

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 268

Criminal Case No 37 of 2019

Between

Public Prosecutor

And

- (1) Mohamed Ansari bin
Mohamed Abdul Aziz
- (2) Murugesan a/l Arumugamz

JUDGMENT

[Criminal Procedure and Sentencing] — [Voir dire] — [Procedure]

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Public Prosecutor
v
Mohamed Ansari bin Mohamed Abdul Aziz and another

[2019] SGHC 268

High Court — Criminal Case No 37 of 2019
Chan Seng Onn J
27–29 August 2019, 14 November 2019

14 November 2019

Judgment reserved.

Chan Seng Onn J:

Introduction

1 This judgment concerns the voluntariness of six statements that were the subject of a *voir dire* held within a joint trial involving the two accused persons – Mohamed Ansari bin Mohamed Abdul Aziz (“Ansari”), a 46-year old Singaporean, and Murugesan a/l Arumugam (“Murugesan”), a 31-year old Malaysian.

2 Ansari faces a total of nine charges and claims trial to one proceeded charge under s 5(1)(a) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) (“MDA”), punishable under s 33(1) read with the Second Schedule of the MDA, pertaining to the possession of not less than 39.68g of diamorphine (“the Drugs”) for the purpose of trafficking (“Ansari’s Charge”). The remaining charges have been stood down by the prosecution. Murugesan also faces one

proceeded charge under s 5(1)(a) of the MDA, punishable under s 33(1) read with the Second Schedule of the MDA, pertaining to trafficking the Drugs by delivering the Drugs to Ansari.

3 In the present *voir dire*, Ansari challenges the admissibility of two contemporaneous statements, one cautioned statement and three long statements (collectively referred to as “the Statements”). Ansari’s case is that the Statements were not made voluntarily, and he had been induced by two Central Narcotics Bureau (“CNB”) officers, Staff Sergeant Muhammad Helmi bin Abdul Jalal (“SSGT Helmi”) and Station Inspector Fathli bin Mohd Yusof (“SI Fathli”), to make the Statements, in the hope that Bella Fadila (“Bella”), who was Ansari’s then-girlfriend, would be “let off”.¹

Voluntariness of the Statements

The Statements

4 In relation to Ansari’s Charge, SSGT Helmi recorded two contemporaneous statements from Ansari, referred to collectively as the “Contemporaneous Statements”:

- (a) the first contemporaneous statement recorded on 24 March 2016 at about 1.20pm under s 22 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (“CPC”) in a CNB operational vehicle²; and

¹ Ansari’s Submissions for Ancillary Hearing at para 5.

² Transcript 28 August 2019 at p 3.

(b) the second contemporaneous statement recorded on 24 March 2016 at about 3.32pm under s 22 of the CPC in the bedroom of the VIBES apartment that Ansari and Bella were residing in.

5 In relation to Ansari's Charge, SI Fathli recorded one cautioned statement and three long statements, collectively referred to as the "Non-Contemporaneous Statements":

(a) the cautioned statement recorded on 25 March 2016 at about 3.08am under s 23 of the CPC ("25 March 2016 Statement");

(b) the statement recorded on 30 March 2016 at about 2.59pm under s 22 of the CPC ("30 March 2016 Statement");

(c) the statement recorded on 31 March 2016 at about 10.36am under s 22 of the CPC ("31 March 2016 Statement"); and

(d) the statement recorded on 4 April 2016 at about 2.40pm under s 22 of the CPC ("4 April 2016 Statement").

Ansari's case

6 In relation to the Contemporaneous Statements, Ansari alleges that on 24 March 2016 in the CNB vehicle, before the Contemporaneous Statements were recorded, Ansari had begged SSGT Helmi to "***let [Bella] go because she's not involved in the case***".³ Ansari alleges that SSGT Helmi had responded, "***it depends on what you say***"⁴ ("SSGT Helmi's Inducement"). SSGT Helmi's Inducement thus induced Ansari to make the Contemporaneous Statements.

³ Transcript 28 August 2019 at pp 58–59.

⁴ Transcript 28 August 2019 at p 59.

7 In relation to the Non-Contemporaneous Statements, Ansari alleges that on 25 March 2016 at about 3.00am, before the 25 March 2016 Statement was recorded, he was brought to Interview Room 3 of Police Cantonment Complex Lock-up, and was alone with SI Fathli in the room for a short while.⁵ Ansari testified that he had begged SI Fathli “*to let Bella go, Bella my girlfriend, because she’s not involved in this*”.⁶ SI Fathli had allegedly replied, “*[s]o far you have been [cooperative]. So if you continue cooperating, we will let Bella go*”⁷ (“SI Fathli’s Inducement”). SI Fathli’s Inducement thus induced Ansari to make the Non-Contemporaneous Statements.

The Arrest

8 On 24 March 2016 at about 12.20pm, Ansari entered the HDB carpark at Block 106 Lengkong Tiga in a car bearing licence plate number “SGF 6111J” (“the Car”). The Car was driven by Jufri bin Mohd Alif (“Jufri”). Bella was also in the Car. Murugesan was riding a motorcycle bearing license plate number “JQR5667” (“the Motorcycle”). As the Car and the Motorcycle moved towards the exit of the HDB carpark, CNB officers moved in and effected arrest on Ansari, Murugesan, Bella and Jufri.

The law on voluntariness of statements

9 The burden is on the prosecution to prove beyond reasonable doubt that the statement had been made voluntarily, and not on the defence to prove on a balance of probabilities that the confession was not made voluntarily: *Koh Aik Siew v PP* [1993] 1 SLR(R) 885 at [23], *Chai Chien Wei Kelvin v PP* [1998] 3

⁵ Transcript 28 August 2019 at p 62.

⁶ Transcript 28 August 2019 at p 63.

⁷ Transcript 28 August 2019 at p 63.

SLR(R) 619 (“*Chai Chien Wei Kelvin*”) at [53]. It is only necessary for the prosecution to remove a reasonable doubt of the existence of threat, inducement or promise held out to the accused and not every lurking shadow of influence or remnants of fear: *Panya Martmontree v PP* [1995] 2 SLR(R) 806 [28] and *Chai Chien Wei Kelvin* at [53].

Incriminating Bella in the 31 March 2016 and 4 April 2016 Statements

10 I first deal with the evidence that the prosecution had sought to adduce in the *voir dire* when they cross-examined Ansari on his answers given in the 31 March 2016 Statement and the 4 April 2016 Statement that had incriminated Bella in relation to drug-related offences. Essentially, the prosecution sought to rely on the contents (*ie*, specific questions and answers) of the 31 March 2016 Statement and the 4 April 2016 Statement to contradict Ansari’s case and to show that the alleged inducements, even if offered, were not operative in inducing Ansari to make these statements.

11 Although the court was not provided with and therefore did not have sight of the 31 March 2016 Statement and the 4 April 2016 Statement during the *voir dire*, the prosecution referred to and cross-examined Ansari on both statements, and Ansari admitted to inculcating Bella in both statements in relation to Bella’s involvement with the drugs found in an apartment and Bella’s knowledge of Ansari’s involvement in drug-related activities.⁸

12 Mr Tiwary, Ansari’s legal counsel, objected to the prosecution’s line of questioning, submitting that the statement of the accused cannot be looked into at all during a *voir dire*, even for the purpose of determining the voluntariness

⁸ Transcript 28 August 2019 at pp 70, 72–73.

of the statement itself. Mr Tiwary submits that allowing otherwise would be dangerous and unsafe due to the porosity of s 279(5) of the CPC, which states:

(5) If any evidence has been given in any ancillary hearing relating to the statement or the other evidence which has been objected to by any party to the proceedings, any such evidence which is relevant for the purposes of the main trial *shall be admissible without the need to recall any of the witnesses* to give evidence.

[emphasis added]

Mr Tiwary expresses concern that the porosity of s 279(5) of the CPC would allow for the potential flow of evidence from the ancillary hearing to the main trial even before the defence is called, which “puts the cart before the horse”. Looking into the statement of the accused during a *voir dire* could now compel the accused to give evidence in the ancillary hearing that could flow out into the main trial through s 279(5) of the CPC, even though the accused should be entitled to remain silent about such evidence at the main trial before the defence is called.⁹

Can the court look at the contents of a statement in an ancillary hearing to determine its admissibility?

13 As such, I will now address the anterior legal question as to whether the court at the ancillary hearing can have sight of the contents of a statement that is the subject of the *voir dire* in order to determine the ancillary issue of the voluntariness and hence admissibility of the statement.

14 From the outset, s 279(2) of the CPC provides that: “[i]n an ancillary hearing, any evidence adduced shall be *limited only to the ancillary issue* [emphasis added].” This means that the contents of the statement that are

⁹ Transcript 29 August 2019 at p 65.

irrelevant to the question of voluntariness shall not be looked at in the ancillary hearing. Therefore, no porosity issue arises for the contents of the statement that are irrelevant to the admissibility of the statement, since the contents would not enter into the ancillary hearing in the first place on the basis of relevance.

15 However, I do accept that at times, the same content in the accused's statement can relate simultaneously to *both* the question of voluntariness of the statement, which is a matter for the ancillary hearing, and the question of the commission of the offence, which is a matter for the main trial. In the interests of justice, I am of the view that the presence of s 279(5) of the CPC and its porosity cannot prevent the content of the statement relevant to an issue on voluntariness from being adduced during the ancillary hearing just because the same content is also relevant to the issue of the commission of the offence to be dealt with at the main trial. Two possible scenarios arise. If the statement is ruled to be voluntary, this part of the statement (*ie*, the content relevant to both voluntariness and the commission of the offence) will enter the main trial anyway. If the statement is ruled to be involuntary, this part of the statement will not enter the main trial anyway. As such, I find no legal impediment for the court to have sight of the content of the statement during the ancillary hearing to ascertain if any part of it is relevant to the issues that are to be determined at the ancillary hearing. If it is found to be relevant, questions may be asked during the *voir dire* in relation to the making of that part of the statement.

16 My real concern pertains to the evidence of the accused and other witnesses testifying at the ancillary hearing, if the evidence given by the accused or the other witnesses is simultaneously relevant to *both* the question of the voluntariness of the accused's statement and to the question of the commission of the offence. Under s 279(5) of the CPC, there is no problem with the *evidence of witnesses, and not the accused*, flowing to the main trial without the witnesses

being recalled back at the main trial. Since the prosecution can always call the same witnesses back at the main trial to repeat the evidence given at the ancillary hearing because the same evidence also relates to the commission of the offence, s 279(5) of the CPC renders this step unnecessary for the prosecution. I accept that this enables the trial to be conducted more efficiently.

17 However, I am inclined to hold a different view where the testimony of the accused given at the ancillary hearing is relevant *both* to the voluntariness of the statement and to the commission of the offence. In the interests of justice, the accused should not be constrained in the manner he gives evidence when challenging the voluntariness of his statements during the ancillary hearing. If the accused gives evidence relevant *both* to the issue of the voluntariness of his statement and also to the issue of his commission of the offence, then this part of the accused's evidence given at the ancillary hearing should not, by virtue of s 279(5) of the CPC, be rendered automatically admissible as evidence that forms a part of the prosecution's case even before the defence is called. To that extent, I agree with Mr Tiwary. To hold otherwise would substantially prejudice the accused by compromising the accused's right to silence.

18 Having a *voir dire* allows the accused to step into the witness box to give evidence on oath and challenge the admissibility of the recorded statements purported to be his statements before the close of the prosecution's case, without sacrificing his right to remain silent should the court later decide to call for his defence at the close of the prosecution's case. It was held in *Haw Tua Tau v PP* [1981–1982] SLR(R) 133 at [17] that the following principles would apply to determine if an accused ought to be called upon to give his defence (see also s 230(m) of the CPC):

... At the conclusion of the Prosecution's case ..., the judge must consider whether there is some evidence (not inherently

incredible) which, if he were to accept it as accurate, would establish each essential element in the alleged offence. If such evidence as respects any of those essential elements is lacking, then, and then only, is he justified in finding “that no case against the accused has been made out which if unrebutted would warrant his conviction”, within the meaning of s 188(1). Where he has not so found, he must call upon the accused to enter upon his defence ...

The accused should be protected during the ancillary hearing, which should be insulated from the main trial. The accused should retain the freedom to give evidence during the ancillary hearing to challenge the admissibility of his statements and yet be able to retain his right to silence in the main trial before he is called upon to enter his defence. Section 279(5) of the CPC compromises this if the accused’s evidence in the ancillary hearing can be introduced into the main trial by s 279(5) when the accused’s evidence is simultaneously relevant to *both* the voluntariness of the statement and the commission of the offence. In such a situation, I am of the view that the court has the discretion to, and should disallow, the accused’s oral testimony during a *voir dire* from flowing back into the main trial via a backdoor in s 279(5) of the CPC before the accused’s defence is even called. Mr Tiwary and the Deputy Public Prosecutor avoided specific references to the substantive content of the accused’s statement when the accused was being questioned during the *voir dire* to ensure that the accused did not venture into any areas in his evidence that might have a bearing on the main trial itself, even though that evidence was clearly also relevant to determine the voluntariness of the statement itself. These precautions taken appear to me to be rather unachievable and awkward at times. All this is unnecessary since the court has the discretion to disallow the accused’s oral testimony at the ancillary hearing relating to the commission of the offence from entering the main trial if such testimony prejudices the accused’s right to silence in any way. Due to these concerns, the parties took the position that the court should not have sight of the

statements at all during the *voir dire* and no statements were therefore provided to the court during the ancillary hearing.

19 In any case, there is no provision in the CPC that expressly prohibits the court from having sight of the contents of the statement, which are relevant to the ancillary issue, in order to determine the ancillary issue.

20 For the above reasons, I thus hold that the statement can be marked for identification during the ancillary hearing and the court is entitled to view the contents of the statement if it is relevant to determine the issue for which the ancillary hearing is being held.

21 Applying this to the present case, I reject Mr Tiwary's submission that the prosecution is barred from cross-examining and adducing any evidence from Ansari in relation to the contents of the 31 March 2016 Statement and the 4 April 2016 Statement whereby he incriminated Bella. The contents of the 31 March 2016 Statement and the 4 April 2016 Statement that were incriminatory of Bella would be relevant to the voluntariness issue under s 279(2) of the CPC, given that it contradicts Ansari's case that he had been induced by SSGT Helmi and SI Fathli to make the Statements in order to "let Bella go". As such, it is the fact that he had incriminated and not exculpated Bella of her involvement in these two statements (and not the factual truth or otherwise of that incrimination itself) that is relevant to the issue of inducement in the ancillary hearing.

22 Turning to the evidence that inculpated Bella, Ansari admitted under cross-examination that in the 31 March 2016 Statement, he had incriminated Bella in relation to her involvement with the drugs in the apartment, and stated

Bella's knowledge of Ansari's involvement in drug-related activities.¹⁰ Ansari also admitted that in the 4 April 2016 Statement, he had incriminated Bella in relation to her drug activities.¹¹ However, I do note that in the 31 March 2016 Statement, Ansari answered a general question regarding Bella's involvement without incriminating Bella.¹²

23 When Ansari was re-examined about this contradiction on how his incrimination of Bella would allow Bella to be let off, he explained that he was under the impression that had he cooperated with CNB, he and Bella would *both get lighter sentences*.¹³ Ansari explained that by answering the questions in the manner that he did, and giving incriminating information about what Bella had done, Ansari was hoping that CNB would still let her off.¹⁴

24 I do not find this explanation to be logical. It is difficult to understand how incriminating Bella would result in lighter sentences for *both* Bella and Ansari. I can only see the logic in how Ansari's cooperation with CNB in incriminating Bella could have resulted in a lighter sentence for *only* himself, but not Bella. Ansari's motive to incriminate Bella would have been self-serving in nature. This is consistent with Ansari's further testimony where he admitted that the second reason for giving information that incriminated Bella was to obtain the Certificate of Substantive Assistance under s 33B(2)(b) of the MDA for *himself*.¹⁵ To my mind, this second reason is believable and far more logical

¹⁰ Transcript 28 August 2019 at pp 70, 72.

¹¹ Transcript 28 August 2019 at p 70.

¹² Transcript 28 August 2019 at p 76.

¹³ Transcript 28 August 2019 at p 74.

¹⁴ Transcript 28 August 2019 at p 76.

¹⁵ Transcript 28 August 2019 at p 75.

than the first. The evidence regarding Bella's incrimination will be considered below in relation to my analysis of the inducements allegedly made by SSGT Helmi and SI Fathli.

The Contemporaneous Statements

Ansari's Testimony

25 In relation to the two Contemporaneous Statements recorded by SSGT Helmi, Ansari testified that on 24 March 2016 after his arrest, he was brought to the Car.¹⁶ When Ansari arrived, he saw that both Jufri and Bella had been arrested.¹⁷ Ansari testified seeing Bella, who had been handcuffed, crying and in fear.¹⁸ This is corroborated by Bella's testimony that it was probable that she might have been crying from shock or fear.¹⁹ As a result, Ansari testified feeling very disappointed and aggrieved by that sight, as he felt responsible for Bella's arrest.²⁰

26 After the search of the Car, Ansari was escorted back to the CNB vehicle, whereby Ansari and SSGT Helmi were the only people in the vehicle.²¹ It is Ansari's testimony that right before the Contemporaneous Statements were recorded in the CNB vehicle, Ansari had begged SSGT Helmi to "***let [Bella] go because she's not involved in the case***".²² Ansari alleged that SSGT Helmi had

¹⁶ Transcript 28 August 2019 at p 58.

¹⁷ Transcript 28 August 2019 at p 58.

¹⁸ Transcript 28 August 2019 at p 58.

¹⁹ Transcript 7 August 2019 at p 24.

²⁰ Transcript 28 August 2019 at p 58.

²¹ Transcript 28 August 2019 at p 58.

²² Transcript 28 August 2019 at pp 58–59.

responded, “*it depends on what you say*.”²³ Ansari interpreted SSGT Helmi’s statement to mean that if Ansari had taken responsibility for the Drugs found in the search of the Car, the CNB officers would let Bella go.²⁴ As a result, Ansari alleged that he had made the Contemporaneous Statements with the objective of clearing Bella of the allegations against her and in the hope that Bella would not be involved in the case.²⁵

27 It is Ansari’s testimony that he wanted Bella to be let off for the following reasons.²⁶ First, Bella was his then-girlfriend who stayed with him at the VIBES apartment. Second, Bella had a 3-year old daughter from Indonesia and was responsible for taking care of her. Third, Ansari claimed that Bella was not involved in any drug activities. Fourth, Ansari felt sad seeing Bella cry and felt responsible for her situation, since he was the one who had called Bella down to Singapore.

SSGT Helmi’s Testimony

28 In contrast, SSGT Helmi denied that on 24 March 2016 after the arrest, Ansari had uttered the words, “Please let Bella go. She is my girlfriend. She does not know anything about these drugs.”²⁷ SSGT Helmi also denied making any inducement or promise²⁸ and denied having said the words “it depends on what you say” (*ie*, SSGT Helmi’s Inducement).²⁹ It is SSGT Helmi’s testimony

²³ Transcript 28 August 2019 at p 59.

²⁴ Transcript 28 August 2019 at p 59.

²⁵ Transcript 28 August 2019 at pp 60–61.

²⁶ Transcript 28 August 2019 at p 59.

²⁷ Transcript 28 August 2019 at p 20.

²⁸ Transcript 28 August 2019 at p 9.

²⁹ Transcript 28 August 2019 at p 20.

that if Ansari had provided information that was “substantial and evidential to the case” *outside* of the recording of a contemporaneous statement, SSGT Helmi would have recorded it down in his field diary.³⁰ If such substantial and credible information to the case had been volunteered by Ansari *during* the recording of a contemporaneous statement, he would have recorded it in his pocket book.³¹ However, as for all other irrelevant information, SSGT Helmi testified that he would not have recorded it down.³² SSGT Helmi also testified that before recording the first contemporaneous statement, the only conversation that took place between SSGT Helmi and Ansari was SSGT Helmi’s serving of the Mandatory Death Penalty notice to Ansari from 1.05pm to 1.15pm, according to his field diary.³³ At 1.20pm, SSGT Helmi recorded the first contemporaneous statement.

Threat, Inducement or Promise

29 The case of *Chai Chien Wei Kelvin* held that the test for voluntariness involves both an objective element and a subjective element (at [53]):

...The test of voluntariness is applied in a manner which is partly objective and partly subjective. The objective limb is satisfied if there is a threat, inducement or promise, and the subjective limb when the threat, inducement or promise operates on the mind of the particular accused through hope of escape or fear of punishment connected with the charge...

30 I find that the alleged SSGT Helmi’s Inducement, if in fact made, could have operated as an inducement under both the objective and subjective limbs

³⁰ Transcript 28 August 2019 at p 16.

³¹ Transcript 28 August 2019 at p 19.

³² Transcript 28 August 2019 at p 16.

³³ Transcript 28 August 2019 at p 13.

of the test in *Chai Chien Wei Kelvin*. There is a reasonable basis for Ansari's understanding of SSGT Helmi's Inducement as being an inducement to him to make the positive statement that he did, in the hope that Bella would be let off.

31 The prosecution submits that the words, "it depends on what you say" could not be construed objectively as an inducement as the words are unclear as to *what was required* of Ansari, such as to give a statement at all, to tell the truth, or to tell a certain version of facts.³⁴ Alternatively, the prosecution also submits that Ansari's interpretation of SSGT Helmi's Inducement that CNB would let Bella go if Ansari had taken responsibility for the drugs was a self-perceived inducement, which cannot in law amount to an inducement within the meaning of s 258(3) of the CPC: *Lu Lai Heng v PP* [1994] 1 SLR(R) 1037 at [19].³⁵

32 However, I reject the prosecution's submissions when considering the context in which SSGT Helmi's Inducement was made. SSGT Helmi's Inducement was made in the context of Ansari having first begged SSGT Helmi to "let Bella go because she was not involved in the case", to which SSGT Helmi responded, "it depends on what you say", which was very shortly after Ansari and Bella had been arrested with the Drugs found in the Car.

33 I find that the most obvious and natural meaning of the reply "it depends on what you say" in response to Ansari's alleged begging to "let Bella go because she was not involved in the case", prior to the recording of the Contemporaneous Statement, would mean that Ansari had to give *a positive statement* by taking full responsibility for the Drugs found in the Car in order

³⁴ Prosecution's Ancillary Hearing Submissions at para 23.

³⁵ Prosecution's Ancillary Hearing Submissions at para 26.

for Bella to be let go. This is consistent with Ansari's own subjective understanding and interpretation of SSGT Helmi's statement, which is that if he (*ie*, Ansari) had taken responsibility for the Drugs, the CNB officers would let Bella go.³⁶ The meaning of the words, "it depends on what you say" is not as unclear as the prosecution submits, when the words of SSGT Helmi's Inducement, tied in with the context in which they were allegedly uttered, begets an objective inducement of Ansari to incriminate himself for the Drugs found in the Car in order for Bella to be let off.

34 The words "it depends on what you say" could also not possibly have meant that what was required of Ansari was merely that he had to give *a statement* (*ie*, whether positive, negative or mixed), as the prosecution had suggested as an alternative interpretation of the words. First, the alleged SSGT Helmi's Inducement was phrased, "it depends on *what* you say", and not "it depends on *whether* you say anything". The former makes specific reference to the *contents* of Ansari's subsequent statements, rather than whether or not Ansari *made* subsequent statements at all. Second, a logical inference of the words in that context could not have meant that Ansari just had to give a statement. Giving a statement, especially if it is a completely negative statement, would have been of little utility to a CNB officer. If Ansari were to deny complete responsibility for the Drugs found in the Car, how then would Bella be let off? Nobody would then be responsible for the Drugs found. An objective interpretation of SSGT Helmi's Inducement in that context is that Ansari would be required to sufficiently assist the CNB in a manner that justified allowing Bella to be let go. In other words, SSGT Helmi had strongly hinted that if Ansari were to give a positive statement taking full responsibility

³⁶ Transcript 28 August 2019 at p 59.

for the Drugs found in the Car, then Ansari’s plea to him to let Bella go might be acceded to.

35 It is also irrelevant whether in fact SSGT Helmi had the authority to let Bella off as long as the inducement had sufficiently operated on the mind of Ansari to give Ansari reasonable grounds to believe or suppose that his plea for Bella to be let go would be attended to if he had cooperated and taken full responsibility for the Drugs found in the Car. This is not a wholly self-perceived inducement on the part of Ansari. It is a clear inducement proceeding from SSGT Helmi that falls within the meaning of s 258(3) of the CPC. Since the alleged SSGT Helmi’s Inducement in response to Ansari’s begging SSGT Helmi to “let Bella go” would objectively involve a *quid pro quo*, I reject the prosecution’s proposition that SSGT Helmi’s Inducement could have been a form of self-perceived inducement.

36 For the above reasons, I find that the alleged SSGT Helmi’s Inducement, had it been made, would have objectively been an inducement that would have subjectively operated on the mind of Ansari to render the Contemporaneous Statements involuntary.

Whether SSGT Helmi’s Inducement was in fact made

37 Evaluating the evidence in its totality, I have a reasonable doubt that both the plea from Ansari to SSGT Helmi to let Bella go and SSGT Helmi’s Inducement in response were not made.

38 I find it quite hard to believe that Ansari would not have raised any concerns about Bella with the recording officer at all. Ansari, who was 43 years old at the time of the alleged offence, was significantly older than Bella, who was in her early twenties. Given their age difference, the fact that Bella had a 3-

year old daughter from Indonesia whom she was responsible for, Ansari witnessing Bella crying and Ansari being the reason for Bella's presence in Singapore, it is entirely reasonable that Ansari, as Bella's boyfriend, would have felt protective, responsible and guilty over Bella's situation. It would have been perfectly natural for Ansari to have asked SSGT Helmi to "let her go". Ansari's testimony that he begged SSGT Helmi to "please let Bella go. She is my girlfriend. She does not know anything about these drugs" is not something that I could readily dismiss as being untruthful or unlikely. I would expect emotions within Ansari to well up and his concern for Bella to be rather strong at that time after their arrest. I would find it rather unusual if Ansari had made no attempt whatsoever to seek the help of the recording officer to have Bella let off as according to Ansari, Bella was not involved at all with the Drugs found in the Car.

39 I find that the defence has managed to cast a reasonable doubt on the prosecution's case that Ansari had never raised any request in relation to letting Bella go and therefore no response was in fact made by SSGT Helmi to that non-existent request. Accordingly, I hold that the prosecution has not proved beyond a reasonable doubt that the plea from Ansari to SSGT Helmi to let Bella go and SSGT Helmi's Inducement were not made and that the Contemporaneous Statements are therefore wholly voluntary. I rule that both Contemporaneous Statements are inadmissible for the purposes of the main trial.

The Non-Contemporaneous Statements

Ansari's Testimony

40 In relation to the Non-Contemporaneous Statements recorded by SI Fathli, Ansari testified that he had been induced by SI Fathli to give the

Non-Contemporaneous Statements to cooperate with CNB in order to let Bella go.³⁷

41 Sometime before Ansari met SI Fathli to give his 25 March 2016 Statement, Ansari had seen Bella along the corridor of the “[pre/post] medical area”, in fear and feeling sad.³⁸ This made him feel disappointed and aggrieved that Bella was in that condition.³⁹

42 On 25 March 2016 at or about 3.00am, Ansari was brought to Interview Room 3 of Police Cantonment Complex Lock-up to give his 25 March 2016 Statement and he was handed over to SI Fathli. Ansari testified that when he entered the interview room, SI Fathli was the only person in the room.⁴⁰ No interpreter was present. Thereafter, Ansari testified that he had begged Fathli **“to let Bella go, Bella my girlfriend, because she’s not involved in this.”**⁴¹ Fathli had allegedly replied, **“[s]o far you have been [cooperative]. So if you continue cooperating, we will let Bella go”**.⁴² Ansari testified that thereafter, the Malay interpreter, Mr Mohammad Farhan bin Sani (“Mr Farhan”), entered the room.⁴³ SI Fathli then started to record Ansari’s 25 March 2016 Statement at 3.08am.

³⁷ Transcript 28 August 2019 at p 63.

³⁸ Transcript 28 August 2019 at p 62.

³⁹ Transcript 28 August 2019 at p 62.

⁴⁰ Transcript 28 August 2019 at p 62.

⁴¹ Transcript 28 August 2019 at p 63.

⁴² Transcript 28 August 2019 at p 63.

⁴³ Transcript 28 August 2019 at p 63.

43 It is Ansari’s testimony that he was induced by SI Fathli’s Inducement to make the Non-Contemporaneous Statements and he cooperated with the CNB officers with the objective of letting Bella go and hence he “[admitted] to the allegations”.⁴⁴

SI Fathli Testimony

44 On the other hand, SI Fathli denied that Ansari had told him in Malay, “Please help Bella. She does not know about the drugs”, or words to that effect.⁴⁵ SI Fathli also denied uttering SI Fathli’s Inducement, or words to that effect.⁴⁶

45 SI Fathli initially testified that he and Mr Farhan would have gone down to the lock-up together to the interview room.⁴⁷ The normal process would be to meet the interpreter in the office that they both shared first, and then head down to the lock-up together.⁴⁸ However, SI Fathli later admitted that he could not recall whether he had met the interpreter straight at the lock-up of the Police Cantonment Complex on 25 March 2016.⁴⁹

46 SI Fathli initially denied that he and Ansari were alone in the interview room for a short while before the recording of the 25 March 2016 Statement. Then SI Fathli admitted that he was “quite positive that it never happened”⁵⁰ and

⁴⁴ Transcript 28 August 2019 at p 64.

⁴⁵ Transcript 28 August 2019 at p 47.

⁴⁶ Transcript 28 August 2019 at p 47.

⁴⁷ Transcript 28 August 2019 at p 45.

⁴⁸ Transcript 28 August 2019 at p 45.

⁴⁹ Transcript 28 August 2019 at p 45.

⁵⁰ Transcript 28 August 2019 at p 47.

that he “could not recall exactly that it did not happen”.⁵¹ SI Fathli also subsequently clarified that he could not recall whether he and the interpreter went into the interview room first before Ansari arrived on 25 March 2016.⁵² SI Fathli also did not note down who arrived first or whether he arrived together with Mr Farhan in his investigation diary.⁵³

47 Subsequently, SI Fathli changed his testimony again, testifying that “from my recollection, I came down, I arrived at the lock-up together with [the interpreter]” as Mr Farhan was in the same office as him.⁵⁴ Therefore, he confirmed that they would have met in the office and gone down to the lock-up together.⁵⁵ However, upon further cross-examination, SI Fathli conceded that there was no system for CNB interpreters to be on 24-hour standby in their office. Since the time of the statement recording was around 3.00am in the morning, Mr Farhan would not have been in the office at the time.⁵⁶ SI Fathli would have had to request for Mr Farhan’s assistance before the statement recording, and he would have been at home or outside the office.⁵⁷ SI Fathli finally admitted that he could not recall exactly whether he first met with Mr Farhan at the office to head down together to the lock-up, or met Mr Farhan at the lock-up on 25 March 2016.⁵⁸ SI Fathli testified that even if he had arrived at

⁵¹ Transcript 28 August 2019 at p 47.

⁵² Transcript 28 August 2019 at p 49.

⁵³ Transcript 28 August 2019 at p 49.

⁵⁴ Transcript 28 August 2019 at p 50.

⁵⁵ Transcript 28 August 2019 at p 51.

⁵⁶ Transcript 28 August 2019 at p 53.

⁵⁷ Transcript 28 August 2019 at p 53.

⁵⁸ Transcript 28 August 2019 at p 53.

the lock-up before Mr Farhan, he would have waited for the interpreter before entering the interview room together to interview Ansari.⁵⁹

Mr Farhan's Testimony

48 Mr Farhan also testified that he could not remember who first arrived at the interview room on 25 March 2016.⁶⁰

Police Station Diary

49 After the parties completed their submissions on the *voir dire*, I asked for the lock-up diary ("Police Station Diary") to be produced in relation to the movements of Ansari, SI Fathli and Mr Farhan at or about the time of the commencement of the recording of the 25 March 2016 Statement. The Police Station Diary when produced only showed the movements of Ansari but not that of SI Fathli or Mr Farhan.⁶¹ Hence the Police Station Diary is not helpful in determining whether SI Fathli and Ansari could have been alone together in Interview Room 3 of Police Cantonment Complex Lock-up for a short period of time prior to the arrival of Mr Farhan for the recording of the 25 March 2016 Statement.

Whether SI Fathli's Inducement was in fact made

50 After considering all the evidence, I find that the prosecution has not established beyond a reasonable doubt that SI Fathli's Inducement was not in fact made.

⁵⁹ Transcript 28 August 2019 at p 55.

⁶⁰ Transcript 28 August 2019 at p 41.

⁶¹ Exhibit 1T-P7.

51 From the testimonies of SI Fathli and Mr Farhan, I find that a reasonable doubt exists as to whether or not SI Fathli and Ansari could have been alone in the interview room for a short while prior to the statement recording on 25 March 2016. This was when the alleged SI Fathli's Inducement could have been made. First, SI Fathli could not recall whether he and Mr Farhan had first met at the office before heading down to the lock-up, or met straight at the lock-up. Second, neither Mr Farhan nor SI Fathli could confirm who first arrived at the interview room on 25 March 2016. Third, this information was also not recorded in SI Fathli's investigation diary. Notably, SI Fathli testified that even if he had arrived first at the lock-up, he would have waited for Mr Farhan before interviewing Ansari together.⁶² However, I do not find SI Fathli's testimony reliable on this due to the vacillations in his testimony and his inability to recall clearly the events preceding the taking of the cautioned statement early in the morning of 25 March 2016.

52 SI Fathli's testimony is also not credible for the following reasons. First, SI Fathli's oscillating testimony regarding the events prior to the recording of the 25 March 2016 statement is rather suspect. It was only after it was pointed out to him that Mr Farhan could not possibly have been on standby in the interpreter's office at 3.00am in the morning that he admitted that he could not recall whether or not he had met Mr Farhan before heading down to the lock-up. Second, I observe that SI Fathli did not genuinely apply his mind to recall the events that occurred on 25 March 2016 before answering the questions on the stand. There were many instances during SI Fathli's testimony whereby he

⁶² Transcript 28 August 2019 at p 55.

replied to questions with quick affirmative or negative answers in rapid succession as if he was merely going through the motions:⁶³

Q Did---in the recording of this statement, did you make any threat, inducement or promise to the accused?

A No, Your Honour.

Q And since you are fluent in the Malay language, did the interpreter, Mr Farhan, make any threat, inducement or promise to the accused?

A No, Your Honour.

Q Was this statement recorded under oppressive conditions?

A No, Your Honour.

Q Did the accused raise any complaint whatsoever at any point in time during the recording of this statement?

A No, Your Honour.

Q Did you detect if the accused was feeling uncomfortable or unwell at any point in time when you recorded this statement?

A No, Your Honour.

Q Was this statement provided by the accused voluntarily?

A Yes, Your Honour.

Q And did anything out of the ordinary happen in the recording of this statement?

A No, Your Honour.

53 Third, it is SI Fathli's testimony that Ansari had not uttered the words "Please help Bella. She does not know about the drugs" in Malay, or words to that effect and SI Fathli denied uttering SI Fathli's Inducement.⁶⁴ Given the situation that Ansari was in, after seeing Bella in the corridor, it is more likely

⁶³ Transcript 27 August 2019 at pp 40–41.

⁶⁴ Transcript 28 August 2019 at p 47.

than not for Ansari to have uttered those words to seek reprieve for Bella. If SI Fathli's testimony were to be accepted, then it is rather odd that Ansari, given the feelings he had at that time for Bella, never sought any help at all for his girlfriend. It would be natural for Ansari to beg SI Fathli about his girlfriend after seeing Bella in the corridor. I do note however that several days later, Ansari did not appear to be as protective of Bella as before because Ansari implicated Bella in relation to the drugs found in the flat in two much later statements (*ie*, the 31 March 2016 Statement and the 4 April 2016 Statement). Nevertheless, I find that a reasonable doubt still exists as to whether SI Fathli's Inducement was in fact made six and ten days *earlier* respectively on 25 March 2016 before the statement was recorded and when both SI Fathli and Ansari were allegedly alone in the interview room prior to the arrival of the interpreter. This is primarily due to my assessment of Ansari's testimony being more credible than that of SI Fathli's testimony, coupled with a reasonable possibility that SI Fathli and Ansari were alone in the interview room for a short while before the 25 March 2016 Statement could have been recorded, whereby Ansari had the opportunity to and did plead with SI Fathli about letting Bella off and SI Fathli's Inducement was then uttered. Accordingly, I find that the prosecution has not proven beyond a reasonable doubt that SI Fathli's Inducement was not in fact made.

Threat, Inducement or Promise

Objective Limb

54 I now turn to whether SI Fathli's Inducement operated as an inducement.

55 In *Cheng Heng Lee and another v Public Prosecutor* [1998] 3 SLR(R) 747 at [30], the Court of Appeal held that had the investigating officer truly told the accused, "You better cooperate with me and I will help you. If not, you will

surely hang”, the accused’s subsequent statement would have been inadmissible as it was caused by an inducement. Similarly, I find that the words “so far you have been cooperative. So if you continue cooperating, we will let Bella go” would objectively be an inducement for Ansari to inculcate himself, in return for letting Bella go. The prosecution also agreed that, had SI Fathli’s Inducement been made, it would have amounted to an objective inducement.⁶⁵

Subjective Limb

56 The next issue is whether or not SI Fathli’s Inducement had subjectively operated on the mind of Ansari when he made the Non-Contemporaneous Statements. The prosecution submits that because Ansari had continued to incriminate Bella in the 31 March 2016 Statement and the 4 April 2016 Statement despite the fact that SI Fathli’s Inducement had been made, SI Fathli’s Inducement did not subjectively operate on the mind of Ansari.⁶⁶

57 I first turn to interpreting the meaning of the words “continue cooperating” used in SI Fathli’s Inducement and how the words would have subjectively operated on Ansari’s mind. Having considered the universe of possibilities of the meaning of the words “continue cooperating”, the natural inference from the words “continue cooperating” would refer to Ansari *inculcating himself* in the Non-Contemporaneous Statements. It could not possibly mean that SI Fathli would have let Bella go if Ansari had given a statement that *exculpated himself*. In relation to Bella’s involvement, the words “continue cooperating” probably could not have meant requiring or asking Ansari to *exculpate Bella* in his statement. Finally, the words “continue

⁶⁵ Transcript 29 August 2019 at p 10.

⁶⁶ Prosecution’s Ancillary Hearing Submissions at para 30.

cooperating”, on their own, might have included requiring Ansari to *inculcate Bella* in his statements. However, considering the context of the words “continue cooperating” as a *quid pro quo* for “letting Bella go”, it would be inherently self-contradictory for the words “continue cooperating” to mean requiring Ansari to inculcate Bella in his statements, in order for the CNB officers to “let Bella go ... because she’s not involved in this”. Further, the word “continue” also necessarily implies that Ansari had previously “cooperated”. No evidence has been placed before this court to show that Ansari had previously inculpated Bella in the Contemporaneous Statements prior to SI Fathli’s Inducement on 25 March 2016 such that he was also to continue in his cooperation by continuing to inculcate Bella. The obvious and logical interpretation of “continue cooperating” would be to require Ansari to *continue inculcating himself* at the minimum, *and not so much with reference to Bella*. After all, Ansari testified that he had made the Non-Contemporaneous Statements with the objective of letting Bella go because she was not involved and he therefore cooperated with CNB officers by admitting to “what [Ansari] had been accused of”.⁶⁷

58 In this respect, I find the fact that Ansari had *incriminated Bella* in the 31 March 2016 Statement and the 4 April 2016 Statement to be a neutral factor in determining whether Ansari had in fact “continued cooperating” in terms of continuing to implicate himself in his Non-Contemporaneous Statements, in order to show that SI Fathli’s Inducement had subjectively operated on Ansari’s mind. In other words, what is more crucial for the subjective limb of *Chai Chien Wei Kelvin* is whether Ansari had continued to *incriminate himself* in the contents of the Non-Contemporaneous Statements, which Ansari testified to

⁶⁷ Transcript 28 August 2019 at p 64.

having done so in his Non-Contemporaneous Statements.⁶⁸ Parties however did not produce the Statements themselves in the *voir dire* to show that Ansari did in fact keep his side of the bargain in cooperating with CNB and continuing to take responsibility for all the Drugs found.

59 I turn now to Ansari's incrimination of Bella in the 31 March 2016 Statement and the 4 April 2016 Statement. The main relevance of Ansari's incrimination of Bella only in these later statements is in assessing whether SI Fathli's Inducement had continued to subjectively operate on Ansari's mind. What was Ansari's *true motive* for making each of these two later Non-Contemporaneous Statements? I do accept that there can be multiple reasons for an accused to make a statement. Over time, these reasons can also change. Ansari admitted that a second reason for cooperating with CNB and "giving [his] statements accordingly" was to obtain the Certificate of Substantive Assistance.⁶⁹ Ansari admitted that, in his bid to obtain the Certificate of Substantive Assistance, he had given information that incriminated Bella.⁷⁰ I observe that Ansari was not as protective of Bella now, as demonstrated by his inculcation of Bella in the 31 March 2016 Statement and the 4 April 2016 Statement. His motive of self-preservation by getting the Certificate of Substantive Assistance assumed far greater importance and had overcome his motive of protecting Bella pursuant to SI Fathli's Inducement. Ansari's incrimination of Bella in the 31 March 2016 Statement and the 4 April 2016 Statement suggests that the effect of SI Fathli's Inducement to "let Bella go" had dissipated and no longer subjectively operated on Ansari's mind on 31

⁶⁸ Transcript 28 August 2019 at p 64.

⁶⁹ Transcript 28 August 2019 at p 63.

⁷⁰ Transcript 28 August 2019 at p 75.

March 2016 and 4 April 2016. After all, the 31 March 2016 Statement and the 4 April 2016 Statement were made six and ten days after SI Fathli's Inducement respectively. It is crucial to consider *when* the inducement was made: Jeffrey Pinsler, *Evidence and the Litigation Process* (LexisNexis, 6th Edition, 2017) at para 5.031.

60 I find that it is more likely that Ansari's making of the 31 March 2016 Statement and the 4 April 2016 Statement, where he had incriminated Bella, was incentivised by the hope of obtaining the Certificate of Substantive Assistance for himself, as he had admitted.⁷¹ This was his true motive, and it had eclipsed the effect of SI Fathli's Inducement. It is inherently incoherent for Ansari to suggest that he had been induced by SI Fathli's Inducement to make the 31 March 2016 Statement and the 4 April 2016 Statement in order to "let Bella go" because she was not involved, and yet Ansari chose to incriminate the very person he had sought to "let go" in those statements themselves.

61 For the foregoing reasons, I find that SI Fathli's Inducement did not subjectively operate on Ansari's mind any longer on 31 March 2016 and 4 April 2016. SI Fathli's Inducement did not operate as an inducement for Ansari to make the 31 March 2016 Statement and the 4 April 2016 Statement. Hence, I find that the 31 March 2016 Statement and the 4 April 2016 Statement were voluntarily made and admissible. However, I still find that SI Fathli's Inducement did operate as an inducement for Ansari's making of the much earlier 25 March 2016 Statement and 30 March 2016 Statement. I am not satisfied that the voluntariness of the 25 March 2016 Statement and 30 March

⁷¹ Transcript 28 August 2019 at p 75.

2016 Statement had been proven beyond a reasonable doubt and hence I find them to be inadmissible.

Conclusion

62 In conclusion, I find that the prosecution has not proven beyond a reasonable doubt that the two Contemporaneous Statements recorded by SSGT Helmi on 24 March 2016 and the two Non-Contemporaneous Statements recorded by SI Fathli on 25 March 2016 and 30 March 2016 had been made voluntarily. Hence, they are inadmissible. However, I find that the prosecution has proven beyond a reasonable doubt that the two Non-Contemporaneous Statements recorded by SI Fathli on 31 March 2016 and 4 April 2016 had been voluntarily made and are thus admissible.

Chan Seng Onn
Judge

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