IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2016] SGCA 69

Criminal Appeal No 35 of 2015

Between

MASOUD RAHIMI BIN MEHRZAD

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

Criminal Appeal No 36 of 2015

Between

MOGAN RAJ TERAPASISAMY

… *Appellant*

And

PUBLIC PROSECUTOR

… *Respondent*

GROUNDS OF DECISION

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

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Chao Hick Tin JA, Andrew Phang Boon Leong JA and Tay Yong Kwang JA
10 October 2016

30 December 2016

Chao Hick Tin JA (delivering the grounds of decision of the court):

1 These two appeals were against the decision of the trial judge in *Public Prosecutor v Masoud Rahimi bin Mehrzad and another* [2015] SGHC 288 ("the HC Judgment") which involved a joint trial of two persons, Masoud Rahimi bin Mehrzad ("Masoud") and Mogan Raj Terapadisamy ("Mogan"). We dismissed both appeals at the conclusion of the hearing and we now set out the reasons for our decision.

2 Masoud, the appellant in Criminal Appeal No 35 of 2015 ("CCA 35/2015"), was convicted of one count of possession of not less than 31.14g of diamorphine, a Class A controlled drug, for the purpose of trafficking under s 5(1) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("the MDA"). He was given the mandatory death sentence as he was found not to have been a courier within the meanings set out in s 33B(2)(*a*) of the MDA when committing the offence and he was also not

certified by the Public Prosecutor to have provided substantive assistance in disrupting drug trafficking activities within or outside of Singapore pursuant to s 33B(2)(*b*) of the MDA.

3 Mogan, the appellant in Criminal Appeal No 36 of 2015 ("CCA 36/2015"), was convicted of one count of trafficking in not less than 14.99g of diamorphine, a Class A controlled drug, under s 5(1) of the MDA. He was sentenced to the mandatory minimum of 20 years' imprisonment and 15 strokes of the cane.

Background facts

4 Masoud is a male Singaporean. He was 20 years old and serving his national service at the time of the offence. Mogan is a male Malaysian who was just a month shy of 22 years old at the time of the offence. He was, at the material time, working as a forwarding agent for a shipping company in Johor.

5 The events leading up to the arrest of the Appellants were largely undisputed. On 20 May 2010, Mogan retrieved four bundles hidden in the false ceiling of a toilet at a coffee shop in Woodlands. At about 7pm, officers from Central Narcotics Bureau ("CNB"), acting on information that Masoud was expecting a drug delivery, began surveillance at Block 293 Bishan Street 22. Masoud occupied a flat there. Shortly before 9pm, Masoud left his flat and drove off in a grey Mazda RX8 ("the Mazda RX8") which was parked at the multi-storey car park near the block. The vehicle travelled towards the passenger pick-up point at Bishan MRT station where it parked alongside a beige Malaysian-registered Proton Wira ("the Proton Wira") driven by Mogan. Mogan got out of the Proton Wira and boarded the Mazda RX8. Mogan then passed a black bundle to Masoud, who handed some money to Mogan. Both

drove off in their respective vehicles and were subsequently intercepted by CNB officers at different locations.

Masoud's arrest

6 Masoud's vehicle was intercepted at the junction of Henderson Road and Jalan Bukit Merah. A black bundle with the words "BISH 1" and Chinese characters was found on the front passenger seat. The black bundle contained one packet of granular substance and two packets of crystalline substance.

7 While searching the vehicle, the CNB officers also found a locked compartment at the backseat. Masoud initially denied that there was anything in it. However, when pressed on how to open the compartment, he directed the officer to use the vehicle key. A Mickey Mouse plastic bag ("the Mickey Mouse Bag"), which contained two bundles of a brown granular or rocky substance, was recovered from the locked compartment. The Mickey Mouse Bag contained another transparent plastic bag ("B1A1") – Masoud's deoxyribonucleic acid was found on both sides of the masking tape which was on the exterior of B1A1. It is also significant to note that, PW23, DSP Tai Kwong Yong, testified that he could see the contents of the bundles found in the Mickey Mouse Bag without opening them.

8 Apart from the black bundle and the Mickey Mouse Bag, the CNB officers also recovered a notebook with written entries, three National Registration Identity Cards ("NRICs") and two driving licences which were later found to be forged. Following the recovery of the drugs, CNB officers conducted a search at his place of residence and found, among other items, two stun guns in his master bedroom.

9 The substances recovered from Masoud's vehicle were analysed by the Health Sciences Authority ("HSA"). The HSA results indicated that the black bundle handed from Mogan to Masoud contained not less than 15.5g of diamorphine and not less than 77g of methamphetamine. The Mickey Mouse Bag, on the other hand, was found to contain not less than 15.64g of diamorphine.

Contemporaneous statements

10 Two contemporaneous statements were recorded from Masoud on the day of his arrest. In his first contemporaneous statement, Masoud denied knowing the contents of the black bundle. He identified Mogan as the person who left the black bundle in his car. In his second contemporaneous statement, Masoud denied knowing what was inside the bundles in the Mickey Mouse Bag, who they belonged to, and how they had found their way into the backseat compartment of his vehicle.

Cautioned statement

11 In his cautioned statement, Masoud said that he knew Mogan as "Joke". He claimed that he had met Mogan to collect his phone and Mogan had left the bundle in his car before alighting. He also claimed that he did not realise Mogan had left the bundle in his car until after he had driven a distance. He said that he had no intention of trafficking in drugs because the bundle did not belong to him and he did not know what was inside until he was arrested and it was opened.

Long statements

12 Three long statements were recorded from Masoud. In his first long statement recorded on 22 May 2010 at 5.58pm, he claimed that he was having

Post Traumatic Stress Disorder ("PTSD") as well as anxiety disorders. He was at the material time a national serviceman. He had no motivation to work and his pay had been taken away because he was always on medical leave. After a row with his father over money issues, his father took away all the furniture in his house and left him with nothing.

13 In that statement, Masoud gave a detailed account of the events leading up to his arrest. According to Masoud, his sister, Tasha, asked him if he wanted to work as a driver for a Malay male whose name was "Arab". He agreed and was paid $150 per day. He would drive Arab around to collect money from various people. He suspected that Arab was involved in something illegal but did not probe further. Masoud said that he worked for Arab from the first week of August 2009 until the first week of February 2010, when Arab disappeared all of a sudden. Sometime in mid-February, one of Arab's bosses, Ah Kiat, contacted Masoud and offered him a job as a driver and to collect money. Masoud did not know what the monies were for but he was told that these were monies owed to Ah Kiat. Masoud accepted the job offer and worked for Ah Kiat until one "Alf" appeared.

14 One day, Ah Kiat instructed Masoud to go directly to Alf, and not to him (Ah Kiat). Alf then became the one who gave Masoud instructions to collect money and bundles. Masoud said that he did not know what the bundles contained. He would wait at home for people to call him to collect the things upon which he would collect and deliver the things. He would be paid $150 per day for doing that. Masoud said that he used a rental car to collect and deliver the money and bundles, and that the car was rented using a forged driving licence. It was in this context that he was instructed by Alf to collect the bundle from Mogan on 20 May 2010, the day of his arrest.

15 Masoud identified Mogan as "Joke" and explained that he could recognise Mogan and his vehicle since he had received bundles from Mogan four times. He claimed that he had a bad feeling about the bundle that was handed over by Mogan and his instincts told him that there was something wrong. He also mentioned that he was supposed to deliver the bundle to Alf.

16 A second statement was recorded from Masoud on 23 May 2010 at 5.47pm. In that statement, Masoud said that he had doubts as to what he was collecting and delivering. Despite his suspicions, he chose to do it because he needed money for his expenses. As for the Mickey Mouse Bag, Masoud explained that Alf had placed it in the locked compartment of the Mazda RX8 two to three days before Masoud's arrest. That compartment could be accessed from the trunk and the backseat of the vehicle. According to Masoud, after Alf placed the Mickey Mouse Bag in the compartment through the trunk, he (Masoud) opened the compartment from the backseat and reached in to feel what was inside the Mickey Mouse Bag. He claimed that he felt only newspaper and plastic. Masoud also claimed that Alf came over to the backseat to stop him from checking the contents of the Mickey Mouse Bag and that Alf instructed him "not to open it or touch it or let anyone get access to it". He said that he did not check the Mickey Mouse Bag again because he was afraid that Alf might find out that he had disobeyed instructions. Masoud admitted that he was the only one who drove the car from the day the Mickey Mouse Bag was placed in the compartment to the day he was arrested.

17 When queried about the entries in the notebook that was found in the Mazda RX8, Masoud claimed that he did not know what those entries meant. He explained that he had been instructed by Alf to "copy down and write [those] things". Masoud also said that he had not planned on using the stun

guns that were found in his residence; he had stolen them from Alf with the intention of keeping them away from Alf.

18 In his third long statement which was recorded on 25 May 2010 at 11.10am, Masoud added that the bundles in the Mickey Mouse Bag were in his car for three days but he did not ask Alf why he had not taken them from him. On the collection and delivery of bundles, he said that he found "all these very suspicious but [he] never stop[ped] because [he] needed the money".

Mogan's arrest

19 Mogan's vehicle was intercepted at a traffic light at the junction of Kallang Way and Aljunied Road. In the vehicle, the CNB officers found a large black bundle and two smaller bundles. The large black bundle comprised two bundles, each containing 200 tablets of nimetazepam. One of the two smaller bundles was found to contain 100 tablets which were analysed and found to contain nimetazepam. The last bundle was found to contain in total: (a) 15.84g of methamphetamine; and (b) 37.96g of ketamine.

Contemporaneous statements

20 In his contemporaneous statement, Mogan stated that he did not know the contents of the black bundle that he handed to Masoud and that he had retrieved that bundle from the ceiling of a toilet of a coffee shop in Woodlands Town Centre. He also said that "Bro" whom he had never met before promised him a payment of RM 1,000 for delivering that bundle to a Malay male near the taxi stand at Bishan MRT station.

Cautioned statements

21 In his cautioned statement, Mogan repeated his account of how he had retrieved the black bundle from the ceiling of a toilet in Woodlands and described the bundle as "drug wrapped in black adhesive tape which is not transparent". He added that he called to inform someone that he had retrieved the bundle and received a text message from a telephone number that he was instructed to call. He duly called that number and was told to deliver the bundle to Masoud near the taxi stand at Bishan MRT station.

Long statements

22 Three long statements were recorded from Mogan. In his statement recorded on 22 May 2010 at 2.20pm, Mogan stated that the delivery of the bundle was instructed by "Bro" who was introduced to him by a Chinese male known to him as "Mr Tan". He had met Mr Tan at a wedding function in Johor Bahru ("JB") and gave the latter his mobile phone number because the latter claimed that he wanted Mogan to assist him in bringing household items into Singapore. Subsequently, Mogan met up with Mr Tan in JB. On that occasion, Mr Tan said that he wanted Mogan to send drugs into Singapore. According to Mogan, Mr Tan "did not say the exact words [*sic*] "drug" but said "barang"". Mogan then asked whether "barang" was illegal and Mr Tan said yes. Mogan guessed at that point that it was drugs but did not know what drugs exactly. He told Mr Tan that he did not want to "be involved in all this" and drove away.

23 Two to three weeks later, Mogan agreed to meet Mr Tan again in JB after the latter's persistent pleading. Mr Tan promised to pay Mogan RM 1,000 for delivering the "barang" and Mogan kept telling him that he did not want to do it. Nonetheless, Mogan agreed to assist Mr Tan in delivering a

Singapore SIM card to Taman University in JB. But he received a work call on the way there. As he was caught up with work, he forgot about the SIM card entirely. He eventually kept the SIM card for his own use in Singapore. Subsequently, Bro called Mogan and introduced himself as Mr Tan's friend. He repeated Mr Tan's request for Mogan to bring "barang" into Singapore and promised more money for the delivery. Mogan flatly refused the offer and hung up on Bro.

24 On 20 May 2010, Mogan was on his way to Singapore to meet his ex-girlfriend, Shalini. After Mogan entered Singapore, Bro called him to ask where he was. Bro informed him over the telephone that there was "barang" and that he (Bro) would pay Mogan RM 1,000 plus to deliver it. Mogan said that he somehow thought of using the RM 1,000 to repay one Ah Neh to whom he owed approximately RM 10,000. He also said that Bro did not tell him what was inside the bundle but he (Mogan) guessed that the bundle contained illegal items. Bro then gave him directions to collect the "barang". From the ceiling boards of the toilet, Mogan duly retrieved the "barang", which consisted of a number of bundles in a green plastic bag. One of the bundles had the letters "BISH". After collecting the "barang", Mogan went back to his car. He opened the green plastic bag and put his hand inside. He felt that the bundles were hard but did not know what they were. He suspected that there was "something illegal inside the bundles".

25 Another long statement was recorded from Mogan on 23 May 2010 at 2.39pm. He added that he did not check what was inside the bundles and that it did not occur to him to check them. Of particular note is his statement that: "I suspect that I was carrying illegal stuff but I do not know what exactly is inside the bundles but I still don't want to check". In this statement, Mogan referred to Masoud as "Boss". He also said that he had never seen Masoud

before and that was the first time that he saw Masoud. Mogan said that Masoud gave him $40 for "makan makan" after he passed the bundle to Masoud. After delivering the bundle to Masoud, Mogan was instructed to deliver the remaining bundles to Kallang MRT station. He was arrested on his way to Kallang MRT.

26 A further statement was recorded from Mogan on 25 May 2010 at 2.32pm. In that statement, Mogan added that he knew what he was doing was wrong and was afraid that people at the coffee shop in Woodlands would notice that he had gone into the toilet empty-handed but came out carrying something. He also said that he was surprised when Masoud passed him $40 for "makan" since he did not expect to be given the money. In this statement, Mogan said that Bro had promised him a total of RM 1,500 (instead of the initially agreed RM 1,000) if he also delivered the other bundles to Kallang MRT station.

The proceedings below

27 Masoud and Mogan were jointly tried on two charges each for offences under the MDA. In respect of Masoud, the *first* charge alleged that he had possession of not less than 31.14g of diamorphine for the purposes of trafficking. The *second* charge alleged that he had possession of 77g of methamphetamine for the purposes of trafficking. In respect of Mogan, the *first* charge alleged that he had trafficked in not less than 14.99g of diamorphine. The *second* charge alleged that he had trafficked in 77g of methamphetamine. Both charges related to his act of handing over the black bundle to Masoud. After their convictions on their respective first charges, the Prosecution decided against further prosecution in relation to the charges involving methamphetamine and the Judge ordered a discharge not amounting

to an acquittal of those two charges pursuant to s 232(1)(*b*) of the Criminal Procedure Code (Cap 68, 2012 Rev Ed).

28 In order to make out the charge against Masoud, three elements had to be established: (a) possession of the diamorphine (which may be proved or presumed), (b) knowledge of the diamorphine (which may be proved or presumed) and (c) proof that the possession of the diamorphine was for the purpose of trafficking. Masoud did not deny that he had possession of the diamorphine which formed the subject matter of his charge. He was thus presumed to have knowledge of the diamorphine by virtue of s 18(2) of the MDA. The issues in the trial below were: (a) whether he had rebutted the presumption of knowledge; and (b) whether he had in his possession the diamorphine for the purpose of trafficking.

29 As for Mogan, it was not disputed that he had possession of the black bundle. Therefore, he was presumed to have knowledge of the diamorphine contained in that bundle by virtue of s 18(2) of the MDA. The element of trafficking had also been established as a matter of fact since there was no dispute that he had delivered the black bundle to Masoud. The only issue in the trial below was whether he had successfully rebutted the s 18(2) presumption.

The Prosecution's case

30 The Prosecution's case against Masoud was that he had actual knowledge that he was in possession of controlled drugs or alternatively, that he was presumed to have such knowledge by virtue of s 18(2) of the MDA. To that end, the Prosecution called as an expert witness, an intelligence officer with the CNB, who testified that the notebook and the text messages in the mobile phones found in Masoud's possession contained drug slang. Apart

from the aforesaid notebook and the text messages, the Prosecution also relied on the following to establish Masoud's knowledge of the drugs in his possession: (a) the drugs in the Mickey Mouse Bag; (b) Masoud's failure to mention his defence; (c) Masoud's bank accounts; and (d) the stun guns and forged identification. The Prosecution also submitted that Masoud had the drugs in his possession for the purposes of trafficking since on his own evidence, he intended to deliver the bundles to Alf.

31 As for Mogan, the Prosecution's case was that Mogan was Masoud's courier, running drugs from Masoud's supplier in Malaysia for him to distribute in Singapore. The requirement that Mogan had trafficked in the drugs was established since Mogan had delivered to Masoud the black bundle containing the drugs. As for Mogan's knowledge of the contents of the black bundle, the Prosecution submitted that the circumstances in which he came to be in possession of the drugs supported the conclusion that he knew he was being asked to traffic in drugs or alternatively, that he had failed to rebut the presumption of knowledge.

Masoud's defence

32 The crux of Masoud's defence at trial was that he had no knowledge of the controlled drugs found in his possession, let alone their nature. According to him, his job was to collect money from debtors and hand them to a person known to him as "Alf". The money would be wrapped in bundles and delivered to him by persons who would identify themselves using code names such as "Jay" or "Joke". He testified that he was paid $150 a day for this job. He would make the trips in a car (*ie*, the Mazda RX8) that he had rented with a forged driving licence. Masoud also stated that it was Alf who had instructed him to collect money from "Joke" (who turned out to be Mogan) on 20 May

2010. He testified that he had collected bundles containing money from Mogan on four previous occasions (see [15] above) and that he had similarly expected the black bundle to contain money, not drugs.

33 Masoud claimed that Mickey Mouse bag was placed in the Mazda RX8 by Alf on 17 or 18 May 2010. Alf asked him to open the trunk of his car and he saw Alf put the Mickey Mouse bag into the backseat compartment from the boot of the vehicle. Masoud stated that he could not see what was inside the bag but, as he was suspicious, he put his hand inside the bag and felt only "plastic and paper". He also stated that as he was feeling the contents inside the bag Alf asked him what he was doing and told him to come out of the vehicle. Alf then sought to distract him so that he would not check the contents of the Mickey Mouse bag any further.

34 The core of Masoud's defence was that he had been framed by the illegal moneylending syndicate that he was involved in. He provided a number of possible reasons for the alleged set up. First, he suggested that he had been framed because he had indicated an intention to stop working for the syndicate. Secondly, he suggested that Alf could have framed him because the latter had found out that he had attempted to steal money contained in a bundle on an earlier occasion. According to Masoud, Alf had confronted him with stun guns on that occasion. He claimed that he took the stun guns away to prevent Alf from threatening him with them after they were inadvertently left in his car. The stun guns were those that were found in his place of residence. Thirdly, Masoud suggested it was possible that he was framed by another member of the syndicate called Cina who discovered that Masoud had complained to Alf about his poor performance.

Mogan's defence

35 Mogan's defence at trial was fairly straightforward. He did not seek to deny that he had possession of the diamorphine contained in the black bundle. His defence was that he did not know the nature of those drugs and had rebutted the presumption of knowledge on a balance of probabilities. He claimed that he had no reason to know that the bundles contained drugs. He said that he was told the bundles contained "barang" and he thought that they contained something illegal on which tax had not been paid. He also said that he thought the bundle contained a stun gun and a baton since he had delivered a similar black bundle to Masoud on 15 May 2010 and was told by one "Shan", the person who wrapped it, that it contained a stun gun and a baton.

The findings of the trial judge

36 The Judge found that the charges against the appellants were established beyond reasonable doubt. In rejecting Masoud's defence, the Judge took the following factors into consideration.

(a) Masoud's defence appeared to have developed over time to the eventual version that was before the court (the HC Judgment at [12]). If he were indeed part of a moneylending syndicate, he would have mentioned it at the outset.

(b) Masoud's explanation that he had been framed by the syndicate was illogical since it was highly unlikely, and in fact baffling, that a syndicate would frame its member by placing so many bundles of drugs worth such a large amount of money in his car (the HC Judgment at [13]).

(c) The entries in Masoud's notebook and text messages contained multiple references to code names for drugs such as "chocolate" which is commonly used to refer to heroin (the HC Judgment at [14]) and Masoud's attempt to explain the terms used in the messages as being references to standard amounts of money to fit his story about being part of a moneylending syndicate was unconvincing (the HC Judgment at [15]).

(d) The drugs found in the Mickey Mouse plastic bag were clearly visible due to the haphazard manner in which they were wrapped. Further, the drugs were found in the locked backseat compartment which could only be unlocked with a key that was in Masoud's possession. Further, he knew of their presence and had touched them (as evidenced by his DNA) (the HC Judgment at [16]).

(e) The quantity of drugs found in Masoud's possession was large. The entries in his notebook and his text messages and circumstantial evidence such as his use of a rental car, the stun guns and the forged identification documents supported the inference that Masoud was involved in the trafficking of drugs (the HC Judgment at [19]).

37 As for Mogan, the Judge was not persuaded by his evidence that he did not know that he was delivering drugs (the HC Judgment at [25]). Given that he was suspicious of the contents of the four bundles which he had received from a person he did not know (and who promised him a sum of money to deliver them) from a highly suspicious location, and thought that they were illegal, a coherent explanation as to why he failed to check the contents of the bundle was required. Mogan's failure to provide such an explanation destroyed his defence. Significantly, the Judge also disbelieved Mogan's

attempt to explain away the usage of the word "drugs" in his statements by blaming it on the inaccurate translation of the interpreter (the HC Judgment at [22]–[24]).

Masoud's appeal

38 The crux of Masoud's appeal was that he had rebutted the presumption of knowledge provided for in s 18(2) of the MDA. Of particular note are counsel's submissions on the test that should be applied in determining whether the presumption of knowledge that is set out in s 18(2) of the MDA has been rebutted. First, it was argued that an accused needs only to raise a reasonable doubt as to his knowledge of the nature of the controlled drugs in order to rebut the s 18(2) presumption. Secondly, it was argued that this court had erred in formulating the test for rebutting the presumption of knowledge in *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 2 SLR 903 ("*Dinesh Pillai No 1*").

39 The remaining arguments were directed at the factual findings made by the Judge. First, it was submitted that the Judge had erred in finding that Masoud's defence was developed late. Secondly, it was submitted that the Judge had erred in accepting that the notebook entries and the text messages contained drug references and to this end, counsel argued that the expert witness called by the Prosecution was not sufficiently qualified to testify in this regard. Lastly, it was also argued that the Judge had placed undue weight on the circumstantial evidence such as the stun guns as well as the forged NRICs and driving licences.

Mogan's appeal

40 On appeal, Mogan admitted that he knew the bundles contained drugs. His main contention was that the presumption of knowledge had been rebutted because he did not know and could not have known the exact drug in his possession given his drug-free background and his inability to differentiate between various types of drugs. Counsel for Mogan also took issue with this court's statement in *Dinesh Pillai a/l K Raja Retnam v Public Prosecutor* [2012] 4 SLR 772 ("*Dinesh Pillai No 2*") that an accused could not rebut the presumption of knowledge if he made no effort to check what he was bringing into Singapore in circumstances that would have alerted a reasonable person that he was being asked to do something illegal (at [11]).

Our decision

The standard of proof

41 Counsel for Masoud submitted that an accused only has an *evidential* (as opposed to a *legal*) burden of rebutting the s 18(2) presumption and therefore, needs only to raise a reasonable doubt to rebut the s 18(2) presumption. He cited in support of his argument the decision of the House of Lords in *R v Hunt* [1987] 1 AC 352 ("*R v Hunt*").

42 This argument was patently unmeritorious. It is, in our view, settled law in Singapore that an accused against whom the s 18(2) presumption operates bears a *legal* burden of rebutting this presumption *on a balance of probabilities*. As such, it is not sufficient for the accused to raise a reasonable doubt *vis-à-vis* the issue of knowledge (*Public Prosecutor v Ilechukwu Uchechukwu Chukwudi* [2015] SGCA 33 at [32]). This has been the position taken in a long unbroken line of local cases (see *Tan Kiam Peng v Public*

Prosecutor [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") at [60] and the cases referred to therein) and there is no reason to now depart from it.

43 Further, the case of *R v Hunt* did not provide any support for Masoud's argument. The issue before the House of Lords was whether the legislature had intended to place on the defendant the burden of proving that he came within a statutory exception to the offence of possession of a preparation or product containing morphine (see 367–368). This turned on a construction of the relevant statutory provisions in that case. On the other hand, the clear intention of Parliament in enacting the relevant statutory provision – s 18(2) of the MDA – in *our* case was to squarely place the legal burden on an accused to rebut the presumption that he knew the nature of the drugs found in his possession.

The test for rebutting the presumption of knowledge

44 We now move on to the appellants' arguments as regards the correct test that should be applied in determining whether the s 18(2) presumption has been rebutted. As mentioned above, the appellants took issue with this court's decisions in *Dinesh Pillai No 1* and *Dinesh Pillai No 2* and it may be helpful to first examine the context in which those decisions were rendered.

45 In *Dinesh Pillai No 1*, the appellant was caught with a brown packet containing diamorphine. He claimed that he was paid by one Raja to deliver "food" wrapped in brown packets to Singapore and that he did not know that the packet contained controlled drugs, let alone diamorphine. When he asked his friend and Raja about the contents of the brown packets to be delivered on earlier occasions, he was told that it was a secret. He was also warned not to open the packets. The appellant admitted that he did not ascertain the contents of the packet despite having the opportunity to do so and despite his suspicion

that it did not contain food. Significantly, he could have easily verified what the packet in question contained by simply opening it (at [21]); he had conceded as much (at [17]).

46 On appeal, the central issue was whether the s 18(2) presumption could be rebutted, or proved to the contrary, by the appellant's bare assertion of lack of knowledge. This court held that it could not. The appellant had turned a blind eye to what the packet contained despite suspecting that it contained something illegal (at [21]). He had neglected or refused to take reasonable steps to find out what he was delivering in circumstances where a reasonable person having the same suspicions would have done so and he had failed to show that it was not reasonably expected of him, in the circumstances, to open the packet to see what was in it (at [21]). Of particular note is [18] of *Dinesh Pillai No 1* where this court stated that the appellant bore the burden of proving on a balance of probabilities that he did not know or ***could not reasonably be expected to have known*** the nature of the controlled drug that was found inside the packet. We pause here briefly to note that counsel for Masoud strenuously argued against the second limb of the aforementioned statement (highlighted in bold italics), which he termed the "reasonable person test".

47 The appellant in *Dinesh Pillai No 1* subsequently applied to set aside his conviction and sentence. He argued, *inter alia*, that there was a fundamental error in this court's decision in *Dinesh Pillai No 1* because the High Court's decision was affirmed on the ground that the appellant was careless, negligent or reckless in not checking the packet to see what was in it and such carelessness, negligence or recklessness did not constitute knowledge. In *Dinesh Pillai No 2*, this court rejected the appellant's argument on the basis that it was entirely misplaced. The real issue was not what the

appellant knew or did not know was in the packet. Rather, the material issue was whether the appellant had rebutted the s 18(2) presumption on a balance of probabilities (at [11]). On that basis, this court held that the s 18(2) presumption could not be rebutted if the accused made no effort to find out what he was bringing into Singapore in circumstances which would have alerted a reasonable person that he was being asked to do something illegal (at [11]). We pause again to note that counsel for Mogan also took issue with this part of the court's judgment.

48 In the present case, the core of the appellants' arguments appears to be that the inquiry as to whether an accused has rebutted the presumption of knowledge prescribed in s 18(2) of the MDA is a subjective one and therefore, should not be viewed through the lenses of the hypothetical reasonable person.

The law

49 We commence our analysis by first setting out s 18(2) of the MDA as well as the relevant cases that have laid down the basic principles that guide the application of the presumption of knowledge. Section 18(2) of the MDA provides:

> 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*. [emphasis added]

50 Much ink has been spilt over this presumption. In *Tan Kiam Peng*, the appellant had been convicted in the High Court under s 7 of the MDA for importing heroin and sentenced to suffer the mandatory death penalty. His defence was that while he knew he was importing illegal drugs, he did not know the precise nature of the drugs he was carrying. In rejecting his defence, this court held that apart from actual knowledge, s 18(2) of the MDA also

encompassed the doctrine of wilful blindness – the appropriate level of suspicion that led to a refusal to investigate further – which was the legal equivalent of actual knowledge (at [139]). The court was also clear in stating that wilful blindness would be established where an accused knew that he or she was trafficking in controlled drugs but nonetheless chose to assume such an enormous and deadly risk by trafficking drugs without establishing the true nature of the drugs he or she was carrying (at [130]). In establishing wilful blindness, an important factor is the credibility of the witnesses (including the accused himself or herself) – the accused may claim that he or she made inquiries but may be disbelieved by the court (at [131]). In the final analysis, the court concluded that much would depend on the precise facts and circumstances such as the quantity and weight of the packets, as well as to whether or not the accused was remunerated for carrying the packets (at [130]).

51 In *Tan Kiam Peng*, this court also made an observation that there was some uncertainty as to whether the knowledge referred to in s 18(2) was (a) the knowledge that the drug in question was a controlled drug ("the broad interpretation") or (b) the knowledge that the drug in question was the specific type of drug (for *eg*, heroin) that was found in the accused's possession ("the narrow interpretation"). The court expressed a provisional preference for the narrow interpretation given the need (in view of the extreme penalties prescribed by the Act) to resolve any ambiguities in interpretation in favour of the accused, as well as the fact that the broad interpretation had not been adopted in any decision (at [95]).

52 Two subsequent cases are also worth mentioning. The first is *Nagaenthran a/l K Dharmalingam v Public Prosecutor* [2011] 4 SLR 1156 ("*Nagaenthran*"). In that case, this court considered the distinction between

the narrow and broad forms of knowledge discussed in *Tan Kiam Peng* to be of little practical significance since the material issue in s 18(2) of the MDA is not the existence of the accused's knowledge of the controlled drug, but the non-existence of such knowledge on his part (at [23]). Some factual examples of how an accused can rebut the s 18(2) presumption were also provided (at [27]). For instance, it was suggested that the accused could adduce evidence to prove, on a balance of probabilities, that he genuinely believed that what was in his possession was something innocuous (*eg*, washing powder, when it was in fact heroin) or that he thought it was a controlled drug other than the one actually found in his possession (*eg*, where he genuinely believed he was carrying "ice", rather than heroin).

53 The second case is *Khor Soon Lee v Public Prosecutor* [2011] 3 SLR 201 ("*Khor Soon Lee*") in which the doctrine of wilful blindness was further refined. There, the appellant became a drug courier for one Tony to pay off his debts. Tony told the appellant that he was looking to transport Erimin, Ketamine, Ice and Ecstasy into Singapore. For the various deliveries, sometimes the appellant was told that the bundles contained Erimin and Ketamine while he was on other occasions not told of their contents. The appellant was instructed not to open the bundles and check their contents. The appellant would usually travel to Singapore together with Tony to make the deliveries. He was eventually arrested with a number of drugs which included diamorphine. The delivery that led to the appellant's arrest was the first time that the appellant and Tony travelled in separate vehicles. This made the appellant suspicious but he did not question Tony about it because the latter appeared to be in a rush and the appellant wanted to complete the delivery. In his defence, the appellant asserted that he had previously asked Tony whether the deliveries involved heroin (diamorphine) as he was afraid of the death penalty. In response, Tony reassured him that he never placed heroin in the

bundles of drugs that he told the appellant to carry. The appellant's account of Tony's response was not challenged by the Prosecution (at [6]). The central issue that arose on appeal was the appellant's knowledge of the nature of the controlled drugs that he was carrying.

54 From the outset of its decision, this court emphasised that negligence or recklessness did not amount to wilful blindness and cautioned against making a finding of wilful blindness unless there was a strong basis for doing so (at [20]). On the facts of that case, the court held that the appellant's failure to check the contents of the package containing the drugs in question constituted at best negligence or recklessness (and therefore, did not rise to the level of wilful blindness) given his consistent pattern of drug deliveries and his relationship with Tony. The appellant had no strong reasons to suspect that the package contained diamorphine and the fact that on that occasion, he and Tony were to travel separately was not sufficiently peculiar to raise a strong suspicion.

55 What emerges from the above is a clear and coherent picture of how the courts have approached the s 18(2) presumption. *First*, the knowledge referred to in s 18(2) encompasses both actual knowledge and wilful blindness, which is the legal equivalent of actual knowledge. Wilful blindness is established when the accused had the appropriate level of suspicion and he refused to investigate further. The threshold to establish wilful blindness is a high one; negligence or recklessness will not suffice. It is apposite to note that the concepts of actual knowledge and wilful blindness recede into the background where the s 18(2) presumption has been triggered. This is because s 18(2) of the MDA presumes such knowledge and consequently obviates the need for the Prosecution to prove the same. Conversely, where actual knowledge or wilful blindness – the legal equivalent of actual knowledge –

has been established, it would logically follow that an accused would not be able to rebut the s 18(2) presumption (see *Khor Soon Lee* at [16] and *Muhammad Ridzuan bin Md Ali v Public Prosecutor and other matters* [2014] 3 SLR 721 at [75]). *Secondly*, in order to rebut the s 18(2) presumption, what the accused has to do is to adduce evidence to establish *on a balance of probabilities* that he had not known the nature of the drugs. This can come in the form of proof that the accused genuinely believed that he was carrying something innocuous or that he was carrying a controlled drug other than the one found on him. Whether the presumption of knowledge has been rebutted is ultimately a fact-centric inquiry and has to be assessed on the specific facts of each case.

Our analysis

56 We turn now to evaluate counsel's submissions in the light of the above principles. Counsel for Masoud argued that the correct approach is for the accused to establish that he did not know and had not been wilfully blind to the nature of the controlled drugs that were found in his possession. However, this approach, in our view, does not necessarily preclude the consideration of the reasonable person's perspective. Short of a clear admission from the accused, it would often be almost impossible for the court to ascertain the accused's real subjective state of knowledge at the time of the offence except by objective evidence. Indeed, in *Tan Kiam Peng*, this court observed that "the practical reality [is] that a finding of actual knowledge is likely to be rare" (at [106]). The court would often have to rigorously test the veracity of an accused's common and belated plea of "I did not know" against the *objective* circumstances of every case. For instance, if the circumstances were so suspicious that a reasonable person in the accused's position would have checked the bundle in his possession, a plea of "I did not know" would

ring hollow. Importantly, counsel for Masoud accepted during the hearing that the subjective state of knowledge of the accused must necessarily be evaluated against the objective circumstances surrounding the offence. Seen in this light, the reasonable person's perspective provides a useful evidential proxy by which the court could assess the true subjective state of knowledge of the accused and on that basis, to make a determination as to whether the accused had actual knowledge (or its equivalent) of the nature of the controlled drug: see Benny Tan Zhi Peng, "Wilful Blindness and Presumption of Knowledge under Section 18(2) of the Misuse of Drugs Act – Putting the Puzzle Pieces Together" *The Singapore Law Gazette* (February 2016) at pp 40–41 ("*Benny Tan*").

57 Our approach is also consonant with the views espoused in the previous decisions of this court. In *Tan Kiam Peng*, this court made it abundantly clear that it was concerned with the accused's subjective knowledge assessed on an *objective* basis (at [151]). The relevance of the reasonable person's perspective is also alluded to in the following statement made by this court in *Nagaenthran* (at [30]):

> [Actual knowledge] is a subjective concept, in that the extent of knowledge in question is the knowledge of the *accused* and not that which might be postulated of a hypothetical person in the position of the accused ***(although this last-mentioned point may not be an irrelevant consideration)*** … [emphasis added in bold italics]

58 In addition, we were not persuaded by the submission that the incorporation of the "reasonable person test" would operate to the disadvantage of an accused. As alluded to above, it is often difficult to prove actual knowledge and the "reasonable person test" provides evidential assistance in this regard. By parity of reasoning, it is typically difficult for an accused to prove the absence of knowledge. Thus, the reasonable man's

perspective may equally work in the accused's favour by enabling him to establish his lack of knowledge and therefore, aid in his rebuttal of the s 18(2) presumption. Indeed, it has been observed that the "reasonable person test" would afford an offender who genuinely did not know what he was carrying the chance of proving so on a balance of probabilities: see *Benny Tan* at p 41. We were accordingly unable to agree with counsel's submission that the "reasonable person test" would adversely affect an accused's prospect of rebutting the s 18(2) presumption.

59 To conclude, notwithstanding counsel's valiant efforts to persuade us to discard the "reasonable person test", we saw no merit in their submission in this regard. Instead, we were and are of the view that the reasonable man's perspective is merely one of the evidential tools for the court to assess the accused's subjective state of mind. We did not think that this approach is in any way inconsistent with the established case law (much of which has emanated from this court). Indeed, it may be a misnomer and may also conduce towards terminological confusion to utilise the word "test". As we have emphasised above, the "reasonable person test" is, in substance, but *an evidential aid that focuses on the objective facts and context* in the case at hand and is *not* an independent "test" in the conventional sense in which that word is used. We reiterate again that the inquiry as to whether an accused person has successfully rebutted the presumption of knowledge is necessarily fact-sensitive and each case turns strictly on its own facts. As stated by this court in *Tan Kiam Peng* at [132], "the possible factual scenarios are far too many to admit of blanket propositions and, hence, the decision of the court in a given case will have to depend on the precise facts, the evidence adduced as well as the credibility of the witnesses themselves". What is of paramount importance in every case is the practical application of the provision to the facts that have been presented before the court; it will not be helpful to place

undue emphasis on an excessively theoretical and technical interpretation of s 18(2) of the MDA.

60 With that, we turn now to explain the reasons for our conclusion that the Appellants had failed to rebut the presumption of knowledge on a balance of probabilities.

Whether Masoud had rebutted the presumption of knowledge

61 In the present case, we saw no basis to interfere with the Judge's finding that Masoud had failed to rebut the presumption of knowledge. First, the notebook entries and the text messages found in Masoud's mobile phones contained strong evidence that Masoud knew that he was dealing in drugs. In contrast, we found Masoud's claim that he had been framed by an illegal moneylending syndicate to be highly unconvincing and fanciful. Secondly, we found that Masoud's defence had been developed over time and appeared to be a last-ditch attempt to bolster his defence.

Masoud's alleged involvement in the illegal moneylending syndicate

62 We begin with the issues that have been raised in respect of the entries in the notebook found in Masoud's vehicle and the text messages in Masoud's mobile phones. At the trial below, the Prosecution led evidence from Senior Staff Sergeant Muhammad Faizal bin Baharin ("SSSGT Faizal"), an experienced CNB officer who has had 13 years of experience dealing with drug informers and accused persons, to prove that the note book entries and the text messages contained drug references. On appeal, Masoud sought to persuade the court that SSSGT Faizal was not a qualified expert under s 47 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the Evidence Act") and that his

interpretation of the notebook entries and the text messages should accordingly be rejected.

63 In this regard, the decision of this court in *Leong Wing Kong v Public Prosecutor* [1994] 1 SLR(R) 681 ("*Leong Wing Kong*") provides a useful parallel to the present case. In that case, an Assistant Superintendent of the CNB, who had more than 20 years' experience in the enforcement division of the CNB, gave evidence on the value of drugs and the straws of heroin usually sold in the market. On appeal, the appellant argued that the Assistant Superintendent was not a qualified expert (at [14]). In rejecting this argument, this court held that the competency of an expert is a question for the court and that there is considerable laxity as to who qualifies as an expert (at [16]). On this basis, this court concluded that the witness, who had 20 years' of experience working with the enforcement division of the CNB, had sufficient work experience to qualify as an expert witness in the matters on which he gave evidence (at [17]).

64 We note that the court in *Leong Wing Kong* preferred to admit the expert evidence under s 51 of the Evidence Act (Cap 97, 1990 Rev Ed) because the admission of expert evidence under the then s 47 was limited to areas of "science or art" and the court considered it to be stretching the scope of "science or art" to include within its ambit evidence of the practices of drug users and suppliers (at [18]). However, this point is not material for our purposes given that the 2012 amendments to the Evidence Act significantly broadened the admissibility criteria for expert evidence (Evidence (Amendment) Act 2012 (Act 4 of 2012). Expert evidence "upon a point of scientific, technical or *other specialised knowledge*" [emphasis added] can now be admitted under s 47 of the Evidence Act. Evidence on drug slang

would, in our view, fall within "other specialised knowledge" and accordingly can be admitted under s 47 of the existing Evidence Act.

65 In the present case, there was no reason to doubt the competency of SSSGT Faizal who has had over 13 years of experience dealing with accused persons and drug informers and would therefore be well-acquainted with drug slang. Although there were terms that he appeared to be unfamiliar with (for example, "document"), his interpretation of key terms such as "chocolate" and "air con" was consistent. He testified that the term "chocolate" referred to heroin because of its colour and the term "air con" was used to refer to "ice" which refers to methamphetamine. He also testified that the prices stated in the notebook and text messages corresponded with the drug prices around the time of the offence. Given that street slang for drugs is by its very nature informal and dynamic, we did not think that SSSGT Faizal's inability to provide a comprehensive explanation for all the terms used in the notebook and the text messages rendered his evidence on the key terms less reliable.

66 In stark contrast to SSSGT Faizal's evidence, Masoud's explanation of the moneylending terms was illogical and inconsistent. Masoud testified that the words "chocolate" and "air con" were references to standard amounts of money. However, he was unable to provide further details about the "standard amounts" that the abbreviations such as "chocolate" and "air con" referred to. Furthermore, his interpretation of the terms was inconsistent. He had said at one point that "chocolate" referred to a standard amount of money. Shortly after, his evidence changed and he explained that "chocolate" referred to interest charged. Masoud's attempts to explain the alleged moneylending terms in his notebook also contradicted his initial position that he had been instructed by Alf to "copy down and write [those] things" (see above at [17]) and did not understand what those entries meant.

67 We turn next to Masoud's reliance on his text message to his girlfriend dated 4 May 2010 in which he suggested that he was in danger. We were unable to agree that this text message pointed towards a possible set up by the alleged moneylending syndicate against him. This is especially so in the light of our finding that his notebook entries and text messages contained drug references. We would also add that we agreed with the Judge's observation that it simply did not make sense for the alleged illegal moneylending syndicate to plant such a large quantity of diamorphine (which was way in excess of the threshold amount for a capital charge and presumably worth a large amount of money) in Masoud's car to frame him.

68 For the sake of completeness, we should state that we did not see any merit in Masoud's claim that an adverse inference should be drawn against the Prosecution for Alf's absence from the trial. There was simply no evidence to support the assertion that the Prosecution had failed to call Alf as a witness because Alf's testimony would have been unfavourable to the Prosecution's case. The CNB officers had attempted to establish the existence of Alf but to no avail. Further, there was no evidence of Alf's existence save for Masoud's uncorroborated assertions and Alf could very well have been a character conjured up by Masoud in aid of his own defence. Thus, there was no basis, and indeed ludicrous, to suggest that an adverse inference should be drawn against the Prosecution for Alf's absence from the trial.

69 In view of the above, we were satisfied that the notebook entries and text messages contained references to drugs and, at the same time, we rejected Masoud's claim that he was involved in an illegal moneylending syndicate and had possibly been framed by members of the same syndicate.

Masoud's failure to mention material aspects of his defence

70 In our view, Masoud's failure to mention earlier his alleged involvement in the moneylending syndicate and the possible set up by the syndicate was another factor that undermined the credibility of his defence. A court is entitled to disbelieve the evidence of a witness even without having to draw an adverse inference against him for omitting to mention earlier some material facts which, if disclosed, would be in his favour (*Kwek Seow Hock v Public Prosecutor* [2011] 3 SLR 157 at [20]). In the present case, Masoud did not, at any point prior to the trial, say that he expected the black bundle to contain money or that he could have been, or was being, framed by an illegal moneylending syndicate. In fact, he said quite the opposite in his contemporaneous statements in which he denied knowing what was inside the black bundle and the bundles in the Mickey Mouse Bag (see above at [10]). Even in his cautioned statement, Masoud continued to insist that he did not know what was inside those bundles (see above at [11]). If Masoud had genuinely thought that the black bundle (handed over by Mogan) contained money, he would be reasonably expected to have said so upon his arrest or shortly after that. But he did not and was unable to provide a satisfactory response when questioned about his failure to mention this defence earlier.

71 We were also not persuaded by counsel's attempt to attribute Masoud's failure to mention this defence to his shock and fear after his arrest coupled with his alleged history of post-traumatic stress and agitated depression. Counsel also attempted to buttress his point by making reference to the conditioned statement of ASP Tai Kwong Yong in which ASP Tai said that "[Masoud] looked zoned out and worried". In the absence of medical opinion that establishes a clear causal link between Masoud's psychiatric condition (even assuming that looking "zoned out and worried" was a reflection of his

alleged psychiatric condition) and his failure to mention his defence earlier, counsel's submission was based wholly on surmise and speculation, and we were accordingly unable to accept it.

Masoud's knowledge of the contents of the Mickey Mouse Bag

72 While Masoud took pains to deny knowledge of the drugs found in the Mickey Mouse Bag, the evidence showed that he was not a credible witness and was, at the very least, shutting his eyes from wanting to know what could have been in that bag.

73 First, Masoud was untruthful in his response when he was asked what was inside the locked compartment (see above at [7]). He denied that there was anything in it. He was also untruthful in his response when the bundles in the locked compartment were discovered. His response then was that he did not know how the bundles found their way into the locked compartment of the Mazda RX8 (see above at [10]). Subsequently, in his second long statement which was recorded three days after his arrest, he changed tack and claimed that those bundles had been placed there by Alf two to three days before his arrest (see above at [16]).

74 Secondly, Masoud's attempt to explain away the presence of his DNA on *both* sides of the masking tape on the exterior of B1A1 (see [7] above) in the Mickey Mouse Bag was also rather unpersuasive. He claimed that he had reached into the compartment to check the bag but his accounts of how he had done so were inconsistent. In his first long statement, he said that he was in the backseat when he reached into the compartment as the Mickey Mouse Bag was placed in it (see above at [16]). However, in court, he testified that he was in the driver's seat at that time and had pushed the seat down to reach the compartment. When questioned about this discrepancy, his explanation was

rather convoluted and strained. He tried to bridge the gap between his accounts by explaining that he had pushed down the driver's seat to reach halfway to the backseat and that was what he meant when he said he was in the backseat.

75 Thirdly, it was also clear, on Masoud's own case, that his suspicions had been aroused when Alf placed the Mickey Mouse Bag in the compartment. In that statement, he had also admitted that he was suspicious of the contents of the Mickey Mouse Bag. He said in his second long statement: "[b]ut I was still suspicious about it. I do not know what is inside the red Mickey Mouse plastic bag. I just felt suspicious and curious". By Masoud's own admission, the bag was placed in a vehicle which only he had control over and it was there for a period of two to three days before his arrest. Notwithstanding his suspicions, he did not check the contents of the Mickey Mouse Bag even though he had ample time and opportunity to do so. We also found it significant that he would have seen the contents of the bag had he done so since the bundles had been wrapped haphazardly and the substances in them could clearly be seen without opening them (see [7] and [36(d)] above).

76 Having regard to all the circumstances, we were of the view that the Judge was correct in his conclusion that Masoud had failed to rebut the presumption of knowledge on a balance of probabilities. In arriving at this conclusion, we also found to be unpersuasive Masoud's claim that he had been framed by an illegal moneylending syndicate. His claim was contradicted by the contemporaneous evidence (the notebook entries and the text messages) for which he did not provide a satisfactory explanation.

Whether Masoud had in his possession the diamorphine for the purpose of trafficking

77 Masoud apparently did not directly challenge the Judge's finding that he was someone involved in the trafficking of drugs. Instead, he seemed to be arguing in [242] and [243] of his Skeletal Arguments dated 3 October 2016 that he had successfully rebutted the presumption of knowledge contained in s 18(2) of the MDA. On this basis, he argued that there could not have been "*mens rea* for trafficking" and consequently, the presumption of trafficking under s 17 of the MDA had been rebutted. We need to point out that this argument was based on a misunderstanding.

78 We would clarify that the presumptions in ss 17 and 18 cannot be applied together (*Mohd Halmi bin Hamid and another v Public Prosecutor* [2006] 1 SLR(R) 548 at [10]). It is also clear that the Judge did not rely on the s 17 presumption to establish that Masoud was in possession of the drugs for the purpose of trafficking (the HC Judgment at [19]). Rather, the Judge took into account the following factors to reach his conclusion that Masoud had in his possession the diamorphine for the purpose of trafficking. First, the large quantity of diamorphine in his possession could not have been intended for his personal consumption. Secondly, the entries in Masoud's notebook and his text messages contained references to drugs, quantity of drugs as well as their prices. Thirdly, the circumstantial evidence adduced by the Prosecution such as Masoud's use of a rental car, the stun guns and the forged identification documents all fell into place with the other evidence that showed Masoud to be someone involved in the trafficking of drugs (the HC Judgment at [19]).

79 We were satisfied that the Judge's finding that Masoud was someone involved in the trafficking of drugs was amply supported by the evidence and accordingly found no basis to interfere with it.

Whether Mogan had rebutted the presumption of knowledge

80 As for Mogan, we concluded that he too had failed to rebut the presumption of knowledge as to the nature of the drugs. In fact, we found that he had deliberately turned a blind eye to the contents of the bundles that he was tasked to deliver and this would have, in any case, been sufficient to establish actual knowledge of the nature of the drugs without invoking the s 18(2) presumption.

81 It is quite evident from Mogan's statements to the CNB that he was aware that he was asked to bring drugs into Singapore in exchange for RM 1,000. In particular, in his long statement recorded on 22 May 2010, he recounted how he had initially rejected Mr Tan's and Bro's requests for him to bring the "barang" or "drugs" into Singapore (see [22]–[23] above). He was extremely resistant to the idea of delivering the "barang" or "drugs" and his testimony was that he had rejected their requests four times.

82 At the trial below, Mogan sought to deny knowledge of the drugs in his possession notwithstanding the number of times he mentioned the word "drugs" in his statements recorded by the CNB. He claimed that he had used the word "barang" but the interpreter had on his own accord interpreted the word "barang" to mean "drugs". His attempt to explain away the references to drugs in his statements was disbelieved by the Judge on the basis that some parts of his statements would not have made sense if the word "drugs" were to be replaced with the word "barang" (the HC Judgment at [23]). The Judge also rejected Mogan's assertion that he thought the black bundle contained stun guns and batons since Mogan had made no mention of this defence earlier and his phone records showed that he had not made contact with the person whom

he claimed had informed him that a previous delivery involved stun guns and batons (the HC Judgment at [24]) (see also [35] above).

83 Given the evidence stacked against him, it was unsurprising that Mogan made an about-turn in his appeal and admitted that he knew that the black bundle which he handed to Masoud contained drugs but claimed that he genuinely did not know what type of drugs they were. His case on appeal was that he was not a drug user and was unable to differentiate between the different types of drugs.

84 We did not think that Mogan's bare assertion of ignorance was sufficient to rebut the presumption of knowledge on a balance of probabilities. As was made clear in *Tan Kiam Peng* at [130], if an accused knows that he is carrying controlled drugs and takes the enormous risk of proceeding without establishing the true nature of the drugs he is carrying, that in itself constitutes wilful blindness (see [50] above). In the present case, Mogan had chosen to run the deadly risk of transporting illegal drugs without ascertaining its nature. He did not say that he had sought assurances as to the contents of the bundles. Even if he did, it did not follow that that would be sufficient to rebut the presumption. Neither did he say that he had in any way attempted to verify the contents of the bundles notwithstanding the fact that he had ample opportunities to do so. Furthermore, the fact that he was promised a rather substantial sum (RM 1,000) in exchange for a simple delivery as well as the fact that he was to retrieve the bundles from a rather dubious location would also have been sufficient to arouse his suspicions as to the severity of the nature of the drugs. In the premises, we were satisfied that Mogan had deliberately turned a blind eye as to the contents of the bundles. In view of that, Mogan had failed to rebut the presumption of knowledge.

Conclusion

85 For the foregoing reasons, we were of the view that there was no merit in the appeals against conviction. Since Masoud was not found to be a courier, and the Public Prosecutor did not certify that he had substantively assisted the CNB in disrupting drug trafficking activities either within or outside Singapore, he was liable to suffer the mandatory death sentence. Masoud' appeal was accordingly dismissed. As for Mogan, the Judge had imposed on him the mandatory minimum sentence which could not be reduced on appeal. Therefore, his appeal against sentence was dismissed as well.

Chao Hick Tin	Andrew Phang Boon Leong	Tay Yong Kwang
Judge of Appeal	Judge of Appeal	Judge of Appeal

Seah Eng Chee Rupert, Dhanaraj James Selvaraj and Sim Jin Simm Alina (Rupert Seah & Co, James Selvaraj LLC and Axis Law Corporation) for the appellant in Criminal Appeal No 35 of 2015;
Eugene Thuraisingam, Gino Hardial Singh and Suang Wijaya (Eugene Thuraisingam LLP) for the appellant in Criminal Appeal No 36 of 2015;
Ng Cheng Thiam and Carene Poh (Attorney-General's Chambers) for the respondent in both appeals.