the purpose of the defence of duress". He then presented a diagram to illustrate these three points in time *viz*, "points A, B and C". Given that we have adopted a more restrictive view of the meaning of "instant death", Chan J's approach is unnecessarily technical and would invite fine distinctions to be made as to when "point B" has occurred (or if it has occurred at all). We would therefore respectfully decline to adopt the approach as outlined by Chan J in *Nagaenthran (HC)* (at [28]).

The appellant voluntarily placed himself in the situation that resulted in the offence

54 Further, the Judge rightly found that the appellant had voluntarily placed himself in the situation that resulted in the offence, such that he was no longer entitled to invoke the defence of duress.

55 Section 94 of the Penal Code includes a proviso on prior fault. Even where the accused is shown to have acted under the fear of instant death, he must still prove that the predicament in which he found himself was not brought about by himself. If the accused of his own accord had placed himself in a situation by which he became subject to the threats of another person, whatever threats may have been used towards him, he cannot avail himself of the benefit of s 94 (see *Penal Law of India* (Law Publishers (India) Pvt Ltd) ("*Penal Law of India*) at p 775). A similar explanation may be found in *Indian Penal Code* vol 1 (All India Reporter Limited 1980) at p 524. The proviso under s 94 is accompanied by Explanation 1, which illustrates the situation where a person voluntarily joins a gang of robbers, knowing of their character. The accused is not entitled to the benefit of the defence under s 94, should he subsequently be compelled by his associates to do anything which is an offence by law. Explanation 1 to s 94 suggests that *any* crime would suffice; not only the ones which the accused knew or ought to have known he might be ordered to commit (see Chan Wing Cheong, Stanley Yeo *&* Michael Hor, *Criminal Law for the 21st Century: A Model Code for Singapore* (Academy Publishing, 2013) at paras 7.8.14 and 7.8.32). In short, an accused who, of his own accord, joins a criminal enterprise, is not entitled to the rely on the defence for criminal acts he is then compelled to do.

56 For completeness, we reiterate the Court of Appeal's commentary on the structure of the Penal Code (*Public Prosecutor v Li Weiming and others* [2014] 2 SLR 393 at [82]): explanations that follow specific sections are used to describe the words used by the Legislature in the main section in greater detail. Explanations are not akin to the illustrations in the Penal Code which exemplify the practical applications of the provision in relation to particular hypothetical problems that may arise. Rather, they are intended to explain or

clarify certain ambiguities which may have crept into the statutory provision. Therefore, Explanation 1 to s 94 defines the proviso with greater precision.

57 The following excerpt from the authors of the IPC sheds light on their intention to include the proviso in the IPC (*Penal Law of India* at p 776):

> … If a captain of a merchantman were to run his ship on shore in order to cheat the insurers and then to sacrifice the lives of others in order to save himself from a danger created by his own villainy: if a person who had joined a gang of dacoits with no other intention than that of robbing, were, at the command of his leader accompanied with threats of instant death, in case of disobedience, to commit murder, though unwillingly, the case would be widely different, and our former reasoning would cease to apply : *for it is evident that punishment, which is inefficacious to prevent him from yielding to a certain temptation may often be efficacious to prevent him from exposing himself to that temptation.* We cannot count on the fear, which a man may entertain of being brought to the gallows at some distant time, as sufficient to overcome the fear of instant death ; but the fear of remote punishment may often overcome the motives which induce a person to league himself with lawless companions, in whose society no person who shrinks from any atrocity than they may command can be certain of his life. *Nothing is more usual than for pirates, gang robbers and rioters to excuse their crimes by declaring that they were in dread of their associates and durst not act otherwise. Nay, it is not improbable that crews of pirates and gags* (sic) *of robbers may have committed crimes which every one among them was unwilling to commit, under the influence of mutual fear*, but we think it clear that this circumstance ought not to exempt them from the full severity of the law. …
>
> [emphasis added]

The IPC framers were clearly influenced by the deterrent theory that a person would be dissuaded from becoming involved with criminal activity if he was not going to be excused for offences committed unwillingly by him as a consequence of such involvement. The drafters were also concerned that, if there were no such proviso, criminal gangs and terrorist organisations could readily resort to the defence to shield their members from criminal liability by

threatening their members with death in the event that they refused to comply with orders (see *Criminal Law in Malaysia and Singapore* at para 22.32).

58 In our judgment, the appellant fell squarely within the proviso under s 94. It was undisputed that the appellant knew that "Boss" was involved in the drug trade and that he willingly worked for "Boss" as he wanted to clear his gambling debt (GD at [54]). Before this court, the appellant maintained that he had tried to extricate himself from the employ of "Boss".[59] The appellant sought to analogise the present case to the facts of the second accused in *Ng Pen Tine*. In our judgment, the facts of *Ng Pen Tine* are distinguishable.

59 Even after the appellant had been threatened by "SoundsoFaiths Hurt" and returned the drugs and moneys in his possession to Storhub, the appellant *voluntarily resumed* working for "Boss". This was because "Boss" offered various benefits to the appellant in return for his work. These benefits included the rental of a condominium for the appellant, reimbursement for his new handphone and monetary remuneration to clear his debt. In the WeChat correspondence between "Boss" and the appellant on 10 and 11 August 2020, there were extensive conversations about these financial incentives.[60] Indeed, the appellant conceded that until he had another option, he would continue working for "Boss" for the benefits that were being given to him by "Boss".[61] By contrast, in *Ng Pen Tine*, the second accused was not offered any such financial benefits. In that case, the second accused had made three trips from Malaysia to Singapore on Ah Xiong's behest. After the second trip, the second accused attempted to stay away from Ah Xiong by escaping to Pahang.

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59 AWS at para 96.

60 3ROP at p 401, 418–419, 431–433.

61 Transcript (7 July 2023) p 49 ln 27 to p 50 ln 18; 2ROP at p 407.

However, Chan J found that, because Ah Xiong had threatened the second accused's family, the second accused was forced into joining Ah Xiong and his group at one Ah Zhong's house, where he was subsequently prevented from leaving the house and forced to drive his car to Singapore a third time to complete a drug delivery, which led to his arrest on 4 October 2007 (*Ng Pen Tine* at [161]). Further, while the appellant had willingly decided to work for "Boss", the second accused's association with Ah Xiong was coloured by deception and trickery (*Ng Pen Tine* at [86]). In fact, Chan J found that the second accused had no actual knowledge that he was carrying anything into Singapore, let alone heroin, until his arrival, whereupon Ah Xiong informed him of their hidden location in his car (*Ng Pen Tine* at [144]).

60 The appellant also submitted that "as was the case in *Ng Pen Tine*", the appellant did not have subjective knowledge that "Boss" and his associates would resort to threats of death should he not do their bidding.[62] First, as a preliminary point, we noted that Chan J never made the finding in *Ng Pen Tine* that the second accused did not subjectively know that Ah Xiong would resort to threats of death. Second, the appellant's own evidence suggested that he knew that "Boss" could resort to threats of death. During his cross-examination, the appellant testified that "Boss" was "capable of doing more than just this offence. He can do murder or some sort. That I don't know what … he is capable of, but I believe that he has the power to do so".[63] Third, and in any event, we took the view that s 94 does not require the appellant to have subjectively known of the risk of being threatened into committing the harm alleged.

61 As such, the Judge rightly rejected the appellant's defence of duress.

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62 AWS at paras 95–96.

63 Transcript (7 July 2023) at p 55 ln 10–12; 2ROP at p 413.

Conclusion

62 For the reasons set out above, we dismissed the appeal.

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

See Kee Oon
Judge of the Appellate Division

Daniel Chia Hsiung Wen and Samyata Ravindran (Prolegis LLC) for the appellant;
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