IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2022] SGCA 45

Criminal Appeal No 14 of 2020

Between

Raj Kumar s/o Aiyachami

… *Appellant*

And

Public Prosecutor

… *Respondent*

Criminal Appeal No 15 of 2020

Between

Ramadass Punnusamy

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

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

Raj Kumar s/o Aiyachami
v
Public Prosecutor and another appeal

[2022] SGCA 45

Court of Appeal — Criminal Appeals Nos 14 and 15 of 2020
Sundaresh Menon CJ, Andrew Phang Boon Leong JCA and Belinda Ang Saw Ean JAD
25 January 2022

27 May 2022 Judgment reserved.

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

Introduction

1 The appellant in CCA 14/2020 ("CCA 14") is Raj Kumar s/o Aiyachami ("Raj"), who claimed trial to a capital charge under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA") for having in his possession for the purpose of trafficking not less than 1,875.8g of vegetable matter, which was analysed and found to be cannabis (the "Drugs"). The appellant in CCA 15/2020 ("CCA 15") is Ramadass Punnusamy ("Ramadass"), who claimed trial to a capital charge under s 5(1)(*a*) of the MDA for delivering the Drugs to Raj.

2 Both Raj and Ramadass were initially charged with a second offence concerning the trafficking of a quantity of 2,977.8g of cannabis mixture. However, following our decision in *Saravanan Chandaram v Public Prosecutor*

and another matter [2020] 2 SLR 95, the Prosecution withdrew the latter charges, and the Judge granted discharges amounting to acquittal in respect of them.

3 At the trial, both appellants disputed that they knew the nature of the Drugs. The High Court Judge (the "Judge") convicted both Raj and Ramadass on their respective proceeded charges. The Judge also found that Raj was not a courier, and in any case, the Public Prosecutor had not issued a certificate of substantive assistance ("CSA"). He therefore imposed the mandatory death sentence on Raj: see *Public Prosecutor v Raj Kumar s/o Aiyachami and another* [2020] SGHC 119 (the "Judgment") at [100].

4 As regards Ramadass, the Judge found that his involvement was limited to the specified activities that allowed him to be treated as a courier, and given that the Public Prosecutor had issued a CSA, Ramadass was sentenced under s 33B(1)(*a*) of the MDA to life imprisonment and the mandatory minimum of 15 strokes of the cane (Judgment at [101]–[102]).

5 Raj and Ramadass have appealed against their convictions and sentences. On appeal, the primary issue in relation to Raj, is whether the Judge erred in finding that he had failed to rebut the presumption of knowledge. As for Ramadass, his primary contention on appeal is that the Judge erred in finding that he had actual knowledge of the nature of drugs, and in finding in the alternative, that Ramadass had failed to rebut the presumption of knowledge.

6 Having considered the circumstances of the present case, and for reasons that are set out in this judgment, we find that the Judge did err in the findings he made in relation to the knowledge of both Raj and Ramadass. In the

circumstances, we acquit both appellants on the charges that were proceeded against them.

The background facts

The events leading up to the arrest of Raj and Ramadass

7 On 21 September 2015, officers from the Central Narcotics Bureau ("CNB") were briefed on a potential delivery of drugs by Ramadass, who was expected to be driving a lorry with the Malaysian registration number MAQ351 (the "Lorry"), to Raj and to one Muhammad Noorul Amin bin Muhammad Sabir ("Noorul"). Raj was expected to be driving a Mitsubishi car bearing registration number SFW 3916X (the "Mitsubishi").

8 At around 12.30pm on 21 September 2015, Ramadass drove the Lorry into Singapore through the Woodlands Checkpoint. The Lorry was owned by Ramadass's employer, and it was used to deliver bricks from Johor Bahru to customers in Singapore. At around 1pm, the Lorry turned into 10 Senoko Loop, where its cargo of bricks was unloaded. The Lorry then left 10 Senoko Loop at around 1.15pm and was observed by CNB officers following a route around Senoko Loop and Senoko Drive, stopping intermittently along the road. This lasted for around half an hour.

9 At around 1.45 pm, Raj was spotted by Station Inspector Tay Cher Yeen ("SI Jason") using the toilet at Min Lock Eating House ("the Canteen"), which was located at 22 Senoko Loop. Raj was subsequently observed getting into the driver's seat of the Mitsubishi, while Noorul was in the passenger seat. The Mitsubishi left the carpark at around 1.50pm.

10 At around this time, the Lorry drove onto Senoko Drive and parked some way ahead of an unmarked CNB vehicle. Ramadass was seen alighting from the Lorry and speaking to the drivers of two other cars that were parked behind the Lorry. Shortly after this, Raj drove the Mitsubishi to Senoko Drive and parked it behind the two other cars and the Lorry, just in front of the CNB vehicle. The two other cars drove off. Raj was observed making a gesture to Ramadass by Staff Sergeant Norizan binte Merabzul before driving off again. At around 2pm, Raj returned to the area and on this occasion, he parked the Mitsubishi in front of the Lorry. Ramadass then alighted from the Lorry, retrieved a red plastic bag from the passenger side of the Lorry and walked to the Mitsubishi. He opened its rear left passenger door and placed the red plastic bag inside. He then walked in between the Mitsubishi and the Lorry towards the driver's side of the Lorry. At around 2.03 pm, Raj drove off in the Mitsubishi, followed shortly by Ramadass in the Lorry.

The arrest of Ramadass

11 At around 2.18 pm, the Lorry was stopped at Woodlands Checkpoint and Ramadass was arrested. One of the arresting officers, Sergeant Meenambikhai Arul Molzi Thevar ("Sgt Meena"), had a brief conversation with Ramadass, which was recorded in the field diary ("Ramadass's First Statement"). The translated transcript of Ramadass's First Statement is set out here:

> Upon arrest I, W/Sgt Meena Arul questioned [the] subject, if he has anything to declare. He said Yes. He said that he went to Senoko Drive to send jama. What does jama means (sic). He replied "drugs". He was told that he is carrying "buku" (tamil word). (tamil word) means ganja, 1 kilo ganja.

Sgt Meena testified that the Tamil word she had recorded Ramadass as using, could be transliterated as "*yellai*". According to her, "*yellai*" was the Tamil word for "leaf".

12 At around 2.30pm, Sgt Meena served the Mandatory Death Penalty Notice ("MDP Notice") on Ramadass in a CNB vehicle. It was not disputed that the MDP Notice was served on Ramadass before the Drugs were seized, and before any charges were served on him. She then recorded a second contemporaneous statement from Ramadass ("Ramadass's Second Statement") at around 2.50pm in the field diary. In Ramadass's Second Statement, Ramadass was recorded as having said that he had gone to Senoko to send "*jama*", which meant drugs; that there were drugs inside the red plastic bag, and that the white "*bungkus*", a Malay word meaning parcel, was packed with "*ganja*"; that he threw the "*jama*" into the silver car (meaning the Mitsubishi) and recognised one of the male Indians in the car as he had passed him "*jama*" previously. He specifically identified the "baldie", who was the one who gave him hand signals from the car, and stated that he did not send "*jama*" to anyone else.

13 At around 3.40pm, Ramadass was escorted to the Lorry by the CNB officers to conduct a search. The following items were found in the Lorry:

(a) from the flap above the driver's seat, one white "Star Mart" plastic bag containing a stack of $50 notes (later established to amount to $7,000); and

(b) from in between the driver's seat and the front passenger seat, one blue bag containing notes tied in a bundle using rubber bands (later established to amount to $4,300).

Two handphones were also seized from Ramadass and marked "R-HP1" and "R-HP2" respectively.

14 At around 7.35pm, Sgt Meena recorded a third contemporaneous statement from Ramadass ("Ramadass's Third Statement") while they were in a CNB vehicle. In Ramadass's Third Statement, Ramadass was recorded as having said that he had brought "drugs into Singapore" in the Lorry. Ramadass was not sure who put the drugs there, but was told the night before by someone known to him as "Muruga" that the Drugs were placed under the rear passenger seat, and that Muruga would call him to tell him who to deliver the drugs to.

15 Three subsequent statements were recorded from Ramadass during the course of investigations. In Ramadass's cautioned statement ("Ramadass's Fourth Statement") recorded on 22 September 2015 at around 4.16pm, he denied knowledge of the nature of the Drugs, and stated that Muruga had placed the Drugs in the Lorry without his knowledge. In Ramadass's fifth statement recorded on 24 September 2015 by Inspector Teh Chee Sim Karlson ("Insp Karlson") ("Ramadass's Fifth Statement"), Ramadass gave an account of how the items came to be placed in the Lorry. He also said that he had been told by Muruga that the substance placed in the Lorry was "chemically sprayed tobacco". In Ramadass's sixth statement recorded on 26 September 2015 by Insp Karlson ("Ramadass's Sixth Statement"), Ramadass stated that he did not know what "*ganja*" was and had never seen "*ganja*" before. He also sought to clarify some of the responses recorded by Sgt Meena in Ramadass's First and Second Statements. In particular, he sought to explain that the words "*jama*" and "*ganja*" recorded in Ramadass's Second Statement actually meant "thing" and "chemical[ly] sprayed tobacco" respectively, and that he had repeated what Sgt Meena had told him.

The arrests of Raj and Noorul

16 After Raj left Senoko Drive in the Mitsubishi, he drove to Ang Mo Kio Avenue 1 and turned into a petrol station at 793 Ang Mo Kio Avenue 1. Raj and Noorul alighted from the Mitsubishi and were arrested by CNB officers at around 2.30pm. At around 2.47pm, the Mitsubishi was searched. The items that were recovered included the following:

(a) from the floor between the front seats, one plastic bag (later marked "B1") containing (i) miscellaneous items; and (ii) one colourful pouch ("B1B") containing one red plastic bag ("B1B1"), which contained a plastic packet ("B1B1A"), and which in turn contained three packets ("B1B1A1"). The said three packets each contained vegetable matter described by Raj as "Butterfly". We elaborate on this below;

(b) from the rear passenger seat, one red plastic bag (later marked "C1"), containing five rectangular blocks, each wrapped in red-and-white "Sky Net" packaging ("C1A", "C1B", "C1C", "C1D" and "C1E" respectively), under which was another layer of plastic followed by gold-coloured paper, and each of which contained a block of vegetable matter ("C1A1A1", "C1B1A1", "C1C1A1", "C1D1A1" and "C1E1A1" respectively).

Some of the CNB officers present later testified that they detected a smell of cannabis, and that one of the blocks wrapped in the "Sky Net" packaging was found with a hole in the wrapping, through which vegetable matter could be seen.

17 A total of five statements were taken from Raj by various CNB officers. In all five statements, Raj gave the same response, to the effect that he was "not

being uncooperative, but [he] would like to consult [his] lawyer to seek legal advise [*sic*] before [giving his statement]".

18 A total of seven statements were also recorded from Noorul. However, as the Prosecution did not proceed against Noorul on a capital charge, he was neither called to testify at the trial nor were his statements disclosed. Following this court's decision in *Muhammad Nabill bin Mohd Fuad v Public Prosecutor* [2020] 1 SLR 984 on the Prosecution's disclosure obligations, Noorul's statements were disclosed to both Raj and Ramadass on 23 December 2020. This was after the Judgment had already been released. Prior to the hearing of these appeals, both Raj and Ramadass confirmed that they would neither be relying on Noorul's statements, nor would they be making applications to call Noorul as a witness.

The parties' respective cases at the trial

19 The trial took place over several tranches between October 2018 and July 2019. The Prosecution called a total of 32 witnesses. Both Raj and Ramadass gave evidence in their own defence, with Raj calling one Mark Kalaivanan s/o Tamilarasan ("Mark") and one Vicneswaran s/o Subramaniam ("Vicneswaran") who were both inmates at Changi Prison, as well as one Edmund Wong Sin Yee ("Wong").

The Prosecution's case at trial

20 The case run by the Prosecution can be summarised as follows:

(a) Raj was presumed, pursuant to s 21 of the MDA, to be in possession of the Drugs on the basis that this was found in the Mitsubishi and Raj was the driver and person in charge of that car. Raj was also

presumed to know the nature of the Drugs in his possession under s 18(2) of the MDA.

(b) Given the large quantity of the Drugs and the fact that Raj was not a consumer of controlled drugs, the court should infer that he had the Drugs in his possession for the purpose of trafficking.

(c) Ramadass was in possession of the Drugs, and had knowledge of the nature of the Drugs. In the alternative, Ramadass was presumed to know the nature of the Drugs under s 18(2) of the MDA. Ramadass had delivered the Drugs to Raj and therefore trafficked in the Drugs.

21 The chain of custody was uncontroversial, and was not contested by either Raj or Ramadass.

Raj's defence

22 Raj generally disputed that he knew the nature of the Drugs, and his defence was premised on his contention that there had been a "mistaken delivery". According to Raj, he had gone to Senoko Drive to pick up a delivery of what he referred to as "Butterfly K4". It was not disputed that this was one of the street names of tobacco that had been laced with a synthetic chemical that mimicked the narcotic effects of cannabis (which is referred to as chemically sprayed tobacco or synthetic cannabis). In this judgment, we refer to this material as "Butterfly". He claimed that he ordered 100 packets of Butterfly on 20 September 2015 from a Malaysian supplier known to him as "Vijay".

23 Raj testified that he had known Vijay since August 2015, when Vijay inquired about deregistered cars, which Raj was in the business of selling. In the course of their conversation, Vijay also told Raj he had Butterfly, and offered

to sell Raj Butterfly. Realising he could make a profit selling Butterfly, Raj started purchasing Butterfly from Vijay from the end of August 2015 until just before the time of his arrest on 21 September 2015. Raj was later informed by Vijay that orders for Butterfly had to be in the minimum quantity of a hundred packets at a cost of $80 per packet. When Raj told Vijay that he did not have $8,000 on hand to enable him to afford such a minimum order, Vijay offered to let Raj to take the Butterfly on credit and to pay him once he had collected sufficient money from his onward sales. Raj agreed to this and this credit arrangement was extended to subsequent orders.

24 Raj testified that he personally took delivery of each order, but he had never met Vijay in person, and always received the deliveries from an intermediary. Raj contacted Vijay using his mobile phone and made all the arrangements for deliveries with Vijay. For those orders that were delivered on credit, once Raj had raised enough money from his sales, he would inform Vijay, who would send a runner to collect the payment. According to Raj, the packets of Butterfly that had been found in his car at the time of his arrest were part of a prior order of 100 packets.

25 Turning to the events that culminated in his arrest on 21 September 2015, Raj testified that when he called Vijay earlier that day, he was told where and when he could collect the Butterfly packets he had ordered. He asked Noorul to accompany him, and when they reached Senoko Loop, Raj tried to contact Vijay, but could not get through. He went to the Canteen to get a meal and a drink, and then stopped at the restroom. Vijay called at this time and told him to proceed to Senoko Drive and to park his car beside a red lorry. Raj drove to Senoko Drive and saw a red lorry and parked behind it. After waiting a short while, he thought he might not be at the right place and so left to look for some other red lorry in the vicinity, but as he was driving away, Vijay called and told

him the registration number of the red lorry. Raj then went back to where he had been and observed that the red lorry's registration number matched the number that Vijay had just given him. He parked his car in front of the lorry and waited for a minute or two, before someone knocked, opened the door, and left the packets in the rear passenger seat. Vijay then called again and told him to let him know when he had sold enough to pay $8,000 for his order.

Mark's evidence

26 According to Raj, he met Mark for the first time in prison sometime towards the end of 2017 or early in 2018. While Mark claimed to have seen Raj previously on four or five occasions, they had never spoken to each other outside prison. During the course of their interactions, Raj told Mark that he had gone to Senoko Loop on 21 September 2015 to collect some other items but ended up being arrested for possession of "*ganja*". It was not disputed by Raj or Mark that "*ganja*" was the street name for cannabis.

27 In a remarkable coincidence, Mark claimed that he had gone to Senoko Loop on 21 September 2015 to collect something for his friend "Mano", and that he had seen Raj at the Canteen when he went to use the restroom. Mark was sure of the date because his pet hamster had died when he returned from Senoko Loop, and he later tattooed the words, "RIP 21.9.15 PAT" on his left middle finger. "PAT" was a reference to "Patrick", the name of his pet hamster.

28 According to Mark's evidence, he had worked with Mano from 2000 to 2001, and they used to smoke "*ganja*" together. They lost contact when Mark was imprisoned but re-connected in 2015 after Mark's release. Mano then offered to sell Mark "*ganja*" for his own consumption, and Mark subsequently purchased "*ganja*" from Mano on several occasions. A few days before 21 September 2015, Mano asked Mark to collect six bundles of "hans" and 1

kilogram of "*ganja*" for him. Mark explained that "hans" was chewable tobacco. For doing this, Mark would receive 100g of "*ganja*" for free.

29 At around 10am on 21 September 2015, Mano instructed Mark to go to Senoko Loop to collect the shipment of drugs and tobacco. Mark took a taxi to the Senoko area, and stopped at the Canteen at Senoko Loop as he needed to use the restroom. When he was leaving the Canteen, Mark noticed Raj making his way to the Canteen. Mark recognised Raj as someone he had seen before but did not speak to him. Instead, he called Mano and asked where he was supposed to go. Mano told him to wait and that he would call him back. A few minutes later, Mano called and told him that he could collect the items from someone in a red lorry, bearing a registration number that included the number "351". Mark explained that he could remember the number as it was the same block in Jurong East where he used to gather with other members of his secret society. It should be noted that Mark was not challenged on his account of having recognised Raj at the Canteen as someone he had seen previously.

30 The red lorry was parked outside the Canteen, and Mark was instructed to approach the driver of the lorry, say the name "Muruga", and collect the items. Mark looked along the road outside the Canteen and saw a red lorry to his right. He signalled to the taxi driver to wait a while, and then walked towards the lorry. He went to the passenger side, knocked on the door and said, "Muruga". The driver then handed him a plastic bag. Mark returned to the taxi and went home. He did not check the contents of the plastic bag but noticed that some paper was covering the contents.

31 When he reached home, Mark called Mano who asked him to separate the six bundles of "hans", and one block of "*ganja*". Mark removed the paper that was covering all the boxes, and found around seven boxes inside. When he

opened the boxes he saw Butterfly packets in all of them except one, which contained some powder in a packet. He then called Mano and told him what was inside the bag, and was told that the items were meant for someone else and had been given to Mark by mistake. Mano told him to place the packets back into the boxes and into the bag, and that he would send someone to collect it. Less than 30 minutes later, Mano called Mark and told him that someone was at the lift at the bottom of the block to collect it. Mark went down and met a Malay male who approached him and asked if he was Mark, and said that he had been sent by Mano to pick up the items. Mark handed over the bag and received $50. This was the first and last time that Mark helped Mano pick something up.

Vicneswaran's evidence

32 Raj also called Vicneswaran, who testified that he had been consuming Butterfly from around July until November or December 2015. Vicneswaran said he purchased Butterfly from various sources, including Raj (whom he identified in court). He testified that he purchased Butterfly from Raj in August and September 2015, at Raj's tattoo shop at Orchard Towers. He usually bought about 10 packets three to four times a week, some of which he smoked, while the rest he sold to others. He paid about $150 per packet. He said exhibit B1B1A1 was similar to the Butterfly packets he had bought from Raj. If he sold the packets to others, he would sell a packet for between $250 and $300, or he would break a packet into small packages and sell each for $50. Vicneswaran confirmed that he had spoken to Raj in prison about the present case and had agreed to give evidence about his purchases of Butterfly from Raj. Vicneswaran's evidence as to the quantity of Butterfly that he had been purchasing from Raj in August and September 2015 was not challenged. Nor was any evidence led by the Prosecution to refute the prices at which Butterfly could be or was sold.

Wong's evidence

33 To explain his refusal to provide any information to the CNB in his five statements, Raj testified that he had previously been advised by Wong, who had been a practising lawyer and who he met in prison, that he had a right to consult a lawyer before giving a statement and could not be forced to do otherwise. Wong was called as a defence witness by Raj, and confirmed Raj's account of their discussion.

Ramadass's defence

34 Turning next to Ramadass's case, first, he challenged the voluntariness and hence the admissibility of his First, Second and Third Statements (collectively, the "Contested Statements"). He claimed that Sgt Meena had frightened him by saying that gangsters would beat him to death if he did not implicate himself, after which she offered to help him. He also claimed that Sgt Meena had threatened to hit him with her elbow, and denied him food or water or access to the toilet.

35 Ramadass did not dispute that he had delivered the Drugs to Raj. His defence was that he did not know the nature of the Drugs. He claimed that he had brought to Singapore what he believed to be four bags containing chemically-sprayed tobacco (or Butterfly) and delivered them to four different persons. Apart from Ramadass's claim in his oral testimony that he had made more than one delivery on 21 September 2015, Ramadass's oral evidence was generally consistent with what he had said in his Fourth, Fifth and Sixth Statements as to not knowing the nature of the Drugs.

36 Ramadass testified that he worked as a lorry driver and had come to know Muruga about a year before his arrest when Muruga was working for

another company. About four months before his arrest, Muruga approached Ramadass on several occasions asking whether he would be willing to bring some items into Singapore. Ramadass refused because he knew that Muruga consumed and also distributed "Ice" (which is the street name for methamphetamine) to other lorry drivers. He was therefore afraid that Muruga would have him bring "wrongful items" into Singapore and that he "could be hung for it".

37 On 19 September 2015, Ramadass said he had been drinking with his friends, when sometime past midnight Muruga called him and asked him to "deliver some things into Singapore". Ramadass claimed that he could not remember if he agreed to do the delivery because he was intoxicated at the time. He also said he had fallen asleep while intoxicated on the morning of 20 September 2015. On 21 September 2015, Ramadass left for work at 7am and was tasked with delivering bricks in Singapore. After he cleared Malaysian immigration, he recalled his conversation with Muruga. He then called Muruga, who told him that he had placed items in the Lorry but refused to tell Ramadass the precise location.

38 After Ramadass entered Singapore, Muruga called him and told him that he had placed chemically-sprayed tobacco in the Lorry. Ramadass proceeded to deliver the bricks at 10 Senoko Loop. While the bricks were being unloaded, Muruga called Ramadass and told him he would later tell Ramadass where the chemically-sprayed tobacco was. After Ramadass drove off from 10 Senoko Loop and was at Senoko Drive near the Canteen, he called Muruga and was told that the chemically-sprayed tobacco was placed beneath the seat located behind the passenger's seat.

39 When he lifted the seat, he saw that there were four red bags placed in a box under the seat. Muruga told him that a person would approach the lorry and say, "Muruga", and he was to hand over a bag of chemically-sprayed tobacco. Muruga, however, did not tell him which bag he was to hand to the person who approached him. Shortly after this, someone knocked and said "Muruga" whereupon Ramadass handed a bag to him through the window.

40 Muruga told Ramadass that another person would come shortly and that he should do likewise. This duly happened and was followed by a third such delivery. Muruga next instructed Ramadass to drive to Senoko Drive. When he got there, he was told to look for a silver car. Muruga asked him to bring the remaining bag to the car and leave it in the car. Ramadass parked by the side of the road and waited a while before a silver car arrived and parked in front of his lorry. There were two packets inside the last red plastic bag, and underneath it were three more bundles with red-and-white wrappers. Ramadass put all of these into the red plastic bag and walked to the silver car. He tried to open the door but it was locked, so he knocked, and then opened the door and left the bag in the car without saying anything. Ramadass then returned to his lorry and spoke to Muruga, who told him to return to Malaysia where he would be paid RM500. He left for Woodlands Checkpoint, and was arrested there.

41 In addition to challenging the admissibility of the Contested Statements, Ramadass also challenged their accuracy. He testified that after his arrest, while Sgt Meena was taking his statement, Senior Station Inspector Tony Ng Tze Chiang ("SSI Tony") came into the car and asked how many people he had handed items to. SSI Tony said the CNB officers had seen him hand items to three persons at the Canteen and one other person at Senoko Drive, but told him that he did not need to mention the three other persons in his statement. Ramadass also alleged that the answers recorded in the Contested Statements in

relation to what he allegedly knew of the nature of the Drugs were made up by Sgt Meena.

The decision below

Ancillary hearing

42 In view of the allegations that Ramadass had raised in relation to the Contested Statements, an ancillary hearing was held on 7 and 8 November 2018. At the conclusion of the ancillary hearing, the Judge held that the Contested Statements were admissible for the following reasons. First, Ramadass's allegation that he was scared that the gangsters would beat him to death if he refused to implicate himself was illogical (Judgment at [38]). Second, Ramadass's claim that Sgt Meena had told him that "[if] you help us, then we would also help you", could not be material in any way because Ramadass was unable to say what help Sgt Meena was seeking from him (Judgment at [39]). Third, Ramadass's allegation that Sgt Meena had threatened to hit him with her elbow was incredible and that in any event, if she did make a shoving gesture with her elbow, this would have been insufficient to threaten Ramadass or undermine his will (Judgment at [40]). Fourth, Ramadass's claim that he was denied food or water or access to the toilet could not have amounted to oppression so as to affect the admissibility of the statements (Judgment at [41]). Fifth, Ramadass had failed to raise these allegations when he had the opportunity to do so in his later statements. Indeed, in Ramadass's Sixth Statement, when asked about the First and Second Statements, he did not allege that they had not been given voluntarily (Judgment at [42]).

Raj's case

43 In relation to Raj, the element of possession was not disputed (Judgment at [53]). The main issue at trial was whether Raj knew the nature of the Drugs and secondly, whether the Drugs were in his possession for the purpose of trafficking. As to the first issue, the Prosecution relied on the presumption under s 18(2) of the MDA. Raj's principal defence was that he had ordered and had intended to take delivery of a quantity of Butterfly. He contended that the cannabis had been delivered to him by mistake. The Judge considered that to find for Raj on this, he would have to be satisfied that: (a) Raj had ordered Butterfly and was taking delivery of this at Senoko on 21 September 2015; and (b) Ramadass delivered the drugs to Raj by mistake (Judgment at [56]). The Judge ultimately rejected this defence, finding that:

> (a) Raj's account of how he came to place an order for 100 packets of Butterfly on 20 September 2015 from Vijay was incredible. Raj had never met Vijay in person, and they had first been in touch in August 2015. The Judge did not believe that Vijay would let him take 100 packets of Butterfly at $80 per packet on credit, with the money only being payable when he had sold enough of the Butterfly, and with no schedule for repayment being set down (Judgment at [58]). Given the Judge's finding that Raj did not order Butterfly on 20 September 2015, the reason for his presence at Senoko Drive on 21 September 2015 could not have been to take delivery of Butterfly (Judgment at [59]).
>
> (b) The Judge also found that there was no mistaken delivery by Ramadass. In the Judge's view, two facts had to be shown to establish a mistaken delivery: (i) that Ramadass had more than one red plastic bag to deliver; and (ii) at least one of the plastic bags contained Butterfly and at least one contained the drugs which Raj received (Judgment at [60]).

The Judge found it inherently incredible that there were four plastic bags that looked similar but contained different items, when Muruga had not told Ramadass which bag he was to pass to each recipient (Judgment at [62]). Ramadass also failed to mention any of the other bags or deliveries in any of his six statements, and the Judge rejected his attempted explanations for this omission (Judgment at [63]–[65]). The Judge also rejected Mark's evidence that he was at Senoko on 21 September 2015 to take delivery of "*ganja*" but had received white powder and packets of Butterfly by mistake (Judgment at [66]). Although the Judge did not accept the Prosecution's submission that Mark had inked the hamster tattoo while he was in prison (Judgment at [69]), he found that Mark and Raj had ample opportunity to collude. While there was no explanation for why Mark would testify in Raj's defence, the Judge thought that this did not overcome the implausibility of the claimed events (Judgment at [70]). The Judge accepted that Ramadass did not have any opportunity to talk to Raj or Mark prior to giving evidence. However, he took into account the fact that Ramadass was in court when Raj and Mark gave their evidence, and was therefore able to tailor his evidence to say he had made multiple deliveries of Butterfly in order to support their account. He also had a motive for doing so as it supported his claim that he believed that he was to deliver Butterfly and not cannabis (Judgment at [71]). In any event, there was a smell of cannabis from the red plastic bag which Raj admitted to being familiar with (Judgment at [72]) and Raj's failure to investigate the contents of red plastic bag was explained by the fact that Raj must have known that it contained cannabis (Judgment at [73]).

44 The Judge also found that the Drugs were in his possession for the purpose of trafficking, inferring this from the quantity of drugs that was

involved (Judgment at [76]). However, he did not rely on Raj's evidence that he intended to sell the items in his possession, since this pertained to his intention to traffic in Butterfly (Judgment at [77]).

45 The Judge also declined to draw an adverse inference against Raj for his refusal to provide information to the CNB in his statements, because the Judge accepted that Raj had in fact been advised by Wong, that he could consult a lawyer before giving a statement (Judgment at [79]–[81]). This was not challenged by the Prosecution on appeal.

Ramadass's case

46 As for Ramadass, he admitted that he had taken the bag containing the Drugs and placed it in the Mitsubishi. The only question was whether he knew what the bag contained. The Judge found that Ramadass had admitted to such knowledge in the Contested Statements for three reasons. First, Sgt Meena could not have known the nature of the Drugs as they were yet to be seized at the time Ramadass's First Statement was recorded, unless this was what she had been told by Ramadass. Second, Ramadass had made corrections to his Second Statement which was recorded at about the same time that the Drugs were recovered, and there was no evidence that Sgt Meena knew the nature of the Drugs at that time. Third, the details of where the Drugs were placed in the Lorry and Muruga's instructions could only have come from Ramadass (Judgment at [84]). He rejected Ramadass's account that he believed that he was delivering chemically-sprayed tobacco, this being inconsistent with what he had said in the Contested Statements (Judgment at [85]). The Judge also found that parts of Ramadass's oral testimony was not supported by the objective evidence, such as the assertion made by Ramadass in his Sixth Statement that chemically-

sprayed tobacco was called "*ganja*", which was inconsistent with the Contested Statements (Judgment at [86]).

47 The Judge also noted that in addition to relying on Ramadass's admissions made in his first three statements to make out its case of actual knowledge, the Prosecution also relied on the presumption of knowledge under s 18(2) of the MDA, and as to this, the Judge found that the presumption had not been rebutted. Ramadass admitted that he had previously rejected Muruga's requests to bring things into Singapore because he knew that Muruga was a drug consumer, and was afraid that Muruga would make him transport drugs, which could result in his facing the death penalty. Having refused Muruga on at least ten previous occasions, the Judge did not believe that Ramadass simply accepted Muruga's assertion that he had only placed chemically-sprayed tobacco in the Lorry (Judgment at [95]).

48 The Judge convicted Raj and Ramadass of the respective charges they faced in relation to the cannabis. As Raj's involvement did not fall within the acts specified under s 33B(2)(*a*) of the MDA and as he was not issued a CSA, the Judge imposed the mandatory sentence of death (Judgment at [100]). As for Ramadass, the Judge found that he was a courier, and as the Public Prosecutor had issued a CSA in his favour, the Judge exercised his discretion to impose a sentence of life imprisonment and the mandatory minimum of 15 strokes of the cane on Ramadass (Judgment at [101]–[102]).

The parties' cases on appeal

49 We briefly set out the respective parties' cases on appeal.

Raj's appeal

50 In CCA 14, Raj appeals against both his conviction and sentence, and raises three primary arguments. First, Raj contends that the Judge erred in rejecting his mistaken-delivery defence, and that the evidence of Mark, Vicneswaran and Ramadass raised at least a reasonable doubt as to whether he had in fact ordered Butterfly but was mistakenly delivered cannabis. Second, in his submissions and before us, Raj submitted that the Judge erred in concluding that he would have been aware of the nature of the Drugs because there was a smell of cannabis. Third, Raj also contended that the Judge had erred in relying on statements made by Ramadass to establish the case against Raj.

Ramadass's appeal

51 On appeal, since the case against him rests almost entirely on the admissibility and reliability of the Contested Statements, that is the focus of Ramadass's case. In his written submissions, Ramadass contended that the Contested Statements were inadmissible, because they were obtained pursuant to threats or inducement. However, before us, counsel for Ramadass only pursued the contention that the Contested Statements were unreliable, and that little weight should be placed on them. First, Ramadass argued that the MDP Notice which was served by Sgt Meena before the Ramadass's Second Statement was recorded, indicated that she already knew the nature and quantity of the Drugs and that this attracted capital punishment even before the Drugs had been seized. This undercut a significant part of the Judge's reasons for rejecting Ramadass's case at trial. Second, Ramadass submitted that Sgt Meena's failure to follow police procedures by recording Ramadass's First and Third Statements in chronological sequence into the field diary, meant that they could not be relied upon as an accurate contemporaneous record. Third, Ramadass contends that the manner in which Sgt Meena had recorded the

Contested Statements was inconsistent, and called into question whether it was an accurate record of what Ramadass actually said.

52 In addition, Ramadass argues that the Judge erred in finding that he had tailored his evidence to say he made multiple deliveries of Butterfly in order to fit Raj's defence, because he had already stated in his Fifth and Sixth Statements, long before he knew what Raj's case was, that he believed he was bringing in chemically-sprayed tobacco. This was further reinforced by the fact that Ramadass's counsel at the trial had put to SSI Tony during cross-examination that he had made other deliveries, before Raj's defence was called.

The Prosecution's case

53 The Prosecution's position on appeal is that none of the Judge's findings were plainly wrong or against the weight of the evidence, and therefore, they should not be disturbed.

The issues to be determined

54 The required elements to establish a charge of trafficking under s 5(1)(*a*) of the MDA are:

(a) the act of trafficking, without authorisation, in a controlled drug; and

(b) knowledge of the nature of the controlled drug, which can be proved or presumed pursuant to s 18(2) of the MDA.

"Trafficking" is defined in s 2 of the MDA as follows:

"traffic" means —

> (*a*) to sell, give, administer, transport, send, deliver or distribute; or
>
> (*b*) to offer to do anything mentioned in paragraph (*a*),
>
> otherwise than under the authority of this Act, and "trafficking" has a corresponding meaning;

55 As Raj does not dispute being in possession of the Drugs or that it could be inferred from the quantity of the Drugs that he had possessed it for the purpose of trafficking, and Ramadass does not dispute having delivered the Drugs to Raj, their appeals turn solely on whether they each had actual or presumed knowledge of the nature of the Drugs. The issues that arise in these appeals may be summarised as follows:

(a) First, has Raj rebutted the presumption of knowledge under s 18(2) of the MDA?

(b) Second, in respect of Ramadass, was sufficient evidence led to call into question the reliability of the Contested Statements, such that these could not be relied upon to establish that he knew the nature of the Drugs? If so, has Ramadass rebutted the presumption of knowledge under s 18(2) of the MDA?

Issue 1: Raj's appeal

56 In rejecting Raj's mistaken delivery defence and in concluding that Raj had failed to rebut the presumption of knowledge, the Judge made the following findings (see above at [43]):

(a) First, the Judge disbelieved Raj's story about his purchases of Butterfly from Vijay, because he disbelieved the credit terms that were allegedly offered by Vijay;

(b) Second, the Judge disbelieved Ramadass's oral testimony that he had more than one bag to deliver, and that at least one of these contained Butterfly;

(c) Third, the Judge rejected Mark's evidence that he was at Senoko on 21 September 2013 to take delivery of cannabis but mistakenly took delivery of Butterfly. The Judge noted that Mark and Raj had "more than ample opportunity to collude and manufacture the story that Mark spun in Court", though nowhere in the Judgment is there a specific finding that both Mark and Raj had colluded to fabricate that story. We return to the significance of this point later;

(d) Fourth, the Judge found that Raj would have known that he was in possession of cannabis given the smell that was emanating from the packages, and despite this, he made no effort to investigate the contents of the bag containing the Drugs.

57 We develop our subsequent analysis in the following sequence:

(a) We first consider whether Raj's account of events and specifically his claim as to the credit terms offered by Vijay was plainly incredible;

(b) We next consider whether the Judge erred in (i) rejecting Mark's evidence that he had been at Senoko to take delivery of cannabis; (ii) rejecting Ramadass's evidence that he had more than one bag to deliver; and (iii) failing to consider Vicneswaran's evidence that Raj was in the business of dealing in Butterfly at the time of his arrest;

(c) We finally consider the evidence as to the smell that was allegedly emanating from the packages.

Raj's account of the events

58 The key reason underlying the Judge's rejection of Raj's account of what he had ordered was his conclusion that it was incredible that Vijay would have been willing to sell 100 packets of Butterfly to Raj on credit (Judgment at [58]). We have difficulty with this view for several reasons.

59 First, a material aspect of Raj's evidence which was not fully explored by the Judge was how Raj had gotten to know Vijay, how he became involved in the sale of Butterfly, and why Vijay may have offered to sell Butterfly to Raj on credit. In this regard, his evidence at trial was as follows:

> Q: Now let me ask you some things about Vijay. You have known Vijay since when?
>
> A: I know him since August 2015.
>
> …
>
> Q: How did you come to know him?
>
> A: He enquired about deregistering car---how to deregister car and lorry. He enquired about deregistered car, lorry.
>
> …
>
> Q: After speaking to him, did you realise or begin to understand what he was actually doing, what business he was in?
>
> A: I realise that he would buy Singaporean cars, change the chassis number into Malaysian numbers and then sell it over there. He would clone it to become a Malaysian car.
>
> Q: Sorry, you clone it?
>
> A: Clone.
>
> Q: Clone it to be a Malaysian car, okay. Now, other than speaking about these deregistered vehicles, did he speak to you about or did you all speak about anything else?
>
> A: Yes, I inquired him pertaining to something. I inquired him about liquor that did not require paying of tax, leather, branded luxury goods such as Ray-Ban, triple-A grade.

Q: You said leather, can you explain what---leather what?

A: Leather luxury goods.

Q: Leather luxury goods. Apart from these, did you all speak about anything else?

A: When I spoke to him about this, he told me that he did not deal with such matters and that he would ask around for me.

Q: Okay.

A: He also said that he does not have these things and that he has Butterfly K4.

60 This aspect of Raj's evidence at trial provided an important backdrop against which to consider his relationship with Vijay. Raj did not deny under cross-examination that he knew that Vijay was involved in illegal businesses, and he dealt with him because he realised there was a market for such products:

Q: Vijay contacts you 13th of August 2015 to buy a vehicle. Okay, before he even settles on the vehicle, you start asking him about liquor and branded luxury goods that don't require paying tax.

A: Triple-A grade Ray-Ban as well.

Q: Yes. Okay, so in terms of timeline, that's correct, right?

A: Yes, okay.

Q: Why did you ask him about these things?

A: This is because I came to know that he was handling illegal car business.

Q: Yes, so why did you ask him about liquor and branded leather goods and triple-A grade Ray-Bans? What's that got to be with illegal car business?

A: If he---if so, I would have been able to sell it over here. I would buy it and sell it over here.

Q: What made you asked him about these things?

A: This is because there's a demand here for these items and---

61 While the Prosecution did submit below that Raj's account of how he came to know Vijay and how he got involved in the sale of Butterfly was dubious, it is unclear to us why that should be so, and certainly no evidence was led to rebut this aspect of Raj's defence. It was not disputed that Raj had in fact sold a car to Vijay for around $4,000 or $5,000, sometime after his first two purchases of Butterfly from Vijay, which were not transacted on credit. It was after taking delivery of the car that Vijay asked Raj whether he had finished selling the 50 packets of Butterfly, and then offered to sell him a larger amount of 100 packets on credit. Seen in the light of the entirety of their dealings, it cannot be said that Raj's evidence concerning the credit terms was manifestly incredible that it had to be rejected out of hand.

62 Second, the Judge's reasoning seemed to rest heavily on his view that this arrangement meant that Vijay bore the risk of Raj not being able to sell enough Butterfly to repay Vijay. The Judge was also troubled that such credit had been offered without a fixed time for repayment.

63 With respect, this seemed to ignore the reality of these dealings, which involved *contraband* goods. If Raj's story was true, he was dealing with someone who was also dealing in illegal goods. A failure to pay would not be met by a lawsuit but by other consequences, typically unlawful in nature. Simply put, the reported transactions between Raj and Vijay were not by any means conventional commercial contracts, which the parties would seek to enforce in the conventional way. In this context, credit and payment risks are simply not assessed in the usual way and in our respectful view, the Judge's rejection of Raj's account, which was not materially damaged under cross-examination, was unjustified.

Whether the Judge erred in rejecting Mark's evidence

64 The Judge also rejected Mark's evidence that he had been at Senoko to take delivery of cannabis, and was instead mistakenly handed a package that contained Butterfly. The Judge offered almost no reasons to explain why he rejected Mark's evidence beyond observing that Mark and Raj had "ample opportunity to collude and manufacture the story that Mark spun in Court". At the same time, the Judge also accepted that there was no explanation for why Mark would have wanted to testify falsely in support of Raj (Judgment at [70]). Crucially, as we have noted above, the Judge stopped short of finding that Mark and Raj did collude to fabricate an elaborate tale. The Judge also did not find that Mark lacked credibility in Court.

65 The point is a substantial one. There is an immense difference between having the opportunity to do something and actually doing that thing. Before us, the Prosecution did not contend that the Judge had found that Mark and Raj did collude to fabricate their evidence. While Mark's story featured a number of what might neutrally be termed co-incidences, in assessing Mark's evidence, it was also vital to keep in mind that:

(a) Mark was effectively implicating himself in a very serious offence, which at the time he gave evidence, he had not been investigated for or charged with;

(b) His evidence had the effect of exculpating Raj at the expense of inculpating himself;

(c) In short, he had much to lose and seemingly nothing to gain in doing this, if it was all false.

66 All this is reflected in the Judge's candid acknowledgement that he had no explanation for why Mark would want to do this. It is also important to recognise that this was not evidence going to a tangential detail but to the very heart of Raj's defence. Raj's *only* substantial defence was that he had gone to collect some Butterfly and ended up collecting cannabis. Mark's evidence was that he had gone to the same place and at the same time, to collect some cannabis and ended up collecting some Butterfly. Given the nature of these contentions, the Judge was faced with a binary choice. There was no room at all for the evidence of either of them to be dismissed as mistaken. Either the story, strange as it might seem, was true; or it was the product of a conspiracy to pervert the course of justice in the most cynical way. It was incumbent on the Prosecution to make this out in cross-examining Mark and Raj. However, the Prosecution's primary contention at trial and before us, appears to have been that Mark and Raj had "ample opportunity" to collude because the both of them had shared yard time and were cellmates in prison. In these circumstances, the Judge's observation that Mark and Raj had ample opportunity to collude, while undoubtedly true, was quite beside the real point, which was *whether they did in fact collude*. In the absence of such a finding, there was no basis for rejecting Mark's evidence. Nothing else was put forward in the judgment to explain why this rejection was otherwise defensible. And when we put this to the Prosecution, there was nothing forthcoming by way of a response.

67 Mark's evidence was against his own interest and it is generally accepted that "in the ordinary course of affairs a person is not likely to make a statement to his own detriment unless it is true" (*Dal Bahadur Singh and others v Bijai Bahadur Singh and others* AIR 1930 PC 79 at 80, per Lord Buckmaster). This explains why s 32(1)(*c*) of the Evidence Act 1893 (2020 Rev Ed) ("EA") provides that statements of a person can be admitted, even if the person is unable to be produced in court, "when the statement is against the pecuniary or

proprietary interest of the person making it, or when, if true, it would expose the person or would have exposed the person to a criminal prosecution or to a suit for damages".

68 In *Public Prosecutor v Forster Frank Edald Heinrich* [1988] 2 MLJ 594 ("*Forster*"), the accused person was charged with trafficking cannabis resin, which was found in his bag. At the time of the arrest, the accused person was sharing a room with two other companions, who were not arrested, and subsequently fled the country for West Germany, which had no extradition treaty with Malaysia. From the apparent safety of West Germany, the two companions affirmed affidavits in which they stated that the cannabis resin belonged to them, rather than to the accused person. The accused person sought to admit these affidavits under s 32(1)(*c*) of the Evidence Act 1950 (Rev 1974) (M'sia) ("Malaysian EA"), which is in similar terms to s 32(1)(*c*) of the EA. The court found that the affidavits were admissible despite the fact that they were beyond the reach of the jurisdiction of the Malaysian court, on the basis that the deponents' exposure to the risk of prosecution *at any time while they were living* was sufficient to satisfy s 32(1)(*c*) of the Malaysian EA.

69 While *Forster* does bear some similarities with the present case, there are two key differences which make the present case *even more compelling*. First, unlike Mark, the two companions who confessed to the crimes were not at direct risk of prosecution having already left Malaysia. Second, in *Forster*, it was the *statements* of the companions which were sought to be admitted to evidence. In the present case, Mark gave direct evidence in court and said he personally had gone to collect a kilogram of cannabis. In the absence of a finding that this was a sinister case of collusion, or that it did not survive the scrutiny of cross-examination, this evidence ought to have been accorded considerable weight.

70 The Prosecution highlighted the sheer coincidence by which Raj seems to have "chanced" upon the exculpatory evidence of Mark. The Prosecution also pointed to the improbability of Mark having obtained a tattoo of the precise date of the Drug transaction. However, the Judge did not accept the Prosecution's contention that the tattoo was in fact done after Mark was in prison and so this undercut the only significant ground on which the Prosecution tried to undermine Mark's evidence. And the fact that the coincidence seemed too good to be true, did not make it so, any more than the fact that Mark and Raj had the opportunity to collude, did not, without more, mean that they did.

71 In our judgment, the fact that Mark had effectively confessed to having at least attempted to commit a serious offence is a weighty factor in evaluating his evidence. It follows that, by rejecting Mark's evidence on the basis that he and Raj "had more than ample opportunity to collude and manufacture the story" (Judgment at [70]), the Judge erred. And once Mark's evidence is considered, it becomes evident that the Prosecution had failed to discharge its evidential burden to rebut this aspect of Raj's defence.

Whether the Judge erred in rejecting Ramadass's evidence

72 The Judge rejected Ramadass's evidence at trial that he was tasked to carry out multiple deliveries for three reasons. First, the Judge found it "unbelievable" that Muruga would have placed four seemingly identical red plastic bags in Ramadass's lorry without informing Ramadass which bag he was to pass to each recipient (Judgment at [62]). Second, he noted that Ramadass did not mention that he had four red plastic bags or that he had made four deliveries, in any of his six statements to the Police. Ramadass only sought to distance himself from this omission in his oral evidence by claiming that SSI Tony had told him not to mention the other deliveries (Judgment at [63]–[64]).

Third, while the Judge accepted that Ramadass did not have the opportunity to speak to either Raj or Mark in prison, he thought that Ramadass had ample opportunity to tailor his evidence to support Raj's and Mark's "tale of the mistaken delivery" based on what transpired during the course of the trial (Judgment at [71]). We consider each of these points.

Whether Ramadass's failure to mention the other deliveries rendered it unreliable

73 A key reason why the Judge rejected Ramadass's evidence as to having made four deliveries on 21 September 2015, was the fact that he had failed to mention any of these deliveries in his six statements to the police (Judgment at [63]). We can be brief on this.

74 First, we do have concerns over the reliability of the Contested Statements (see below at [103]–[122]), but we leave this to one side. The key point is this. When a court views the late introduction of evidence with scepticism, it is usually concerned with exculpatory evidence. The underlying point is that if this were true, one would have expected such exculpatory evidence to have been produced early on. That simply is not true of evidence that is *inculpatory* in nature. Ramadass was charged with delivering one package of illicit substances. If he had in fact been involved in delivering more than one such package, one should not be surprised if he did not mention to the investigating authorities that he was involved in also delivering other packages since he might reasonably expect to face more charges upon doing so. Seen in this light, we do not regard Ramadass's failure to mention the other deliveries in his six statements to the police as necessarily undermining or being fatal to the reliability of this aspect of his evidence.

Whether Ramadass's evidence that he had handed out the bags at random was unbelievable

75 Another reason underlying the Judge's finding Ramadass's testimony to be inherently incredible, was his assertion under cross-examination that he delivered the four bags in a seemingly random way. The Judge held that it was unbelievable that "Muruga" would have placed four similar-looking bags in the Lorry and asked Ramadass to hand them out randomly, knowing that they had different contents (Judgment at [62]).

76 We have difficulty accepting the Judge's findings for two reasons. First, if Ramadass had genuinely believed the items were all the same, it would not have been implausible that Ramadass had not thought it odd that he was not asked to differentiate the bags according to the deliveries.

77 Second, in its closing submissions, the Prosecution had relied on the cross-examination by Raj's counsel to make the submission that Ramadass's evidence of having randomly delivered the four bags without asking instructions from "Muruga" was inherently incredible. However, this was not the Prosecution's case at trial and it was not a point that had been put to Ramadass, neither had it been raised by the Judge at the end of cross-examination. The Prosecution's only challenge to this aspect of Ramadass's testimony, was that he could not have handed out the bags randomly as they would have been of different sizes. However, as the Judge had observed, this was not a fact that had been established in the course of the trial:

> Q: Do you agree with me that this evidence is illogical?
>
> A: I am telling what had happened. It is not necessary for me to lie.
>
> Q: Is the reason why you could hand the bags at random because they were all the same size?

> A: No. I just picked it randomly by hand. I did not take a look at it.
>
> Q: If the bags were different sizes, you would have even more reason to ask Muruga which bag is meant for which recipient. Correct?
>
> A: No, I did not ask. He told me to take it and give it and I did so. This is because this is something that is unnecessary to me.
>
> Court: And his evidence did not say that they are different sizes. He said they are similar. So where are we going?
>
> …
>
> Court: Miss---it's difficult to put five into a bag meant for two. But a bag meant for five can contain two. His evidence, the bags are similar. So unless you establish that one bag is different, how can you ask that kind of question?
>
> …

78 As we held in *Imran bin Mohd Arip v Public Prosecutor and other appeals* [2021] 1 SLR 744 at [110], it is generally not appropriate for a trial judge to reconstruct the Prosecution's case and employ reasons not articulated by the Prosecution in convicting an accused person. Key points which are relied upon to convict an accused person should be put to him before it is made as a submission by the Prosecution, and he should be given the opportunity to refute or address the points. The only case put to Ramadass by the Prosecution to refute this part of his evidence, was rejected by the Judge.

79 In the circumstances, Ramadass's claim that he had handed out the bags at random should not have been rejected as inherently unbelievable.

Whether Ramadass had tailored his evidence to fit Raj's defence

80 We turn to consider the Judge's finding that Ramadass had ample opportunity to tailor his evidence to fit Raj's defence, notwithstanding the fact

that he also held that there was no evidence that Ramadass had the opportunity to speak with either Raj or Mark in prison.

81 We respectfully disagree with the Judge's analysis on this. The Judge held that because Ramadass testified after Raj and Mark had given evidence, he tailored his evidence and claimed he made multiple deliveries of chemically-sprayed tobacco (or Butterfly) in order to fit Raj's defence. First, even before Raj or Mark had taken the stand, it had been put to SSI Tony by Ramadass's counsel, that Ramadass had made more than one delivery on 21 September 2015:

> Q: You see, when you took custody of [Ramadass], you had knowledge that between 1.00pm and 1.50pm that day, he had made several deliveries. He had stopped to make several deliveries.
>
> A: Can you---can you---because I don't understand what you mean by your question "deliveries".
>
> Q: Delivery. You see here, you---the evidence in the Court is only the delivery to [Raj]---I mean, to [Raj] by [Ramadass], isn't it? Yes, delivery, sorry, delivery to Mitsubishi. Yes? In this Court, you have given evidence that [Ramadass] had placed something in the Mitsubishi car. But I'm telling you, you also had information about [Ramadass's] making deliveries from 1.00pm to 1.50pm.
>
> …
>
> Q I'm putting it to you that before [Sgt] Meena started recording his contemporaneous statements, you told him not to talk about the other deliveries.

82 It is evident from this that Ramadass had already advanced the case that he had made more than one delivery on 21 September 2015 *before* he heard the evidence of Raj and Mark on Raj's mistaken delivery defence.

83 Second, in Ramadass's Fifth and Sixth Statements, recorded on 24 September 2015 and 26 September 2015 respectively, Ramadass had stated that

he believed that he was bringing in chemically-sprayed tobacco. This was before Raj had even met Mark in prison, and strongly cuts against the idea of an elaborate conspiracy amongst the defence witnesses to run a false case.

84 It follows that, in our judgment, the Judge was wrong to have concluded that Ramadass had tailored his evidence to say he had delivered four bags of chemically-sprayed tobacco after hearing the evidence of the other witnesses.

85 Next, we summarise the statements of the various CNB officers as to Ramadass's movements on the day in question. Ramadass left 10 Senoko Loop (where he was delivering the bricks) at 1.15pm, and arrived at 31 Senoko Drive at about 1.50pm, where he eventually delivered the Drugs to Raj at 2.00pm. Ramadass claims to have made the three other deliveries in the period between 1.15pm and 1.50pm. Ramadass's movements in and around Senoko Loop and Senoko Drive, after leaving 10 Senoko Loop but prior to the delivery of the Drugs, as witnessed by the various CNB officers was as follows:

(a) In his conditioned statement, Staff Sergeant Chien Lik Seong Sunny ("SSgt Sunny") stated that he observed Ramadass travelling along Senoko Loop and Senoko Drive before stopping at 10 Senoko Loop. SSgt Sunny then parked his vehicle at 7 Senoko Loop to observe Ramadass. However, under cross-examination, SSgt Sunny acknowledged that he lost sight of the Lorry as it drove off along Senoko Loop;

(b) In his conditioned statement, Senior Station Inspector David Ng ("SSI David") stated that he observed Ramadass driving around Senoko Loop and Senoko Drive, and stopping intermittently. Under cross-examination, SSI David stated that he trailed the Lorry with Senior Staff Sergeant Woo Yoke Chun ("SSSgt Woo"), from the time Ramadass left

10 Senoko Loop until he stopped at 17 Senoko Loop. SSI David drove past the lorry and then looped back to the Lorry;

(c) In his conditioned statement, SI Jason stated that he had observed Ramadass driving around Senoko Loop and Senoko Drive, and stopping intermittently. In his examination-in-chief, SI Jason said that he lost sight of the Lorry at times, and that he tailed the Lorry after it left 10 Senoko Loop but overtook it after the Lorry stopped;

(d) In her conditioned statement, SSSgt Woo stated that she observed Ramadass driving around Senoko Loop and Senoko Drive, and stopping intermittently. Under cross-examination, SSSgt Woo said that she lost sight of the Lorry after it left 10 Senoko Loop, and she waited for SSI David to pick her up.

86 There was one material aspect of this evidence, which did not seem to have been considered by the Judge. Based on the evidence of the CNB officers who were tasked with following and observing Ramadass from the time he left 10 Senoko Loop at about 1.15pm until he arrived at Senoko Drive at about 1.50pm, there were gaps within that period when nobody was observing Ramadass. Crucially, during the same period of time, the forensic examination by the CNB of Ramadass's handphone R-HP2 revealed that there were a total of 17 calls with a handphone number identified by Ramadass to have belonged to Muruga. This supported Ramadass's testimony that he had been in communication with Muruga while the three other deliveries were being made.

87 It follows that Ramadass's evidence at trial that he did make other deliveries could not be rejected out of hand.

Whether the Judge erred in failing to consider Vicneswaran's evidence

88 Part of Raj's defence at trial, was that he had been in the business of buying and re-selling Butterfly at the time of his arrest, and he led evidence from Vicneswaran to that effect. While the Prosecution disputed Vicneswaran's evidence at trial, the Judge did not make a finding as to whether Raj had in fact been selling Butterfly at the time of his arrest. The Judge also did not make any findings on Vicneswaran's evidence that he had purchased Butterfly from Raj around the time of Raj's arrest. Further, nothing was put forward to explain why Vicneswaran would have come forward with this testimony if it was not true.

89 In our judgment, this aspect of Raj's defence at trial should have been properly addressed, especially considering the fact that key aspects of Vicneswaran's testimony were consistent with Raj's evidence. Based on Raj's evidence, he sold packets of Butterfly for prices of between $150 and $180 per packet, which was corroborated by Vicneswaran's evidence. Crucially, it was not disputed that B1B1A1 which was found in Raj's possession contained Butterfly, and Vicneswaran positively identified this as being similar to the Butterfly packets he had purchased from Raj.

90 In these circumstances, we are satisfied that Vicneswaran's evidence had properly put in issue evidence that Raj had been dealing in Butterfly at the time of his arrest, and this ought to have been addressed.

Whether the Judge erred in finding that Raj would have known that he was in possession of cannabis from its smell

91 The Judge accepted the Prosecution's submissions at trial that Raj would have known that cannabis had been placed in the Mitsubishi given the distinctive smell of cannabis, and Raj's failure to investigate the contents of the

bag containing the Drugs. The Judge concluded that he did not do so because he in fact knew it contained cannabis (Judgment at [72]–[73]).

92 While Raj does not dispute that he could recognise the smell of cannabis, in his written and oral submissions Raj contended that the CNB officers' attestation to having detected the smell of cannabis was belated, and had been omitted from their conditioned statements. In addition, Raj also argues that there was no clear evidence that the smell of cannabis was readily discernible by either Raj or all the CNB officers present.

93 To recapitulate, there were seven CNB officers present during the search of the Mitsubishi, namely SSgt Tay, SSI David, Sergeant Dadly bin Osman, SI Jason, Staff Sergeant Xu Youguang Benjamin ("SSgt Benjamin"), Sergeant Yogaraj s/o Ragunathan Pillay, and SSSgt Woo. None of the six CNB officers who were witnesses at the trial (SSgt Benjamin was not produced as a witness), had stated in their conditioned statements that they could smell cannabis when the Drugs were retrieved from the Mitsubishi.

94 At trial only the following CNB officers mentioned the smell of cannabis and this was only in their oral testimonies:

(a) SSI David claimed in re-examination that he did detect the distinctive smell of cannabis;

(b) SI Jason said that the bundle containing the Drugs had a very strong smell of cannabis, and that there was a tear in one of the bags which he observed when he looked at the bags;

(c) SSgt Tay stated that the bundle containing the Drugs had a very strong smell of cannabis.

95 We agree with Raj that there are several difficulties with Judge's finding that Raj would have known that the Drugs were cannabis from its distinctive smell.

96 First, taken at its highest, the evidence only shows that *some* of the CNB officers were able to detect the smell of cannabis. Seen together with the fact that the human sensory perception of smell is inevitably subjective, it cannot be said that the Prosecution has established that the smell of cannabis was so pervasive that Raj must have known based on this alone that the Drugs were in fact cannabis. Second, if it was the Prosecution's case that Raj knew the nature of the Drugs based just on the smell, it would have been incumbent on the Prosecution to establish with clear evidence that Raj could not have failed to notice the smell of cannabis. Yet, none of the CNB officers had thought it necessary to mention this in their conditioned statements. Further, the evidence that was led at a late stage was not clear. For instance, in respect of SSgt Tay, it was not clear from his evidence if he only detected the smell of cannabis after removing the five bundles containing the Drugs from the red plastic bag. Finally, as regards to SSI David's evidence, he only mentioned the smell of cannabis in re-examination, and Raj was not given the opportunity to cross-examine him on this part of his testimony.

97 For these reasons, we conclude that the Judge erred in accepting the Prosecution's submissions that Raj must have known that he was in possession of cannabis based on the smell that allegedly emanated from the package.

Our conclusion on Raj's appeal

98 In that light, we conclude on the evidence that the Judge erred in rejecting the evidence of Mark and Vicneswaran and in rejecting Raj's defence based on the difficulties he had with the asserted credit terms. Once their

evidence is accepted, it becomes evident that Raj succeeded in establishing his mistaken delivery defence. It is also evident that Ramadass's evidence corroborated this even before he knew what Raj's case was going to be.

99 In our judgment, the Prosecution has failed to discharge its evidential burden to rebut Raj's defence. Accordingly, we allow Raj's appeal, set aside his conviction and acquit him.

Issue 2: Ramadass's appeal

100 In finding against Ramadass, the Judge made the following findings (see above at [46]–[47]):

(a) First, the Judge found that Ramadass had admitted to actual knowledge of the nature of the drugs in the Contested Statements;

(b) Second, the Judge found that Ramadass had been unable to rebut the presumption of knowledge under s 18(2) of the MDA because the Judge rejected Ramadass's assertion that he believed Muruga's assertion that he had only placed chemically-sprayed tobacco in the Lorry.

101 We develop our analysis as follows:

(a) We first consider whether the Contested Statements could be relied upon to show that Ramadass had actual knowledge of the nature of the Drugs;

(b) We then consider whether Ramadass was able to rebut the presumption of knowledge under s 18(2) of the MDA.

Whether the Contested Statements could be relied upon to show that Ramadass had actual knowledge of the nature of the Drugs

Admissibility of the Contested Statements

102 Before us, the voluntariness of the Contested Statements was not contested. We need only say that this was a wise course because the assertions of threats or coercion seemed to us to be hopeless.

Reliability of the Contested Statements

103 The key argument mounted on appeal is that the Contested Statements were not accurately recorded by Sgt Meena, and could not be relied upon to support the finding of actual knowledge on his part. We consider each of the three statements in turn.

(1) Ramadass's First Statement

104 Ramadass testified at trial that it was Sgt Meena who had told him which words or descriptors to use in his First Statement. The Judge rejected this on the ground that Sgt Meena could not have known the nature of the Drugs at that point in time (Judgment at [84(a)]).

105 In this regard, Ramadass's First Statement was recorded at 2.18pm on 21 September 2015, after which Sgt Meena proceeded to serve the MDP Notice on Ramadass at about 2.30pm. It was not disputed that the Drugs were eventually seized sometime after 2.47pm. As pointed out in Ramadass's written submissions, this meant that Sgt Meena had evidently anticipated that both the quantity and nature of the Drugs that would be involved were such that it would attract the mandatory death penalty.

106 Aside from this, Sgt Meena's evidence under cross-examination was that she used inverted commas to denote phrases or words that Ramadass had actually used when making his statements.

107 By reference to the extract reproduced at [11] above, this was Sgt Meena's evidence at trial:

> Q: He used the word "drugs"?
>
> A: Yes, Your Honour.
>
> Q: That is why you put it in open and closed inverted commas?
>
> A: Yes, Your Honour.
>
> Q: Because that is his words?
>
> A: Yes.
>
> Q: That's your evidence, right?
>
> A: Yes, Your Honour.

108 However, in relation to the word "*jama*" which was recorded in Ramadass's First Statement, the word was not placed in inverted commas. Yet, Sgt Meena testified that this word had been used by Ramadass.

109 Similarly, the words "*yellai*" and "*ganja*", were also not placed in inverted commas, even though Sgt Meena claimed that these words were in fact used by Ramadass. When given the opportunity to explain the inconsistency in her evidence in re-examination, Sgt Meena's response was troubling:

> Q: So now I'll refer you to answer A3 and A5 of P177. You were asked about the word "drugs" there. And also, if you refer to P178 at answers 12 to 15, each of those answers, where the word "drugs" appears. And in cross-examination, you said that you were sure the accused used the English word "drugs" although it's not indicated in inverted commas. Can you explain how or why you said this? Or how or why you are sure that he said the English word "drugs"?

A: I cannot explain, Your Honour.

Court: Cannot explain?

Witness: I cannot explain.

Q: Are you able to explain why there are no inverted commas used in this case?

A: No, Your Honour.

Q: How sure are you that the accused used the English word "drugs"?

A: I'm very sure, Your Honour, actually.

Q: So, turning back to P175, you were asked about the word "*yellai*" and why *yellai* is in brackets rather than in inverted commas. Can you explain why it's in bracket and not in inverted commas?

A: No, Your Honour.

Q: How sure are you that the word "*yellai*" was said by Ramadass?

A: Very sure, Your Honour.

110 Ramadass also relied on the fact that Ramadass's First Statement was reflected as having been recorded at 2.18 pm, but it appears in the field diary *after* an entry that was made at 2.30 pm in the field diary. This could not be reconciled with Sgt Meena's evidence that the field diary was supposed to be a *chronological record of events*. Under cross-examination, she admitted candidly that she was unable to explain why the entry of the First Statement had been recorded after a supposedly later entry.

111 In all the circumstances, and given the absence of any explanation, we agree with Ramadass that there are sufficient doubts as to the accuracy as well as the timing of Ramadass's First Statement, which renders it unsafe to accord it significant weight even if we agree with the Judge that it is admissible.

(2) Ramadass's Second Statement

112 We turn next to Ramadass's Second Statement. We first set out a portion of the Ramadass's Second Statement:

> Q3: What does "jama" mean?
>
> A3: Drugs
>
> …
>
> Q5: What was inside the red coloured plastic bag?
>
> A5: Drugs. Inside the red plastic bag, was another white ~~parcel~~ (signature) bungkus
>
> Q6: What do you mean by white bungkus?
>
> A6: White bungkus means parcel. The white bungkus is packed with "ganja"

113 Ramadass alleged that it was Sgt Meena who had supplied the words contained in Ramadass's Second Statement. In particular, Ramadass testified that he did not tell Sgt Meena that "*jama*" meant drugs. The Judge rejected this for three reasons. First, the Judge noted that Ramadass had the opportunity to amend the incriminating portions of the statement but did not do so. Second, the Judge noted that Sgt Meena would not have known details such as the fact that the Drugs were in white parcels. Third, the Judge thought Ramadass's allegation was inconsistent with Ramadass's Sixth Statement in which he stated that he had just agreed with whatever Sgt Meena had said (Judgment at [84(b)]).

114 In considering Ramadass's Second Statement, we find it impossible to overlook the fact that it is plagued by Sgt Meena's failure to denote the words used by Ramadass properly. By reference to the extract reproduced at [112] above, despite having testified that she would denote words used by Ramadass inverted commas, and that Ramadass had used the English "drugs" in response

to her question asking him what "*jama*" meant, Sgt Meena was unable to explain why the words "drugs" had not been placed in inverted commas.

115 Second, it seems to us that there was no substantive difference between Ramadass's allegation that Sgt Meena was the one who had written his Second Statement, and what he said in his Sixth Statement, which was to the effect that he had adopted the words used by Sgt Meena. This is what was recorded in his Sixth Statement:

> Q3: Meena asked you what "jama" means you said drugs.
>
> A3: She didn't ask me what does "jama" means, she leads that "jama' means drugs ah? So I said yes.
>
> Q4: Meena asked you what was inside the red plastic bag. You said it's drugs.
>
> A4: I was confused and don't know what to say. I just use what Meena had said.

116 For the same reasons that apply in relation to the First Statement, we agree that it is unsafe to accord the Second Statement significant weight even if we agree with the Judge that it is admissible.

(3) Ramadass's Third Statement

117 We first set out a portion of Ramadass's Third Statement:

> Q12: How did you bring the drugs into Singapore?
>
> A12: I brought the drugs into Singapore in my lorry MAQ351
>
> Q13: Where exactly did you keep the drugs?
>
> A13: The drugs were kept behind, under the seat where I rest. There is a long seat behind the driver seat which I use for my resting purposes.
>
> Q14: How is the drugs placed under the seat?
>
> A14: The seat can be opened by just lifting it up. The drugs are just placed under the seat and covered.

> Q15: Who placed the drugs under the seat?
>
> A15: I am not sure who placed it there. Last night I was told by one Muruga that he had already placed the drugs under the seat and told me that he would call me today and inform me, who to pass the drugs to

118 Ramadass similarly alleged that the material contents of his Third Statement emanated from Sgt Meena. In particular, Ramadass denied telling Sgt Meena that he had brought drugs into Singapore and where the Drugs were placed in the Lorry. The Judge rejected this because he found that the details in the statement could only have come from Ramadass, and that Ramadass had signed it without making any amendments (Judgment at [84(c)]).

119 As with the earlier statements, Ramadass's Third Statement was plagued by Sgt Meena's failure to denote correctly the particular words that she claimed was used by Ramadass. In this instance, the word which was critical was the word "drugs". Under cross-examination, Sgt Meena said that she used the Tamil words "*bodei porul*" meaning drugs, in her questions to Ramadass, and that Ramadass replied to her questions in Tamil, but used the English word "drugs" in response. Ramadass's counsel contended that this was highly implausible, by reproducing the conversation in these terms to reflect Sgt Meena's contention as to how it transpired:

> Q: [Completely in Tamil] How did you bring the ***bodei porul*** into Singapore?
>
> A: [In Tamil save for the word *drugs* in English] I brought the ***drugs*** into Singapore in my lorry MAQ531.
>
> Q: [Completely in Tamil] Where exactly did you keep the ***bodei porul***?
>
> A: [In Tamil save for the word *drugs* in English] The ***drugs*** were kept behind, under the seat where I rest. There is a long seat just behind the driver seat which I use for my resting purposes.

> Q: [Completely in Tamil] How is the ***bodei porul*** placed under the seat?
>
> A: [In Tamil save for the word *drugs* in English] The seat can be opened by just lifting it up. The ***drugs*** are just placed under the seat and later covered.
>
> Q: [Completely in Tamil] Who placed the ***bodei porul*** under the seat?
>
> A: [In Tamil save for the word *drugs* in English] I am not sure who placed it there. Last night I was told by one Muruga that he had already placed the ***drugs*** under the seat and told me that he would call me today and inform me, who to pass the ***drugs*** to.
>
> [emphasis in original]

We agree with Ramadass that the exchange as set above would have been highly unlikely, and that it raises material doubts as to the accuracy of Ramadass's Third Statement.

120 Finally, it once again appears from the field diary that Sgt Meena recorded Ramadass's Third Statement between other entries recorded at 8.38pm and 8.45pm, even though the Third Statement was supposed to have been recorded at 7.35pm. In re-examination, Sgt Meena was unable to explain how this could have happened.

121 It follows that we again do not think much weight can be placed on Ramadass's Third Statement even if we accept that the statement is admissible.

122 To summarise, while we agree with the Judge that the Contested Statements were admissible, the inconsistent practice adopted by Sgt Meena in terms of how she reflected the words used by Ramadass and those which were her translation of his words, the inexplicable sequence in which the statements appear in the field diary and the inability of Sgt Meena to explain or address these concerns, cause us to conclude that there is a sufficient doubt as to whether

the written record of the statements accurately record and reflect what was said by Ramadass. Where the case against an accused person turns on the specific words that are reflected in a statement, as is the case here, it is critically important that the court be satisfied as to the accuracy of the statement. This will often not be a difficulty but that is not the case here. In our judgment, the Judge erred in relying upon the Contested Statements to find that Ramadass had the actual knowledge that he was delivering cannabis.

Whether the Judge erred in finding that Ramadass was unable to rebut the presumption under s 18(2) of the MDA

123 The Prosecution also relied on the presumption of knowledge under s 18(2) of the MDA, to establish that Ramadass knew the nature of the Drugs, which were in his possession when he delivered them to Raj. Ramadass's case is that he believed that Muruga had placed chemically-sprayed tobacco (meaning, Butterfly) in the cabin of his lorry.

124 In his decision, the Judge found it "unbelievable" that Ramadass would have accepted Muruga's assertion that the items placed in Ramadass's lorry was Butterfly given that Ramadass had previously declined Muruga's requests to transport items because he was concerned over Muruga's illicit dealings. The Judge also thought that the suspicious circumstances in which the Drugs came to be placed in Ramadass's lorry would have raised Ramadass's concerns and made him doubt that it was Butterfly (Judgment at [95]). Accordingly, the Judge found against Ramadass on this issue (Judgment at [97]).

125 The analysis on this turns on whether Ramadass has rebutted the presumption under s 18(2) of the MDA. As to the correct framework for this purpose, this was set out in *Obeng Comfort v Public Prosecutor* [2017] 1 SLR 633 ("*Obeng*") at [39]–[40]:

> 39 In a case where the accused is seeking to rebut the presumption of knowledge under s 18(2) of the MDA, as a matter of common sense and practical application, *he should be able to say what he thought or believed he was carrying, particularly when the goods have to be carried across international borders as they could be prohibited goods or goods which are subject to tax.* … The presumption under s 18(2) operates to vest the accused with knowledge of the nature of the drug which he is in possession of, and to rebut this, he must give an account of what he thought it was.
>
> 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. This assessment will naturally be a highly fact-specific inquiry.* For example, the court will generally consider the nature, the value and the quantity of the purported item and any reward for transporting such an item. If it is an ordinary item that is easily available in the country of receipt, the court would want to know why it was necessary for him to transport it from another country. If it is a perishable or fragile item, the court would consider whether steps were taken to preserve it or to prevent damage to it. If it is a precious item, the court would consider whether steps were taken to keep it safe from loss through theft or otherwise. If it is a dangerous item, the court would consider how the item was packed and handled. 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.
>
> [emphasis added]

126 In relation to the threshold issue of what Ramadass thought he was bringing into Singapore (*Obeng* at [39]), we are satisfied that leaving aside what is attributed to him in the Contested Statements, which, for the reasons set out previously, we have held should not be relied upon, Ramadass had consistently maintained that he believed he was bringing in chemically-sprayed tobacco. In his Fifth and Sixth Statements, Ramadass said he was told by Muruga that chemically-sprayed tobacco had been placed in the Lorry and this was consistent with his defence at the trial.

127 Next, we consider the veracity of this assertion against the objective facts and his actions. As stated in *Obeng* at [40], this is a highly fact-specific inquiry. In our judgment, the objective facts support Ramadass's assertions for three reasons.

128 First, in Ramadass's Fifth Statement, recorded on the 24 September 2015, Ramadass had stated to Insp Karlson that Muruga told him that the substance in the Lorry was "tobacco sprayed with chemicals" (see at [15] above). We find this significant because on 24 September 2015, before Raj even had the opportunity to collude with Raj or Mark, or to know Raj's case, Ramadass had already indicated that he believed that he had delivered Butterfly. Crucially, it was unlikely that Ramadass would have known, on the 24 September 2015, that packets of Butterfly *had been found* in the Mitsubishi, in Raj's possession. The presence of the Butterfly in the car corroborated Raj's account of what he had expected to receive. But more importantly, it also corroborated Ramadass's account of what he had been told he was to deliver at a time when he did not know this would be found in Raj's car, or that it would fit in with Raj's case. This is a point that the Judge seems to have overlooked and it also distinguishes this case from other typical cases where an accused person makes a bald assertion that he thought he was in possession of anything but the drugs in question.

129 Second, on the totality of the evidence, it might seem that Ramadass's assertion that he was only delivering Butterfly was inconsistent with the assertion by Mark and Raj that they each expected to receive different items. But that was a matter for the Prosecution to explore at trial and to make its submissions on. As far as Raj's case is concerned, we have explained why on the evidence, Raj has made good his mistaken delivery defence. As far as Ramadass is concerned, the Prosecution's case rested primarily on the

statements which we have found could not be relied upon, and secondarily, on the presumption of knowledge under s 18(2) of the MDA, which we find was overcome by the early claim Ramadass made about delivering Butterfly. This being a claim made at a time when Ramadass did not know and had no reason for believing that this was what Raj would contend he had expected to collect, and which would be corroborated by what was found in Raj's car.

130 Finally, the Judge rejected Ramadass's contention because he found it incredible that Ramadass would believe Muruga's statement that he had placed Butterfly in the lorry. We observe that it is not clear why Ramadass would have been bound to disbelieve what Muruga told him, especially given the circumstances in which this transpired, according to Ramadass: see [36]-[40] above. Moreover, it was not Ramadass's case that he agreed to carry these items for Muruga because of what Muruga told him. His case is that this was placed in the Lorry by Muruga and he was later told what was there.

Our conclusion on Ramadass's appeal

131 In conclusion, we consider that the Contested Statements cannot be relied upon to show that Ramadass had actual knowledge of the Drugs. We are also satisfied that Ramadass's assertion that he believed the Drugs to have been chemically-sprayed tobacco was consistent with his Fifth and Sixth Statements and with the objective extrinsic evidence. We therefore find that Ramadass has rebutted the presumption of knowledge under s 18(2) of the MDA. In the circumstances, we set aside Ramadass's conviction and acquit him.

Conclusion

132 In summary, having examined the facts and the evidence before us, we allow both the appeals in CCA 14 and CCA 15 and acquit both Raj and Ramadass.

Sundaresh Menon
Chief Justice

Andrew Phang Boon Leong
Justice of the Court of Appeal

Belinda Ang Saw Ean
Judge of the Appellate Division

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Yang Ziliang and Andre Chong Wei Min (Attorney-General's Chambers) for the respondent in CA/CCA 14/2020 and CA/CCA 15/2020.