

Suboh bin Ramli and Another v Public Prosecutor
[2000] SGCA 62

Case Number : Cr App 16/2000
Decision Date : 16 November 2000
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; MPH Rubin J; L P Thean JA
Counsel Name(s) : Edmond Pereira (Edmond Pereira & Partners) and Johan Ismail (Johan Ismail & Co) (assigned) for the first appellant; Ang Sin Teck (Rajah Loo & Chandra) and Tan Tee Giam (Aw & Tan) (assigned) for the second appellant; Hay Hung Chun and Paul Chia (Deputy Public Prosecutors) for the respondent
Parties : Suboh bin Ramli; Another — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking in controlled drug – Evidence that second appellant delivers bag to person at flat on third floor – Second appellant admits delivering bag but to male Malay on sixth floor – Finding drugs in bag – Whether prosecution proven charge beyond reasonable doubt – ss 5(1)(a), 18(1)& 18(2) Misuse of Drugs Act (Cap 185, 1998 Ed)

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking in controlled drug – Evidence that second appellant delivers bag to person at flat on third floor – First appellant and another person in flat – Finding drugs on first appellant upon arrest – Finding bag containing drugs in flat – Whether prosecution proven beyond reasonable doubt first appellant has possession of drugs – Whether first appellant rebutted presumption concerning trafficking – ss 5(1)(a), 5(2) & 17(c) Misuse of Drugs Act (Cap 185, 1998 Ed)

JUDGMENT:

Cur Adv Vult

1. The first appellant, Suboh bin Ramli ('Suboh'), and one Abdul Salam bin Mustapha ('Salam') were jointly tried before the High Court on a charge that they, on 22 December 1999, at or about 3.25 pm, at Block 489, Jurong West Avenue 1, #03-37, in furtherance of their common intention, trafficked in a quantity of not less than 165.67 grams of diamorphine by having such drugs in their possession for the purpose of trafficking, an offence under s 5(1)(a) read with s 5(2) and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1998 ed) ('the Act'). Also tried jointly with them was the second appellant, Wong Kok Loong ('Wong'), who was charged with trafficking in the same quantity of drugs by delivering the drugs to Salam and Suboh at Block 489, Jurong West Avenue 1, #03-37 on that day, at or about 2.20 pm, an offence under s 5(1)(a) and punishable under s 33 of the Act. At the conclusion of the trial, the learned judge found that the prosecution had not proved its case against Salam beyond reasonable doubt, and accordingly he acquitted Salam. The learned judge, however, found that the prosecution had proved the charges against Suboh and Wong respectively, and he accordingly convicted them of the charges respectively and sentenced them to suffer death. Both Suboh and Wong appeal against the decision of the learned judge.

The prosecution's case

2. The evidence adduced by the prosecution was this. On 22 December 1999, at about 9.30 am, SSgt Subramaniam and W/Sgt Rahizah binte Rahim of the Central Narcotics Bureau ('CNB') were keeping observation at the vicinity of Block 137 Yishun Ring Road. At about 12.25 pm, Salam was spotted by the officers at the void deck of Block 137, and was seen leaving and taking a taxi. The officers trailed the taxi to Jurong West Street 41, where he alighted. He was then seen walking to a shop at the void deck of Block 486, where he bought something, and thereafter he was seen walking to Block 489. There, he took the lift to the sixth floor and upon coming out he was seen walking along the corridor and taking the staircase to the third floor. In Block 489, the lift does not stop at the floors, from the second to the fifth, but at the sixth floor. At the third floor, Salam was seen entering

a flat, which subsequently was ascertained to be #03-37 of Block 489, Jurong West Avenue 1.

3. At about 2.05 pm, Suboh was seen by the CNB officers arriving at the vicinity of Block 489 in a taxi. He was later seen walking along the corridor on the sixth floor and taking the staircase down to the third floor and entering the flat #03-37.

4. At about 2.15 pm, a Malaysian vehicle bearing the number plate JDF 755 was seen entering the car park and parking in front of Block 489. The driver was seen alighting from the car, and he was Wong. He went to the void deck and was seen using his handphone and thereafter returning to his car for a short while. He was next spotted carrying a blue plastic bag, waiting at the lift landing of Block 489 and taking the lift up. A short while later the officers saw a person walking along the common corridor on the sixth floor to the left staircase and going to the third floor and then standing outside the flat #03-37 for a few minutes. Thereafter, that person was seen taking the same route back to the sixth floor. Subsequently, Wong was seen coming out of the lift on the ground floor, and this time he was empty-handed. He then moved his car to another parking lot. A short while later, he drove off. He was trailed by CNB officers and at the junction of Upper Thomson Road and Marymount Lane he was stopped and arrested.

5. At about 3.15 pm, Salam and Suboh were seen leaving the flat. As they emerged from the lift on the ground floor of Block 489, they were arrested. A body search was conducted on both of them. There were found on Suboh, among other things, ten sachets of heroin, a bunch of three keys, a Motorola pager and a Panasonic handphone. Nothing incriminating was found on Salam. Both of them were brought up to the flat and two of the keys found on Suboh were used to open the padlock to the gate and the main door of the flat respectively. The flat was searched and in the front bedroom behind a cupboard, the CNB officers found a green plastic bag, and inside it was a blue plastic bag which contained the following:

(a) five bundles of granular substance in a plastic bag which were wrapped in cellophane;

(b) a digital weighing scale;

(c) a red plastic bag containing: (i) five plastic spoons, (ii) numerous empty plastic sachets, (iii) a pencil and a roll of scotch tape, and (v) twelve sachets of heroin.

Upon analysis, the ten sachets found on Suboh were proved to contain not less than 6.16 grams of diamorphine, and the five bundles and twelve sachets seized from the flat to contain not less than 165.67 grams of diamorphine. The diamorphine contents of the sachets and bundles were not in issue.

6. At about 7.20 pm, on the same day, urine samples were taken from both Salam and Suboh, and sent to Department of Scientific Services for analysis. Salam's sample tested positive for heroin.

7. A search was also carried out by the CNB officers at the respective addresses where Salam and Suboh lived, namely, Block 137 Yishun Ring Road, #04-176, and Block 407 Clementi Avenue 1 #02-50. But nothing incriminating was found in either of the flats.

8. After Wong was arrested a search was carried out on him and among the things found were: his passport, a yellow Ericson GF 768 handphone, a grey Nokia 3210 handphone, cash of S\$170 and MR840. His car was also searched. A brown envelope containing S\$9,500 and another brown envelope containing S\$24,950 were found underneath the front passenger seat. Between the driver's seat and passenger seat were found, among other things, a Nokia handphone battery, S\$103.65 and MR63.20. Wong admitted ownership of all these items.

9. Statements were recorded from three of them under s 122(6) of the Criminal Procedure Code (Cap 68, 1985 ed), and as there was no challenge to these statements, they were admitted in evidence. In their respective statements, they said as follows. Salam said:

The thing is not mine. I have nothing to do with the house.

Suboh said:

I have nothing to say right now.

And Wong said as follows:

I did not give the heroin to the two Malay men. I only collected money from a Malay man whom I do not know.

There were also statements recorded from Salam and Suboh under s 121 of the Criminal Procedure Code, and these statements were also admitted in evidence, as there was no challenge as to the voluntariness of these statements. In these statements each of them exonerated himself and implicated the other, and the learned judge did not take into consideration those portions of these statements. For our purpose, nothing turns on these statements.

10. There were also recorded from Wong statements under s 121 of the Criminal Procedure Code ('s 121 statements'). The admissibility of these statements was challenged by Wong on the ground that the recording officer threatened to assault him and at the same time offered him an inducement. The learned judge held a *voire dire* to determine the admissibility of these statements, and at the conclusion held that the prosecution had proved that the statements were made by Wong voluntarily. Accordingly, these statements were admitted in evidence. Parts of these statements are relevant in this appeal, and we shall refer to them in a moment.

Block 489 Jurong West Avenue 1, #03-37

11. Neither Salam nor Suboh was the owner or tenant of the flat, Block 489, Jurong West Avenue 1, #03-37. The registered owners are Hazlie bin Dolwabah ('Hazlie') and his wife, Sarimah binte Rahmat. At the material time, they were not residing at the flat. They had moved out to Hazlie's parents' flat, Block 517A Jurong West Street 52, #13-555. Prior to their move, Hazlie's three brothers were also staying at the flat #03-37 of Block 489, and they had also moved to their parents' flat at Jurong West Street 52. Hazlie said that since he and his family had moved out, he had never been back to the flat at Jurong West Avenue 1, except that occasionally he went back to collect his personal items. The last time he visited the flat was in October 1999.

12. Hazlie's youngest brother is Hazafi bin Dolwabah ('Hazafi'). Hazafi knew Suboh, having met him at the Reformative Training Centre in 1995 and in Changi Prison in 1996. After Hazafi had been released from the prison, Suboh met up with him and they had a drink together at a coffee shop in Haig Road. Suboh had also visited Hazafi on three occasions at the flat at Block 489, Jurong West Avenue 1, #03-37, while he and his family were staying there, before they moved to his parents' flat at Block 517A, Jurong West Street 52, #13-555. Initially, in his evidence, Hazafi said that he did not give Suboh the key to the flat; nor had he lost or duplicated it. Later, while the trial was in progress, the learned judge directed the prosecution and defence to test the three keys recovered from Suboh, and it was found that one of the keys could open the front gate of Hazafi's father's flat. On account of this fresh evidence, Hazafi was recalled, and on being confronted with this evidence, he admitted that he gave the keys to Suboh, as the latter wanted a place to stay. However, throughout his evidence, Hazafi maintained that he did not know Salam at all. On this the learned judge found that Hazafi had never vacillated.

Salam's evidence

13. Salam gave evidence in his defence. He denied any knowledge of the drugs found in the flat and denied that he had the keys to the flat. It is not necessary to deal with his evidence, as nothing in this appeal turns on it.

Suboh's evidence

14. Suboh in his defence testified as follows. At about 1 pm on 22 December 1999, Suboh received a call from Salam, asking him if he would like to sell VCDs (Video Compact Discs). Suboh said he would, and Salam told Suboh to go to the flat, Block 489, Jurong West Avenue 1, #03-37, and to whistle when he arrived there.

15. Suboh went there by taxi. Upon his arrival, he whistled and Salam opened the door and invited him in. Salam produced a plastic bag with about twenty samples of VCDs inside. The only title Suboh could remember during the trial was 'Kama Sutra'. Suboh also saw small sachets of drugs in the plastic bag. When he asked to whom the drugs belonged, Salam said that he did not know and that the plastic bag was given to him by someone earlier. Suboh asked for some of the drugs for himself but Salam refused this request. Suboh nonetheless persisted in asking for them and took some for his own use.

16. Thereafter, Suboh felt the need to move his bowels and he went to the toilet. He smoked two cigarettes inside the toilet. After leaving the toilet, Suboh spent some time talking in the hall with Salam. He did not notice the plastic bag containing the VCDs and the drugs then.

17. As they were leaving the flat, Salam opened the padlock of the gate with a key he had with him. Salam then went ahead and told Suboh to lock up after him. Suboh did so and followed Salam, who by that time had ascended the stairs. Suboh put the keys into his pocket, intending to return them to Salam later. Suboh only managed to catch up with Salam at the lift landing on the sixth floor. Before Suboh could return the keys to Salam, they were arrested as they emerged from the lift at the ground floor.

18. Suboh denied any knowledge of the drugs. He denied that Hazafi had ever given him the keys to the flat #03-37 of Block 489.

Wong's case

19. At the trial, when he was called upon to enter on his defence, Wong elected to remain silent. However, witnesses were called to testify on his behalf. Wong's main line of defence pertained to the identification evidence. His stand was that he handed over the blue plastic bag to a male Malay on the sixth floor of Block 489 and that he never delivered any blue plastic bag to any person at the flat on the third floor. Witnesses were called to cast doubt on the evidence of the CNB officers who saw Wong walking along the sixth floor corridor and descending to the third floor, where he stood outside the flat #03-37 of Block 489 for a few minutes.

Wong's appeal

20. As a matter of convenience, we consider first Wong's appeal. Wong was not apprehended while carrying the bag containing the drugs, and his fingerprints were not found on the bag containing the drugs. Neither Salam nor Suboh implicated Wong in any way. He was convicted mainly on the surveillance evidence of the CNB officers and his s 121 statements.

21. Before us counsel for Wong seeks to impugn the surveillance evidence adduced by the prosecution. He submits that there were serious gaps in the evidence of the CNB officers engaged in the surveillance, and none of the officers testified that they actually saw Wong coming out of the lift on the sixth floor of Block 489, walking along the common corridor and down the staircase to the flat #03-37 and standing in front of the flat for a short while. He does not seriously dispute that the officers saw a person walking along the common corridor on the sixth floor and going down to the third floor. His submission is that none of the officers had truly identified that that person was Wong. In the circumstances, the surveillance evidence was highly

unsatisfactory and unsafe, and the learned judge was in error in relying on such evidence to convict Wong.

22. There was no dispute that Wong went to Block 489, Jurong West Avenue 1 at about 2.15 pm on 22 December 1999. At that time, there were several officers stationed in the vicinity keeping an observation of Block 489. We turn to examine their evidence as to what they actually saw and also what they heard from each other over the radio set they carried. We take as the starting point the evidence of the officer who actually saw the Malaysian car No. JDF 755 arriving at the car park of Block 489. That evidence came from Cpl Peter Loong Tean Huat. He testified that he was instructed to look out for a Malaysian car coming to the car park of Block 489 and that at about 2.15 pm he saw a Malaysian car No. JDF 755 driven by a male Chinese arriving at the car park of Block 489. He later heard on the radio set that the driver was taking the lift and carrying a blue plastic bag, and shortly thereafter he heard that the driver was standing outside the flat #03-37. He later heard another radio message that the driver was walking back to his car empty handed. At about 2.55 pm he saw the car No. JDF 755 leaving the car park of Block 489 Jurong West Avenue 1.

23. Next, there was the evidence of Sgt Tony Ng and SSgt Goh Teck Hock who arrived at the scene at about 1.30 pm. Sgt Tony Ng was stationed at the edge of the void deck of Block 487 facing Block 489. At about 2.15 pm he heard over the radio that a Malaysian car had arrived and entered the car park. He saw a car No. JDF 755 parking in front of Block 489 Jurong West Street 41. He saw the driver alighting from the car and going to the void deck where he was seen using his handphone. The driver was wearing a grey-like T-shirt. The sergeant later saw the driver going back to his car. He next saw the driver entering the lift at the ground floor of Block 489. However, he failed to see if the driver was carrying anything in his hand. Shortly thereafter, he heard a radio message that the driver was at the sixth floor and going down to the third floor. Later, he saw the driver coming out of the lift on the ground floor of Block 489. This time Sgt Tony Ng was positive that the driver was not carrying anything. The driver got into his car, stayed there for a short while and then reversed his car and moved to another parking lot, where again he remained for some time before he drove off.

24. SSgt Goh Teck Hock was with Sgt Tony Ng at the time. SSgt Goh testified that he also stationed himself at the void deck of Block 487 to keep observation. At about 2.15 pm he heard on the radio set that a Malaysian car No. JDF 755 had arrived at the car park of Block 489. He saw the driver alighting from the car and proceeding to the void deck and there using his handphone. A short while later, the driver returned to the car and opened the door at the driver's side. SSgt Goh then saw the driver carrying a blue plastic bag, rectangular in shape and of a size slightly bigger than the A4 paper size, with a string handle attached to it. He then instructed Sgt Tony Ng to relay the message to the others that the driver was carrying a blue plastic bag. He saw the driver going to the lift landing and entering the lift. About one or two minutes later, he heard the radio message that the driver was standing outside the flat #03-37. The next time SSgt Goh saw the driver was when he came out of the lift on the ground floor of Block 489. The driver then was empty handed; he went to the car, reversed it and parked at a different lot before he eventually drove off.

25. On the same day, at about 4.20 pm, after the arrest of Salam and Suboh, ASP Ang Choe Seng asked SSgt Goh to identify a blue plastic bag recovered from the flat #03-37. SSgt Goh identified the blue plastic bag that was seized from Block 489 as the bag which the driver of the car No. JDF 755 was seen carrying from his car.

26. We now come to the evidence of W/Sgt Rahizah binte Rahim and SSgt M Subramaniam. Both of them, on that day, 22 December 1999, since 9.30 am had been keeping observation of Block 137, Yishun Ring Road. At about 12.25 pm they saw Salam coming out of the void deck of that block and boarding a taxi. They followed in their vehicle and trailed the taxi to Jurong West Street 41 where Salam alighted. Rahizah saw Salam going to the lift landing of Block 489 and taking the lift, and thereafter saw him walking along the common corridor on the sixth floor to the staircase going down to the third floor and entering the flat #03-37.

27. In the afternoon, Rahizah and Subramaniam were still at the vicinity of Block 489. At about 2.15 pm, Rahizah heard on the radio set that a Malaysian car No. JDF 755 had entered the car park. Later she spotted a person walking along the sixth floor corridor towards the left staircase and there was no other person walking there at that time. She immediately radioed a message that someone was walking along the sixth floor corridor. That person walked down the staircase to the third floor and then turned towards the flat #03-37. She saw this person standing in front of the flat for a few minutes. That person later left, took the

staircase up to the sixth floor and walked along the common corridor to the lift landing on the right. She then lost sight of the person. Later, she heard that the person was on the ground floor.

28. SSgt Subramaniam corroborated substantially what Rahizah said. At the time when the Malaysian car arrived at the car park he had already repositioned his car at the car park facing Block 489 and his view was unobstructed. At about 2.15 pm, he heard on the radio set that a Malaysian car No. JDF 755 had arrived at the vicinity of Block 489 and subsequently that a male Chinese had alighted from the car carrying a blue plastic bag and walking towards the lift landing of Block 489. He next heard that the male Chinese was taking the lift. A short while later, he saw a male Chinese walking along the sixth floor common corridor towards the left staircase, and walking down the staircase and later standing outside the flat #03-37 for about two minutes. He then saw this person leaving, taking the same staircase up and walking along the common corridor on the sixth floor. Later, he heard on the radio set that the male Chinese was spotted coming out of the lift on the ground floor, and this time he was empty-handed. At about 2.55 pm, he heard that the Malaysian car left the car park of Block 489.

29. As the Malaysian car left the car park of Block 489, it was trailed all the way by the CNB officers until the junction of Upper Thomson Road and Marymount Lane, where it was stopped and the driver of the car was arrested. The driver was none other than Wong himself.

30. In our view, the sum total of the surveillance evidence is this. Wong was seen driving the car No. JDF 755 to the car park of Block 489 at about 2.15 pm and alighting from the car. He was seen carrying a blue plastic bag and walking to the lift landing of Block 489 and taking the lift. A short while later, a person was seen walking along the common corridor on the sixth floor to the staircase on the left and going down to the third floor and walking to the flat, #03-37. And the person stood outside the flat for a few minutes. This person then returned to the sixth floor, taking the same route to the lift landing on the sixth floor. Very soon thereafter, Wong was seen emerging from the lift, and this time he was empty-handed. He went to the car No. JDF 755 and remained there for a short while. He was seen moving the car to another parking lot and remaining there again for a short while. After that he drove off. He was trailed by the CNB officers and was subsequently arrested.

31. It is true that none of the CNB officers involved in the surveillance could say that the person seen walking along the common corridor on the sixth floor, taking the staircase to the third floor, going to the flat #03-37 and standing in front there for a few minutes was Wong. However, at that time, no other person was seen walking along the common corridor on the sixth floor or the third floor. The inference is that Wong was the person they saw. We find irresistible the following conclusion of the learned judge at 237 of his grounds of judgment:

237. There was ample credible evidence from SSgt Subramaniam and W/SGT Rahizah and the surveillance team, supported by evidence of contemporaneous radio message communications, that the driver of JDF 755 had indeed gone up to the 6th floor of the Blk 489 via the lift, walked along the common corridor, walked down the stairs to the 3rd floor, stood outside the said flat and later leaving the way he came from. He was seen carrying a blue plastic bag when he went up the lift and later, he was no longer seen with the blue plastic bag when he returned to his car. The totality of the surveillance evidence led me to the inexorable conclusion that the 3rd accused had delivered a blue plastic bag to a person at the said flat on the 3rd floor.

Wong's s 121 statements

32. The surveillance evidence was not the only evidence adduced by the prosecution. Wong made two s 121 statements to the CNB officers in the course of their investigation, one on 23 December and the other on 27 December 1999. Clearly these statements may be used in evidence at the trial below. The material part of the first statement was as follows:

2. On 22.12.99, the day when I was arrested, I arrived in Singapore at about 12.00 p.m. via Woodlands checkpoint. I drove A short while later, I left for Blk 489 Jurong West Ave 1.

3. At about 1.00 p.m. plus, I reached the carpark of Blk 489 Jurong West Ave 1. I then parked my car at one of the parking lots nearer to Blk 489. I got out from the car and called a number and spoke to the person in Malay. I said to him "Saya suda sambai". The person then asked me to go to the 6th storey in Malay. I then removed a blue plastic bag from the floorboard at the rear passenger seat. After which, I took the blue plastic bag and went up to the 6th storey corridor using the centre lift. After coming out from the lift, I turned right and saw a male Malay. Without speaking to him, I handed over the blue plastic bag to him and he in turn gave me a brown envelope in which I knew contained money. I took the lift back to the ground floor and went back to my car. In the car, I opened the large brown envelope which I got from my friend earlier on and counted the money which amounted to S\$24,950. They were in denominations of S\$1,000, S\$50, and S\$10. After counting the money, I placed both the brown envelopes underneath the front passenger seat.....

4.

5. I am now shown a blue plastic bag and I recognise it as the blue plastic bag that I had mentioned earlier in my statement (Recorder's note: - Accused is shown a blue plastic bag labelled as 'A1a' which was recovered in a raid on Blk 489 Jurong West Ave 1 #03-37).....

The material part of the second statement was as follows:

12. On the eve of my arrest, 'Ah Bear' called me at about 11.00 p.m. to inform me that I have got to work and at about midnight, he asked me to meet him at the same '7-11' store. He then handed over a blue plastic bag to me and like the previous times, told me that he would call me again when I am in Singapore. He also told me then to enter Singapore by 12.00 p.m. I then took the plastic bag and left it in the car boot.....

13. On the day of my arrest, I woke up at about 11.00 a.m. After washing up, I went to my car and hid the plastic bag which 'Ah Bear' gave to me under the spare tyre in the car boot. After which, I left for Singapore in my car. At about 12.00 p.m., I entered into Singapore via Woodlands checkpoint. I used the green lane and was not checked by the police. As 'Ah Bear' did not call me, I went to look for a friend of mine to borrow money for my business. I had arranged with my friend to borrow money and therefore, I forked out time to collect it from him. At the carpark at Ang Mo Kio, I took out the blue plastic bag and transferred to the floorboard of the rear passenger seat. While removing it from the car boot, I saw about one to two packets of yellow substance inside the bag. I wish to say that I do not know what was the yellow substance. After I had collected the money from my friend, 'Ah Bear' called me and gave me the contact number for a male Malay. I keyed in the number into my handphone. Although I had planned to collect a handphone sent for repairs, I went straight to Jurong West as 'Ah Bear' told me that the person is already waiting. I immediately called the number which

'Ah Bear' gave me and the male Malay answered the call. I asked him where he was and he told me that he was at Blk 489 Jurong West. He also told me to call him again when I had reached there. Upon reaching Blk 489 Jurong West at about 1 plus p.m., I called the male Malay and he told me to go to the 6th storey where I handed the plastic bag to him. I also collected some money.....

33. In quoting his statements, we have set out what counsel contends are the exculpatory parts as well as the inculpatory parts of the statements. Both parts of the statements were considered by the trial judge and he found that the statements corroborated the surveillance evidence of the CNB officers. The trial judge said at 238 and 239:

238. I must emphasize that the prosecution's case against the 3rd accused was not entirely based on this surveillance evidence alone but was corroborated by the inculpatory parts of the 3rd accused's s 121 statement.

239. The 3rd accused had confessed in substance to the following:

(a) 'Ah Bear' had previously asked him to carry packets of items into Singapore. He had done so and was paid. He made these deliveries because he was short of money.

(b) On the eve of his arrest 'Ah Bear' asked him again to make delivery of items into Singapore. Ah Bear handed a **blue plastic bag** to him. He did not know the **number of packets** inside. 'Ah Bear' told him to **collect money** from the person he was handing the blue plastic bag over.

(c) On the day of his arrest, he hid the plastic bag under the spare tyre in the boot of his car JDF 755. He believed that the things he carried were **illegal** as "Ah Bear' had previously told him to hide them well. But he never thought that he would face the death penalty if arrested.

(d) When he was at Ang Mo Kio, he removed the blue plastic bag and transferred it to the floorboard of the rear passenger seat. He saw about one to two packets of **yellow substance** inside the bag. He called a number provided subsequently by 'Ah Bear' and the male Malay told him that he was at Blk 489 Jurong West.

(e) Upon reaching Blk 489, he called the male Malay again and was told to go to the 6th storey. He went to the 6th storey where he **met a male Malay**, and **handed the blue plastic bag to him** and collected a brown envelope containing money from him.

(f) He was shown the blue plastic bag seized and he recognised and **identified it as the blue plastic bag** mentioned in his statement which he said he was carrying when he went up the lift of Blk 489.

We agree entirely with these findings of the learned judge.

34. It should be noted that Wong admitted that on the day and at the time in question he drove his car No. JDF 755 to the car park of Block 489 at Jurong West Avenue 1, parked his car there, brought out a blue plastic bag and went up to the sixth floor, and there he delivered the bag to a Malay and collected moneys from him. What is very damning was that, in the first s 121 statement, he identified the blue bag, which the CNB officers had recovered from flat #03-37 Block 489 after the arrest of Salam and Suboh, as the bag he handed to the Malay on the sixth floor. That bag was found to contain the quantity of drugs, which formed the subject of the charge.

35. It should also not be forgotten that upon his arrest, there were found in his car, under the front passenger's seat, two brown envelopes: one containing S\$9,500 and the other containing S\$24,950. One of these brown envelopes must have come from the Malay to whom he handed the blue bag. In his s 121 statements, he admitted that upon handing the blue bag to the Malay he collected from him a brown envelope containing moneys.

36. Purely on his own admissions, Wong had delivered a blue bag to a Malay on the sixth floor of Block 489 and collected moneys from him and that bag was found to contain the drugs. The drugs therefore were in the bag, and the bag was clearly in his possession. That being so, under s 18(1) of the Act, he was presumed (until the contrary is proved) to have the drugs in his possession, and under s 18(2), he was further presumed (until the contrary is proved) to have known the nature of the drugs. Hence, by delivering the drugs to the Malay on the sixth floor (assuming that what he said was true), he committed the offence of trafficking by delivering that quantity of drugs. In this respect, whether he delivered the drugs to Suboh or to any other person is immaterial. By merely delivering the drugs to a person, known or unknown, he committed the offence of trafficking in those drugs.

37. There is no merit in the appeal by Wong. We agree entirely with the trial judge's finding that the prosecution had proved the charge against Wong beyond reasonable doubt. Accordingly, we dismiss the appeal brought by Wong.

Suboh's appeal

38. We now turn to Suboh's appeal. The main argument advanced by counsel for Suboh is that the learned judge misdirected himself when he relied on the testimony of Salam, who was shown to be untruthful and unreliable. Salam had lied on material aspects of the evidence, and because of these lies and inconsistencies, the learned judge should have placed little or no weight on Salam's evidence. Counsel draws our attention to some parts of Salam's evidence which were clearly lies, namely his evidence: (a) that Suboh arrived at the flat first; (b) that he never entered the flat; (c) that he did not consume any heroin; and (d) that he thought his urine tested positive because of some cough mixture that he had taken.

39. It is true that in his evidence Salam sought to distance himself from the drugs found in the flat #03-37, Block 489 and in so doing lied on various aspects. However, the learned judge was fully alive to the lies in his evidence and took them into account in evaluating the prosecution's case against him. The learned judge said at 217 and 218 of his grounds of judgment:

217. Although Salam retracted a number of his statements to the CNB officers after his arrest which showed him to be a self-confessed liar, nevertheless I was prepared to accept his evidence given at the trial proper after I had carefully scrutinised his evidence. He appeared fairly forthright and candid. I was to some extent impressed by the consistency of his evidence not only on a general level but also in the details despite being tested quite severely in cross-examination by counsel for Suboh and by the DPP. He came out surprisingly well. I was surprised at his candour about his past which he revealed without hesitation during cross-examination by counsel for Suboh....

218. I tested his evidence against the objective evidence. I was fully conscious of the fact that an accused person might want to tailor his evidence to fit the objective facts as closely as possible to give it a veneer of believability, sufficient to raise at least a reasonable doubt. Much as I would like to think that there was a lurking suspicion that he might well be involved based on the circumstantial evidence, I did not think that it was sufficient for me to convict Salam on the criminal charge based on a high standard of proof of beyond reasonable doubt. The circumstantial evidence did not point irresistibly to the conclusion that he had a common intention to traffick in the said drugs together with Suboh.....

On the evidence before him, the learned judge was entitled to come to this conclusion.

40. At any rate, even if the learned judge had rejected Salam's evidence on the ground that Salam was untruthful and unreliable, and convicted Salam of the charge, we do not see how such a result would or could have any effect or impact on the defence of Suboh. It certainly would not exonerate him from the charge. Salam's lies, which were relied on heavily in the argument by Suboh's counsel, concerned only Salam himself and does not impinge on Suboh's defence or guilt. The learned judge certainly did not rely on Salam's lies to convict Suboh. The evidence of Salam on which the learned judge relied in acquitting him has no bearing on the defence of Suboh in relation to the charge.

41. Counsel for Suboh seeks to impugn also the evidence of Hazafi on the ground that there were lies and inconsistencies in the latter's evidence. Hazafi in his evidence initially said that he had never given Suboh the keys to the flat, but later on being recalled he reversed his evidence and admitted that he had given the keys to the flat to Suboh, because Suboh wanted a place to stay. In so doing he had lied in his earlier evidence and his statement given at the Preliminary Inquiry. This was noted by the learned judge. However, what was material was the fact that Hazafi knew Suboh and not Salam. Hazafi testified that Suboh visited him on three occasions in 1998, while he and his family were staying at the flat #03-37 of Block 489, and this was not disputed by Suboh. The fact that Suboh had visited the flat on three previous occasions indicated that Hazafi and Suboh must have been on fairly good terms. On the other hand, Hazafi was quite insistent in his evidence that he did not know Salam, and on this the learned judge found that he 'never vacillated' at all. Salam also consistently maintained that he did not know Hazafi. We do not find any error on the part of the learned judge in accepting the evidence of Hazafi that he did not know Salam and that he gave Suboh the keys to the flat #03-37.

Evidence of the charge against Suboh

42. In this appeal it is essential to bear in mind what the charge was that was brought against Suboh. The charge against him was that he had possession of the drugs in question *for the purpose of trafficking*, and under s 5(2) of the Act he thereby committed the offence of trafficking in the drugs. To make good this charge the prosecution has to prove beyond reasonable doubt that Suboh had possession of the drugs at the material time: *Low Kok Wai v Public Prosecutor* [1994] 1 SLR 676, *Public Prosecutor v Wan Yue Kong and ors* [1995] 1 SLR 417 and *Lim Lye Huat Benny v Public Prosecutor* [1996] 1 SLR 253. Once this burden is discharged, the presumption under s 17(2) that he had possession of the drugs *for the purpose of trafficking* is triggered, and the burden is then on Suboh to show on the balance of probabilities that drugs were for purposes other than trafficking.

43. We now turn to consider whether the prosecution has proved that Suboh had possession of the drugs. In discharging this burden, the prosecution has to prove (i) that Suboh had physical custody of the quantity of substance, and (ii) that he knew that the quantity of substance contained drugs: *Fun Seong Cheng v Public Prosecutor* [1997] 3 SLR 523, *Su Chee Kiong v Public Prosecutor* [1999] 1 SLR 782 and *Gulam bin Notam Mohd Shariff Jamalddin and anor v Public Prosecutor* [1999] 2 SLR 181.

44. First, the evidence. At about 2.30 pm on 22 December 1999, Wong was seen going to Block 489 with a blue bag and taking the lift up. On Wong's own admission he went up to the sixth floor and delivered the blue bag to a male Malay, and the bag was subsequently found to contain the drugs. As we have found, Wong's evidence that he delivered the bag to a Malay on the sixth floor is unbelievable, and we reject it. Purely based on what the CNB officers actually saw, the inference is inescapable that Wong delivered the blue bag, which contained the drugs, to someone at the flat #03-37 of Block 489. There were in the flat, at the time, only two persons, Salam and Suboh. Upon their arrest by the CNB officers, there were found on Suboh, among other things, the keys to the flat, and ten sachets of heroin. With the help of the keys, the CNB officers gained access to the flat, and a search was conducted in the presence of Salam and Suboh. They found a blue bag which contained the drugs, the subject of the charge. That, however, was not all. On his own admission, the ten sachets of drugs found on Suboh at the time of arrest came from a plastic bag in the flat, and on the basis of the search conducted by the CNB officers immediately after his arrest, the only plastic bag that contained the drugs was the blue bag which was the very bag delivered by Wong.

45. In a statement recorded under s 122(6) of the Criminal Procedure Code, he said: 'I have nothing to say right now'. He declined to say what his defence was to the charge, although he was given an opportunity to do so. The learned judge drew an inference that he was involved in the drugs, and, in our view, the learned judge was entitled to draw such an inference. At the time of his arrest, he had with him a pager and a handphone. The trial judge also drew the following inference:

He was clearly going on his drug trafficking rounds when he was caught with the 10 sachets.

It is clear to us that the learned judge did not draw this inference merely because he had with him a pager and a handphone. He drew this inference on the basis of this and all the other evidence before him.

46. The learned judge then said at 228 and 229:

228. He could not give a reasonable account of what he did in the flat from 2.05 pm to 3.20 pm. By his own evidence, he saw the sachets of drugs before he went inside the toilet for some 20 minutes. He testified that apart from the time spent in the toilet, he was in the hall of the flat. If the drugs were delivered at the time he was in the toilet, then he would not have seen any drugs prior to his going to the toilet. By that evidence, it suggested that he was present in the hall at the time the 3rd accused delivered the drugs. The irresistible conclusion was that he and not Salam took delivery of the blue plastic bag with the drugs. It was he who had, whilst Salam was resting in the master bedroom, repacked some of the drugs into the sachets, which accounted for the empty torn plastic bag (stained with heroin) and the cellophane wrapper found in the kitchen (which was similar to that used for wrapping the other packets of drugs). After repacking, he then placed 10 sachets in his pockets to get ready for his trafficking rounds. Thereafter, he hid the blue plastic bag containing the drugs and the other drug trafficking paraphernalia behind the cupboard in the flat. There was no reliable evidence to show that Salam knew about this hidden blue plastic bag.

229. In my judgment, Suboh had physical possession of the drugs in the flat as well as the requisite mens rea for trafficking.

.....

47. For the reasons we have given, we agree with the findings of the learned judge that the prosecution had proved beyond reasonable doubt that Suboh, at the material time, had physical custody of the drugs as well as the requisite *mens rea*, i.e. that he knew that the blue bag found in the flat contained the drugs. The prosecution therefore had proved that Suboh had possession of the drugs, and as the quantity of the drugs in his possession exceeded 2 grams of diamorphine, there arose the presumption under s 17(1) of the Act that he had possession of the drugs for the purpose of trafficking, and no evidence had been adduced by Suboh to rebut this presumption. Consequently, by reason of s 5(2) of the Act, he committed the offence of trafficking. Accordingly, Suboh's appeal is also dismissed.

L P Thean
Judge of Appeal

Chao Hick Tin
Judge of Appeal

M P H Rubin
Judge

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