Anand Naidu a/l Raman v Public Prosecutor
[2000] SGCA 67

Case Number	: Criminal Appeal No 15 of 2000
Decision Date	: 30 November 2000
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; MPH Rubin J; L P Thean JA
Counsel Name(s)	: —
Parties	: —

Anand Naidu a/l Raman ...appellant

v

Public Prosecutor ...respondent

Citation: Criminal Appeal No 15 of 2000
Jurisdiction: Singapore
Date: 2000:11:30
2000:10:23
Court: Court of Appeal
Coram: L P Thean JA
Chao Hick Tin JA
M P H Rubin J
Counsel: R Palakrishnan with Daniel Koh *(Palakrishnan & Partners)* for the appellant
Jaswant Singh *(Deputy Public Prosecutor)* for the respondent

HEADNOTES:

Criminal Law

– Drug trafficking – Appeal against conviction – Whether conviction was safe and satisfactory – Misuse of Drugs Act (Cap. 185) s 5(1)(a)

Facts

It was undisputed that the appellant had given to one Tan Siew Lam ('TSL')a plastic bag containing 62.76 grams of morphine. This transaction was witnessed by officers of the Central Narcotics Bureau and both the appellant and TSL were arrested soon after the transaction took place. They were jointly tried in the High Court and were both convicted. TSL chose not to appeal. The appellant's story was that he was an innocent courier who had unwittingly delivered the drugs. He claimed that he was running an errand for a friend named Ah Seng (aka John) and did not know that he was delivering drugs.

According to the appellant, he had planned to meet John at the Ang Mo Kio MRT station in order to give him a ride back to Johore. However, upon arriving at the station, John told him that he had to wait for his girlfriend and thereafter he had to make a delivery to Bishan before he could return with the appellant to Johore. The appellant, being pressed for time, suggested that he make the delivery while John waited for his girlfriend. John agreed and gave him a plastic bag to give to TSL. The appellant claimed that he never suspected that the contents were drugs or anything illegal. Instead, he believed that he was delivering Chinese New Year goodies and decorations, the Chinese New Year being just a few days away. Upon meeting TSL, the appellant was given a red packet containing $168.00.

Upon his arrest and thereafter, the appellant told lies and never mentioned John or any other aspect of the story he relied on in court. In court, he confessed to his lies but said that he lied because he was afraid when he discovered he was being arrested for a drug related offence, which he knew was very serious. At the trial, TSL raised a token defence but testified for the appellant and told a story that appeared to corroborate the appellant's story.

The judge rejected the appellant's story and convicted him. He was sentenced to death as required by s 33 of the Misuse of Drugs Act and the second schedule to the Act. The appellant appealed against his conviction.

Held

, dismissing the appeal:

(1) Pursuant to s 18(1) of the Act, the appellant, being in possession of the plastic bag which contained the drugs, was presumed to have had the drugs in his possession and further, under s 18(2), was presumed to know the nature of those drugs. The burden was thus on the appellant to prove, on a balance of probabilities, that he did not know what the contents of the plastic bag were. It was for the appellant to satisfy the court that he was an innocent courier (see ¶ 23).

(2) The argument that the CNB had not conducted a sufficiently thorough investigation which would have revealed evidence to support the appellant's story was highly speculative. The investigations that must be carried out by the CNB must depend on the circumstances and in the circumstances of the case, the CNB could not be faulted for not making any further investigations into those areas argued for by the appellant's counsel (see ¶ 24).

(3) The crux of the matter was that the appellant had lied upon arrest and had persistently failed to reveal the story he alleged was true until the trial. If he was innocent and truly believed that he was delivering something innocuous like food and decorations, there would have been no need for him to lie when questioned upon arrest. On the contrary, he should have been forthcoming with the story about John. The reason for the lies – fear upon arrest – was an excuse that rang hollow particularly because he remained silent about this defence even after he was formally charged. Even the appellant recognised that had he told the arresting officers about John, in all probability John could have been arrested. If the appellant were truly innocent and fearful, he would not have hesitated to tell the arresting officers about John (see ¶ ¶ 25-27).

(4) It does not follow that a witness who has lied once ought to suffer the rejection of all his evidence. In such circumstances, the witness' evidence must be scrutinised with great care. It is not necessary to enter a discourse on the distinction between 'credibility lies' and 'probative lies'. Ultimately, what significance a court should place on a lie must depend on the circumstances and the issue in dispute. In this case, the appellant's lies upon arrest were told because of a realisation of guilt and this guilt stemmed from his knowledge of the contents of the plastic bag (see ¶ 29); *Zoneff v R* (2000) HCA 28 referred.

(5) There was a contradiction in the judge's grounds of decision concerning the

standard of proof expected of the appellant relating to his knowledge of the drugs. This question therefore followed: did this confusion result in a substantial miscarriage of justice as laid down in s 54(3) of the Supreme Court of Judicature Act (Cap. 322)? In *Ng Eng Eng Kooi v PP* [1970] 1 MLJ 267, the Federal Court of Malaysia held that where a trial judge misdirected himself as to the quantum of proof necessary to rebut a presumptive fact, but rejected the evidence of the defence witnesses *in toto*, the misdirection had no effect on the result which would still be the same if the trial judge had correctly directed himself. The judge's mistake would, in such a case, not result in a substantial miscarriage of justice. This was true of this case and, therefore, the contradiction occasioned no miscarriage of justice and the appeal would therefore be dismissed (see ¶ ¶ 31-35); *Ng Eng Eng Kooi v PP* [1970] 1 MLJ 267 followed.

Case(s) referred to

Ng Eng Eng Kooi v PP

[1970] 1 MLJ 267 (folld)

R v Lucas

[1981] QB 720 (refd)

Zoneff v R

(2000) HCA 28 (refd)

Legislation referred to

Misuse of Drugs Act (Cap. 185) ss 5(1)(a) and 33

Supreme Court of Judicature Act (Cap. 322) s 54(3)

JUDGMENT:

Grounds of Judgment

1. The appellant was convicted by the High Court of a capital charge of trafficking in 3 packets of morphine containing a net weight of 62.76 grams. He was sentenced to suffer the mandatory punishment of death. We heard his appeal and dismissed it. We now give our reasons.

2. We should add that jointly tried with the appellant before the High court was one Tan Siew Lam (TSL). The charge against TSL was in relation to having the same three packets of morphine in his possession for the purposes of trafficking. Neither TSL nor the appellant objected to the joint trial. TSL was similarly convicted and sentenced, but he chose not to appeal.

The facts

3. A great part of the evidence tendered before the court was undisputed. On 1 February 2000, at about 10.10pm a number of Central Narcotics Bureau (CNB) officers were on surveillance duties in the vicinity of Block 163, Bishan Street 13, #08-168 (the flat). TSL resided in the flat. A Malaysian registered vchicle JEQ 8706 was seen being driven into the car-park of the adjacent Block 164. The driver was later ascertained to be the appellant. He was then wearing a dark-coloured cap. He alighted from the vehicle and walked to the void deck of Block 164 where he made a call from a public telephone located there. Sgt Eddie Wee who walked past him heard him say over the phone "Come down. I am here." The number of that public phone was 3543208. The appellant then walked back to his vehicle and stood beside it. It was then about 10.15pm. The *Call Trace Report* of Singtel Mobile showed that a 10-second call was made to mobile phone No 96714234 from telephone 3543208 at 10.1219 pm.

4. At about the same time, TSL was seen coming out of the flat. He was talking on a handphone as he walked down the staircase to the ground floor. On reaching the ground, he then walked in the direction of Block 164, towards the appellant. TSL was not carrying anything. As TSL met up with the appellant, the latter took an orange-coloured plastic bag from the car and handed it over to TSL who then walked away with the plastic bag in the direction of Block 163 which was the same direction he came. This handing over of the orange plastic bag was seen by two CNB officers, S/Sgt Tan Yian Chye and Sgt Eddie Wee.

5. At Block 163, TSL took the lift up to the 8th floor and he was arrested as he emerged from the lift. The orange plastic bag held by TSL was seized; so were a bunch of keys and a handphone (bearing No. 96714234) held by Tan in his left hand. Upon being questioned by a CNB officer, Ronnie See, TSL said the orange-coloured plastic bag contained four packets of heroin and they belonged to him.

6. Much later when the orange plastic bag was opened by the Investigating Officer, Insp Tan Choon Hoe, three newspaper bundles were found therein and in each newspaper bundle was a plastic packet containing yellowish granular substance. The substance in the three packets was analysed to contain not less than 62.76 grams of morphine.

7. In the meantime, the appellant drove off from the car-park of Block 164 but soon stopped his vehicle at the car-park besides Block 162. It was then about 10.17pm. He alighted from his vehicle and walked towards a public telephone at the void deck of Block 167 where he made a call. There, he was arrested by CNB officers. The officers took the appellant back to his vehicle and seized a red packet, with $168/- in it, which was on the driver's seat. A black and red cap was found on him as well.

8. A while later, at the car-park, the appellant, on being asked by Sr Staff Sgt Ang Oon Tho, told the latter that he had no drugs in the car and that he was there to take an "ang pow" from an unknown male Chinese who called him on his handphone No. 92297274 at 9.00pm and that he had not handed anything to that person.

9. The evidence of TSL was that, through the arrangement of a friend Ah Sing (also known as John), he was to receive a plastic bag of goods from an Indian man. He admitted that the goods were heroin. He said he ordered four packages of the substance and did not know why he got only three. He admitted that mobile phone bearing No. 96714234 belonged to him. TSL did not really raise any defence; instead he admitted to the charge.

10. As for the appellant, his defence was that he did not know that the plastic bag he was delivering to Tan contained drugs. He thought it contained Chinese New Year goodies or decorations, as Chinese New Year was just four days away falling on 5 February 2000. He was merely doing a favour for John. He did not look inside the plastic bag to see what it contained. He trusted John.

11. The learned trial judge had no difficulty in convicting Tan of the charge he faced. His counsel did not even make any closing submission on his behalf. As regards the appellant, the trial judge rejected his defence that he did not know that the plastic bag contained drugs.

Events enumerated by the appellant

12. We shall now set out in some detail, the events as described by the appellant leading to his allegedly doing the favour for John and thereby unwittingly getting involved in drug trafficking. He told the court that he resided in Johore Bahru with his parents. He was a student doing computer studies with the computer school, Informatics, in Johore Bahru. On 1 February 2000, he was asked by his father to send his mother down to Singapore to withdraw some money from a POSB ATM machine at Woodlands. At around 6.00pm he received a call from John who was then in Singapore. John asked if the appellant could give him a lift from Singapore back to Johore Bahru. The appellant agreed to pick up John at the Ang Mo Kio (AMK) MRT Station.

13. That evening the appellant dropped his mother off at Woodlands at about 9.30pm and as she also wanted to buy some things in a nearby market he decided he could make use of the time to go to the AMK MRT station to pick up John. He told his mother that he would be back in half an hour. On seeing John at the station, the appellant was told by John that he had to wait for his girlfriend who would only be arriving in 30 to 45 minutes' time. John also told the appellant that he had to deliver something in a plastic bag to a friend at Bishan. In order to save time, as his mother would be waiting at Woodlands, the appellant volunteered to deliver the things for John to the friend at Bishan. He assumed that the things he was delivering were Chinese New Year goodies and decorations. John did not tell him what those things were. Neither did John give him a description of the person to whom the plastic bag was to be delivered. All John said was that the person was at Block 143 Bishan Street 13 and that John would call that person to come down to meet the appellant.

14. The appellant arrived at Block 163 at Bishan Street 13 but could not locate Tan so he made a phone call to John (on his handphone) from a public phone at the void deck of Block 164 telling him to ask Tan to come down from his flat to collect the stuff. According to him he told John "Look, ask your friend to come down, I'm here." Before he could also ask if John's girlfriend had arrived, the line was cut off. He tried calling John again but could not get through to John. Then remembering that John had given him a Singapore number which he had stored in his pager's memory, he called that number, which turned out to be TSL's handphone number. However, after his phone rang for a while, his call was directed to the voicemail box. He hung up after about 10 seconds of the recorded message, giving him all the available options, was played. He returned to his car and shortly thereafter a person (TSL) appeared before the appellant who asked the latter if he was John's friend. The appellant answered in the affirmative and handed the plastic bag to TSL. TSL told the court that he was instructed by John not to open the package to examine it. In exchange, TSL gave the appellant a red packet which the latter initially declined to receive, as he did not want to be paid for doing a favour for a friend. TSL's evidence confirmed that there was this reluctance. But TSL persuaded him to accept it for good luck and for Chinese New Year and the appellant took it.

15. Later upon discovering that the red packet contained $168/-, a far larger sum than he had expected, he was happy and called his girlfriend to discuss what they could do with that money. CNB officers arrested him as he was talking to his girlfriend. He asserted that he was purely an innocent carrier.

16. As regards the statements given by him upon his arrest, the appellant admitted that they were lies but explained that he was then frightened, having realised that he was implicated in a drug offence. At that moment he thought it better to dissociate himself from John, and to deny having given anything to TSL. This fear led him to lie.

Reasons for judge's rejection of his defence

17. We shall now examine the reasons the learned trial judge gave for rejecting the appellant's defence that he did not know what he was carrying and that he was only doing a favour for a friend. These were the considerations which led the trial judge to his conclusion:-

> (i) The trial judge found the appellant's behaviour strange. Why did he not tell John to find his own way back to Johore Bahru as his girlfriend would be delayed by perhaps up to 45 minutes? Instead, he volunteered to deliver the plastic bag

to Bishan for John when he knew that all these would mean that he would make his mother wait even longer and when he himself was unfamiliar with Bishan and did not even know the person to whom he was supposed to deliver the plastic bag to. Furthermore, why didn't he ask John to come along as the journey from AMK MRT station to Bishan would only take 10-15 minutes and the return trip would take no more than half an hour. Thus, there would be time for John to go to Bishan and come back before his girlfriend turned up.

(ii) The appellant said he did not check the plastic bag because he trusted John. Yet he did not know John's full name, his address, or his place of work. They had been acquainted for only some 2 to 3 months.

(iii) The trial judge accepted as plausible the prosecution's submission that there was a motive in TSL's evidence that he was told by John not to open and inspect the package on receiving it. The trial judge felt this assertion was really to help the appellant as by the very nature of such transactions, it would follow that the delivery would be hurried and surreptitious. There was hardly a need to remind TSL not to open the plastic bag to check the goods.

(iv) The trial judge found that the appellant did speak to TSL during the 10-second call made to TSL's handphone 96714234 when the appellant asked TSL to "come down". If it were true that 96714234 was a number given by John to the appellant as John's other number, why should John give to the appellant TSL's handphone number?

(v) TSL was then holding the handphone. He was expecting a call. There was no reason why he would not answer the call but allow it to go into the voicemail. The trial judge disbelieved the appellant that he had made 3 calls. He also disbelieved TSL's evidence that he received no calls from the appellant that evening.

(v) The trial judge felt that if indeed the events were as the appellant described in court, why didn't he so state when being questioned. He should have been outraged and would have told the officers he was framed by John. The trial judge was conscious that the fact that a witness lied on one or two points did not mean that his entire evidence must be rejected. But having carefully scrutinised the evidence he found the appellant not to be a truthful witness and that the account given by the appellant to be incredible. After referring to *R v Lucas* [1981] QB 720 at 724, he held that the lies told by the appellant related to a material issue in the case and were motivated by a realisation of guilt and fear of the truth. All these were consistent with the fact that he knew he was delivering a controlled drug to TSL.

18. The trial judge further found that the appellant's failure to enquire of John as to the nature of the contents of the bag he was asked to deliver or to make a personal examination himself when he could have easily done so, 'showed that he was wilfully shutting his eyes to the truth and was prepared to do anything including act illegally irregardless [sic] of the consequences'. The trial judge equated this wilful blindness to knowledge that the appellant knew the bag contained drugs.

19. In the premises, the trial judge concluded that the appellant had not rebutted the presumption of knowledge operated against him.

Argument of counsel

20. Counsel for the appellant went through at great lengths to show that it was likely that the appellant did make the three calls that evening. Relying on the *Call Trace Report* which showed that a call was received on handphone 96714234 at 10.01pm lasting 32 seconds from 96248258, counsel said that could be the call made by John to TSL. Furthermore, if John and TSL were part of a drug-ring, it was not impossible that a handphone used by John could be left with TSL. At the time of TSL's arrest he had three handphones (of which two were seized at the flat), including handphone No. 96714234. So when the appellant made the third call, i.e., to number 96714234, it was possible that the handphone could have been switched off or its battery was flat or John was talking to TSL and the call was diverted to voicemail.

21. Counsel also criticised the investigative agency for not carrying out a thorough investigation. Among the several complaints in this regard were:-

> (i) No *Call Trace Reports* were done on the other two handphones of TSL. Neither was any search carried out on all incoming pagings on the appellant's pager, or on the memory stored in the appellant's pager;
>
> (ii) there was no evidence to show how many calls were made from the public phone 3543208. The prosecution thus had not proved that only one call was made from the public phone 3543208;
>
> (iii) there was also no investigation into what John's handphone number was and no *Call Trace Reports* obtained for the same. If all these had been gone into, a reasonable doubt would have been raised.

22. Counsel's third contention related to the three lies the appellant was alleged to have told Sr Staff Sgt Ang Oon Tho:-

> (i) that he had received a call on his pager from TSL;
>
> (ii) that he had gone to take an 'ang-pow' from TSL;
>
> (iii) that he had not delivered anything to TSL.

Quite rightly, counsel centred his argument on the third lie. He contended that on being confronted by the CNB officers, the appellant had one of two choices, and here we would quote counsel:-

> "(i) tell the truth and complicate the whole picture by having to prove the existence of John and his connection to the whole fix the appellant now found himself in, perhaps even by then doubting John's entire story about having to wait for his girlfriend; or
>
> (ii) conceal the fact that the appellant had anything to do with the orange package, and hope that no one had seen him passing the package to (TSL)."

In the spur of the moment the appellant chose option (ii).

Our views

23. In our view, in making the submission in the manner the appellant's counsel did, one important aspect seemed to have been overlooked. There was clear evidence that the appellant delivered the orange plastic bag to TSL and in that plastic bag there were drugs. The appellant admitted at the trial that he delivered the plastic bag to TSL. Pursuant to s 18(1) of the Misuse of Drugs Act, the appellant, being in possession of the plastic bag which contained the drugs, was presumed to have had that drug in his possession and further, under s 18(2), was presumed to know the nature of those drugs. The burden was thus on the appellant to prove, on the balance of probabilities, that he did not know the contents in the plastic bag. It was for the appellant to satisfy the court that he was an innocent carrier.

24. Counsel's argument that the appellant did make the three phone calls, and his allegations that the investigative agency had failed to conduct full searches into calls made from public phone 3543208 and on the calls made to and from the other two handphones seized at the flat of TSL, etc, were highly speculative. Obviously what investigations should be carried out by the CNB must depend on the circumstances. It would be recalled that on being questioned by Sr/S/Sgt Ang Oon Tho, the appellant did not mention anything about John, or that he made any calls to anyone. He also denied handing anything over to any person. He only stated that someone whom he did not know, paged him at 9.00pm that evening and that he was to collect an "ang-pow" from a male Chinese. In these circumstances, we did not see how CNB could be faulted for not making any further investigations into those areas alleged by the appellant's counsel.

25. As we perceived it, the crux of the matter revolved round the statements the appellant made to Sr/S/Sgt Ang and his continued non-disclosure until the trial of the fact that he was doing a favour for John in carrying the plastic bag from Ang Mo Kio to Bishan. We had carefully considered the arguments of his counsel that he took a gamble, thinking that perhaps the CNB officers did not see him passing the package to TSL, and opted not to say anything about John and thus had to deny having passed any package to TSL. What troubled us extremely was why did he even have to take that gamble and this was what made his version given in court incredible. All the more so when he himself admitted that the CNB officers did ask him what did he pass to TSL. So there was no question of him thinking that the CNB officers did not see him pass the plastic bag to TSL. If he were an innocent carrier, as he claimed to be, then why did he not say that he was only delivering a package of Chinese New Year goodies to TSL on behalf of John?

26. The appellant knew clearly what the CNB officers were after. Sr/S/Sgt Ang Oon Tho's first question to him was "Is there any drugs inside your vehicle." The appellant was told upon arrest that he was involved in a drug activity. He said he was frightened. His explanation for the lies was, and here we quote him:-

> "when I was arrested, someone told me what did I give to the Chinese guy and then someone pulled me away into the car and when I was in the car, I thought there must be something wrong in the plastic bag and it had something to do with drugs because they were CNB officers. And I knew that if anyone is involved in drug activities in Singapore, he'd be (hanged) to death."

This excuse rang hollow particularly in the light of the fact that even after the appellant was formally charged, and statements taken from him, he still did not divulge anything about John or that he was set-up by John. He further added that because he was scared he stuck to his story. But he recognised that if he had at the time of his arrest divulged the role of John in all this, John could have been arrested. Here again his reason was:-

> "Because I'm the one who gave the plastic bag to the Chinese guy … and I was afraid of that. And I didn't want to get involved with John's activities or whatever they were."

27. If he were scared, and if he were innocent, then any person in his shoes would have narrated the facts of how he was made use of by John and not create a false story to shelter John.

28. Counsel for the appellant relied upon a recent case of the High Court of Australia in *Zoneff v R* (2000) HCA 28 where that court drew a distinction between 'credibility lies' and 'probative lies' to contend that the lies told by the appellant were only

'credibility lies'. The following passage of the Australian High Court was cited by his counsel:-

> Leaving aside irrelevant or inconsequential lies, a distinction has been drawn between so-called 'credibility lies' and 'probative lies'. The former are said to be those which, according to their content, affect the credibility of the accused's evidence and thus the weight which the jury may give to other testimony of the accused. In this sense, a conclusion that the accused has lied upon one matter, even peripheral to the offence charged, may make the jury scrutinise with more care (perhaps scepticism) other testimony given by the accused. It might, in this way, contribute indirectly to the rejection of the accused's version of critical events and the acceptance of that propounded by the prosecution.
>
> Probative lies, on the other hand, are those 'which naturally indicate guilt … a hard test to satisfy'. This is a 'hard test' precisely because it is rare that a lie about a particular matter will be so crucial as, of itself, if proved, to establish directly guilt beyond reasonable doubt of a criminal offence. It could happen if, for example, the lie related to an object indisputably linked to the offence. Take a handkerchief with bloodstains proved by DNA evidence to be that of the victim but falsely attributed by the accused to a nosebleed. It is testimony of this kind that has been explained as evidencing a 'consciousness of guilt'. It is said to be such a lie because the accused tells it knowing that telling the truth would necessarily, and without more, establish guilt of the offence charges.
>
> Recently, in *R v White* the Supreme Court of Canada expressed a view about 'consciousness of guilt evidence' with which I agree. It said that the 'label is somewhat misleading and its use should be discouraged'. In its place that Court has proposed what it describes as a more 'general description' using 'more neutral language' such as 'evidence of post-offence conduct'. At least two considerations support this change. First, it adopts an objective classification. It concentrates on the significance of such conduct (including lies). It postulates no necessary psychological well-springs ('mental traces') for lies. It merely measures any suggested lies against other evidence of the accused's involvement in the crime. Secondly, as the Canadian court points out, the words 'consciousness of guilt' suggest a conclusion about the conduct in question which tends to undermine the presumption of innocence. The expression may prejudice the accused in the eyes of the jury. This is the 'circularity' to which reference has earlier been made. It should be avoided in any direction about the use that may be made of a juror's belief that the accused has lied in or out of court. That is the law in Canada. It should be accepted as the law in Australia.

29. The learned trial judge in the present case was aware that it did not follow that just because a witness had told a lie that all his evidence must be rejected. Quite rightly, he said in such circumstances the witness' evidence must be scrutinised with great care. We do not wish to go into a discourse on the distinction between 'credibility lies' and 'probative lies'. We do not think it would be a profitable exercise. Ultimately what significance this court should place on a lie must depend on the circumstances and the issue in dispute. Here, the appellant was asked specifically at the time of his arrest what were the things he passed to TSL. If he had genuinely thought that the things were Chinese New Year goodies and decorations why did he deny passing anything over to TSL. This question went to the heart of the matter: his knowledge of the things he passed over. We had no doubt that the false answers were given because of a realization of guilt. We would reiterate that at no time until the trial did he disclose the existence of John and the favour he did for John. There was, however, a bare assertion by the appellant in the witness box, that at some point he did tell a CNB officer of the existence of John. But he could not identify who that officer was. In the circumstances, the trial judge was entitled, and was entirely correct, to have rejected his claim of ignorance. The version

that was placed before the court smacked clearly of an afterthought. In our judgment, the appellant knew what he was carrying and passing over to TSL.

30. We ought to mention that counsel for the appellant averred that the trial judge was wrong to have also found that the appellant was guilty of wilful blindness when he did not examine the package all the way to Bishan, before delivering it to TSL, when he had ample opportunity to do so. For the reasons above, it would be wholly unnecessary for us to go into this aspect of the matter.

Standard of proof

31. Finally, there was the question of the standard of proof which we must briefly touch on. In ¶17.9 of the Grounds of Decision the learned trial judge stated:-

> As the 2nd Accused had therefore not proven an absence of knowledge of that which he possessed beyond a reasonable doubt, the presumptions in the MDA against him became final and conclusive. He therefore knowingly had possession of the 62.76 grams of morphine and trafficked in it when he gave it to the 1st Accused thereby failing to prove the contrary on a balance of probabilities – namely that he did not traffic in the said drug. (Emphasis added).

32. It would be seen that there is a contradiction in this paragraph as to the standard of proof which the appellant must satisfy in relation to the proof required on his knowledge of the things in the plastic bag. Thus, the issue that arose was whether this confusion had resulted in a substantial miscarriage of justice as laid down in s 54(3) of the Supreme Court of Judicature Act (Cap 322).

33. In *Ng Eng Kooi v PP* [1970] 1 MLJ 267 the Federal Court of Malaysia held that where the trial judge misdirected himself as to the quantum of proof necessary to rebut a presumptive fact, but rejected the evidence of the defence witnesses *in toto*, the misdirection had no effect on the result which would still be the same if the trial judge had correctly directed himself. The judge's mistake would, in such a case, not result in a substantial miscarriage of justice.

34. In the present case, as shown above, the trial judge had clearly, for good reasons, rejected the appellant's claim that he did not know the nature of the things in the plastic bag that he was carrying. The trial judge found the appellant to be an untruthful witness. Therefore, notwithstanding this apparent confusion on the question of the required standard of proof, we had no hesitation in concluding that the finding of the trial judge should be upheld because it had not, as a result, occasioned any substantial miscarriage of justice.

35. In the premises, we dismissed the appeal.

L P Thean	Chao Hick Tin	M P H Rubin
Judge of Appeal	Judge of Appeal	Judge