

Public Prosecutor v Muhammad Ali Hashim and Others
[2001] SGHC 78

Case Number : CC 61/2000
Decision Date : 21 April 2001
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Bala Reddy, Peter Koy and Aedit Abdullah (Deputy Public Prosecutors) for the prosecution; Billy Low (Billy & Alsree) and Allargarsamy s/o Palaniyappan (AC) (Pereira & Tan) (both assigned) for the first accused; Ram Goswami (Ram Goswami) and Devendarajah Vivekananda (AC) (Niru & Co) (both assigned) for the second accused; Mohd Muzammil (Muzammil Nizam & Partners) and N Kanagavijayan (Krishna & Partners) (AC) (both assigned) for the third accused
Parties : Public Prosecutor — Muhammad Ali Hashim; Muhammad Afzal Khan; Muhammad Naveed

JUDGMENT:

Grounds of Decision

1 Muhammad Ali Hashim (the first accused), Muhammad Afzal Khan (the second accused) and Muhammad Naveed (the third accused) who are 53, 49 and 30 years of age respectively were tried jointly before me on the following charges:

(1) As against the first accused (Hashim):

That you, MUHAMMAD ALI HASHIM,

on the 6th day of April 2000 at River View Hotel, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act, Chapter 185 by having in your possession for the purpose of trafficking about 5 kilogrammes of heroin in two suitcases containing a total of not less than 2871.2 grammes of diamorphine at the said hotel without any authorisation under the said Act or the regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) punishable under section 33 of the Misuse of Drugs Act.

(2) As against the second accused (Khan):

That you, MUHAMMAD AFZAL KHAN,

on the 6th day of April 2000 at River View Hotel, Singapore, did engage with one Muhammad Ali Hashim in a conspiracy to do a certain thing, namely, to traffic in diamorphine, a controlled drug specified in Class "A" of the First Schedule of the Misuse of Drugs Act, Chapter 185, and in pursuance of the said conspiracy and in order to the doing of that thing, did offer to sell to one "Ray" about 5 kilogrammes of heroin containing a total of not less than 2871.2 grammes of diamorphine, and you have thereby abetted the commission of the offence of offering to traffic in the said controlled drug, and committed an offence under section 5(1)(a) read with section 12 of the Misuse of Drugs Act and punishable under section 33 of the said Act.

(3) As against the third accused (Naveed):

That you, MUHAMMAD NAVEED,

on the 6th day of April 2000, at or about 9.35p.m., outside Centrepoint Shopping Centre, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule of the Misuse of Drugs Act, Chapter 185, to wit, by delivering 2 suitcases containing a total of not less than 2871.2 grammes of diamorphine to one Muhammad Ali Hashim, Passport No:F118067, without any authorisation under the aforesaid Act or the Regulations made thereunder and you have thereby committed an offence under section 5(1)(a) and punishable under section 33 of the Misuse of Drugs Act.

2 Each accused had one additional charge preferred against him but they were stood down pending the outcome of the trial of the charges mentioned in the preceding paragraphs.

Prosecution evidence

3 The prosecutions evidence against all three accused comprised in the main in three segments, ie (a) the evidence of Raymond Quattlander (PW-3) (Ray), an undercover agent attached to the US Drug Enforcement Agency (DEA) who spearheaded a sting operation resulting in the arrest of all three accused persons. [In relation to this segment the prosecution produced several audio and video-tapes and their transcripts, recording the conversation between Ray, the first accused and second accused on 6 April 2000 in connection with the drug deal as well as the delivery of two suitcases (exhs P-52 and P-53) by the first accused where the offending drugs were concealed]; (b) an agreed statement of facts substantially gleaned from the preliminary inquiry statements of some 39 witnesses, most of whom were involved in the surveillance and the arrest of the accused persons; and (c) the evidence of the investigating officer as well as an Urdu language interpreter who assisted the investigating officer in recording statements from the accused persons.

4 Insofar as is material, the evidence of Ray could be summarised as follows.

5 Ray had been a special agent in the employ of the DEA in New York City, New York, USA. Sometime in June 1999, he was assigned to act in an undercover operation for negotiating the purchase of a quantity of heroin from the first and second accused. In the event, contact was made by the DEA with them and soon Ray left New York for Singapore for the drug transaction. Although other venues were suggested by Ray to them to conduct the anticipated deal, Singapore was chosen by the first and second accused. Consequently, on 5 April 2000 he set out for Singapore to assist the DEA Singapore country office in collaboration with Singapore Central Narcotics Bureau (CNB) in this joint operation.

6 Rays role in this operation was to feign as the head of a major international heroin syndicate based in New York. His arrangement was to purchase two kilograms of heroin (No. 4) for US\$120,000 in cash and another 3 kilograms on consignment.

7 After Rays arrival in Singapore on 6 April 2000, the first accused who was by then in Singapore contacted him. Later, the first and second accused met Ray at about 5.00pm on 6 April 2000 at River View Hotel, Singapore. Another DEA Special Agent, Kimberley Elliot (Elliot) pretending to be the woman friend of Ray was also present. Ray, at this point of time was fully wired and had a concealed micro-audio device on him to record the conversation between him and others. Then as Ray, Elliot, the first accused and the second accused were seated at a table at the ground level caf, Ray opened a small bag which was kept inside a backpack held by Elliot and showed briefly to the first and second accused the wad of US currencies amounting to US\$120,000 stacked inside the bag. Soon Elliot departed from the caf.

8 At about 5.10pm, Ray invited the two of them to his room at River View Hotel to discuss business in private. They all then

trooped into Rays room where they engaged themselves in a long and rambling discourse on the proposed sale of 5 kilograms of heroin by the two accused to Ray. Their entire conversation punctuated by two intervals ie from 5.10pm to 5.50pm (between the two accused and Ray), from 10.10pm to 10.30pm (between the first accused and Ray) and later from 10.48pm to 11.34pm (between the first accused and Ray) was captured by a secret video recording device installed in Rays hotel room as well as by an audio device concealed within the clothes worn by Ray. The conversations thus taped both audio and video - were replayed in court. The transcripts of the relevant portions of the tapes would be referred to later in this grounds.

9 According to Ray, whilst all three were in his hotel room, he was told by them that the heroin to be supplied to him were concealed in suitcases in an extremely sophisticated manner. He was warned that once the heroin was exposed for inspection, it would be impossible for the luggage in which the drugs were hidden to be restored to its original state. Ray persisted. In the end, it was agreed that Ray would take delivery of 5 kilograms of heroin (although the original plan was for only 2 kilograms) and the price to be paid was US\$300,000 US\$120,000 initially and the balance to be remitted later. It was also agreed between them that the heroin to be sold would be shown to Ray later that evening. According to Ray, his two visitors discussed the sale of 5 kilograms of heroin to Ray in earnest.

10 Soon, both the first and the second accused departed the hotel room at about 5.53pm. Later that evening at about 8.02pm, the first accused returned to see Ray in his room without any suitcases. He presently informed Ray that he had brought with him a sample for testing. In the event, the sample was tested and it was found to be heroin. All the same, Ray made it clear to the first accused that the latter should return with the suitcases that contained heroin to conclude their business. The first accused who left Ray at about 8.11pm returned later at about 10.09pm with two suitcases.

11 The first accused then attempted to open the suitcases but they were found locked and he had no keys with him to open them. As a result after making a telephone call to someone (who was later identified the third accused) he left Rays room briefly to obtain the keys. The arrangement was that the third accused would bring the keys to the suitcases to the hotel and hand them to the first accused at the hotel lobby.

12 At about 10.45pm, the third accused made his appearance and after giving a bunch of keys to the first accused left the place by the same taxi.

13 Later at about 10.48pm, the first accused and Ray returned to Rays room. The suitcases that were brought were opened. Ray found them to be empty but emitting an odour of mothballs. The first accused pointed to the sides of the suitcases and stated that the heroin was concealed along the walls of the suitcases. Both of them, in the event, tried to locate it. Ray told the first accused to cut open the lining of the suitcases which the latter did but was not able to locate any drugs. Consequently, the first accused called the second accused using Rays mobile phone to inquire the whereabouts of the heroin.

14 Whilst the first accused was waiting for the second accused to come up with an answer, he told Ray that one of the suitcases contained about 1,300 grams of heroin and the other about 3,200 grams.

15 A short while later, Rays telephone rang. Ray who first answered the phone passed it to the first accused. After speaking to the second accused, the first accused conveyed to Ray that the drugs were compressed against the walls of both suitcases. The first accused and Ray then scraped the walls of the suitcases and discovered powder - flakes along the suitcase walls. Ray tested the powder for heroin and it proved positive. Thereafter, the suitcases were closed. Ray directed the first accused to pick up the suitcases and accompany him to the lobby, stating that upon the first accused handing over the suitcases to his courier (referring to Elliot) he would receive payment.

16 At about 11.34pm the first accused and Ray left the hotel room for the hotel lobby; the first accused was carrying both the suitcases. Once in the lobby, Ray left him after advising him to wait at the lobby for Elliot. Ray had with him the micro-audio recording device which was employed to record Rays conversation with the first and the second accused that evening.

17 On 7 April 2000, Ray handed over to one Todd Davidson of the US Embassy in Singapore, the audio-cassettes which recorded the conversations alluded to. It is pertinent to add here that Agent Elliot substantially corroborated the evidence of

Ray in relation to the meeting at the lobby, prior to Ray and the two accused left for a discussion in Rays room.

18 The next segment of the prosecution evidence was contained in a statement of agreed facts submitted in accordance with s 376(1) of the CPC (Cap 68) by the prosecution and counsel for all the accused. The said statement sketched out the events which transpired on 6 April 2000, the movement and interaction between the accused persons including the third accused, the seizure of exhibits, the raid conducted at the respective rooms of the accused persons, their medical examination, scientific analysis of the drugs seized, the setting up of audio-visual device at the River View Hotel which captured the conversation between Ray, the first accused and the second accused live and a few other details. Insofar as is material the said statement of agreed facts reads as follows:

Activities of the first and second accused

1. On 6.4.2000, the first accused arrived at the River View Hotel at about 5.05 pm. He was accompanied by the second accused, and one Ray. They were seen meeting a female Caucasian. After the meeting, the first and second accused accompanied Ray to Rays hotel room, number 1711 in River View Hotel.
2. At about 5.55 pm, the first and second accused left River View Hotel, and took a taxi, SHA 511 C, to Hotel Grand Central. They arrived at Hotel Grand Central at about 6.10 pm. They then took a lift up to Hotel Grand Central.
3. At about 7.55 pm, the first accused left Hotel Grand Central, boarded a taxi (SHA 7355 A) and travelled to River View Hotel. At about 8.05 pm, the first accused was seen arriving at River View Hotel. At about 8.15 pm, the first accused left River View Hotel aboard taxi SHA 9614 U; he arrived at Hotel Grand Central at about 8.30 pm and entered Hotel Grand Central.
4. At about 9.30 pm, the first accused left Hotel Grand Central and walked to Centrepont Shopping Centre. Outside Centrepont Shopping Centre, the first accused met the third accused. The third accused had with him two dark coloured suitcases. The first accused took the two suitcases from the third accused and they parted ways.
5. Meanwhile, the first accused hailed a taxi at Cavenagh Road. The first accused took taxi SHB 3611L to River View Hotel, arriving at about 10.10 pm. He then went up to Room 1711 of River View Hotel.
6. At about 10.30 pm, the first accused and Ray were at the lobby of the River View Hotel. At about 10.45 pm, the third accused arrived, and met the first accused. The third accused handed to the first accused a bunch of keys. The third accused left shortly after. The first accused then returned to Room 1711 River View Hotel with Ray.
7. The first accused was arrested at about 11.40 pm at the lobby of River View Hotel. At the time of his arrest, he had with him the two suitcases, which he had brought to River View Hotel earlier.
8. The second accused was arrested at about 12.25 am, on 7.4.2000, in his hotel room, number 340, at Hotel Grand Central.

Activities of the third accused

9. On 6.4.2000, at about 1 pm, the third accused was having his lunch at the Kopitiam foodcourt at Meridien Hotel. He returned to his hotel, Hotel Supreme, at about 1.05 pm.

10. At about 4.40 pm, the third accused left Hotel Supreme, carrying two white plastic bags and a black paper bag. He went to a shop at Orchard Plaza, Uncle Sim Luggage Shop. He then left the shop empty-handed.

11. At about 5.30 pm, the third accused boarded a bus, SBS service number 106, at Orchard Road, and travelled to Serangoon Plaza.

12. After window-shopping at Serangoon Plaza, he took a taxi, SH 1912, back to Hotel Supreme, arriving at about 6.40 pm. He walked towards Orchard Plaza, and returned to the luggage shop. He left the luggage shop carrying a travel bag, and returned to Hotel Supreme with it at about 6.55 pm. At about 9.30 pm, the third accused left Hotel Supreme with two dark coloured suitcases. He walked to Centrepont Shopping Centre. At about 9.35 pm, the third accused met the first accused, with whom he had a short conversation. The two parted, with the first accused carrying away the two suitcases the third accused had brought with him.

13. At about 9.45 pm, the third accused returned to Hotel Supreme.

14. At about 10.20 pm, the third accused left Hotel Supreme, walked towards Centrepont Shopping Centre, and boarded a taxi SHA 6686G. He travelled in that taxi to River View Hotel, arriving there at about 10.45 pm. The third accused met the first accused at the lobby of River View Hotel and handed a bunch of keys to the first accused. After that, the third accused left River View Hotel and boarded the same taxi that had brought him there. At about 10.50 pm, the third accused was arrested in his taxi at the junction of Orchard Boulevard and Paterson Road.

Seizure and raid

15. On 7.4.2000, shortly after 12.25 am, a party of officers seized various items belonging to the second accused after his arrest in Room 340, Hotel Grand Central.

16. At about 2.30 am, the third accused accompanied a group of CNB officers to his hotel room, number 207, at Hotel Supreme. A number of items were seized by the officers.

17. At about 3.10 am, the first accused accompanied a group of CNB officers to his hotel room, number 602, at Starlet Hotel. A number of items were seized by the officers.

19. The items seized from all three accused persons after their arrest were subsequently handed over to the Investigation Officer, ASP Fan Tuck Chee.

Medical examination

First Accused

18. On 7.4.2000, at about 4.40 am, the first accused was at Alexandra Hospital, having been brought there by an escort of CNB officers. The first accused was examined by a doctor. In the medical examination, the first accused denied having any injuries. The examining doctor found no injuries on the first accused. The first accused then left the hospital under escort at about 6.10 am.

19. At about 7.15 am, the first accused was at Alexandra Hospital, again having been escorted by CNB officers. The first accused was examined by a doctor. The first accused denied having any injuries or complaints. The examining doctor found no injuries on the first accused. The first accused left the hospital under escort at about 8.15 am.

Second Accused

20. At about 4.35 am on 7.4.2000, the second accused was at Alexandra Hospital, escorted by a group of CNB officers. The second accused was examined by a doctor. The second accused denied that any injury had been caused to him. In the medical examination, the doctor found that the second accused had superficial abrasions on the right collar bone and right arm. The second accused then left the hospital together with the CNB officers at about 5.55 am.

21. At about 8.30 am, the second accused was again at the Alexandra Hospital, accompanied by CNB officers. He was examined by a doctor, who did not find any further injuries. The second accused denied being injured.

Third Accused

22. At about 6.15 pm on 7.4.2000, the third accused was escorted by CNB officers from CID to Alexandra Hospital, where they arrived at about 6.30 pm. There the third accused was examined by a doctor. In the examination, the third accused denied having any injuries or complaints. The examining doctor found no injuries on the third accused. At about 6.40 pm, the third accused was escorted to MIB at CNB, where they arrived at 6.50 pm.

23. At about 8.40 pm, the third accused, under escort by CNB officers, was taken from MIB to Alexandra Hospital, where he arrived at about 8.55 pm. The third accused was examined by a doctor. In the examination, the accused denied having any injuries or complaints. The examining doctor found no injuries on the third accused. The third accused was escorted back to CID at about 9.30 pm, and arrived at CID at about 9.45 pm.

Seizure and analysis of the drugs

24. Upon their arrest, on 7.4.2000 all three accused persons were brought back to the Major Investigation Branch (MIB) of the Central Narcotics Bureau, together with the two suitcases that were seized from the first accused.

25. At MIB, CNB, in the presence of all three accused persons, the 2 suitcases were opened and the inner lining of the suitcases were chiselled away. A white granular substance believed to be heroin was found concealed in the sides of

both suitcases.

26. The white granular substance found in the black Goldcrown suitcase was packed into 2 plastic bags and marked A1a and A2a. The white granular substance found in the blue Bless suitcase was packed into 1 plastic bag and marked B1a.

27. On 10 April 2000, contents in A1a, A2a and B1a were sent to the Department of Scientific Services (DSS) for analysis. On 10 July 2000, the DSS certificates pertaining to the analysis of A1a, A2a and B1a were collected by the CNB. The results of the analysis are as follows:

a. The contents of A1a were found to contain 2182 grams of damp granular substance. The damp granular substance was dried, pulverised and homogenised into a powdery substance. The powdery substance was analysed and found to contain not less than 1628 grams of diamorphine, at a confidence level of 99.9999%;

b. The contents of A2a were found to contain 1671 grams of damp granular substance. The damp granular substance was dried, pulverised and homogenised into a powdery substance. The powdery substance was analysed and found to contain not less than 533.0 grams of diamorphine and other substance not related to these proceedings.

c. The contents of B1a were found to contain 1021 grams of damp granular substance. The damp granular substance was dried, pulverised and homogenised into a powdery substance. The powdery substance was analysed and found to contain not less than 710.2 grams of diamorphine, at a confidence level of 99.9999%.

Setting up of audio-visual equipment

28. On 6.4.2000, DEA Special Agent Larry Sproat installed a concealed audio/video device in Room 1711 of River View Hotel. Monitoring equipment consisting of a television monitor, videocassette recorder, receiver and antenna, was set up by him in Room 1712. The equipment was maintained by DEA Special Agent Larry Sproat until after the arrest of the first accused.

Testing of urine samples

29. The three accused persons provided urine samples after their arrest, which were analysed by the Department of Scientific Services (DSS). The analysis by DSS showed that the urine samples of all three accused persons were negative for morphine, amphetamine, methamphetamine and 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid.

The above facts are not disputed and are agreed upon between the Prosecution and Defence pursuant to section 376(1) of the Criminal Procedure Code (Cap

68).

19 The next segment pertained to the evidence of the investigating officer and the Urdu language interpreter who assisted him in recording statements from the accused persons.

20 ASP Fan, the investigating officer in this case testified that at about 11.20pm on 6 April 2000 he took custody of the third accused (who was arrested at about 10.50pm by a team of CNB Officers). At about 12.05am on 7 April 2000, he took custody of the first accused who was arrested at about 11.40pm on 6 April 2000 by another team of CNB operatives at River View Hotel Lobby with two suitcases. At about 12.50am on 7 April 2000 he was given custody of the second accused who was arrested by another team of CNB officers at about 12.25am that morning.

21 In the event, whilst all the three accused were present at the Major Investigation Branch (MIB) of the CNB, ASP Fan chiselled the interior of both suitcases and found in them a substantial amount of heroin. Later after taking photographs of the suitcases and the heroin found therein, the investigating officer weighed it. Subsequently, after the formalities in relation to the raid of the accused persons hotel rooms, their urine tests and sending some of them for medical examination had been completed, he secured the drugs in his office cabinet.

22 ASP Fan added that in the course of his investigation, several statements were recorded from the accused persons. Insofar as is relevant, the prosecution sought to admit altogether three statements recorded from the first accused, two recorded on 13 April 2000 and one on 15 April 2000. The prosecution also sought to admit two statements from the third accused one recorded on 10 April 2000 and the other on 11 April 2000. After being informed that there was an objection on behalf of the first accused as to the voluntariness of his three statements, a trial within a trial was conducted to determine their admissibility. As far as the third accused was concerned, there was an objection by his counsel only as to the voluntariness of his second statement. As a result, a trial within a trial was also held to determine the admissibility of the third accused's second statement.

Trial within a trial as respects the first accused

23 The issue in this trial within a trial concerned three investigation statements marked for identification as P-47, P-48 and P-49.

24 ASP Fan in his testimony asserted that neither before nor during the recording of any of the statements the first accused was subjected to any form of threat or inducement or promise for him to make the statements. ASP Fan further testified that all the three statements recorded from the first accused were given voluntarily by him.

25 The other prosecution witnesses Sgt Stanley Tan and S/Sgt Patrick Thng Joo Seng in their evidence denied any knowledge of any deal for co-operation between ASP Fan and the first accused. S/Sgt Patrick Thng was somewhat ambivalent in regard to the time the first accused had lunch with ASP Fan. He also retracted a segment of his earlier evidence where he had claimed that on 15 April 2000 he escorted the accused back to the lock-up (page 1058 of the NE). His pocket book entries were also found to be incomplete (pages 1060 to 1063 of the NE).

26 The first accused in his evidence denied that the statements sought to be admitted were given by him voluntarily. His evidence in the main can be summarised as follows.

27 After his arrest at about 11.45pm on 6 April 2000, ASP Fan proceeded to record from him a cautioned statement at about 6.20am on 7 April 2000. However, when the charge preferred against him was read and explained to him he realised that he was facing the consequences of a death penalty. As a result, he became sick, started feeling dizzy, suffered a headache and could not think properly. Presently, he made a statement to Insp Fan in the following terms: I am not feeling well and my mind is not able to think. So I can't talk now.

The first statement P-47

28 Consequently, on 13 April 2000 he was taken to ASP Fan's room for the purposes of recording a statement. No one else except ASP Fan and he were in that room. At the outset, ASP Fan told him to make a statement. The first accused replied: *I don't expect (sic) any drugs*. ASP Fan then remarked that they, meaning CNB, knew everything and they were watching and listening to everything and that nobody would believe the first accused's protestations. Faced with this retort, the first accused asked ASP Fan how the latter could help him. ASP Fan's immediate response was that the first accused should give the CNB a good statement and co-operate with them and if he did the first accused would be offered a different charge, a lenient sentence and would not have to suffer a death sentence. The first accused understood the words of ASP Fan to mean that if he were to give a good statement to CNB, he would get a lenient sentence and escape the death penalty.

29 Following the foregoing understanding, the first accused gave ASP Fan a statement. Whilst the recording was in train, the first accused on his own asked ASP Fan a few times about help to which ASP Fan replied: Give me a good statement, I will help you. The first accused added that the co-operation alluded to was in reference to devising a set-up for one Faribourg of Sweden to be apprehended in Singapore. He reiterated that he gave a statement to ASP Fan that evening because the latter promised to give him another charge to avoid death penalty (page 1077 of the NE). The recording of the statement (P-47) on this occasion ended at 5.25pm.

The second statement P-48

30 The first accused was taken again to the room of ASP Fan at 7.45pm on 13 April 2000 for the purposes of recording yet another statement. ASP Fan read to the first accused what was taken from him earlier that evening.

31 The first accused didn't want it to be read back to him for he knew what was in it. ASP Fan then asked the first accused to commence his second statement. According to the first accused: I asked him the same thing about my health (sic). He told me, you give a good statement, I help you (page 1079 of the NE). The first accused added that ASP Fan then told him: I will give you a different charge that won't get you death penalty. There then followed the recording of the second statement. During this recording too, the first accused asked ASP Fan to help him. The reply from ASP Fan was: You help me, I help you. (page 1080 of the NE). During the recording of the second statement, there was a coffee break. The atmosphere was friendly. The subject of the accused's help and co-operation in getting Faribourg of Sweden to visit Singapore was raised again. After break, the recording continued in the same vein as before.

The third statement P-49

32 On 15 April 2000 at about 11.45am, the first accused was again taken to the room of ASP Fan. When ASP Fan tried to read to the first accused the statements recorded by him earlier, the first accused did not want them to be read. As a result, the previous statements were not read back to him.

33 At the commencement of this third statement (P-49) once again, the first accused raised the same question *about [his] health* (page 1085 of the NE). He told ASP Fan: *I am giving you this statement, you promise me to help me*. ASP Fan replied: *You give good statement, I will help you*. On this occasion, ASP Fan did not tell him how he would help him but on the previous occasions, he had already told him that he would arrange for a different charge to be preferred against him so that the first accused would not get the death sentence (page 1086 of the NE).

34 When the recording was in progress, the first accused asked ASP Fan again: You will help me? ASP Fan responded: Yes I'll help you, you give me a good statement, I will give you a different charge. (page 1088 of the NE). There was a lunch break during the recording of the third statement. Whilst at lunch he was seated with ASP Fan and S/Sgt Patrick Thng. ASP Fan and

he were then talking about Faribourg of Sweden. S/Sgt Patrick Thng and another officer by name Stanley were close by. In essence, the first accused told ASP Fan he could arrange for Faribourg to come to Singapore. He added that he made all the statements sought to be admitted because there was a promise as well as an inducement from ASP Fan to be lenient with him and a confirmation that he would be given a lesser charge. He also said a number of days later he was interviewed by one Kumar and one Naseer of the CNB concerning the said Faribourg.

35 Kumar and Naseer asked him to repeat the statements made by the first accused to ASP Fan. He gave them a statement and at the end of the meeting they also told him that when you co-operate with us, we will write to Judge to [be] lenient on you. (page 1100 of the NE).

36 S/Sgt Sukumar Balan and Cpl Nazir Ali Khan were called by the prosecution as rebuttal witnesses. They in their evidence denied that any promise or inducement of the nature alleged by the first accused was ever made by them to him. They also denied any threats on their part. They confirmed however that they interviewed the first accused to elicit intelligence.

Trial within a trial as respects the third accused P-51

37 Following objection by counsel for the third accused that the second statement (P-51) recorded from the third accused on 11 April 2000 was not given by him voluntarily, a trial within a trial was held. There was however no objection by the defence to the admissibility of a previous statement (P-50) recorded from the third accused on 10 April 2000.

38 ASP Fan who recorded this particular statement with the assistance of an Urdu interpreter Neaz Ahmad Khan testified that he recorded a statement from the third accused on 11 April 2000 between 7.25pm and 11.15pm. ASP Fan affirmed that the statement recorded from the third accused was given voluntarily by him and that there was neither threat nor inducement nor any promise given or made to the third accused either by him or by the interpreter who assisted him either during or before the recording of the statement.

39 However, in cross-examination and not before, ASP Fan admitted confronting the third accused during the process of recording. His field book also had the entry: At 9.30pm confronted the accused that Nassim Khan could not have paid his expenses for free. After explanation, accused broke into tears and cried. At about 9.45pm, accused requested for water and was given two mugs. (pages 1210 and 1211 of the NE).

40 Neaz Ahmad Khan, a part-time Urdu interpreter engaged by the CNB to assist ASP Fan in the recording of statements from the third accused averred that there was no threat, inducement or promise made to the accused either before or during the recording of the statement. He said that the only persons present during the recording were the accused, ASP Fan and himself.

41 The Urdu interpreters cross-examination however threw up a few significant facets to the recording and the excerpts of which are reproduced below:

(a) [ASP Fan] once raised his voice he shouted only once (page 1250 line 18 of the NE)

(b) [ASP Fan] raised his voice at the time when he said: Dont come and tell some other story, dont make up the story and tell me. (page 1251 line 3 of the NE)

(c) [ASP Fan] asked again and again in different form. At one stage he shouted because hes taking time and he says, You dont make up the story (page 1251 lines 18 to 22)

(d) [Naveed] didnt even understand. I told him whatever you say must tell the

truth (page 1252 lines 5-7 of the NE).

(e) And then at that instance he [Naveed] broke down He cried (page 1252 lines 11-12 of the NE).

(f) When [ASP Fan] raised his voice and shouted he looked angry or irritated (page 1253 line 9 of the NE).

(g) [Naveed] was taking time. then suddenly he started to cry. I felt very uncomfortable when he started to cry. I told him --- as a Muslim brother, "If you believe hereafter, the life hereafter if you have done anything wrong" you might admit or you might tell the truth nobody forcing but you can decide yourself. (page 1258 lines 8 to 21 and page 1259 line 1 of the NE).

(h) He cried really he cried (page 1261 lines 6-8 of the NE).

(i) I [Neaz] [made] the whole environment very friendly Always talk about family (page 1261 lines 18-21 of the NE).

Evidence of the third accused at the trial within a trial

42 The third accused testified at about 7.25pm on 11 April 2000, ASP Fan started recoding a statement from him with the assistance of Neaz Ahmed Khan. Insofar as is material the main aspects of his testimony can be summarised as follows.

43 There were two breaks during the recording of the statement. Just after the first break, he saw ASP Fan and the interpreter conferring amongst themselves. When they eventually returned, the interpreter told him: Look you are seated on a chair. You admit otherwise you will be taken to a torture room. At that time, ASP Fan who was seated in front of him was shouting and banging the table with his fist (page 1278 of the NE). He was frightened and started to cry (page 1282 lines 9 to 15).

44 The third accused was very frightened. He was fearful because earlier on there was an attempt to assault him whilst he was inside a vehicle just after his arrest. The third accused added that at one stage in the course of the recording, the interpreter told him: You admit. You made a mistake, you might as well admit. You have travelled in the aeroplane. If the plane had crashed, you would have died. God has given you an opportunity to admit, so before you die you might as well admit. (page 1284 lines 15 to 18).

45 In sum, he said that he gave the statement because he was forced to do it. He claimed that in fact all that he wanted to say was already stated by him to ASP Fan previously on 10 April 2000.

46 During cross-examination, he added another fragment about what the interpreter had told him (page 1310 lines 17 to 21 and page 1311 lines 1 to 3). It reads as follows:

He said that on one occasion he was going to India to meet his father. In the train a man stole someones things and ran. [He] caught up with that man and I locked him up in the bathroom of the train. From inside the bathroom this man broke the window pane and tried to escape. The train was travelling fast and he fell out of the train. He died. That man never had the opportunity to ask for forgiveness. You are given an opportunity. So he was giving me such stories to frighten me.

47 It must be presently observed that the foregoing part was never put to the interpreter by the defence when the latter was being cross-examined.

48 S/Sgt Subramaniam was called by the prosecution to rebut the third accused's allegation that there was an attempt to assault him by the CNB officers who arrested him. The officer said that there was no attempt to threaten or assault the third accused at any stage.

Ruling on the admissibility of the statements made by the first accused

49 There were lengthy submissions both by the counsel for the first accused as well as the learned DPP on the admissibility or otherwise of the three statements (P-47, P-48 and P-49) which were the subject matters of contention during the trial within a trial. It was submitted by counsel for the first accused that the first accused proffered those three statements because of the inducement or promise made to him by ASP Fan that if the first accused were to give a good statement, the capital charge he was facing would be altered to one which did not attract the death penalty. Counsel urged the court to accept the evidence of the first accused and reject the version of the prosecution. Counsel for the first accused also highlighted the alleged co-operation to be rendered by the first accused to set up a sting operation to entice the said Faribourg out of Sweden into Singapore.

50 I need not replicate at any length the submissions made by the prosecution. They are in print for all to see. Suffice it if I said that the prosecution urged the court to reject the claims of the first accused that he was induced into making the statements alluded to.

51 It is a settled principle of law that the burden is always on the prosecution to prove beyond a reasonable doubt that confessional statements recorded from the accused persons, be they plenary or non-plenary, are made voluntarily without being vitiated by any elements of threat, inducement, promise or oppression. By the law of England and the law applicable in Singapore, a confession to be admissible, must be free and voluntary. Lord Sumner in the well-known case of ***Ibrahim v King*** [1914] AC 599 said at page 609:

It has long been established as a positive rule of English criminal law, that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised or held out by a person in authority.

52 The foregoing principle was amplified by Lord Morris of Borth-Y-Gest in ***DPP V Ping Lin*** [1976] AC 574. He commented at page 595D-E:

was it as a result of something said or done by a person in authority that an accused was caused or led to make a statement: did he make it because he was caused to fear that he would be prejudiced if he did not or because he was caused to hope that he would have advantage if he did. The prosecution must show that the statement did not owe its origin to such a cause.

53 Having reviewed all the evidence, my finding is that the prosecution has indeed proven that the three statements recorded from the first accused were made voluntarily by him without any elements of threat, inducement, promise or any form of oppressive conduct on the part of ASP Fan or any one in authority. In my finding, it was the first accused who seemed to have initiated the subject of co-operation perhaps hoping that such an endeavour on his part would soften the prosecution to acceding to his plea for a lesser charge. In my view, his claim that ASP Fan coerced him into giving him a so-called good statement was a fabrication.

54 His repeated claims that ASP Fan promised him that his charge would be reduced if he gave him a good statement, were distinctly marked by a great deal of tentativeness and hesitation on his part. Although I found a few slivers of equivocation in the evidence of ASP Fan as to the first accused mentioning to him a character known as Faribourg and some ambivalent features in the evidence of S/Sgt Thng, at the end, after considering all the evidence, I was satisfied that the prosecution had proven that the statements adverted to were made by the first accused voluntarily. Consequently I ruled that they be admitted to evidence.

Ruling on the admissibility of the statement made by the third accused

55 The principles applicable and questions the court had to consider before admitting the contested statements of the accused persons, stated in *Ibrahim v King* and *DPP v Ping Lin* (*supra*) need not be restated here. The crucial point in the pronouncements of Lord Morris in *DPP v Ping Lin* was not whether the person in authority had intended to make an inducement or threat but whether the accused person perceived the statements and actions of the person in authority as such. Another point which had to be borne in mind is the principle: Voluntariness is not an issue to be determined by reference to some hypothetical standard: it requires a careful assessment of the effect of the actual circumstances of a case upon the will of the particular accused (see *Collins v Rex* (1980) 31 ALR 257 at 307, lines 30-45 per Brennan J).

56 In my evaluation, the admission by ASP Fan that he confronted the third accused and the evidence of the interpreter about ASP Fan looking angry and irritated, banging the table, raising his voice which made the third accused to cry, asking the questions again and again and the suggestion by the interpreter to the third accused that as a Muslim he should admit and tell the truth, inevitably raised the spectre of oppression and gave rise to a real and reasonable doubt as to the voluntariness of the statement.

57 In my finding the repeated questions by ASP Fan and the gratuitous exhortations by the interpreter appeared to have actually operated in the mind of the accused. In my determination, there was most clearly a substantial degree of over-persuasion, undue insistence and importunity on the part of the recording officer, compounded by an unwarranted intoning by the interpreter. The repeated questioning by the recording officer and the manner in which he seemed to have conducted the interview appeared to have propelled the recording process into the realm of oppression alluded to by Chao Hick Tin JA in *Yeo Swee How v Public Prosecutor* [1997] 2 SLR 390 at 400E-H where he observed that cross-examination could render a statement inadmissible if it amounted to oppression. The learned DPPs comment in his supplementary submission that there may be occasions when the prosecutions own evidence per se may indicate some element of involuntariness, was apt and applied to the situation at hand squarely.

58 In my opinion, the prosecution had failed to satisfy me that the statement recorded from the third accused on 11 April 2000 was given voluntarily. In the result, I ruled that the said statement could not be admitted in evidence.

Resumption of the main trial

59 Following my rulings above, the three statements (marked P-47, P-48 and P-49) recorded from the first accused were formally admitted in evidence. They were too long to be entered upon here. It was sufficient if I said that in those statements the first accused admitted his involvement in the drug deal initially with one Lou and later with Ray; the involvement of his business partner the second accused in the proposed transaction; the selection of Singapore as the venue for the delivery of heroin by the parties; the arrangement for a courier to send the drugs in suitcases; his as well as the arrival of the second accused in Singapore; the meeting between Ray and himself with the second accused at River View Hotel lobby and in Rays room; the delivery of the two suitcases to Ray in the hotel room later; the identification of drugs along the walls of the suitcases and his subsequent arrest at the hotel lobby.

60 Insofar as is material, para 7 (in exh P-47) paras 9, 14 and 21 (in exh P-48) and paras 30 and 31 (in exh P-49) require reproduction. They read as follows:

7. In January 2000, I sought help from my partner Afzal by asking him to find and send samples to Lou. Afzal is aware of my financial situation and also Lou asking me to do drugs as I discussed with him my personal problems. Afzal agreed to help but he also could not find anybody who would send the sample. Afzal's heroin supplier asked for 30 per cent advance of the money. So we contacted Lou to ask him to come to Pakistan to check the sample and take the drugs from Pakistan. It is then that myself and Afzal got to know Ray. Sometime at the end of January 2000, Lou called me on my mobile and told me that he wanted to introduce me to his cousin Ray who is the main man and whom he works for. According to Lou, Ray has been in the business for a long time and has all along got his heroin from Mexico and Columbia. He also told me that Ray could be trusted and then he handed the conversation over to Ray. Ray told me that he did not want to go to Pakistan but suggested that I send the heroin to New York or get someone in New York who can deliver it to him.

9. My conversation with Lou about the heroin sample continued almost every day and I also understand from Lou that Ray suggested that I meet them in either Singapore or anyway in Europe. I was also told that it could not be in Pakistan as Ray did not want to go there. Neither could the meeting be in USA as I would not be able to get a visa. Through Afzal, I asked the heroin supplier to either do the transaction in Singapore or Europe. I was then informed by Afzal that according to the heroin supplier, the drug courier could not get a visa to Europe. Therefore, it has to be done in Singapore initially, the drug deal was to be done in Paris. However, the heroin courier could not get a visa for Paris and the supplier did not want to do it in other parts of Europe. It was sometime in February 2000 when we finally agreed on the place. At that time, Lou told me that Ray would get a new mobile number in Singapore, one different from the number 1-917-971-5360 that was given to me previously (Recorders note: Accused was asked about Ray's mobile number and he retrieved it from his address book as 1-917-971-5360).

14. On 2 Apr 2000, Afzal informed me that the courier would be going to Singapore on 3 Apr from Lahore, passing through Karachi. The supplier would fax a copy of his passport photo so that I could watch him while he goes through the Customs. He then asked me to change my flight to Singapore Airlines, the same as the courier. It was only at that time when he told me that instead of 2 jackets, there would be 5 and they would be going in suitcases. I asked him how would the money be done and he asked me to talk to Lou. Immediately, I called Lou and told him of the change. He was surprised and asked me to talk to Ray. An hour later, Lou called me back and said that the US\$120,000/- has already been packed. There would not be a problem at all with the rest but the balance money would be sent to Pakistan by Lou's girlfriend named Liz only after the goods reach New York and they had seen it. After that, Afzal asked me for a guarantee as he was worried that his suppliers would kill him if the balance money were not paid.

21. Ray then asked Afzal and myself to go to his Room 1711 where he started talking about the business. He said that we had agreed on 2 for US\$120,000/-

and the remaining 3 to be at US\$50,000/- each. I asked how he would pay us and Ray said that after checking the goods, he would make the payment through his girlfriend in 2 days time. Ray also asked where we want, in Pakistan or Singapore and Afzal replied in Singapore. Ray insisted to open the suitcase in Singapore but we did not agree as the arrangement was for him to check in New York. We started an argument with Ray stating that he could not pay for something he did not see. Afzal and myself disagreed and no decision was made. We then left the room and took a taxi back to the Hotel Grand Central.

30. I went back to the lobby to meet up with Ray and we both returned to his room. Ray asked me to open the suitcases and I opened one of them, only to find it empty. He started searching the suitcase and ripped open the inside using a knife but he could not find anything. He then asked me to open the other suitcase and it is also empty. Ray started getting furious again and said that I am cheating him. He asked me to ask Afzal about how the heroin was hidden using his mobile. I called Afzal and he got furious that I called him at the hotel using Rays mobile. I told him that there was nothing in the suitcases and he sounded worried. He said that he would call the people in Pakistan. Afzal called into Rays mobile about 10 minutes later and asked him to look at the de-colouration at the corners of the suitcase. Afzal hung up the phone and I passed the message to Ray. Ray then tried breaking through the crust of both suitcases. He managed to break the crust only after some hard work and saw some powder inside. Ray started testing the powder found at every corner of the suitcases and told me that it is OK but that it may not be 5 kilograms. Ray told me that it may just be 2 kilograms and he would pay me the US\$120,000/-. He said that when he had checked that it is 5 kilograms in New York, he would send the rest of the money, which is US\$50,000/- per kilogram through his girlfriend.

31. After testing the heroin, Ray asked me to close the suitcases. I reminded him that there was a portion of the fabric of the suitcase still in the room. He told me that it was alright as he would take care of that. Ray then asked me to follow him and he would take me to his girlfriend. I did not carry the suitcases with me then but Ray asked me to pick up the suitcases and follow him. We then went to the hotel lobby and he told me to wait there for his girlfriend whom I am to hand over the suitcases to. She would also hand me the money. After that, Ray went off. A few minutes later, I was arrested by 5 to 6 people.

61 As regards the third accused, a statement which was recorded on 10 April 2000 by ASP Fan was tendered in evidence. This particular statement was not subject to any trial within a trial and the court admitted it upon receiving confirmation from counsel for the third accused that the said statement was made voluntarily by the third accused. Insofar as is material the relevant portions of this statement (exh P-50) are as follows:

I am the above person and is also known as Koko to my relatives and friends.

2. I am the youngest child in a family of four children. My parents have already passed away and I am staying alone in Lahore because my siblings are either all married or working overseas. In Lahore of Pakistan, I own a shop selling motor vehicle spare parts. I earn about US\$70/- (4000 Rupees) per month through the business. Although I have only received till the 9th year of education, I could speak and understand broken English of which I have learnt from the television.

3. On 6.4.2000 sometime after 10.00 p.m., I was arrested in a taxi along a road by about 8 to 10 plainclothes man. They identified themselves as policeman. I was then asked to come out of the taxi and handcuffed. A search was done on me but nothing was found. I was then asked to sit back into the taxi with 2 officers and they brought me to an unknown place where another group of about 4 officers took over me and brought me to the office where I am in now. I now know that it is an office for anti-narcotics.

4. After I was brought to the anti-narcotics office, I was questioned by 2 men in English but I told them that I do not understand English. Then, another officer came and spoke to me in simple Urdu. He asked me to whom did I give two bags to and also how many people were there in my group. I told him I do not know what he was talking about. I was then brought into another room and asked whether I know two other male persons there who were handcuffed. I told him I do not know them. When I entered the room, there were many officers there and I saw one suitcase being opened and there was some white substance that looked like stone beside it. Another suitcase was then opened in front of myself and the 2 other male persons and it looked clean, neat and empty. I did not notice how the inner layer of the suitcase was taken out. However, with the inner layer taken out, I saw white substance that looked like stone in it. All the white substance in the 2 suitcases was then taken out and weighed in front of us and I was told that it was 5 kilograms of heroin.

5. After the weighing of the heroin, I was brought by the same team of officers to my room at Supreme Hotel and my belongings in the room was taken away by the officers. Before I left the hotel, I paid for all my bills. I was then brought to another place where the officers took 6 bottles of my urine which I later put inside a box. The officers then brought me back to the anti-narcotics office and later I was brought to the lock-up.

6. The next day after lunch, I was taken out of the lock-up and brought to the hospital for a medical check-up. After that, I was brought to a room in the anti-narcotics office and an officer read over to me the charge in English. It was interpreted by an Urdu speaking gentleman. A short statement was also recorded from me. After the statement, I was brought back to the hospital for another check-up after which I was sent to the lock-up.

7. I am not a drug addict and I have never taken any drugs before.

8. In 1998, Nashim Khan was released from prison and he came to visit me at my home in Lahore. He was there for 15 minutes. When he left, he gave me his telephone number for Karachi. I can recall the home number to be 021-272760 and 021-2851074 and his mobile number to be 0300209088. The country code of Pakistan is 92.3 days later, I called his house at Karachi from a public phone at Lahore just to say hello. I was informed by a female answering the phone that Nashim Khan is serving sentence in jail for a drug charge.

9. Sometime in Dec 1999, Nashim Khan came to my home for 15 minutes. We chatted and he left. Then again on 15.3.2000, he came to my home in Lahore and offered me to go to Singapore. I agreed. He said that he will buy me a ticket and also give me some money. He also told me that he has 2 briefcases that I

can use to carry my clothing.

Adjourned for a break at 10.30 p.m.

Resumed statement recording at 10.50 p.m.

10. Since 25.3.2000 until 3.4.2000, Nashim Khan visited me almost every day and I went to the Bakhtawar Hotel where he resided in my town on 1.4.2000. At the hotel, I had wine with Nashim Khan and an unknown male was present. The unknown male spoke to Nashim Khan but I could not hear what they said as they spoke very softly. This same unknown male was later seen by me at the airport in Lahore. He was wearing a sky blue shirt and navy blue trousers. To me, he is a immigration officer and he has a name tag. However, I could not read the name in English. I recognised him but he pretended not to see me. I had easy access for my luggage and immigration checks at the airport. On 1.4.2000, I together with Nashim Khan also went to the travel agents office where he bought for me an air ticket from Pakistan to Singapore and back. After buying the ticket, he handed the ticket to me and I returned home.

11. On 2.4.2000, a Sunday, I went to the hotel as my passport was with Nashim Khan. When I was at the hotel, Nashim Khan sent a photocopy of the first 2 pages my passport to an Karachi. I asked him why and he told me that he is sending to a friend whom will help me in Singapore.

12. On 3.4.2000 at about 4.00 p.m. (local time), I went to the hotel carrying my clothing in a plastic bag. At the hotel, Nashim Khan opened 2 suitcases which were empty and put my clothing into them. We then left for Lahore airport by taxi. He paid the taxi fare and I would like to say that all the way from the hotel to airport, he carried the 2 suitcases and I never had the chance to hold them. I then checked in the suitcases and have only my jacket and passport with me. The plane that I took was Singapore Airlines SQ 418. I was at seat number 39A.

13. At the Lahore airport, Nashim Khan told me to check into either Supreme Hotel or Musthafa Hotel when I reach Singapore. He also told me to call him on his mobile in Karachi when I reach the hotel so that his people could meet me at the hotel. He also gave me US\$500/- to spend.

14. I boarded the plane in Lahore at about 6.10 p.m. (local time) and it took off at about 7.00 p.m. (local time). I reached Karachi at about 8.40 p.m. (local time) and I stayed on board the plane. At about 9.30 p.m. (local time), the plane took off again and I reached Singapore in the morning on 4.4.2000.

15. After I come out from the plane, I approached the Immigration and filled up an immigration card with some help from another passenger. After I cleared the Customs, I collected the 2 suitcases and left the airport on a taxi. I told the taxi driver to go to Supreme Hotel where I checked into Room 207. In the room I called Nashim Khan to inform him that I am already at Supreme Hotel. He told me that his man known as Ash will come to me and I am to give the person the 2 suitcases. If they were to give me US\$500/- to US\$1,000/-, I could just it and spend. I slept for 2 hours after which I left the hotel at about 6.00 p.m. to walk around. I returned at about 9.00 p.m. to sleep again.

16. On 5.4.2000, I woke up about 8.00 a.m. and was in the room until about 12.00 p.m. About 11.00 a.m., I received a call from a male person whom introduced himself as Ash in a native manner. He spoke to me in Urdu and told me that he is from Nashim Khan. He wanted to come and see me but I told him that I wanted to go for sightseeing. Ash then told me that he would come at about 5.00 p.m. I then left the hotel.

17. I returned to my room before 5.00 p.m. but Ash did not come. He called me and said that he will meet me at a shopping centre. I told him that I could not recognize him but he said that he had seen my photograph as he has a copy of my passport. I then went to the shopping centre where Ash approached me. We spent about 5 minutes together and he told me that he had left the 2 suitcases in Pakistan with Nashim Khan. As I am busy today, he will come to collect the suitcases the following day on 6.4.2000. I then went shopping and returned to the hotel at about 8.00 p.m.

18. I am now shown a photograph of a male person whom I recognised as Ash whom I had mentioned (Recorders note: Accused is shown a polaroid photograph of one Muhammad Ali Hashim, P/P No.:F118067 whom he identified as Ash whom he mentioned earlier in his statement).

62 As stated by me earlier, the prosecution case was to a large extent hinged on the audio-visual tape recordings made secretly at the River View Hotel bedroom where the first and second accused met with Ray. All the video-tapes were played during the proceedings and the transcripts thereof were also tendered and admitted in evidence without objection. On the face of video presentation and the transcripts, it appeared that the first and the second accused were actively discussing the sale of heroin to Ray. Insofar as is material a few segments as appear in pages 7, 8, 10, 11, 12, 13, 17, 25, 35, 37, 71 and 72 are reproduced below:

Page 7 of the transcript:

Hashim: It is all concealed in the suitcase so you dont have to worry about taking there.

Officer: Well, OK, you mean the actual heroin itself, OK.

Khan: It came right from ---

Officer: It came from the area.

Khan: North East Asia.

Officer: OK. Now, my question is this, I want to see my product before I pay you. Do you understand that? Because I didnt come half way around the world not to see my drugs. I got my courier, shell take care of everything for me. She knows how to get it. Shes a professional. She has been working for me since I started my business. OK?

Khan: OK.

Officer: I trust her, I can leave money here, with her here, I come back, theres not a dime taken from there.

Khan: I understand.

Officer: And you cant get that kind of help anymore.

Khan: I understand.

Officer: You understand? So, I need to see, and with due respect, I came half way around the world, I want to see those drugs here now, you know, the drugs, and I want to see it because ---

Page 8 of the transcript:

Khan: Same as with us.

Officer: Right, you saw, I showed you the money, Im ready. In that packet is a hundred and twenty thousand, because we had agreed, it was two "ki"s with sixty a piece. Now, you come out with, what, three---three more?

Khan: Five.

Officer: So its five now. Theres three extras.

Khan: Its very, very, very, very nice most latest system which is already known there.

Officer: OK. So when they get here, do you know how to open it? Do you know how to access it?

Khan: Yes, you can open but

(Urdu)

Hashim: No, if you want to see the sample ---

Officer: No, I want to see the drugs. I can have it taken out of here, reprocess, re-whatever. I can, trust me. I want to know what Im getting. Ive done this --- Ive done this before. I want to see my drugs. I want to test my drugs. I want to make sure its heroin.

Khan: You want to test, huh?

Officer: Yes.

Pages 10 and 11 of the transcript:

Khan: Three hundred thousand dollars.

Officer: No, no, I understand that but we got to get to that. Wait, wait, lets get to that. I understand where youre coming from. Our arrangement was for two kilos for hundred and twenty thousand based on, listen to me, based and correct me if Im wrong, two kilos, hundred and twenty thousand dollars based on that

any future negotiation, any future kilos that I would purchase from you would come down in price.

Hashim: But thats on a different trip, you know, different ---

Officer: No, no not a different trip. Our initial initial, and correct me if Im wrong, these five "ki"s came up to me in the last minute when I had the money already transporting over here, and I couldnt come up to have the rest of the money transported. So, technically, I came here to buy two "ki"s for hundred and twenty thousand, sixty a piece. That is a lot of money, because I can get from the Columbians, in the United States, sixty-five, seventy thousand per "ki" per kilo of heroin.

Khan: What we did, we did sincerely ---

Page 12 of the transcript:

Khan: Yes. And, now, I dont know, he knows, if you want to open, you can open.

Officer: Yes, I want to open.

Khan: I

Officer: Good, good, good.

Khan: He will look after everything. If --- I dont know, if you open, again, how you will ---

Officer: Dont worry, Ill get it out. Trust me.

Khan: How you will, how you will ---

Officer: Trust me, I will. She will take care of it, no problem.

Khan: How you will transport?

Officer: The transportation, dont worry. Ill take care. I just want to make sure I have what I have, thats all. I will take care of transportation, OK? Now, how much for the other three "ki"s? You got to be reasonable with price. Where are you getting it from? A source, right? Youre getting it from your country? Is it good quality?

Khan: Its top quality.

Hashim: Its top quality.

Officer: From your country?

Page 13 of the transcript:

Khan: I tell you one thing, Mr Ray, theres no match, this product made in Columbia. No match.

Page 17 of the transcript:

Officer: Whats the price?

Khan: They give about fifty thousand to fifty-five thousand, depending on 1 to 3 quality.

What quality is this on 1 to 3

Khan: Which quality we are offering. We do business with topmost quality, the topmost, because we understand, we understand if we are taking so much risk right from one place to other place, other place to other place, and then here, and then from this place to other place, because in our country, in number 1 and number 2, theres no much difference. Its a very, very, slight difference.

Officer: Uh-hmm.

Khan: So every sensible businessman wants to (send) the best quality ---

Officer: Of course.

Khan: --- because every sensible businessman, every educated sensible businessman wants that the quality should go the top-most, and we call that triple 5.

Officer: OK.

Page 25 of the transcript:

Khan: Federal express (speaks in Urdu)

Officer: Federal Express, it would have come directly to me. Its guaranteed.

Khan: But still, it was a risk.

Officer: Sure, sure. But you know what, it would have come.

Khan: It was a risk for you.

Officer: No, it wouldnt have been a risk for me because Ive had a few things sent Federal. It just depends. You dont do lump sums entirely. You do short thing ---

Khan: Yes, probably

Officer: Right, that would have been perfect. That would have been---that would have been perfect. And another thing would have been---you see, what I do, I have some Colombian women, they come in and do body-carry. They swallow and then they come.

Khan: I know but you cant make big quantity.

Officer: Right, I understand that. But that was just, you know, that was what these different things. I sent several people, they go and collect my merchandise in another country and theyll send in little by little.

Khan: I tell you, body---body probably it would be best if you can pick up but flight should be direct.

Officer: Right.

Page 35 of the transcript:

Khan: Well go, well discuss. And once the system is opened, then this is your responsibility.

Officer: No problem. If you bring it here, we open it here and Ill check it and Im responsible for it from here. Its not a problem. Trust me, its not a problem.

Khan: And he will be with you after one and half hours.

Officer: OK.

Khan: Hell bring the sample also, hell do whatever you want.

Officer: You dont want to count the money? (Laughter)

Khan: No.

Page 37 of the transcript:

Khan: the things which are packed, they are really very highly, technically packed, and if you open them there, as I said, that---

Officer: Well, you got to---with due respect, with all respect, this is our first deal.

Khan: Yeah.

Officer: So I want to make sure, and you got to respect me on that. I came from a long distance and if I see this is what it is, I take your word from every other load. However you said, Ill take your word for every little load and youll have your money. My word, OK? But you got to respect, we have to set precedence and this first deal now is going to be the first of a happy marriage.

Khan: Yeah, right (laughter).

Page 71 of the transcript:

Hashim: You see this This much left, and big one. You have to

Officer: Yes, my couriers are going to have to struggle now.

Hashim: Huh?

Officer: My couriers are going to take their time in pulling these out. All right, this is what were going to do. Let me test that one, and were going to close this up. Just let me test this. Im tired, Im sorry, but Im tired. So this is your new system? Im going to suffer with your new system.

Hashim: Thats what they claim, they will check. You know something?

Officer: No, I know, I know what you mean. I mean, its going until we get used to it. Yes, it looks like the magic colour to me, how about you?

Hashim: Yes.

Officer: Yes?

Hashim: youif youre happy

Page 72 of the transcript:

Hashim: Hes (worried). "Is something coming?", yes, its coming, now I told him its coming.

Officer: Yes, its coming.

Hashim: Its coming but we are checking the quantity.

Officer: Yes, I mean, look at this. (Be it for real), do you think this is five kilos? I dont think so.

Hashim: No, Ray, we have to check it and ---

Officer: Im going to check it thoroughly and I give you my word, if theres five kilos here, you get all your money. Im a man of my word, and youre going to get your money. Youre getting your money today.

Hashim: Hmm.

Officer: Youre getting it, so dont worry about that. But if theres no five kilos in here, and theres just the two kilos that I ordered, then I think thats only fair.

Hashim: You should be honest with me.

63 Before closing its case, the prosecution offered 32 witnesses to the defence but the offer was declined by counsel for the accused persons.

Ruling at the close of the prosecutions case

64 At the close of the prosecution, counsel for the accused persons did not make any submission of no case to answer. The prosecution for its part submitted that a prima facie case had been made out against each accused on the respective charges each individual faced. Having considered all the evidence thus far and having regard to the principles enunciated in ***Haw Tua Tau v PP*** [1981] 2 MLJ 49 (PC), I was satisfied that the prosecution had made out a case against each accused person on the charge each was facing, which if unrebutted would warrant his conviction. Consequently I called upon each of them to enter upon his defence and explained to each of them the courses open to them. All the accused in the event, after conferring with their respective counsel elected to give evidence on affirmation and in their own defence.

Evidence of the first accused

65 The evidence of the first accused in his defence can be stated as follows.

66 He is a Pakistani National born in Bahrain on 3 June 1947. He was for sometime doing business in London but having been unsuccessful in his venture he returned to Pakistan sometime in May 1999 and shortly thereafter joined the second accused in a leather and leather garment business.

67 He became acquainted with one American by name Lou whilst the first accused was in the United States about ten years previously. Lou who used to be in touch with the first accused contacted him in Pakistan sometime during the third week of May 1999. Lou told him that he had just opened a leather goods shop in New York City and asked the first accused for some leather jacket samples to show his customers.

68 In the event, the first accused arranged for such samples to be sent over to Lou in New York. Although eight leather jacket samples were sent to Lou for which Lou was obliged to pay him US\$1,000, no payments were forthcoming. Curiously though, Lou had for some inexplicable reasons approached the first accused's brother-in-law who was in the United States and asked him for drugs. Following a protest from his brother-in-law on Lou's audacity, the first accused sent a fax to Lou questioning him why he should mention drugs to his brother-in-law when they were engaged in the leather garment business. Lou shot back that the leather business was just a business front. The first accused didn't quite comprehend what Lou meant. Since then he tried to avoid calls from Lou. However, sometime in October 1999, the first accused was in dire straits. He needed money. So on one occasion when Lou called him he asked Lou for US\$2,000; \$1,000 for the jackets sent earlier and the other \$1,000 as a loan.

69 Lou's immediate response to the first accused was: Do drugs. Lou wanted him to send drugs to New York through mail. The first accused did not agree. He rejected the proposal. Lou was unyielding; he told the first accused that he would make him rich and advised him not to lose the opportunity. Exchanges of this nature continued over a span of two months.

70 Later on sometime in October 1999, Lou telephoned the first accused in his office. As he was not in, his partner the second accused answered the call. Subsequently, the first accused briefed the second accused that Lou had a leather shop in New York and that Lou was pushing him to do drugs. The second accused did not say anything.

71 Noting that Lou had neither paid for the leather jackets nor extended any financial help to him, the first accused decided to cheat Lou (page 1728 line 1). He realised that Lou, a rich man was very desperate for drugs. The first accused wanted Lou's

money with a view to alleviating his present financial difficulties. He was indebted at that stage in the region of about US\$60,000 altogether. The first accused told the second accused of his plan to cheat Lou.

72 Subsequently, when Lou called him the next time, the first accused who was in need of funds [falsely] promised to send him drugs. They then started discussing the price. Lou told the first accused that if the first accused were to deliver to Lou in New York one jacket (meaning one kilogram of heroin) the price payable was US\$70,000. The price would be different if delivery was effected outside the United States.

73 Lou, however, was unwilling to travel to Pakistan for the drugs. He told the first accused that it was risky to carry a large sum of money to Pakistan. Lou insisted that the drugs be sent to New York by mail or by courier. The first accused intimated to Lou that if he wanted delivery in New York, Lou had to make an advance payment of 30% for two jackets. The first accused said that the expression jacket used by Lou meant one kilogram of heroin.

74 Since they had agreed on the price of US\$70,000 per jacket, the first accused requested Lou to remit to him US\$42,000 being the advance payment of 30% for two jackets ($US\$70,000 \times 2 \times 3 = US\$42,000$). Lou's reaction was that the first accused should send him samples before he sent the first accused any monies.

75 The first accused did not send Lou any samples although he told him he had sent them through some greeting cards. About a fortnight later, Lou complained to the first accused that he had yet to receive the samples. The first accused gave him an excuse that the samples might have been intercepted by customs. In the event, no samples were in fact sent. Lou was getting impatient and told the first accused that his boss was of the opinion that the first accused was wasting Lou's time and that the first accused had no connections.

76 Lou called the first accused regularly and the first accused kept maintaining to Lou that he had sent the samples requested. In the course of one such conversation between them, the first accused told Lou: either come to Pakistan or send 30 per cent advance (page 1744 of the NE). Lou replied that he could not come to Pakistan and suggested instead that the first accused go to Europe. The first accused's reply was that he could not travel to Europe as he had no visa to visit Europe.

77 In February 2000, Lou called the first accused again and this time he informed the first accused that his boss was going to Singapore for a holiday with his girlfriend. He enquired from the first accused whether the latter could also make the trip to Singapore. The first accused's response was that he would call him in two days. Later he discussed this matter with his partner, the second accused who was a party to the scam planned by the first accused to cheat Lou.

78 In the event, the first accused sent an e-mail to Lou stating that they could meet in Singapore. After the e-mail Lou called the first accused back and told him that his cousin Ray was his boss. After this introduction, the first accused and Ray began to communicate with each other. Ray advised the first accused that he was going to Singapore with his girlfriend during the first week of March 2000. Having agreed to this, the first accused arranged with the second accused to get a courier who would pay his own expenses. Consequently, it was decided by the first and the second accused that the first accused should contact one of his friends in Islamabad known as Muntaz Ahmed Abbasi who was also known to the second accused. In the event, Muntaz Abbasi gave him information concerning the system in relation to transportation of drugs. According to the first accused, the arrangement of a courier and so-called system were for the purposes of gaining Lou's confidence.

79 Once Singapore was identified as the venue to meet, the agreement between him and the NY parties was that two jackets would be taken to Singapore and the agreed price for them was US\$120,000. Ray was initially not agreeable to the price suggested but Lou managed to convince Ray that the price was all right for the first transaction. The first accused intended to obtain the US\$120,000 from Lou according to the scam he had planned but in truth he was not going to bring the proposed two jackets (ie, two kilograms of heroin) to Singapore. In relation to this scam, his agreement with the second accused and the said Muntaz Abbasi was that after expenses, he would get 40 per cent and the other two 30 per cent each.

80 The trip planned by Ray to Singapore in March 2000 was postponed by two weeks. The reason given by him was that as President Clinton was visiting Pakistan, the security would be tight and there would be problems in taking out the money. The

trip was again postponed for a further two-week period because of the intervening Muslim religious festival of Eid. Eventually, it was agreed they meet in Singapore on 3 April 2000. By this time, the agreement in place was that upon delivery of the two jackets, a sum of US\$120,000 would be paid in cash to the first accused. Shortly thereafter, Lou called the first accused once again to tell him that Rays girlfriend would be going to Singapore with the money on 3 April 2000 and Ray would arrive later. It was agreed between Lou and the first accused that only a sample of the heroin would be inspected and there would not be any inspection of the jackets in Singapore.

81 Whilst the first accused was thus negotiating with Ray and Lou, Mumtaz Abbasi was trying to arrange for a courier. The day before he left for Singapore, the first accused was sent a fax containing the copy of the passport of the courier. It was also stated in the fax that the courier was going to Singapore with only one suitcase and the first accused had to give him US\$3,000 to \$4,000 for the couriers expenses. In the event, the first accused flew to Singapore from Karachi, Pakistan and arrived in Singapore on 4 April 2000 and checked into Broadway Hotel at Serangoon Road, Singapore.

82 After his arrival, the first accused contacted the second accused and gave him the name and telephone number of the hotel he had checked in. He also called Lou in New York. The first accused was advised by Lou that Ray would be arriving in Singapore the next day ie, on 5 April 2000. Lou also described the appearance of Rays girlfriend.

83 On 4 April 2000, the second accused called back the first accused and told him that the courier had arrived in Singapore and was staying at Supreme Hotel.

84 On 5 April 2000 the first accused moved out of Broadway Hotel and checked into Starlet Hotel. Again, he called the second accused and gave him the name and telephone number of his present address. Lou was also advised of the transfer. At about 5.00pm on 5 April 2000 he met the courier, the third accused near Supreme Hotel. When he met the third accused he came to realise that there were two suitcases instead of one. He was surprised. The third accused informed him that someone had given him two suitcases at the Lahore Airport and instructed him to deliver them to one Hash in Singapore. The first accused knew that Mumtaz Abbasi referred to him as Hash. The first accused after informing the third accused that he would take over the suitcases in a few days, left the place.

85 On 6 April 2000 the first accused learnt from Lou that Ray had arrived in Singapore. Later that morning when he returned to the hotel after shopping, there was a message for him from Ray to contact him at 11.00am on 6 April 2000. Ray had left his mobile phone number in the voicemail. A few moments later he received a call from the second accused stating that he was also in Singapore and staying at Grand Central Hotel. According to the first accused, the second accused had arrived in Singapore earlier than expected. He was to arrive only after the first accused had received the monies.

86 Soon, the first accused went to the second accuseds hotel to meet him where they talked about the scam: to give Ray the suitcases; to tell him that the drugs were in the suitcases; test only the samples; not to open the suitcases; take Rays money and leave Singapore.

87 Before the first accused met the second accused, the first accused had called earlier. Ray had told him then to call him at 4.00pm that day as he had to meet someone. Later at about 4.00pm he called Ray on his mobile phone and consequently an appointment was made to meet Ray at 5.00pm that day.

88 At about 5.00pm, the first and the second accused met Ray at the lobby of the River View Hotel. A woman who looked like a Chinese (Elliot) was there. The first accused was taken aback by her appearance since he was earlier informed by Lou that Rays girlfriend was a tall blonde. However his suspicions abated when Ray asked Elliot to hand over a bag to Ray and showed him the monies inside. He believed at that time Ray had US\$120,000 with him for payment. Elliot left them shortly thereafter at the request of Ray.

89 Ray and the two accused presently proceeded to the room of Ray at the hotel. At the room, Ray mentioned to the first accused that he was informed by Lou that there were in fact five jackets (reference to five kilograms of heroin) for collection. Although the first accused had previously never discussed with Lou for more than two jackets, he was content to talk about

five jackets as he thought that this was good for the cheating (sic) scam (page 1777 of the NE, line 19).

90 The first accused added that: Lou [was] paying for 2 jackets and 3 hes getting on credit 3 jackets (page 1777 of the NE, lines 21 to 24).

91 As the conversation continued, Ray was intent on checking what the first accused had brought from Pakistan but the two accused were not agreeable to open the suitcases. They wanted only the samples to be tested. They did not want the suitcases to be examined because the suitcases were not supposed to contain anything.

92 The first accused confirmed that he had, prior to the commencement of the trial, watched the video-tapes replayed in court and had read the transcripts thereon. He added that in that meeting with Ray the second accused did most of the talking. Finally, it was agreed that he and the second accused would decide whether they would let Ray open the suitcase (sic) (pages 1779 to 1783 of the NE).

93 Shortly later, both the first and the second accused left Rays room for the second accuseds hotel room. After their arrival, the first accused used the public telephone at the lobby and complained to Lou about Rays insistence in opening the suitcases. Lou told him that Ray was his boss and let him do what he wanted. He advised the first accused not to blow the deal.

94 The first accused was concerned. He went to the second accuseds room and discussed how to handle the situation. In the end, he suggested to the second accused: We do this same cheating to Faribourg. (page 1787 of the NE). The second accuseds reply was: We dont know how long Faribourg will [take to] come to Singapore. We have only 14 days visa. (page 1789 of the NE). So they decided to try Ray again. The upshot was the first accused returned to visit Ray again in his room. This time the second accused did not accompany him.

95 When Ray saw the first accused without any suitcases he was upset. He was mad at the first accused for calling Lou. The first accused explained to him that it was agreed previously that the suitcase would not be opened in Singapore. Ray retorted: I must see my stuff before I pay you. The first accused then gave him a sample which he had brought with him. Ray was not satisfied with the sample. The first accused told him to test the samples. In the event, the sample was tested. Ray still asked him: OK where is the suitcase? The first accused replied that he needed some money to give to the courier so that the courier could deliver him the suitcase. Ray was adamant and said: No, there is no money unless I see the suitcase (page 1793 of the NE). The first accused returned to Grand Central Hotel and told the second accused that Ray was very stubborn. The second accused then told him to show Ray the suitcases.

96 The first accused thereafter telephoned the third accused at about 9.00pm and asked him to meet the first accused at the McDonalds Restaurant at Centrepoint at 9.30pm with the suitcases. The third accused obliged and delivered the two suitcases to him and then asked for money. The first accused after telling him that he would call him later left the place. As he was later walking along the road looking for a taxi to return to see Ray, the second accused went past him. About 20 minutes later, he managed to get a taxi and arrived at River View Hotel. Ray was waiting for him at the lobby since the first accused had telephoned him a little earlier. Ray got hold of one suitcase and escorted him to his room.

97 Ray placed the suitcase he was carrying on the bed in the room. He tried to open the suitcase but found it locked. Ray exclaimed: What is this? (page 1798 of the NE). The first accused then asked for the money. Ray replied that the first accused had already seen the money and that he was trying to cheat him. Ray looked very upset. At that time the first accused felt that the scam [was] going to fail (page 1798, lines 16 to 17). The first accused did not want to open the suitcases and told Ray that drugs were concealed inside and he did not have to open them to see it. According to the first accused there was nothing inside the suitcases and they were all empty (page 1799 of the NE).

98 At any rate the first accused did not have the keys to the suitcases. He then called the third accused and asked for the keys. The third accused agreed to bring the keys to River View Hotel. Consequently, Ray and himself went downstairs to the lobby. The third accused arrived shortly, handed the keys to him and departed.

99 After receiving the keys from the third accused, both of them returned to Rays room. Both suitcases were opened but they were both empty. Ray then queried the first accused as to the whereabouts of the drugs. The first accused replied they were concealed inside. Thereafter, Ray gave a knife to the first accused and asked him to look for the drugs inside the suitcases. The first accused knew that there were no drugs in the suitcases. Both of them, nonetheless, tried to locate the drugs but failed.

100 Ray then suggested to the first accused that he should call the second accused to find out where the drugs were. The first accused then called the second accused and told him that the scam had failed and that Ray had opened both the suitcases. The second accused wanted to know what Ray wanted. The first accused told him that Ray wanted to know where the paper was. Both he and the second accused knew what the word paper meant. The word was coined by them as part of the scam to mean drugs. The second accused replied that it was becoming a mess. He said that he would think about it and call him back soon. A few minutes later the second accused called him back and advised him what to do. Consequently the first accused suggested to Ray to break the suitcases and check everywhere. So Ray started again to dig the panelling of the suitcase with his knife.

101 After about five or six minutes, he heard Ray say: Here it is. Since the first accused did not expect anything inside the suitcases, he was shocked to see the drugs (page 1810B of the NE, lines 11-15). At about this time, the second accused called. The first accused expressed his surprise and told him: Where is the drug coming from? He replied: It is impossible. I dont know. The second accused added that it must be a mistake by Mumtaz Abbasi at the Lahore Airport. I asked him: What do you mean by this? The second accused replied: Just come and we talk later and then hung up the phone (page 1810C of the NE).

102 Ray appeared happy but the first accused was worried and was anxious to escape from all this. His thinking then was not to take any money but to run away from the place. After Ray had made a phone call saying: Honey we are coming, both of them left the room. The first accused carried both the suitcases at the request of Ray. He was told to hand over the suitcases to the girl downstairs and she would give him the money.

103 The suitcases (exhs P-52 and P-53) were in the event taken by the first accused to the hotel lobby. As he was trying to go out of the hotel with a view to dumping the suitcases outside and get away from the place he was arrested by CNB officers. He said that his plan was merely to cheat Ray. The scam he conceived was to give an empty suitcase to Ray telling him that everything was concealed inside employing a new system and to give him only a sample of what was supposed to be inside the suitcases. To give credibility to the scam, the feature of a courier was added.

104 He was extensively cross-examined by other defence counsel as well as the DPP. Many an aspect of his cross-examination would be referred to if need be, later in this grounds. However it would be sufficient if I said that he maintained his stand that he came to Singapore in order to cheat Ray and obtain monies from him under false pretences; he never intended to deliver any drugs to Ray; and that he was greatly taken aback by the inexplicable presence of heroin in the suitcases. He maintained that whatever statements given by him to ASP Fan were merely for the purposes of giving him a good statement and not otherwise. He also retracted some segments of his statements which need not be detailed here.

Evidence of the second accused

105 The evidence of the second accused insofar as is material is as follows.

106 He is a Pakistani National, born on 28 November 1950. For the past 10 to 12 years he had been supplying defence equipment to the Pakistani Army. He had also been dealing in electronic goods, photostat machines, computer parts, faxes and other goods. The firm which he owned was known as Management & Marketing Services International. He arrived in Singapore on 6 April 2000 for the main purpose of making inquiries in respect of some cabin compressor parts.

107 He met the first accused about 10 to 12 years ago in New York for the first time. They exchanged addresses and telephone numbers. In 1998, the first accused paid a visit to his office to tell him that he was moving to London.

108 The next occasion they met was when the second accuseds father passed away in June 1999. The first accused called on him to pay his condolences. Later, at the end of June 1999, the first accused again paid him a visit. This time the first accused told him that he was in leather garment business, had a small factory and was looking for an office space. As the second accused had a large office, he was prepared to accommodate the first accused. Eventually, it was agreed between them that the first accused would bear 50 per cent of the expenses incurred. However, after about five months, the second accused admitted the first accused as his business partner in December 1999.

109 The first accused often came to the office bringing with him leather purses, leather jackets and other leather goods. The first accused made use of the fax and e-mail facilities available at the second accuseds office premises.

110 In November 1999, about a month before both of them entered into a partnership deed, the first accused told him that he was in the course of securing a large order for leather jackets from overseas and would be receiving an advance payment. In fact, the first accused had shown him orders for the supply of leather jackets in large numbers from the US, UK and Australia and told the second accused that he was going to receive a lot of money. The second accused never suspected that the first accused was doing anything irregular. In the main, the agreement between themselves was that each would concentrate on his own area; the first accused would not transgress into the second accuseds defence procurement business and the second accused would not interfere with the leather business of the first accused.

111 The first accused never mentioned or talked about drugs to him at any time. Before his arrival in Singapore, the second accused had spoken to Lou only once. The first accused had sometime in January or February 2000 told him that Lou was engaged in leather business in the US and that he was his buyer.

112 As he learnt that Lou was the first accuseds business partner, he had spoken to Lou once and greeted him. He, however, had no communication with Ray whilst in Pakistan. He did not suspect that the first accused had anything to do with drugs; neither did he overhear any conversation between the first accused and any person concerning drugs nor did he come across any documents where there was any mention of drugs. The first accused never told him about any drugs deal with Lou. If such a transaction was mentioned, he would have thrown the first accused out of his office immediately.

113 The second accused had visited Singapore many times previously. He came here mainly to procure electronic goods which were either unavailable in Pakistan or were too expensive there.

114 When asked about the name Mumtaz Abbasi, the second accused said that Mumtaz Abbasi was a friend of the first accused and the latter had sold his house through him. Apart from that he knew nothing about Mumtaz Abbasi.

115 Reverting to Lou, the second accused said that the first accused mentioned to him in February 2000 that he was going to meet Lou in Paris. However, the first accused could not get a visa to go to Paris did not make the trip. Then sometime in March 2000, the first accused told him that Lou was going to Singapore and that the first accused would be meeting him there. However, the planned trip did not materialise. Then at the end of March 2000, the first accused told him that he would be going to Singapore to meet Lou; Lou was going to make him some advance payments in return for some samples. The second accused learnt from the first accused that the order was for the supply of 2,000 leather jackets.

116 The second accused informed the first accused that he had also been intending to visit Singapore since he too had to make some inquiries there. The first accused then told him that if the second accused were to be in Singapore, the first accused would pay him a substantial sum to clear part of his debts to the second accused. The first accused wanted the second accused to help remit monies to Pakistan from Singapore as the first accused was planning to stay in Singapore for a while.

117 By the end of March 2000, as he was unable to get the required spare parts in Pakistan, the second accused decided to visit Singapore. He booked his flight only two days before his arrival here. His main object was to buy cabin compressor parts for supply to the Civil Aviation Authority, Karachi, Pakistan. In this connection, he produced a list (marked exh D-6). He added that except for the sums owed to him by the first accused, his firm was doing financially well. The first accused was indebted to him in the sum of Pakistani RS550,000 (Rs55 to US\$1), out of which he had repaid only RS40,000.

118 The first accused arranged with the second accused that once the former had reached Singapore, he would telephone him. On 4 April 2000, the first accused indeed telephoned him saying that he had arrived in Singapore and provided him with the telephone number of the hotel where he was staying. In fact, before the first accused left for Singapore, the second accused had given him the locations of a few hotels in Singapore. Later, the first accused called him again to say that he had moved to another hotel by the name Starlet Hotel and gave him its telephone number.

119 The second accused left Karachi on 5 April 2000 and arrived in Singapore on 6 April 2000 at about 6.15am. The final tender for cabin compressors was to be submitted by 9 April 2000. By this time, he had to be back in Pakistan. If he could not get the spare parts in Singapore he would have to leave for Hong Kong to make enquiries. After his arrival at about 9.00am he called the first accused. They then agreed to meet later and have lunch. The first accused in the event called at his room later. Their conversation was general in nature and about the defence equipment the second accused was trying to source. The first accused on his own mentioned that his buyer was in Singapore and he was meeting him later that day.

120 After lunch the first accused left the second accused briefly and when he returned later requested the second accused to accompany him as he would be collecting some advance payments from his buyer. The first accused mentioned that two persons would be better than one.

121 The second accused agreed to accompany the first accused because the latter had informed him that he wanted to show his buyer some leather samples and persuade him to make the advance payment. The first accused represented to him that the order which he had received was a substantial one valued at US\$300,000. Earlier whilst they were in Pakistan the second accused heard from the first accused that the order was for the supply of between 4000 and 5000 leather jackets.

122 Following the request, the second accused accompanied the first accused to meet the buyer. Later as both of them arrived at the lobby of River View Hotel, the first accused introduced Ray to him. They all sat at a table. A lady (subsequently identified as Elliot) was also with them at that time.

123 There was a discussion between Ray and the first accused at the table. He overheard Ray telling the first accused that he was tired because his flight was very long. The second accused interjected and said that he too was tired. A short while later, the second accused noticed Ray receiving a bag from Elliot and from that he removed a smaller bag from within, placed it in front of the first accused, unzipped the bag briefly and zipped it back. The second accused did not see what was inside the bag (page 2184 lines 8 to 17). Whatever that was said by Ray when he was unzipping and zipping the bag was not comprehended by the second accused due to Ray's accent and the speed with which he was talking; the second accused could catch only some of the words (page 2185 of the NE).

124 After the bag was zipped back, it was handed back to Elliot by Ray and soon Elliot left. Later at the invitation of Ray, both he and the first accused proceeded to Ray's hotel room.

125 Once they had entered the room, Ray showed some photographs to the first accused. The second accused had only a brief glance at them.

126 The second accused said that whilst he was at Queenstown Remand Prison he had seen the video recording of what transpired in the room; he had also seen them replayed during the court proceedings and had read the transcripts. He admitted that whilst in Ray's room on that occasion he did most of the talking.

127 He explained that he went to Ray's room because the first accused requested him to do so as the latter was expecting some advance payment for the supply of leather jackets. The second accused said: I did not have any idea in my mind about drugs because Hashim had told me that he was to receive advance money and I was talking in relation to that (page 2188, lines 16 to 22).

128 The second accused added that during their conversation he could not understand some of the things which were said and he didn't understand the English language (page 2189, line 10). At some stages when Ray was talking he could not understand

what he said and therefore asked the first accused in Urdu what Ray was saying. At one stage, he even told the first accused in Urdu: Where have you brought me? I shouldn't have been coming here. (page 2189 lines 17 to 21). But the first accused gestured to him to remain seated.

129 He maintained that throughout the entire conversation he never used the word drugs. He did not know that the code word jacket meant heroin. He thought the word Ki uttered by Ray was in reference to the word key (page 2191 of the NE). As regards his own words: Its very, very, very, very nice most latest system which is already known there appearing in the transcripts (page 8, line 9), he claimed that it was a reference to leather jackets (pages 2192 to 2193 of the NE). When he uttered the figure \$300,000 and topmost quality during the conversation, he was also referring to leather jackets and nothing else (page 2196 of the NE). He claimed that when he said that the things which are packed they are really very highly, technically packed, and if you open them there, he was merely repeating what the first accused had told him about the jackets earlier that they were technically packed and if he were to open the things, then he would have difficulty in taking them back (page 2198 of the NE lines 1 to 8).

130 The second accused admitted receiving a telephone call from the first accused and asking him about papers and things. But his explanation was that when the first accused called him, he thought the first accused was referring to a telephone number written by the first accused on a piece of paper earlier. He did not however, understand what was meant by the expression things. Therefore, when the first accused asked about the papers he simply replied: the paper is with me. When the first accused asked him where are the things, he thought that the first accused wanted the second accused to call the telephone number written on the paper. On that assumption, the second accused told the first accused that he would call the given number (page 2202 of the NE). As a result, the second accused called the telephone number 2851074 in Pakistan and spoke to one Naseem Khan or Naseem Ahmet and conveyed to him that the first accused wanted to speak with him.

131 The second accused denied that he had told the first accused to break the suitcases to find the drugs (page 2209 lines 9 to 16).

132 The second accused claimed that after the first accused and he left Rays hotel room after their meeting, the second accused questioned the first accused: Where did you take me to and what is the whole matter about and what does your leather garment buyer want.? The first accused's alleged reply was: You will not understand all this. When the second accused heard this he told the first accused that if that was the case, he would not meet Ray anymore and that he would not get himself involved in any deals with him (page 2213 of the NE lines 6 to 22).

133 The second accused claimed that after this he did not see the first accused. Later that evening he was arrested in his room and was taken to the CNB where he saw the first accused and later the third accused. He also saw three CNB officers scraping the suitcases. He did not suspect anything at first but when he was told that heroin had been found inside, he was shocked.

134 The second accused maintained that he did not know anything about the suitcases, to whom they belonged or what was inside them. He also denied the version given by the first accused in his testimony that there was a scam to cheat the leather buyer and the second accused was aware of the scam. He said that he did not know of any scam and he came to Singapore mainly to source for compressor parts and would have taken the monies to Pakistan if the first accused happened to receive an advance for his reported leather jacket orders (pages 2233 and 2234 of the NE). He added that in the meeting with Ray in the hotel room, he was not engaged in assisting the first accused to cheat Ray.

Evidence of the third accused

135 The evidence of the third accused can be summarised as follows.

136 He is 30 years of age (born on 24 August 1970), single and a Pakistani National. He had attended school for only three years and had been a salesman in a spare-parts shop in Pakistan before his arrest on 6 April 2000.

137 He arrived in Singapore from Pakistan for the first time on 4 April 2000. The purpose of his visit was primarily to hand over two suitcases to one Hash. He also wanted to make use of the trip to buy some electrical goods for sale back home and to ply some of the items textile material which were brought by him. The suitcases were given to him in Pakistan by one Naseem Khan.

138 The third accused had been acquainted with Naseem Khan since 1997. He first met him in 1997, later once in 1998, once in 1999 and three or four times in 2000. Naseem Khan ran a poultry farm, a tent service for functions as well as a business for people to make international telephone calls.

139 After his arrival in Singapore he learnt that Hash was Hashim, the first accused. He did not know the second accused until he met him for the first time at the CNB. The third accused had never heard of Mumtaz Abbasi.

140 As regards the two suitcases to be delivered to Hash in Singapore, Naseem Khan made this request to the third accused on 25 March 2000 (page 2532 line 15 of the NE) although on 15 March 2000 (sic) Naseem Khan made an offer to send the third accused to Singapore. The third accused thought Naseem Khan was just pulling his leg. The third accused was overjoyed by the offer. He had heard of Singapore and was excited at the prospect of doing sightseeing, buying electrical appliances with a view to resale in Pakistan for a profit and to take some wares and sell for gain in Singapore.

141 He met Naseem Khan again on 1 April 2000 when the latter called at his house to obtain his passport in connection with the issuing of an airline ticket. A seat was booked for him to leave Pakistan on 3 April 2000 and the return was arranged for 10 April 2000. The third accused was told that a photocopy of his passport pages would be faxed to Hash in Singapore.

142 After the purchase of the ticket, he met Naseem Khan on 2 April 2000 at a hotel in Lahore. In his presence Naseem Khan faxed the copy of his passport to Karachi and later returned the passport to the third accused.

143 The third accused was to leave Lahore for Singapore on 3 April 2000. Following prior arrangement the third accused met Naseem Khan at his hotel at about 3.00pm on 3 April 2000. Naseem Khan was to send him to the airport. The third accused had with him his personal clothings and a few items which he wanted to sell in Singapore. Those items included: ladies material, scarves, shawls, purses, geometry boxes and a few other items. He had with him US\$1,000 in cash and another sum of US\$5000 given to him by Naseem Khan.

144 At the hotel room of Naseem Khan, there was another man whom the third accused had never met before but this man left the place soon. The third accused later saw him at the airport duty office when he was departing Lahore for Singapore.

145 Naseem Khan opened the two suitcases which were with him in his room (exhs P-52 and P-53), removed whatever that was inside except for one or two mothballs and handed the suitcases to the third accused. The third accused then placed all his items in the two empty bags and soon both of them left for the airport in a taxi. He did not at that time suspect that there were any drugs hidden in the suitcases. Before he left Lahore he was given the names of two hotels in Singapore for him to stay: Mustaffa Hotel and Supreme Hotel. Naseem Khan intimated to him that the two suitcases the third accused was carrying had to be handed over to his friend Hash. Naseem Khan further told him that if Hash were to volunteer and give him some money, he could accept it. Naseem Khan told him that Hash might give him \$500 to \$1,000 but the third accused on his part should not ask for any money.

146 He left Lahore by a Singapore Airlines flight at 7.00pm on 3 April 2000. The plane stopped at Karachi for about 50 minutes on the way to Singapore. Throughout the entire flight nobody approached him. The flight finally landed in Singapore at about 6.00 to 6.30am on 4 April 2000. He enlisted another Pakistani National to fill up his disembarkation form. Having cleared immigration and customs formalities he proceeded straight to Mustaffa Hotel at Serangoon Road. As there were no rooms available at that hotel, he left for Supreme Hotel and there he was allotted room number 207.

147 After breakfast, at about 9.30am on 4 April 2000 he telephoned Naseem Khan by using a public telephone situated at or near Orchard Plaza and gave him his whereabouts and the room number. Naseem Khan told him that his friend Hash would go to the third accused's hotel room to collect the bags from him. Thereafter the third accused returned to his room and freshened up

before doing some window shopping. Just about this time, the telephone in his room rang.

148 The caller spoke to him in English which he could not understand. The caller who later identified him as Hash spoke to him in Urdu. Since the third accused had indicated to the caller that he was planning to some sightseeing, the caller said he would call him at 5.00pm that day. Nothing else was discussed during this conversation.

149 The third accused later went window shopping and returned to his room at about 4.00pm. At about 5.00pm the first accused telephoned and told him that he would like to meet him. The third accused suggested that they meet in his hotel room. The first accused did not agree and arranged to meet him outside the hotel.

150 The third accused offered to take the suitcases for delivery to the first accused but the latter told him that he only wanted to meet him and that he would be able to recognise the third accused as he had a photocopy of his passport. In the event, both met outside the hotel. After exchanging pleasantries, the first accused told the third accused that he was busy for the next one or two days and would come and collect the bags later. When the third accused enquired from the first accused about places to have his meal, the first accused pointed to the direction of the McDonalds Restaurant at Centrepont, Orchard Road. The third accused said that his first meeting with the first accused was on 4 April 2000, the day of his arrival in Singapore.

151 On 5 April 2000, the first accused called him at about 11.00am and told him that he might collect the bags either on that day or the next day. The third accused requested him to call him before the first accused arrived.

152 On 6 April 2000, the morning was uneventful. Later at about 4.00pm, he transferred some of the items which he had brought with him from Pakistan in a plastic bag with a view to showing them to some shopkeepers. He managed to sell two suiting materials to a Sikh shopkeeper for S\$50 and purchased from him a bag as he needed one to keep his belongings once he had handed over the suitcases to the first accused. After telling the shopkeeper from whom he had purchased the bag to keep it for him for a while, he boarded a bus and went to the Mustaffa Department Store at Serangoon Road.

153 At about 9.15pm on 6 April 2000 he received a telephone call from the first accused. He wanted to collect the suitcases. To a suggestion by the third accused for the first accused to pick up the suitcases from the former's hotel room, the first accused declined saying that he was having his food at the McDonalds at Centrepont with his friends and asked the third accused to take the suitcases there. He told him that he would meet the third accused near the staircase there. The third accused obliged. He took the two suitcases and handed them to the first accused and enquired from him whether they were the same bags he had left in Pakistan. The first accused after confirming that those were indeed the bags, accepted them. Presently the third accused returned to his hotel room.

154 About 45 minutes or so later, the telephone in the room of the third accused rang. It was the first accused. The first accused told him that the suitcases handed to him were locked and that the third accused had not handed over the keys to them. The tone of the first accused was severe. The third accused lost no time in apologising to the first accused for the oversight. When the third accused suggested that the first accused collect the keys from him, there was a sarcastic response from the first accused. The third accused became frightened. He was afraid that the first accused might complain to Naseem Khan. Presently, the third accused asked the first accused where he should deliver the keys. The first accused spelt out for him the name of River View Hotel. He promptly took a taxi and handed over the keys to the first accused at the lobby and soon left the place by the same taxi. However, on his way back to the hotel he was arrested by CNB officers at about 10.45pm on 6 April 2000.

155 He denied saying to the first accused whilst at the River View Hotel entrance either the words: I wanted to see the buyer or the words Is he the guy in reference to Ray.

156 After his arrest at about 8.20pm on 7 April 2000 a cautioned statement was recorded by ASP Fan from him. The said statement (exh D-3) reads as follows:

I am not guilty as charged. I came to Singapore for business and tour, not to do drug trafficking.

I hope the authority will understand my position and let me out of the custody as soon as possible.

I am an innocent person.

157 The third accused explained that the word business in his statement referred to the sale of the wares he had brought from Pakistan and the electrical goods he had intended to purchase for resale in Pakistan for profit. He emphasised that he did not know or suspect that there were drugs concealed in the suitcases which he was made to carry from Pakistan for delivery to the first accused.

158 Insofar as the cross-examination of the third accused was concerned, a few aspects concerning the dates mentioned by the third accused in his testimony as well as his statements require highlighting.

159 According to the third accused's evidence he met the first accused for the first time on 4 April 2000 and later on 6 April 2000. There was no meeting on 5 April 2000.

160 When cross-examined, the third accused maintained that he had met the third accused on 4 April 2000 and not on 5 April 2000 and the date 5.4.2000 appearing at para 16 of his statement was incorrect (pages 2729 and 2730 of the NE).

161 The next aspect relates to the date Naseem Khan met the third accused at Lahore and offered to send him to Singapore. The third accused said in his testimony that it was on the 15 March 2000 (page 2657 of the NE). He also said that the next occasion he met Naseem Khan was on 25 March 2000 (pages 2662 and 2663). However when it was pointed out to him that he entered Uganda on 11 March 2000 and returned to Pakistan only on 25 March 2000 (pages 2694 to 2696 of the NE), he said that the correct date of Naseem Khan's first offer was on 25 March 2000 and not 15 March 2000. According to him the first occasion Naseem Khan made him an offer to go to Singapore was on 25 March 2000 and the second occasion he repeated the offer was on 1 April 2000 (page 2696 lines 19 to 23 and page 2697 lines 1 to 2).

162 It must be observed at this stage that the third accused did mention before he was referred to his passport entries, that the first occasion he was made the offer by Naseem Khan to visit Singapore was on the day of his return from Uganda. In this regard the questions asked of him and the reply given by him appearing at pages 2657 and 2658 of the NE bear reproduction:

Q What else did both of you talk about in December 1999?

A Nothing much, your Honour. All he asked was how I was and he left.

Q Did he ask you to call him in Karachi?

A No, your Honour.

Q The next time that Naseem Khan came to see you, according to your examination-in-chief, was on the 15th of March 2000.

A Yes, your Honour.

Q Did he come to your---

DPP (MR REDDY): Sorry, I rephrase it, your Honour.

Q Where did he meet you on the 15th of March 2000?

A At my house, your Honour.

Q Was he alone when he came to see you?

A Yes, your Honour, he was alone.

Q What time did he come to see you?

A Around 9.00pm.

Q *How long did he stay with you in your house on this occasion?*

A *About 15 to 20 minutes. That was the day I had returned from Uganda. My uncle, my sister and other relatives had come to meet me. That was the time he came, your Honour*

Q *Where were your relatives who had come to visit you on this 15th of March 2000?*

A They were in the house.

DPP (MR REDDY): Where were his relatives when they came to meet him on the 15th of March 2000?

INTERPRETER: They were in the house.

Q *How many of them were in the house on the 15th of March 2000?*

A *I think about five or six, including my nephews and cousins.*

Q *According to your examination-in-chief, this was the first occasion that he had told you about his offer to send you to Singapore?*

A *Yes, your Honour. When he came to the house, your Honour, he asked me why there were so many people in the house. I told him that I had just returned from Uganda and they had come to visit me. Then he asked me if he were to send me to Singapore, whether I will agree to go.*

[Emphasis added]

163 Other matters touched upon in the cross-examination of the third accused would be referred to later in this grounds, should the occasion warrant.

Final speeches and conclusions

(a) First accused

164 The charge against the first accused was that on 6 April 2000 at River View Hotel, Singapore, he trafficked in a controlled drug by having in his possession for the purpose of trafficking about 5 kilograms of heroin in two suitcases containing not less than 2,871.2g of diamorphine, an offence punishable under s 5(1)(a) read with s 5(2) and punishable under s 33 of the MDA.

165 Sections 5(1)(a) and 5(2) of the MDA read as follows:

5-(1) Except as authorised by this Act or the regulations, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore to -

(a) traffic in a controlled drug; or

(2) For the purposes of this Act, a person commits the offence of trafficking in a controlled drug if he has in his possession that drug for the purpose of trafficking.

166 It was not in dispute that the drugs found in the two suitcases (P-52 and P-53) carried by the first accused and seized at the scene of arrest contained not less than the amount stated in the charge. The scientific evidence as to analysis as well as the claim of evidence in relation thereto were also not disputed by the defence.

167 The submission by counsel for the first accused, delaminated of all excess, was simply this: That the first accused came to Singapore not to traffic in any drugs but to execute a scam on Ray, by which Ray would be induced to hand over a large sum of money on the pretext that the latter was going to receive a suitcase containing heroin (which turned out to be two suitcases) although there would not be any drugs in those suitcases.

168 Counsel for the first accused submitted (para 37 of the submission) that the scam bottomed out and failed when the suitcases were opened and worse, drugs were eventually found within. The first accused was shocked. As a result the first accused was stunned speechless; he even needed a drink and in fact was looking for an opportunity to leave the room. Later as the first accused started to walk towards the entrance of River View Hotel, intending to get out of the place quickly, he was stopped and arrested at the lobby by a few CNB officers.

169 In my determination, the defence put forward by the first accused that he came all the way to Singapore to deliver an empty suitcase to a drug buyer and receive a substantial sum of money in return for the said empty suitcase appeared to border on the ludicrous.

170 If he was indeed intending to deliver empty suitcase or suitcases, why didnt he simply walk away soon after he and Ray were unable to locate the whereabouts of the supposedly hidden (for that matter allegedly non-existing) substance. Could he not have excused himself from Ray stating that he had to return to his hotel to check with his business associate as to the whereabouts of the drugs and use that occasion to vanish once and for all? At any rate, why did he have to telephone the second accused and ask for instructions and later convey to Ray that the drugs were stored on the inside ends of the suitcases?

171 The first accused was seen twisting and turning in the witness box. Many an answer by him was glib and tentative. Rays evidence that there was a confirmed order for heroin could not be doubted. The first accused, for all to see, was caught red-handed with the offending substance when he was at the hotel to hand-deliver them to an undercover agent. All his actions and words on the evening of 6 April 2000 were caught in the audio and video-recorders put in place by the law enforcement agencies. His attempted defence that there was never any intention on his part to deliver drugs to Ray was totally decimated by the materialisation of nearly 5 kilos of heroin found in the suitcases. Was it a pure miracle or an inexplicable preternatural phenomenon that brought forth about 5 kilograms of heroin, the amount coincidentally mentioned by the first accused before the sides of the suitcases were prised open?

172 In my view the defence of the first accused was a hopeless and rickety gambit, hastily assembled, ill-thought out, ill-prepared and ineptly presented no reflection on counsel. The story narrated by him defied common sense and reason; it was unreal, weird and entirely rid of substance.

173 The video-tapes played in court and the transcripts provided gave a clear impression that the on-going negotiation at the hotel was not a mere sham but a serious and sinister enterprise to deal in drugs then and in future. Furthermore, it would be inconceivable that the empty suitcases to be delivered in Singapore would soon turn out to be a storehouse for 5 kilograms of heroin. The first accused's story in my finding was nothing but a tissue of lies. The sample of heroin he carried with him on that day further belied his defence.

174 In coming to my conclusion, I did not have to rely on any of the confessionals admitted in evidence by the prosecution. In my finding, the prosecution had proven beyond a reasonable doubt that the first accused was not only in physical possession of the drugs but also had knowledge of the existence of the drugs, the nature of the drugs found in the suitcases and that he was in possession of the drugs for the purposes of trafficking.

175 As submitted by the learned DPP, there was ample evidence to justify the conclusion that the possession of drugs by the first accused was for the purpose of trafficking: In this the following aspects were in my opinion significant:

- (a) Ray talked to the first and second accused of Colombia and Bangkok and;
- (b) both the first and the second accused discussed with Ray the sale of the drugs to Ray including its price;
- (c) they discussed future sales;
- (d) the first accused provided a sample of heroin to Ray for testing;
- (e) the suitcases were hand-delivered by the first accused to Ray;
- (f) the money had been shown to the first accused earlier; and
- (g) the first accused was keen to exchange the suitcases for cash.

176 Reviewing the evidence in its totality, the inescapable conclusion was that the first accused was in Singapore to traffic in heroin found in his possession on 6 April 2000. If, as he claimed, the whole exercise was meant to be a sham, he did not have to enlist the help of a third party (ie, Naseem Khan) to arrange for the suitcases to be flown all the way from Lahore to Singapore.

177 In the circumstances, after being satisfied that the prosecution had proven its case beyond a reasonable doubt and that the first accused had not established his defence on balance of probabilities, I found him guilty as charged and sentenced him to the only punishment prescribed under the law.

(b) *Second accused*

178 The second accused faced an amended charge that on 6 April 2000 at River View Hotel, he engaged himself with the first accused in a conspiracy to traffic in diamorphine and in pursuance of the conspiracy, offered to sell to Ray about 5 kilograms of heroin containing not less than 2,871.2g of diamorphine and he thereby abetted the commission of the offence of offering to traffic in the drugs, an offence under s 5(1)(b) read with s 12 and punishable under s 33 of the MDA.

179 The charge was amended on 19 January 2001 from one under s 5(1)(a) to one under s 5(1)(b) of the MDA. In the result, an opportunity was afforded to the second accused to recall and re-examine witnesses pursuant to s 167 of the CPC but counsel for the second accused informed the court that it was unnecessary since the amendment did not introduce any new element to the charge.

180 Section 5(1)(b) of the MDA provides:

5-(1) Except as authorised by this Act or the regulations, it shall be an offence for a person, on his own behalf or on behalf of any other person, whether or not that other person is in Singapore to -

(b) offer to traffic in a controlled drug;

181 Section 12 of the MDA reads thus:

Any person who abets the commission of or who attempts to commit or does any act preparatory to, or in furtherance of, the commission of any offence under this Act shall be guilty of that offence and shall be liable on conviction to the punishment provided for that offence.

182 It would also be useful to remember that the word traffic appearing in the MDA has been defined under s 2 of the Act to mean:

(a) to sell, give, administer, transport, send, deliver or distribute; or

(b) to offer to do anything mentioned in paragraph (a) [above].

183 As submitted by the prosecution that the prosecution had to prove the following ingredients to bring home a conviction against the second accused:

(1) That the second accused was engaged in a conspiracy with the first accused;

(2) That as conspirators, both of them agreed to traffic in diamorphine, a controlled drug, this being the object of the said conspiracy.

(3) That pursuant to this conspiracy, the second accused abetted the offence by offering to sell Ray 5 kilos of heroin containing not less than 2871.2g of heroin.

184 Before dealing with the submissions made in respect of the guilt or innocence of the second accused, reference should be made to what the Court of Appeal said in *Vinit Sopon & Ors v Public Prosecutors* [1994] 2 SLR 226, where Yong Pung How CJ, in delivering the judgment of the Singapore Court of Criminal Appeal, said at page 241E-G:

The charge against the third appellant was one of abetment by conspiracy. Section 12 of the MDA provides that a person who abets the commission of any offence under the Act shall be liable on conviction to the punishment provided for that offence. Although abet is not defined in the MDA, it bears the same meaning as in s 107 of the Penal Code, by virtue of s 2 of the Interpretation Act (Cap 1), which states:

abet with its grammatical variations and cognate expressions, has the same meaning as in the Penal Code.

Conspiracies under s 107(b) of the Penal Code are proved generally from inference of conduct as it is often difficult to have direct evidence of

conspiracy. Even in a criminal case, it can be inferred from circumstantial or oral evidence. It may be proved by evidence of surrounding circumstances and the conduct of the accused both before and after the alleged commission of the crime.

185 In relation to abetment by conspiracy, in *Lai Kam Loy & Ors v Public Prosecutor* [1994] 1 SLR 787, Yong Pung How CJ commented at 795:

As for the second and third appellants, the charge against them was one of abetment of trafficking by conspiracy. The ingredients which the prosecution had to prove were the existence of a conspiracy to do an illegal act, with the result that the illegal act which was the object of the conspiracy was actually carried out. The latter ingredient was not in issue as the object of the conspiracy was the delivery of drugs which was effected by the first appellant. The question that arose was whether the second or the third appellant was party to the conspiracy to deliver the drugs. The essence of a conspiracy is agreement and in most cases the actual agreement will take place in private such that direct evidence of it will rarely be available. A frequent method of proving a conspiracy is to show that the words and actions of the parties indicate their concert in the pursuit of a common object or design, giving rise to the inference that their actions must have been co-ordinated by arrangement beforehand. We emphasize that these acts do not of themselves constitute the conspiracy but constitute evidence of the conspiracy.

The question that a trial court must ask itself at the end of the trial was stated succinctly by Huggins J in *R v Chau Sau-Tai*, which is whether, in respect of each alleged conspirator, the court is satisfied that, on the evidence as a whole, he must have conspired with one or more of the others.

186 In *Public Prosecutor v Sugianto & Anor* [1994] 2 SLR 1, the Court of Appeal reiterated at page 16:

The essential ingredient of a conspiracy is agreement. (See the judgment of the Court of Appeal in *Lai Kam Loy & Ors v PP*.) From the very nature of a conspiracy, direct evidence will hardly ever be available. It is evident, therefore, that the existence of a conspiracy will have to be inferred from the evidence and all the surrounding circumstances of the case.

187 In essence, the prosecutions case against the second accused centred around the evidence of the DEA undercover agent Ray; the audio-video recording made at the River View Hotel and the transcripts thereon.

188 The second accuseds defence as summarised by his counsel in his closing submission (paras 8 and 9) was as follows:

8. In essence Afzals defence was that:-

- (1) he never conspired with Hashim to sell any drugs to Ray;
- (2) he never arranged for any courier to bring the drugs to Singapore;
- (3) he did not negotiate for the sale of any drugs to Ray in

Rays room in River View Hotel;

(4) he did not know anything about the 2 suitcases and their contents which Naveed delivered to Hashim;

(5) he did not meet and speak to Hashim in the vicinity of Orchard Plaza when Hashim was carrying the two suitcases;

(6) he had not called any drug supplier in Pakistan;

(7) he did not make a call to Hashim telling him how to locate the drugs in the two suitcases;

(8) he did not make a phone call from a public telephone at a bus stop outside Orchard Plaza on 6.4.2000 at about 11.00 p.m;

(9) that he was in Singapore on legitimate business to source for cabin compressor spare parts;

(10) that Hashim who was his business partner in Pakistan had falsely implicated Afzal in this case for his own ends; and

(11) that he was not involved in any cheating scam as alleged by Hashim.

189 In short, the second accuseds explanation was that he was an innocent businessman drawn into this mess, without his knowing by his scheming and conniving partner, the first accused. He denied that he had anything to do with the drugs found in the suitcases and that his presence at the River View Hotel was merely to lend support to his partners leather jacket business and nothing else. He told the court that his main purpose in coming to Singapore was to source for cabin compressor parts which he required for a tender exercise closing on or about 9 April 2000 although he would have assisted in remitting whatever advance payments the first accused was hoping to receive from his leather garment buyer. In this connection he even produced a list of equipment to be purchased which was found with him when he was arrested. His counsel urged me to accept his defence; reject both Rays evidence as well as the first accuseds claim that the second accused was an active partner in the so-called scam.

190 I must say at the outset that after due consideration I did not accept the claim of the first accused that there was a so-called scam. I found it to be a pure myth and consequently dismissed it as unworthy of belief and credit.

191 However, the transcripts as well as the video presentation gave a clear impression that the second accused was neck-deep in this drug conspiracy. The video-tape played in court and the transcripts confirmed that he was the chief orator in Rays room.

192 His defence was found by me to be wholly against the drift and grain of some direct and compelling evidence before the court. His mention in the hotel room of: (a) We have very, very, very new item, very, very safe items (page 6 of the transcript) (b) a special system that is very new (page 6 of the transcript), (c) come right from North East Asia (page 7 of the transcript); (d) there is no match, this product made in Columbia. No match. (page 13 of the transcript); (e) We do business with topmost quality so much risk right from one place to other place (page 17 of the transcript); (f) we will always give you the topmost quality, crystal, topmost (page 18 of the transcript); (g) if there is transit, then no problem but there can be hassles (page 26 of the transcript) (h) the guy has sample also opened sample also very little (page 28 of the transcript); (i) we often come here, we travel here, its easy. Its very dangerous also. (page 32 of the transcript); (j) the things which are packed they are really very

highly technically placed and if you open them (page 37 of the transcripts) and a reference to a sample sent in a Christmas card (page 24 of the transcript) all read in the context of the exchange between Ray, the first and second accused, left no room for doubt that what the second accused was talking about in the hotel room; his entire conversation was about top quality drugs and not leather jackets in their true sense.

193 The second accused endeavoured to explain that he was at all times making reference to leather jackets and did not quite comprehend or follow what Ray was talking about due to Rays peculiar accent and diction. Watching the video not once but many times, the distinct impression the court had was that the second accused knew what Ray was talking about and his present explanations were nothing but fabrications on his part.

194 In fact, the segment which is reproduced below seemed to entirely nullify the second accuseds claim that he did not know that Ray was talking about drugs since the words it is all concealed in the suitcase were this time clearly uttered not by Ray but by his partner in crime, the first accused:

Pages 6 and 7 of the transcript:

KHAN: So we will tell you what we did. We did a very, very-
--and very, very nice (Urdu)

. (Urdu)

HASHIM: Well, weve got a special system that is very new.

OFFICER: Im lost.

HASHIM: "Im lost"?

OFFICER: Im lost. Oh, you got to mean carrying.

HASHIM: *It is all concealed in the suitcase, so you dont have to worry about taking there.*

OFFICER: *Well, OK, you mean the actual heroin itself, OK.*

KHAN: It came right from---

OFFICER: It came from the area.

KHAN: North East Asia.

OFFICER: OK. Now, my question is this, I want to see my product before I pay you. Do you understand that? Because I didnt come half way around the world not to see my drugs. I got my courier, shell take care of everything for me. She knows how to get it. Shes a professional. She has been working for me since I started my business. OK?

KHAN: OK.

[Emphasis added.]

195 Having reviewed all the evidence in its totality after discounting what the first accused said about the second accused's role, the only compelling conclusion was that the second accused was on 6 April 2000 actively engaged in a conspiracy with his business partner, the first accused and abetted him in the commission of the offence spelt out in the charge. In my finding, the second accused's evidence was replete with untruths and was an exercise in skulduggery. I was in the end satisfied beyond a reasonable doubt that the prosecution had proven beyond a reasonable doubt by direct and unequivocal evidence that the second accused was guilty of the offence charged. In the premises, I found him guilty, convicted him and sentenced him to the mandatory punishment prescribed under s 33 of the MDA.

(c) *Third accused*

196 The charge facing the third accused was that on 6 April 2000 at about 9.53pm, he trafficked in a controlled drug outside Centrepont Shopping Centre, Singapore, by delivering two suitcases containing not less than 2871.2g of diamorphine to the first accused and thereby committed an offence under s 5(1)(a) punishable under s 33 of the MDA.

197 Section 5(1)(a) of the MDA has already been reproduced elsewhere in this grounds and therefore requires no repetition. The fact that the two suitcases seized by the CNB from the first accused (exhs P-52 and P-53) were the same suitcases delivered by the third accused to the first accused was not disputed by the third accused. He also did not dispute that at about 10.45pm on 6 April 2000, he handed over the keys to the suitcases to the first accused at River View Hotel. The scientific evidence as to the diamorphine content of the drugs found inside the suitcases as well as the chain of evidence relating thereto were also not contested by the third accused. The only dispute was in relation to the question whether the third accused knew that the two suitcases which he carried from Lahore to Singapore and handed over to the first accused on that day, contained a controlled drug when he delivered them to the first accused.

198 Counsel for the third accused seemed to concede at the outset that by virtue of the fact that the third accused had physical possession of the two suitcases in which the concealed drugs were found, the statutory presumptions prescribed under s 18 of the MDA became operative. Insofar as is material ss 18(1) and (2) of the MDA provide as follows:

18.- (1) Any person who is proved to have had in his possession or custody or under his control

- (a) anything containing a controlled drug;
- (b) the keys of anything containing a controlled drug;
- (c) the keys of any place or premises or any part thereof in which a controlled drug is found; or
- (d) a document of title relating to a controlled drug or any other document intended for the delivery of a controlled drug,

shall, until the contrary is proved, be presumed to have had that drug in his possession.

(2) Any person who is proved or presumed to have had a controlled drug in his possession shall, until the contrary is proved, be presumed to have known the nature of that drug.

(3) The presumptions provided for in this section shall not be rebutted by proof

that the accused never had physical possession of the controlled drug.

(4) Where one of 2 or more persons with the knowledge and consent of the rest has any controlled drug in his possession, it shall be deemed to be in the possession of each and all of them.

199 The learned DPP also submitted in the same vein and said that the presumption contained under s 18(2) of the MDA applied and in the circumstances the third accused would have to rebut the operative presumptions on balance of probabilities (para 96 of the prosecution submission).

200 However, it would be instructive at this stage to call to mind the applicable principles enunciated by the Court of Appeal in like situations.

201 In *Sim Teck Ho v Public Prosecutor* [2000] 4 SLR 39 at 43, it was held by the Court of Appeal (per Yong Pung How CJ) that:

Therefore, in order to prove possession, the prosecution must prove that there is first, physical control over the controlled drug, and second, knowledge of the existence of the thing itself, *that is the existence of the controlled drug, but not the name nor nature of the drug.* [Emphasis added.]

202 In other words, in addition to proving the element of the physical control on the part of the accused, the prosecution would also have to prove knowledge on the part of the accused as to the existence of the controlled drug.

203 The next aspect relates to the defence of ignorance by the accused and the consideration whether the accused could have been wilfully blind to the reality. In this regard, Yong Pung How CJ, in delivering the opinion of the Court of Appeal in *Chou Kooi Pang & Anor v Public Prosecutor* [1998] 3 SLR 593 at 599 observed:

Ignorance can only be a defence where there was no reason for suspicion. In the circumstances, the first appellant should have been alerted to the fact that he was carrying something illegal. He was being given a substantial sum of money just to deliver a bag to someone in Singapore. As such, his failure to inspect the contents of the bag when he received them or at any time until the bag was delivered to the second appellant amounted to wilful blindness to the obvious truth of the matter: *PP v Hla Win* [1995] 2 SLR 424.

204 Now some first principles: In *Tan Ah Tee & Anor v Public Prosecutor* [1978-1979] SLR 211, the Singapore Court of Criminal Appeal (per Wee Chong Jin CJ) commented at pages 217 and 218: Indeed if there were no statutory presumptions available to the prosecution, once the prosecution had proved the fact of physical control or possession of the plastic bag and the circumstances which this was acquired by the [accused], the trial judges would be justified in finding that [the accused] had possession of the contents of the plastic bag within the meaning of the Act unless [the accused] gave an explanation of the physical fact

205 The Singapore Court of Criminal Appeal then cited with approval what Lord Wilberforce said in *R v Warner* [1969] 2 AC 256 (HL) at 312 in the following terms:

In all such cases, the starting point will be that the accused had physical control of something a package, a bottle, a container found to contain the substance. This is evidence generally strong evidence of possession. It calls for an explanation: the explanation will be heard and the jury must decide whether there is genuine ignorance of the presence of the substance, or such an acceptance of the package with all that it might contain, or with such

opportunity to ascertain what it did contain or such guilty knowledge with regard to it as to make up the statutory possession. Of course it would not be right or consistent with the terms of the Act, to say that the onus of showing innocent custody rests upon the accused. The prosecution must prove the offence, and establish its ingredients. But one starts from the point that the Act itself has exempted the great majority of cases of innocent possession, so that once the prosecution has proved the fact of physical control in circumstances not covered by an exemption and something of the circumstances in which this was acquired or held, this, in the absence of explanation, may be sufficient to enable a finding of possession to be made. On the other hand, the duty to submit the question of possession to the jury in this way does give the opportunity of acquittal to innocent carriers and custodians, who can put forward an explanation of the physical fact which a jury accepts.

206 Citing a host of authorities the learned DPP argued that the third accused was wilfully blind to the actual contents he was carrying. He submitted: Naveed did not even inquire as to what he was in fact carrying. He was fully satisfied with bringing two suitcases that appeared empty to Singapore to be handed over to someone he never knew. He did not bother to make inquiry at all of Naseem Khan about most, if not, all relevant matters.

207 On the issue of wilful blindness the following segment appearing at para 119 of the prosecutions submission requires mention. It reads:

In **Warner** it was said by Lord Pearce:

For a man takes over a package or suitcase at risk as to its contents being unlawful if he does not immediately examine it (if he is entitled to do so). As soon as may be he should examine it and if he finds the contents suspicious reject possession by either throwing them away or by taking immediate sensible steps for their disposal.

In this present case, Naveed took possession of the suitcases in Pakistan. He did not examine it there. He made no enquiries about the suitcases or the person to whom he was to deliver them. He also had sufficient time in Singapore and contact with Hashim to ask Hashim more about the suitcases, but he did not. He had ample opportunity to examine them in Singapore. Therefore, he recklessly and wilfully closed his eyes to the fact that he was indeed transporting drugs.

208 I found the foregoing submission to be altogether disingenuous. First of all, it seemed to ignore the evidence of the third accused (which was not contested at any length) that when he was handed the bags in Pakistan, they were completely empty save for an odd mothball. Secondly, it also seemed to side-step the prosecutions own evidence that when the bags were opened in Rays hotel room, both Ray who was said to be an experienced DEA operative and the first accused, the principal culprit in this episode, were themselves hard-put to locate the drugs in the suitcases so much so they had to stop the search for a while and seek advice from the associate of the first accused, before they actually located the drugs. In the circumstances, the suggestion by the prosecution that the third accused had ample opportunity to examine the bags in Singapore was found by me to be somewhat effete.

209 In my opinion, the error on the part of the third accused for not asking Naseem Khan why two empty suitcases were being sent to Singapore could not be used to tack him with the label of wilful blindness. The situation at hand cannot be likened to the famous Nelsons blind eye at the battle of Copenhagen, alluded to by Lord Scott of Foscote in **Manifest Shipping Co Ltd v Uni-Polaris Shipping Co Ltd and others** (2001) 1 All E R 743 at 780, where Nelson made a conscious decision to place the telescope to his blind eye in order to avoid seeing what he knew he would see if he placed it to his good eye. A distinction ought to be

made between a dishonest person and a person who was found to be honestly blundering (see Lord Blackburns dicta in *Jones v Gordon* (1877) 2 App Cas 616 at 629). In my evaluation, the third accused was more of a blundering nitwit than a shrewd scoundrel.

210 There was an attempt by the prosecution to assail his credibility. This was on account of certain inconsistencies in his evidence on some dates mentioned by him in his statements as well as in his testimony. Chief amongst them was the date on which Naseem Khan made the first offer to him to visit Singapore. The third accused said it was on 15 March 2000. But his passport entries showed that he was in Uganda at that time and had not arrived in Pakistan until 25 March 2000. The prosecution opened fire with all its guns blazing on this. But the forgotten fact was that he had previously, well before he was confronted with his passport entry, told the court that this meeting with Naseem Khan took place on the very day he returned from Uganda and the said offer was made to him when members of his family gathered around him upon his return at his residence. In my evaluation, the said discrepancy should not be viewed as a deliberate lie on his part but was caused due to his inability to recall the correct date. In any event, even if it was a lie, which I did not think it was, it was not of that category of a lie bespoken in *R v Lucas* [1981] QB 720 or *Public Prosecutor v Yeo Choon Poh* [1994] 2 SLR 867, being a deliberate lie, related to a material issue, motivated by a realisation of guilt and fear of truth. In this regard, it behoved the court to bear in mind the advice contained in *Yeo Choon Poh* that the mere fact an accused tells lies should not be taken as evidence of his guilt and only a lie given out of a realization of guilt and fear of truth relating to a material issue can amount to corroboration of the accuseds guilt.

211 The other dates alluded to by the prosecution ie, whether the third accused met the first accused in Singapore on 4 April or 5 April 2000 and whether the third accused had met Naseem Khan in the hotel on 1 April or 3 April 2000 were similarly in my determination of little consequence to the material issue; neither of them could be regarded as a deliberate lie; nor were they considered by me to be material to the core issue. The prosecutions submission here was extremely tenuous and consequently not accepted by me.

212 To digress a little, I must observe that if I were to accede to the prosecutions invitation to hold that the third accuseds evidence stood discredited or impeached basically because of the so-called inconsistencies and discrepancies with regard to the dates mentioned by the third accused in relation to some peripheral details, the prosecution would find itself equally in an uncomfortable terrain in regard to some inconsistencies as to timings listed by S/S/Sgt Thng when the first accused was reportedly narrating matters concerning Faribourg during the recording of his statements. What was sauce for the goose must be sauce for the gander as well.

213 In my determination, the account narrated by the third accused appeared to have a substantial degree of cogency; he was neither shifty nor evasive nor prevaricating. Except as to certain dates on which he seemed to have some problems, I was inclined to think that he was in fact naive and somewhat unwittingly had fallen in the trap set up by Naseem Khan and his fellow collaborators. It also did not escape my notice that the third accused was the one who volunteered the information concerning Naseem Khans involvement and the latters antecedents. The third accused could simply have hidden them. But he did not.

214 The learned DPP in his submission urged the court to draw an adverse inference against the third accused for his failure to mention in his cautioned statement that he had brought the suitcases from Pakistan to return them to their owner Hash. This was a curious submission so to speak. First of all, the court noted that the prosecution was singularly shy in not tendering this cautioned statement during the prosecutions case for reasons well known to it. Having elected so, it did not fall for the prosecution to argue later that the third accused should have mentioned the particulars alluded to in his cautioned statement.

215 Secondly, the case cited by the prosecution *Roshdi v Public Prosecutor* [1994] 3 SLR 282 highlights the aspect that a cautioned statement recorded under s 122(6) of the CPC does not require the accused person to minutely detail the defence he would be relying on at the trial. At any rate, looking at the cautioned statement in its true perspective, it was my opinion that the third accused had stated his position sufficiently. In any event, in the statement (exh P-50) made by him on 10 April 2000 two days after his cautioned statement - he had adequately adumbrated his defence. In the circumstances, the invitation by the prosecution to draw an adverse inference against the third accused pursuant to s 122(3) of the CPC was found by me to be entirely unprepossessing. In this, I am fortified by a view expressed by the Singapore Court of Appeal in *Public Prosecutor v Abdul Naser bin Amer Hamsah* [1997] 1 SLR 73 where the court observed that no adverse inference could be drawn when the

defence was disclosed in an investigation statement recorded.

216 I considered all the evidence adduced at this trial in its totality. In the administration of criminal justice, there are many contending and complementary principles the courts would have to be often reminded of. The first and foremost is the famous maxim: *It is better that ten guilty persons escape than that one innocent suffer.* (Sir William Blackstone 1723-80 Commentaries on the Laws of England, 15th Edn, 1809 Vol 4, page 358). Then we have another equally forceful expression: *A miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent.* (Viscount Simon LC, in ***Stirland v DPP*** [1944] AC 315 at 324. Correspondingly, there is another gnome: *The judge is condemned when the criminal is absolved.* (Thomas Fuller 1654-1734). The foregoing sayings are no mere aphorisms but judicial sign-posts that often guide judges in the administration of criminal justice.

217 Having examined the entire spectrum of the evidence, I formed the view that the third accused was narrating a credible and cogent account of what took place. He was found by me to be a simpleton and entirely forthcoming without so much as a twitch of shiftiness about his demeanour or inflexion. In my finding, the third accused, a person of low academic attributes fell into a trap set up by Naseem Khan and his confederates without his knowing. When the third accused was told that he could get a free trip if he agreed to deliver some bags in Singapore, he readily accepted it without much thought. He did not know that the suitcases he carried into Singapore and delivered to the first accused contained drugs. With regard to all the evidence in its entirety, I was of the view that the third accused had indeed raised a reasonable and a real doubt on the prosecutions case.

218 In this connection, it might serve well if I reproduced below what I said on 30 January 2001 when I delivered my verdict in relation to the case of the third accused.

(a) Having considered all the evidence and the submissions made thereon by counsel for the third accused as well as the learned DPP, I am of the view that the third accused has indeed raised a reasonable doubt on the prosecutions case and has rebutted whatever presumptions which may have arisen against him on a balance of probabilities. After reviewing the totality of the evidence, I am of the opinion that the prosecution has not discharged its ultimate burden in proving its case against the third accused beyond a reasonable doubt. I shall no doubt in due course set out my reasons in this connection in writing. However, within the parameters laid out in *Goh Lai Wak v PP* [1994] 1 SLR 748, I must say that the case against the third accused was by and large anchored amongst other things on two broad grounds. The first ground was that the third accused ought not to have agreed to carry those suitcases, albeit empty for delivery to someone in Singapore especially from one Naseem Khan who had been to prison in Pakistan for drug-related offences. The second ground was that the sum of US\$500 which the third accused was paid to bring those suitcases into Singapore, must have triggered the requisite alarm bell in his mind so as to cause him to examine even the inner linings of the said suitcases closely.

(b) The foregoing submission had no doubt an appearance of logic. However, it seemed to elude the prosecutions own evidence that even their star witness Raymond Quattlander, a trained DEA operative as well as Hashim, the principal character in this saga whom the prosecution portrayed as one of the traffickers, encountered noticeably, great difficulty that too for a considerable period of time in locating the hidden drugs. Given this scenario, the suggestion that had the third accused examined the linings of the bags closely he would have discovered that they contained drugs, is found by me to be lacking in substance. Further, a payment of US\$500 which is equivalent to about S\$875 to act as an errand boy for someone from Lahore to Singapore, in itself, does not warrant a reasonable, let alone an irresistible inference that the third accused knew or ought to have

known that he was bringing drugs into Singapore.

(c) In my view, the story narrated by the third accused appeared to possess a degree of cogency. Add to this fact that he had lugged the two large suitcases over some distance from his hotel room and delivered them to Hashim in a public area rather than within the confines of his hotel room, appeared to lend some weight to his defence. Moreover, his claim that he came to Singapore to sell some wares and earn a bit of money and in pursuance of this he in fact sold some of his wares to a trader in Orchard Road was not challenged by the prosecution although the prosecution did have the whereabouts of the stores he had visited. Still more, his immediate and unhesitating statement declaring his non-involvement when charged with the offence as well as his volunteering information about events in Pakistan including the background of Naseem Khan which he could have well hidden and one which the prosecution would not have known but for his volunteering, appeared to render his story all the more creditworthy. Now dealing with the inconsistencies highlighted by the prosecution as respects the dates of his meeting with Naseem Khan in Lahore and with Hashim in Singapore they are in my view not significant enough to reject his evidence as being unworthy of credit. In my view he had tilted the balance in his favour and created a real and reasonable doubt on the prosecutions case.

(d) In the premises I am unable to conclude that he is guilty as charged and consequently acquit and discharge him of the charge. I will now hear the learned DPP as to the charge which is pending against him.

219 In the end, as stated by me earlier I found the first and second accused guilty as charged, convicted them and sentenced them to the only punishment prescribed under the law. The third accused was acquitted. Consequent upon the verdict and upon the application of the prosecution, leave was granted to withdraw the remaining charges pending against the first and the second accused. They were as a result given a discharge amounting to an acquittal in relation to the said charges, pursuant to s 177 of the CPC.

M P H Rubin

Judge

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