Public Prosecutor v Mohamed Abdul Nasser bin Mahamood and Another [2001] SGHC 83

Case Number	: CC 15/2001
Decision Date	: 26 April 2001
Tribunal/Court	: High Court
Coram	: Choo Han Teck JC
Counsel Name(s)	: David Chew and Glenn Seah [Attorney-General's Chambers] for the prosection; S S Dhillon and Lim Swee Tee [Dhillon Dendroff & Partners] for the first accused; Amolat Singh [Amolat & Partners] and Kertar Singh [Kertar & Co] for the second accused
Parties	: Public Prosecutor — Mohamed Abdul Nasser bin Mahamood; Ashok Kumar Giri

JUDGMENT:

Grounds of Decision

The Prosecution Case

1. The first accused was charged with possession of five parcels of cannabis (with a weight of 2370.5g, nett) for the purposes of trafficking. The second accused was charged with trafficking in the same parcels of cannabis by giving them to the first accused. The circumstances of their arrest are as follows.

2. The first accused was arrested on 23 October 2000 at a slip road known as Lorong 25, near the Aljunied Mass Rapid Transport ("MRT") Station. A few minutes before that he had got into a silver coloured Renault car (with the licence plate bearing "SDD 1802 C") driven by the second accused at Aljunied Road. The second accused drove the car into the slip road and stopped just before the end of the road, facing the MRT station. The first accused got out of the car and retrieved a largish plastic bag from the rear passenger seat. He then walked towards the MRT station. He did not get far when officers from the Central Narcotics Bureau ("CNB") arrested him. The second accused was also arrested before he could turn his vehicle around. The arrests were made almost simultaneously. The first accused was arrested by S/SSgt Keith Ng Teck Chung and Cpl Fazuri bin Isnin. I find as a fact that the first accused fell to the ground in the course of the arrest and was hand-cuffed with his arms behind his back whilst on the ground. The circumstances as to how he fell, however, are not entirely clear but are not relevant in this case. The time of his arrest was recorded as 11.50am. The commanding officer in charge of the operation, ASP Alex Chin Chee Meng testified that he recorded an oral statement from the first accused at 11.55am at the scene of arrest. The prosecution sought to admit this statement which it considered to be a confession. Mr. Dhillon, counsel for the first accused challenged its admissibility on the ground that it was not made voluntarily. An inquiry was commenced into the voluntariness of the statement.

The Trial-Within-A-Trial Of The First Accused

3. S/SSgt Keith Ng gave an account of the arrest as follows. When he saw the first accused walking towards the MRT station with a plastic bag in hand he ran towards the first accused. According to S/SSgt Keith Ng, the first accused tried to move away when he saw the CNB sergeant running at him. S/SSgt Keith Ng grabbed the accuseds hand and identified himself as a CNB officer. The two lost their balance and fell to the ground with the first accused laying on S/SSgt Keith Ngs left arm. The officer grabbed the accused with his right arm and at that moment, Cpl. Fazuri appeared from his position and handcuffed the first accused. According to ASP Chin and Sgt. Azhari, it was about this point that they ran out of their car and saw the two accused being arrested. The first accused was brought to the pavement and was there questioned by ASP Chin with Sgt. Azhari acting as the interpreter. The officers testified that no threat, inducement or promise was made to induce the statement recorded from the first accused. The questions and answers were recorded one by one and the accused, Sgt. Azhari, and ASP Chin signed at the end ASP Chins pocket-book where the statement was recorded.

4. The first accused asserted that when he was brought to the ground in the course of the arrest, S/SSgt Keith Ng used his foot to press his (the first accuseds) face against the ground. He was made to identify the contents in the plastic bag. The first accused said he did not know what it was. S/SSgt Keith Ng released his foot so that the accused could look at the bag. He then asked the first accused again. The first accused again said he did not know. Then SSgt Keith Ng told the first accused, "Its ganja!". The record from ASP Chins notebook and the oral evidence show that the first accused was brought to the side of the road very shortly after his arrest and there, by the side of the road, questioned by ASP Chin. Defence counsel made various submissions, some of which were extravagant and need not be repeated. However, I accept the evidence of the first accused and find that it is reasonably possible that some physical force might have been used in the arrest, and the contents in the bag might have been suggested to him. These may have occurred from purely innocuous intention, but nonetheless, that might have affected the mind of this accused. It is unsafe to rely on the statements recorded without a moments respite for the accused to compose himself in those circumstances. I am, however, not laying any general principle that a suspect cannot be questioned immediately after arrest. Each case falls to be considered on its own facts. In this case, I am not satisfied that the oral statement of the first accused to ASP Chin was voluntarily made.

Trial-Within-A-Trial Of Second Accused

5. The prosecution then attempted to adduce evidence of an oral statement made by the second accused shortly after his arrest. Mr. Amolat, counsel for the second accused, objected on the ground that the statement was not made voluntarily. The case for the second accused in this aspect was that he was made to lie prone on the hot noon-day ground for about 30 to 40 minutes without water. He was moved to the comfort of shade only after he had given his statement to ASP Chin. He testified that he had repeatedly asked for water but it was refused him. He wanted the water not only to quench his thirst but also to wash sweat from his face. The sweat had trickled into his eyes causing him pain. He also testified that the officer who first made contact at the time of his arrest, Cpl Sadali, had brandished a gun in his face and the thought of the gun was in his mind even when he was giving his statement. This was disputed by Cpl Sadali. In any event, the second accused conceded that he was not put in fear of the gun. The second accused also testified that he had given his answers to ASP Chin the way he did in order to be consistent with what the first accused had said moments earlier. He said that he could see and hear the recording of the statement of the first accused. Although he said that he gave answers which were intended to be consistent with what the first accused had told ASP Chin, it was not really the case. For instance, he said that he told ASP Chin that if the first accused had said that the parcels contained ganja, then it must be ganja. But a few questions later, he claimed to have answered ASP Chin by telling him that he was delivering "jamu", an Indonesian herbal medicine, to the first accused. It was also not explained why he intended his answers to be consistent with that of the first accused. The overall impression I had of his testimony is that even if it was true that he was made to lie on the ground for 40 minutes, he was none the worse for it. He made no impression on me that his will was so sapped by the event that he was compelled to say what he did. On the contrary, it seems to me that he had his wits about him all the while. He was, on his own testimony, fully attentive to the interview between ASP Chin and the first accused. I was satisfied that his statement was freely made, and so admitted it in evidence.

Other Evidence In The Main Trial

6. In the course of cross-examination of some of the CNB officers who led raids to premises occupied by the two accused persons, Mr. Dhillon asked if any drugs or drug related evidence were found in the premises occupied by or in the control of the second accused. Mr. Amolat objected to this question on the ground that it was irrelevant, prejudicial, and ought to be excluded under the evidentiary principles relating to similar fact evidence. With respect, I do not think that this ought to be considered a similar fact issue. The prosecution is not seeking to prove the guilt of the second accused by showing that he had the propensity to commit the offence charged because he had committed similar offences previously. In this case, from the thrust of the cross-examination of the prosecution witnesses it is obvious that the two accused persons are not denying the incontrovertible fact that they were arrested moments after the first accused had alighted from the car driven by the second accused, with a plastic bag containing the cannabis in question. It had appeared quite obviously at that point that their defence

would be the lack of knowledge of the content of the parcels in the plastic bag, and a denial of the ownership of the said parcels. Thus, knowledge and intention may be the key factors in the defence of both accused persons. In such a case, each accused was entitled to persuade the court that he was innocent because the other was the guilty one. There were other permutations, of course, namely that both might be equally innocent or equally guilty carriers. But to enable one party to raise a doubt in the case against him he might be required to adduce prejudicial evidence against the other. In *R v Miller* [1952] 2 All ER 667, 669 Devlin J held that defence counsel is always entitled to "adduce any evidence which is relevant to his own case and assist his client, whether or not it prejudices anyone else". This authority has been received with approval and adopted in our High Court in *PP v Teo Eng Chan* [1987] SLR 475, 480 and I, for my part, am also in agreement with it, subject, of course, to the proper weight to be given to such answer as the witness may give. I therefore allowed the question. It then transpired that the second accused was in occupation or control of a private flat known as 25-D Shelford Road and it was there that the CNB officers recovered three small packets of substance which the officers said contained cannabis. The reports of the scientific officer from the Department of Scientific Services were read and admitted in evidence confirming that the substances seized at 25-D Shelford Road were cannabis (and cannabis mixture). Nothing incriminating was found in the premises of the first accused.

7. The prosecution admitted, without objection, the cautioned statement of the first accused in which he stated: "I do not know what to say. I appeal to the judge. This is my first offence. I have financial difficulties and desperate for money. I have to support five children." The accused explained these remarks when he gave his defence which I shall revert shortly.

8. A sum of $950 was recovered from the side pocket of the drivers door of the car SDD 1802 C. Another sum amounting to $6,740 was recovered from the pocket behind the drivers seat. Finally, a sum of $317.85 was recovered from the wallet of the second accused.

9. Neither counsel for the accused persons made a submission of no case to answer at the close of the prosecution case. On the evidence, I was satisfied that the prosecution had made out a case which required rebuttal from both accused and thus called upon their defence. They elected to give evidence on oath.

Defence of First Accused

10. The first accused is 37 years old and is married with five children, the eldest of whom is 11 years old and the youngest is three. He was unemployed for some months prior to his arrest; before that he helped his brother in his textile store until they had a misunderstanding after which he left the store. His wife is a housewife. He was introduced to the second accused by a mutual friend when they met by chance in a coffee-shop about three months before his arrest. He met the second accused on only three occasions including the introductory meeting, and the meeting on the day of their arrest. The second accused telephoned him on the morning of 23 October 2000 and asked what his plans were. He told the second accused that he was planning to go to the market. The second accused told him that he would give him a ride and asked him to meet him by the Aljunied MRT station. Shortly thereafter, the second accused came by in his car and picked up the first accused. They drove from the bus-stop at the front of the MRT station to Lorong 25 nearby. There the second accused asked the first accused to take the plastic bag which was placed in the rear passenger seat of the car, and hand it to a man in army fatigues waiting at the MRT station. The second accused said that he would park the car and follow after him. The first accused took the plastic bag which he said was folded downwards so that he could not, and did not, see the contents; he and the second accused were arrested moments after he had taken the bag out of the car.

11. The first accused then explained the statement he made under s122(6) of the Criminal Procedure Code. He said that he was sleepy and his foot was hurting (it was 2 oclock in the morning after his arrest and he had not much rest since his arrest at 11.50am the previous morning). He had injured his ankle in the course of arrest but neither he nor his counsel made an issue of this. He said that the investigating officer told him that the penalty for the offence was death by hanging. He was then asked if he had anything to say. He was shocked and said that he had nothing to say. He was told that he could make an appeal to the court and so he said that he would appeal to the judge. He said that this was his first charge but the interpreter had translated his word into "offence". I am of the view that nothing turned on the difference. In an attempt to establish that this accused (who

could not even pass his primary one tests in school) is a simple-minded man and was unable to comprehend the otherwise uncomplicated routine of the recording of a cautioned statement, Mr. Dhillon, his counsel, gilded the lily by asking if that was the first time he had given a cautioned statement. The first accused replied that it was. It transpired from cross-examination by Mr. David Chew the DPP that the first accused had been charged and convicted of theft and fined $2,000 in 1985. Mr. Chew thus challenged the first accuseds veracity on this account. Counsel will learn to appreciate that a gilded lily often wilts from the weight of its adornment. However, in this case I accept the first accuseds explanation that he had no recollection of a statement being recorded from him in 1985.

Defence Of Second Accused

12. The second accused, aged 46, worked as the maintenance manager for Mr. Loo Choon Beng in his condominium at 25 Shelford Road (known as "Bengs Lodge") as well as the "Windsor Nursing Home" from which he derived his pay. He was given a room at a unit in 25 Shelford Road (No.25-D) which he shared with the gardener. This room was pad-locked and it seems, only the two of them had access. Mr. Loo gave the second accused permission to use the rest of the unit as he pleased but short of renting it out for residential purposes. The second accused took this to mean that he could, and he did, let out a room to a contractor as a store. None of the other rooms were locked.

13. The second accused testified that his friend Sidek brought the first accused to Shelford Road sometime last year with the view of renting some space to store "jamu". He quoted a fee to the first accused, but no agreement was concluded and the matter was left at that. He met the first accused only twice more after that, including the meeting of the morning of the arrest, Monday, 23 October 2000. He testified that on Saturday evening, 21 October, he was somewhere in the east coast attending a farewell party for the gardener. He received a telephone call from an unlisted number. It was the first accused, who told him that he was calling from a public telephone at Shelford Road, and he told the first accused in reply that he was at a party.

14. On the morning of 23 October, the first accused telephoned the second accused (both were speaking over their mobile telephones) and said that he was going to Shelford Road. The second accused told him that he was going to his mothers home (at Balam Road) to take her for her medical check-up. The first accused then said that he would call again later. About six or seven minutes later, he called and told the second accused that he had left a "red bag" (it transpired that it was a black bag with red trimmings) in his storeroom and asked if the second accused could bring it to him. A few minutes later, he called again and asked the second accused to meet him at the bus-stop at the Aljunied MRT station. He told the second accused that he would pay him $50 for his trouble, and, according to the second accused, he did pay. The first accused also told the second accused that the things he left behind were in a red bag but as the bag had holes he did not want it any more and asked that the second accused transfer the contents into two plastic bags. The second accused then placed the contents into a plastic bag which he then put into a second plastic bag so that he needed to carry only one bag for convenience. The contents were in five parcels but they were well wrapped in masking tape and the actual content within could not be seen; but the second accused said that as he was packing the parcels he detected a "funny" odour from them. He did not know what it was, but "could be herbs could be anything". The second accused placed the plastic bag on the front passenger seat and drove off to meet the first accused.

15. The second accused drove to the appointed place and eventually found the first accused. The latter opened the front passenger door and got into the car, somewhat to the surprise of the second accused who expected him to just take the bag and leave. The first accused then took the plastic bag and placed it at the rear passenger seat behind the driver. He directed the second accused to drive the short distance from the bus-stop to the slip road, Lorong 25. There the first accused alighted and the second accused proceeded to turn his car round to leave when the two were arrested.

16. The second accused proceeded to elaborate on the answers he had given to the questions put to him by ASP Chin at the scene of arrest. He emphasized that he was held down by force on the hot tarred road and he was hot, sweating, and thirsty. He repeatedly asked for shade and water but was refused. The impression he conveyed was that he was oppressed by the heat and discomfort of his position. Thus, in those circumstances, he only wanted to get over the interview as quickly as possible. He also said that he knew that a statement was bound to be recorded from him at the police station subsequently, and he would

give his statement properly then. He did not expect ASP Chin to use those answers in court. He explained that he had used the word "drugs" only because he heard the first accused say so and so his answer to ASP Chin was in fact "I heard him say drugs so it must be drugs". Similarly, he also used the word "ganja" because he heard the first accused use that word. He said that he did not say that he earned $500 for delivering the ganja. He said that his answer was $50. He explained that it was paid by the first accused for delivering the plastic bag to him. In respect of the last two questions in which he said that it was his last piece of ganja, he said that he did not remember the questions nor the answers as he was hoping to finish his answers fast so that he could be placed in the shade and given water as promised.

17. The DPP referred him to his cautioned statement in which he only said, "Yes, I did give him". He explained that he was extremely tired because he had no rest since his arrest and when the cautioned statement was taken at 3am the following morning he was exhausted. He said that earlier on the CNB officers had unpacked the drugs and showed them to him. So when he said that he gave it to him he meant that those were the things he gave to the first accused.

18. Evidence was led to show that three small packets of cannabis were recovered from two separate rooms in 25-D Shelford Road. The second accused admitted that these belong to him and that he smoked ganja sometimes. There was some objection initially by Mr. Amolat Singh when Mr. Dhillon sought to adduce this evidence from the CNB officers who searched the homes of the accused persons. I overruled the objection. The evidence was not only potentially helpful to the first accused, but is also relevant to challenge the second accused persons defence that he had no knowledge that the parcels he was delivering contained cannabis.

19. The second accused testified that the $950 in the front side pocket of the car belonged to him but the $6,740 belonged to his sister-in-law from who he borrowed the car. His sister-in-law, Sharmila Devi gave evidence on this account. She is a leading flight stewardess earning $1,300 to $1,500 a month. Her husband is a taxi-driver but there was no evidence as to what his income was. Miss Sharmila testified that the Renault car was purchased by her husband and herself but was available to their family members who required its use from time to time. She loaned the car to the second accused on the Saturday (21 October) before his arrest. She had intended to change some Singapore currency to Malaysian ringgit that morning (21 October) but was advised by the money-changer, whom she regularly use, to change the money in Malaysia as the rates are more favourable there. When she was back in the car, seated at the rear, her two-year old daughter started playing with the money and she therefore tucked them inside the back pocket of the drivers seat. This was the sum of $6,740. She said that it came from her savings and salary and was intended to be used as part of the deposit for a flat at Sunshine Bay Resort, at Port Dickson. She adduced evidence of a deposit made for the flat a couple of months later. That evidence of the deposit payment was not seriously challenged. Miss Sharmila said that she and her husband (who is the brother of the second accused) handed the car to the second accused after lunch, and she had completely forgotten that she had left the money in the car. She went to work, on a short turn-around flight that night, and did not realise that the money was still in the car until she heard that the second accused had been arrested. Thereafter, her husband contacted the CNB to claim the money.

Findings

20. The two accused put up a classic "cut-throat" defence. Each claiming no knowledge of the contents in the plastic bag ("P28") because they belong to the other. On the undisputed evidence, there are only three reasonable possibilities, namely, only the first accused is guilty, or secondly, only the second accused is guilty, or thirdly, both accused are guilty. The physical element of the offence was not in issue. Both accused were in possession of the cannabis at some point on the day of their arrest. In the case of the first accused, he was charged with possession for the purposes of trafficking. In his case, the statutory presumption applied and he is deemed to have knowledge of the contents in the plastic bag. He had to rebut this presumption on a balance of probabilities. The second accused was charged with trafficking in that he delivered the cannabis in the plastic bag to the first accused. Similarly, he had to rebut the prosecution case by persuading the court that he did not know and could not reasonably have known that the bag he delivered contain cannabis. It will be more appropriate to consider the case of the second accused before that of the first accused.

21. The evidence against the second accused is compelling. He packed the five parcels of cannabis into the plastic bag and brought them in his car to the Aljunied MRT station. His answers to ASP Chin shortly after his arrest at Lor. 25 expressly admitted knowledge that the bag contained cannabis. His cautioned statement gave no indication of his defence which was that he had no knowledge of the contents, or that the contents belonged to the first accused. Instead, it was an admission of the fact of his giving the bag (and cannabis) to the first accused. A large sum of money was found in the car driven by the second accused at the time of his arrest. Cannabis was found in his place of abode; and he freely admitted that those belonged to him and that he smoked cannabis from time to time. His testimony must, therefore, be considered against this background.

22. The evidence of the second accused is unsatisfactory in certain aspects. First, there was no cogent reason why the first accused could not have kept the "red" bag (containing the five parcels of cannabis) in his own home. The bag was not at all a large one and could easily have been kept almost anywhere in a flat. No evidence or suggestion was put forward as to why he could not have done so. Secondly, no reason was given or suggested as to why the first accused would go unannounced to the residence of the second accused, a person he had only met twice before, and leave a consignment of cannabis there, unguarded, without telling him. The incontrovertible evidence was that the "red" bag was kept in an unlocked store-room at the second accuseds flat at 25-D Shelford Road. If the cannabis belonged to the first accused, would he have done that? I think it most unlikely. Furthermore, no reason was offered as to why he would leave the bag there for just the night and Sunday and have the second accused deliver them to him for a delivery fee of $50. I am of the view that the testimony of the second accused that the first accused instructed him to transfer the cannabis from the "red" bag to two plastic bags was an embellishment. The second accused said that the first accused told him that he no longer required the "red" bag because it was full of holes. When examined in court, the bag was rather new and no holes were found on it.

23. The second accused was an articulate witness who spoke well and fluently in English. I take into account that he was under some stress on the day of his arrest, and that he was led from one place to another in the course of assisting the CNB in their investigations such that by 3am the following morning when his cautioned statement was recorded he was probably exhausted. In these circumstances, how ought his cautioned statement be evaluated? There is no doubt that the statement was properly recorded by the investigating officer ASP Fan Tuck Chee. All the second accused said was, "Yes, I did give him." I do not think that, given his character and disposition, the second accused could not, even in those circumstances, have at least said, "Those drugs did not belong to me" or words to that effect. His cautioned statement must also be considered against his earlier answers to ASP Chin. They culminate in the strong inference that the second accused knew precisely what were in the five parcels. The cautioned statement of the second accused was of no assistance to him even if no adverse inference was drawn from it.

24. I now turn to the money found in the car. I find Miss Sharmila to be a forthright witness and since her testimony was hardly dented under cross-examination, I am prepared to accept that the $6,740 in the back pouch of the drivers seat may well belong to her and her husband. The sum of $950 in the side pocket of the drivers door was expressly admitted to belong to the second accused, but what can be made of this? He said that it was money he collected from gardening jobs he had performed for residents in the Shelford Road area. That does not explain why he kept them in the side pocket of a borrowed car. He had a not insignificant sum of about $300 in his wallet. I therefore conclude that the presence of the $950 was highly suspicious although it would be speculative as to how he actually came by it. But a high degree of suspicion is a fair way of placing this piece of evidence; and it will thus be added to the stock of evidence to be weighed in the final analysis.

25. Taking all the evidence into account, including the manner in which the second accused gave his testimony, I am satisfied that the prosecution had proved its case beyond reasonable doubt against the second accused, and nothing he or his witnesses have said had created any doubt in my mind that he did not know that the plastic bag he brought to the first accused contained cannabis.

26. I turn now to the case against the first accused. It must be noted that this accused had physical possession of the drugs for only the briefest of moment. He had taken only five steps or so before he was arrested. In the circumstances, I must accept that he had hardly time to inspect or ponder over what lay in the five parcels. Although the prosecution disputed his claim that the bag was folded and he did not look in, I am of the view that that made little difference because the parcels were completely wrapped in masking tape. Even if he did see them, the prosecution did not go so far as to suggest that he had touched or felt the parcels. He had no previous contact with the parcels. A person can, of course, be a drug trafficker even if he had held the drugs

for a fleeting moment as he pass the drugs from one person to another so long as he did so with the knowledge that he was passing drugs. So, while the length of time he was in actual physical possession of the drugs is relevant, the focus must be on whether there is sufficient evidence to rebut the presumption of knowledge.

27. The prosecutions case against the first accused was based substantially on the statutory presumption and the perceived weakness of his testimony, backed by some circumstantial evidence, and, in some ways, by the evidence of the second accused. The prosecution did not, of course, accept the whole of the evidence of the second accused otherwise that may lead to the conviction of the first accused but the acquittal of the second. It is well established that the law entitles the court to accept the evidence, or part of it, of a accused into account against the co-accused. But that evidence must naturally be considered purposefully, and the more that one has to pick and choose, the greater the care must be. For my part, I find that the evidence of the second accused to be unreliable. In my judgment, the second accused was tailoring his story to exculpate himself and to do so he was compelled to condemn the first accused.

28. The essence of the first accuseds defence was that he was asked by the second accused to hand over the plastic bag to a man in army fatigues who was waiting at the Aljunied MRT station. There was evidence from the prosecution that there was such a person at that time, and a vain attempt was made to capture that man, but he escaped. There was no evidence that the first accused was being paid to hand over the drugs. So, it could be that the reason is that the first accused had bought the drugs from the second accused and was on the way to selling them to the man in the army fatigues. This might also explain why $950 was found in the side pocket of the car, and why the evidence seemed to show that the second accused was turning his car around as if to leave. That evidence was contrary to the first accuseds evidence that the second accused told him that he was going to park the car and go with him for the delivery. Mr. Dhillon suggested, however, not implausibly, that if the second accused was indeed the real culprit, he would have wanted to park his car facing the main road for an expedient getaway should the need arise. All these were clearly relevant considerations.

29. In support of his defence, the second accused adduced evidence from the telephone authority to show that on 23 October 2000 the first accused telephoned the second accused first and not the other way round as the first accused had maintained. He said that the second accused telephoned him and asked where he was going. On learning that the first accused wanted to go to the Geylang Serai market, the second accused offered to give him a ride there. The record shows that on 19 October (Thursday) the first accused made two very short calls (lasting less than 45 seconds each) to the second accused who returned an equally short call in between. These calls occurred between 3.19pm and 3.56pm. On Friday 20 Oct, the first accused made one very short call to the second accused who, in turn, made three very short calls to him. On 23 October the first accused made three very short calls to the second accused between 10.15am and 11.05am. The second accused made three calls in return between 11.31am and 11.35am. All these calls were less than 45 seconds each. No relevant evidence was led as to what the conversations were about in respect of the calls on 19 and 20 October other than "just to say hello". In respect of the calls on 23 October, the second accused said that the first accused called to tell him that he had left a bag in a store-room at 25-D Shelford Road. He asked the second accused to send it to him at the Aljunied MRT station and that he would be paid $50 for his troubles. The first accuseds version was that it was the second accused who called and offered him a ride to Geylang upon learning that he was going there. I have already stated that I find the testimony of the second accused to be unreliable. The question that I must now turn to is what I ought to make of the testimony of the first accused as well as the evidence against him.

30. In the absence of direct evidence, all that can be said of the evidence concerning the first accused, in particular the telephone calls, is that there is sufficient evidence to conclude that the conduct of the first accused is suspicious. It would be going too far, however, to conclude that the telephone calls he made were indicative that he had knowledge that the second accused was selling or passing cannabis to him. He is obliged in law to prove on a balance of probabilities that he did not know he was handling cannabis at the time of his arrest. In order to come to a finding whether this burden had been discharged, I am obliged to act on evidence which I can rely as being safe; and remind myself to resist the temptation of converting suspicion into proof. So, having put the case against the first accused as highly as I can on the evidence, I weigh them against the testimony of the first accused himself. He was clearly not as articulate or alert as the second accused. If he had a devious or sophisticated mind it was not apparent from his evidence or the manner in which he gave it. I am prepared to attribute the inaccuracies in his evidence to forgetfulness and simplicity of mind. I had also taken into account that he had no previous connections with drug-taking or drug-trafficking; nor were there any drugs or drug related paraphernalia in his possession

anywhere; and that his s.121 CPC statement (admitted in evidence by the defence) which appeared to have been comprehensively and fairly recorded by ASP Fun, about a week after the arrest, bears out what he had said in court. I am satisfied that that on the balance of probabilities, the first accused did not know that he was carrying cannabis at the time of his arrest.

31. Accordingly, for the reasons above, I find that the first accused had rebutted the presumption against him and he is therefore discharged and acquitted. For the reasons above, I have not been satisfied that the second accused had raised any reasonable doubt in the case against him and consequently, I find him guilty as charged, and sentence him to suffer death.

Choo Han Teck

Judicial Commissioner