

Public Prosecutor v Syed Abdul Mutalip bin Syed Sidek and Another
[2002] SGHC 24

Case Number : CC 52/2001
Decision Date : 18 February 2002
Tribunal/Court : High Court
Coram : MPH Rubin J
Counsel Name(s) : Christopher Ong and Adriel Loh (Deputy Public Prosecutors) for the prosecution; Gurdip Singh (George Sandosham Gurdip & Partners) and D Vivekenanda (Niru & Co) (AC) (both assigned) for the first accused; Thangavelu (Rajah Velu & Co) and Sanjiv Rajan (Allen & Gledhill) (AC) (both assigned) for the second accused
Parties : Public Prosecutor — Syed Abdul Mutalip bin Syed Sidek; Roetikno bin Shariff

Judgment

GROUND OF DECISION

1 Syed Abdul Mutalib bin Syed Sidek, born on 25 November 1956, ('the first accused') and Roetikno bin Shariff born on 10 April 1968 ('the second accused'), both from Singapore, were jointly charged and tried before me for an offence that they, on or about 17 April 2001 at about 5.20pm in room 406 of Taipei Hotel, Geylang, Singapore, in furtherance of the common intention of them, did traffic in a Class A controlled drug, by having in their possession for the purpose of trafficking 78.85g of diamorphine, an offence under s 5(1)(a) of the Misuse of Drugs Act (MDA) read with s 5(2) of the MDA and s 34 of the Penal Code, punishable under s 33 of the MDA.

2 The prosecution evidence was that on 17 April 2001 at about 5.20pm, there was an anti-vice raid by the officers of the Singapore Police Force at Taipei Hotel located at No. 60 Lorong 8 Geylang Road, Singapore. During the raid, the officers tried to gain entry to room 406 of the hotel. One of the officers, Sgt Stanley Chan Kok Yeen, having been provided with a master key to the rooms by the hotel staff tried to open the door but he was only able to open the door slightly as it was latched from within. He could not see if anyone was inside. He identified himself as a police officer and requested the room door to be opened. There was no response. He then closed the door and continued to demand the door be opened. Soon he heard noises coming from the ceiling which he suspected to be footsteps.

3 Sgt Stanley Chan presently ran down the steps to check if any one was escaping. As he did not see anyone fleeing, he returned to room 406 and thereafter he and a few other police officers, made force-entry into the room. There was no one inside. The window to the room was found open. He noticed on the floor of the room a partially-opened packet wrapped in a newspaper. There was also another plastic bag nearby. In the partially opened packet, there was a transparent packet containing yellow granular substance which he suspected to be controlled drugs.

4 Sgt Stanley Chan also observed several items on the bed including a small weighing scale, empty unused plastic sachets and one Nokia handphone. Upon further examination, he found a tray filled with yellow granular substance in an opening of the false ceiling of the bathroom. He also noticed small portions of yellow substance on the bathroom floor.

5 An employee of the hotel, Wong Fong Yin as well as another police officer from the raiding party, Sgt May Tan Quee Wah, testified that at about the time the raid was being conducted, they saw two Malays making a rapid exit through the hotel staircase. Wong Fong Yin identified the persons as the first and second accused.

6 Oral and documentary evidence produced at the trial confirmed that both accused persons were residing in the said hotel from 5 April 2001 until the date of the raid.

7 The drugs and exhibits seized from the hotel room were sent in due course to the Health Science Authority for analysis by Insp Saherly bin Limat, the investigating officer in this case. The analysis confirmed that the drugs seized contained not less than 78.85 grams of diamorphine. This aspect was not disputed by the defence in any way.

8 Latent marks lifted from Room 406 of Taipei Hotel by the Scene of Crime Unit were traced to both accused persons, according to the fingerprint examiner, S/S Sgt Lim Song Poh.

9 On 20 April 2001 at about 3.15pm, the first accused was arrested when he was in the process of returning a hired vehicle to its owner at No 28 Daisy Avenue, Singapore. The second accused was arrested on 30 April 2001 at about 6.00am at Room 202 of Compass Hotel, located at Lorong 22 Geylang.

10 Following their arrests, the accused persons made several statements. Altogether seven statements, four from the first accused (exhibits P-55, P-56, P-58 and P-59) and three from the second accused (exhibits P-60, P-61 and P-62) were sought to be adduced by the prosecution in evidence. There was no objection from the accused or their counsel as to their admissibility. After counsel confirmed that the said statements were given voluntarily by the accused persons without any threat, inducement, promise or any oppressive conduct from the recording officer or anyone in authority, before or during their recording, all the seven statements were admitted in evidence.

11 In the statements both accused unequivocally admitted to being present in Room 406 of Taipei Hotel at the time the police were knocking at the door. They also admitted that they had been repacking drugs in room 406 at the material time. Both of them claimed that when the police were trying to seek entry into room 406, they quickly exited through the window of the room, traversed along the ledge of the wall outside, entered room 305 at the third level through the window and later fled the hotel by the staircase.

12 Insofar as is material, some relevant segments of their statements are reproduced below.

Statements of the first accused:

(a) Exhibit P-55 – Statement recorded from the first accused at 11.50am on 24 April 2001

2 On 17.04.2001, my friend 'Dino' [second accused] and me were in Room 406 of Taipei Hotel. We were repacking the big packets of heroin into smaller sachets on the bed. Dino had asked me to help him. My Job was just to seal the plastic sachets after Dino had filled them with heroin. I used a white candle to seal the sachets. While doing this, there was a knock on the door. Dino went to answer. He opened the latched door and then closed it again after the people outside identified themselves as police officers. He then said, "Blah, blah!" to me and signalled me to get out of the room using his hands. I then picked up the yellow plastic tray filled with heroin and put it in the false ceiling in the toilet. The false ceiling was already opened. As I was doing this, I saw Dino climbed out of the window. I then heard the police trying to break the door. I looked out of the window and saw Dino going into Room 305 below via the window. I also climbed down to the 3rd floor window of Room 305 and entered it. I saw Dino picking up his belongings and asked him for a shirt. He ignored me and then left the room. I also left the room. We turned left and went down the staircase. Dino went first. At the second storey landing, a woman officer shouted at Dino who was going down to the first storey. While her back was turned, I walked past her, along the 2nd storey corridor and went to the next

staircase. I then went down to the first storey and exited through the side door. I went to the back of the hotel and climbed over the wall. I did not know what happened to Dino at that time. I am now shown a photo of a male person and I recognise him as Dino. ...

(b) Exhibit P-56 – Statement recorded from the first accused on 25 April 2001 at 1.40pm

3 My previous (sic) was read back and explained to me in Malay by the interpreter. I do not wish to make any corrections.

4 When I left Room 406, Taipei Hotel on 17.04.2001, I was bare-bodied and only wearing a light blue jeans. I left my shoes in the room. ...

5 At the back of the hotel, I managed to find a white round-neck T-shirt. I wore it before I climbed over the wall. ...

(c) Exhibit P-59 – Statement recorded from the first accused on 3 May 2001 at 10.15am

19 My previous statement was read back and explained to me in Malay by the interpreter. I do not wish to make any corrections.

20 On 17.4.2001, at about 11 am, I woke up in room 406, Taipei Hotel. I was alone. After a shower, I called Dino's room at 305. I know he was with a girl, Sasha. I asked if he wanted any food. I then called room 310 where my foster sister was staying with her female friend. I cannot remember her contact number as she is the one who normally contacted me. I called her 'Baby' and I know the female friend as 'Nick'. I only know that she stays around Dakota Crescent or Old Kallang Airport area. I then left to buy some food from a coffeeshop at Lorong 23 Geylang Road. I bought 5 packets of mixed rice. After that I went back to the hotel. I went to Dino's room at 305 to give him 2 packets of the rice. I then went to my foster sister's room at 310 to give her another 2 packets of rice. I also ate my packet of rice there. I then went up to room 406 to rest. At this point of time I did not see any drugs in the room.

21 Between 1-2pm, Adik called my room. She told me that she needed some money for a massage. I said I can give her some money and asked her to come to my room. When she came later, I gave her S\$70. We then talked for a while as she was tired. Later, I sent her off until the hotel main gate. I also told Adik to call me that night if she has any problems. I then went up to Dino's room. He and the girl were eating. I then left the keys to room 406 with him. I also told him that I am going to my foster sister's room at 310. In room 310, I saw my foster sister eating with her friend. I chit chatted with them. My foster sister told me that she is working in a Karaoke Lounge at Allson Hotel. Dino then called for me at room 310. He told me that he was already at room 406. I then went to room 406.

22 At room 406, I knocked on the door. Dino opened it. When I entered the room, I saw a tray of heroin on the bed. I also saw some empty sachets, candles and a small digital weighing scale. Dino told me that he was packing the heroin and asked me to help him seal the packets after he filled them with heroin. I agreed to help him as the room was under registered my name. I also have never done it before and wanted to try out of curiosity. That was the first time I saw Dino repacking a large amount of heroin. I wish to state that before this, I did

see Dino selling heroin to his customers. ... During this period, I am not holding any job. I remembered sealing a few sachets of heroin before hearing a knock on the door. After that, the events that followed, happened as mentioned in my earlier statements. I started driving him around since you checked into Taipei Hotel together with him on the 5.4.2001. I do not know how the drugs got into room 406. I normally returned the key to the room to the counter clerk before I leave the hotel. Dino also has access to the key as we had checked in together.

Statements of the second accused:

(a) Exhibit P-60 – Statement recorded from the second accused on 3 May 2001 at 2.50pm

I am known as 'Dino' to my friends and family. ...

2 On 17.04.2001, I was in room 406. My friend, 'Talip' was with me. We were putting the heroin into smaller packets. I helped to put the heroin in the small packets and weigh them. Talip helped to burn the plastic to seal the plastic packets. I had opened 2 big packets of heroin. I placed the heroin on a tray. We then laid out the weighing scale, empty sachets, candle, envelopes and the tray of heroin on the bed. Before we could start repacking, there was a knock on the door. I went to see who it was. Before I could reach the door, the person outside had opened it. The door was latched from inside and it could not be opened fully. The person outside identified themselves as police officers. I then panicked and ran back to the bed. I informed Talip that the police are outside. As I was doing that, I heard the sound of the door being break opened. I then jumped out of the window to try and escape. I nearly fell but managed to hold on to the window frame at the third storey. I then climbed into the room. I did not know that the room is my own room 305. While I was hanging outside the window, I looked up and saw Talip climbing out of the fourth storey window. After I got into the third storey room, I opened the window frame to let Talip step on it. I then went to the door, opened it and went out of the room. I turn to the left towards the staircase. Talip followed behind me. At the lower staircase lobby, a female officer was there. I just ran past her towards the main hotel lobby. There, I turned right, past the counter and ran out of the hotel by the main glass door. After I left the hotel, I did not notice where Talip was. When I made the escape, I was wearing only a white singlet and a pair of brown pants. I am now shown a photo of a male person and I recognise him as Talip. ...

(b) Exhibit P-61 – Statement of the second accused recorded on 5 May 2001 at 10.15am

3 My previous (sic) was read back to me in English by the recorder. I do not wish to make any corrections.

4 On 16.4.2001, I received a call from a male person by the name of 'Mail'. He asked me to standby to receive some heroin to repack. He asked me where I was staying. I told him I am staying in Taipei Hotel. He asked me to wait for a call later. A few hours later, a male Chinese called 'Ah Boy' called me at my handphone. He asked me which room I was staying in. I told him that I was staying in room 406. He then told me to go to the fourth floor pantry to look for a black box with a silver cover. I left room 305 and checked the fourth floor pantry. I found a black box with a silver cover in the pantry. At this time, Talip was not around. I am not sure where he was. Talip knows that we are waiting for the delivery of some heroin to be repacked. We have agreed to use room 406

to do the repacking. That is why I told Ah Boy that I am staying in room 406. I then brought the box to the hotel lobby to collect the key to room 406. After that I went to room 406. In the room, I opened the box and saw four newspaper bundles and one weighing machine. I did not opened (sic) the newspaper bundles as I already knew that it contained heroin. I then placed the box in the false ceiling in the toilet. After that I left the room.

5 After returning the key to the counter, I called Talip to ask him to fetch me. We then drove out for a meal. In the car, I told Talip that the items have arrived. I also suggested buying some plastic sachets, envelopes, candles and other things needed to repack the heroin. Talip said that he knows where to get the items. He then brought us to a shop at Onan Road. He went to buy the plastic sachets. I went to a nearby shop to buy envelopes, candles and a penknife. We then went back to the hotel. At the hotel I asked Talip to wait downstairs. I then went to room 406 to place the items we just bought together with the drugs in the false ceiling. After that we left the hotel to drive about and went to Pink Pussycat to have a drink that night. We went back to the hotel late at night. I slept in room 305 with my girlfriend, Sasha while Talip went to sleep in room 406.

6 On 17.4.2001, we had planned to do the repacking early but we had overslept. In the morning, Talip went to buy some food and drinks. About 5 pm, I went into room 406 and waited for Talip. While waiting for Talip, I brought down the items in the false ceiling in the toilet and placed them on the bed. While waiting for Talip to come, I cut open two packets of heroin and placed the contents on a tray. The tray was taken from the hotel room. It was previously used to put the glasses on the dressing table. Talip then came into the room. We then started to repack the heroin. We had already repacked some plastic sachets of heroin when the police came. After that, the events that followed happened as mentioned in my earlier statement.

7 I knew Mail ... I only recognise his face but I do not know where he stays. I only know that he uses Hi-cards to contact me. I also do not know Ah Boy. That was the first time I had talked to Ah Boy. I had deleted the numbers from my phone after I ran away from the hotel. I cannot remember the numbers now. This is the first time that Mail arranged for such a big amount of heroin to be repacked by us.

Submissions at the close of the prosecution case

13 At the close of the prosecution case, both the defence counsel informed the court that they were not going to make any submissions. However, after the court posed a few questions to the learned DPP, counsel for the first accused made a brief submission (see page 306 of the NE). He submitted that the prosecution had not produced any evidence to show that the first accused was in possession of the amount of drugs referred to in the charge despite his client's statement admitting that he was repacking heroin from a large packet to smaller sachets. Counsel also contended that the prosecution had not established that the first accused was the registered occupant of room 406; the drugs seized were found in three different locations in the room ie, on the bed, in the bathroom ceiling and on the floor of the bathroom and that the prosecution had not established further the actual quantity the first accused was engaged in packing. There was no submission from counsel for the

second accused.

14 The learned DPP in his submission invited the court's attention to the unequivocal admissions by both accused persons in their voluntary statements as to how they were handling and packing the drugs at room 406 at the material time.

Ruling at the close of the prosecution case

15 In my view, the case of ***Foong Seow Ngui & Ors v Public Prosecutor*** [1995] 3 SLR 785 (CA) appeared to answer the submissions made on behalf of the first accused. In that case the third appellant Lim together with one Tan, the second appellant, were apprehended by CNB officers in the act of repacking drugs in a flat belonging to Foong. Foong who was arrested on the ground floor of the flats admitted in evidence that the drugs seized were his. Lim denied possession of the drugs claiming that he had only attempted to scoop half a spoonful of drugs into a small sachet so that he could take it with him for his own consumption. In rejecting Lim's explanation, Thean JA delivering the decision of the Court of Appeal said at page 802F:

Reverting to the facts, counsel submitted that clearly there was an absence of any pre-arranged plan which was a requisite in establishing the presence of a common intention. Further, assuming that all three of them had joint possession of the drugs, such joint possession does not amount to common intention to traffic in the drugs in question. Accordingly, there was no criminal act committed in furtherance of a common intention and the charge founded on s 34 was erroneous and all the three appellants had been wrongly convicted on the present charge.

We think that this argument ignores the relevant provisions of the Act under which the three appellants were charged. As we have said in *PP v Tan Aik Heng* [1995] 2 SLR 241, the prosecution has invoked s 34 of the Penal Code to establish liability of all the accused for the criminal act, ie the offence, committed by one or more of them in furtherance of their common intention. The criminal act was not the sale and purchase of the one pound of heroin that took place between Tan and Foong at the latter's flat through the instrumentality of Lim. The criminal act was the trafficking in the quantity of diamorphine in question at the material time, and the act of trafficking was not any of the acts as defined in s 2 of the Act. The offence here was founded on possession of the drugs for the purpose of trafficking. The basis for this is s 5(2) of the Act, which provides:

For the purpose 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.

Now, the question is who had possession of the drugs at the material time. The drugs were found in Foong's flat and he admitted that he was in possession of the drugs, and had repacked the drugs into smaller sachets. As for Lim, he was caught in the act of repacking the very same drugs in Foong's flat. Lim also had possession. Thus Foong and Lim were in joint possession of the drugs for the purpose of trafficking in them. Both of them committed the criminal act, ie the offence of trafficking. [Emphasis added.]

16 Having considered the evidence adduced by the prosecution including the statements recorded from the accused persons and having regard to the fingerprints of both accused found in the exhibits recovered from room 406, on 17 April 2001, I was satisfied that the prosecution had made out a case against both accused on the charge on which they were being tried, which if unrebutted would warrant their conviction. Consequently, both of them were given the standard allocution and were told of the options available to them. In the event, they elected to give evidence on affirmation and their evidence in their defence can be summarised as follows.

Defence of the first accused

17 The first accused being divorced had been staying at Taipei Hotel from 14 to 17 April 2001. On 16 April 2001, he was the registered occupant of room 305 in that hotel. On that day at about 11.00am, he went to a coffeeshop at Lorong 6 Geylang to meet his friend 'Boy', a dark-skinned Chinese pimp. Boy had earlier arranged to pick up the keys to a motor vehicle hired by the first accused. 'Boy' did not hire the vehicle himself as he did not have a valid driving licence. In the event, Boy arrived and took possession of the keys to the vehicle, a Honda bearing registration number 2715; the first accused could not recall the prefix or suffix to the vehicle registration number.

18 After Boy had left with the keys, the first accused telephoned his friend Dino, and invited him to join him for lunch at Beach Road Hawker Centre. The first accused had known the second accused since 1996.

19 Later, after both the accused persons and the second accused's girlfriend, Hazel had lunch at the Beach Road Hawker Centre, all of them proceeded to Hamilton Hotel at Lavender Street. Whilst they were there, at about 5.45pm, Boy telephoned the first accused to say that he had no more use for the vehicle and that the first accused could collect the vehicle at Lorong 20 Geylang Road.

20 Not long after, the first accused left by himself to pick up the vehicle at the given address where he had to wait a while before Boy appeared and handed the keys to the first accused. At that time, Boy also handed \$100 to the first accused requesting him to book a hotel room at Taipei Hotel for Boy's use.

21 Just before he collected the vehicle, the first accused telephoned the second accused and learnt from him that the latter was planning to go to his girlfriend's place of work at Pink Pussycat. The second accused invited the first accused to join him there.

22 The first accused then picked up the second accused at Lavender Street. Both of them left in the same vehicle to Taipei Hotel to book a hotel room for Boy. Whilst on the way to the hotel, the first accused received a telephone call from Boy who enquired from the first accused about a box which Boy had earlier left on the rear seat of the vehicle. The first accused then requested the second accused to look behind to check whether the box was there. The second accused immediately turned around, picked up a box which was there and showed it to him. The first accused duly informed Boy who was still on the phone that the box was there.

23 The box was about 50cm by 35 cm in size. Outside the box was the inscription 'Polo'. Boy requested the first accused to take custody of it for him. The second accused was then holding the box in his hands.

24 In the event, both of them arrived at Taipei Hotel at about midnight. There the first accused booked room 310 for Boy. At that time, room 305 was also registered in his name. Both of them then

made their way to room 406 which was then registered in the name of the second accused. The second accused was carrying the box at the request of the first accused. When both of them were in room 406 the first accused wanted to change his shirt which was kept by him in room 406 on the evening of 15 April 2001. According to the first accused, although he was registered at room 305, he slept in room 406 on 15 April 2001.

25 He went to room 406 that evening also for the purpose of smoking heroin. The second accused who brought the box into the room opened the box to see what was in it. When it was opened, the first accused happened to see a red-coloured plastic bag. Inside the plastic bag were many envelopes. The first accused directed the second accused to place the box and its contents on the bed. He then changed his shirt, smoked heroin together with the second accused and thereafter left the room. As they were at the reception counter of the hotel, the first accused met two girls named 'Baby' and 'Nik'. Baby told him that she had been asked by Boy to take the keys to the room booked for Boy. He therefore obtained the key to room 310 from the receptionist and handed it to Baby. Baby and Nik presently left him for the room.

26 Soon, both the first and the second accused were on their way to Pink Pussycat at Orchard Towers and spent their time there until 3.00am. After that both the accused persons and the second accused's girlfriend Sasha went for a meal at Aliwal Street and later returned to Taipei Hotel. The first accused repaired to room 406 whilst the second accused and his girlfriend left for room 305 to sleep.

27 At about 4.00am, when the first accused was in the shower, he heard a knock on his door. It was Boy who was at the door accompanied by a pregnant woman. He asked the first accused to let the woman sleep in room 406 for the night. After the first accused had invited her in, Boy asked him about the box. The first accused confirmed that it was with him. Boy soon departed after handing \$200 to the first accused and requesting him to send the pregnant woman for a check-up at a clinic when the first accused was free. After the woman entered the room, the first accused gathered the box, the red plastic bag and the envelopes which were on the bed and placed the box in a cupboard and the rest in a drawer on a side table. He and the woman then retired to bed.

28 At about 7.00am on 17 April 2001, the first accused left the hotel to drive a friend to the World Trade Centre and returned to the hotel at about 11.00am. After his return, he received a telephone call from Boy who informed him that he wanted to use the motor vehicle as well as the hotel room. So the first accused left the hotel to deliver the vehicle as well as the key to room 406 to Boy at Lorong 23. Having completed his task, he went and bought some food for lunch for himself and his friends in the hotel. Two packets of rice were delivered by him to Sasha at room 305 where the second accused was sleeping. He next left for room 310 where he gave two packets of rice to Baby and consumed one packet himself. He remained in room 310 until sometime past 4.00pm, when he received a telephone call from Boy who was in room 406, inviting him to go there to consume heroin. When the first accused arrived at room 406, Boy, after returning the ignition key to the vehicle to him, asked him about the box. The box was duly handed over to Boy by the first accused. Boy opened the box and finding it empty asked the first accused where the plastic bag and envelopes were. The first accused instantly opened the drawer, retrieved the envelopes and the red plastic bag and handed them to Boy. After that he entered the bathroom to take a shower.

29 Whilst he was in the bathroom, he heard a knock on the door of the room. He quickly put on his trousers and as he came out of the bathroom he saw Boy walking towards the room door. At about this time, he happened to notice drugs in a tray placed on the bed. The room door was soon opened but the latch within was still in place. He heard voices outside the room saying they were police. He became frightened. Presently, he ran towards the window and climbed out of the room and suddenly found himself in room 305. He did not quite understand how he came to be in room 305. When he

entered room 305, he noticed that the second accused and Sasha were in that room.

30 The second accused was shocked when he saw the first accused entering the room from nowhere. He asked the first accused where he was coming from. The first accused told him there was a police raid and as his urine was 'dirty' he fled from his room.

31 The second accused also remarked that his urine too was dirty. The first accused asked the second accused for a shirt but there was no response from the second accused. Instead, the second accused quickly gathered his belongings and hurried out of his room. The first accused followed suit. When he ran out of the room, he was clad only in his trousers. As he ran down by the staircase and reached the second level, he saw a policewoman in civilian clothes. However, as she turned her face towards another direction, he walked past her and ran to the rear of the hotel where he happened to find a white t-shirt. After slipping into it, he jumped over the wall, got to a nearby shop and telephoned his younger brother. He told his younger brother that he was on the run from the police.

32 In the event, he met his brother at a coffee shop at No 527 Bedok North Street 3 and received \$200 from him. Later that evening, he met his brother again and told him of his intention to go to his aunt's house at Beach Road. Then between about 8.00 and 9.00pm, his brother called and told him that Boy was at Block 527 Bedok North Street 3 with the wallet of the first accused. Boy also later telephoned the first accused in his aunt's house and told him that he wanted to return the wallet to the first accused.

33 They both arranged to meet at a coffee shop at Block 4 Beach Road. When they later met, Boy after handing over the wallet to him advised him to 'make himself scarce' (page 407, line 3 of the NE). Boy then revealed to him then that he was the one who had brought the seized drugs into room 406, earlier that day.

34 After Boy had left, the second accused who was earlier contacted by the first accused arrived at the coffee shop. The first accused narrated to the second accused what Boy had told him. At about 11.00pm that night, the first accused managed to slip into the car park of Taipei Hotel and retrieve the hired vehicle left there by him earlier. After the first accused had recovered the vehicle from the car park on 17 April 2001, he never went back to Taipei Hotel.

35 The first accused was arrested by CNB officers at Daisy Avenue on 20 April 2001 when he went there to return the motor vehicle to its owner. On 21 April 2001 he was charged in court for drug trafficking and was held in remand at the CID at Eu Tong Seng Street. Whilst he was in custody he made a number of statements to the authorities. He confirmed that all the statements (exhs P-55, P-56, P-58 and P-59) recorded by the investigating officer were given by him voluntarily.

36 Referring to para 2 of his statement (exh P-55) recorded on 24 April 2001, he said that although he had implicated the second accused in his statements, it was not the truth. He claimed that when he was arrested, the CNB officers were looking for the second accused only; they did not ask him anything about Boy. Moreover, at that stage, he was labouring under the impression that the CNB officers would not believe him if he were to bring out the name of Boy whose particulars and full name he did not know. As he believed that the second accused had left for the safety of Malaysia, he decided to make use of the second accused's name rather than mention Boy. He also did not realise at that stage that the second accused would be arrested. When asked by his counsel whether he realised that making such a statement would be detrimental to his interest, his reply was that he did not know it at that time as he was then in a confused state of mind (see page 415 of the NE).

37 He claimed that the second accused was not present in room 406 when the police were at the

door and that parts of para 2 of his statement in exh P-55 insofar as they purported to incriminate him and the second accused, were concoctions. He asserted that except for the last ten lines of para 2 (beginning with the words: 'I also climbed down ...' and ending with the words '... I recognise him as Dino') the rest was untrue.

38 He made a similar disclaimer and retraction to his statement (exh P-59) made on 3 May 2001. In relation to the said statement, he emphatically retracted the following part at para 22 of that statement:

Dino opened it. When I entered the room, I saw a tray of heroin on the bed. I also saw some empty sachets, candles and a small digital weighing scale. Dino told me that he was packing the heroin and asked me to help him seal the packets after he filled them with heroin. I agreed to help him as the room was under registered (sic) my name ... and wanted to try out of curiosity. That was the first time I saw Dino repacking a large amount of heroin.

39 In the main, his defence was that on 17 April 2001 at 5.20pm or thereabouts, he was not in possession of any drugs either by himself or with the second accused nor was he trafficking in any drugs.

Defence of the second accused

40 He was also known as Dino. He came to know the first accused sometime in 1996. They did not maintain regular contact with each other until 3 April 2001 when he chanced upon the first accused at a discotheque known as Makati. He met the first accused again at Makati on 4 April 2001. The first accused suggested that the second accused stay at Taipei Hotel as the rates there were low. Consequently, he started staying there from about 5 April until 17 April 2001. During that period, the first accused was also resident there.

41 From 5 April 2001 until 14 April 2001 he and the first accused met almost everyday. On 15 April 2001, he left Taipei Hotel at about 12 noon. He did not meet the first accused that day. On 16 April 2001, the second accused was at Hamilton Hotel at Lavender Street. On that day, he and the first accused met for lunch at Beach Road together with a girl named Hazel. After a while, all of them returned to Lavender Street. That night at about 11.00pm, the first accused took the second accused in his vehicle back to Taipei Hotel. The first accused then booked another room in addition to the two rooms that were already in his name. The rooms thus booked or registered in the name of the first accused were 310, 305 and 406. The additional room was reportedly for a friend of the first accused. They then repaired to room 406 and after consuming heroin both of them departed for Pink Pussycat at Orchard Towers and remained there until about 4.00am on 17 April 2001.

42 Shortly thereafter, both of them left for a meal at Jalan Sultan together with the second accused's girlfriend Sasha before all of them returned to Taipei Hotel. After their arrival at the hotel, the first accused requested the second accused to take room 305 (page 594 of the NE). The second accused obliged and remained in room 305 throughout the day, that is, until about 5.00pm on 17 April 2001 (page 594, lines 23 to 25 and page 597, lines 1 to 7).

43 At about 5.00pm on 17 April 2001, the first accused suddenly appeared in room 305. The second accused could not figure out how the first accused had entered the room since the door to the room was locked. He asked the first accused: 'From where have you come?' The door was locked.' The first accused told him that he had entered the room by the window. The second accused asked him why

he had entered through the window. The reply from the first accused was that there was a raid on the room upstairs (page 597 lines 9 to 23 of the NE).

44 Upon hearing this, the second accused panicked as he was then under urine supervision by the CNB. He wanted to avoid trouble and therefore immediately bolted from the room by the staircase. As he was making his way down, somewhere near the second level staircase a woman wearing a badge asked him in a rough voice: 'Hey, where are you going?' He simply ignored her and briskly left the hotel. He did not know what happened to the first accused.

45 That evening, sometime past 7.00pm, the second accused reached his home, changed his attire and left for a coffee shop downstairs. When he was at the coffee shop, his sister telephoned him to say that CNB officers had called at his house around 8.00 to 9.00pm on 17 April 2001. He did not know why the CNB officers had called at his house. Later that night, when the first accused telephoned the second accused, the second accused enquired from the first accused what could have caused the CNB officers to call at the second accused's residence. The first accused advised him to meet him at a Beach Road Coffee Shop. At Beach Road, the first accused told him what had transpired at room 406 earlier that evening.

46 Later that night, the second accused accompanied the first accused to Taipei Hotel in order to retrieve the rented motor vehicle left at the parking area there by the first accused. The vehicle was eventually collected. Thereafter, the second accused together with the first accused left for the second accused's mother's flat at Kampong Arang. Leaving the first accused at the ground level of the block of flats, the second accused bounded upstairs to see his mother. But as he reached the flat, he saw many pairs of shoes outside the entrance to his mother's flat. Sensing something unusual, he decided to make haste from the place. Soon, he and the first accused left for Aliwal Hotel at Aliwal Street. After spending sometime smoking heroin at the hotel both of them left for Pink Pussycat at Orchard Towers.

47 The second accused endeavoured to explain to the court how his fingerprints happened to be found on the exhibits seized by the police from room 406 particularly on an envelope and a silver coloured box cover (exh P-89). His evidence in relation to the fingerprint aspect was as follows.

48 On 16 April 2001, the first accused came to fetch him from Hamilton Hotel, Lavender Street. Later, when he was in the vehicle driven by the first accused, someone telephoned the first accused. The first accused presently asked the second accused whether he could spot a box at the rear seat of the vehicle. The second accused, seeing a box at the rear seat, lifted it up with his hand, showed it to the first accused and thereafter placed the box where it had been earlier.

49 Subsequently, when they arrived at the hotel, he carried the box with him and took it to room 406. There, noting the 'beautiful appearance' of the box (the words were his – see page 611 line 19 of the NE), he was curious to find out what was in it. He then opened the box. There was a red plastic bag in it. He opened the red plastic bag and found some envelopes. He happened to touch them. Eventually, he placed them on the bed.

50 The second accused also said that the three packets of medicine found in room 406 were his. According to him he used some of the medicine on 13 April 2001 and left them in the room on 14 April 2001.

51 The next segment of his testimony concerned the statements he had given to the investigating officer after his arrest on 30 April 2001. He claimed that although the statements were given by him voluntarily, they were substantially untrue and that they were fabricated by him in order to help the

first accused as he felt he owed the first accused an obligation for the help he had received from the first accused in the past. He claimed that the drugs found in room 406 by the authorities had nothing to do with him. In relation to the statement recorded from him on 3 May 2001 (exh P-60) he claimed that except for the introductory paragraph, ie, para 1, as well as the last nine lines of the statement where he had detailed his hurried exit from the hotel, the remainder of his statement implicating him with the drugs found in room 406 were all untrue and made up by him.

52 He also disowned and retracted almost the entire statement given by him on 5 May 2001 (exh P-61). He claimed that the statement was also concocted by him and did not reflect the truth. According to him the only parts which were true in that statement were the last two sentences in para 5 which read: 'We went back to the hotel late at night. I slept in room 305 with my girlfriend Sasha while Talip [first accused] went to sleep in room 406.'

53 In respect of his last statement (exh P-62) recorded on 9 May 2001, he claimed that the following segments were not true and were made up by him:

Para 9

... About nightfall, I left to look for Talip's brother, Din. I went to a coffeeshop at Blk 527 Bedok North. I did that as I was holding on to Talip's wallet and I wanted to return the wallet to him. Din gave me the phone number to Talip's aunty's house at Blk 4, Beach Road. ... I returned his wallet. ...

Para 12

... I had kept two cigarette boxes ... in the false ceiling of the toilet in the room.

54 The second accused said that he did not think far when he made those untrue yet incriminating statements. Even though he was initially angry with the first accused, when he heard from the first accused that the latter had implicated the second accused, he did not manifest his anger to the first accused as the latter had helped him previously. He felt he owed him something. He also did not realise the significance of his statements at that time (pages 638 and 639 of the NE). However, when he was brought to Court 26, had the charge read out to him and was made aware that the amount of drugs amounted to about 78 grams, it occurred to him that he had made a huge mistake. His friend (the first accused) advised him to tell the truth in court and hence his present true statements in court (page 642 of the NE).

55 The second accused said that he had made reference to a pantry on the fourth floor of Taipei Hotel from where he reportedly took delivery of the drugs but there was no such pantry in the hotel.

Rebuttal evidence by the prosecution

56 The investigating officer was recalled to rebut, amongst other things, the claim by the second accused that there was no pantry on the fourth level of Taipei Hotel. The investigating officer said that he had revisited the hotel together with defence counsel as well as the DPP and asserted that there was indeed a storeroom (albeit not a pantry in the strict sense of the word), 4 ft by 5 ft, situated on the fourth level of the hotel, almost opposite room 406 which housed mops, brooms, toilet papers and the like. The investigating officer further testified that he had also revisited the opening in the bathroom ceiling in room 406 but was not able to say whether anyone could make an escape through that opening. He confirmed however that it was possible for persons to escape through the window of room 406. Later in re-examination, he agreed with defence counsel that it might be

possible for someone to crawl through the opening of the ceiling.

Final speeches

57 In his closing address, counsel for the first accused urged the court to accept the testimony of the first accused that he had nothing to do with the drugs found in room 406 of Taipei Hotel and that the drugs were brought into room 406 by Boy without his knowledge and consent. Counsel also contended that the retracted confessions of the accused did not reflect the truth; the prosecution had not proven its case against the first accused beyond a reasonable doubt and in the circumstances the first accused was entitled to be acquitted of the charge. Counsel also urged the court to draw an adverse inference against the prosecution for not calling two women whose names were mentioned by the first accused in his statements as being those to whom he had allegedly narrated on 19 April 2001, his escape from Taipei Hotel.

58 The essence of the submission by counsel for the second accused was similar. He too submitted that the prosecution had not proven the charge against the second accused beyond a reasonable doubt and that it would be unsafe for the court to convict the accused persons solely based on their statements. Counsel also urged the court to accept the second accused's testimony in court asserting his innocence as well as his explanations as to how his fingerprints came to be found on the exhibits recovered from room 406 on 17 April 2001. The main point in the submission made on behalf of the second accused was that he was not in room 406 at the time the police knocked on the door; he did not know anything about the drugs and that he fled from room 305 not because of any involvement with drug trafficking but because of his fear that his urine would have traces of drugs consumed by him at the material period.

59 The learned DPP in his final speech urged the court to hold that the retracted confessions of both the accused persons represented the actuality of the situation. He submitted that the fingerprints of both accused on some of the exhibits closely connected to the drugs found in the room reinforced the prosecution's version of the events. He further invited the court to hold that the events detailed by the accused persons in their statements as to how they went about handling and packing the drugs in room 406, could not have been concocted.

Findings and conclusion

60 The first and paramount question which required to be determined by the court in this case was whether the prosecution had proven that the accused persons were in possession of the offending substance mentioned in the charge against them.

61 In this regard, the prosecution relied almost exclusively on the voluntary statements given by both accused and to some extent their fingerprints found on the exhibits seized from the room. The forensic evidence as to the nature and amount of diamorphine found as well as the correctness of the fingerprint examination was never in dispute.

62 The incriminating statements given by the accused were disclaimed and retracted in the course of the trial by both the accused claiming that the statements were not true and were made up by them to suit the occasion. The first accused's story was that although he had nothing to do with the drugs, he simply fabricated his involvement with the seized drugs since he felt that the investigating officer was unlikely to believe the existence and role of Boy whose particulars he did not have. As to the reason why he implicated the second accused, he said that when he was arrested, the

investigating officer questioned him only about the second accused and that he also believed at that stage the second accused had fled from Singapore for the safety of Malaysia.

63 An immediate question that begged an answer at this juncture was if what the first accused narrated to the investigating officer was pure fiction, then how was it that the second accused who was apprehended nearly 10 days after the arrest of the first accused, also incriminated himself and the first accused in respect of a very serious charge. In this connection, the second accused for his part came up with an equally disingenuous explanation. According to him when he was arrested and taken to the CID lock-up, the first accused happened to mention to him that he had implicated the second accused because the first accused could not mention Boy as he did not know his address. The second accused further claimed that seeing the dilemma the first accused was in and not otherwise, he decided to help his friend and corroborate the false story as he was obliged to the first accused for some past favours.

64 Dealing first with the defence of the first accused, if he was indeed as uninvolved with the drugs as he would want the court to believe, it was most improbable that he would have exposed himself to a serious charge which entailed the death penalty. In my finding, his story that he simply passed up the opportunity to expose the real villain and took the blame on himself and in that process falsely involved the second accused, was devoid of any truth. In my determination, if he was indeed an innocent victim of circumstances, the most natural thing for him would have been to narrate the circumstances as they unfolded rather than spin a damaging yarn incriminating himself and worse implicating the allegedly innocent second accused when there was no pressure of any nature brought to bear on him by anyone in authority.

65 Dealing with the protestation from the second accused claiming that he was totally in the dark as to what transpired in room 406 when the police was at the room door and that he had nothing whatsoever to do with the drugs, his claim too, in my determination appeared to repel probabilities. First, why would the second accused who reportedly fled from room 305 on 17 April 2001 in order to escape a much less serious charge of consumption, decide to incriminate himself on a more damaging charge of trafficking merely to return a favour to his friend? If his desire was just to corroborate what the first accused simply narrated to the investigating officer, why venture and mention the name of 'Ah Boy' as the supplier of drugs when the first accused himself had conveniently omitted Boy's name? Worse, why further elaborate on buying sachets, envelopes, candles and the rest for the repacking of heroin? Why mention taking delivery of the drugs on the fourth floor pantry when there was reportedly no such pantry or delivery? Why mention all the foregoing details when such details did not feature at all in the account narrated by the first accused to the investigating officer? Above all, how would the purported corroboration help his friend at all? In my evaluation, his belated claims did not appear to possess any cogency.

66 In my finding, both the first and the second accused were indeed in room 406 repacking the drugs at the time the police arrived at the door for the raid and that their current claims that they had nothing to do with the drugs found in the room or that they were never engaged in repacking the drugs, did not appear to have even a semblance of truth.

67 Reviewing all the evidence, I was satisfied beyond a reasonable doubt that the retracted confession of both the accused persons as to their presence in the room handling and packing the drugs, reflected the truth and the reality of the situation.

68 The term 'possession' has been defined in many authorities. Suffice it if I referred to a short passage in the speech of Lord Pearce in **Reg v Warner** [1969] 2 AC 256 at 305C-D, where he said:

For the same reason I do not think that possession was intended to be limited by legal technicalities to one of two alternatives, namely, either to mere physical possession or to mere legal possession. Both are forbidden. A man may not lawfully own the drugs of which his servant or his bailee has physical possession or control. Nor may he lawfully have physical possession or control as servant or bailee of drugs which are owned by others. By physical possession or control I include things in his pocket, in his car, in his room and so forth. That seems to me to accord with the general popular wide meaning of the word "possession" and to be in accordance with the intention of the Act.

69 Returning to the facts of the present case on the basis of the evidence proffered by the prosecution and accepted by me, I was satisfied that the prosecution had proven beyond a reasonable doubt that both accused persons were in possession of the drugs referred to in the charge, both in its technical and real sense of the term. The prosecution had further in my finding proven that both the accused knew the nature of the drugs. As to the amount of diamorphine found in the substance seized, the forensic evidence adduced by the prosecution was never a matter of debate.

70 The next issue then was whether the drugs found in their possession were for the purposes of trafficking. In this regard, there was a clear admission by both the accused that they were engaged in repacking the drugs at the time the police arrived at the room door. This admission by itself justified the conclusion that the process of repacking the drugs into small sachets could not be for any purpose other than for trafficking. Further, the fact that the amount of drugs found and seized in the room was in excess of the amount mentioned in s 17 of the MDA, the presumption that the said drugs were for the purposes of trafficking, unless it was proved that such possession was not for that purpose, had been triggered. In my evaluation, there was no credible material placed before the court to conclude that the drugs were for any purpose other than for trafficking.

Common intention

71 The next issue concerned the accused person's common intention, an ingredient of the charge against them. In this regard, reference must be made to s 34 of the Penal Code which reads:

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if the act were done by him alone.

72 This section, as stated by the learned authors of Ratanlal (see Ratanlal and Dhirajlal's Law of Crimes, 23rd Edn, Vol 1, page 85) lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention (***Mahbub Shah v Emperor*** (1945) 47 Bom LR 941). It deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of common intention, each person is liable for the result of them all as if he had done them himself; 'that act' and 'the act' in the latter part of the section must include the whole action covered by a 'criminal act' in the first part, because they refer to it (***Barendra Kumar Ghosh v Emperor*** AIR 1925 PC 1).

73 A relevant segment in the advice of Sir Madhavan Nair in ***Mahbub Shah*** (*supra*) at page 943 reads:

... To invoke the aid of s. 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

74 The subject of common intention came up for further discussion in another Indian case of **Bashir v State of Allahabad** (1953) AIR All 668 at 671 where the court (per Desai J) observed:

(13) What is meant by "common intention" is the "community of purpose" or "common design" or "common intent" [It] will not be wrong to interpret the words "common intention" to mean "community of purpose", "common design" or "common enterprise" which are the words used in the English Common Law. In – 'Mahboob Shah (sic) v. Emperor', AIR 1945 PC 118 (D), "common intention" was held to imply a "pre-arranged plan". This does not mean either that there should be confabulation, discussion and agreement in writing or by word, nor that the plan should be arranged for a considerable time before the doing of the criminal act. The Judicial Committee in the 'case of Mahboob Shah (sic) (D)', did not lay down that a certain interval should elapse between the formation of a pre-arranged plan and the doing of the criminal act and did not negative the formation of a pre-arranged plan just a moment before the doing of the criminal act. ...

75 On an issue relating to common intention in relation to a drug trafficking case, the Court of Appeal (per L P Thean JA) in **Foong Seow Ngui & Ors v Public Prosecutor** ([1995] 3 SLR at 802B-F) made the following comments:

Reverting to the facts, counsel submitted that clearly there was an absence of any pre-arranged plan which was a requisite in establishing the presence of a common intention. Further, assuming that all three of them had joint possession of the drugs, such joint possession does not amount to common intention to traffic in the drugs in question. Accordingly, there was no criminal act committed in furtherance of a common intention and the charge founded on s 34 was erroneous and all the three appellants had been wrongly convicted on the present charge.

We think that this argument ignores the relevant provisions of the Act under which the three appellants were charged. As we have said in *PP v Tan Aik Heng*, the prosecution has invoked s 34 of the Penal Code to establish liability of all the accused for the criminal act, ie the offence, committed by one or more of them in furtherance of their common intention. The criminal act was not the sale and purchase of the one pound of heroin that took place between Tan and Foong at the latter's flat through the instrumentality of Lim. The criminal act was the trafficking in the quantity of diamorphine in question at the material time, and the act of trafficking was not any of the acts as defined in s 2 of the Act. The

offence here was founded on possession of the drugs for the purpose of trafficking. The basis for this is s 5(2) of the Act, which provides:

For the purpose 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.

Now, the question is who had possession of the drugs at the material time. The drugs were found in Foong's flat and he admitted that he was in possession of the drugs, and had repacked the drugs into smaller sachets. As for Lim, he was caught in the act of repacking the very same drugs in Foong's flat. Lim also had possession, Thus Foong and Lim were in joint possession of the drugs for the purpose of trafficking in them. Both of them committed the criminal act, ie the offence of trafficking.

76 The principles articulated by Thean JA were equally applicable to the case at hand. Reverting to the issues at hand, based on my finding that both accused were indeed present in room 406 at the material time, handling and repacking the drugs, their common intention to traffic in those drugs could be clearly deduced. In my determination, their acts and deeds inside the room at about 5.20pm on 17 April 2001 were decidedly in furtherance of their common intention to traffic in the drugs mentioned in the charge. There could be no other conclusion.

77 The findings and determination set out by me in the preceding paragraphs ought to, in my view, dispose of all the peripheral issues and feeble defences, some of them hopelessly glib, raised on behalf of the two accused. However, for the sake of completeness the following observations need mention.

78 Counsel for the first accused submitted that the prosecution had failed to call two witnesses, *Baby* and *Adik* mentioned in paras 16 and 17 of the statement (exh P-58). The contention was that the first accused had disclosed in his statement that he spoke to these two women on 19 April 2001, two days after he fled from the hotel about his escape and that the failure by the prosecution to call them warranted the court to draw an adverse inference against it.

79 First of all, counsel for the first accused himself conceded that he never demanded, requested nor suggested to the prosecution that these two witnesses be called or made available to them although the prosecution offered a number of witnesses to the defence at the time it closed its case. Secondly, even going by the first accused's statement, his assertion was that he spoke to these two women on 19 April 2001 about his escape. There was no suggestion that these women were ever in room 406 at the time the raid was conducted. In any event, it was not incumbent on the prosecution to call all and sundry to confirm a self-serving statement made by the accused persons days after the event. In my view, the submission by counsel owed nothing to logic or reason.

80 The next aspect of the defence submission concerned the footsteps heard on the ceiling by some police officers. Counsel for the first accused submitted in this regard (see paras 39 to 40 of his written submission) that the probability of a third person indeed existed and that the prosecution had failed to rule out or disprove such a probability.

81 The court was indeed mystified by the footsteps factor. From the facts presented, I could not rule out the possibility that it might very well have been someone trying to get access into the opening in the ceiling. All said, the issue before the court was not so much as to whether a third man escaped through the ceiling but whether the two accused were present in the room handling and packing the drugs mentioned in the charge. Having regard to the findings I had arrived at in this case and having

regard to the aspect that the alleged presence of Boy was raised by the first accused only during the trial, the criticism that the prosecution had failed to rule out or disprove the probability of the presence of the third party was entirely out of focus and ill-conceived.

82 As regards the second accused, his counsel mounted a vigorous criticism of the manner in which the investigating officer recorded the second accused's statement whilst at the same time, conceding that the statements emanating from the second accused were voluntary in nature and not tainted by any threat, inducement, promise or any form of oppression. It was contended by counsel that the investigating officer deliberately and purposefully recorded the second accused's statement to ensure that it was corroborative of the first accused's statement. In this regard, he relied on a frank answer from the investigating officer to a question by defence counsel (see page 220 of the NE). As viewed by me, there was nothing out of the ordinary or intrinsically wrong for an investigating officer to expect a measure of sequence and sense in the various strands of information he was engaged in collecting from the witnesses. So long as the investigating officer had conducted his interviews without any threat, inducement, promise or any form of oppression and so long as the investigating officer had not attempted to extract anything from the accused against his will, the criticism levelled did not appear to have any validity or merit. In any event, reviewing and comparing the statements of both accused, it did not appear that they were mirror images of each other. Further, the very claim of the second accused was that he volunteered those incriminating statements not because of any pressure from anyone in authority but because he wanted to corroborate the first accused's story in order to help him.

83 The learned DPP in his closing submission (page 835 of the NE) highlighted the aspect that the woman Sasha who was alleged to be in room 305 together with the second accused could not be located by the prosecution and was not called by the second accused to corroborate his story. In my view, it was for the prosecution to prove its case beyond a reasonable doubt. However, the second accused, having given a voluntary statement admitting to his involvement in the offence and his presence in room 406 when the raiding party was at the room door, had a measure of burden, however little, to render self-help and lift himself out of the quagmire which was entirely of his own making. In fact, his defence in court was one almost bordering on alibi. If it was indeed his defence, such a defence should have been disclosed to the prosecution at the earliest opportunity in order to give the prosecution time to investigate that defence. The tactics adopted by or for and on behalf of the second accused in springing a surprise defence of alibi midway through trial did not bode well for his defence. Given the facts, although I was not inclined to draw any adverse inference against the second accused for not calling Sasha, I was of the view that on balance of probabilities the second accused had not established his defence.

84 Returning to the first accused, his belated mention of Boy during the trial did not help him either. As I mentioned earlier, the versions narrated by the first as well as the second accused admitting to their presence in room 406 as well as repacking the drugs, reflected the actual events of the day.

85 Reviewing all the evidence in its totality, I was in the end satisfied that the case against both accused had been proven beyond a reasonable doubt by the prosecution and that the accused persons had not established their defence on balance of probabilities. Consequently, I found both of them guilty as charged, convicted them and sentenced them to the only punishment prescribed under the law.

Sgd:

MPH RUBIN
Judge

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