

Public Prosecutor v Syed Yasser Arafat bin Shaik Mohamed  
[2000] SGHC 61

**Case Number** : CC 3/2000  
**Decision Date** : 19 April 2000  
**Tribunal/Court** : High Court  
**Coram** : MPH Rubin J  
**Counsel Name(s)** : Hay Hung Chung and Edwin San (Deputy Public Prosecutors) for the prosecution;  
Yap Gim Chuan (Soh Wong & Yap) and Paul Anpualagan (Surian & Partners) (AC)  
(both assigned) for the accused  
**Parties** : Public Prosecutor — Syed Yasser Arafat bin Shaik Mohamed

**JUDGMENT:**

**GROUND OF DECISION**

1 Syed Yasser Arafat bin Shaik Mohamed, the accused herein was charged and tried before me on the following charge that:

on or about the 5<sup>th</sup> day of August 1999, between 4.29 pm and 4.50 pm, in a taxi bearing registration number SHA 1043U at the junction of Lentor Avenue and Yishun Avenue 1, Singapore, he trafficked in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession 5 packets of diamorphine weighing 32.27 grams (nett) for the purpose of trafficking, without any authorisation under the MDA or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33 of the MDA.

2 The evidence led by the prosecution established that on 5 August 1999, at about 3.50pm a team of officers from the Central Narcotics Bureau ('CNB') comprising S/SSgt Tan Wu Chyuan (PS-20/PW-8) ('S/SSgt Tan') and Sgt Choo Thiam Hock (PS-21/PW-3) were keeping watch on Blk 65, #05-337 Kallang Bahru, Singapore. Subsequently, more CNB officers arrived and joined the watch on the said unit.

3 At about 4.10pm on the same day, S/SSgt Tan saw a male Malay, later identified as one Mohamed Daud Bin Salih, ('Daud') (PW-23) at the void deck of Block 65 Kallang Bahru. At about 4.30pm one of the officers noticed an NTUC taxi bearing the registration number SHA 1043U arrive at the entrance of Block 65A (a multi-storeyed carpark). Daud then boarded the said taxi from the front passenger side, seated himself and waited.

4 Daud and the taxi driver, one Mak Keng Chin (PS-10/PW-7) both said that shortly after Daud had boarded the taxi, the accused arrived, entered the said taxi and occupied the rear passenger seat. The taxi driver said that the accused had a bag with him then.

5 Daud further said that when he presently turned to the accused and asked for the taxi's destination, he noticed that the accused had a black and white haversack (exh P-87) ('the haversack or backpack') by his side. The accused told him that he wanted to proceed to Blk 243 Yishun Ring Road.

6 The CNB officers thereafter trailed the taxi from Kallang Bahru through PIE (Jurong), CTE (Ang Mo Kio) and SLE (Yishun). Later, the taxi exited at Yishun and travelled along Lentor Avenue.

7 At about 4.48pm that day, at the junction of Lentor Avenue and Yishun Avenue 1, the taxi was intercepted by the team of CNB officers. Daud was arrested and handcuffed by Sgt Rahmat Bin Toleh (SPS-25/PW-14) at the front passenger seat and was moved to the rear passenger seat, whilst another officer S/SSgt Tan Yian Chye (PS-22/PW-9) ('S/Sgt Tan') arrested and handcuffed the accused at the right rear passenger seat. S/SSgt Tan said that he saw the black and white haversack (exh P-87) lay to the right of the accused. Thereafter, the taxi driver was told to proceed to Yishun Avenue 1 near the sports complex where Daud and the accused were kept under guard at the rear passenger seat of the taxi by the CNB officers.

8 On the same day at about 5.00pm, S/SSgt Ronnie See Su Khoon (PS-28/PW-16) and his party of officers comprising S/Sgt Ravi Vellu (PS-32/PW-15), Sgt Dean Goh Teck Kiat (PS-30/PW-19), Sgt Mohd Noor Bin Mohd Zain (PS-29/PW-17), Sgt Mohd Najid Bin Sairi (PS-33/PW-21), Cpl Larry Lee Keng Hiang (PS-34/PW-20) and W/Cpl Nurmuhamini Binte Bakar (PS-31/PW-22) arrived at Yishun Avenue 1 to take over the case from S/SSgt. Tan and the arresting party.

9 S/SSgt Ronnie See was briefed by S/SSgt Tan who pointed out to him the black and white haversack (exh P-87) which was still next to the accused inside the taxi. From outside the rear right of the taxi, S/SSgt Ronnie See proceeded to unzip the said haversack and found in it five packets of granular substance which he suspected to be heroin.

10 A search was then conducted on Daud and the accused. Amongst other things, a bunch of 6 keys (exh P-88) was found on the accused person's left trouser pocket.

11 At about 5.55pm, Insp Soh Thiam Loon ('Insp Soh') (PS-46/PW-28) with his party of officers (consisting of ASP Adam Fashe Huddin, S/Sgt Xavier and S/Sgt Yayah) arrived at Yishun Avenue 1. Insp Soh then took over the case from S/SSgt Ronnie See, who handed over, amongst other things, the black and white haversack (exh P-87) and the bunch of six keys (exh P-88) which had earlier been seized from the accused.

12 The prosecution's evidence also established that later that day at about 6.20pm, Insp Soh and his party of officers together with S/SSgt Ronnie See's party of officers arrived at a flat situated at Blk 243 Yishun Ring Road, #04-1145, with the accused and Daud. Once at the entrance of the flat, Insp Soh handed over the bunch of six keys seized from the accused to S/Sgt Ravi Vellu who opened the padlock and the main door of the said unit using two of the six keys from the bunch.

13 In the ensuing search of the flat, the following items were found in a room between the two bedrooms by W/Cpl Nurmuhamini:

- (i) In the left bottom drawer of a cabinet, two boxes of candles were seized;
- (ii) In the right bottom drawer of the same cabinet, the following were seized:
  - (a) a plastic container containing numerous empty sachets;
  - (b) two stained pincers;
  - (c) a digital weighing scale;

(d) a plastic container containing a bowl with a knife and two spoons;

(e) a box of candles;

(f) a plastic container;

(g) three stacks of envelopes; and

(h) loose empty sachets in a plastic bag.

(iii) In the right bottom drawer of the wardrobe, a straw of heroin wrapped with tin-foil was seized (marked exhs P-90 to P-93).

14 Scientific analysis carried out by the Department of Scientific Services (DSS) established that the drugs found in the black haversack contained 32.27g of diamorphine. There were altogether five packets inside the said bag and the gross weight of the drugs seized amounted to 2,248.7g (see DSS Certificates as in exhs P-56, P-57, P-58, P-59 and P-60 at pages 42 to 46 of the PI notes).

### **Statements**

15 Besides the cautioned statement made by the accused on 6 August 1999 (exh P-81 at page 278 of the PI notes), the prosecution sought to admit three other statements recorded from the accused on 11 August, 14 August and 24 August 1999. The defence did not raise any objection to the admission of the cautioned statement. In the said cautioned statement the accused said:

I do not know anything about the stuff. That's all.

16 However with regard to the other three statements, there were objections as to their admission. Consequently, a trial within a trial ensued. At the *voir dire*, the evidence of the prosecution witnesses, namely, Insp Soh, interpreter Sofia bte Sufri, S/Sgt Ronnie See, S/Sgt Patrick Phoa and S/Sgt Xavier was that they never coerced, threatened, induced or made any promises to the accused with a view to proffering any statements from him. The only nick in the prosecution's case was an admission by the interpreter Sofia that during one of the recording sessions, whilst Insp Soh was in the process of obtaining the personal particulars of the accused, she enquired from the accused whether he was the brother of one Sharifah Imah, a woman who had been involved in an unrelated previous drug offence. She asked him what had happened to her. The accused replied that his sister had been discharged from the capital case. The interpreter also said when she asked him about his sister, the accused appeared surprised. The interpreter agreed with defence counsel that questions were posed to the accused about the background of the accused as well as his family members and when asked whether any incriminating questions were put to the accused during the recording, she responded in the affirmative.

17 In his evidence during the trial within a trial, the accused alleged that the statements sought to be admitted were not made by him voluntarily and that they were given under duress, threat, inducement and promises emanating from various CNB officers. His allegations could be summarised as follows:

(a) On the day of arrest

(i) Inside the taxi-cab shortly after his arrest:

Allegation: He was questioned by S/Sgt Ronnie See in a stern manner.

(ii) In the Yishun flat:

Allegation: He was questioned by Insp Soh. Besides Insp Soh he was once pulled aside by a tall Malay officer (Adam Fashe Huddin) and was told he had better admit and co-operate since he was caught with evidence. The same officer also questioned him in a firm tone about the drugs seized. He maintained however that he did not know anything about the drugs.

(b) 6 August 1999

Allegation:

After his cautioned statement had been completed, Insp Soh showed the accused the photograph of the son as well as the girlfriend of the accused and told him to think about their future, especially his son. Insp Soh told him to co-operate otherwise he would recommend to the authorities the confiscation of his flat where he was residing with his parents and son. His mind was not at ease since he had only one son and both his parents were old. If the house were to be confiscated they would have no roof over their heads. He felt pressurised and confused.

(c) 11 August 1999

Allegation:

On this occasion interpreter Sofia asked him about his sister. She told him that she had acted as the interpreter when his sister was facing a capital charge. This fact was interpreted to Insp Soh. Whatever statement he made on 11 August 1999 was not made of his free will and not voluntarily given. By giving the statement he was trying to save the best for his son, his parents and the flat where he was residing.

(d) 14 August 1999:

Allegation: His mind was not at ease. He believed whatever Insp Soh told him about his son and house on 6 August 1999. He therefore gave a statement which was by way of questions and answers. Insp Soh questioned him about his past. After the statement had been completed, Insp Soh told him to think about the charge he was facing. Insp Soh told him this time too that he was going to recommend the confiscation of his house because most of his siblings were all involved in drug offences. The interpreter was not present at the time when Insp Soh told him this. The

accused was afraid. He believed Insp Soh was serious because this was the second occasion he had told him so. The statement he made on 14 August 1999 was involuntary.

(e) 24 August 1999

Allegation:

Again this was a question and answer session. Whenever he went out of line or forgot events, he was corrected by Insp Soh and the interpreter. The questions and answers were also in reference to his brothers' and sisters' drug history as well. The statement given by him on 24 August 1999 was involuntary.

18 It is a settled principle that the prosecution would have to prove beyond a reasonable doubt that the statements which it sought to admit were made voluntarily without any of the vitiating elements of threat, inducement, promise or oppression. The law as regards statements made to CNB officers is governed by s 24 of the Evidence Act (Cap 97). In this regard, it is instructive to recite the principles pithily set out by Yong Pung How CJ in ***Gulam bin Notar Shariff Jamalddin v Public Prosecutor*** [1999] 2 SLR 181 at 203 (CA) where he said:

The admissibility of the ... statements is governed by s 24 of the Evidence Act which reads:

A confession made by an accused person is irrelevant if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

Whether a statement is voluntary is a question of fact: *Tan Boon Tat v PP* [1992] 2 SLR 1, following *DPP v Ping Lin* [1975] 3 All ER 175. It is also well established that the common law concept of involuntariness by oppression in *R v Prager* (1972) 56 Cr App R 51 has been subsumed under s 24 of the Evidence Act. The test for determining admissibility under s 24 is first, whether the confession was made as a consequence of any inducement, threat or promise, and second, whether in making that confession, the accused did so in circumstances which, in the opinion of the court, would have led him reasonably to suppose that he would gain some advantage for himself or would avoid some evil of a temporal nature to himself. Both are questions of fact and are matters of judicial evaluation: see *Seow Choon Meng v PP* [1994] 2 SLR 853 and *Tan Boon Tat v PP* [1992] 2 SLR 1, following *DPP v Ping Lin* [1975] 3 All ER 175. 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: *Dato Mokhtar bin Hashim v PP* [1983] 2 MLJ 232 and *Mohd Desa bin Hashim v PP* [1995] 3 MLJ 350. Where voluntariness is challenged, the burden is on the prosecution to prove beyond a reasonable doubt that the confession was 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] 2 SLR 599. However, the accused need only raise a reasonable doubt or, in other words, it is only necessary for the prosecution to remove a reasonable doubt of the existence of the threat, inducement or promise, and not every lurking shadow of influence or remnants of fear: *Panya Martmontree v PP* [1995] 3 SLR 341.

19 Also in ***Poh Kay Keong v Public Prosecutor*** [1996] 1 SLR 209, the Singapore Court of Appeal in allowing the appeal of the accused and in the process reversing the trial court's finding that the statements given by the accused were voluntary, held at page 210:

(1) The purpose or object of s 24 of the Evidence Act was to ensure the reliability of a confession. This was founded on the premise that a confession brought about as a result of an inducement, threat or promise was not reliable and should be excluded. Giving s 24 a purposive construction, an inducement, threat or promise 'had reference to the charge against the accused person' if it was made to obtain a confession relevant or relating to the charge in question. Similarly, the 'advantage' or 'evil' had 'reference to the proceedings against an accused person', if it was gained or avoided (as the case may be) by the making of a statement relevant or relating to the charge brought against the appellant (see pp 220B-D, 221D-G); *Ibrahim v R* [1914] AC 599 and *Customs and Excise Commissioners v Harz & Anor* [1967] AC 760 followed.

20 Bearing the foregoing principles in mind, I proceeded to evaluate the evidence adduced at the trial within a trial. In the main, the question before me was whether Insp Soh did utter the words ascribed to him by the accused and if he did, whether those words had the effect of negating the voluntariness of the statements referred to.

21 Insofar as the prosecution witnesses were concerned – save for an intrusive and unwarranted enquiry by the interpreter which I had earlier adverted to – no vitiating comments, threats, inducements or promises were ever made to the accused either during or before the commencement of the recording of the statements. Their evidence was by and large consistent and free from any significant inconsistency. However, the claim of the accused, I must say, was replete with contradictions and inconsistencies, some of which were major and they could be summarised as follows:

(i) It was put to Insp Soh by the defence that after the interpreter had left the interview room on 6 August 1999, Insp Soh told the accused that he knew the background of his family members. But when the accused was asked during his cross-examination whether Insp Soh told him that he knew of his family background, the accused answered in the negative.

(ii) It was further put to Insp Soh by the defence that after 6 August 1999 and before 11 August 1999, Insp Soh had an opportunity to meet the accused and he reminded him again to 'better co-operate'. In this connection, Insp Soh was specifically asked whether he had met the accused on 7 August 1999 when the

accused and Daud were taken out of lock-up. Insp Soh denied the allegation. But when the accused was asked by the prosecution during his cross-examination whether he had met Insp Soh after 6 August 1999 and before the recording of the statement on 11 August 1999, his answer was in the negative.

(iii) It was further put to Insp Soh that on 11 August 1999 he once again reminded the accused: 'Think about your child. Give me a good statement and I will know what to do for you.' Insp Soh denied this allegation. It was further put to Insp Soh that he told the accused: 'the drugs belong (sic) to Hamal. I know about this. Better co-operate.' However when the accused was asked during his cross-examination whether Insp Soh uttered the words 'Think about your child, give me a good statement and I will know what to do for you', his reply was: 'He never mentioned about this.' When he was asked whether on 11 August 1999 Insp Soh mentioned anything about the ownership of the drugs, his reply was in the negative.

(iv) It was further put to Insp Soh by the defence that he threatened the accused on 14 August 1999 before the interpreter came in. But the evidence of the accused in his examination-in-chief contradicted what was put to Insp Soh. The accused maintained all along that when he went into the room of Insp Soh on 14 August 1999, interpreter Sofia was already there. It was also put to Insp Soh by defence counsel that on 14 August 1999, he told the accused that the six keys seized from him belonged to the flat at Yishun Ring Road and he had better co-operate. Insp Soh however disagreed. Here again when the accused was asked in cross-examination whether Insp Soh said anything to him about the keys on 14 August 1999, he answered that he could not recall.

(v) Above all, when asked by the court whether on the 14 or on 24 August 1999 Insp Soh put pressure on him by mentioning the possibility of the confiscation of his flat or the matter concerning his family members, the accused simply answered that he could not recall.

22 Having reviewed all the evidence and having observed the witnesses, I was of the view that the prosecution had indeed proven that the statements recorded on 11, 14 and 24 August 1999 were voluntarily made by the accused. The intrusion of the interpreter, although improper and merited a stricture, did not in my view bring about any pressure on the accused. In the end, I was satisfied that the three statements sought to be admitted were voluntarily made without being tainted by threat, inducement or any element of oppression. Consequently, I admitted those statements after being assured by the learned DPP and defence counsel that irrelevant and possibly prejudicial matters appearing in the statements had been excised.

23 Relevant segments of the statements admitted read as follows:

**(1) Paragraphs 3, 4, 5 and 6 of the statement recorded on 11 August 1999 (exh P-84A):**

3. The next day, on 5 Aug 1999, we checked out at about 12 something p.m. I went alone back home to the above address at Jurong. I stayed at home until about 3 or 4 p.m. Then I went out. Before I went out, I called Daud and asked him to wait for me at the void deck of Blk 65 Kallang Bahru. I called him from my handphone 97472443. I asked him if he could follow me to Blk 65 Kallang Bahru.

Daud asked for the reason. I told him nothing, just follow me. He said he would meet me there by 3-plus p.m. When he received my call, it was on his handphone. His tel no is 96437137. I went to Kallang Bahru Blk 65 5<sup>th</sup> floor to the compartment covering the pipes just beside the staircase to pick up my thing which was the stuff that I was caught with. The stuff is heroin. I am now shown a bag by the recording officer and I confirm it to be the one that contained the 5 packets of heroin and which I picked up from the compartment of 5<sup>th</sup> floor of Blk 65 Kallang Bahru. (Recorder's note: the accused is shown a bag seized during his arrest on 5 Aug). My dealer put the stuff there. I called him Ah Poh (a Chinese male).

... For this transaction at Kallang Bahru, Ah Poh called me on 3 August 1999 at about 2 p.m. on my handphone. He asked me if I needed any stuff. I told him I needed 5 packets of heroin in about 2-day's time. He told me to put S\$22,000 at the compartment of 5<sup>th</sup> floor next to the staircase at Blk 65 Kallang Bahru on 4 Aug by afternoon. He said he would put the heroin on 5 August. He also said he would call me in the afternoon on 5 August 1999. On 4 Aug at about 2-plus p.m., I went to put the S\$22,000 at the said location after which I left. At about 2-plus p.m. on 5 Aug 1999, Ah Poh called me thro' my handphone and told me the heroin would be there by 3-plus p.m.

4. When I arrived at Kallang Bahru, Daud was already waiting at the void deck of Blk 65. (The accused was shown a photo and he affirm (sic) it to be Mohamed Daud Bin Salih NRIC: S7011052J) I asked him to call a taxi and I also told him that we were going to Yishun Ring road Blk 243. Daud never asked me the purpose of going there. I went up to the 5<sup>th</sup> floor to collect the heroin. Before coming down, I called Daud to ask where was he and whether the taxi had arrived. He said the taxi was here, at the entrance of the carpark. When I came down, I was carrying a bag with the five packets of heroin inside. Daud was already in the taxi sitting in the front seat. I sat behind. The taxi moved off for Yishun. We were going to Blk 243 4<sup>th</sup> floor; I don't remember the unit numbers. The unit was the same unit that CNB officers later brought me and Daud there. I intended to put the heroin in the said unit after which we would leave to walk around Orchard Rd.

5. While we were in the taxi, I received a phone call from Yah thro' my handphone. It was a casual talk. I was not sure whether Daud received or made any phone call. At the red light junction at Yishun (I don't know what road), CNB officers just came from nowhere and arrested us. Two officers came and handcuffed me, one from the left rear door and one from the right rear door. They asked several questions to which I just answered I don't know. The taxi was then asked to move up along the roadside next to the Sports Stadium. Just when the two officers who were on my right and left moved to leave the taxi, I threw my handphone which I was holding all the while despite being handcuffed from the back out of the rear right door. I don't know if the handphone was in the taxi or on the road. But most probably the handphone was on the road. I threw away my handphone because a lot of people called me. I was afraid and confused. I threw the handphone away on impulse. The model of my handphone was a Samsung, black in color.



6. The unit at Blk 243 Yishun Ring Rd is not my house. I wanted to stay alone. The house at Jurong belonged to my family. About one month-plus ago, I met a friend (I called him Aziz). I am now shown a photo of a male whom I confirm to be Aziz. (Recorder's note: the accused is shown a photo of Mohamad Hamal Bin Abd Karim NRIC S 7348683A) I told him I was looking for a house. Aziz said he had a house which he didn't stay and would let me stay for free but I must take care of the house. I shifted there in about mid-July and stayed there most of the time instead of the Jurong house. When I shifted in, all the two rooms were not locked and remained so since then. All the items seized from the storeroom belonged to me.

**(2) Paragraphs 15, 21 and 22 of the statement recorded on 14 August 1999:**

15. I am now shown a black and white Bodypac bag by the recording officer and I confirm it to be the same bag that I picked up from the compartment on 5 Aug, the same bag that contained the 5 packets of heroin, the same bag that I carried downstairs to the taxi, and the same bag I was caught with when I was arrested. (Recorder's note: The accused is shown a black and white Bodypac bag marked "D"). I am also shown a photo of a male Malay and I affirm him to be Daud. (Recorder's note: the accused is shown a photo of Mohamed Daud Bin Salih, NRIC S 7011052J).

21. At the house of Blk 243 at Yishun Ring road, all the seized items belonged to me. When Aziz handed over the keys of the house to me, these items were not there. The one straw found in the right bottom drawer of the wardrobe, I must have left it there. It is heroin and is for my consumption. The digital weighing machine is for weighing the heroin in order to re-pack from the 5 packets of heroin. The empty sachets are also for re-packing purpose and the two pincers for sealing the sachets. The knife was for cutting the packets of heroin. The two metal spoons are for scooping the heroin from the packet into the sachet. The three boxes of candles are for sealing purpose. The bowl is for containing the heroin after I have cut open the packets. The plastic container is for arranging the sachets that have been filled up. I intend to sell a sachet for S\$200.

22. I may come back the next day to do the re-packing alone.

24 At the close of the prosecution's case, the learned DPP offered altogether 19 witnesses and also made available to the defence Hamal, who was initially a co-accused in this trial but had been dealt with separately upon his pleading guilty to a reduced charge before another court. He was the tenant and the other occupant of the Yishun Ring Road flat where, amongst other things, drug trafficking paraphernalia had been recovered.

25 Defence counsel did not make any submission at the close of the prosecution's case. The learned DPP, relying on (a) the seizure of the five packets of drugs inside the black haversack found next to the accused, which on analysis were found to contain 32.27g of diamorphine; (b) the evidence of Daud and the taxi driver that the accused was in possession of the said haversack when he boarded the taxi; and (c) the admissions of the accused as contained in the statements that he was in possession of the drugs found in the haversack and that he intended to deal with them, submitted that a *prima facie* case had been made out against the accused which if unrebutted would warrant his conviction.

26 Having considered all the evidence, even if the statements admitted as being voluntarily made were to be disregarded, I was satisfied that the prosecution had made out a case against the accused on the charge, which if unrebutted would warrant his conviction. Consequently I called upon the accused to enter his defence; the standard allocution was administered and he was explained the courses open to him. The accused however elected to remain silent. Notwithstanding an adjournment granted to reconsider his decision, he still elected to remain silent and did not wish to call any witnesses on his behalf. His counsel also did not make any submission, admittedly upon his instructions.

### ***Final speech***

27 The learned DPP's final speech was by and large similar in substance to his address at the close of the prosecution's case. Despite the silence of the accused, I reviewed all the evidence presented and considered the submissions by the DPP.

### ***Findings and conclusion***

28 The standard allocution administered to the accused contained a mandatory warning that his refusal to give evidence might lead to adverse inferences as appear proper as provided under s 196(2) of the CPC. Section 196(2) of the CPC provides as follows:

**196.-(1) ...**

(2) If the accused –

(a) after being called upon by the court to give evidence or after he or the advocate representing him has informed the court that he will give evidence, refuses to be sworn or affirmed; or

(b) having been sworn or affirmed, without good cause refuses to answer any question,

the court, in determining whether the accused is guilty of the offence charged, may draw such inferences from the refusal as appear proper.

29 Section 196(2) of the CPC was introduced in Singapore in 1976 by amendments to the CPC following recommendations by the UK Criminal Law Revision Committee in its 11<sup>th</sup> Report. The Committee's recommendation is contained in para 111 of the Report and it is reproduced hereunder:

... At present the failure of the accused to give evidence is not allowed to be treated as corroboration. We disagree with this rule. It seems to us clearly right that, when the prosecution have adduced sufficient evidence of a fact to be considered by the jury or magistrates' court, the failure of the accused to give

evidence denying the fact should be capable of corroborating the evidence of it. Admittedly, if the case is one where corroboration is required by law and the prosecution have not enough corroborative evidence to adduce, they may be unable to start the proceedings, because they will not know whether the accused will or will not give evidence; but there may be other corroborative evidence, and failure to give evidence will add to this. In any event the question relates also to where corroboration, though desirable, is not required as a matter of law.

30 In my view, s 196(2) of the CPC had not introduced any new concept to the way the law was administered in our criminal courts. Prevalent judicial approach prior to the introduction of that section could be gleaned from a decision by the Federation of Malaya Court of Appeal in ***Chan Chwen Kong v Public Prosecutor*** [1962] 28 MLJ 307 where Thomson CJ observed at page 308:

... In most criminal cases there is at some stage an onus of a sort upon the accused person. Once the prosecution produces evidence which if believed would support a conviction there is a tactical onus on the accused person either to produce evidence of his own or to point to something in the prosecution evidence that at the very lowest make the trier of fact less than sure of any conclusions he might otherwise be prepared to base upon the prosecution evidence. If he fails to discharge that tactical onus he will be convicted. ...

31 The accused's considered decision not to give evidence in his defence meant that he had failed to discharge the tactical onus placed on him.

32 In my finding, the prosecution had indeed proven beyond a reasonable doubt that the accused was in possession of the drugs which contained 32.27g of diamorphine. This unchallenged aspect immediately raised the presumptions as contained in ss 17, 18(1)(a) and 18(2) of the MDA. By electing to remain silent and neglecting to explain how he came to be in possession of the offending drugs the accused had clearly failed to discharge the burden of rebutting the presumptions adverted to on a balance of probabilities. After reviewing all the evidence, I was satisfied that even without the need to resorting to the statements admitted at the trial within a trial, the prosecution had discharged its ultimate burden in proving its case against the accused beyond a reasonable doubt. In the result, I found the accused guilty of the charge he faced, convicted him and sentenced him to the only punishment prescribed under the law.

Dated this 19<sup>th</sup> day of April 2000.

MPH RUBIN

Judge

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