IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 99

Criminal Case No 23 of 2023

Between

Public Prosecutor

And

Ravivarma Govindan

GROUNDS OF DECISION

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

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v
Ravivarma Govindan

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19 April 2024

Aedit Abdullah J:

1 The accused person, Ravivarma Govindan ("the Accused"), claimed trial to two charges of importation of a Class A controlled drug under s 7 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"), which is punishable under either ss 33(1) or 33B(1) of the MDA. Having considered the parties' submissions and the evidence, I convicted the Accused on both charges. At the sentencing stage, in light of the issuance of a certificate of substantive assistance by the Public Prosecutor ("the Prosecution") and my finding that the Accused's involvement was limited to that of a courier under s 33B(2)(*a*) of the MDA, I exercised my discretion under s 33B(1)(*a*) and imposed a global sentence of life imprisonment and 20 strokes of the cane.[1]

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[1] Form 53 dated 4 January 2024.

The Accused has appealed against my decision on both conviction and sentence.[2] I now set out the full reasons for my decision.

Background

Charges

2 The first charge against the Accused concerned the importation into Singapore of three blocks of vegetable matter containing not less than 1,551.0g of cannabis.[3]

3 The second charge concerned the importation into Singapore of one bundle containing not less than 82.38g of methamphetamine.[4]

Undisputed facts

4 The undisputed facts were set out in a statement of agreed facts[5] that was tendered, duly signed by the Prosecution and the Defence, pursuant to s 267(1) of the Criminal Procedure Code 2010 (2020 Rev Ed) ("the CPC").

5 The Accused is a Malaysian citizen.[6] In the early hours of the morning of 6 February 2020, at around 6.25am,[7] the Accused drove from Johor Bahru to Tuas Checkpoint in a rented Myvi motorcar bearing registration number WB5890W[8] ("the Car"). The Car was stopped by an Immigration and

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2 CA/CCA 2/2024 Notice of Appeal dated 11 January 2024.

3 Arraigned Charges dated 10 Aug 2023 at p 1.

4 Arraigned Charges dated 10 Aug 2023 at p 2.

5 Statement of Agreed Facts ("SOAF").

6 SOAF at para 1.

7 Statement of Mohammad Ilham bin Hassim dated 23 December 2021 at para 5 (Agreed Bundle ("2AB") at p 441).

Checkpoints Authority ("ICA") officer, who escorted the Car,[9] driven by the Accused, to A1 White House at Tuas Checkpoint.[10]

6 At A1 White House, the Accused was asked in Malay if he had anything to declare. He replied that he did not. The Accused was warned that he would be liable for anything found in the Car, which he acknowledged.[11]

7 Officers from the ICA proceeded to conduct a search on the Car. During the search of the Car's right passenger seat, a blue bundle was detected underneath a wooden board in the seat. The ICA officers then ceased the search and placed the Accused under arrest. As the Accused was being arrested, he repeatedly asked "why" in Malay, to which he was instructed to wait for the arrival of officers from the Central Narcotics Bureau ("CNB").[12]

8 At about 6.55am, a team of CNB officers arrived at A1 White House.[13] The CNB officers continued a search of the seat, during which they recovered and seized as case exhibits: (a) three big blue bundles (marked as "A1",[14] "A2",[15] and "A3"[16]); and (b) one small bundle (marked as "A4"[17]). For convenience, I refer to the bundles collectively as "the Bundles".

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8 P225.

9 SOAF at para 4.

10 SOAF at para 5.

11 SOAF at para 6.

12 SOAF at para 7.

13 SOAF at para 8.

14 P194

15 P197

16 P200

17 P203

9 It was discovered that A1, A2 and A3 each contained one block of vegetable matter (respectively marked as "A1A",[18] A2A",[19] A3A"[20]), while A4 contained a crystalline or powdery substance (marked as "A4A"[21]).[22] Subsequently, the contents of the Bundles were sent for analysis by the Health Sciences Authority ("HSA"),[23] who returned the following results:[24]

(a) A1A was found to contain not less than 960.4g of cannabis mixture;[25]

(b) A2A was found to contain not less than 945.5g of cannabis mixture;[26]

(c) A3A was found to contain not less than 909.1g of cannabis mixture;[27] and

(d) A4A was found to contain not less than 82.38g of methamphetamine.[28]

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18 P196

19 P199

20 P202

21 P205

22 Statement of Muhammad Irfan bin Zulfri dated 23 December 2021 at para 7 (2AB at p 471).

23 SOAF at paras 45–46; Statement of Lim Hui Jia Stephanie dated 24 December 2021 at para 2 (Agreed Bundle (Vol 1) dated 31 July 2023 ("1AB") at pp 78–79).

24 SOAF at paras 47–49.

25 Amended HSA Certificate Lab No. ID-2032-00267-001 in respect of the exhibit marked "A1A" dated 5 August 2020 (1AB at pp 84–85).

26 Amended HSA Certificate Lab No. ID-2032-00267-002 in respect of the exhibit marked "A2A" dated 5 August 2020 (1AB at pp 86–87).

27 Amended HSA Certificate Lab No. ID-2032-00267-003 in respect of the exhibit marked "A3A" dated 5 August 2020 (1AB at pp 88–89).

In sum, the Bundles contained not less than 1,551.0g of cannabis and not less than 82.38g of methamphetamine, both of which are Class A controlled drugs under the First Schedule of the MDA.[29]

10 During the Accused's arrest, the CNB also seized various personal properties of the Accused, including his mobile phone (marked as "B1-HP1",[30] and henceforth referred to as the "Handphone"). The Accused's Handphone was subsequently sent for forensic examination.[31]

11 After the Accused's arrest, the CNB commenced follow-up operations with a view to apprehending others who may have been involved. This involved the monitoring of calls to and from the Accused's Handphone following his arrest. These calls were answered by the Accused in the presence of CNB officers and recorded on a CNB voice recorder.[32] I will refer to the contents of some of these monitored calls ("the Follow-Up Calls") at appropriate junctures below.

12 As a result of these follow-up operations, the CNB successfully induced one Netiaanthan Manimaran ("Netiaanthan"), also a Malaysian citizen and the Accused's childhood friend,[33] to come to Singapore on the same day as the Accused's arrest. Upon his attempted entry into Singapore at Tuas

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28 HSA Certificate Lab No. ID-2032-00267-004 in respect of the exhibit marked "A4A" dated 6 April 2020 (1AB at p 83).

29 SOAF at paras 48–50.

30 P206

31 SOAF at para 57; Statement of Muhammad Ashari bin Adnan dated 8 September 2020 at para 2 (1AB at p 18).

32 SOAF at paras 13–29.

33 SOAF at para 2.

Checkpoint at around 2.51pm, Netiaanthan was arrested. At the time of his arrest, Netiaanthan had been riding a motorcycle[34] bearing registration number JLN6104.[35] Netiaanthan's alleged involvement in the offences forming the subject of the two charges here was a major plank of the Accused's defence to the charges against him. I will therefore elaborate on his role in the present case below.

13 In the course of the CNB's investigations, the Accused gave a total of 19 statements to the CNB, which I set out below in chronological order:[36]

(a) a contemporaneous statement recorded on 6 February 2020 at 7.23am (the "First Contemporaneous Statement");[37]

(b) a contemporaneous statement recorded on 6 February 2020 at 9.35am (the "Second Contemporaneous Statement");[38]

(c) a cautioned statement recorded on 7 February 2020 at about 3.50am under s 23 of the CPC (the "First Cautioned Statement");[39]

(d) a long statement recorded on 9 February 2020 at about 9.34am under s 22 of the CPC (the "First Long Statement");[40]

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34 P226

35 Statement of Tan Lye Cheng Michelle dated 27 December 2021 at para 11 (2AB at p 609).

36 SOAF at para 64.

37 P168 (2AB at p 475).

38 P169 (2AB at pp 476–479).

39 P177 (2AB at pp 652–655).

40 P178 (2AB at pp 656–661).

(e) a long statement recorded on 10 February 2020 at about 2.58pm under s 22 of the CPC (the "Second Long Statement");[41]

(f) a long statement recorded on 11 February 2020 at about 10.17am under s 22 of the CPC (the "Third Long Statement");[42]

(g) a long statement recorded on 11 February 2020 at about 2.45pm under s 22 of the CPC (the "Fourth Long Statement");[43]

(h) a long statement recorded on 12 February 2020 at about 9.52am under s 22 of the CPC (the "Fifth Long Statement");[44]

(i) a long statement recorded on 12 February 2020 at about 2.56pm under s 22 of the CPC (the "Sixth Long Statement");[45]

(j) a long statement recorded on 12 February 2020 at about 4.00pm under s 22 of the CPC (the "Seventh Long Statement");[46]

(k) a long statement recorded on 7 August 2020 at about 10.10am under s 22 of the CPC (the "Eighth Long Statement");[47]

(l) a long statement recorded on 2 September 2020 at about 2.08pm under s 22 of the CPC (the "Ninth Long Statement");[48]

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41 P179 (2AB at pp 662–666).

42 P180 (2AB at pp 667–671).

43 P181 (2AB at pp 672–689).

44 P182 (2AB at pp 690–704).

45 P183 (2AB at pp 705–706).

46 P184 (2AB at pp 707–719).

47 P185 (2AB at pp 720–728).

48 P186 (2AB at pp 729–741).

(m) a long statement recorded on 8 September 2020 at about 10.13am under s 22 of the CPC (the "Tenth Long Statement");[49]

(n) a long statement recorded on 16 September 2020 at about 10.06am under s 22 of the CPC (the "Eleventh Long Statement");[50]

(o) a long statement recorded on 25 September 2020 at about 10.35am under s 22 of the CPC (the "Twelfth Long Statement");[51]

(p) a long statement recorded on 29 September 2020 at about 10.11am under s 22 of the CPC (the "Thirteenth Long Statement");[52]

(q) a long statement recorded on 7 October 2020 at about 10.06am under s 22 of the CPC (the "Fourteenth Long Statement");[53]

(r) a long statement recorded on 8 October 2020 at about 10.00am under s 22 of the CPC (the "Fifteenth Long Statement");[54] and

(s) a cautioned statement recorded on 13 October 2020 at about 10.00am under s 23 of the CPC (the "Second Cautioned Statement").[55]

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49 P187 (2AB at pp 742–748).

50 P188 (2AB at pp 749–753).

51 P189 (2AB at pp 754–764).

52 P190 (2AB at p 765).

53 P191 (2AB at pp 766–773).

54 P192 (2AB at pp 774–782).

55 P193 (2AB at pp 783–785).

14 It was undisputed that there was no oppression, nor was there any threat, inducement or promise made before or during the recording of the Accused's statements, all of which were given voluntarily.[56]

The parties' cases

The Prosecution's case

15 The Prosecution relied on the presumptions under ss 21 and 18(2) of the MDA to establish its case against the Accused.[57] As the Bundles containing cannabis and methamphetamine were found in the Car which the Accused had control of, he was presumed to have the drugs in his possession under s 21 of the MDA and was also presumed to have known of the nature of the drugs contained in the Bundles under s 18(2) of the MDA.[58] The onus therefore lay on the Accused to rebut these presumptions. The Prosecution submitted that the Accused failed to rebut either presumption.[59]

The Prosecution's case on possession

16 As regards the presumption of possession under s 21 of the MDA, the Prosecution made a few key points.[60]

17 First, the Prosecution submitted that the Accused's claim of a similar past incident in December 2019 ("the December 2019 Incident"), where

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56 SOAF at para 65.

57 Prosecution's Opening Address dated 7 August 2023 at para 14; Notes of Evidence ("NE") (8 August 2023) at p 12 line 1–13.

58 Prosecution's Closing Submissions dated 6 November 2023 ("PCS") at paras 4 and 49–50.

59 PCS at para 138.

60 PCS at para 72.

Netiaanthan had allegedly duped him into carrying contraband hidden in a car driven by him into Singapore, as well as the Accused's own professed outrage at Netiaanthan over this incident, should not be believed.[61] The Prosecution pointed to internal inconsistency in the Accused's account,[62] the lack of corroborating evidence,[63] and the delay before the Accused had raised this supposed incident in the course of investigations.[64]

18 Second, the Prosecution submitted that the Accused had been a willing renter and driver of the Car containing the drugs into Singapore. This was in contrast to the Accused's claims that he had only rented the Car following a late request for assistance by Netiaanthan,[65] and that he had only driven the Car into Singapore as it was his only mode of transport after Netiaanthan had taken his motorcycle.[66] In this connection, the Prosecution also disputed the Accused's claim that he had undertaken checks on the Car prior to setting off. To this end, the Prosecution pointed to inconsistency with contemporaneous evidence,[67] as well as the internal inconsistency and improbability of the Accused's account of events.[68]

19 Third, the Prosecution submitted that the contents of the Follow-Up Calls after the Accused's arrest were highly incriminating as they disclosed

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61 PCS at para 73

62 PCS at paras 74–79.

63 PCS at para 81.

64 PCS at para 80.

65 PCS at para 83.

66 PCS at para 89.

67 PCS at paras 84–86 and 91–92.

68 PCS at paras 87–88 and 93–97.

that the Accused was aware that the Bundles had been hidden in the Car.[69] Indeed, the conversations between the Accused and other persons indicated that the Accused not only knew of the Bundles, but also knew that they contained drugs, and that these drugs were cannabis and methamphetamine specifically.[70]

20 Fourth, the Prosecution contended that the Accused had been an evasive witness at trial and that his evidence therefore lacked credibility.[71] This was the conclusion to be drawn from numerous internal inconsistencies in the Accused's account, as well as his denials of knowledge on various matters in the face of clearly contradictory evidence. Such evidence included conversations in text messages that the Accused had been party to, the statements he had given to the CNB after his arrest, and the Follow-Up Calls.[72]

21 Fifth, the Prosecution urged the court to consider the Accused's account of events against that which Netiaanthan had given to the CNB after his own arrest. The Prosecution submitted that the court should prefer Netiaanthan's account (which incriminated the Accused) over the Accused's bare assertions that Netiaanthan had lied.[73]

22 Finally, the Prosecution submitted that the Accused's claim to having no knowledge of the Bundles having been in the Car was a clear afterthought. In this regard, the Prosecution relied on the Accused's omission to substantiate

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69 PCS at para 99.

70 PCS at paras 99–107 and 135

71 PCS at paras 108.

72 PCS at paras 109–121.

73 PCS at paras 122–125.

this belief in statements to the CNB and argued that the Accused's explanation that the omission was the result of inaccurate or incorrect recording was clearly self-serving and should be rejected.[74]

The Prosecution's case on knowledge

23 In relation to the presumption of knowledge under s 18(2) of the MDA, the Prosecution relied on much of the same points as above to argue that it could be properly inferred from the totality of the evidence that the Accused not only knew about the presence of the Bundles in the Car, but that he had known of the specific nature of their contents.

24 In this regard, particular emphasis was placed on the Follow-Up Calls, in which the callers had used euphemistic terms for drugs. It was suggested that the Accused had failed to give an adequate explanation on why the callers would use such terms other than that he knew what they meant, and more specifically, that they had been referring to the drugs found in the Car.[75] At the highest, the Accused could be said to have been indifferent to what the Bundles contained, but this was insufficient to rebut the presumption of knowledge.[76]

The Defence's case

The Defence's version of events

25 The pith of the Defence's case was to point the finger at Netiaanthan while simultaneously disclaiming all knowledge of incriminating matters.

74 PCS at paras 127–131.

75 PCS at paras 135–136.

76 PCS at para 133.

Given that they form the substratum of the Defence's case, I first set out the Accused's version of the facts, which can be broadly summarised as follows.

26 On 5 February 2020 (*ie*, a day before his arrest), the Accused had received a late request from Netiaanthan to help rent a car for Netiaanthan. Although the Accused had already rented a car for Netiaanthan, Netiaanthan told him that this first car was unsuitable because it could not be used to keep cigarettes.[77] The Accused was scared and reluctant to rent the Car for Netiaanthan as he suspected that the cigarettes that Netiaanthan intended to hide in the car were illegal unpaid duty cigarettes.[78] The Accused initially rebuffed Netiaanthan's request, but after Netiaanthan assured him that this would be "the last time", the Accused caved and agreed to help him.[79] To this end, the Accused made arrangements for the rental of a car.[80] The Accused, however, did not collect the car himself. Instead, he arranged for Netiaanthan and their common friend[81] Daniel (whom the Accused and Netiaanthan also referred to as "Cina") to collect the car.[82] There was no dispute that this second car referred to by the Accused was the Car.[83]

27 On 6 February 2020 (*ie*, the day of the Accused's arrest), the Accused had been awoken early by Netiaanthan, who told the Accused that he (*ie*, Netiaanthan) needed to use the Accused's motorcycle and that the Accused

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77 Defence's Closing Submissions dated 6 November 2023 ("DCS") at para 19.

78 DCS at para 22.

79 DCS at para 22.

80 DCS at para 22.

81 SOAF at para 2.

82 DCS at paras 23.

83 DCS at para 23.

could use the Car to go to his workplace in Singapore.[84] Before the Accused could really question Netiaanthan and register his protest, Netiaanthan rode away on the Accused's motorcycle.[85] This left the Accused with little choice but to use the Car to travel to Singapore to go to work; he could not afford to miss work as he had previously taken medical leave.[86]

28 As the Accused prepared to set off, Netiaanthan returned on the Accused's motorcycle.[87] Netiaanthan told the Accused that there were cigarettes in the Car.[88] He instructed the Accused to drive to the Accused's workplace in Singapore, and that he (Netiaanthan) would come by the Accused's workplace to collect the Car while leaving the Accused's motorcycle in place of the Car.[89] Despite the Accused's protest that he did not want to drive the Car into Singapore, Netiaanthan said "see you in Singapore" and rode away on the Accused's motorcycle again.[90]

29 Having little choice but to use the Car to get to Singapore, the Accused undertook checks on various parts of the Car.[91] These checks turned up fruitless as the Accused could not find anything hidden in the Car.[92] Although the Accused felt tension as he did not know where the cigarettes had been hidden, he felt comfortable and safe to use the Car to enter Singapore as he

84 DCS at para 28.

85 DCS at para 29.

86 DCS at para 30.

87 DCS at para 31.

88 DCS at para 31.

89 DCS at para 32.

90 DCS at para 32.

91 DCS at paras 33–34.

92 DCS at paras 33–34.

had not been able to find them during his own checks.[93] The Accused then set off for Singapore in the Car.

30 As alluded to above (at [17]), the Accused also made reference to the December 2019 Incident at various junctures, including: (a) before trial, in his Seventh Long Statement[94] to the CNB; and (b) at trial, in the course of examination-in-chief[95] and under cross-examination.[96] I set out the relevant facts on this alleged incident, and address it below, at an appropriate juncture.

The Defence's case on lack of possession

31 The Defence accepted that s 21 of the MDA had been engaged by virtue of the Bundles containing the drugs having been found in the Car. However, the Defence submitted that the presumption had been rebutted as the Accused had not known that the Bundles were in the Car before he had driven into Singapore on the day of his arrest.[97] Four main points were raised in support of this submission.

32 First, the Defence pointed to the fact that the Accused had consistently denied knowledge about the Bundles hidden in the Car from the moment of his arrest.[98] In this connection, the Accused gave evidence that he had checked

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93 DCS at para 34.

94 Statement of Ravivarma Govindan dated 12 February 2020 at about 1600 hrs at paras 94–96 (2AB at pp 711–712).

95 NE (23 August 2023) at p 37 lines 1–14.

96 NE (24 August 2023) at pp 24–32.

97 DCS at para 166.

98 DCS at para 173.

the Car and found nothing before deciding to use it and drive into Singapore,[99] which supported his belief that there was nothing illegal in the Car.[100]

33 Second, the Defence submitted that there was some contemporaneous evidence to support the Accused's account of how he had come about using the Car, and that such account was not inherently incredible.[101]

34 Third, the Defence contended that there was no objective evidence that contradicted the Accused's account.[102] This claim was supported by the undisputed fact that the Accused's DNA was not found on the Bundles and the Seat, and that the Accused apparently received, or stood to receive, no remuneration for bringing the Bundles into Singapore.[103] In response to the Prosecution's reliance on the Follow-Up Calls, the Defence submitted that the references made by the callers to drugs did not suggest that the Accused had prior knowledge of the Bundles and their contents, but were instead procured by what the Accused had said to them in the latter's attempt to assist the CNB with its follow-up operations.[104]

35 Finally, the Defence submitted that the Accused had a legitimate purpose to enter Singapore on the date of his arrest, as he was only intending to go to his workplace.[105] Presumably, this was in contradistinction to any nefarious intent to import drugs.

The Defence's case on lack of knowledge

36 The Defence submitted that the presumption of knowledge under s 18(2) of the MDA had been rebutted because the Accused had thought that the Bundles contained cigarettes (rather than cannabis and methamphetamine).[106]

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99 DCS at para 139.

100 DCS at para 144.

101 DCS at para 174.

102 DCS at para 175.

103 DCS at para 175.

104 DCS at para 176.

105 DCS at para 177.

37 In this regard, the Defence pointed to the following factors to support its contention that the Accused had believed that the Bundles contained cigarettes:

(a) First, the Accused had consistently maintained and testified at trial that he had held such a belief.[107]

(b) Second, the basis of the Accused's belief was the events that had transpired in the morning of his arrest. In particular, the Accused claimed that Netiaanthan had told him that the Car contained cigarettes.[108]

(c) Third, the Accused testified that he had known that bringing drugs into Singapore was an offence.[109]

The applicable law

38 The charges of drug importation faced by the Accused were under s 7 of the MDA:

> **Import and export of controlled drugs**
>
> **7.** Except as authorised by this Act, it shall be an offence for a person to import into or export from Singapore a controlled drug.

39 The elements of the offence of importation under s 7 of the MDA are that: (a) the accused was in possession of the drugs; (b) the accused had

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106 DCS at para 179.

107 DCS at paras 182–184,

108 DCS at para 185.

109 DCS at para 185.

knowledge of the nature of the drugs; and (c) the drugs were intentionally brought into Singapore without prior authorisation (see *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 ("*Adili*") at [27]).

40 The third element of importation was not in dispute. It was unarguable that the Accused had brought or caused the Bundles containing the drugs to be brought into Singapore (see s 2(1) of the Interpretation Act 1965 (2020 Rev Ed); *Public Prosecutor v Adnan bin Kadir* [2013] 3 SLR 1052 at [5] and [22]). It was also agreed between the parties that neither the Accused nor Netiaanthan were authorised to possess cannabis and/or methamphetamine for any purpose.[110] Thus, the differences between the parties were confined to the first and second elements.

41 To establish the first element of possession, the Prosecution had to prove that: (a) the Accused was in physical possession, custody or control of the Bundles that were found to contain cannabis and methamphetamine; and (b) the Accused knew that the Bundles were in fact in his possession, custody or control (see *Adili* at [34]).

42 The second element of knowledge required the Prosecution to prove that the Accused was aware of the specific nature of the drugs contained in the Bundles. More specifically, it had to be proven that the Accused knew that the Bundles contained cannabis and methamphetamine; it would not have sufficed that the Accused knew that the Bundles contained some illicit substance or even a controlled drug generally (see *Ramesh a/l Perumal v Public Prosecutor and another appeal* [2019] 1 SLR 1003 at [65]–[67]).

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110 SOAF at paras 51–52.

43 As mentioned above, the Prosecution invoked the presumptions under ss 21 and 18(2) of the MDA. Section 21 of the MDA provides:

> **Presumption relating to vehicle**
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> **21.** If any controlled drug is found in any vehicle, it is presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

44 This presumption goes towards the first element of possession. In the present case, the effect of s 21 of the MDA was to place the burden of proof on the Accused to establish, on the balance of probabilities, that he did not know that the Bundles (and the drugs contained therein) were in the Car (see *Gopu Jaya Raman v Public Prosecutor* [2018] 1 SLR 499 ("*Gopu Jaya Raman*") at [21] and [97]; *Beh Chew Boo v Public Prosecutor* [2020] 2 SLR 1375 ("*Beh Chew Boo*") at [55]).

45 If the Accused succeeded in rebutting the presumption under s 21 of the MDA, the Prosecution would have failed to prove that he was in possession of the cannabis and methamphetamine. The case against the Accused would then have failed *in limine* and there would have been no need or occasion to consider the second element (see *Gopu Jaya Raman* at [22]).

46 If, on the other hand, the Accused failed to rebut the presumption under s 21 of the MDA, the second presumption invoked by the Prosecution would come into play. In this regard, s 18(2) of the MDA provides:

> **Presumption of possession and knowledge of controlled drugs**
>
> **18.** – …
>
> (2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

47 The presumption under s 18(2) of the MDA goes towards the second element of knowledge of the specific nature of the drug. Like the s 21 presumption above, its effect was to place the burden of proof on the Accused to prove, on the balance of probabilities, that he did not know the nature of the controlled drug referred to in the charges against him. Given that the Accused was charged for importation of cannabis and methamphetamine, he was presumed to know that the Bundles contained these two drugs unless he succeeded in proving otherwise (see *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 at [23]–[24]; *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng Comfort*") at [37]).

48 As a matter of common sense and practical application, an accused person who seeks to rebut the presumption of knowledge under s 18(2) of the MDA should be able to say what he thought or believed he was carrying. It would not suffice for the accused to simply state that he did not know or think he was carrying drugs, as this would render the s 18(2) presumption all bark and no bite. In a similar vein, the accused would not rebut the s 18(2) presumption simply because he did not know the scientific or chemical name of the drug, or the effects that the drug could bring about. In short, the s 18(2) presumption operates to vest the accused with knowledge of the nature of the drugs he was found in possession of, and to satisfactorily rebut this, he must give an account of what he thought it was (see *Obeng Comfort* at [39]).

49 I also bore in mind the following guidance laid down by the Court of Appeal in *Obeng Comfort* on the nature of the inquiry into whether the s 18(2) presumption had been rebutted (at [40]):

> Where the accused has stated what he thought he was carrying ("the purported item"), the court will assess the veracity of his assertion against the objective facts and examine his actions relating to the purported item. …

> Ultimately, what the court is concerned with is the credibility and veracity of the accused's account (*ie*, whether his assertion that he did not know the nature of the drugs is true). This depends not only on the credibility of the accused as a witness but also on how believable his account relating to the purported item is.

50 Finally, in considering whether the Accused rebutted the presumptions in play, I was mindful of two cautionary points. First, given the inherent difficulty in proving a negative, the burden on the Accused must not be so onerous that it became virtually impossible to discharge (*Gopu Jaya Raman* at [24]). Second, although the Prosecution had statutory presumptions operating in its favour, the evidence had to be evaluated neutrally in determining whether each presumption had been rebutted, without any predilection for either conclusion (*Gopu Jaya Raman* at [25]).

Issues to be determined

51 Given the Prosecution's reliance on the ss 21 and 18(2) presumptions, the two substantive issues in this case were whether the Accused had succeeded in rebutting either of these presumptions.

52 In addition to these substantive issues, there were two other discrete points that arose from the Defence's case: (a) first, the Accused's objections to certain evidence; and (b) second, the December 2019 Incident that was raised by the Accused. I propose to first address these two points as preliminary issues, before coming to the two substantive issues above.

My decision

53 Having considered the parties' submissions and the evidence carefully, I concluded that the Accused failed to rebut either the presumption of possession under s 21 of the MDA or the presumption of knowledge under

s 18(2) of the MDA. I arrived at this conclusion, despite taking a generous approach to the Accused on the preliminary issues, as there were crucial pieces of incriminating evidence that the Defence failed to provide any satisfactory answer to.

Preliminary issues

The Defence's objections to certain evidence

54 The first preliminary issue arose out of the two objections to certain evidence made by the Defence in its closing submissions.

55 First, the Defence contended that the evidence of a CNB officer, one Sergeant Hemamalani d/o Rajesegaran ("Sgt Hema"), on her alleged questioning of the Accused shortly after his arrest, should be excluded on the basis that its prejudicial effect outweighed its probative value pursuant to the court's common law exclusionary discretion under the principles set out in *Muhammad bin Kadar and another v Public Prosecutor* [2011] 3 SLR 1205 ("*Kadar*").[111] In the alternative, the Defence submitted that, even if the court was not minded to exclude Sgt Hema's evidence, no weight should be placed on it.[112]

56 Second, the Defence submitted that the court should place no weight on the statements[113] given by Netiaanthan to the CNB following his arrest, save to the extent that they corroborated the Accused's belief that, if he had been carrying anything illegal, such contraband was cigarettes rather than

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111 DCS at paras 151–161.

112 DCS at para 162.

113 Prosecution's Supplementary Bundle ("PSB") at pp 1–94.

drugs. The Defence also submitted that no weight should be placed on the statement of facts[114] that Netiaanthan pleaded guilty to when he was subsequently charged and convicted[115] of one charge of attempted possession of cannabis under s 8(*a*) read with s 12 of the MDA.

(1) The objection against Sgt Hema's evidence

57 The evidence of Sgt Hema that the Defence took issue with was her account, given in examination-in-chief, that the Accused had given answers to her questions following his arrest which suggested that he had knowledge of a scheme amongst his associates to traffic drugs into Singapore:[116]

> Q So can you tell us what the accused told you about this individual with the contact Sanggap2?
>
> A When I asked Ravivarma who Sanggapp was, what he told me was that he---Sanggap is a leader of---for them who gives them the drugs to deliver to Singapore and he has done it many times, Your Honour.

58 The difficulty was that these details were contained in neither Sgt Hema's conditioned statement[117] nor the conditioned statement of Sgt Hema's superior, Deputy Superintendent Sea Hoon Cheng[118], who Sgt Hema testified to having informed of the details. This was conceded by Sgt Hema when both conditioned statements were put before her in cross-examination.[119]

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114 PSB at pp 99–103.

115 PSB at pp 95–96.

116 NE (15 August 2023) at p 7 lines 27–31

117 Statement of Hemamalani d/o Rajasegaran dated 23 December 2021 (2AB at pp 491–501).

118 Statement of Sea Hoon Cheng dated 22 December 2021 (2AB at pp 460–462).

119 NE (15 August 2023) at p 12 lines 11–14 and p 13 lines 13–16.

59 The Defence argued that, if the Accused did tell the above details to Sgt Hema, her failure to record them in writing constituted a breach of the procedural requirements for the taking of long statements under s 22 of the CPC. It submitted that this procedural non-compliance rendered Sgt Hema's evidence highly prejudicial to the Accused, and that the court should respond to this by either excluding it under its *Kadar* discretion or by placing no weight on it.[120]

60 I was content to resolve this objection in favour of the Defence and, in coming to my decision, I placed no weight on Sgt Hema's evidence on this point. I did not think it necessary to discuss the Defence's submissions at length because it did not seem to me that Sgt Hema's evidence was particularly critical to the Prosecution's case.

(2) Netiaanthan's statements and the statement of facts for his conviction

61 The Defence submitted that no weight ought to be accorded to the statements given by Netiaanthan after his arrest and the statement of facts that he had pleaded guilty to in separate proceedings. The Defence gave three reasons for this. First, the Accused did not have the opportunity to test the veracity of Netiaanthan's statements as the latter had declined to testify at the Accused's trial.[121] Second, the contents of Netiaanthan's statements were likely to be self-serving as they were given at a time when he had a strong incentive to conceal or even contrive facts to minimise his involvement.[122]

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120 DCS at paras 157–162.

121 DCS at para 91.

122 DCS at para 91.

Third, it was suggested that Netiaanthan's statements were inconsistent with contemporaneous evidence.[123]

62 For the predominant reason that the Defence was deprived of the opportunity to test Netiaanthan under cross-examination, I accepted the Defence's submission and placed no weight on Netiaanthan's evidence (see *Public Prosecutor v Chia Kee Chen and another appeal* [2018] 2 SLR 249 at [57]).

63 However, in deciding that no weight should be placed on Netiaanthan's evidence, I also rejected the Defence's submission that limited weight should be placed on certain portions of Netiaanthan's evidence to the extent that they corroborated the Accused's supposed belief that he had only been transporting cigarettes.[124] The Defence could not be allowed to approbate and reprobate in this manner. As a matter of fairness, the Prosecution also faced the corresponding disadvantage of an inability to test the parts of Netiaanthan's evidence that were favourable to the Accused. A just result to both parties, in my view, was for Netiaanthan's evidence to be treated as tainted in its entirety.

The December 2019 Incident

64 The second preliminary issue relates to the December 2019 Incident that was raised by the Accused. I have found it appropriate to address this as a preliminary issue because it appeared to me that the Defence had essentially abandoned reliance on the December 2019 Incident by the close of the trial.

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123 DCS at para 91.

124 DCS at paras 105–113.

However, before I elaborate on this, it is necessary for context that I first set out the Accused's account of this incident.

65 The December 2019 Incident, as described by the Accused in his Seventh Long Statement to the CNB,[125] can be summarised as follows. Sometime in December 2019, Netiaanthan asked the Accused to drive a car that the Accused had rented for Netiaanthan into Singapore. This was because Netiaanthan claimed to require use of the Accused's motorcycle. The Accused agreed, and when he arrived in Singapore at his workplace, he saw someone in a helmet on his (the Accused's) motorcycle, waiting outside the gate of his workplace. The Accused was surprised that his motorcycle was there, and he did not recognise the helmeted individual. This stranger then approached the car that the Accused was driving, knocked on the window, and informed the Accused that his (the Accused's) helmet and jacket were in the car boot. The Accused then got out of the car to check and confirmed (to his surprise) that his items were in the car boot. After the Accused retrieved his items and closed the boot, the stranger had gotten into the car and drove off immediately.

66 When the Accused returned home, he questioned Netiaanthan on what had transpired at his workplace. Netiaanthan apologised to the Accused but told him nothing except that there had been cigarettes in the car. The Accused claimed that he was angered by this, and scolded Netiaanthan for putting him at risk. Netiaanthan apologised once more and attempted to placate the Accused by giving him some money. The Accused claimed that he rejected this money, and let the matter lie notwithstanding his professed anger and irritation at the time.

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125 Statement of Ravivarma Govindan dated 12 February 2020 at about 1600hrs at paras 94–96 (2AB at pp 711–712).

67 It appeared that the Accused raised the December 2019 Incident intending to rely on its similarity to the present charges against him, so as to support his claimed belief that there was either nothing illegal in the Car or, at the most, that cigarettes had been hidden in the Car. I caveat that this was my impression because (as mentioned above) the Defence seemed to drop reliance on the December 2019 Incident in its ultimate case. I drew this conclusion for the following two reasons.

68 First, the Defence mentioned the December 2019 Incident only once in its closing submissions. This sole reference[126] was made not in the course of making any argument that the court should draw any inference from it, but in the course of the Defence's restatement of the events that transpired prior and subsequent to the Accused's arrest. Specifically, the Defence referred to the December 2019 Incident as something that the Accused had told the CNB officers about shortly after his arrest.

69 Second, and more importantly, when it came to the Defence's oral reply submissions, apart from reiterating that the Accused had mentioned the December 2019 Incident in his Seventh Long Statement, counsel for the Defence himself sought to downplay the December 2019 Incident as a "neutral point" that was "of little weight".[127]

70 The Accused's travel movement records from the ICA were placed in evidence before the court.[128] These records indicated details such as the date

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126 DCS at para 54.2.

127 NE (20 November 2023) at p 4 lines 20–32.

128 Statement of Anmbalagi D/O Ayah dated 23 December 2021 (1AB at pp 101–105); P256.

and time of entry and departure, as well as the mode of transport at entry and departure. Based on these records, assuming that the December 2019 Incident did occur, the date it occurred would probably have been 18 December 2019, as this was the only date which met all of the following conditions: (a) the Accused had entered Singapore by car; (b) the Accused had left Singapore by motorcycle; and (c) there was no corresponding entry and departure by Netiaanthan in the car in which the Accused had entered into Singapore. The last of these conditions – *ie*, condition (c) – is critical because the Accused's account of the December 2019 Incident was that the car had been collected from his workplace by a stranger rather than Netiaanthan. Further lending strength to the inference that 18 December 2019 was the relevant date was the fact that Netiaanthan entered Singapore the next day (19 December 2019) in the car that the Accused had entered Singapore with on the previous day.[129] This necessarily meant that the car had been driven back to Malaysia by someone (such as the stranger claimed by the Accused) before finding its way to Netiaanthan.

71 However, even with these travel movement records, there was simply not enough evidence before me to make any finding as to whether the December 2019 Incident had occurred and whether the Accused's account of its details was accurate. At the highest, these records could only corroborate the possibility of the December 2019 Incident having occurred. They had nothing to say about the truth or probability of the Accused's account.

72 Given that the burden lay on the Accused to prove the December 2019 Incident on the balance of probabilities, the insufficiency in evidence had to be

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129 P256.

resolved against the Accused as a failure to discharge his burden of proof (see ss 105 and 108 of the Evidence Act 1893 (2020 Rev Ed)). Further, as noted above, the Prosecution did argue that the Accused's account of the December 2019 Incident should be rejected, although their arguments were mostly founded on internal consistency and logic rather than evidence.[130] The Accused's apparent resiliation from the December 2019 Incident at the close of his case meant that these points went unanswered.

73 However, I was willing to give the Accused the benefit of the doubt that the December 2019 Incident had panned out as he claimed, given the inherent difficulty he faced in proving it due to Netiaanthan's absence at trial. But as I will explain at appropriate points below, I did not agree with the Defence that it could be waved away as a "neutral point", as it seemed to me that the December 2019 Incident tended to hurt, rather than to support, the Defence's case.

Substantive issues

74 Having addressed the preliminary issues, I come to the substantive issues that arise from the two MDA presumptions that were invoked in this case.

Whether the Accused had rebutted the presumption of possession under s 21 of the MDA

75 To recapitulate, for the Accused to succeed in rebutting the s 21 presumption, he had to prove on the balance of probabilities that he had no

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130 PCS at paras 74–80.

knowledge that the Bundles were in the Car. In my judgment, he fell considerably short of discharging this burden for the following reasons.

(1) The Accused was contradicted by his own statements

76 First, I accepted the Prosecution's submission that the Accused's claim of having no knowledge of the existence of the Bundles in the Car seemed to be an afterthought that was belatedly raised at trial. This claim was inconsistent with what the Accused had told the CNB in all his statements, as he had admitted to knowing that there had been some form of contraband hidden in the Car. To substantiate this finding, I set out in the following paragraphs a chronological account of the Accused's statements which demonstrates that he had consistently maintained having knowledge of some contraband in the Car.

77 In his First Cautioned Statement, taken less than 24 hours after his arrest, the Accused stated – after the usual caution had been administered – in his defence to the charges that he knew that there had been cigarettes in the Car, but he did not know of the quantity.[131] Given that the element of knowing possession does not require the Accused to have appreciated the nature of what he was carrying, whether he believed that it was cigarettes (as he claimed) or actually knew that it was drugs – *viz*, cannabis and methamphetamine – was irrelevant to the issue of rebutting the presumption of possession. The Accused's knowledge that he was in possession of some contraband would suffice to establish the element of knowing possession.

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131 Statement of Ravivarma Govindan on 7 February 2020 at about 0350 hrs (2AB at p 655).

78 Subsequently, in his Fifth Long Statement, the Accused recounted the circumstances of his arrest at Tuas Checkpoint.[132] This statement was replete with a litany of the same admission (*ie*, that he knew that there had been some contraband hidden in the Car).

79 As the Accused recounted his account of events from his alighting from the Car up until the initial search by two ICA officers, he had this to say on his reply when asked by the officers on whether he had anything to declare before they commenced searching the Car:[133]

> … I told him that I did not know anything and I did not keep anything in the car. I knew that there were cigarettes in the car because Nithianathan told me but I did not tell the officer about it because I do not know where the cigarettes were exactly in the car. I did not tell the officer that there were cigarettes in the car because I was not sure if the officers can find the cigarettes. I did not want volunteer this piece of information, which there were cigarettes in the car, to the officer because I do not want to get Nithianathan into trouble and I was also scared that "something" may happen to me. The "something" is I scared that if I told the officer about Nithianathan and the officer did not believe me and I would get into trouble. That was the reason that I was scared and did not tell the officer anything. Thereafter, about two officers started to search the car.

In this extract, the Accused did not only admit to having known that there was some contraband hidden in the Car, he also explained his thought process behind his decision to deliberately hide this knowledge from the officers.

80 Still on his Fifth Long Statement, the Accused went on to explain his perspective when the Bundles were recovered from the Car by the CNB

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132 Statement of Ravivarma Govindan on 12 February 2020 at about 0952 hrs at para 62–63 (2AB at pp 690–691).

133 Statement of Ravivarma Govindan on 12 February 2020 at about 0952 hrs at para 62 (2AB at pp 690–691).

officers. He once again made clear that he knew that something had been hidden in the Car, and that his surprise was not directed to the existence of contraband in the Car, but to what the contraband turned out to be (*ie*, drugs).[134]

81 Skipping forward in time, I come to the Accused's Second Cautioned Statement, recorded on 13 October 2020 at about 11.03am, more than half a year after his arrest. This was the last statement that the Accused gave to the CNB. Given the lapse of time since his arrest, it was reasonable to expect that the Accused would by this time have firmed up his defence to the allegations against him. Nevertheless, the Accused once again did not disclaim knowledge of the existence of contraband in the Car. On the contrary, he maintained the account given in his First Cautioned Statement that he had known that there were cigarettes hidden in the Car.[135]

82 It is thus clear from the above that, in his statements to the CNB, the Accused had consistently taken a position that was fundamentally inconsistent with his case at trial that he did not know that there was anything incriminating in the Car.

83 I found that the Accused offered no cogent explanation or reconciliation of the inconsistency between his position as articulated in his statements and his position at trial, on the issue of his knowledge as to the existence of hidden contraband in the Car. Given this, I disbelieved his account at trial as to his lack of knowledge of contraband being in the Car. In

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134 Statement of Ravivarma Govindan on 12 February 2020 at about 0952 hrs at paras 67–68 (2AB at pp 692–693).

135 Statement of Ravivarma Govindan on 13 October 2020 at about 1103 hrs (2AB at p 785).

this regard, I highlight the remarkable consistency and clarity with which he had maintained knowledge of the existence of contraband from his First Cautioned Statement through to his Second Cautioned Statement. His subsequent attempt to disclaim such knowledge at trial was clearly an afterthought.

84 The law does allow an accused person to run alternative cases, even if they may be inconsistent (see *Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [37], citing *Public Prosecutor v Mas Swan bin Adnan and another appeal* [2012] 3 SLR 527 ("*Mas Swan*") at [68]). The Defence emphasised this at the close of its oral reply submissions.[136]

85 This legal proposition is correct. But *Mas Swan* does not govern patent and irreconcilable inconsistencies between an accused person's alternative cases and the drawing of the entirely logical inference from this that one is not believable. To my mind, when viewed in the context in which the statement was made, the point that the Court of Appeal made in *Mas Swan* was a relatively limited one.

86 *Mas Swan* involved two accused persons, Mas Swan and Roshamima, who were jointly charged with importing diamorphine into Singapore after three hidden bundles of diamorphine were discovered in the vehicle in which they were attempting to enter Singapore from Malaysia. At trial, Mas Swan contended that he knew that the three bundles were in the car but believed that they contained ecstasy pills because Roshamima had told him so. On the other hand, Roshamima denied any such conversation having taken place and

136 NE (20 November 2023) at p 10 line 7–19.

disclaimed any knowledge of the existence of the three bundles in the car. At first instance, the trial judge accepted Mas Swan's evidence and acquitted him of the charge of importation. In contrast, Roshamima was convicted as the trial judge disbelieved her defence that she did not know of the existence of the three bundles in the car. The learned judge also considered that Roshamima had failed to rebut the presumption of knowledge under s 18(2) of the MDA.

87 On appeal, the Court of Appeal held that the trial judge had erred in law by failing to consider the possibility that Roshamima might also have believed that the three bundles actually contained ecstasy pills. This was the context in which the court stated the principle that "a trial judge should not shut his mind to any alternative defence that is reasonably available on the evidence even though it may be inconsistent with the accused's primary defence" (*Mas Swan* at [68]). It is clear, therefore, that the Court of Appeal said absolutely nothing that impinges on how the court should go about treating the inconsistencies in an accused person's alternative accounts. Its point was that just because the accused person has opted to go with an 'all or nothing' defence – there, denying knowledge of the existence of the three bundles altogether – and has pleaded no other alternative, the court should not fail to consider the possibility of an alternative defence – there, lack of knowledge of the specific nature of the contents of the bundle – if it rejects the 'all or nothing' defence that the accused has solely relied on. To cast the *ratio* of *Mas Swan* as a broad proposition that an accused person is entitled to run inconsistent defences may not therefore be entirely accurate, even if the proposition is sound, since in *Mas Swan*, the issue really arose from the fact that the accused, Roshamima, had herself not run an alternative case. Looked at in this light, the Court of Appeal's concern in *Mas Swan* did not arise in the present case, since the Accused had himself put forward alternative cases

against possession and knowledge rather than putting all his eggs in the basket of refuting possession.

88 Indeed, my caution against reading *Mas Swan* too broadly, or out of context, is buttressed by the fact that the Court of Appeal has, in subsequent decisions, itself recognised "[the] need to qualify the seeming breadth of the holding in *Mas Swan*" (see *Mohammad Azli bin Mohammad Salleh v Public Prosecutor and another appeal and other matters* [2020] 1 SLR 1374 ("*Azli*") at [94]). In *Azli*, the Court of Appeal clarified that "there must be some limits to [*Mas Swan*'s] application" due to the particular factual context of *Mas Swan* (at [95]). Specifically, Sundaresh Menon CJ emphasised that the need to consider alternative defences was necessarily "constrained by reference to the available evidence" (at [96]). It is an implicit assumption in this statement, and really a matter of common sense, that the viability of any case – primary or alternative – that an accused person runs will be constrained by the available evidence.

89 I found that lessons could be drawn from the Court of Appeal's treatment of *Mas Swan* in *Azli*. Menon CJ opined in *Azli* that some of the criticism levelled by the Court of Appeal in *Mas Swan* at the trial judge there had not been entirely warranted because, having not run a case on knowledge, no evidence or submission was ever advanced by Roshamima (the co-accused person in *Mas Swan*) before the trial judge to rebut the presumption under s 18(2) of the MDA (*Azli* at [95]). Thus, it was difficult to see how the trial judge could, as the Court of Appeal suggested he should, have considered Roshamima's knowledge of what was in the bundles (*Azli* at [96]). In my view, a similar point could be made about the Accused's case on rebutting the presumption of possession under s 21 of the MDA. In the context of his statements at least – although the same could be said about the totality of the

evidence – there was little to nothing on which he (or the court) could latch upon to support the argument that he had not known about the existence of contraband at all in the Car.

90 It follows from the above that *Mas Swan* and the principle therein does not immunise an accused person from adverse consequences if, as in the present case, he conducts his defence by taking a position that is founded on certain premises, and even leads evidence in support, before doing an about turn and resiling from this position or its underlying premises. Although I have attempted to explain this point in some detail, I do not think that this can be controversial.

(2) The Defence's factual case was internally inconsistent

91 Second, I found that the Defence's factual case was internally inconsistent. Not only did it not support a lack of knowledge on the Accused's part that there was contraband in the Car, it was in fact premised on him having such knowledge. Given this fundamental inconsistency, I found the Accused's account to lack credibility, and this supported my overall finding that his case on lack of possession was an afterthought.

92 I have set out the Defence's version of events as to how he had come to drive the Car into Singapore on the date of his arrest at [26]–[29] above. For present purposes, it suffices to highlight three points that form part of the Defence's own account of events. First, Netiaanthan had sought the Accused's assistance to rent the Car because he (Netiaanthan) wanted to hide cigarettes in the Car.[137] Although the Accused claimed to have been initially reluctant, he

[137] DCS at para 21.

did not dispute that he ultimately acceded to this request. In other words, he agreed to assist Netiaanthan in smuggling cigarettes into Singapore.[138] Second, on the date of his arrest, before the Accused had set off for Singapore in the Car, Netiaanthan had positively informed him that there were cigarettes hidden in the Car.[139] Third, because Netiaanthan had informed the Accused of this, he (the Accused) supposedly decided to undertake his own checks and sweep of the Car prior to his departure, which he claimed turned up empty for any contraband hidden in the Car.[140] Apart from being stated in the Defence's closing submissions, the Accused confirmed all three of these points under cross-examination.[141]

93 In my judgment, as a matter of simple logic, it was plainly impossible for the Accused to put forward a factual account containing the three points above and simultaneously maintain that he had no knowledge that there was contraband hidden in the Car. Rather, the Accused's account clearly implicated him having such knowledge, not least because (a) he acquired knowledge of the existence of contraband in the Car when Netiaanthan told him so; and (b) it was precisely because he had such knowledge that he supposedly decided to conduct checks on the Car. It defies logic that the Accused would conduct a check on the Car if he did not know – or at the very least, have reason to suspect – that there was contraband hidden therein.

94 With respect, it appeared to me that the Defence's case was built on a defective foundation, which was a conflation between: (a) a lack of knowledge

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138 DCS at para 22.

139 DCS at para 31.

140 DCS at paras 33–34.

141 NE (24 August 2023) at pp 23–24.

that contraband had been hidden in the Car; and (b) a lack of knowledge of where contraband had been hidden in the Car. The crucial distinction, in the present context, was that only the former would suffice to enable the Accused to rebut the presumption of possession under s 21 of the MDA. Taken at its highest, the Defence's case could only be consistent with a lack of knowledge about the exact location in the Car where the contraband had been hidden. The Accused could not sensibly claim that he did not know that there was contraband hidden in the Car at all.

95 In my view, this clearly manifested itself in the context of the Accused's claim that, after he had checked the Car and found nothing, he was "having the tension as [he] did not know where [Netiaanthan] kept the cigarettes".[142] If the Accused genuinely believed that there had been nothing hidden in the Car whatsoever, it would not make sense for him to feel any tension or concern. The existence of tension and concern was instead consistent with him having knowledge that there was something hidden in the Car, albeit that he could not locate it. Indeed, the Prosecution picked up on this glaring inconsistency and put it to the Accused in its cross-examination.[143]

96 The Defence did not address this inconsistency in its re-examination of the Accused. However, by the time of its closing submissions, it had evidently become alive to the significance of this point, as it sought to reconcile the Accused's feeling of tension with his claimed belief that there was nothing hidden in the Car in the following explanation:[144]

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142 Statement of Ravivarma Govindan on 11 January 2020 at about 1445 hrs at para 52 (2AB at p 675).

143 NE (25 August 2023) at pp 23–24.

144 DCS at para 142.

> We also submit that, even if [the Accused] still felt "tension" after he checked the Car, such a feeling of "tension" is not at odds with him truly having checked the Car and also feeling comfortable and safe to use the Car. [The Accused] had already conducted checks on the Car and satisfied him, visually, that nothing was in the Car. *Yet, what Netia told him about there being cigarettes in the Car still lingered in his mind. The feeling of "tension" should be normal of someone who is trying to manage his emotions stemming from what he actually saw versus what he was told but did not see. In fact, it was honest of [the Accused] to say that he was "having the tension" because the context of him saying that is that he had checked the Car and saw nothing, but what Netia said still weighed on his mind and he did not know where Netia kept the cigarettes.* If he had wanted to fabricate an explanation of him checking the Car before using it, it would not make sense for him to mention about any negative thoughts or emotions, and he should have just emphasized feelings of confidence to use the Car.
>
> [emphasis added]

97 I was not persuaded that it could have been possible for the Accused to feel tension while having a genuine belief that there was nothing hidden in the Car. This was unsurprising because, as I have explained above, the two rested on fundamentally incompatible bases.[145] If the Accused genuinely did not know that there was anything hidden in the Car, he would not have felt tension because he would have had nothing to be concerned about. In my view, the part of the extract above that I have placed in emphasis inevitably gave the game away: the Accused felt tension because he knew that there was contraband hidden in the Car – since Netiaanthan had told him so – but he did not know where exactly in the Car the contraband had been hidden. The Defence all but conceded to this in its statement that the Accused was "trying to manage his emotions stemming from what he actually saw versus what he was told but did not see". Put simply, the fact that the Accused could not see

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145 NE (20 November 2023) at p 21 lines 8–14.

the hidden contraband (because he could not find it), did not mean that what he had been told (that there was contraband hidden in the Car) was untrue.

98 In my judgment, the likely explanation for this logical inconsistency was that the Accused's claim that he had no knowledge of the existence of any contraband in the Car was an afterthought. This dovetails with my analysis above where I have demonstrated the remarkable consistency with which the Accused had asserted knowledge that the Car contained cigarettes. The Accused had initially focused on putting up a case to rebut the presumption of knowledge under s 21 of the MDA. At this juncture, I point out that, in his statements, the Accused did not merely state a belief that the Bundles contained cigarettes. Instead, in all the extracts from his statements that I have referred to above, he went further to assert actual knowledge that the Bundles (or at least the Car) contained cigarettes. There is a clear conceptual difference between claiming to believe something and claiming to know it as a fact. While this may be a difference in degree and not kind, it heightens the disparity between his initial position and his subsequent case at trial where he claimed to have no knowledge of the Bundles at all.

99 In short, the Defence's case made a lot more sense when one viewed it in the context of the Accused having known that there was contraband hidden in the Car, and it made a lot less sense if one tried to rationalise it with him having no knowledge of anything being hidden in the Car. Given this, the natural inference to draw was that the former – which was also given at a time more proximate to his arrest – was the correct account and the latter was an afterthought.

100 In closing this point, I make a brief reference to the December 2019 Incident. As I alluded to above (at [73]), although this incident was raised by

the Accused, it seemed to me to hurt his defence rather than assist it. The present point was one such example. If one were to consider the Accused's version of events in the context of the December 2019 Incident, it would mean that the Accused had been duped by Netiaanthan into smuggling cigarettes into Singapore on a previous occasion. He would therefore have been aware of Netiaanthan's *modus operandi*, and this made any claim to not having knowledge that the Car contained hidden contraband all the more unbelievable, especially because, on this occasion, Netiaanthan had actually told him of the existence of the contraband in the Car.

(3) The Accused's account was contradicted by his text messages

101 Third, the Accused's claim to having no knowledge that there had been contraband hidden in the Car was contradicted by text messages that he had been party to.

102 It would be recalled that, on the Accused's account of events, Netiaanthan's request for his assistance to rent the Car had been sprung onto him at the eleventh hour (see [26] above). Specifically, the Accused claimed that Netiaanthan had made the late request the night before his arrest, that is, Wednesday, 5 February 2020. This was stated by the Accused in his Fourth Long Statement,[146] maintained during cross-examination,[147] and the factual account put forward by the Defence in its closing submissions.[148]

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146 Statement of Ravivarma Govindan on 11 February 2020 at about 1045 hrs at para 45 (2AB at p 672).

147 NE (25 August 2023) at p 37 lines 27–29.

148 DCS at para 19.

103 However, as the Prosecution pointed out in its closing submissions,[149] this was contradicted by messages that were exchanged between the Accused and Daniel (a common friend with Netiaanthan) the day before – 4 February 2020 – where the two clearly discussed the renting of a car. Indeed, contrary to the Accused's claim that he had been initially unwilling to rent the Car for Netiaanthan, these messages showed the Accused actively chasing Netiaanthan (through Daniel) to confirm what type of car to rent.[150]

104 Further, and more importantly, the Accused's claim that he did not know that there was anything hidden in the Car was undermined by how he told Daniel in these messages that they should "try putting the bomb" into the car, and if it was not possible to do so, they could "change the car".[151] This clearly inferred the existence of a prior arrangement between the Accused, Daniel and Netiaanthan to rent a car for the purpose of packing something into it. Although the Accused categorically denied this at first in cross-examination,[152] he later recanted this denial and admitted that these messages involved a discussion to hide contraband – specifically, cigarettes – in the rented car, which turned out to be the Car that he had driven into Singapore.[153]

105 The Accused's change of position here generally undermined his credibility as a witness. But, for the more specific purpose of the s 21 presumption, the crucial point was that these messages materially contradicted the Accused's account of an eleventh-hour request from Netiaanthan for

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149 PCS at paras 84–86.

150 P257 at pp 1–3.

151 P257 at p 2.

152 NE (25 August 2023) at p 63 lines 7–14.

153 NE (29 August 2023) at p 22 lines 18–29.

assistance in renting the Car. These messages also contradicted the Accused's claim that he had been unaware that anything had been hidden in the Car, as they revealed an element of planning to hide contraband in a rental car almost immediately before the Accused's arrest.

(4) The Follow-up Calls indicated that the Accused knew of the Bundles in the Car

106 Fourth, it could be inferred from the Follow-up Calls that the callers who the Accused conversed with clearly assumed that he had knowledge of the existence of the Bundles in the Car. It bears emphasis that these callers were not strangers to the Accused, but on his own evidence, his friends.

107 For example, in a Follow-up Call between the Accused and one "Sanggap2" at 9.52am, Sanggap2 instructed the Accused to inform him when the Accused reported for work, and that he (Sanggap2) "will send someone to take everything".[154] Since Sanggap2 did not explain what "everything" meant in the rest of the call, Sanggap2 must have assumed that the Accused knew what he was talking about. It was not suggested that Sanggap2 had dialled the wrong number or that the Accused had otherwise received a message that was meant for someone else, since the Accused himself confirmed that Sanggap2 was a common friend of him and Nethiaanthan.[155]

108 The Accused had no explanation for why Sanggap2 had made such an assumption. After the audio of this Follow-up Call was played to him, the Accused stated in his Eleventh Long Statement that he "could not explain why

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154 Translated Transcription of 200206-0948. Mp3 (P176A at p 3).

155 Statement of Ravivarma Govindan on 12 February 2020 at about 1600hrs at para 78 (2AB at p 707).

Sanggap[2] had not sounded surprised when [the Accused] replied him ok after [Sanggap2] told [him] that he will send someone to collect the things".[156]

109 It was clear from a subsequent Follow-up Call between the Accused and Sanggap2 at 12.45pm[157] that the "everything" which Sanggap2 had referred to in the earlier call were the Bundles that had been hidden in the Car. In this subsequent call, after Sanggap2 had inquired of him how the Car had been searched at customs, the Accused responded that the Car had been "checked fully", but that "[he] was not caught" as while the officers had "tapped behind the seat", "they said that there was nothing inside" as "[i]t's sealed with cable tie". The Accused was clearly referencing the Bundles that had been hidden behind the seat in a manner that involved the use of cable ties.[158] In response, Sanggap2 merely confirmed: "Ah yes. It was sealed by cable tied. If it is not sealed with cable tied, then you see how". The fact that Sanggap2 exhibited no surprise whatsoever that the Accused knew exactly where and how the Bundles had been hidden in the Car clearly suggested that he (Sanggap2) assumed that the Accused had known of this.

110 In a similar vein was the Accused's Follow-up Call with Netiaanthan at 1.52pm.[159] In this call, the Accused told Netiaanthan that he (the Accused) had removed the Bundles from the Car and kept them in his company.[160]

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156 Statement of Ravivarma Govindan on 16 September 2020 at about 1006hrs at para 142 (2AB at p 749).

157 SOAF at para 27, S/N 1; Translated Transcription of 200206_1241.mp3 (P176A at pp 6–8).

158 Statement of Muhammad Khairi bin Mohamad Sani dated 24 December 2021 at para 11 (2AB at p 446).

159 SOAF at para 28, S/N 3.

160 Translated Transcription of Audio File 200206_1349.mp3 (P176A at pp 8–9).

Similar to Sanggap2, Netiaanthan did not express the slightest surprise at the fact that the Accused had been able to do so. This clearly suggested that Netiaanthan believed that the Accused knew of the Bundles in the Car. Indeed, Netiaanthan also believed that the Accused knew where exactly the Bundles had been hidden in the Car.

(5) The authorities relied on by the Defence

111 The Defence cited two decisions of the Court of Appeal, *Gopu Jaya Raman* and *Beh Chew Boo*, in which the accused persons were found to have successfully rebutted the presumption under s 21 of the MDA.[161] I found both decisions to be readily distinguishable and of no assistance to the Defence.

112 In *Gopu Jaya Raman*, the appellant successfully rebutted the presumption of possession because he was able to satisfy a majority of the Court of Appeal that, on a balance of probabilities, the three bundles of drugs found on his motorcycle had been planted there without his knowledge (at [91]). It is clear that the present case was completely different. Since the Accused admitted that Netiaanthan had told him about the contraband hidden in the Car prior to entering Singapore, he was clearly not in the same position as the appellant in *Gopu Jaya Raman*. Furthermore, the majority in *Gopu Jaya Raman* found that while the appellant's associates clearly had a plan to transport drugs into Singapore, it was not satisfied on the evidence that the appellant had been part of this plan (at [92]-[93]). In contrast, as I have found above, the messages between the Accused and Daniel on 4 February 2020 clearly suggested that the Accused, Daniel and Netiaanthan had a common design to pack something into the Car before it was driven into Singapore.

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161 DCS at paras 168–170.

113 In *Beh Chew Boo*, drugs had been found hidden in the storage compartment of the seat of the motorcycle on which the appellant had ridden into Singapore. The appellant's defence was that the drugs had been hidden in the storage compartment without his knowledge. This appeared to be corroborated by the fact that the motorcycle did not belong to the appellant, but rather to his friend, Lew. Further, only the DNA of Lew, and not the Appellant, was found on the drug exhibits. The Court of Appeal considered that the appellant had put forward an account that was not "inherently incredible", such that the evidential burden shifted to the Prosecution to rebut the appellant's account (at [71] and [80]). In these unique circumstances, the Prosecution's failure to call Lew as a witness meant that it failed to discharge its evidential burden in the face of the appellant's "plausible defence" (at [80]). The Court of Appeal thus held that the appellant succeeded in rebutting the s 21 presumption and acquitted him. On comparison, it was clear that the Accused's case was really nothing like *Beh Chew Boo*. The same points of difference (at [112] above) *vis-à-vis Gopu Jaya Raman* applied with equal force to the Accused's misplaced reliance on *Beh Chew Boo*. Ultimately, the Accused could not run away from the reality that he had run a case of a lack of knowledge of contraband being in the Car in the face of his own account that he had been told precisely the opposite by Netiaanthan.

114 More generally, the underlying difficulty with the Defence's reliance on these authorities was that it seemed to take the approach of attempting to force-fit the facts of the Accused's case into statements made by the Court of Appeal in these cases where the presumption had been successfully rebutted. The Defence took certain statements made by the Court of Appeal, which were findings of fact or assessments of the evidence in the particular cases

before it, as laying down some prescriptive formula or test as to whether an accused person succeeds in rebutting the s 21 presumption:[162]

> An accused person can successfully rebut the presumption under s 21 if he can prove, on a balance of probabilities, that he did not know about the existence of the bundles (found to contain drugs) in the vehicle *because he had been broadly consistent in denying knowledge of the drugs being hidden in the vehicle, that there is some contemporaneous evidence to support his account of what happened and his account is not inherently incredible, that there is a lack of objective evidence that contradicts his account, and that his reason for entering Singapore was not incredible.*
>
> [emphasis added]

It is noteworthy that the part of the above extract which I have placed in emphasis is essentially a patchwork of statements and phrases found in *Gopu Jaya Raman* and *Beh Chew Boo*.

115 I doubted that this was the correct approach to take. Whether an accused person succeeds in rebutting the presumption of possession (or knowledge) turns on the specific facts and evidence in each case. It is not something that is amenable to any sort of prescriptive formulae. After crocheting together the statements from *Gopu Jaya Raman* and *Beh Chew Boo* to create the "rule"[163] which I have reproduced above, the Defence's analysis essentially proceeded as a box-ticking exercise based on matching facts in the present case to these statements.[164] However, these statements cannot be divorced from the specific factual and evidential context in which they were made. To take one example, the Court of Appeal's statement in *Beh Chew Boo*

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162 DCS at para 167.

163 DCS at para 172.

164 DCS at paras 173–178.

that the appellant's account was "not inherently incredible" was not intended to lay down any legal principle that a "not inherently incredible" account would lead to a rebuttal of the presumption. Rather, the finding that the appellant's account in that case was "not inherently incredible" was significant against its factual backdrop, because it meant that, on the state of the evidence before the court, it was incumbent on the Prosecution to call Lew as a witness to respond to the appellant's account.

116 In the present case, even if the Defence were correct that all of these features from *Gopu Jaya Raman* and *Beh Chew Boo* were existent, that did not mean that the Accused had *ipso facto* rebutted the presumption of possession as the appellants in these two decisions did, if, in spite of the presence of these features, the Accused nevertheless failed to put up any answer to the damning aspects of the Prosecution's case and the evidence which I have highlighted above. The question of whether an accused person has rebutted the MDA's presumptions is not a quantitative exercise in identifying as many common features with precedent cases of acquittal. It requires a qualitative assessment that is tailored to the specific facts and available evidence in the instant case.

(6) Conclusion: The Accused failed to rebut the presumption of possession under s 21 of the MDA

117 For the reasons above, I was satisfied that the Accused failed to rebut the presumption of possession under s 21 of the MDA. It was clear that the Accused knew that there had been contraband hidden in the Car. The existence of this knowledge alone disabled him from being able to prove that he had not been in knowing possession of the Bundles that were discovered in the Car. What he believed the nature of this contraband to be, and whether he knew where exactly the contraband had been hidden in the Car, were strictly

irrelevant matters when considering whether he had rebutted the s 21 presumption.

Whether the Accused had rebutted the presumption of knowledge under s 18(2) of the MDA

118 I turn to the presumption of knowledge under s 18(2) of the MDA. Although the Defence suggested in its oral reply submissions that its strongest point lay in rebutting the s 18(2) presumption,[165] the Defence's case[166] was rather threadbare. Its closing submissions were ultimately reduceable to the single point that the court should accept the Accused's asserted belief that the Bundles contained cigarettes simply because he had been consistent in asserting this belief following his arrest.[167]

119 In contrast to the sparsity of the Defence's case on knowledge, I found the weight of the evidence to point in the opposite direction. In these circumstances, I had little difficulty in finding that the Defence had failed to rebut the s 18(2) presumption.

(1) The Follow-up Calls and text messages indicated that the Accused knew the nature of the drugs

120 First, it could be inferred from the Follow-up Calls and the Accused's text messages that the Accused knew the nature of the drugs in the Bundles.

121 I develop this point with reference to two examples from the Follow-up Calls and text messages: (a) Netiaanthan's reference to "three books and 1

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165 NE (20 November 2023) at p 11 lines 3–5.

166 DCS at paras 179–185.

167 NE (20 November 2023) at p 11 lines 7–10.

ice" in the 1.52pm Follow-up Call,[168] and "books" in the text messages; and (b) Netiaanthan's and Sanggap2's references to "work" in the Follow-up Calls and the text messages.

(A) NETIAANTHAN'S REFERENCES TO "THREE BOOKS AND 1 ICE" AND "BOOKS"

122 I start with the Follow-up Call between Netiaanthan and the Accused at 1.52pm. In this conversation, after the Accused told Netiaanthan that he (the Accused) had removed the Bundles from the Car, Netiaanthan replied that "there will be three books and 1 ice", and asked the Accused to confirm this: "Is it right? Ah?".[169]

123 It was clear beyond peradventure that "three books and 1 ice" was an explicit reference to the Bundles and their contents. Although the Accused claimed in cross-examination that he did not know if "three books and 1 ice" was a reference by Netiaanthan to the Bundles,[170] I had no hesitation in rejecting this as feigned ignorance by the Accused to dissociate himself from a highly incriminating, and therefore inconvenient, statement that Netiaanthan had made to him. In the first place, this claim of ignorance was a change in position from the Accused's Eleventh Long Statement where, after hearing the audio of this Follow-up Call, the Accused had confirmed that he "knew that Nithianathan was talking about the four things that were found in the car".[171] Moreover, looking at the conversation itself, Netiaanthan had said that "there will be three books and 1 ice" only, and immediately, after the Accused had

168 SOAF at para 28, S/N 3.

169 Translated Transcription of Audio File 200206_1349.mp3 (P176A at pp 8–9).

170 NE (25 August 2023) at p 29 lines 27–31

171 Statement of Ravivarma Govindan on 16 September 2020 at about 1006hrs at para 149 (2AB at p 751).

told him that "I saw what was inside after removing them". Thus, it was plain that by "three books and 1 ice", Netiaanthan was referring to the Bundles. Further, as a matter of common sense, it could hardly have been a coincidence that "three books" and "1 ice" just so happened to correspond, respectively, to the three bundles of cannabis – A1, A2 and A3 – and one bundle of methamphetamine – A4 – that had been discovered in the Car.[172]

124 Given the importance of the terminology used, I pause at this juncture to clarify what Netiaanthan had actually said. Netiaanthan's reference to "books" and "ice" were English translations of Tamil words that he used, *viz*, "*booku*" and "*pani*" respectively. This was confirmed in the examination-in-chief of the interpreter who had been present during the recording of the Accused's statements, Mdm Vijaya Thavamary Abraham,[173] after the audio of this Follow-up Call had been played back to her.[174] The same was also confirmed by Sgt Hema. In response to clarificatory questions I posed to Sgt Hema, she confirmed that Netiaanthan had used the Tamil words "*booku*" and "*panni*".[175] Importantly, Sgt Hema also gave evidence that these terms were known to the CNB as drug slang for cannabis and ice (*ie*, methamphetamine).[176] Whilst the Defence did raise an objection to Sgt Hema's evidence (see [57]–[60] above), that was in respect of a different point altogether (*ie*, what the Accused had told her when she questioned him after his arrest). I thus saw no reason to doubt the veracity of this aspect of Sgt Hema's evidence. It is well-settled that a trial judge is not bound to reject a

172 DCS at para 59.5.9.

173 PW58.

174 NE (22 August 2023) at p 19 line 29–p 21 line 2.

175 NE (15 August 2023) p 22 lines 5–15.

176 NE (15 August 2023) p 8 lines 23–30; p 22 line 16–p 23 line 1.

witness's evidence in its entirety but can reject some aspects and accept others.

125 As to the pertinent question of what inference should be drawn from Netiaanthan saying to the Accused that "there will be three books and 1 ice", the Defence contended in its written submissions that this statement was in fact *exculpatory* to the Accused. It was suggested that, if the Accused had known of the contents of the Bundles prior to this, there would have been no need for Netiaanthan to tell the Accused that the Bundles contained "three books and 1 ice".[177]

126 With respect, I was not persuaded by this submission. I did accept that the Defence's interpretation of why Netiaanthan had said this to the Accused was one possible interpretation, but it was not the only possible interpretation or an interpretation that was more probable than others. A possible alternative interpretation was that Netiaanthan was simply seeking confirmation from the Accused that the Accused had removed all the Bundles from the Car; in other words, that all the Bundles were properly accounted for. Indeed, the latter seemed to me to be the more likely interpretation than the Defence's, given that Netiaanthan had, just prior to bringing up "three books and 1 ice", expressed his concern that the Car would be searched – and the Bundles hidden therein discovered – if the Car were left in Singapore as the Accused had proposed. Netiaanthan's concern would have been assuaged upon the Accused's confirmation that all the Bundles had been removed from the Car, and nothing incriminating had been left behind.

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177 DCS at para 76.1.

127 Furthermore, and most strikingly, in asking the Accused to confirm that he (the Accused) had removed "three books and 1 ice" from the Car, Netiaanthan clearly assumed that the Accused understood what "three books and 1 ice" meant. Moreover, as the Accused had told Netiaanthan that he had seen what was inside in the Bundles, in asking the Accused to confirm that the Bundles' contents were "three books and 1 ice", Netiaanthan inevitably assumed that the Accused possessed sufficient knowledge to be able to provide such confirmation.

128 In the face of this, it was incumbent on the Accused to provide an explanation, given especially the operation of the presumption of knowledge under s 18(2) of the MDA. However, nothing of the sort was forthcoming from the Accused. In his Eleventh Long Statement, the Accused merely asserted that he "[did] not know what the books and ice meant" and "only knew that there were illegal cigarettes in the car".[178]

129 In this connection, the Accused's claim that he "only knew that there were illegal cigarettes in the car" did not, in my view, withstand scrutiny. It would be recalled that the basis for the Accused's supposed belief that the Bundles contained cigarettes was that Netiaanthan had told him that the Car contained cigarettes (see [28] above). Assuming that were true, there were two possibilities as to what Netiaanthan could have assumed the Accused to understand "three books and 1 ice" to mean when Netiaanthan asked the Accused to confirm that there were "three books and 1 ice" after the Accused had told him that he had removed the Bundles from the Car and "[seen] what was inside".

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178 Statement of Ravivarma Govindan on 16 September 2020 at about 1006 hrs at para 149 (2AB at p 751).

130 The first possibility was that Netiaanthan could have assumed that the Accused believed the Bundles contained cigarettes (although they did not), in line with what Netiaanthan had supposedly told the Accused (*ie*, that the Car contained cigarettes). In this instance, Netiaanthan would have to have assumed that the Accused understood "three books and 1 ice" to be a reference to cigarettes. However, the Accused confirmed in cross-examination that he did not hold any such understanding of the meaning of "book" and "ice" (more specifically, the Tamil words "*booku*" and "*pani*" that Netiaanthan had used).[179] Given that it would make little sense for Netiaanthan to have referred to cigarettes using terms that the Accused did not understand to mean cigarettes, this naturally cast doubt on the Accused's claim that Netiaanthan had told him that the Car contained cigarettes, as well as his (the Accused's) derivative belief that the Bundles contained cigarettes.

131 The second possibility is that, when the Accused told Netiaanthan that he had "[seen] what was inside" the Bundles, Netiaanthan could have interpreted this as the Accused telling Netiaanthan that he had discovered the truth of the nature of the Bundles' contents, *ie*, that the Bundles contained drugs rather than cigarettes (as Netiaanthan had supposedly represented to him). Indeed, when it emerged that the Bundles contained drugs, the logical corollary of the Accused's case was that Netiaanthan had lied to him that the Car contained cigarettes so as to trick him into smuggling drugs into Singapore. In this instance, Netiaanthan would have to have assumed that the Accused understood "three books and 1 ice" to refer to cannabis and methamphetamine; otherwise, he could not expect the Accused to be able to confirm that the Accused had recovered "three books and 1 ice" from the Car.

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179 NE (29 August 2023) at p 4 lines 25–31.

However, the Accused claimed to not understand what "three books and 1 ice" was at all (see [128] above).

132 Thus, on either possibility, the Accused's story simply did not add up. He was either lying about his claim that Netiaanthan had told him that the Car contained cigarettes, or he was lying about his lack of knowledge that "three books and 1 ice" constituted a reference to cannabis and methamphetamine. The Accused's account was therefore internally inconsistent. In contrast, the conversation between the Accused and Netiaanthan made a lot more sense if one were to take the Accused as having been aware that the Car contained cannabis and methamphetamine, so as to be able to provide the confirmation of the Bundles' contents that Netiaanthan sought from him.

133 Further, the Accused's text messages corroborated the inference that he knew, at the very least, what "books" meant. In text message conversations between Netiaanthan and the Accused prior to the Accused's arrest, Netiaanthan had referred to "books" on a number of occasions in his messages to the Accused.

134 I first refer to the following few translated messages, exchanged between the Accused and Netiaanthan on 6 January 2020:[180]

ARKAN	'*Hm*' Ok Ok. I have no story with you, what '*la*' H— (vulgarity), He didn't leave me money that's what boiling me nothing else. I am P— (vulgarity) angry with him. Last week also he messed it and this week also he messed it. H— (vulgarity) he thinks a life is P— (vulgarity). Leave it leave it.

[180] P257 at pp 40–42, TCFB S/No. 616–621.

ARKAN	You chatted?
Nethia	Ok Ok I too told him earlier but he didn't listen. Keeps saying that he transferred in the book, put already, put already, that's why I asked you to talk and send him an audio.
Nethia	Hey Ravi, I don't have your account number, he says he wants to change to dollars, now he says he wants to change to dollars as I told him I want to transfer money. He asking to send account number, send your account number. I had saved your account but I tried finding for it and can't get.
ARKAN	cimb Bank Phone-Phone:+607059672155
ARKAN	Is he asking for account number again? He's going to get beating from my hand.

135 It could not be disputed that the Accused was expressing his frustration to Netiaanthan that moneys owing to him had remained unpaid. I did not accept the Accused's denial that these messages showed that he was frustrated at the person who owed him money.[181] In the last message, he was clearly unhappy that the debtor was stalling repayment by claiming that he needed the Accused's account number to make the transfer, so much so that the Accused even stated that he was going to give this debtor a beating. The Accused's use of expletives further underscored his anger.

136 In cross-examination, the Accused agreed that the money was owed to him for something called a "book".[182] But perplexingly, he maintained that he did not know what "book" was.[183] I noted that this echoed the Accused's earlier claim of ignorance in his Twelfth Long Statement where, after he had been shown the above messages, the Accused stated that "[Netiaanthan]

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181 NE (25 August 2023) at pp 48–50.

182 NE (25 August 2023) at p 49 lines 18–20.

183 NE (25 August 2023) at p 49 lines 23–25.

mentioned about 'book money' but I did not know what he was talking about. I do not know what 'book money' was".[184]

137 I had no hesitation in rejecting the Accused's claim of ignorance. It was illogical that the Accused was frustrated over a debt that remained unpaid, but yet did not know for what the debt was owed to him for (*ie*, "books"). Indeed, when invited by his counsel in re-examination to explain what these messages meant, the Accused changed tack and took the outlandish position that he had nothing to do with the money that was the subject of discussion, and also suggested that "book" referred to "bank book".[185]

138 Leaving aside the Accused's change of position *per se*, his revised claims in re-examination that the money was not owed to him, and that he had only been lending Netiaanthan use of his bank account, were nothing short of absurd. It was clear on the face of the messages that the Accused was angered that moneys owing to him personally remained unpaid. If the moneys were owed to Netiaanthan, it would have made no sense for the Accused to have displayed such outrage as he did. Evidently, the Accused had tied himself up in knots in his bid to deny his knowledge as to what "book" meant.

139 I turn to a second set of messages that illustrated that the Accused knew what "book" meant. On 21 January 2020, Netiaanthan sent the following message to the Accused:[186]

> 1 buku 600

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184 Statement of Ravivarma Govindan on 25 September 2020 at about 1035 hrs at para 162 (2AB at p 756).

185 NE (29 August 2023) at p 18 lines 1–24.

186 P257 at pp 12–13.

1 Sadape 500
8 Parking 3200
4300 totally

140 It was clear that this message was some sort of receipt, invoice or price list: the value of "1 buku" was 600, the value of 1 "Sadape" was 500, and the value of "8 Parking" was 3200. The total value of these three items was 4300 (being the sum of 600, 500 and 3200). The fact that Netiaanthan sent this message to the Accused meant that he assumed that the Accused understood what each of these terms, including "buku", meant.

141 This message, which I will refer to shorthand as the "Price List Message", was not found in the extraction report of the Accused's Handphone but was successfully extracted from Netiaanthan's mobile phone after the latter's arrest.[187] In cross-examination, the Accused claimed that he did not receive this Price List Message.[188] There was no doubt in my mind that this denial was a blatant lie.

142 Aside from the fact that the Accused was contradicted by objective forensic evidence, a subsequent message from the Accused made clear that he had received the Price List Message and was responding to it in this subsequent message. This arose from the fortuitous circumstance of Netiaanthan having made a typographical error in the message above, in the word "Sadape". In response to this error, the Accused sent a voice message to Netiaanthan, which was translated as: "What's that shut up?".[189]

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187 PCS at para 111.

188 NE (25 August 2023) at p 58 lines 4–22.

189 P257 at p 13.

143 At this juncture, it is necessary to address the significance of the Accused having been translated as saying "shut up", instead of "sadape". In cross-examination, the Accused seized on this to claim that he did not say "sadape", and maintained this position even after the audio was played to him:[190]

> Q If you look at serial number 794, there's a message from you to Netia at 12.06pm. You tell him:
>
> "What's that? Sadape."
>
> A Yes.
>
> Q So I think to be clear, we will play the audio for this.
>
> … [audio is played in court]
>
> Q So that's your voice, right?
>
> A (No audible answer)
>
> Q So---
>
> Court Sorry, what's the answer? Yes or no?
>
> Witness Yes, Your Honour.
>
> Court Alright. Carry on.
>
> Q So based on this audio, I suggest to you that you were asking Netia what is this word, S-A-D-A-P-E, in the text message that is highlighted in green. Do you agree?
>
> A I disagree.

144 There was little doubt in my mind that "shut up" was an erroneous transcription of "sadape" for three reasons. First, reading the conversation in context, it made little sense for the Accused to tell Netiaanthan to "shut up". Second, it was clear from Netiaanthan's subsequent reply to the Accused that he (Netiaanthan) had heard and understood the Accused as saying "sadape" instead of "shut up", as he clarified that he had made a typographical error in

190 NE (25 August 2023) at p 58 line 30–p 59 line 20.

the use of "Sadape" in the Price List Message, which was supposed to be "sapadu" (*ie*, the Tamil word for food):[191]

> No buddy, I typed as food [*ie*, sapadu] P— (vulgarity) it auto corrected and send like that, C— (vulgarity).

Unlike the Price List Message, this clarificatory message was extracted from the Accused's phone.

145 Third, and most importantly, there was a clear explanation for why the Price List Message was found on Netiaanthan's mobile phone but not on the Accused's Handphone. This was because Netiaanthan had in fact instructed the Accused to delete the Price List Message above. Indeed, in another stroke of fortune (or even irony), while the Accused might have deleted the Price List Message, he did not delete the subsequent message from Netiaanthan asking him to do so, as this message was extracted from the Accused's Handphone:[192]

> Hey, once you have seen delete, once you have seen delete all the message.

146 To my mind, there was therefore no doubt that the Accused had received the Price List Message and had deleted it as Netiaanthan had instructed him to. Indeed, as he had done in relation to the other set of messages above (where he had been venting his frustration at being owed money), the Accused again shifted his position in relation to the Price List Message when questioned on it by his counsel in re-examination. Whereas he had previously asserted in cross-examination that he had not received the Price List Message, the Accused now acknowledged in re-examination that he had

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191 P257 at p 13, TCFB S/No. 797.

192 P257 at p 13, TCFB S/No. 793.

received the Price List Message but deleted it. Indeed, the Accused claimed further that he had been an unintended recipient of the Price List Message.[193]

147 Given that the Accused could not claim that he had not received the Price List message, the inference that he knew what "buku" in the Price List Message meant went unrebutted. Furthermore, that "buku" was something illegal was strongly suggested by how Netiaanthan had instructed the Accused to delete the Price List Message. Indeed, in an earlier message where Netiaanthan also instructed the Accused to "erase everything from [his] WHATS APP", Netiaanthan told the Accused that this was for his own safety.[194] The element of danger was consistent with "buku" being a reference to drugs.

(B) NETIAANTHAN'S AND SANGGAP2'S REFERENCES TO "WORK"

148 The second example I refer to is the euphemistic reference by Sanggap2 and Netiaanthan to "work" in the Follow-up Calls and text messages. In my judgment, it was quite clear that this was a reference to some sort of drug delivery or smuggling operation.

149 Starting with the Follow-up Calls, the first reference to "work" came in the 11.51am Follow-up Call between the Accused, Daniel and Netiaanthan. After the Accused told Netiaanthan that the Car had been searched, Netiaanthan said:[195]

> You ah, Machi … you just take and come back straight. Do not listen to him. He p— (vulgarity) asking you to work. It is a

193 NE (29 August 2023) at p 19 line 13–p 20 line 2.

194 P257 at p 40, TCFB S/No. 615.

195 Translated Transcription of 200206 – 1019.Mp3 (P176A at p 5).

> big thing you escaped now … p— (vulgarity) (Inaudible). My phone … no charger. Unable to on. No powerbank also.

150 The Accused was evasive and also did not take a consistent position on what this "work" referred to. Initially, in his Eleventh Long Statement, he categorically denied any knowledge of what Netiaanthan had meant by "work".[196] But in cross-examination, he confirmed that Netiaanthan had been referring to "work" that "Sara" had asked the Accused to do.[197] The Accused did not dispute that "Sara" was Sanggap2.[198]

151 The Accused's concession in cross-examination that the "work" he had been doing involved Sanggap2 was confirmed in a subsequent Follow-up Call between Sanggap2 and the Accused at 12.45pm. In this call, Sanggap2 made multiple references to some "work" that he, the Accused and Netiaanthan were involved in. In particular, after the Accused and Sanggap2 discussed how the Car had been checked at customs (see [109] above), Sanggap2 told the Accused three times in the rest of the call that "we [will] stop this work for awhile".[199] The use of "we" indicates that Sanggap2 considered the Accused to be part of this "work" and thus privy to its nature. It was also clear that this "work" included Netiaanthan, as after the Accused asked Sanggap2 to get Netiaanthan to pick the Accused up from his workplace, Sanggap2 told the Accused that "[a]fter Nithi comes, he will take the three and work inside. Nithi will do the work".[200]

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196 Statement of Ravivarma Govindan on 16 September 2020 at around 1006hrs at para 146 (2AB at p 750).

197 NE (25 August 2023) at p 25 lines 6–10.

198 Statement of Ravivarma Govindan on 7 October 2020 at around 1006hrs at para 172 (2AB at p 768).

199 Translated Transcription of 200206_1241.mp3 (P176A at pp 7–8).

200 Translated Transcription of 200206_1241.mp3 (P176A at p 7).

152 The final Follow-up Call between the Accused and Netiaanthan at 1.52pm drew the threads from the previous calls together. In this call, Netiaanthan gratuitously volunteered details on the "work" that Sanggap2 had tasked him to do, as well as a call between him (Netiaanthan) and Sanggap2 on the "work":[201]

Netiaanthan	Ok, No problem. I will come now. You give me the three books and ice. You leave in peace with the car as per normal. There will be nothing in the car, empty. You can leave directly. Even if they catch you at the customs and bring you to your company and ask you to open your locker, you can open and show them because you will not have anything with you, fully empty, no problem. As for the three books and 1 ice…I will throw them where I am suppose to throw and will come back.
Accused	Ah.
Netiaanthan	I will throw them either at exit 18 or at the tyre company, whether come or not… (inaudible), 'p—' (vulgarity), he told me in a casual manner to throw the three books outside Ravi's company and that they will come and take. He asked me to give the ice at Yishun. I told him how to give? Each one of them are scared of their lives. I asked him if he is playing the fool? He asked me to help. I told him I cannot. If they want to come and take, ask them to come and take. I told him that I will not help.
Accused	Ah
Netiaanthan	Immediately, Sallah [*ie*, Sara] wanted to call me. He called me after awhile. He told me that if they were to come and take the things, he will deduct the grab money from my salary. I was P— (vulgarity) angry. I told him that he was only giving 400 dollars for 1 book and if we work, we are given 600 dollars. Ok. So, to come and go…

[201] Translated Transcription of Audio File 200206_1349.mp3 (P176A at p 9.

153 In his Eleventh Long Statement, although the Accused claimed that he "did not understand or explain what [Netiaanthan] was talking about", he did sufficiently understand Netiaanthan to be recounting a conversation between Netiaanthan and Sanggap2.[202] The Accused also confirmed this in cross-examination:[203]

> Q So, later on in the call, Netia starts to use a vulgar language when describing somebody.
>
> A Yes.
>
> Q So he's talking about Sara, isn't he?
>
> A Yes.
>
> Q So Netia is relaying to you what Sara supposedly told him.
>
> A Yes.
>
> Q Sara told Netia to throw the three books outside the company and give the *pani* at Yishun.
>
> A Yes.

It was clear, therefore, that what had transpired was that after the 12.45pm Follow-up Call between the Accused and Sanggap2, Sanggap2 and Netiaanthan had spoken to each another, before Netiaanthan then relayed what he had discussed with Sanggap2 to the Accused during this 1.52pm Follow-up Call.

154 The content of Netiaanthan's account to the Accused as to what he was to do with the "three books and 1 ice" were redolent of a drug delivery, or some sort of related transaction. Although I found this to be rather self-evident, I highlight three aspects of what Netiaanthan had said.

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202 Statement of Ravivarma Govindan on 16 September 2020 at about 1006 hrs at para 149 (2AB at p 751).

203 NE (25 August 2023) at p 31 line 26–p 32 line 3.

155 First, whereas Netiaanthan said that he would "throw" the "three books", he stated that he had been "asked … to give the ice at Yishun". To my mind, this meant that Sanggap2 had instructed Netiaanthan to discard the "three books" – *ie*, the cannabis in A1, A2 and A3 – but complete a delivery of the "1 ice" – *ie*, the methamphetamine in A4 – to Yishun.

156 Second, in respect of his instructions to deliver the "1 ice" to Yishun, Netiaanthan told the Accused that "[e]ach one of them are scared of their lives". Although it was admittedly ambiguous who the "them" referred to here was, it was clear that Netiaanthan meant that the delivery of "1 ice" to Yishun was a risky endeavour, such that some persons were "scared of their lives". Indeed, the Accused agreed when it was put to him in cross-examination that "whatever Netia is talking about, he's talking about something very risky here".[204] The element of risk lent credence to the inference that Netiaanthan was talking about delivering methamphetamine to Yishun.

157 In this regard, I pause to observe that this was not the only occasion where the "work" that the Accused, Netiaanthan and Sanggap2 were involved in was described as risky. Indeed, it would be recalled that, during the 11.51am Follow-up Call between the Accused and Netiaanthan (see [149] above), Netiaanthan told the Accused, in respect of the "work" that Sanggap2 had asked the Accused to do, that "[i]t is a big thing [the Accused] escaped".[205] Further, in the same vein, the Accused in the Follow-up Calls had told all three of Sanggap2 (during the 12.45pm Follow-up Call),[206] Netiaanthan and Daniel (during the 12.28pm[207] Follow-up Call)[208] that he was scared. Yet, none of

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204 NE (25 August 2023) at p 32 lines 9–11.

205 Translated Transcription of 200206 – 1019.Mp3 (P176A at p 5).

206 Translated Transcription of 200206_1241.mp3 (P176A at pp 6–8).

them expressed any surprise at this or inquired as to the reason. This suggested that it was common ground between all parties that the "work" that the Accused was involved in was risky, and that they knew the reason for the risk.

158 Third, Netiaanthan recounted to the Accused a discussion that he (Netiaanthan) had had with Sanggap2 over how much money he was being paid. In cross-examination, the Accused affirmed that this was also his understanding of what Netiaanthan had said.[209] Specifically, Sanggap2 had told Netiaanthan that "if they were to come and take the things, [Sanggap2] will deduct the grab money from [Netiaanthan's] salary". I found the phrase "grab money" to be suggestive of a drug delivery operation. Indeed, it seemed quite clear to me that what Netiaanthan meant to convey to the Accused was that Sanggap2 had told him (Netiaanthan) that, if Sanggap2 had to send someone to come and pick up the "things" – which I interpreted to be a reference to the "three books and 1 ice" or some part thereof – Netiaanthan would have failed to complete his task in delivering the "three books and 1 ice", such that Sanggap2 would deduct the "grab money" that he was to be paid for making this delivery. In response, Netiaanthan was angered by this, and told Sanggap2 that he was not being paid enough, as Sanggap2 was "only giving 400 dollars for 1 book and if we work, we are given 600 dollars".

159 It was therefore clear from the above that the "work" referred to in the Follow-up Calls likely involved the delivery or smuggling of drugs, specifically, the cannabis and methamphetamine – or "three books and 1 ice" – contained in the Bundles.

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207 SOAF at para 26, S/N 3.

208 Translated Transcription of Audio File 200206_1225_01.mp3 (P176A at pp 5–6).

209 NE (25 August 2023) at p 32 lines 18–22.

160 Turning to the text messages, I found that the text messages supported the inference that the "work" involved drug delivery or smuggling, and also undermined the Accused's claims that he did not understand what "work" as used by Netiaanthan and Sanggap2 in the Follow-up Calls referred to. This is because the text messages, which all predated the Accused's arrest, disclosed that the Accused, Netiaanthan and Sanggap2 had all been involved in "work" that involved the delivery of "books", *ie*, cannabis.

161 I start with a message sent by the Accused to Netiaanthan on 20 January 2020 where, after having discussed car rental arrangements with Netiaanthan, the Accused told Netiaanthan to "check out the job Sara said about".[210]

162 This message is straightforward. It illustrates that the Accused, Netiaanthan and Sanggap2 had a common involvement in some "job" or "work". Indeed, the Accused conceded in his Fourteenth Long Statement that he had been "asking Nithiathan what work Sara was talking about" as "Sara could have told [him] about some work".[211] Although he claimed not to remember what the "job" was,[212] the existence of such prior common involvement in "work" between the Accused, Netiaanthan and Sanggap2 undermined the Accused's claim that he did not understand what Netiaanthan and Sanggap2 had been referring to as "work" in the Follow-up Calls.

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210 P257 at p 7, TCFB S/No. 775.

211 Statement of Ravivarma Govindan on 7 October 2020 at about 1006hrs at para 174 (2AB at p 768).

212 Statement of Ravivarma Govindan on 7 October 2020 at about 1006hrs at para 174 (2AB at p 768).

163 The second message that I refer to is a message sent by Netiaanthan to the Accused on 21 January 2020. I reproduce the material part as follows:[213]

> Because I told Sara I want my money for the books which I worked in Malaysia, as I'm going back to Ipoh and he can f— (vulgarity) around me.
>
> He said that 7 books '*ah*'
>
> They came to the house to '*ah*' to collect so … they asked you to work in the morning but you didn't so it's not in the account.
>
> He was draggy, OK brother if you minus 7 books from my total of 34 books, balance is 27 books.
>
> For 27 books you must pay me 2700 I told him.
>
> '*Ah*' OK '*ya*' I will calculate everything and transfer thr money to you later, OK brother calculate the total and transfer to me, he said OK OK but I don't know, let's see.
>
> No such thing as wait and see, he has to put as I told him I leaving for Ipoh, that's why I asking for the full amount because he will then backlog my money and P— (vulgarity) and keep for 2 to 3 weeks then pay.

164 It is clear from the message that Netiaanthan was expressing to the Accused his frustration at not having been paid by Sanggap2 for the "books which [he] worked in Malaysia". More specifically, Netiaanthan considered himself to be owed the value of work done in respect of "27 books". Indeed, the Accused agreed in his Fifteenth Long Statement that Netiaanthan "was saying that he would ask Sara for the money" and that "[t]his money is for the book work that [Netiaanthan] had done".[214]

165 Logically, Netiaanthan's reference to "books" here must have meant the same thing as the "books" in his reference to "three books and 1 ice"

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213 P257 at pp 22–23, TCFB S/No. 821.

214 Statement of Ravivarma Govindan on 8 October 2020 at around 1000hrs at para 178 (2AB at p 775).

during the 1.52pm Follow-up Call to the Accused after the latter's arrest. Given that the usage of "books" here also related to "work" that Netiaanthan had done for Sanggap2, it was almost inconceivable that Netiaanthan could have in this message intended a different meaning of "books" than in the 1.52pm Follow-up Call. Thus, it followed that the "book work" that the Netiaanthan had done for Sanggap2 was a reference to the delivery or smuggling of cannabis. Indeed, save for asserting that he believed that "books may have referred to cigarettes", the Accused essentially adopted the same interpretation that "the book work may have referred to sending the [cannabis] to somewhere or someone".[215]

(C) CONCLUSION ON THE FOLLOW-UP CALLS AND THE TEXT MESSAGES

166 Drawing all the threads together, the point that has repeatedly emerged in the above exegesis of the Follow-up Calls and text messages is that multiple persons – who were not strangers to the Accused but his friends – clearly assumed knowledge on the Accused's part as to the existence of the Bundles, the nature of their contents and how the Accused was involved with them. Put differently, the knowledge and assumptions of these persons were circumstantial evidence from which the court could draw an inference as to the Accused's own knowledge.

167 It bears emphasis that the effect of the presumption of knowledge under s 18(2) of MDA was to impute the Accused with knowledge that the Bundles contained cannabis and methamphetamine unless he could prove, on the balance of probabilities, that he did not have such knowledge. Given this,

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215 Statement of Ravivarma Govindan on 8 October 2020 at around 1000hrs at para 178 (2AB at p 775).

and given also that the Accused sought to disclaim having knowledge of the nature of the Bundles' contents in the face of overwhelming circumstantial evidence, it was incumbent on him to provide countervailing evidence in support of his supposed lack of knowledge. However, the Accused offered little but a litany of bare denials and claims of ignorance. The mere fact that he had been consistent in making these bare denials and bare assertions that he believed that he had been carrying cigarettes did not suffice.

168 In this connection, I was cognisant that, unlike the copious references to "books" and the Accused's involvement in "work" relating to "books" in the text messages, there was no mention of "ice". It might therefore be argued that, even if the Accused did have knowledge of the specific nature of the contents of the three Bundles containing cannabis (*ie*, A1, A2 and A3), he did not have knowledge of the specific nature of the contents of the Bundle containing methamphetamine (*ie*, A4). That argument might have had some prospect of success but for the application of the s 18(2) presumption in the present case. The lack of evidence in the text messages to show that the Accused had prior knowledge of what "ice" was might have amounted to a reasonable doubt if the Prosecution were required by law to establish that the Accused knew of the nature of the contents of the Bundle containing methamphetamine beyond reasonable doubt. But that was not required of the Prosecution due to the operation of the s 18(2) presumption. The Accused's bare denials[216] did not suffice to discharge his burden to prove on the balance of probabilities that he did not know the nature of the methamphetamine.

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216 NE (29 August 2023) at p 24 line 28–p 26 line 4.

169 I certainly acknowledge the hypothetical possibility that the Accused truly did not know anything, and that all three of his *friends* – Netiaanthan, Daniel and Sanggap2 – laboured under a major misconception as to what the Accused knew. However, one of them having such a misconception was inherently unlikely; all three of them sharing the same misconception crossed into the realm of virtual impossibility. Yet, as against this, the Accused put up no explanation, reasoned hypothesis, or even a wild conspiracy theory, as to how such a catastrophic misunderstanding could have occurred. In these premises, I had little choice but to accept the inculpatory inference as to the Accused's knowledge that arose from the Follow-up Calls and text messages. More importantly, I found that the presumption of knowledge remained unrebutted.

(2) The Accused was at best indifferent to the nature of the Bundles' contents

170 Furthermore, I agreed with the Prosecution that, taking the Defence's factual account at its highest, the Accused could at best be taken as having been *indifferent* to what had been hidden in the Car.[217]

171 At this juncture, I refer to the December 2019 Incident that formed part of the Defence's version of the facts (see [65]–[66] above). To recapitulate, the Accused claimed that, in December 2019, he had been tricked by Netiaanthan into driving a car that contained contraband cigarettes into Singapore. Thus, the *modus operandi* employed by Netiaanthan in the December 2019 Incident and the present charges against the Accused were

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217 PCS at para 134.

practically identical. The Accused also professed that he had been upset at Netiaanthan for duping him during the December 2019 Incident.[218]

172 Given this, it was quite inexplicable that, less than two months after the December 2019 Incident, the Accused would readily agree to rent the Car for Netiaanthan, and worse, drive it into Singapore; still less when, according to him, Netiaanthan had told him on this occasion that there were hidden cigarettes in the Car. Indeed, somewhat bewilderingly, the Accused himself agreed with the Prosecution that his decision did not make sense:[219]

> Q And you said that in December 2019, Netia had tricked you by secretly cigarettes in a rented car that you drove.
>
> A Yes.
>
> …
>
> Q You were upset with Netia on that occasion in December 2019.
>
> A Yes.
>
> Q So given what Netia did in December 2019, it would have made sense for you to reject his request to rent the Myvi car.
>
> A Yes.
>
> Q You could have said no easily as Netia did not threaten you or force you to rent the car for him.
>
> A Yes.
>
> Q But instead of saying no, you agreed to rent the Myvi car for him specifically to hide cigarettes.
>
> A Yes.

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218 NE (25 August 2023) at p 6 lines 29–30.

219 NE (25 August) 2023 at p 6 line 24–p 7 line 7.

173 This suggested that the Accused simply *did not care* that there were cigarettes – or, for that matter, anything – hidden in the Car before departing for Singapore in it. In its closing submissions,[220] the Prosecution highlighted the following exchange in cross-examination:[221]

> Q Mr Ravivarma, according to Netia had already tricked you once in December 2019, right?
>
> A Yes.
>
> Q So wouldn't it be logical for you to want to know what is inside the car?
>
> A Yes.
>
> Q So despite him tricking you once, you claim that you have no interest in what was inside the car?
>
> A Yes.
>
> Q It could easily have been something much more serious than cigarettes like drugs. Isn't that true?
>
> A I do not know.
>
> Q Netia had already lied to you once. Surely you would want to know what was actually in the car.
>
> A No.
>
> Q So based on what you are saying today, you just accepted his replies and believed that there were cigarettes in the car.
>
> A Yes.

174 The Accused's responses to the questions above were textbook examples of indifference. In *Gobi a/l Avedian v Public Prosecutor* [2021] 1 SLR 180 ("*Gobi*"), the Court of Appeal held that indifference on the part of the accused person would not suffice to rebut the presumption of knowledge under s 18(2) of the MDA (at [65]):

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220 PCS at para 134.

221 NE (25 August 2023) at p 20 lines 6–22.

> … an accused person who is *indifferent* to what he is carrying cannot be said to believe that the nature of the thing in his possession is something other than or incompatible with the specific drug he is in possession of. This is because an accused person who is indifferent is simply nonchalant about what the thing in his possession is, and therefore cannot be said to have formed any view as to what it *is* or *is not*.
>
> [emphasis in original]

175 The Court of Appeal went on to explain that, in the context of the s 18(2) presumption, a finding of indifference as to the nature of the thing would be warranted if the accused person had the ready means and opportunity to verify what he was carrying, but failed to take the steps that an ordinary reasonable person would have taken to establish the nature of that thing, and fails to provide any plausible explanation for that failure (*Gobi* at [65]).

176 In my judgment, the Accused's conduct fell within the scope of the above definition laid down by the Court of Appeal in *Gobi*. It was open for the Accused to attempt to verify or ascertain what had actually been hidden in the Car, but he chose not to do so (*Gobi* at [67]). Instead, he opted to take what Netiaanthan had supposedly told him – *viz*, that there were cigarettes in the Car – at face value. On this point, I took guidance from the following observation made by the Court of Appeal in *Mohamed Shalleh bin Abdul Latiff v Public Prosecutor* [2022] 2 SLR 79 ("*Shalleh*") at [32]:

> It would rarely, if ever, be sufficient for an accused person to rebut the s 18(2) presumption by stating simply that he believed whatever he was told in relation to what was in his possession. Where such a claim is made, the court will, of course, have to consider whether it believes that bare claim and in that regard, it will be necessary to consider the factual matrix and context, including the relationship between the parties and all the surrounding circumstances.

177 I accept that the Accused's case was one step removed from precedent cases where the courts have found that it was implausible for the accused person to believe what someone else had told them on the nature of what was in their possession because the relationship between the accused person and this other person was "transactional and superficial in nature" (see *Shalleh* at [35]; *Public Prosecutor v Gunalan Goval* [2022] SGHC 62 at [61]–[63]). Netiaanthan was indeed a friend of the Accused, and to that extent, their relationship could not be characterised as transactional and superficial in nature. However, I do not think that the Court of Appeal in *Shalleh* intended to lay down a proposition that, so long as an accused person's relationship with some other person is more than transactional and superficial in nature, the accused person would have a licence to take whatever they are told by this other person at face value with impunity. That would make a mockery of the policy underlying the MDA and its presumptions (*viz*, to stem the threat that drug trafficking poses) (see *Gobi* at [68]). Indeed, the Court of Appeal itself made clear that everything would turn on the specific factual matrix of each case (see *Shalleh* at [32]).

178 In the present case, the Accused had no basis to take what Netiaanthan had told him at face value. I cannot stress enough that, on his own account, he had just come off the back of the December 2019 Incident where he had been tricked by Netiaanthan into smuggling contraband into Singapore using the exact same methodology. The Accused therefore had every reason to distrust Netiaanthan and not take whatever Netiaanthan had told him at face value. Further, in so far as the Accused claimed to believe that he had ostensibly smuggled cigarettes into Singapore during the December 2019 Incident, this was also based on nothing but Netiaanthan's *ex post facto* say-so. Netiaanthan could easily have placed drugs instead of cigarettes in the Accused's car, and

given that it was now after the event, the Accused would never have been the wiser since he could no longer check what had been actually hidden in the car. The December 2019 Incident begs the question: if Netiaanthan had no qualms putting contraband into a car the Accused drove across the border without telling him at all, how could the Accused realistically rule out the possibility that Netiaanthan could lie about the nature of the contraband?

179 The Accused seemed to suggest in his account that he had little opportunity to confirm with Netiaanthan because the latter sped off on the Accused's motorcycle before he could slip in any clarification. However, the Accused accepted that he could have told Netiaanthan that he wanted no part in the smuggling operation, and he also did nothing to stop Netiaanthan from leaving on his (the Accused's) motorcycle.[222] The Accused then claimed that he conducted a check or sweep of the Car himself as he was concerned about there being cigarettes in the Car.[223] However, he found nothing during his search.[224] According to the Accused, this made him feel comfortable that there were no cigarettes in the Car.[225]

180 As I had already noted above, the Accused's reaction after failing to discover the hidden contraband during his own search defied logic. If anything, any reasonable person in his position who had been unable to locate the hidden contraband after conducting his own search would have taken steps to check the location of this contraband with Netiaanthan. Yet, the Accused

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222 NE (25 August 2023) at p 10 lines 1–18.

223 NE (24 August 2023) at p 23 lines 31–32; NE (25 August 2023) at p 10 line 25–p 12 line 17.

224 NE (24 August 2023) at p 24 lines 1–2.

225 NE (24 August 2023) at p 24 lines 3–5.

did not attempt to call Netiaanthan to ask why he had said that there were cigarettes in the Car (which the Accused could not find).[226]

181 In my judgment, for the Accused's account to be true, the only rational explanation for his conduct was that he simply did not care what, if anything, was in the Car. He could easily have stopped Netiaanthan before Netiaanthan departed to clarify; at worse, he could have called Netiaanthan on his Handphone after his own searches turned up empty. These were steps that an ordinary reasonable person would have taken to ascertain the existence and nature of the thing that was supposedly in his possession. Having offered no explanation as to why he failed to do any of these things, the Accused must be taken to have been indifferent to the questions of whether he was carrying anything, and if he were, what it was or was not (*Gobi* at [65]). On this view, even if the court were to disregard the Follow-up Calls and the text messages and instead take the Defence's case at face value, the Accused would not have succeeded in rebutting the presumptions of possession and knowledge that were in play.

Conclusion on conviction

182 For all the reasons above, the Accused failed to rebut either or both the presumptions of possession and knowledge under ss 21 and 18(2) of the MDA respectively. I therefore found the Accused to be guilty of both charges and convicted him accordingly.

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226 NE (25 August 2023) p 13 lines 8–14.

Sentencing

183 Coming to the issue of sentence, the importation charge faced by the Accused in respect of cannabis was a capital charge, given that it concerned a quantity of cannabis above the capital threshold. On the other hand, the charge concerning the importation of methamphetamine was a non-capital charge.

184 In respect of the capital charge concerning cannabis, I was satisfied that the Accused was a courier as defined under s 33B(2)(*a*) of the MDA, and the Prosecution tendered a certificate of substantive assistance[227] under s 33B(2)(*b*) of the MDA. As a result, both requirements for the application of the alternative sentencing regime under s 33B(1)(*a*) read with s 33B(2) of the MDA were met. I exercised my discretion to sentence the Accused to the mandatory minimum of life imprisonment and 15 strokes of the cane, in lieu of the death penalty.

185 In respect of the non-capital charge concerning methamphetamine, I heard the parties on the appropriate sentence under s 33(1) and the Second Schedule of the MDA, in light of the High Court decisions in *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 and *Loo Pei Xiang Alan v Public Prosecutor* [2015] 5 SLR 500. The Prosecution[228] and Defence[229] agreed that a sentence of six years' imprisonment and six strokes of the cane was appropriate. But given the number of strokes imposed as the mandatory minimum for the cannabis charge, I found a sentence of six years'

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227 P258.

228 NE (4 January 2024) at p 8 line 31–p 9 line 15.

229 NE (4 January 2024) at p 10 lines 3–10.

imprisonment and five strokes of the cane to be sufficient for the methamphetamine charge.

186 Given that a sentence of life imprisonment had been imposed for the cannabis charge, I ordered the imprisonment sentences for both charges to run concurrently (see s 307(2) of the CPC). Both sentences were backdated to the Accused's date of arrest on 6 February 2020 (see s 318(3) of the CPC). Given that sentences of caning cannot run concurrently, the sentences of caning for both charges were aggregated for a total of 20 strokes (see *Public Prosecutor v Chan Chuan and another* [1991] 1 SLR(R) 14 at [41]; *Public Prosecutor v Azlin bte Arujunah and other appeals* [2022] 2 SLR 825 at [227]).

187 In sum, the global sentence imposed on the Accused was life imprisonment and 20 strokes of the cane, to run from 6 February 2020.[230]

Aedit Abdullah J
Judge of the High Court

Sunil Nair, Jotham Tay Zi Xun and Tung Shou Pin (Attorney-General's Chambers) for the Prosecution;
Cheong Jun Ming Mervyn and Lim Yi Zheng (Advocatus Law LLP), and Skandarajah s/o Selvarajah (M/s S Skandarajah & Co) for the Accused.

230 Form 53 issued on 4 January 2024.