

Public Prosecutor v Rusli bin Sembayang
[2002] SGHC 311

Case Number : CC 55/2002
Decision Date : 31 December 2002
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Christopher Ong, Leong Kwang Ian and Magdalene Koh Ian (Deputy Public Prosecutors) for the prosecution; Amolat Singh (Amolat & Partners) and Lim Swee Tee (AC) (Lim Swee Tee & Co) (both assigned) for the accused
Parties : Public Prosecutor — Rusli bin Sembayang

Judgment

GROUND OF DECISION

1 Rusli Bin Sembayang, a 44-year-old Singaporean was charged and tried before me for an offence that on or about 11 April 2002 at about 1.20am at Block 125 Hougang Avenue 1, #07-1476, Singapore, did traffic in a controlled drug by having in his possession for the purposes of trafficking 1,100.2g of cannabis, an offence which attracted the death penalty.

2 An ancillary charge of trafficking in 959.31g of cannabis resin was stood down pending the outcome of the trial.

3 The prosecution led evidence from 31 witnesses by way of conditioned statements as well as oral testimony. Additionally, the prosecution also admitted in evidence seven statements made by the accused after his arrest as being made voluntarily, without any threat, inducement, promise or oppression.

4 The prosecution's evidence insofar as was material, was as follows.

5 Following a lead obtained by the Central Narcotics Bureau (CNB), Insp Sivaraman Letchumanan (Insp Sivaraman) (PS-23/PW-21) arrived at the flat of the accused at Block 125 Hougang Avenue 1, #07-1476, Singapore. When the officers, after identifying themselves, demanded entry into the flat, the accused who briefly emerged from the master bedroom of his flat, simply withdrew into the room after apologising to them.

6 After observing the accused's reluctance, Insp Sivaraman called for housebreaking tools from the officers keeping watch at the ground level and surroundings of the flat. Insp Sivaraman, also in the meantime, alerted his team of officers to keep a lookout for anybody attempting to scale down the block of flats. Sgt Daniel Gan Wei Teck (Sgt Gan) (PW-23/PS-25), one of the officers on duty in the event, exited the police vehicle he was in to have a better view of the rear of the block of flats.

7 He then spotted a person (later identified as the accused) climbing down the rear of the apartment block and running towards where he was standing. When Sgt Gan shouted: 'CNB, don't run', the accused immediately took to his heels and fled in the opposite direction. Sgt Gan who was required to take care of one other person arrested earlier and kept in the police vehicle, alerted Insp Sivaraman who in turn instructed in motion a team of officers to trail the accused with a view to apprehending him.

8 The accused was next spotted by Sgt Chong Yit Ming (Sgt Chong) (PW-26/PS-27) boarding a taxi in front of Block 114 Hougang Avenue 1. He was promptly trailed by Sgt Chong and Sgt Justin Fong (Sgt Fong) (PW-25/PS-26) in a police vehicle all the way to Geylang Serai. Another team of officers was in tow in the meantime.

9 At Geylang Serai, after a chase and some resistance from the accused, he was finally arrested.

10 Insp Sivaraman who was at the scene when the accused was arrested recognised him as the person who had declined to open the door when the CNB officers were at the entrance of the flat #07-1476 at Block 125 Hougang Avenue 1.

11 Mdm Tan Ai Tiang, a resident of Block 125 Hougang Avenue 1, #06-1476 (the flat situated directly beneath the flat of the accused) testified that she was awakened shortly after midnight on 11 April 2002 by someone shaking the window panes of her bedroom, saying 'Open the window'. Mdm Tan who was petrified screamed. As a result, the person outside started descending to the level below. Mdm Tan at once made a call to the police telling them that she had seen a spiderman climbing down the wall just outside her window grill.

12 As a result of the telephone call from Mdm Tan, a number of police officers arrived at the scene. They were informed that a CNB operation was in progress and someone was seen climbing down the rear of the apartment block and had fled from the area.

13 Sgt Lim Swee Hua (PW-16/PS-18) testified that she found a white plastic bag (exh P-126) in the drain at the rear of the block. Inside the plastic bag (exh P-126) was a block of brown slab (exh P-127) and a broken blue paper cutter (exh P-128). Sgt Lim Swee Hua was joined by W/Cpl Cheng Hsiao Leng (PW-20/PS-20) and W/Sgt Jasylin Low (PW-28/PS-29). All three searched the area immediately behind the block of flats where the accused was earlier seen landing. In the result, more drugs lying nearby were recovered. These included three slabs of cannabis (exhs P-132 to P-134) and a square packet wrapped in silver paper (exh P-130).

14 After the collation of the drugs, Insp Sivaraman showed the contents of one plastic bag (exh P-126) to the accused and asked him whether they belonged to him. The accused remained quiet. Subsequently, the raiding party took the accused to his flat. Entry was obtained to the flat after the accused provided the combination number to unlock the padlock securing the gate. Upon entry, the party of officers found some loose fragments of cannabis on the mattress as well as on other areas inside the flat.

15 Inside the master bedroom, Insp Sivaraman interviewed the accused. Later at about 3.35am that morning (11 April 2002), a statement was recorded from the accused by Insp Sivaraman. The said statement was admitted in evidence without any objection from the defence and on the basis that it was given by the accused voluntarily, without any threat, inducement or promise. Insofar as is material, the said statement contains the following questions by Insp Sivaraman and the answers given by the accused:

Q1: What is that? (Recorder points to the cannabis blocks)

A1: Ganjah.

Q2: Who (sic) does the Ganjah belong to?

A2: One of my friends, Ahmed.

Q3: When did Ahmed bring the Ganjah to your house?

A3: About 5 to 6 days ago.

Q4: Why did Ahmed bring the drugs to your house.

A4: I don't know. Just put here.

16 Investigating Officer, ASP Omer Ali Saifudeen (PW-31) ('ASP Omer') (PW-31/SPS-33) arrived at the scene at about 4.35am that day and assumed responsibility for the investigation. Shortly thereafter at about 6.00am that morning the accused was taken to the CNB office at Clementi and later to the CNB Headquarters.

17 The drugs recovered following the fleeing and the arrest of the accused (P-102, P-127, P-130, P-132 to P134 and P-97) were analysed by Dr Lee Tong Kooi of the Health Science Authority. The result which was not in dispute showed that the seized substance contained a total of 1,100.2g of cannabis.

18 Several statements were recorded from the accused on various dates by the Investigating Officer from at the Police Cantonment Complex and Queenstown Remand Prison with the assistance of a Malay Interpreter Sofia Bte Sufri. Their admissibility was not challenged by the defence. After being satisfied that all the statements recorded from the accused were made voluntarily without any threat, inducement,

promise or any form of oppression, six statements (exhs P-84, P-85, P-87, P-88, P-89 and P-90) were admitted in evidence and the following are some of the highlights.

A Exhibit P-84 – Statement recorded on 16 April 2002 between 1920 hours and 2330 hours (pages 197 to 203 of the preliminary inquiry records):

Actually Ahamd (sic) was with me on the day the CNB officers raided the Blk 125, Hougang unit. I am surprised the CNB officers did not see him climbing down. He climbed down the unit first.

...

6. Ahmad trusted me with his drugs in the unit and he knew that I would not allow any stealing to happen. Thus he was comfortable with me handling his drugs. I did help him pack, cut and weigh the cannabis slabs that I later threw down the window when the CNB officers raided the unit. The cannabis slabs were in a blue canvas bag I do not know where the blue bag was before I threw the drugs in it out. I think it was near the bed. I just threw them out all at once. I threw it out as I panicked and threw out whatever I could find. Ahmad brought the cannabis to me about 2 days prior to the raid. Only Ahmad and I know where it is hidden.

7. When I was climbing down the master bedroom window, I tried to let the Chinese lady on the 6th floor to let me in. She was very shocked when she saw me scaling down the flat. Ahmad scaled down first. There is absolutely no way the CNB officers could not have seen Ahmad scaling down. When I reached the bottom floor, one of the CNB officers shouted, "STOP CNB!!!!". I did not bother to look, I kept on running towards the NKF building at Blk 114. I knew officers were chasing me, but I did not turn around. I ran for about 5 to 10 minutes. At lorong Ah-Soo, I hailed a taxi. I cannot remember what type of taxi. I told the taxi driver to take me to Geylang Serai. We travelled Jln Eunos and stopped at the Blk 2 Geylang Serai market. I ran through the market and crossed Sims Avenue. One Chinese CNB officer managed to catch up to me at the drain near the market. He just verbally told me to stop, while waving his night-stick. I told him, that I wanted to just run. So I rammed through him and he fell into the drain. There was no struggle. As I ran into the block of flats across the road, I do not know what strange force compelled me to turn back and run back to the officers. I believe it is something paranormal. The officers managed to pin

me down at the green dustbin near the taxi stand along Sims Ave. ...

8. I remember the short Indian officer who seemed to be in-charge asking me questions and writing them down. I admitted that the cannabis found below was mine but I was not in a proper frame of mind.

...

14. I helped him pack the cannabis slabs but not all the time. Only rarely. Around 2 or 3 times only. I helped him weigh it also. He did not give me any money for my services.

15. I own about 3 handphones. The Handphone that was thrown down belongs to me. I also threw the blue penknife. (Recorders note: photo with broken blue penknife shown to accused) I had used this penknife to cut the cannabis slabs. I do not know why I picked only these two items to throw. I suppose I was panicking

...

17. The 2 digital scales are used by me to weigh cannabis.

...

19. Ahmad is a childhood friend from Geylang. I do not know Ahmad's Handphone. He is about a year or two younger than me, short, dark skinned, short hair and of slim built. He was visiting me from the time I moved into block 125 Hougang. He does not leave any of his belongings or clothing there. I do not have anything to show he exists. I do not know his family. I do not have any photos of him. I do not know where he works or what he does. I only remember renewing my contact with him 2 weeks ago. He sells both heroin and cannabis. I have never sold cannabis before.

20. From childhood till now, I do not know anything else about Ahmad (sic). I am not able to give the particulars of any real existing person who knows Ahmad. He used to stay at Geylang at Jln Bayam a long time ago.

21. Nobody has access to this house when I am not around.

B Exhibit P-85 – Statement recorded on 17 April 2002 between 2023 hours and 2330 hours (pages 204 to 210 of the preliminary inquiry records):

22. ... On the day of the raid, I knew something was wrong when I saw so many Chinese in front of my door. Then I went back to my master bedroom where Ahmad was. Then he asked me who they were. I told him that I think they were CNB officers. So Ahmad said 'come lah, we run away from the window.' 2 to 3 minutes after they knocked on the door Ahmad started climbing down the window. When the CNB officers came, they knocked on the door and I think they said CNB. When they first arrived, I was in the master bedroom. They I went to the hall and saw them. I said I was scared in English to them when I saw them. My master bedroom door was open when the CNB officers came down for the raid. Then I stepped out and turned towards the hall and stepped one step into the hall. Then I turned back and managed to quickly go back in the room, as the door was still open. The main door was already opened when I stepped into the hall. When they saw me in the hall they kept on shouting and asked me to open the gate. I wish to say that you cannot see anybody in the master bedroom from the main door. The reason the CNB officers may not have seen Ahmad from the door is probably because he was trying to escape. The gap is so small how can the CNB officers see what is in the room?

23 The other 3 persons who visit my house also know Ahmad. I do not know the phone numbers of all 3 persons. I also do not know their full names. I am not sure where they all stay. They are all using private numbers so I do not know their number when they call me. They all knew about Ahmad's and my drugs in the house. They buy drugs from both of us. Ahmad sells them cannabis.

...

25. If Ibrahim had come that day and if he had come into the house, he would have seen the cannabis slabs. He would have been able to see the cannabis slabs as they were not concealed. They were inside the blue bag and the blue bag was in plain view. So the cannabis can be seen as even though the flap of the blue bag was covering, there was a gap to see all the slabs. (Recorder's note: I asked him if he was telling the truth or was actually trying to find out if the questions will implicate him and that he is actually

fabricating the answer to suit the question. He answered:) "Yes." (Recorder's note: I told the accused that I would be writing this down, to this he answered:) "I am saying this to you but do not wish to put this in the statement."

26. (Recorder's note: I then asked him why he let his house to be used for all this drug activity. To this he answered:) I was stupid to have done so.

...

28. ... I have so many handphones as some of my clients use it as a form of barter trade. I think I have 4 handphones in the house. The Ericson T 68 is somewhere in my master bedroom. The next handphone is the grey Motorola on the TV. The third one is a something like a V6 metallic Motorola. It is on the TV also. The fourth one is a dark blue Samsung. That one is inside my drawer where my Pentium 3 laptop was. I cannot remember the handphone number for all of them. I took whatever handphone on the TV to throw. I don't know why I threw that particular handphone only. I wish to say that I threw that hand phone because of the contact numbers inside. My customers and suppliers numbers are inside. The suppliers for Ahmad are inside. No actually I wish to say, that it is my suppliers numbers who are in there. ... What I actually mean now is that Ahmad's number is inside there. Maybe. That handphone belongs to me.

29 The number that comes from Ahmad is always a private number. He always contacts me. I have no way of contacting him. ... He comes down every 2 to 3 days.

...

31. ... I used to cut the cannabis slabs. The yellow cutter is also used by me to cut the cannabis slabs. ... My fingerprints will also appear on the ... and cannabis sachet found with the ...

C Exhibit P-87 – Statement recorded on 23 April 2002 between 10.52 hours and 1132hours (page 213 of the preliminary inquiry records)

43. My eyesight is ok. (Recorder's note: Photo: 2K02.02409 shown) The blue bag in the photo is where I kept the cannabis slabs. (Recorder's note: Photo: 2K02.02416 shown) These are the weighing

scales that I used to weigh the cannabis slabs and the cutter that I used to cut the cannabis slabs.

D Exhibit P-88 – Statement recorded on 25 April 2002 between 1710 hours and 1810 hours (pages 214 to 216 of the preliminary inquiry records)

48. I don't know which direction he could have fled. As he was climbing down, I was looking around to see what I could throw down. In about 5 minutes, from the time the raid started, he had already climbed down and fled. I did not look down as I threw the cannabis slabs from the blue bag down. I only noticed that he was gone when I reached the bottom of the flat and saw that he was not there. I just wanted to escape, so I did not care about the cannabis that was thrown by me. I think that Ahmad also wanted to escape badly so that was why he did not pick up the cannabis slabs that were thrown down. Ahmad had already fled by the time I disposed of the cannabis.

49. All the cannabis slabs ... in the house belong to Ahmad and my role does not go beyond simply helping to pack, weigh and store them only. I put the cannabis in the blue bag next to my bed as that was no special reason other than (sic) the fact that I felt that it was a suitable place to keep it.

50. ... A sachet of cannabis cost about \$10/-. Ahmad told me to sell for this price ...

E Exhibit P-89 – Statement recorded on 22 May 2002 between 0910 hours and 1010 hours (pages 217 to 218 of the preliminary inquiry records):

53. (Recorder's note: The photocopies of the scrapes of paper which I had labeled as 'paper' and '100g' was shown to the accused and he was questioned on its contents) With regards to the first page in the paperpoint notebook, I wish to say that I only helped Ahmad to keep accounts of his drugs and keep track of the drug money transaction. 'Green' is talking about the cannabis found in the house ...

55. (Recorder's note: He is now shown the photocopy of the paper labelled '100g'). The first line at the front of the paper is talking about a cannabis sale of 100 grams is \$400/-. After Ahmad made the sale I took down the transaction for his record keeping and he passed the money to me for safekeeping. I have to give the money back to him. ... The next line means 200 grams of cannabis for \$660/-. Tool means cash. I don't know what 1050 settle means. I can't remember.

I am now shown the back of the paper. The first line means something like 2 grams of ICE for \$200/-. The dates in the paper are just the dates of transaction. The second line means UYA borrowed money from me \$10, \$20, \$35.

...

F Statement recorded on 24 May 2002 between 0919 hours and 1040 hours (pages 219 to 220 of the preliminary inquiry records)

61. Ahmad was trying to use me to sell ... and Cannabis in the house. ... So I just helped him by keeping drug accounts, packing and weighing his cannabis ...

19 In his statements, the accused admitted that all the cannabis found at the back of Block 125 Hougang Avenue 1 and seized by the team of enforcement officers were thrown by him. He identified the substance as *ganjah*. He also admitted that he helped his friend Ahmad to pack, cut and weigh the cannabis slabs. He further admitted to being involved in the sale of cannabis and was able to state the price at which the substance was to be sold.

Close of prosecution case

20 At the close of the prosecution's case, defence counsel did not make any submissions. Having regard to the evidence presented by the prosecution, I found that there was a case which, if unrebutted, would warrant the conviction of the accused. The courses available to the accused were explained to him. In the event, the accused elected to give evidence on oath. His evidence in defence insofar as is material is as follows.

The defence case

21 The accused is now 44 years of age. He is single and at the time of his arrest was unemployed. His educational attainments did not reach beyond secondary two. Since his mother's demise in October 2001, the accused has been living alone at the HDB flat at Blk 125 Hougang Avenue 1, #07-1476. Just before his arrest on 11 April 2002, he had a number of friends including Acit, Joe, Ibrahim, Roy and Ahmad visiting him at this flat on a regular basis to watch television and to play computer games. He let his friends freely into his house and they could enter the flat by themselves as they were given the number to the combination lock at the iron gate. The wooden door was usually unlocked and it could be opened from outside.

22 On 10 April 2002, Joe, Roy, Ahmad and Acit were with the accused before the CNB raided the flat. Acit came to the house at about 4.00pm, and Joe came about an hour later. They then watched television and smoked heroin in one of the bedrooms.

23 At about 8pm, Roy came to the flat followed by Ahmad about half an hour later. Both Roy and Ahmad had with them a haversack each. That evening they smoked heroin again and also consumed some Ice after that.

24 At about 10.00pm or so, a salesman came to the flat attempting to sell the accused an alarm system. He was there for about half an hour and the accused ordered an alarm from him to be installed the following day. His friends remained, in the meantime, quietly in the second bedroom.

25 After the salesman had left, the accused returned to the other bedroom. Joe told everyone that the alarm salesman was not a salesman at all as he did not visit other neighbouring units for sale. He surmised that the salesman was either a CNB officer or an informer. The accused then told everyone to leave the flat. Everyone, except Ahmad, left immediately. Only Ahmad stayed behind as he wanted to depart from the

unit together with the accused.

26 The accused said that Joe told him that he (Joe) would telephone the accused should there be any CNB officers in or around the block of flats.

27 The accused switched off all the lights except for the one in the bathroom. He presently took a shower while Ahmad, who was still carrying his haversack with him, waited. After the shower, as he was about to switch off his laptop computer, some CNB officers arrived and started banging on his door, calling out his name.

28 At first, the accused remained in the master bedroom. When the CNB officers kept knocking at his door, the accused went into the living room of the unit. He saw so many people at the door and was convinced that they were police officers. He said sorry to them and immediately returned to the master bedroom. He was in a state of panic. Ahmad had by this time climbed out of the flat and half his body was out of the window. Ahmad, who had his haversack with him, urged the accused to follow him and escape through the window.

29 The accused was in shock. For a while, he sat on his bed to reflect. At this point in time, he happened to glance at the blue bag in his room. This blue bag which was usually empty had this time a plastic bag inside. The blue bag was found unzipped and fully open. He looked into the white plastic bag and saw a few slabs of cannabis and a block inside. He concluded that Ahmad had off-loaded these cannabis in his flat before climbing out of the window. The accused then took the white plastic bag and threw it out of the window with all its contents. He looked out and seeing Ahmad scaling down he also decided to follow suit.

30 The accused added that it was the first time he saw so much *ganjah* in his house. He knew for sure that they belonged to Ahmad because Ahmad was a known *ganjah* trafficker and on two occasions Ahmad had brought to his flat a small slabs of *ganjah* for him to cut and loosen up. But the accused had never seen or known that Ahmad with so much *ganjah* in his possession.

31 After throwing two of his handphones out of the window, he looked down the window again. Ahmad had gone by this time. He then scaled down the flat. At the sixth storey, he tried to get the lady occupant to let him in. Instead of helping him, she kept screaming and so he scaled all the way down the block.

32 As he reached the ground floor, he paused for a moment to decide which direction to proceed. He then heard someone from the car park shouting to him to stop. He immediately started running and managed to get a taxi to take him to Geylang Serai. The CNB officers trailed him and arrested him at Geylang Serai.

33 The accused admitted that he gave the statements tendered by the prosecution in evidence, voluntarily. However, he attempted to retract some parts of the said statement claiming that the investigation officer had included some details on his own. He also said that he had misunderstood the recording officer in relation to some material aspects concerning the ownership of the drugs.

34 In fact, the accused endeavoured to retract most of the incriminating segments of his statements. As it would be too long to go through each and every segment of his retractions, I shall refer only to the most important ones. As regards his statement (exh P-84) made on 16 April 2002, he denied that he told the recording officer (see para 6 at page 198 of the preliminary inquiry records) that he helped Ahmad to pack and weigh the cannabis. He added that when he was giving the statement he was only referring to one small slab and not others. He also said that he did not make the second sentence in para 8 of P-84 (page 200 of the PI records) which reads: 'I admitted that the cannabis found below was mine ...'.

35 Similarly, he also retracted para 49 of his statement made on 25 April 2002 (exh P-88) where he had said that he helped to pack, weigh and store the cannabis.

36 As regards para 53 of his statement (exh P-89) made on 22 May 2002 (page 217 of the preliminary inquiry records), he alleged that he told the investigating officer whatever the officer wanted him to say. He claimed that he did not know what was meant by the term 'transaction', appearing in the sentence: 'I wish to say that I only helped Ahmad to keep accounts of his drugs and keep track of the drug money transaction.' In relation to the opening sentence in para 61 of his statement (exh P-90) made on 24 May 2002, he denied telling the investigating officer that: 'Ahmad was trying to use me to sell ... cannabis ... So I helped him by keeping drug accounts, packing and weighing

the cannabis.'

37 In sum, his evidence was that the drugs were not his, they belonged to Ahmad, he became aware of the seized drugs only moments before he had thrown them out of the window and consequently he had no intention to traffic in the drugs under reference.

38 It must be stated at this juncture that the following aspects, (as stated by defence counsel in his submission) were never in dispute.

- (a) The accused threw the cannabis out of his flat through the window;
- (b) The drugs were in his master bedroom in a white plastic bag which in turn was housed in a blue bag
- (c) The accused scaled down the flat through the window at the rear of Block 125;
- (d) He ran off and took a taxi to Geylang Serai; and
- (e) There he was arrested.

Arguments, issues and conclusion

39 The prosecution's submission was that the accused was the only person in the flat at the time of the raid and that he was in possession and had full knowledge of the drugs mentioned in the charge. It was the prosecution's further contention that the accused was in possession of the said drugs for the purposes of trafficking having regard to the quantity of the drugs seized. In this, the prosecution relied on the accused's statements where he had admitted that he had cut, weighed and packed the drugs. Further, the prosecution also relied on the provisions of s 17 of the MDA which states that any person who is proved to have had in his possession more than 15 grams of cannabis, is presumed to have had that drug in his possession for the purposes of trafficking unless it is proved that his possession of that drug was not for that purpose.

40 The first main issue in this case was whether the accused was proved to have had in his possession the drugs mentioned in the charge. The second main issue was whether such possession was for the purpose of trafficking. In regard to the first main issue, there was no denial by the accused that the said drugs were in his flat. The only disclaimer by him was that they did not belong to him but to Ahmad whose particulars and whereabouts he could not satisfactorily provide either to the investigating officer or to the court. He said that once the CNB officers were at the entrance of his flat demanding entry, Ahmad scooted through the window after which he too made his exit.

41 The issue then turned to the existence as well as the presence of Ahmad in his flat at the material time.

42 Defence counsel, after submitting that the court should accept the evidence of the accused on the involvement of Ahmad and his presence in the flat at the material time, urged the court to discount the evidence of Sgt Gan, who claimed that he was on the lookout for persons escaping through the rear of Block 125 Hougang Avenue 1 and that he did not see anyone else other than the accused climbing down the rear wall of the block of flats. Although in my opinion, Sgt Gan's evidence left a lot to be desired, my conclusion having regard to the evidence of all the prosecution witnesses, was that the presence of Ahmad in the flat at the material time was made up by the accused. If indeed Ahmad was present on that day, the accused would have mentioned this at the very first opportunity when he gave his first statement (exh P-77) on 11 April 2002. In fact what he said in that statement claiming that Ahmad brought the *ganjah* five or six days ago did not seem to cohere with his current claim that Ahmad brought the drugs only on 11 April 2002.

43 When questioned why he did not mention that Ahmad had also escaped through the window on that day, his only explanation was that it did not occur to him at that time to narrate Ahmad's escape and that no officer had ever asked him where Ahmad was (pages 714 and 715 of the NE). In fact, it was not until 16 April 2002 (exh P-84) the accused seemed to have mentioned the alleged escape of this Ahmad.

44 In my determination, the accused's inability to provide the address, contact number as well as whereabouts of this so-called Ahmad, an alleged childhood friend known to him over 25 years, most certainly threw cold water on his claim concerning the presence and escape of Ahmad from the flat at the relevant time. There was also a glaring inconsistency between the evidence of the accused in court and his

statements about Ahmad. In court, the accused claimed that he had regular contact with Ahmad after mid-2001 as Ahmad started visiting his flat frequently. However, in para 19 of P-84 (statement by the accused on 16 April 2002), he had said: 'I only remember renewing my contract with him two weeks ago.'

45 In my finding, the accused's accounts as to the existence as well as the presence of Ahmad at his flat were entirely unconvincing. The defence of the accused that the drugs belonged to someone else and not to him was, in my determination, a complete fabrication.

46 The accused attempted to retract and disown many a passage from his statements. The passages disowned were all incriminating in nature. In my view, the retractions were pure afterthoughts and after review of all the evidence and having regard to the manner in which he testified, I was satisfied that the said statements were indeed made by him voluntarily and they reflected the actuality of the events save for the fabrication concerning the presence of Ahmad in the flat at the material time and his claim that the drugs were brought to his flat by Ahmad without his knowledge and concurrence.

47 In *Yap Sow Keong v Public Prosecutor* (1947) 13 MLJ 90, the Court of Appeal laid down the principle that even if a confession has been retracted by an accused, the accused may be convicted on the strength of it alone, so long as the court is satisfied that it is true. In my finding, the retracted parts told a consistent story that the accused was dealing with drugs knowingly for the purpose of trafficking. His admission at para 8 of exh P-84 (statement made on 16 April 2002 at page 200 of the PI records) that the 'cannabis found below was *mine* ...' (emphasis added) was a convincing piece of evidence to justify the conclusion that the accused was in possession of the drugs and that he knew its nature.

48 Dealing with the second issue whether the accused was in possession of the drugs for the purpose of trafficking, it must be observed at this stage that quite apart from the applicability of the provision of s 17 of the MDA which had not been rebutted by any acceptable evidence by the accused, there was compelling evidence that the drugs were indeed for trafficking by the accused. The accused's reference to weighing, packing and cutting led me to only one conclusion that he was and has been a trafficker in the drugs he was in possession of. His notes of the price of the drugs, drug sales transactions and his code word 'green' for cannabis (see para 53 of exh P-89, statement of 22 May 2002 at page 217 of the PI records), all went to reinforce my view that he was a trafficker in full bloom. At any rate, the quantity of the drugs seized led me to conclude that they were indeed for trafficking.

49 Having considered all the evidence, I was satisfied that the prosecution had amply discharged its ultimate burden in proving the charge against the accused beyond a reasonable doubt and that the accused had not, on balance of probabilities, rebutted the operative presumptions under s 17 of the MDA nor had he established his defence. Consequently I found him guilty, convicted him of the charge and sentenced him to the only sentence prescribed by law.

50 Following his conviction, leave was granted to the prosecution to withdraw the charge stood down and pursuant to s 177 of the CPC, the accused was granted a discharge amounting to an acquittal in relation to the said charge.

Order accordingly

Sgd:

MPH RUBIN

Judge

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