

Public Prosecutor v Ng Beng Siang and Others
[2003] SGHC 10

Case Number : CC 47/2002

Decision Date : 24 January 2003

Tribunal/Court : High Court

Coram : Kan Ting Chiu J

Counsel Name(s) : Ng Cheng Thiam, Jared Pereira and Laura Liu (Deputy Public Prosecutors) for the Prosecution; Lawrence Wong (Lawrence Wong & Partners) and Chia Jin Chong Daniel (W P Da Silva & Company) for the first accused; S S Dhillon (Dhillon Dendroff & Partners) and Ramli Salehkon (Ramli & Co) for the second accused; Syed Ahmad Alsree (Billy & Alsree) and Boon Khoo Lim (Dora Boon & Co) for the third accused

Parties : Public Prosecutor — Ng Beng Siang; Rosdi Bin Pungot; Roseley Bin Sidin

Criminal Procedure and Sentencing – Statements – Accused's own statements made under s 121 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) and s 32 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed – Whether accused should be supplied with such statements

Criminal Procedure and Sentencing – Statements – Whether should be admitted in evidence when supplied

1 The three accused persons faced two charges. Ng Beng Siang was charged that he

on or about the 27th day of March 2002, at Sembawang, Singapore, did engage with one Rosdi Bin Pungot (NRIC No.: S1675308D) and one Roseley Bin Sidin (NRIC No.: S1360725G) in a conspiracy to do a certain thing, to wit, to traffic in a controlled drug specified in Class 'A' of the First Schedule to the Misuse of Drugs Act, Chapter 185, namely, 20 bundles of substance containing not less than 48.21 grams of diamorphine, and in pursuance of the said conspiracy and in order to the doing of that thing, an act took place on the 27th day of March 2002, to wit, (he) drove (his) motor car JFY 5311 from Malaysia into Singapore for the purpose of transporting and delivering the said controlled drugs to the said Rosdi Bin Pungot and the said Roseley Bin Sidin, and on the same day, between 1.00 pm and 1.25 pm, at Blk 406A, Sembawang Drive, Singapore, the said Rosdi Bin Pungot, on behalf of himself and the said Roseley Bin Sidin, took possession of the said controlled drugs for the purpose of trafficking from (his) motor car JFY 5311, and (he) has thereby abetted the commission of the offence of trafficking in the said controlled drugs by the said Rosdi Bin Pungot and the said Roseley Bin Sidin, and (he) has thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act, Chapter 185, read with section 12 of the said Act, and punishable under section 33 of the said Act.

and Rosdi Bin Pungot and Roseley Bin Sidin were charged that they

on the 27th day of March 2002, between 1.00 pm and 1.25 pm, in the vicinity of Blocks 406A, 410 and 417, Sembawang Drive, Singapore, and in furtherance of the common intention of (them) both, did traffic in a controlled drug specified in Class 'A' to the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in (their) possession for the purpose of trafficking 20 bundles of substances containing not less than 48.21 grams of diamorphine, without any authorisation under the said Act or the Regulations made thereunder, and (they) have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act, Chapter 185, read with section 5(2) of the Misuse of Drugs Act, Chapter 185, and section 34 of the Penal Code, Chapter 224, and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

The three of them are referred to as the first, second and third accused respectively.

The arrests

2 All of them were arrested on 27 March 2002 by officers of the Central Narcotics Bureau ("CNB"). CNB officers were first deployed by ASP Ang Choe Seng to search for the second accused in the car parks around Block 313 Sembawang Drive, who was believed to be driving a motor car SCG 5421M. Subsequently ASP Ang also instructed the officers to search for another car SBP 6331Y. ASP Ang believed that the third accused was driving this car, although he did not disclose this in his instructions.

3 The officers eventually spotted SBP 6331Y at about 12.55 pm as it went along Sembawang Drive from the direction of Admiralty Drive, in the direction of Admiralty Link. It turned right from Sembawang Drive into the driveway in front of the multi-storey car park at Block 406A, then made its way to the side road between Blocks 412 and 415 where it came to a loading bay. The third accused parked the car there, and walked to the void deck of Block 411. He was joined by the second accused, and they went on to the void deck of Block 410 where they sat on a bench at about 1.05 pm.

4 At about 1.15 pm another car JFY 5311 driven by the first accused entered the multi-storey car park at Block 406A and parked at one of the parking lots. The first accused came out of the car and walked away from the car park.

5 Soon after he left, the second accused entered the car park. He went to the car and took a haversack from the front passenger seat. He then left the car park and walked towards the direction of Block 410.

6 The second and third accused were seen leaving the void deck of Block 410 together and were walking towards Block 418 Canberra Road when instructions were given to arrest them. As the officers approached them, they ran, and the second accused dropped or threw the haversack in the process. The officers caught up with them and placed them under arrest. The haversack was recovered and was found to contain 20 wrapped bundles. The contents of these bundles form the subject matter of the two charges.

7 At about the same time the first accused returned to the car park to his car JFY 5311. He entered the car, drove out of the car park. He was trailed by other CNB officers. When he came to the junction of Sembawang Drive and Sembawang Crescent, he stopped at the traffic lights, and he was arrested.

8 After that the car was searched, and a plastic bag was found in the boot. Inside the plastic bag were five bundles of similar appearance to the 20 bundles in the haversack.

9 In the course of investigations, statements were recorded from the three accused persons. There was no challenge over the admissibility of the statements made by the second accused and the third accused. When the prosecution sought to admit in evidence the statements of the first accused, this was resisted (except for his cautioned statement), on the ground that the statements were not voluntary statements. Consequently a *voir dire* was conducted in respect of the disputed statements, the first recorded by Station Inspector Ronnie See Su Khoon on the day of arrest, and three statements recorded by the investigation officer Inspector Abdul Halim bin Abdul Rahim on 1 and 5 April.

The voir dire

10 The first accused claimed that he did not make the statements voluntarily. His complaints start from the moment of his arrest. When his car stopped behind another vehicle at the junction of Sembawang Drive and Sembawang Crescent Staff Sergeant M Subramaniam came to the car. SSgt Subramaniam was unable to open the car door. When he saw the first accused reaching for the gear shift, SSgt Subramaniam drew his revolver and pointed it at the first accused's head. The first accused then unlocked the door. He was taken out of the car, handcuffed, and was taken to the back seat of the car. No statements were taken from him throughout this time.

11 Subsequently, when Station Inspector See Su Khoon arrived at the scene, the first accused was taken from the back seat and brought to the boot of the car. The boot was opened and a plastic bag was discovered and was opened. According to the first accused, SI See asked him twice what the bag contained, and he said he did not know on each occasion. Then SSgt Subramaniam intervened. He took out his revolver again, pointed it at the back of his head, told him not to feign ignorance and asked him whether it was heroin. He was frightened and said "If you say it is heroin, then it is heroin". After that, he was brought back to the back seat of the car. No statement was recorded from him on this exchange.

12 SI See started to question him after he was brought back into the car. At that stage he did not admit that the bag contained heroin although he was still frightened by SSgt Subramaniam's actions.

13 SSgt Subramaniam admitted that he had drawn his revolver and pointed it at the first accused when he was inside the car. His explanation was that he was concerned that the first accused may attempt to drive away and endanger the safety of other persons, although the car was in a stationary position at that time.

14 A CNB officer pointed a firearm at a suspect when there was no resistance or aggression. Counsel submitted that SSgt Subramaniam had abused or exceeded his powers. I will not pass judgment on this, and trust that the CNB look into it. The incident appeared to have a limited effect on the events that followed. Firstly, SSgt Subramaniam did not say anything to him about any offence or anything that he was carrying. Secondly, when SI See asked him about the contents of the plastic bag in the boot, he was not cowed into submission, but denied knowledge of it.

15 According to the first accused he yielded after the second incident of gun-toting when he agreed with SSgt Subramaniam that there was heroin in the plastic bag.

16 This incident was disputed by the officers. SI See and SSgt Subramaniam denied that the latter was with the first accused when he was taken to the car boot, and both of them denied that SSgt Subramaniam spoke to the first accused or pointed his revolver at him at the boot.

17 The other three statements were statements recorded by Insp Halim with the assistance of Hokkien interpreter Bennet Tan Chee Leong. Two statements were recorded on 1 April, separated by a lunch break, and the third statement was recorded on 5 April.

18 The first accused alleged that when he was first brought to Insp Halim's room on the morning of 1 April, the inspector introduced the interpreter to him. He told them that SSgt Subramaniam had pointed a gun at him, but there was no reaction from them. He then asked for a drink of water and the interpreter left the room with a mug to get it.

19 While the interpreter was away, the inspector told him that he had wanted to arrest the other

two accused persons for a long time (the first accused knew that the second and third accused were also arrested), but had no evidence against them. The inspector told him in a mixture of Hokkien and Malay that he was facing a capital charge and told him that he would give him a chance to avoid the death penalty if he testified that the heroin **belonged** to those two persons. (This part of his evidence was at variance with the case put to the inspector that he was told to say that the two persons **took** the heroin.)

20 He thought over the offer and decided to accept it. He did not seem to know if he conveyed his decision to the inspector. His evidence was (i) that he did not, (ii) that he said "OK, I would go ahead with the exchange", then (iii) that he could not remember. He then proceeded to give his first statement with the help of the interpreter who had returned to the room by then.

21 Insp Halim was unable to remember if he had arranged for the first accused to have a drink on that morning before recording his statement. However he remembered that he did not tell the first accused of his interest in the second and third accused and the lack of evidence against them, and he denied making the offer to the first accused in exchange for his co-operation.

22 The interpreter's evidence was that the first accused did not mention that a gun had been pointed at his head. He also did not recall leaving the inspector's office to fetch a glass of water for the accused. He went on to say that it was not his duty to fetch drinks for accused persons, and he had never done that.

23 At the end of the *voir dire*, I reviewed the evidence. The first accused agreed that when he was at the car boot, there were pedestrians looking at him, and there were cars behind his car. I found it difficult to believe that SSgt Subramaniam would have pointed his gun at the accused who was already under arrest and handcuffed in front of those members of the public who were present.

24 In addition to that, I also took into consideration the officers' roles at that time. SSgt Subramaniam was instructed to assist in the arrest, and he had done that. After the arrest, the first accused was taken to the back seat of the car. By his own account nothing happened till SI See arrived at the scene later. When he came, SI See took over custody of the first accused, took him to the boot of the car, and questioned him about the contents of the plastic bag.

25 The evidence pointed to SSgt Subramaniam's dealings with the first accused terminating with the arrest. He did not have custody of the first accused and he did not search the car or ask him any questions. That was left to SI See who took over custody of the accused and had the car boot opened and took steps to ascertain the ownership of the plastic bag.

26 It is hard to imagine that SSgt Subramaniam would have interrupted SI See when he questioned the first accused at the boot of the car, and then pulled a gun on him in full view of the public. At that time things were in the control of SI See who was senior to him in rank and did not seek his help.

27 With regard to the inducement alleged against the inspector, it was supposed to be given during the few minutes that the interpreter left the room to fetch the drink for the first accused. However, the interpreter was specific that he never fetched drinks for accused persons because that is not his job.

28 The inspector denied that he offered to help the first accused avoid capital punishment if he co-operated in the investigations against the second and third accused. The nature of the co-operation sought was unclear – was the first accused was to say that the heroin belonged to them (as the first accused claimed) or that they took the heroin (as was put to the inspector)?

29 Looking at all the evidence, I did not believe the first accused's evidence of SSgt Subramaniam's threat at the car boot, or the inspector's inducement at the office. I found that the statements recorded by SI See and the inspector were voluntary statements.

The first accused's statements

30 The first recorded statement was the statement recorded by SI See in the car on 27 March. The statement was recorded in SI See's pocket book in Romanised Hokkien. The prosecution agreed to leave out portions of that, and the statement admitted read. Translated into English it reads –

Q Before you are arrested, did you give anything to anyone?

A Yes, earlier at Block 406 Sembawang, I gave a bag to two Malay.

Q What is inside the Bag?

A Inside contains heroin.

Q How much heroin?

A Twenty balls of heroin.

Q You say you gave a bag containing twenty balls of heroin to two Malays at Blk 406 where?

A In the Car Park. When I arrived at the car park, I park the car and walk away. A short while, two Malay went inside my car, took the bag and left. I then return to the car and drive.

Q How you contact the two Malay?

A They call my phone. I do not have their phone number.

Q Do you smoke heroin?

A No. I did not smoke heroin.

Q Do you have anything else to say?

A No.

31 As I had indicated earlier, there was a cautioned statement that was admitted in evidence without dispute over its admissibility. This was made on the morning of 1 April in response to a charge of trafficking in the 20 bundles in the haversack by giving them to the second and third accused. The statement reads

I do not admit to the charge. The 20 bundles of heroin were not seized from my car. It was taken away by the 2 male Malays.

32 The salient parts of the statement recorded on the morning of 1 April are

2 I am shown photographs of two male personnels. (Recorders note: I showed the accused the photographs labelled P2 of Rosdi Bin Pungot IC: S1675308D and photograph labelled P3 of Roseley Bin Sidin, IC: S1360725G). I identified them as the two male Malays I mentioned in my cautioned statement recorded on 27 Mar 2002 at about 9.40 pm. They are also the two male persons, which I have mentioned to one of the officer who recorded my statement at the scene of the arrest.

3 However, I do not know the names of the two male persons. At the first sight, it looks as if both were Malays to me. But now one of them look like an Indian to me after I was shown the photograph labelled P3.

... ..

5 On 27 March 2002 at about 7.00 plus in the morning, I drove JFY 5311 to "Bai Wan Zhen" at Johore Bahru. "Bai Wan Zhen" is also known as Taman Jaya. As arranged, I parked my car near at the big, open area and left it unlocked. I was told by a supplier of the heroin to leave the car door opened so that they can place the heroin in the car.

6 I left the car for a cup of coffee. ... About half an hour later, I received a call from the same supplier that everything was ready. I take it to mean that the heroin has already been placed in the car.

7 I was not told where the heroin was kept. I was further informed by the supplier to proceed to a 4 storey carpark at Blk 406A, Sembawang for transaction upon reaching Singapore. The supplier told me to park my car at the first level and then to go for a drink. He told me not to lock the car and that someone would come to the car and pick up the heroin. He further told me that he would contact me once the heroin was taken away.

8 After the call, I returned to pick up my car. I did not check to see where the heroin was kept. As directed, I drove my car to Singapore and headed for Woodlands Checkpoint.

9 I arrived at Woodlands Checkpoint at about 12.15 pm. After clearing the Checkpoint, I drove my car and parked it at a public carpark in Woodlands. The reason why I went to the carpark in Woodlands was because the supplier called me to say that he wanted to take out the heroin from the car. He also asked me to buy a bag. The supplier further informed me to place 20 bundles of heroin in the haversack and gave the remaining 5 bundles to "uncle". The call was made to me after I have crossed Woodlands Checkpoint. The supplier did not make such an arrangement with me when he spoke to me at Taman Jaya.

10 I did as directed. After parking the car at a public carpark in Woodlands, I went to buy a black color haversack from a shop nearby. I paid \$16 for the haversack. I deliberately left the car door unlocked so that the supplier could get his man to take out the heroin from where it was hidden in the car.

11 About half an hour later, I received a call from the supplier who informed me that everything was ready. I take it to mean that the heroin has been taken out from the hidden spot in the car

and placed it in the area where I could see it.

12 I then returned to my car with the black haversack. The car was still unlocked. I saw 25 bundles which I knew to contain heroin lying on the floor of the front passenger and the back seat in the car. I did not know who was the one who had taken out the heroin from the hidden spot in the car. I counted the bundles of heroin and there were 25 altogether.

13 The bundles of heroin were wrapped with some plastic layers and newspaper. I placed 20 bundles of the heroin inside the black haversack; 17 inside the main compartment of the haversack and 3 on the front pocket. I placed the 5 remaining bundles of heroin inside an empty red plastic bag, which I took from the back seat of the car. This red plastic bag was in the car all the time before I went to Taman Jaya.

14 I placed the haversack containing 20 bundles of heroin on the front passenger seat of my car and placed the red plastic bag inside the car boot. I then drove to the carpark at Blk 406A, Sembawang.

33 When the recording resumed in the afternoon after lunch, the first accused stated

15 I knew where the location of the 4 storey carpark was because this was my second trip to the place. Prior to this occasion, I have been to this 4 storey carpark before to deliver heroin. Hence I had no problem finding the carpark.

... ..

17 As I was about to turn my car into the carpark at Blk 406A, Sembawang, I saw two male Malays waiting at the void deck of a housing block opposite the carpark. These two male Malays looked familiar to me because I have seen them before when I delivered heroin to this place on my first trip about 2 weeks before my arrest. These are the same male Malays whom I had mentioned in paragraph 2 of this statement.

18 When I saw the two male Malays, it immediately impressed on me that they must be the ones who would pick up the heroin from my car. At this juncture, I saw the two male Malays looking at my direction. We had a glance at each other. I saw them sitting together on a wooden chair at the edge of the void deck.

19 I continued to drive into the 4 storey carpark. After I parked my car at the first level of the carpark. I made no attempt to find out whether there were other cars parked beside my car. I left the haversack on the front passenger seat and left the car unlocked before I walked away. I noticed that the digital clock in the car showed that it was about 1.15 pm. After I stepped out of the car, I made a total of 3 calls.

... ..

26 When I approached a T traffic light junction near a primary school, I stopped my car as the traffic light was red. Those cars that were trailing behind me moved forward to block my path. The people in those cars alighted and rushed to my car. One of them flashed a warrant card at me from outside the car. At this point, I realized that this group of people were government people.

27 I unlocked my car door and stepped out. I was handcuffed and put under arrest. My car was

searched on the spot. Five bundles in a red plastic bag were recovered in my car boot by one of the officers. The officer showed me the bundles and asked me what it was. I told him that it was heroin.

34. In the statement of 5 April he described his relationship and dealings with his supplier Ah Ken –

31 My supplier is known to me as Ah Ken. I got to know him during the Chinese New Year in February this year through introduction from friends at night entertainment spots behind City Plaza shopping centre in Johore Bahru. My friends told me that Ah Ken is dealing with drugs. During my conversation with Ah Ken, I asked him whether he has any job to offer me. The jobs I mentioned about refer to drug despatch. Ah Ken told me that there were indeed jobs for me and asked me whether I was interested.

32 Ah Ken also told me that I have to find my own way of getting a car to do the delivery. He told me that he would only provide a car for me if I work with him for a longer period of time. Ah Ken also told me that the payment for courier service would be credited to my bank account. I told Ah Ken that I would consider about it.

33 About 2 weeks later, Ah Ken phoned me up and asked me whether I had made up my mind. I told him that I accepted the job offer. Ah Ken then told me to wait for further calls from him when the stuffs arrived. When I mentioned about stuffs, I actually refers to heroin.

34 Ah Ken told me that when the heroin arrived, he would call me to drive my car to an arranged spot. At the arranged spot, I would park my car there and left it unlocked. Ah Ken told me that he would ask his own men to load the heroin into my car. After the loading of the heroin into the car, Ah Ken would then contact me again to inform me as to where to send the heroin. Ah Ken told me that I have to send the heroin to Singapore. He would let me know the location of delivery in Singapore when I crossed the Woodlands Checkpoint. Ah Ken told me that I just need to play the role of a courier for him and need not ask too much about the drug deal.

35 Ah Ken told me he would pay me \$300 Malaysian ringgit for each bundle of heroin that was successfully delivered. Ah Ken did not provide me with any information on the number of bundles to deliver each time. He would only let me know after I had crossed Woodlands Checkpoint. Ah Ken had told me that the leader of the Singapore Customers would come in personally to make payment to Ah Ken's boss in Malaysia. He told me not to bother about collecting payment from customers.

36 Ah Ken told me that all I have to do was to park the car at an arranged spot, left it unlocked and walked away. Ah Ken told me that the customers themselves knew what to do. Ah Ken told me that he would inform the customers about the estimated time of my arrival at the scene of transaction and my car number. After the customers have collected the heroin, they would in turn call Ah Ken to inform him about it. Ah Ken would then tell me to let me know the status. Ah Ken is stationed in Johore Bahru.

37 I have no means of contacting Ah Ken. Whenever I received calls from Ah Ken, the screen of my handphone would show that the call comes from a private number.

38 On 27 March 2002, the day of my arrest, Ah Ken has been in regular contact with me right from the time I left Taman Jaya in Johore to the time I delivered the heroin to the two male Malays at Blk 406A, Sembawang. I was taking instruction from him to bring the 25 bundles of heroin into Singapore for delivery to the two male Malays and Uncle.

39 Ah Ken is a close associate of his boss. He has a number of helpers assisting him. Ah Ken's boss is known as Ah Lai. He is a male Chinese from Penang. Ah Ken is a lone person who moves about very

often. I do not know his whereabouts or his place of abode.

40 The delivery that I made on 27 March 2002 was the second trip. Prior to this trip I had made an earlier trip to deliver ten over bundles to the same two male Malays which I had mentioned in this statement. That was my first trip.

41 The first trip was made two weeks before my arrest. The arrangement was also made by Ah Ken. Ah Ken told me that someone would be waiting for me at the arranged location. During this trip, I was told to drive my car to the same four storey carpark located at Blk 406A, Sembawang and parked my car at the first level. Before I turned in to the carpark, I slowed down the car as I expected the customer to be nearby. I saw the shorter male Malay whom I had mentioned in my statement, walking alone at the void deck of a Block opposite the carpark. I believed the shorter male Malay must be the one waiting to collect the heroin from my car.

The statements of the second accused

35 After he was arrested, the second accused was questioned by Insp Xavier Lek Lai Ann. This took place at the void deck of Block 418, Sembawang Drive after the haversack was retrieved and was opened to show the 20 bundles inside.

36 The questions and answers which were recorded in Insp Lek's pocket book were admitted in evidence without objection -

Q What are all these?

(Point to the 20 bundles)

A I don't know.

Q All these stuff belong to who?

A Sent to someone.

Q Who is the someone?

A A friend (Boy).

Q How to contact him?

A He will call me.

Q Who is the person arrested together with you?

A Friend (Roseley).

Q What is he doing with you?

A Accompany me here to meet a friend.

Q Meet the friend for what purpose?

A Sent the stuff inside the bag.

Q Where you get the stuff in the bag from?

A At the carpark there.

Q Who you get it from?

A From Rahman.

Q Where is this Rahman?

A Maybe in his house.

Q Where is Rahman's house?

A Near Vista Point.

Q Have you been to Rahman's house?

A No.

Q Do you have Rahman's contact number?

A No.

37 The second accused also made three other statements, which were admitted in evidence on his counsel's initiative. The first of these was the cautioned statement recorded on 27 March in reply to a charge of trafficking in the 20 bundles in the haversack. He said in his cautioned statement

My intention of going there was not to traffic. I do not know the haversack contained drug. Roseley also does not know anything about this matter. I hope the judge would consider my explanation.

38 On 5 April, Insp Halim recorded an investigation statement from him, where he said

I am also known as Adi among my friends and family members.

2 On 27 March at about 11.00 plus in the morning, a friend of mine named Rahman telephoned me on my handphone. He told me that he wanted to see me to talk. He told me that he wanted to talk to me about work. He told me to meet him at AZ restaurant at

along Sembawang Road immediately.

3 I left home immediately and drove my car SCG 5421M to Sembawang Road. I arrived there before twelve in the afternoon. After fifteen minutes of wait, Rahman arrived at the AZ restaurant.

4 Rahman told me that there is work for me as usual. I understood this to mean to collect bag and deliver it to someone. He told me that he would tell me the place and the time I would be going to take the bag later. He also disclosed that Malaysian car from Johore would be coming to a carpark at Sembawang. He also told me that he would telephone me when the Johore car arrives at the carpark and that I was supposed to collect a "thing" which would be in a bag from the car. Rahman told me that I was to deliver the "thing" to someone known as "Boy" who would be meeting along the main road near Blk 416, Sembawang Road. Rahman told me that "Boy" would be coming in a taxi. I agree.

5 I did not know what I was to collect from the Malaysian car. Nor do I know whom this person known as "Boy" is.

6 After this conversation with Rahman, I left in my car together with him and I drove the car to a multi storey carpark at Blk 424, Sembawang Road. Along the way, Rahman suggested to me that I pass my car key to him so that he could pick me up at along Sembawang Road near Blk 416 after I had delivered the "thing" to "Boy". I agreed to his suggestion.

7 A while later we arrived at a multi storey carpark at Blk 424 Sembawang Road. I parked my car on the second storey. We got out of the car. I locked the car and gave my car key to Rahman. We walked together towards Blk 417. Along the way Rahman told me that the multi storey carpark where I was supposed to collect the "thing" is located about 2 Apartment blocks behind the carpark which I had parked my car.

8 When nearing Apartment Blk 417, Rahman walked straight across the road where I later lost sight of him. I proceed to Blk 416, walked under some void decks apartment Blocks. When I was nearing the Apartment block that is opposite the multi storey carpark, I bumped into a friend of mine known as Roseley who was walking at the void deck.

9 I invited Roseley to accompany me to the void deck opposite the multi carpark I was supposed to go. Facing the road to the multi storey carpark, Roseley and I sat on a wooden bench at the void deck. We sat there chatting. I asked him what he was doing there. He told me that he wanted to check out a food stall. I told him that I was waiting for a friend to collect something and deliver it to "Boy". I told him this because he asked me what I was doing there.

10 As we were talking, I saw a light grey or brown Malaysian plate car passing the road to the multi storey car park. The make of the car is Proton Wira. I saw the car was driven by a male Chinese. The car entered the multi storey carpark. I could not remember the car registration number. Shortly after, Rahman telephoned me. He told me that the car had arrived. I told him that I saw the Malaysian car. I hanged up the telephone.

11 I asked Roseley to wait for me and I walked towards the multi storey carpark. I proceeded to the first level of the carpark and looked for the car. I saw a male Chinese walking away at the other end of the carpark. In one of the parking lot, I saw a light grey

car bearing a Malaysian plate parked next to a staircase. There was no other Malaysian plate car there, so I decided that was the car I was supposed to take the "thing" from.

12 The car was unlocked. I opened the rear door and found no bag there. I went to the front door passenger door and saw a black bag on the seat. Believing it to be the bag I was supposed to collect, I took it and walked away from the carpark. I slinged the bag on my shoulder. When I carried the bag, I found it to be heavy. I did not open to see what was inside.

13 I walked back to the void deck. As I was walking, I saw Roseley was still sitting at the void deck. He was talking on the handphone. I walked towards him. I expected him to be waiting for me because our chat had not ended. I asked him to accompany me to the main road near Blk 416 Sembawang Road. He agreed and told me that he parked his car at the vicinity of Blk 416. We walked together side by side.

14 He asked me what I was carrying as it appeared heavy. I told him that it was indeed heavy but that I did not know the content. As I was nearing Apartment Block 417, Sembawang, I turned behind and saw about 5 or 6 people chasing me. They were about 5 metres behind me. I got shocked and ran away. As I was running, the bag slipped off from my shoulder and fell down to the ground. I did not know what happened to Roseley.

15 I slipped and fell down. Two people pinned me and handcuffed me. One of the male Chinese picked up the black bag that fell off my shoulder. I was brought to a void deck nearby together with the bag. As I was walking there I saw Roseley sitting at the void deck with his hand handcuffed behind him.

16 The male Chinese opened the black bag. I saw there were many plastic bundles inside. He asked me for the amount of plastic bundles inside. I told him that I do not know.

39 On 9 April a further investigation statement was recorded, where he added that

... ..

29 I do not know the occupation of Rahman. He told me that he stays in Woodlands area. Rahman is an Indian Muslim. He is the late thirties. He is medium in built and height. He spots short hair. He is sometimes in jeans or casually dressed. I am able to recognise him if I were to see him again.

30 After my meeting with Rahman at Sembawang coffeeshop on the first occasion I worked for him, I did meet him again at the Turf Club over the weekend. The second occasion I met Rahman outside the Turf Club was on the 27 March 2002 at AZ restaurant.

31 I did not make any arrangement with Roseley to meet him on 27 March 2002 at the vicinity near where I was arrested. I did not make any telephone calls or phone message to Roseley on 27 March 2002. The last time I telephoned Roseley was one day before I was arrested. I contacted him on his handphone to ask him whether he would be going to the Turf Club at Kallang Stadium to watch the HongKong horse racing on Wednesday night, that is on 27 March 2002. He told me he has not decided.

32 Roseley did not telephone me on 27 March 2002. Nor did he phone message me on 27 March 2002. The last time Roseley telephoned me on Tuesday night that is on 26 March

2002. He asked me to follow him to meet a horse jockey named Asslam at a Japanese karaoke joint at Daimaru on that night. Roseley brought 2 other friends. Assalam brought another friend working as a stable boy at the Turf Club.

33 I did not use my handphone on 27 March 2002 to telephone anyone. Except for Rahman, I did not received any phone call on my handphone on 27 March 2002.

... ..

42 I wish to add here that when I collected the haversack from the car on 27 March 2002, I was under the impression that the haversack contained gold bars and white gold nuggets. I thought it was heavy because it was laden with gold and silver. I did not know that it contained drugs.

The statements of the third accused

40 The third accused also made several statements. Some were admitted at the initiative of the prosecution, and others at the request of his counsel.

41 Chronologically, the first statement was recorded by Insp Lek at the void deck of Block 418 after his arrest. This statement which was admitted at the request of the third accused reads

Q What are you doing here?

A Want to see shop.

Q Where is the shop?

A At the coffeeshop Blk 400+ near the main road.

Q Who is the person arrested together with you?

A My friend, Adi. [The second accused is also known as Adi.]

Q What is inside Adi's bag.

A I don't know.

Q What are you and Adi doing here?

A I bumped into him at a carpark near a coffeeshop. I was walking towards my car with him when I was arrested.

42 On 28 March a cautioned statement was recorded from him on the charge of trafficking in the 20 bundles in the haversack and he said

I am innocent. I do not know anything about this matter. I met Rosdi by chance and

we walked together towards my car. It was then that I was arrested. I hope the court will consider my case.

43 On 8 April Insp Halim recorded an investigation statement from him where he said

2 On 27 March 2002 at about 12.30 in the afternoon, I proceeded to a coffeeshop located at Sembawang Drive from my Canteen at Marsiling Lane. My intention of going to the said coffeeshop was to check one of the stall there as I wanted to rent it. I intended to open another rice stall there at Sembawang area. I arrived at the said coffeeshop at about 1.00 pm.

3 This coffeeshop is located near a main Road near Sembawang Drive. One of my friend named Azman told me that there were some vacant stall at the said coffeeshop that are for rental. He told me that the coffeeshop is in front of the multi storey carpark of Blk 406A, Sembawang Drive. I do not have the telephone number of Azman.

4 I left my food stall at Marsiling lane when the workers at Seiko factory had finished their lunch break. There were 2 helpers and my wife at the stall when I left. I told my wife that I wanted to check a stall at Sembawang. I did not tell her the time I would be back.

5 I drove my car to Sembawang Drive and parked my car at the main road in front of the coffeeshop. I believed there is one coffeeshop near that area. I got out of my car and proceeded to the coffeeshop. I sat inside the coffeeshop for about 30 minutes to check the crowd. I noticed that the coffeeshop was patronised by more Chinese than Malay people.

6 I did not noticed the Block number of this coffeeshop. To my recollection there were about 7 stalls in the coffeeshop. This coffeeshop has a Chinese name. There was one Malay and Indian stall while the rest are Chinese stalls. There were 2 vacant stalls which were not taken as there were no stall signs indicating occupancy.

7 A while later, I realised that I have parked my car at the double yellow line along the main road. I noticed that there were many vehicles parking along the main road. Afraid that my car would be summoned, I drove it to near a loading and unloading of at a rubbish dump area nearby. This place is near Blk 416 or 418. I did not park my car at a nearby carpark because I noticed there were too many cars going in and out of the carpark. I was of the opinion that the carpark was full. From where I parked my car, I could see the multi storey carpark.

8 I got out of my car and walked towards the direction of the said coffeeshop. I walked pass a few void decks and towards a multi storey carpark to get to the coffeeshop. I intend to continue to check the crowd at the coffeeshop as I believed that the lunch hour was not over yet.

9 As I was approaching the multi storey carpark, I saw Rosdi standing alone near a staircase of the carpark as if he wanted to cross away from the carpark. I noticed that he was carrying a dark coloured haversack over his shoulder. I noticed that the haversack was full and heavy. I stopped by and chit chatted with him. I asked Rosdi what he was doing there. He told me that he wanted to see a friend and offered me a stick of cigarette. Rosdi then invited me to smoke cigarette at the void deck opposite the multi storey carpark. Rosdi and I crossed the small road leading to the carpark and we walked

towards the void deck.

10 At the void deck, I asked him where he was heading after meeting his friend. He pointed to me direction where he wanted to go. I noticed that he was pointing at the direction where my car was parked. I told him my car was parked at that area and told him that I would walked with him. I changed my mind about wanting to check the coffeeshop for crowd. I thought that it was sufficient I had earlier spent about 30 minutes at the coffeeshop and that I thought the lunch hour was almost over.

11 About 5 minutes later, Rosdi told me that he wanted to move off. I walked together with him. We walked together side by side under the void decks of the HDB flats. As we were walking, I noticed that there was a police car and a small crowd near the entrance of the multi storey carpark. I pointed to Rosdi the police car and the small crowd. Rosdi turned his head towards the police car and kept silence. From where he stood, I could see my car. We were then about to cross the road leading to the carpark. I noticed that Rosdi took a further route, which in my opinion is the longer route to get to the direction of my car. I noticed that he could have walked more towards the right to the area near my car. In stead he took the longer route by walking more to the left across a few void decks. I followed him though. As Rosdi and I was approaching Blk 417, a group of civilian came from my back and arrested me.

12 From the time I met Rosdi near the staircase of the multi carpark to the time we walked together until we were arrested at Blk 417, I did not asked him anything about the haversack he was carrying. Nor did I ask Rosdi what he was carrying over his shoulder or what was in the haversack. Neither did I tell or suggested to Rosdi that the haversack appeared heavy.

and his statement was continued on 15 April –

13 My meeting with Rosdi near the staircase of the multi storey carpark was not pre-arranged. I met him there by chance.

14 I have never been to the area near the carpark of Blk 406A, Sembawang Drive. My going there on 27 March 2002 was my first time.

... ..

21 ... I did not telephone Rosdi on 27 March 2002, the day I was arrested. Nor did I message him. Neither did Rosdi telephone me or message me on 27 March 2002. I could not remember if anyone had paged for me on 27 March 2002.

44 Two other statements recorded on 15 April and 17 April were also admitted in evidence at the request of the third accused which contents were not so relevant to the trial, and it is not necessary to refer to them here.

45 All the statements were admitted in evidence in the course of the prosecution's case. There were other statements of the accused which the prosecution did not tender in evidence. Defence counsel informed me that they did not have them. The prosecutor confirmed that they were not supplied. Several reasons were given, (i) that there was no obligation to do so, (ii) that the statements were retained so that they could be used to impeach an accused's credit if he were to depart from them, (iii) that they are not furnished because an accused may tailor his defence according to his

statements, and (iv) that the statements may be supplied if an accused disclosed his defence first.

46 In the end, counsel for the prosecution and the defence resolved the matter between themselves and the statements were supplied. The circumstances of the resolution were not disclosed to me.

47 An accused person's access to his statements is a matter of some importance. When the issue is raised the same authorities are usually cited in argument – *Kulwant v PP* [1986] SLR 239 which dealt with an application for pre-trial discovery of statements rather than disclosure in the course of a trial, and *Tay Kok Poh Ronnie v PP* [1996] 1 SLR 185 where it was held that such statements should be furnished to an accused person after he has given his evidence. Having dealt with this issue on several occasions I believe that there is room for further consideration in this matter.

48 The statements requested for were the accused's own statements, not statements of the prosecution witnesses or of his co-accused. An accused person is obliged under s 32 of the Misuse of Drugs Act and s 121 of the Criminal Procedure Code to make them. These statements are often referred to as "investigation statements", "s 121 statements" or "long statements". If an accused person has a good memory and if he is aware of the importance of such statements, there is nothing to prevent him from making a note from memory of the statements taken from him. He can recount at his trial what he remembers of his statements.

49 An accused has a legitimate interest to know and be reminded of what he has told in his statements, so that he can obtain proper advice thereon as to the course of action he should take, or he may wish to refer to them in his evidence.

50 Should he be refused the statements so that they can be used to impeach his credit? In many cases where an accused who is refused his statements makes his defence no action is taken to impeach his credit. In my experience, impeachment applications are made in a small minority of such cases. Thus in the majority of cases, this reason for refusing the statements eventually does not stand.

51 That reason is also not applied consistently. In practice, the prosecution would furnish an accused person with cautioned statements recorded from him. Cautioned statements may be used for impeachment in the same way as investigation statements. If the former is furnished, there is no reason why the latter should not.

52 Likewise, an accused may tailor his defence to his cautioned statements as he would his investigation statements, and if that is not a ground for refusing to furnish cautioned statements, it should not be a ground for refusing to furnish the investigation statements.

53 There is another point to be considered. This is that when a reasonable request is made, it should be considered with an open mind. Unless there are reasons to believe that granting of a request will lead to abuse, it would be unreasonable to deny it on the ground that it may lead to abuse.

54 I am also uncomfortable about the requirement that the accused discloses his defence to the prosecution first if he wants to have his investigation statements. There is no obligation for an accused to disclose his defence to the prosecution. That position was abridged slightly by s 122 of the Criminal Procedure Code whereby an accused is warned and advised to state his defence after he has been charged, lest his defence be less likely to be believed if he withheld it till his trial. This was a limited change as the accused is not compelled to make a statement, and he is not liable to punishment if he elects not to give one.

55 Against this background, the request that an accused discloses his defence is a radical step which must be given serious consideration. Where is the authority for it? How is the defence to be disclosed – by counsel or a signed statement by the accused? How detailed must it be? What is the evidential nature of such a disclosure? If such requests are to become part of the prosecution practice, they should be clearly provided for by law, in the way that s 122 was enacted to enable cautioned statements to be recorded. It should not be left to be dealt with on an *ad hoc* basis.

56 Another issue was raised, whether statements should be admitted in evidence when they are supplied. Such statements would be admitted if the accused or the prosecution wants them to be admitted. If no one wants them, there is no necessity for such statements to be admitted in evidence for no purpose. This is how cautioned statements are dealt with, and the same practice should apply to investigation statements. If an accused who had received his statements decides not to introduce them in evidence, there is no reason to make him do it.

The first accused's defence

57 The first accused is 35 years old. He had completed up to Primary 6 education in the Chinese medium. He was working as a part-time painter and tow truck driver.

58 He admitted driving into Singapore with the 20 bundles and left them in the car to be collected, but he did not know they were heroin. He repeated his evidence on the circumstances on the inspector's offer and his decision to co-operate.

59 Counsel then went through the statements of 1 April with him. When he knew Ah Ken through a friend, he was told that Ah Ken was engaged in smuggling jewellery and gold bars. In his dealings with Ah Ken, he thought that they were connected to jewellery and gold bars, and all references in his statements to drugs or heroin should be read as jewellery and gold bars.

60 Counsel sought clarification on the narration of the first delivery made, as described in paras 17 and 40 of his statements. He clarified that on that occasion he only saw the second accused. He had talked of the second and third accused because the investigation officer had told him that he wanted to deal with the both of them, then he had contradicted himself and said that he had not said that he had seen them before.

61 Similarly, when his attention was drawn to the statement made to SI See on 27 March he denied having said that these 20 bundles in the bag were heroin and said that he was not paying attention when the statement was read back to him.

62 Under cross-examination by the prosecution he agreed that when he saw the 25 bundles in the car, he had the opportunity to examine them.

The second accused's defence

63 The second accused is 37 years old and was working as a printer. He knew the third accused and his wife and was a partner in a food stall with them for a while. He did not know the first accused.

64 His counsel went through his statement of 5 April with him. He confirmed that he had worked for Rahman on a previous occasion before 27 March. He did not know very much about Rahman. Rahman's full name, address and telephone number were not known to him. On the first occasion he delivered a paper bag from a car, and he was under the impression that he was delivering gold bars and silver nuggets and that he thought he was doing the same thing on 27 March.

65 He did not check the contents of the bag on the first occasion or the second occasion because he did not have the opportunity to check the contents of the haversack.

66 He reiterated that there were no telephone calls between him and the first accused on 27 March but when his counsel referred him to the call tracing records of his mobile phone he admitted however that he received four calls from the third accused that day between 12.32 pm and 1.13 pm. In the first two calls they talked about horse betting and made arrangements for him to pick up a friend. The third call was disrupted. The last call of 1.13 pm was received when he was at the car. The third accused told him to hurry up as he was leaving. His reason for not referring to these calls was that he was in a state of confusion when he made the statement.

67 Counsel for the third accused referred him to his statement to Insp Xavier Lek made soon after his arrest where it was recorded that the third accused was with him to accompany him to meet a friend. He agreed with counsel that it is not true. His explanation for this was that "The situation is in a state of frenzy, so I just gave the answer."

The third accused's defence

68 He is 42 years old, and was operating a food stall in a factory at Marsiling Lane with his wife. He has known the second accused for about a year, and had operated the food stall with him for a time.

69 He did not know about the first transaction between the first and second accused.

70 On 27 March he left his food stall at 12.15 pm and drove to Sembawang Drive. He went there to inspect a food stall that was available to be taken over. He drove to the coffeeshop, parked his car along Sembawang Drive on the side nearer to Block 406A. He went to the coffeeshop and observe the activities there. It was his first visit to that coffeeshop. After a while he realised that his car was parked against double yellow lines, and decided to move it to avoid receiving a summons for illegal parking.

71 He did not drive directly to the nearest proper parking place. Instead he went on a long drive from Sembawang Drive to Admiralty Drive, then to Canberra Road, made a U-turn and went back to Sembawang Drive in the opposite direction from where he started before parking at the loading bay between Blocks 412 and 415 with the intention of resuming his observation of the coffeeshop.

72 He took this drive because it was his practice to have a look at the general area of any location he was considering. He did not drive around the area earlier because he only decided to do that when he drove away from the double yellow lines.

73 Like the second accused, the third accused also had to correct his investigation statement in respect of his communications with the second accused on 27 March. Para 27 of his statement where he said that they had not communicated with one another was incorrect. They had talked over the telephone about horse gambling and picking up a friend. He gave two explanations for these corrections. First he did not say that there was no communication when the statement was recorded and had said that he could not remember if there had been calls. The second explanation was that he could not remember if there were communications on 27 March, and made the statements nevertheless.

74 There was another major correction. Para 9 of his statement where he said the second accused was carrying a haversack when they met was wrong. He did not tell Insp Halim that when the

statement was recorded. He told the inspector that he could not remember that, and the inspector suggested that to him, and he agreed. (This was not put to the inspector and no reason had been put forward why the inspector would make such a suggestion.)

75 In fact the haversack was only collected by the second accused after they met up, when the second accused went off by himself. During that time he had telephoned the second accused to tell him that he was leaving because he wanted to go to the market.

76 His counsel referred him to his statement to Insp Lek made following his arrest. He confirmed that when the inspector asked him where he was going, he said that he wanted to see a shop.

77 Counsel for the second accused cross-examined him about the gold bars the second accused handed to him. It transpired that he was not told the selling price or the grade of the gold.

Evaluation of the defences

78 The first accused admitted that he drove the car to the carpark with the 20 bundles in the haversack so that it could be collected. His defence was that he did not know that the bundles contained heroin, and he disputed the admissions of knowledge in his statements.

79 He said that the admissions were untrue because he was threatened by SSgt Subramaniam and Insp Halim promised that he could avoid the death penalty if he co-operated. SSgt Subramaniam had not told him what he was to say, and he did not make any admissions to SSgt Subramaniam. When he admitted to SI See that the bundles were heroin, SSgt Subramaniam was not present.

80 He alleged that Insp Halim wanted him to say that the heroin belonged to the second and third accused, then he said he was to say that they took the heroin away. In his statements, he went well beyond incriminating the second and third accused. He incriminated himself in his detailed account of his dealings with the supplier of the heroin and of his previous delivery for him. He did not allege that these disclosures were inserted or suggested by the inspector.

81 I found that the first accused had admitted that he knew he was delivering heroin to Singapore. Even if there were no admissions, he was presumed under s 18 of the Misuse of Drugs Act by possession of the bundles to know their content, and he had not rebutted the presumption.

82 The second accused's defence was that he was instructed by Rahman to collect the bundles from the car and deliver it to Boy. He claimed that he did not know that the bundles were heroin, and had thought they were gold bars and silver nuggets.

83 He admitted that he had undertaken a similar transaction about two weeks prior to 27 March, and on that occasion too, he was under the impression he was dealing with gold bars and silver nuggets.

84 The second accused did not know Rahman well at all. Rahman was a recent acquaintance and he did not know his full name, address or telephone number. He carried out Rahman's instructions without being told and without enquiring what he was to collect and deliver.

85 He thought that they were gold bars and silver nuggets because Rahman had given him samples for him to look for buyers and he in turn asked the third accused to look for buyers for the gold bars without informing him the selling price or the quality.

86 He must have realised that he was not engaged in a normal transaction. On the previous

occasion, he was paid \$3,000 for his services. From the exceptional manner of taking a bag from an unlocked car to the delivery to someone in a taxi, he must have known or suspected something surreptitious was going on. Yet he did not ask Rahman what was being collected and delivered and did not examine the bundles when he had them in his possession. There was nothing to prevent him from checking the contents of the bundles in the haversack in the car or at the carpark if he wanted to, but he did not do that. In the circumstances, he had failed to rebut the presumption arising from his possession of the bundles that he was aware of their contents.

87 The third accused had denied knowledge of the heroin or the delivery. The evidence against him was that he was with the second accused before the first accused's car arrived at the carpark. He waited while the second accused collected the haversack from the car, and he was with the second accused after it was collected and was being taken to be delivered.

88 His explanation was that he was at that area to look at a stall at a coffeeshop in Block 406A with a view to expanding his business there. He left the coffeeshop to re-park his car, and went on to recce the area before returning to the area of the carpark to continue his observation. After parking his car, he met up with the second accused and they were together. He waited when the second accused went to collect the haversack and they left the area together after that.

89 That was the account of the events he narrated in court. However it was not consistent with his own statements and it did not stand up to examination.

90 In his statements he said that he had not been to the coffeeshop before 27 March, and that he only knew of the stall's availability that day. His wife Masrina binte Awi, contradicted his account. Her unchallenged evidence was that she and the third accused had been to the coffeeshop on 24 March to ascertain whether it was suitable for their business and on 26 March he told her that a stall there was available. In cross-examination he admitted that he had been to the coffeeshop with his wife.

91 Next there was his evidence of going to the coffeeshop on 27 March before his arrest. In his statement he moved his car from the roadside and drove it to the loading bay. There was no mention of going on a drive around the area so that he drove to the loading bay from the opposite direction of the coffeeshop. It was not explained why he would interrupt his observation with this long drive, or why he failed to mention that in his statement when he gave a detailed account of his movements.

92 His evidence was that he had returned to take a further look at the coffeeshop, but he did not do that. He said that he met with the second accused, spent time with him in casual conversation and did not go back to the coffeeshop. Apparently the intent and interest that led him to go to the coffeeshop and to drive around the area were forgotten after he met the second accused.

93 The next part of the retelling of the events is important. By the time he made the statement, the third accused knew that the charge he faced related to the contents of the haversack. In his statement he said that when they met the second accused was carrying a dark haversack over his shoulder, and he observed that the haversack was full and heavy. This was manifestly wrong. The truth was that it was only after they met that the second accused left to collect the haversack while he waited.

94 Another untruth was the assertion that he and the second accused did not telephone one another on 27 March. He made four calls to the second accused between 12.32 pm and 1.13 pm. The second accused's evidence was that the last call was made while he was at the first accused's car, and the third accused had called to ask him to hurry. This was not disputed by the third accused.

95 Soon after he was arrested, Insp Lek asked him what he was doing there, and he said he wanted to see a shop. He clarified in his evidence he understood the question to be where he was going and his response was that he wanted to see a shop. This contradicted his evidence that he had already been to the coffeeshop and was leaving the area when he was arrested.

96 Why were these untruths in his statements? I did not accept that the recording officers were responsible for them. I also did not accept that they were mistakes made through confusion or fear. The statements were not made when he was feeling the shock of his arrest, but were made days and weeks later. The length and detail in which he narrated the events showed that he was able to give a full account of the events. There were no expressions or suggestions of uncertainty or confusion.

97 The untruths were deliberate lies. They ran through virtually every phase of the events. They started with the reason for him being in the area, i.e. the lie that he was just told of the availability of the stall and went there to have a look at it for the first time and his statement to Insp Lek that he was going to the coffeeshop when he was arrested. There was the meeting with the second accused who was carrying the haversack and their being in one another's company till they were arrested. Then there was the assertion that he and the third accused had not called one another that day.

98 What effect and weight can lies have on a case? This has received active consideration in our courts. Reference is always made, directly or indirectly, to Lord Lane's judgment in *R v Lucas (Ruth)* [1981] QB 720. In that case the court was considering whether a false statement made out of court can provide corroboration to an accomplice's evidence. The judge held at p 724 –

To be capable of amounting to corroboration the lie told out of court must first of all be deliberate. Secondly it must relate to a material issue. Thirdly the motive for the lie must be a realisation of guilt and a fear of the truth. The jury should in appropriate cases be reminded that people sometimes lie, for example, in an attempt to bolster up a just cause, or out of shame or out of a wish to conceal disgraceful behaviour from their family. Fourthly the statement must be clearly shown to be a lie by evidence other than that of the accomplice who is to be corroborated, that is to say by admission or by evidence from an independent witness.

99 This four-fold test was cited with approval by the Court of Criminal Appeal in *PP v Yeo Choon Poh* [1994] 2 SLR 867. Since then it had been said that lies that meet with the test can be treated as corroborative evidence of guilt (see *Tan Hung Yeoh v PP* [1999] 3 SLR 93 at para 52) and as evidence of guilt (see *Heng Aik Peng v PP* [2002] 3 SLR 469).

100 However a distinction must always be drawn between lies in general and lies which come under the *Lucas* test. In *Heng Aik Peng Yong Pung How* CJ made the point (at para 27) that

The distinction between relying on an accused's lies as evidence of guilt and forming a view that his evidence is not creditworthy because of certain lies is an extremely important one. As pointed out by the court in *R v Lucas*, an accused person may lie for a variety of reasons not connected with guilt of the offences. As such, it is dangerous to convict an accused person based on the fact that he lied, unless the criteria in *Er Joo Nguang v PP* [2000] 2 SLR 645 are satisfied.

The criteria in *Er Joo Nguang v PP* are that enunciated in *Lucas*.

101 The position is therefore that *Lucas* lies may support a finding of guilt. Nevertheless a court must

take into account all the evidence before it, before deciding whether guilt is established.

102 The third accused offered explanations for the lies. The statement about not having been to the coffeeshop previously was a mistake. The lie about the second accused being with the haversack when they met was made because he was confused and surprised by the events and worried about his wife who was also arrested. He lied about not having telephone calls with the second accused on 27 March because he was in fear. His counsel attributed the lies to the fear of being implicated by association.

103 I found that the third accused told these lies because he was fearful that the truth about his visit to Sembawang Drive and his involvement with the second accused would incriminate him.

104 The truth was that he did not go to Sembawang Drive because Azman told him that morning about a stall that was available. I did not believe that he had been to the coffeeshop on 27 March at all. His car was seen going along Sembawang Drive towards the loading bay from the opposite direction of the coffeeshop. The drive along the long route to recce the area was not mentioned in his statements. When he arrived at the loading bay and parked his car he did not go to the coffeeshop as he said he had intended to do.

105 The second and third accused's claim that they met by chance was incapable of belief. If it was a chance meeting, the natural thing for them to do would be to exchange greetings then get on with what each had set out to do. For the third accused it was to go to check the coffeeshop as a business prospect. The second accused's assignment was to collect a bag from an unlocked car in a car park and to deliver it to someone coming in a taxi. He would not want any one not involved in the arrangements to witness his activities and to accompany him for the delivery. The telephone calls between them shortly before they met also suggested that there was an arrangement. The fact that the third accused waited while the haversack was collected was further indication that it was not a chance meeting, and there was more that they were to do.

106 The irresistible inference drawn from all the circumstances was that they had arranged to do what they did; to meet, to take possession of the haversack from the car and deliver it. These acts were done pursuant to their common intention.

107 Against this backdrop, I found the first accused had driven the car with the drugs to the car park with the knowledge and intention that they will be collected from the car, and the second and third accused had gone together to collect the drugs with the view of delivering them to another person. In the circumstances, they were guilty on the charges they faced, were convicted thereon, and the mandatory death sentence was imposed on them.

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