

Public Prosecutor v Azman bin Mohamed Sanwan and others
[2010] SGHC 196

Case Number : Criminal Case No 11 of 2008
Decision Date : 09 July 2010
Tribunal/Court : High Court
Coram : Kan Ting Chiu J
Counsel Name(s) : Chay Yuen Fatt, Shahla Iqbal, Hon Yi and Adeline Ee (Deputy Public Prosecutors) for the Prosecution; Sunil Sudheesan (KhattarWong) for the 1st Accused; Ramesh Tiwary (Ramesh Tiwary) and Pratap Kishan (Kishan & V Suria Partnership) for the 2nd Accused; Ramesh Tiwary (Ramesh Tiwary) and Sarindar Singh (Singh & Co) for the 3rd Accused.
Parties : Public Prosecutor — Azman bin Mohamed Sanwan and others

Criminal law

[LawNet Editorial Note: The appeal to this decision in Criminal Appeal No 14 of 2010 was allowed by the Court of Appeal on 6 March 2012. See [\[2012\] SGCA 19.](#)]

9 July 2010

Judgment reserved.

Kan Ting Chiu J:

1 The three accused persons, Azman bin Mohamed Sanwan "Azman"), Tamil Salvem ("Tamil", who is also known as "Rocky") and Balasubramaniam s/o Murugesan ("Bala"), were prosecuted before me on a charge that they:

on the 28th day of April 2007 at or about 8.20 a.m., at the carpark in front of Block 108 Yishun Ring Road, Singapore, in furtherance of the common intention of the three of [them], did traffic in a controlled drug specified as a Class "A" Controlled Drug listed in the First Schedule to the Misuse of Drugs Act (Chapter 185), to wit, by having in [their] possession for the purpose of trafficking, 1525.7 grams of cannabis, in motor vehicle bearing the registration number SGT 809 X, without any authorisation under the said Act or the regulations made thereunder, and [they] have thereby committed an offence under section 5(1)(a) read with section 5(2) of the Misuse of Drugs Act, read with section 34 of the Penal Code, Chapter 224, and punishable under section 33 of the Misuse of Drugs Act.

2 By the consent of all parties, there was a joint trial of the accused persons.

3 Some of the facts of the events leading to the arrest of the accused persons were not in dispute. On 27 April 2007, the first and second accused Azman and Tamil drove into Johor in a blue Mitsubishi Lancer motor car SGT 809 X which Azman had rented for his daily use.

4 The third accused Bala also went to Johor Baru on that day. He went in another car, a black Honda Civic SCQ 143 X with Sundrammurthy s/o Vellasammy, ("Sundram" who is also known as "Murthy"), Kumaranathan s/o Silvasamy ("Kumar"), and Sundram's brother, Kumaran s/o Vellasamy ("Kumaran").

5 The six of them had arranged to make that trip. Tamil had asked Sundram to fetch Bala and Kumar for drinks and karaoke, and Sundram brought his brother Kumaran along. Tamil also told Sundram and Kumar that he will be going with Azman, who had some business to settle there.

6 When Azman and Tamil entered Johor Baru in SGT 809 X, they did not proceed immediately for drinks and karaoke. They went to several places, met several persons, and picked up a Malay couple before they went to the carpark of the karaoke lounge and met up with Bala, Sundram, Kumar and Kumaran. Sundram's evidence was that Azman took the key of SCQ 143 X from him and drove off in SGT 809 X with the Malay couple, and this was corroborated by Kumaran.

7 The remaining five of them then went into the karaoke lounge. Sundram and Kumaran remembered that Azman joined them about an hour later, and Kumar recalled that Azman joined them after some time. Tamil's evidence was that Azman went to the karaoke lounge about fifteen minutes to half an hour later, whereas Bala had no clear recollection of his arrival. Azman, however, denied that he had taken the key of SCQ 143 X, or that he went to the karaoke lounge after the others.

8 The six of them were at the karaoke lounge until the next morning. Before they left, Azman paid the bill for their entertainment, and returned the key of SCQ 143 X to Sundram, and the three accused persons left in SGT 809 X while the other three of them left in SCQ 143 X.

9 The two cars were driven from Johor Baru back to Singapore with Azman driving SGT 809 X and Sundram driving SCQ 143 X. When they were in Singapore, Azman called Sundram's mobile phone and spoke with Kumaran. Azman directed them to drive SCQ 143 X to Tamil's house in Yishun Ring Road because Tamil and Bala wanted the car urgently. Although Sundram had intended to drive SCQ 143 X to his home in Bishan, he drove to the carpark of Block 108, Yishun Ring Road ("the Yishun carpark"). Sundram, Kumaran and Kumar met Tamil there and handed the key of the car to him. While they were walking towards the main road to catch a taxi to continue on their way, Azman came in SGT 809 X and offered to take them to the main road.

10 Bala was also in Azman's car, as Azman was going to send him to his girlfriend's home. When Sundram, Kumaran and Kumar were dropped off at the main road, Azman drove SGT 809 X back to the Yishun carpark with Bala. It was on their return at about 8.05am that the events unfolded which lead to the arrest of the three accused persons at about 8.20am.

Events at the carpark

11 Unbeknownst to the accused persons, officers of the Central Narcotics Bureau ("CNB") were mounting an operation on Azman and his car and had kept SGT 809 X and SCQ 143 X under surveillance from the time they re-entered Singapore in the morning of 28 April 2007.

12 The officers kept observation individually. The observations and evidence of some of them were of particular relevance and significance to the case.

Evidence of Staff Sergeant Tan Ang Kiat ("SSgt Tan")

13 SSgt Tan saw SGT 809 X return to the carpark. He observed the three accused persons at SCQ 143 X. Azman was revving the car's engine (i.e. to raise the running speed of the engine), Bala was standing at the back of the car and Tamil was standing at its side. SSgt Tan then heard over his radio set that Azman drove SCQ 143 X next to SGT 809 X. At this stage, SSgt Tan saw Azman carrying an umbrella standing near the side of SCQ 143 X. Azman was revving the engine of the car again, and Bala and Tamil were at the rear of the car. SSgt Tan then heard that Azman had taken a

paper bag from the back of SGT 809 X and placed it near to the rear of SCQ 143 X. Shortly after that, he saw Azman place a blue paper bag into the boot of SGT 809 X and close both its boot and the boot of SCQ 143 X. Azman then hugged the other two accused persons in turn before he entered SGT 809 X. Upon receiving instructions, SSgt Tan moved in and arrested Tamil.

Evidence of Staff Sergeant Michael Seet ("SSgt Seet")

14 SSgt Seet saw SGT 809 X return to the carpark. Azman went out of that car and went into SCQ 143 X, then drove and parked it next to SGT 809 X. He then saw Azman revving the engine of SCQ 143 X whilst carrying an umbrella. When Azman did that, smoke was seen emitting from the exhaust pipe. Then Azman, Bala and Tamil went to the rear of SCQ 143 X and they were observed to be meddling with the boot and bumper of the car. After that, Azman went to SGT 809 X, opened the boot of the car, took out a blue paper bag and placed it inside the boot of SCQ 143 X. Then, SSgt Seet saw Tamil try to pry open the bumper of SCQ 143 X while Bala bent down and took a big black bundle from beneath the bumper and placed it in the blue paper bag in SCQ 143 X. Azman then took the paper bag from SCQ 143 X, brought it to SGT 809 X, and closed the boot of both cars. Azman then hugged the other two accused persons, one after the other.

Evidence of Sergeant Peter Loong Tean Huat ("Sgt Loong")

15 Sgt Loong saw the three accused persons standing behind the two cars. He then saw Azman open the boots of the cars. Azman then went to the driver's side of SGT 809 X, took out an umbrella, opened it, went to SCQ 143 X, and revved the engine. After doing that, Azman went to the rear of SCQ 143 X and joined Bala and Tamil. At that time, Bala was squatting down. After a while, Azman went back to SCQ 143 X, revved the engine once more before going back to the rear of the car again and squatting there with Bala. Azman then stood up, handed the umbrella to Tamil, walked to SGT 809 X, took a blue paper bag from the boot, brought it to the rear of SCQ 143 X and remained there with Bala and Tamil. A while later, all three of them stood up and Azman carried a blue paper bag he had taken to SCQ 143 X, brought it back to SGT 809 X and closed the boot. Then he collected the umbrella from Tamil, and kept it in SGT 809 X. After that Azman closed the boot of SCQ 143 X, hugged the other two accused persons in turn, and went into SGT 809 X. At that point, the three of them were arrested.

Evidence of Station Inspector Yon Boon Ngiap ("SI Yon")

16 SI Yon saw the two cars parked side by side, and when Azman revved the engine of SCQ 143 X, SI Yon saw smoke emitting from its exhaust pipe. Azman then went to the back of the car with Bala and Tamil where they appeared to SI Yon to be "meddling" (in SI Yon's words) with the boot and the bumper. They then stood up and Azman went to SGT 809 X, opened the boot, took a blue paper bag and placed it in the opened boot of SCQ 143 X. The three of them bent their backs and resumed meddling with the bumper of the car. Azman then stood up, took a blue paper bag from SCQ 143 X, brought it to SGT 809 X, and closed the boots of both cars. Azman then hugged Bala and Tamil, one at a time.

Evidence of Sergeant Loh Teck Seng ("Sgt Loh")

17 When Sgt Loh arrived at the carpark, SGT 809 X and SCQ 143 X were already there, parked side by side with their boots open. Bala and Tamil were squatting behind SCQ 143 X, Tamil was pulling the car's bumper and Bala was looking underneath the car, and Azman was squatting behind them holding an umbrella. Then all three stood up, and Azman went to the driver's seat of SCQ 143 X and stepped on the accelerator. After that, he went to the boot of SGT 809 X, took a blue paper bag,

brought it to SCQ 143 X and placed it in the boot. Then he went to the driver's seat of SCQ 143 X again, and pressed on the accelerator again, after which he went to the back of that car, and joined Bala and Tamil, and the three of them were squatting down. Sgt Loh explained that he knew Azman had stepped on the accelerator because he heard the engine rev up, and he saw smoke come out of the exhaust pipe. Sgt Loh then saw Bala stretch his hand under the car and retrieve something which looked like a dark bundle which he put in the paper bag in the boot of SCQ 143 X. When Bala made the retrieval from beneath the car, Tamil was pulling the bumper. Sgt Loh then saw Azman take a paper bag similar to the one he saw before from the boot of SCQ 143 X, place the bag inside the boot of SGT 809 X, and then close the boots of both cars. At that point, Azman was not holding the umbrella.

18 The evidence of the surveillance officers did not make a seamless narration of the activities at the carpark. There were gaps in the individual accounts, and inconsistencies between the different accounts. On a review of all the evidence, these shortcomings are explicable and acceptable. The officers were not keeping continuous observation from fixed spots, but moved about during that time; the subjects were out of view whilst they went to new positions; and the accounts were from observations made from different positions and times. The officers had made records of their observations. Some of the records which were produced at the request of counsel corroborated their evidence.

19 When trained law enforcement officers are instructed to keep surveillance during an operation, and to keep notes of their observations, their observations are not casual or accidental. Due weight should be given to their evidence unless there is reason to doubt their integrity or competence. After listening to the officers' evidence, I find that they were recounting in good faith what they saw and remembered, and were forthcoming in accepting that there were aspects of the events that they did not take note of or could not recall. I am unable to agree with counsel's accusation that they had fabricated evidence against the accused persons.

Events following the arrest

20 After the three accused persons were arrested, the boot of SGT 809 X was opened, and a blue paper bag was found there. There were two wrapped bundles inside the bag, one being bigger than the other. The accused persons were kept at the carpark and the exhibits were preserved until the arrival of another team of CNB officers from the Special Task Force. This team of officers then took over custody of the three persons and the exhibits. On the instruction of the leader of the party, Station Inspection Ngo Hing Wong ("SI Ngo"), the three accused persons and the two cars were brought to the carpark of Yishun Stadium ("the Yishun Stadium carpark") for further investigations.

21 At the Yishun Stadium carpark, SI Ngo recorded two statements from Azman. Mr Sudheesan, counsel for Azman, objected to the admission of these statements on the ground that they were not recorded in compliance with s 121(2) and s 121(3) of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) ("CPC").

22 The marginal notes to s 121 state "Examination of witnesses by police". However, this provision applies to CNB officers through s 32 of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("MDA"). Section 32(1) provides that:

In any case relating to the commission of an offence under this Act, an officer of the Bureau shall have all the powers of a police officer under the Criminal Procedure Code (Cap. 68) in relation to an investigation into a seizable offence.

When CNB officers are given the powers conferred on police officers by the CPC, those powers are to be exercised in compliance with the empowering provisions of the CPC.

23 Section 121 of the CPC provides that:

(1) A police officer making a police investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound to state truly the facts and circumstances with which he is acquainted concerning the case except only that he may decline to make with regard to any fact or circumstance a statement which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) A statement made by any person under this section shall be read over to him and shall, after correction if necessary, be signed by him.

24 The first complaint was that SI Ngo did not inform Azman that under s 121(2), he may decline to make any statement that would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. The second complaint was that the two statements were not read over to Azman as required by s 121(3). The prosecution accepted that SI Ngo had not advised Azman of his rights under s 121(2), but contended that SI Ngo had read the statements over to Azman before he signed them.

25 Both issues have been considered and determined by the Court of Appeal. In *Public Prosecutor v Mazlan bin Maidun and another* [1992] 3 SLR(R) 968, the Court ruled in [37(a)] that:

a suspect or an accused need not be expressly informed of a right to remain silent whenever any statement is recorded from him pursuant to s 121(2) of the CPC;

26 In *Vasavan Sathiadew & 2 Ors v Public Prosecutor* [1992] SGCA 26, the Court stated that:

... a non-compliance with s 121 of the [CPC] does not render the statement inadmissible under s 122(5) of the [CPC]. It affects the weight to be given to such statement in that it may give rise to questions whether such statement was in fact made, and if it had been made why it was not signed by the accused as required under s 121(3).

and that:

... a non-compliance with s 121(3) does not result in the statement being inadmissible.

In *Panya Martmontree and others v Public Prosecutor* [1995] 2 SLR(R) 806 it was held at [6] that a statement that was neither read back nor signed was admissible in evidence.

27 Counsel accepted that the decisions of the Court of Appeal on the separate non-compliances bind me, but argued that the effect of the cumulative non-compliance of s 121(2) and s 121(3) is still an open question. I was not persuaded by the logic of the submission. In the cases referred to, the Court of Appeal had held that each deficiency may affect the weight to be accorded to the contents of the statement, but not its admissibility. It is inconsistent with the reasoning of the Court's rulings to conclude that where there are two failures of compliance in the recording of a statement, the admissibility of the statement rather than its weight is affected.

28 SI Ngo gave evidence that he recorded the first statement from Azman in a CNB vehicle at the Yishun Stadium carpark at about 9.25am. He commenced by asking Azman if he could speak English. When Azman confirmed that he could speak English, SI Ngo commenced recording Azman's statement in English in his pocket book. He recorded his questions and Azman's replies in his pocket book. After the statement was recorded, he read the questions and answers back to Azman and asked him if he wished to make any amendments or alterations, but Azman declined. Then Azman signed on each page of the pocket book on which his statement was recorded and wrote down his identity card number on the statement beside his signatures. SI Ngo made some corrections to the statement in the course of recording, and Azman also signed against those corrections. The whole recording process took about half an hour.

29 The statement [\[note: 1\]](#) reads:

Q1: What is inside the blue paper bag "erke" behind the car boot?

A1: I don't know

Q2: Whose does it belong to?

A2: It's not mine. I don't know belong to who.

Q3: Before you got arrested where did you come from?

A3: I came from JB?

Q4: Who were with you?

A4: Rocky and Bala in my blue car SGT 809 X and Sunder, Kumar and the other guy I don't the name [sic] it's Sunder younger brother inside the black car SCQ 143 X.

["Sunder" refers to Sundram]

Q5: Where are Sunder, Kumar and Sunder younger brother? When you all reach Yishun carpark Blk 108?

A5: When I reach the carpark of Blk 108 Yishun I waited for them at the carpark and then all of them, Sunder, Kumar and Sunder younger brother go into my car and I send them to outside the main road.

Q6: After that what you do?

A6; After that I go back to the car, Rocky asked me to reverse the black car SCQ 143 X.

Q7: Who is the driver of the black car SCQ 143 X?

A7: Sunder.

Q8: Do you have anything to add in the statement.

A8: I suspect that the blue paper bag inside contain 2 packet, one is big and the other is small one came from the black car.

Q9: Why you suspect the black car?

A9: Because we go JB together. I suspect my friend in the black car.

30 When defence counsel cross-examined SI Ngo, it was put to him that:

- (i) when he first saw Azman, Azman was crying;
- (ii) he did not ask Azman whether he wanted to speak in English;
- (iii) he did not tell Azman that he could decline to answer the questions;
- (iv) he asked Azman why he reversed SCQ 143 X and Azman told him that the car had problems and he wanted to test it;
- (v) after asking Question 7, he had accused Azman of taking the blue paper bag to SCQ 143 X and Azman denied that;
- (vi) he had fabricated Answers 6 and 8;
- (vii) he did not record the questions and answers word for word;
- (viii) he did not read the statement back to Azman or give him the opportunity to read it; and
- (ix) he did not invite Azman to make amendments or alterations to the statement.

SI Ngo agreed with allegation (iii) but denied the others.

31 Later that day, SI Ngo recorded a further statement from Azman inside SGT 809 X in the Yishun carpark when the CNB officers brought the three accused persons to their homes and conducted searches. SI Ngo recorded this statement at 11am after he was informed by another officer that a similar blue paper bag was found in SCQ 143 X.

32 Before recording the statement, SI Ngo asked Azman if he spoke English and Azman confirmed that he did. The recording then commenced in a question and answer form, with SI Ngo recording each question and each answer in his pocket book word for word. SI Ngo made two amendments as he recorded the statement. After the recording, he read the statement to Azman and invited him to make amendments and alterations, but none was made. Azman then signed the statement and the amendments. The whole recording process took 20 minutes. This second statement [\[note: 2\]](#) reads:

Q10:Why did you car and the black car had the same blue colour paper bag?

A10:I can remember that we buy the same shoe that why we got the same paper bag?

Q11:Who is you're the other friend who buy the same shoe with you?

A11:Rocky

Q12:Did you go to the black car?

A12:Yes

Q13:Why did you go to the black car?

A13:To put the thing one big one and one small one

Q14:What is inside the one big one and one small one?

A14:I really don't know.

Q15:Did anyone ask you to put the thing inside your car?

A15:Rocky ask me to put the one big one and one small one inside my car boot.

I then show him a male picture of an Indian

Q16:Who is this guy?

A16:Rocky.

Rocky was ascertain to be one Tamil Salvem m/41 years IC:S1759602J

33 Counsel put to SI Ngo that:

- (i) Azman had told him that he had gone to the back of SGT 809 X to check the exhaust pipe;
- (ii) that SI Ngo had asked his fellow officers in Mandarin about the person who put bundles into the black car, and was told it was not Azman;
- (iii) he asked Azman if Rocky had asked him to put the things in the car, and Azman said "No";
- (iv) he did not advise Azman that he may decline to answer his questions;
- (v) he did not read the statement back to Azman;

(vi) Azman did not read the statement;

(vii) Azman was not asked if he wanted to make amendments or corrections to the statement;
and

(viii) Azman was tearing during the recording of the statement.

SI Ngo agreed with allegation (iv) but denied the rest.

Contents of the blue paper bag recovered from SGT 809 X

34 Inside the blue paper bag [\[note: 3\]](#) recovered from the boot of SGT 809 X there were two bundles in black plastic wrappings, one larger bundle secured with red adhesive tape and a smaller bundle without red adhesive tape [\[note: 4\]](#). When the larger bundle was unwrapped, two blocks wrapped in silver foil were revealed. [\[note: 5\]](#) When the silver foil was removed, each block was found to be a block of vegetable matter. [\[note: 6\]](#) (The smaller bundle did not contain any vegetable matter and was not related to the present charge.)

35 The two blocks of vegetable matter were examined at the Narcotics Laboratory of the Health Sciences Authority ("HSA") in April 2007 and were found to contain an aggregate of 1525.7g of cannabis [\[note: 7\]](#), the subject matter of the charge on which the three accused persons are tried before me, as well as cannabis mixture.

36 The veracity of the analysis and the weight of the cannabis were not disputed by the accused persons.

The cautioned statements

37 Adam Tan, an officer of the CNB (but who had left the Bureau by the time of the trial), was appointed as the investigation officer. On 28 April 2007, he recorded cautioned statements from each of the accused persons on similar charges of trafficking in 2091.5g of cannabis i.e. the weight of the two blocks of vegetable matter before analysis.

38 These cautioned statements were admitted in evidence without objection. In their cautioned statements, Azman stated:

I am not the one who bring in the drugs. [\[note: 8\]](#)

Tamil stated:

I do not know anything about the drug. I went with my friends to enjoy only. [\[note: 9\]](#)

and Bala stated:

It is true that I went to JB. I went there and enjoy in a pub. I went there in a black colour car.

After enjoying in the pub, I came back in a green and blue colour car. When we came to Singapore, the customs checked the car thoroughly. After that we went to Yishun to drop Tamil Salvem. The car was parked besides his block. Tamil, Azman and I went to buy cigarettes. On the way to buy the cigarettes, we walked pass the front of the car. At this point of time, the officers came and we were handcuffed. We did not know why. I was short of sleep and I also have to go to work at 10 am. The officers asked the three of us whose car is the black car and whose car is the black coloured car was. Then the officers opened the boot of the green and blue car and found the paper bag with the things inside. I do not know what the thing was. The officers asked the three of us what this is. I told the officers I got inside the green and blue car outside the pub in Johor and only alighted in Yishun. I was asleep in the car and it was at Woodlands Checkpoint I was awoken by my friend, the driver, Azman. After this, I continued to sleep again until Yishun. I was tired and short of sleep. The customs people checked and they could have found the bag. How is it that it was only found at Yishun. After that I was arrested. That is all. [\[note: 10\]](#)

Azman's disputed statements

39 Adam Tan recorded other statements from Azman. The prosecution sought to produce two of them, one recorded on 20 August 2007 and another recorded on 16 October 2007, but Azman objected that he had not make them voluntarily and they were therefore not admissible in evidence. In view of the dispute, a *voir dire* was conducted for each statement.

40 The onus is on the prosecution to prove that a statement of an accused person is admissible in evidence. A sub-trial would in the normal course proceed with the recording officer and other officers such as interpreters affirming that the statement was made and recorded without any inducement, threat or promise. Then the evidential burden would shift onto the accused to show that the statement was not made voluntarily and this is done by cross-examining the prosecution witnesses, and leading evidence of the accused and his supporting witnesses, if any.

Statement of 20 August 2007

41 On 20 August 2007, Adam Tan went with interpreter Sofia binte Sufri ("Sofia") to see Azman at the Queenstown Remand Prison to serve on him a charge for trafficking of the drug Ecstasy and to record a cautioned statement from him. Adam Tan's evidence was that after he served Azman with the charge and recorded his cautioned statement, Azman told him in English that he had some things to say to him. Azman then spoke to him, and broke into tears. Adam Tan asked him if he was willing to have what he said reduced into a written statement for his signature, but Azman was not willing to do that. That conversation took place in the presence of the interpreter but she did not take part in it.

42 After that exchange, Adam Tan and the interpreter left, and went their separate ways. Adam Tan went to his car parked outside the prison and recorded in his field book of what Azman had told him. He did not set that out verbatim, but made a summary of it.

43 Counsel cross-examined Adam Tan and established that he had seen Azman on 9 May 2007, and that Azman spoke to him about his wife and family. When counsel put to him that he told Azman that there was a note book which implicated his wife with the drugs, and that he asked him to think about it, Adam Tan denied that.

44 Counsel then moved to the events of 20 August 2007 and put to Adam Tan that

- (i) Azman had argued with him when the additional charge was served on him;

- (ii) he accused Azman of not cooperating with the investigations;
- (iii) he told Azman that he could not escape because he was the driver;
- (iv) he asked Azman why he did not admit his involvement with the drugs, and Azman said that he did not do it;
- (v) he told Azman that he really wanted the other two accused and he could help Azman; and
- (vi) he told Azman that a note book will implicate his wife, but if he co-operated, he could avoid the death penalty and save his wife.

Adam Tan did not agree with any of that.

45 Counsel also put to Adam Tan that:

- (i) he did not ask Azman if he was willing to make a written statement. Adam Tan's response was that after Azman spoke, he asked him if he was willing to have that reduced into a written statement but Azman declined,
- (ii) at the end of the conversation, before he left the prison, he asked Azman to think about it, but Adam Tan disagreed with that. Adam Tan added that after Azman declined to give a written statement, but wanted to make a bargain for him to plead guilty in exchange for a lighter sentence, but he told Azman that he was not in a position to make a decision on that, and
- (iii) Azman actually agreed to co-operate with Adam Tan because Adam Tan told him that he could avoid the death penalty and his wife could be saved. Adam Tan denied making those representations.

46 The interpreter Sofia also gave evidence in the *voir dire*. She confirmed she went to the Queenstown Remand Prison with Adam Tan on 20 August 2007. Unfortunately her evidence was unclear in parts as she had not kept notes of the events and was relying on her memory. For example, in examination-in-chief, she said that when she and Adam Tan entered the interview room, Azman's family told Adam Tan that Azman had something to say about the charge he was facing and in cross-examination, she said that she could not remember whether Azman's conversation with Adam Tan took place before or after the charge was served, although she also said that she and Adam Tan left after the conversation.

47 Her evidence was that she acted as the interpreter in recording of a cautioned statement from Azman on the charge that was served on him. She was not involved in the conversation between Azman and Adam Tan. When she was asked the language Azman spoke in, her initial response was he might have spoken in English and then she subsequently said that the conversation took place in English. She also remembered that Adam Tan asked Azman whether he was prepared to make a signed statement, and Azman declined because when he asked Adam Tan for help to reduce his charge to a non-capital charge, Adam Tan had told him that he could not make such a decision.

48 In cross-examination, several questions were put which Sofia disagreed with including:

- (i) Azman and Adam Tan were discussing Azman's role in the series of events;

- (ii) Azman told Adam Tan that he was not involved;
- (iii) Azman and Adam Tan talked about the roles of other people;
- (iv) Azman and Adam Tan talked about Azman's family;
- (v) Adam Tan told Azman that he wanted information on the involvement of the other two accused persons;
- (vi) Adam Tan mentioned to Azman that he could save Azman from the death penalty and also save Azman's wife; and
- (vii) before leaving, Adam Tan told Azman to think over the matters.

49 Interpreters can be of greater assistance as witnesses if they have more to rely on than their memories. If they take and keep brief notes of the events they are involved in, the notes would enable them to recall events better and with greater reliability when they give evidence.

50 Azman also gave his account on the events of 9 May and 20 August 2007. He recounted that on 9 May 2007 Adam Tan saw him and told him about a charge relating to Ecstasy, but no charge was served on him. Adam Tan also mentioned a book bearing entries in his wife's handwriting. Adam Tan told him that book showed her involvement with drugs. He told Adam Tan that his wife had nothing to do with drugs, and she only helped him to record his money-lending transactions in that book. Adam Tan advised him to think about that, and informed him that he would be returning to see him again.

51 On the events of 20 August 2007, Azman recounted that Adam Tan and Sofia saw him in an interview room. He was served with a charge relating to Ecstasy and had made a statement in response to it. After he had given and signed that statement, he and Adam Tan talked about the case. Adam Tan told him that he was involved and was being very stubborn. Adam Tan added that he wanted information on the two other accused persons, and that the book bearing his wife's handwriting was proof that she was involved. Adam Tan then said that if he co-operated, he would not face the death penalty and his family would be left alone. Adam Tan then asked him questions about the case, and he answered them. This covered his involvement in the events, the two co-accuseds and his brother-in-law. He could not remember if Adam Tan recorded anything in writing. However, he was emphatic that Adam Tan did not ask him if he was willing to give a written statement. He only remembered that before Adam Tan left, Adam Tan asked him to think over the matter further.

52 In the course of cross-examination, Azman confirmed that on 9 May 2007, he did not think that the book will link his wife with the drugs and he was not worried about it and he was still not worried when he made his statement on 20 August 2007. However, when he made his statement on 16 October 2007, he was concerned. The reason for the change was that a few days before that date, his wife informed him that Adam Tan wanted to see her, and he became anxious that she would

be charged in connection with the drugs.

53 When I reviewed the evidence, it was clear that defence counsel did not elicit any admission from Adam Tan or Sofia that any inducement, threat or promise was issued or made which led Azman to make the statement which Adam Tan recorded in his field book.

54 Azman's evidence, on the other hand, was that Adam Tan had warned him on 9 May 2007 that his wife may be involved with the drugs because she made entries in the book that was seized, and Adam Tan advised him to think about that. When Adam Tan saw him again on 20 August 2007 with Sofia, Adam Tan told him that if he co-operated and gave information against the two co-accused, he may not have to face the death penalty and his wife will not be charged and he co-operated with Adam Tan by telling him about his involvement and that of the co-accused and his brother-in-law. He went on to add that:

- (i) Adam Tan did not ask him to give a written statement;
- (ii) he did not believe that the accounts book will link his wife to the drugs and he was not worried over that; and
- (iii) he believed that if he co-operated, he would not face the death penalty.

55 His evidence that after he co-operated and gave Adam Tan the information, Adam Tan did not ask him to give a written statement challenged belief. If Adam Tan wanted his co-operation and he co-operated, it would be natural and logical for Adam Tan to ask him to make a signed statement.

56 I found that there was no credible evidence that Azman had made the oral statement to Adam Tan as a result of the alleged threat and promise. I therefore ruled that the statement was a voluntary statement and admitted it in evidence. Adam Tan recorded in his field book:

B1 stated that he has things to say. B1 was not willing to commit in a statement. He told me and Sofia verbally about his arrest.

He said he was willing to plead guilty but he wants lighter sentence. B1 also indicated that his Malaysian supplier is one "Mamin". B1 stated that he was doing this to get his brother-in-law out from prison. His brother-in-law is someone in Johor Bahru prison currently for drug trafficking. B1 indicated that he was the one who coordinated everything. Mamin informed him that the drugs were in the car while he was driving back. B3 then removed the drugs while B1 carried the paper bag to put the drugs. B2 and B3 are involved in smuggling the drugs. B4, B5, B6 are innocent. His car wash helper, Amran is also involved. [\[note: 11\]](#)

B1 referred to Azman, B2 and B3 to the second and third accused persons, and B4, B5 and B6 to Sundram, Kumar and Kumaran respectively.

Statement of 16 October 2007

57 This statement was recorded by Adam Tan, with Sofia as the interpreter, in the Queenstown Remand Prison, and was signed by Azman. According to Adam Tan, he had received a DNA analysis report from HSA [\[note: 12\]](#) which he wanted to clarify with Azman. He explained to Azman that the report showed that DNA on the string of the paper bag containing the drugs matched Azman's DNA profile, and he asked Azman why his DNA was on the string. Azman then began to repeat in English what he had previously narrated to him on 20 August 2007.

58 Adam Tan asked Azman whether he was willing to have the statement reduced into writing. After thinking for a while, Azman agreed, and he started to record Azman's statement in a narrative form. When the statement was completed, Adam Tan instructed Sofia to read it back to Azman in Malay, after which Azman read the statement himself before he signed it.

59 Adam Tan recalled that besides making the statement, Azman had told him that he was very worried about his wife and family. He was worried about their safety as they may be under threat by some people, and Adam Tan advised him to have his family make a police report.

60 Under cross-examination by counsel, Adam Tan agreed that on 20 August 2007, Azman had already acknowledged that he had carried the blue paper bag and that was recorded in his field book. Counsel put to Adam Tan that

- (i) he did not bring or explain any DNA report to Azman on 16 October 2007;
- (ii) he had gone to see Azman because Azman's wife had informed him that Azman wanted to see him;
- (iii) Azman had asked him "why pull in wife?" and he told Azman that it was because he was not co-operating, and that if he co-operated by giving information on the other two co-accused persons, his wife will not be charged, and he will not face the death penalty;
- (iv) Azman also said "Whatever you want to write, you write, don't disturb my family";
- (v) he told Azman that his statement must be convincing because "The Judge is not stupid, must be convincing"; and
- (vi) the statement was not read back to Azman who had signed it after Adam Tan assured him "You do your part and I'll do my part."

but Adam Tan did not agree with any of that.

61 Counsel then cross-examined Adam Tan on events after 16 October 2007, in which it was alleged that Adam Tan and Azman had referred to the bargain made on 16 October 2007. Adam Tan agreed that he had seen Azman in Queenstown Remand Prison on 9 November 2007 because Azman wanted to see him. He went together with Sofia, and Mr Sudheesan was also there, but he left when Azman stated that his presence was not required. It was put to Adam Tan that Azman then told him that he was worried because his lawyer had scolded him, and that Azman asked Adam Tan why he told his wife that he had confessed. Adam Tan denied that this took place, and denied that he advised Azman to instruct his lawyer to write to get the charges reduced. Adam Tan's evidence was that Azman wanted to see him to provide him with some information which was not related to this case.

62 Adam Tan also agreed that he saw Azman again on 19 December 2007 to collect a DNA specimen from him. Counsel put to him that after the specimen was taken, he told Azman "I come today as a friend, not as an IO, you stick to what we agree and you'll be safe and don't worry" and that if he co-operated with him he would leave his wife alone and there will be no death penalty for him but Adam Tan denied saying that, and explained that he had asked Azman how he was doing in Queenstown Remand Prison as his wife had informed him that he was under duress there.

63 Sofia confirmed that Adam Tan brought her on 16 October 2007 to Queenstown Remand Prison

to record a statement from Azman. Adam Tan told Azman about the DNA report and asked him whether he had anything to say and whether he was willing to give a statement, and Azman agreed to give a statement. Azman then gave a statement in English and Adam Tan recorded it. After that, she read the statement to Azman in Malay and handed the statement to Azman for him to read before he affixed his signature and initials on the statement. Neither she nor Adam Tan had offered any inducement, threat or promise to Azman before or during the recording of the statement. She also confirmed that she was present at the meeting between Adam Tan and Azman on 9 November 2007 but she did not play an active role.

64 Counsel put to her that in the meeting of 16 October 2007:

- (i) Azman asked Adam Tan why his wife was pulled in;
- (ii) Adam Tan told Azman that it was because he did not co-operate;
- (iii) Azman denied his involvement;
- (iv) Adam Tan told Azman that if he co-operated, he will not disturb his wife, and there will be no death penalty;
- (v) Azman told Adam Tan that he can write what he wanted if he will not disturb his family;
and
- (vi) Adam Tan told Azman that his story must be convincing.

but Sofia did not agree that any of these. She also denied that she did not read the statement back to Azman, or that Adam Tan told Azman after he had signed the statement that he need not worry about the death penalty because he had co-operated.

65 With regard to the meeting on 9 November 2007, Sofia did not remember that Azman spoke to Adam Tan about his wife or that Adam Tan advised Azman to get his lawyer to write for the charge to be reduced.

66 When Azman gave his evidence, he said that although he did not believe on 20 August 2007 that his wife would be implicated with the drugs, he subsequently believed that because his wife was asked to report to Adam Tan. He was unhappy over that, and he asked to see Adam Tan. When Adam Tan and Sofia saw him on 16 October 2007, there was no discussion of DNA findings. He asked Adam Tan why he wanted to implicate his wife and Adam Tan told him that it was because he was not co-operating, but if he co-operated, his wife will not be implicated and he would not face the death penalty. When he heard that, he felt he had no choice, and he told Adam Tan that he can write what he liked. Adam Tan asked questions and he answered, with Adam Tan guiding him. When he disagreed with Adam Tan, his answer was not recorded, and Adam Tan told him that his story has to be convincing. After the statement was recorded, it was not read back to him in Malay and he did not read it himself before he signed it because Adam Tan assured him that if he signed the statement, he need not worry about the gallows.

67 After he signed the statement on 16 October 2007, his wife went to see Adam Tan. She subsequently told him that Adam Tan informed her that he had confessed on 16 October. She was angry at him for confessing and he told her that Adam Tan had promised that she will not be implicated and he will not face the death penalty.

68 He then met Adam Tan again on 9 November 2007 after his wife had told Adam Tan that he wanted to meet him because Adam Tan had not followed up on their agreement. When Adam Tan saw him that day he told him that his lawyer was told about the agreement, and his lawyer was angry about it. Adam Tan reassured him and told him to get his lawyer to write in, and he will not face the death penalty.

69 On 19 December 2007, Adam Tan saw him again to take his DNA specimen. On this occasion, Adam Tan assured him that he came as a friend, and advised him to stick to his statement when he attended court, and there will be no death penalty.

70 The prosecution sought to discredit Azman's evidence by arguing that as Azman knew that the book with his wife's handwriting was not related to the drugs, he should not be affected by the alleged threat. There was a flaw in that line of argument in that even if Azman was convinced that his wife was not involved with the drugs, he could be concerned that Adam Tan was determined to have her charged and prosecuted.

71 Azman was also asked if he had signed the statement on 16 October 2007 with no knowledge of its contents, and he confirmed that he did it because of the agreement. However, he also said that he did not sign the statement because he trusted Adam Tan but because he had no choice, and that he did not ask to read it although he knew that parts of the statement were put in by Adam Tan to make the statement convincing.

72 The defence did not call Azman's wife or his lawyer as witnesses in the second *voir dire*. Consequently, the evidence that she had informed Adam Tan that Azman wanted to see him, and the evidence that Azman had told his wife about Adam Tan's promise were hearsay in the first instance and uncorroborated in the second.

73 Azman's contention that by 16 October 2007, he believed that his wife may be implicated with the drugs because Adam Tan had requested his wife to see him did not further his claim that Adam Tan had threatened to implicate his wife. All Azman had said was that his wife told him of that request, and he feared that Adam Tan was going to take action against her. By Azman's own evidence no threat issued by Adam Tan. With no fresh threat, we are left with the original threat to implicate his wife and the promise not to implicate her, and to reduce the charge against him if he co-operated.

74 There were substantial differences in the narrations of the events of 16 October 2007. The prosecution's case was that Adam Tan wanted to inform Azman of the DNA findings. While Adam Tan's evidence was corroborated by Sofia, Azman's evidence was not backed up by his wife or his lawyer.

75 The prosecution's evidence was that after the statement was recorded, it was read back to Azman in Malay, and he also read it himself. Azman's evidence was that it was not only not read back to him, he did not have the opportunity to read it himself, he did not ask to read it, and he was content to sign it without knowing its contents. I find this difficult to understand and accept. If he had signed the statement as his part of the bargain with Adam Tan, there was no reason for Adam Tan not to have the statement read to him or to allow him to read it. In each of the five earlier signed statements he made to Adam Tan [\[note: 13\]](#) it was recorded that the statement was read back to him, and Azman had not denied that.

76 On a review of the evidence, I found the evidence of Adam Tan and Sofia consistent and credible, but not the evidence of Azman. Accordingly, I found that the statement Azman made was voluntarily without any inducement, threat or promise, and I admitted it in evidence.

77 The statement [\[note: 14\]](#) reads:

70. My brother-in-law, Kannan s/o Subramaniam, was in Sepang Regum Prison for suspected drugs and guns. His case went to court in Johor. I visit my brother-in-law quite often about once a week. I sometime go alone or with my wife. He got out from CPC in 2005.

71. I knew Rocky through my brother-in-law and I got to know Bala through Rocky.

72. In early this year, January or February, I was at Kannan's house in JB celebrating my mother-in-law's birthday. We left that night. The next morning or afternoon my brother-in-law, sister-in-law (Hairun Be) and Khalid Selvam were arrested. They were arrested for drug and arms offence.

73. I wanted to get my brother-in-law and sister-in-law out. I know that it can be done using money to pay the lawyers and the authorities. Mamin, a Malay Singaporean who is wanted in Singapore and who is now currently in JB, and Siva, an Indian Malaysian were the ones who introduced me to drugs. They gave me the connection to buy the drugs and sell it in Singapore. They also give me the clients in Singapore. Mamin introduced me to heroin clients. Rocky got me the cannabis clients.

74. I got my heroin from Mamin and I got the cannabis from Siva. I got my Ecstasy tablets from a Chinese man named Richard at Taman Sentosa. Richard is wanted in Singapore. He is a Singaporean.

75. I do not have to pay upfront for the Ecstasy tablets and heroin. Mamin and Richard gave them to me on credit. I have to pay Siva the money for the cannabis on delivery. I do not know the cost of the heroin as I have not paid Mamin yet. The cannabis cost \$2500 ringgit for one 'book'. I was arrested with 2 'books'. One 'book' is about one kilogram. I also do not know the cost of the tablets.

76. For the controlled drugs I was arrested with, Mamin will plant the drugs. My job is to bring the drugs into Singapore and sell them in Singapore. Mamin will tell me who to pass and sell the heroin to in Singapore.

77. Mamin, upon successfully crossing of the causeway, will tell me the names of 2 persons I am suppose to deliver the drugs to. I do not know who these 2 persons are.

78. I have brought in drugs a few times. The previous occasions were not big deliveries. After I brought the drugs into Singapore, Rocky will distribute the cannabis. Amran will distribute the heroin for me.

79. Rocky and Bala assist me to distribute the drugs. The also help me bring the drugs across. That is all.

78 At the conclusion of the two *voir dire*s, it was agreed by all the parties, (including Mr Tiwary, counsel for the second and third accused who did not participate in the *voir dire*s), that the evidence given in the sub-trials was to be regarded as evidence in the main trial. As a result of the agreement, the witnesses did not have to repeat their evidence in the *voir dire*s, although Adam Tan and Sofia were recalled as witnesses in the main trial and were examined further by the prosecution and both defence counsel.

79 Statements were taken from the second and the third accused at the Yishun Stadium carpark after they were brought there following their arrest. They were admitted in evidence without objection. These statements did not add to the prosecution's case against them.

80 Tamil's statement [\[note: 15\]](#) was:

Q1: Where did you go before you were arrested?

A1: Malaysia.

Q2: Whom did you go Malaysia with?

A2: My these two friends.

Q3: Are they the ones whom were also arrested together with you?

A3: Yes.

Q4: What time did you and your friends came into Singapore from Malaysia?

A4: At about 6 plus to 7 in the morning today.

Q5: What kind of transport did you and your friends took to go into Malaysia and out from Singapore?

A5: (Recorder's note: Accused B2 pointed the blue 'Mitsubishi Lancer' to me.)

This one.

Q6: Is there any drugs in the car?

A6: Don't know.

(Recorder's note: I pointed to the blue paper bag to accused B2.)

Q7: What is inside this blue paper bag?

A7: I don't know.

Q8: To whom does this paper bag belongs to?

A8: I don't know.

Q9: Have you seen this paper bag before?

A9: Never.

and Bala's statement [\[note: 16\]](#) was:

Q1: What time you enter to Malaysia?

A1: 11 plus yesterday on 27/4/2007 night time.

Q2: What time you come out of Malaysia?

A2: Just now.

Q3: Which car you took when you all entered S'pore?

A3: SGT 809 X.

Q4: With whom?

A4: Azman and Tamil Salvem.

Calling on the defence

81 At the close of the prosecution case, defence counsel did not submit that there was no case for the accused persons to answer. In the face of the evidence of the surveillance officers, Sundram, Kumar and Kumaran, the statements made by Azman, the undisputed analysis reports of the seized blocks, and the presumptions under s 18(1) and (2) and s 21 of the MDA, it was clear that the prosecution had produced sufficient evidence for the accused persons to be called upon to enter their defences. Both of them elected to enter his defence, but neither of them called any witnesses to give evidence on his behalf.

The defences

The first accused Azman

82 Azman is 38 years old, married with two children. His counsel referred him to the five statements that he had made between 30 April and 8 May 2007 [\[note: 17\]](#) and recorded by Adam Tan and had them admitted in evidence. Azman confirmed and elaborated on the contents of the accounts of events set out in those statements. I will not set out the full text of the statements which run to 54 paragraphs. In these statements, Azman

(i) recounted the arrival of his party of six at the carpark of the karaoke lounge in Johor Baru:

30. We then drove to the karaoke. I know about this karaoke first. One of my loanshark worker there introduced the place to me. I had been there before with this group of friends. We have been there a couple of times. We parked our cars at the carpark outside the karaoke. I locked my car. The karaoke is a shophouse. We parked in front of the shop house. We have to walk by the back lane. The karaoke is very secretive. We have to enter from the back. All six of us were together. The Chinese man from the karaoke will lead us to the entrance. After going into the main door, we walked up the staircase. We entered a room. Rocky, Murthy, Kumar and Murthy's brother ordered one bottle of Chivas. Bala and I had a jug of coke. We reached the karaoke at about 2am plus to 3 am,

(ii) explained why he and Bala returned to the Yishun carpark in SGT 809 X after they had driven to the main road and dropped Sundram, Kumar and Kumaran off:

38. I then drove out to the main road. I dropped Murthy, Kumar and Murthy's brother at the main road. It took only a few minutes. In the car, the three spoke in Tamil. They said something

like the car not being able to start. I know that because they said "fifteen minute cannot start the car" in English. I then wanted to send Bala back. Rocky called me on my phone and said "Where are you?". I told him, "I am going to send Bala back.". He asked me, "Come back, cigarettes don't have." I told him ok that I will go back. I thought Rocky meant that he left his cigarettes in the car." I did not look around to see whether I can find Rocky's cigarettes as I was driving. I drove back to the carpark. Rocky was at the carpark. Bala was beside me in the car. I parked into a parking lot. Bala had said to me something like the car is spoilt. I asked Rocky whether his car is spoilt. He asked me to check. He then passed me the key. The car, SCQ 143 X, was in a parking lot opposite my car. I took the key to the SCQ 143 X. I opened the door of SCQ143 X and tried to start the car. The car was very hard to start. I then drove the car as I had wanted to go for one round. When I drove the car out of the parking lot, I realized that there was a lot of smoke coming out of the exhaust pipe. I saw this from the rear view mirror. I then ram the car so that the engine will not die. I then reverse the car and parked it into the lot next to my car. I did not park back into the same lot as a vehicle was coming from the back. Rocky was next to SCQ143 X when I was testing the car. Bala was outside of the car.

(iii) described the activities with the car at the carpark at Yishun after they returned to Singapore:

39. I then came out of the car and went to check on the exhaust pipe. Rocky was with me when I checked the exhaust pipe. I saw the exhaust pipe and the bumper touching. I told Rocky that all he needs to do is to bend the exhaust pipe straight so it would not touch the bumper. Bala, who was already with us, at the back of the car said the smoke was not from that but came from inside the exhaust pipe. I then went to step on the accelerator and came back immediately to take a look. The smoke came from inside the exhaust pipe. I then told them to bend the exhaust pipe straight so that the smoke will not come up as much. I used my leg to try to bend the exhaust pipe. They were next to me to try to step on the pipe to make it straight. I went to my car to take an umbrella as it was drizzling.

40. We realize that we cannot bend the pipe. We finally give up. I then walked to my car. I entered my car. Bala also came to my car. Rocky was just outside the car. We were then arrested as officers moved in. I was sitting in the car when I was arrested.

and

(iv) declared:

60. I do not know why the drugs got into my car. I was not the one who put the drugs there. I am innocent. I have not seen the two bundles wrapped in black plastic bag before.

83 Azman's counsel also went through the prosecution's evidence with him. Azman denied Sundram's evidence that he took the key of SCQ 143 X from Sundram and had driven off with the Malay couple after the other car arrived at the car park of the karaoke lounge and maintained that he had gone to the karaoke lounge at the same time with the other members of the group.

84 He also denied that he had called Sundram when the cars had returned to Singapore and requested Sundram to drive SCQ 143 X to Yishun. His evidence was that after the two cars arrived at the car park at Yishun, Sundram, Kumar, Kumaran and Bala got into his car SGT 809 X and he drove Sundram, Kumar and Kumaran to the main road and had intended to send Bala home. While they were in the car, he heard them mention that SCQ 143 X could not start. He also received a call from Tamil who asked him to return because Tamil did not have cigarettes, and so he returned to the car park

with Bala after dropping off the other three persons.

85 At the car park, he asked Tamil if there was any trouble with SCQ 143 X, and Tamil told him to check it (Tamil denied that he had asked Azman to test the car). He took the car key from Tamil and tried to start the car. He had difficulty starting the car, and when he drove it, there was a lot of smoke and a vibrating sound. He revved the engine to prevent it from stalling, and drove the car to the parking lot next SGT 809 X, and parked it there.

86 After parking the car, he went to the rear of the car with Bala and Tamil, and noticed that the exhaust pipe was in contact with the bumper. Bala thought that was the source of the smoke, but he believed that the smoke was from the exhaust pipe. There was a proposal to separate the pipe from the bumper. He tested the engine again and then went to his car, opened the boot and took out an umbrella because it was drizzling at that time, and rejoined his two friends at the rear of SCQ 143 X. He handed the umbrella to Tamil, he bent down to check the exhaust pipe and found that it was out of position. All three of them took turns to step on the exhaust pipe, and the bumper was separated from the car. He went to rev the engine again, and found that the smoke continued, although the vibration was reduced. He told the other two that they cannot do more and the car should be sent to a mechanic.

87 He then hugged Tamil to bid him goodbye. He then went back to his car and placed the umbrella next to the driver's seat. While he was waiting for Bala to enter the car, CNB officers came and arrested them.

88 After he was arrested, he was taken to the rear of his car and someone came with the blue paper bag which he had received when he bought shoes previously. He was shown the contents inside the bag. He saw two bundles in the bag, but he did not know what they were.

89 Subsequently, when he was at the Yishun Stadium carpark, SSgt Mohd Affendi Ideris ("SSgt Mohd Affendi") showed him the blue bag, took out the two bundles and asked him what they were. He told SSgt Mohd Affendi that he did not know, and was abused in vulgar language. He was upset by that, and was reduced to tears. (SSgt Mohd Affendi agreed that he had questioned Azman about the bundles and received the negative replies, but denied that he abused him.)

90 After the exchange with SSgt Mohd Affendi, he was brought into a car and questioned by SI Ngo which resulted in a statement set out at [\[29\]](#). When his counsel brought him to the questions and answers recorded, Azman remembered that when SI Ngo asked him Question 8, he shook his head. Then SI Ngo asked him what was inside the bag, and he replied that there was a big and a small bundle, as he had been shown them earlier.

91 He could not remember SI Ngo asking him Question 9. Instead he testified that SI Ngo accused him of putting the bag into the boot of the car and that he had denied that. SI Ngo then asked if his friends had done that and he replied that he did not suspect that. After that statement was recorded, it was not read back to him and he was not asked if he wanted to make amendments, and was just instructed to sign the statement.

92 Azman also gave evidence in the second statement recorded by SI Ngo [\[note: 18\]](#) which is set out in [\[32\]](#). He confirmed that Question 12 was asked and Answer 12 was given. He also remembered that when Question 13 was asked, he did not give the answer that was recorded. He explained to SI Ngo that they were trying to separate the exhaust pipe from the bumper. SI Ngo retorted that they put the big bundle and the small bundle into the car. He denied that. Then SI Ngo asked another officer who had taken the bundles, and was told that it was not Azman.

93 After that exchange, SI Ngo asked Question 14 (about the contents of the bundle), and he answered that he did not know. SI Ngo then asked if Rocky (i.e. Tamil) instructed him to put the bundles into his car boot, and he denied that, then he was shown a photograph and he identified Rocky. It was only later when they returned to Police Cantonment Complex that he was invited to make amendments and asked to sign the statement which was not read back to him. (This was not put to SI Ngo as defence counsel explained that Azman was unsure where the statement was signed. [\[note: 19\]](#))

94 Azman then gave evidence on the statements of 20 August 2007 and 16 October 2007 recorded by Adam Tan. With regard to the statement of 20 August 2007 [\[note: 20\]](#) set out in [\[56\]](#), Azman recounted that after Adam Tan served the additional charge on him on 20 August 2007, he did not talk to Adam Tan about his arrest or tell him that he was willing to plead guilty to a lesser charge, or that his drug supplier was Mamin. He confirmed he told Adam Tan about his brother-in-law, but only that his brother-in-law was suspected of being involved with drugs. He also denied saying that Mamin informed him that drugs were in the car or that Bala retrieved the drugs and he carried the paper bag to put the drugs.

95 Moving on to the statement of 16 October 2007 [\[note: 21\]](#) set out in [\[77\]](#), Azman stated that Adam Tan had not gone to discuss DNA findings or the blue paper bag with him. After his wife told him that Adam Tan had asked to see her, he wanted to see Adam Tan as he thought Adam Tan was going to get her involved with the drugs. When Adam Tan went to see him, he asked Adam Tan why he was asking his wife to see him, and then they had the exchange that he narrated in the *voir dire*.

96 Azman was then brought through the statement. He agreed that the contents of the statement were discussed, but claimed that the contents, particularly those parts referring to his dealings with drugs, were not true, and had been made up by him with occasional prompting from Adam Tan to implicate his two co-accuseds. The completed statement was not read back to him, and he did not read it himself.

97 Azman reiterated that he was not involved in any drug trafficking activities on 27 or 28 April 2007, and that he did not know if Bala and Tamil were involved.

The second accused Tamil

98 Tamil is 41 years of age and is single. He ran a drink stall at the hawker centre in Tekka with Bala, and the two of them also shared the use and upkeep of SCQ 143 X.

99 His evidence was that on 27 April 2007, he accompanied Azman to Johor Baru to collect money, and the plan was for the six of them (he, Azman, Bala, Sundram, Kumar and Kumaran) to go to a pub after that. He had gone to Johor Baru with Azman in SGT 809 X. After arriving at Johor Baru, they went to a money changer, and then to a McDonald restaurant where they met a Malay couple. From the McDonald restaurant they and the Malay couple went to a restaurant known as 'Sri Alam', where they met Bala, Sundram, Kumar and Kumaran. They went to the carpark of the karaoke lounge in the two cars and then to the lounge. He remembered that Azman did not enter the lounge with them, but went 15 to 30 minutes later, and the Malay couple did not go to the lounge at all.

100 They were in the lounge until the next morning. On the return journey to Singapore, he was in SGT 809 X which was driven by Azman, and Bala joined them. He slept in the car, and when they arrived at the Yishun carpark to drop him off, he asked Bala for a cigarette. Bala replied that he had no cigarettes and promised to get him some.

101 After that, Sundram, Kumar and Kumaran came in SCQ 143 X. Sundram parked the car and handed the key to him. As those three persons were about to leave, Azman offered them a lift in his car, and Bala was also in the car. After the five persons left in Azman's car, Tamil waited at the void deck for Bala to come back with the cigarettes. Before SGT 809 X returned Tamil had telephoned Azman to ask if he was returning and Azman replied that he had already re-entered the carpark.

102 When Azman had come back to the carpark, he told Tamil that Sundram had said SCQ 143 X had starting difficulties and asked for the car key. Azman then went to start the car. Azman moved the car from its parking lot, and the car emitted a lot of smoke on being revved. Azman parked SCQ 143 X next to SGT 809 X, and revved the engine again.

103 Tamil and Bala went to the back of the car and Bala kicked the exhaust pipe which was in contact with the bumper. Bala asked Tamil to lift the bumper, but he was unable to lift it when he tried. However, the two of them managed to separate the bumper from the exhaust pipe. Azman came with an umbrella and handed it to Tamil. Azman took a look and said that the car had to be sent to a workshop.

104 Tamil hugged Bala and Azman, and then they were arrested. Tamil concluded by saying that he had not helped Bala or Azman to remove anything from SCQ 143 X and he had no knowledge that there was cannabis in SCQ 143 X or SGT 809 X. Tamil did not call any witnesses.

The third accused Bala

105 Bala is 30 years old and he runs a drink stall with Tamil. On 27 April 2007, he went to Johor Baru in SCQ 143 X with Sundram, Kumar and Kumaran. They went to a restaurant called "Sri Alam" first.

106 Subsequently Azman met up with them and they decided to go to a karaoke lounge. They were in the lounge till the following morning. He came back to Singapore with Azman and Tamil in SGT 809 X because they stayed in Yishun.

107 When they arrived at the Yishun carpark Tamil asked him for a cigarette, but as he did not have any cigarettes he promised to go and buy some for him. He saw SCQ 143 X entering the carpark with smoke coming out from the rear of the car. Sundram, Kumar and Kumaran came out of the car. Azman offered to take them to the main road and they got into SGT 809 X. Bala also joined them, telling Azman that he was going to buy cigarettes for Tamil. The five of them drove off from the carpark, and Sundram, Kumar and Kumaran were dropped off at the main road.

108 Bala and Azman returned to the Yishun carpark in SGT 809 X without buying any cigarettes. Azman parked SGT 809 X, walked over to SCQ 143 X, started the car and, drove it out of its parking lot and parked it next to SGT 809 X.

109 Bala noticed that SCQ 143 X was emitting a lot of smoke. He went to the car and saw that the exhaust pipe was in contact with the bumper. He stepped on the exhaust pipe to press it down and he asked Tamil to pull the bumper upwards at the same time, but Tamil was unable to raise the bumper. At that point he told Tamil that the car should be sent to the workshop. He remembered hugging Tamil, but not Azman. Then the three of them were arrested.

110 He concluded his evidence by saying that he did not know that there were drugs in SCQ 143 X, and that he did not touch its bumper.

111 When he was cross-examined by Mr Sudheesan, Bala clarified that he told Azman about buying cigarettes when SCQ 143 X arrived at the Yishun carpark. He did not recall any discussion about SCQ 143 X when Azman sent Sundram, Kumar and Kumaran to the main road.

112 He was unable to say whether Azman had taken anything from SCQ 143 X or SGT 809 X because he was concentrating on the bumper and exhaust pipe of SCQ 143 X, but he was firm that Azman did not step on the exhaust pipe.

Review of the evidence

113 Azman had initiated and financed the trip to Johor Baru for the party of six. The prosecution lead evidence from Sundram and Kumaran that when the two cars eventually arrived at the carpark of the karaoke lounge, Azman took over the key to SCQ 143 X from Sundram. It was also the evidence of Sundram, Kumar, Kumaran and Tamil that Azman was not with them when they went to the karaoke lounge, and had joined them later. (Azman denied taking the key or going to the lounge after the others.)

114 The prosecution argued that there was no reason for Sundram and Kumaran to lie about the key, but that was not strictly correct. Sundram and Kumaran had been travelling in SCQ 143 X and they were aware of the allegation that the cannabis was retrieved from that car. They have reason to say that Azman had taken the key to the car while they were in the karaoke lounge to distance themselves from the car and the cannabis. Having said that, I must make clear that the fact that a witness may have a reason to lie does not mean that the witness lied. In any event, it was not the prosecution's case that Azman had driven SCQ 143 X or that the key was needed to lodge the bundles into the hollow of the bumper of SCQ 143 X.

115 However I am satisfied that Azman had entered the karaoke lounge after the others. That was the evidence not only of Sundram, Kumar and Kumaran who had travelled in SCQ 143 X, but also of Tamil who was never in the car.

116 On the reason for Azman and Bala returning to the Yishun carpark, there was the evidence of Tamil and Bala of the latter's intention to buy cigarettes. The prosecution pointed out that there was no reason for Azman and Bala to return to the carpark without having purchased the cigarettes. Azman's explanation was that when Tamil called and spoke to him after they left the carpark with the three others, he thought that Tamil had left his cigarettes in SGT 809 X. This was difficult to accept in the face of Bala's clear evidence that they were going to buy cigarettes. Furthermore, Tamil's evidence that when he called Azman, Azman said he had already entered the carpark was not disputed. If that was right, Azman could not have returned to the carpark because of anything that Tamil said to him.

117 Azman's actions in the carpark also called for examination. He had gone to SCQ 143 X, started it, driven it, parked it next to SGT 809 X and attempted to cure the smoking. SCQ 143 X was not his car. He was not responsible for maintaining it, and Tamil or Bala said that they had not asked him to fix it. They had just had a night out and had intended to return to their homes. Nevertheless, Azman tested the car and tried to repair it with Tamil and Bala. The surveillance officers confirmed that the engine was revved and that smoke emitted from the exhaust pipe.

118 There were tests done of the car in the course of the investigations. An engineer was engaged to examine and test the car on 28 August 2007, and he reported that there was no exhaust smoke when the engine was started and the car was taken for a short drive. The test, undertaken months after the event, without replicating the conditions of 28 April 2007, cannot be taken to mean that the

accused persons and the CNB surveillance officers were mistaken or untruthful when they said that they saw smoke from the exhaust. Adam Tan constructed replicas of the two bundles and used them to test if they could be put into and extracted from the cavity between the bumper and the rear of SCQ 143 X, and he found that it could be done.

119 I accept the evidence of SSgt Seet, Sgt Loong, SI Yon and Sgt Loh that Azman opened the boot of SGT 809 X, took out a blue paper bag and place it in the boot of SCQ 143 X, and that Bala retrieve a black bundle from the bumper of SCQ 143 X and placed it in the blue paper bag, and Azman brought the blue paper bag to SGT 809 X. I do not accept Azman's protestations that their evidence was wrong or false.

120 I also accept the evidence of the surveillance officers that Bala bent down at the rear bumper of SCQ 143 X and retrieved a bundle from the bumper and placed it in the blue paper bag in SCQ 143 X.

Azman's defence

121 Azman's defence was that he had not brought the blue paper bag from SGT 809 X to SCQ 143 X, and then from SCQ 143 X to SGT 809 X after the bundles were retrieved by Bala, and he denied any knowledge of or dealing with the bag and its contents. However, given that the cannabis was recovered from SGT 809 X and that he was in possession and control of the car, there is a presumption under s 18(1) of the MDA that:

Any person who is proved to have had in his possession or custody or under his control —

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

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

and under s 21 where:

If any controlled drug is found in any vehicle, it shall be presumed, until the contrary is proved, to be in the possession of the owner of the vehicle and of the person in charge of the vehicle for the time being.

There is also a presumption that he knew of the nature of the drugs as s 18(2) provides that:

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

and both presumptions were not rebutted.

122 Azman did not offer any consistent explanation for the presence of that blue paper bag in the boot of his car (that was the only blue paper bag there). In his first statement to SI Ngo set out in

[29] he said that he suspected that it had come from SCQ 143 X; in his second statement set out in [32] he went on to say that Tamil had requested him to put the two bundles into the boot of his car; and he admitted in Answer 13 that he put the big bundle and the small bundle in his car.

123 When he made the five statements that were admitted in evidence on his initiative, he did not repeat his suspicion or the allegation that Tamil had asked him to put the two bundles into his car. At the trial, Azman did not repeat what he had said to SI Ngo, and that was not brought up in his counsel's cross-examination of Tamil. That suspicion and the allegation were apparently abandoned, and no other explanations were offered for the presence of the bundles in his car.

124 His disputed statements to Adam Tan explained the presence of the cannabis. On 20 August 2007, he said that a person named Mamin had placed the drugs in a car and that Bala had recovered the drugs. This was expanded on in the signed statement of 16 October set out in [77] where he stated that he obtained heroin, cannabis and Ecstasy tablets, and that Mamin had planted the drugs that he was arrested with, and that his job was to bring the drugs into Singapore and to sell them in Singapore.

125 I find that Azman had not only made these statements voluntarily, he did not make them to implicate Tamil and Bala, and he made them without Adam Tan's request to make them more convincing.

126 In the final analysis, there was an abundance of evidence against Azman. They came in the way of direct evidence and presumptions. The direct evidence was in the surveillance officers' evidence that he took the blue paper bag to his car and his admission [note: 22] that his job was to sell the drugs in Singapore. This was proof of his possession of the cannabis for the purpose of trafficking.

127 In addition to that, there is also a presumption under s 17 of the MDA that he had the cannabis in his possession for the purpose of trafficking, which was not rebutted.

128 I should add that I find him to have committed the offence of trafficking by being in possession of the cannabis on his own, and not in furtherance of a common intention with Tamil and Bala as alleged in the charge against them.

129 I am mindful that in his statements of 20 August 2007 and 16 October 2007, he had stated that Tamil and Bala were involved in smuggling and distributing the drugs. However, it should be noted that those assertions do not connect Tamil and Bala with the cannabis seized on 28 April 2007 which were smuggled into Singapore in SCQ 143 X without any involvement of Tamil and Bala and were not distributed.

130 There was nothing to show that the allegation that the cannabis in question was in the possession of Azman, Tamil and Bala for the purpose of trafficking in pursuance of a common intention of the three of them.

Tamil's defence

131 There is little direct evidence that links Tamil with the cannabis. Unlike Azman, he had not made any admissions during the investigations and had maintained his innocence, and there was no allegation that he handled the bundles which contained the cannabis.

132 The primary evidence against him was his involvement in pulling on the rear bumper of

SCQ 143 X. His evidence was that when they saw the smoke coming from the exhaust pipe, Bala asked him to lift the bumper, and he tried, but could not do it. Eventually Azman said the car needed to be sent to a workshop. The prosecution asserted that that he pulled the bumper to facilitate the retrieval of the bundles in the hollow cavity of the bumper, but the prosecution was unable to elicit from the accused persons, Sundram, Kumar and Kumaran any evidence of Tamil's connection with the cannabis.

133 Tamil may be culpable if he had assisted in the retrieval of the bundles knowing that they contained cannabis. As there was no evidence that Tamil had handled the bundles, or, in the words of s 18(1) of the MDA, had them in his possession or in custody or under his control, the rebuttable presumptions in s 18(1) and (2) that he was in possession of the drugs and that he was aware of the nature of the drugs did not operate. Of course knowledge can be established without presumptions. Is it established in Tamil's case?

134 The first issue to be addressed is the requisite level of knowledge, ie how much knowledge must a person have of the drug he is involved with. The Court of Appeal in *Tan Kiam Peng v PP* [2008] 1 SLR(R) 1 ("*Tan Kiam Peng*") after a thorough review of the question arrived at the view (albeit non-conclusive as the issue was not fully argued before the Court) that the required knowledge goes beyond knowledge that it is a controlled drug, and is knowledge that it is the specific controlled drug in question. In the present case, the prosecution submitted that the required knowledge should be pegged at the level of a controlled drug and not the specific controlled drug. As the submissions did not introduce anything that was not considered by the Court, I do not see any reason to depart from the Court's view.

135 That does not mean that a person must have actual knowledge of the specific controlled drug. A person who avoids actual knowledge through wilful blindness is in the same position as a person with actual knowledge.

136 Wilful blindness was discussed at length in *Tan Kiam Peng*, and for the present purposes, it suffices for me to refer to that case, and to some of the cases referred to therein.

137 In the earliest case referred to, *Jones v Gordon* (1877) 2 App Cas 616, Lord Blackburn explained at 629 the mental elements necessary to support a finding of wilful blindness:

If he was (if I may use the phrase) honestly blundering and careless, and so took a bill of exchange or a bank-note when he ought not to have taken it, still he would be entitled to recover. *But if the facts and circumstances are such that the jury, or whoever has to try the question, came to the conclusion that he was not honestly blundering and careless, but that he must have had a suspicion that there was something wrong, and that he refrained from asking questions, not because he was an honest blunderer or a stupid man, but because he thought in his own secret mind - I suspect there is something wrong, and if I ask questions and make farther inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover - I think that is dishonesty.*

138 This has been elaborated on in more recent judgments. Lord Denning MR stated in *Compania Maritima San Basilo S A v Oceanus Mutual Underwriting Association (Bermuda) Ltd* [1977] 1 QB 49 at 68 that:

If a man, suspicious of the truth, turns a blind eye to it, and refrains from inquiry - so that he should not know it for certain - then he is to be regarded as knowing the truth. This "turning a blind eye" is far more blameworthy than mere negligence. Negligence in not knowing the truth is

not equivalent to knowledge of it. [emphasis added]

139 In *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd* [2003] 1 AC 469, Lord Clyde held at [3] that:

Blind-eye knowledge in my judgment requires a *conscious reason for blinding the eye. There must be at least a suspicion of a truth about which you do not want to know and which you refuse to investigate.* [emphasis added]

and Lord Hobhouse of Woodborough added at [25] that:

The illuminating question therefore becomes "why did he not inquire?". If the judge is satisfied that it was because he did not want to know for certain, then a finding of privity should be made. If, on the other hand, he did not enquire because he was too lazy or he was grossly negligent or believed that there was nothing wrong, then privity has not been made out. [emphasis added]

140 The Court in *Tan Kiam Peng* laid down three central principles in wilful blindness:

123 The first is that wilful blindness is treated, in law, as being the equivalent of actual knowledge. [emphasis in original]

...

125 The second central principle is that suspicion is legally sufficient to ground a finding of wilful blindness provided the relevant factual matrix warrants such a finding and the accused deliberately decides to turn a blind eye. [emphasis in original]

and at [127]:

wilful blindness, being ... the equivalent of actual knowledge, is distinct from recklessness ...

141 Against the background of these authorities, we can say that wilful blindness will be found against a person if he has a suspicion of the truth and intentionally refrains from doing anything to allay his suspicion so as to avoid the truth. In such a situation, although it is recognised that he has no actual knowledge, his wilful blindness will be regarded as the equivalent of, actual knowledge, but carelessness or thoughtlessness without the suspicion and the intention is not wilful blindness.

142 In the case against Tamil, there was no evidence that he suspected that there were drugs in the car's bumper, or that he intentionally refrained from making enquiries (which in the circumstances would be difficult as the driver and passengers of the car have departed), or to examine the bundles (because they were not in his possession).

143 As Tamil did not have actual knowledge or equated knowledge of the cannabis and was not in possession of the drugs, he is not guilty of the offence he is charged with.

Bala's defence

144 Bala had not made any admissions after his arrest. He was mentioned in Azman's statements, but the observations I made to the references to Tamil also apply to Bala.

145 However, there is evidence which I accept that Bala had taken the bundles of cannabis from

the bumper and placed them in the blue paper bag in the boot of SCQ 143 X and had possession of them during that short period of time. This brings on the presumption in s 18(1), and the question whether the presumption was rebutted.

146 There was no evidence that he had actual knowledge that the bundles contained drugs, or cannabis in particular. Was there wilful blindness and equated knowledge? One can say that he should have suspected that there were illicit contents in the bundles, but can it be said that he should have suspected that the contents were drugs or cannabis? Did he have the opportunity to allay his suspicions? The events from the retrieval of the bundles in bag to the arrest took place too quickly for him to make enquiries or to examine the bundles.

147 A finding of wilful blindness is portentous in that a person with no actual knowledge is equated with having knowledge. Such a finding should be made only when it is clear that the person had intentionally and deliberately maintained his ignorance, in circumstances when a reasonable person would have suspicions and would have made enquires or take other steps to allay his suspicions. There must be suspicion and intention; carelessness or thoughtlessness will not suffice. Against this backdrop, I do not find wilful blindness against Bala because it cannot be said that he had suspected that the bundles contained cannabis and had deliberately suppressed his suspicions.

148 The prosecution has not shown that Bala had actual or equated knowledge that there was cannabis in the bundles, or that he was in possession of the cannabis for the purpose of trafficking, and therefore he is also not guilty of the offence.

[\[note: 1\]](#) P86A

[\[note: 2\]](#) P86B

[\[note: 3\]](#) P26 and P105

[\[note: 4\]](#) P27 and P28

[\[note: 5\]](#) P30

[\[note: 6\]](#) P33 – P35 and P39 – P41

[\[note: 7\]](#) P75 and P76

[\[note: 8\]](#) P92

[\[note: 9\]](#) P93

[\[note: 10\]](#) P94

[\[note: 11\]](#) P132 and P132T

[\[note: 12\]](#) P89

[\[note: 13\]](#) See [82]

[\[note: 14\]](#) P97 and P97T

[\[note: 15\]](#) P88

[\[note: 16\]](#) P87

[\[note: 17\]](#) P135–P139

[\[note: 18\]](#) P86B

[\[note: 19\]](#) Notes of Evidence page 1313 lines 7–14

[\[note: 20\]](#) P132 and P132T

[\[note: 21\]](#) P97 and P97T

[\[note: 22\]](#) P97 para 76

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