

Public Prosecutor v Tan Siew Lam and Another
[2000] SGHC 161

Case Number : CC 51/2000
Decision Date : 04 August 2000
Tribunal/Court : High Court
Coram : Amarjeet Singh JC
Counsel Name(s) : David Khoo assisted by Leon Loh (Attorney-General's Chambers) for the prosecution; Tan Teow Yeow assisted by Michael S Chia (AC) (Both Assigned) for the 1st accused; Subhas Anandan (Briefed) assisted by Gloria James and Anand Nalachandran (AC)(Assigned) for the 2nd accused
Parties : Public Prosecutor — Tan Siew Lam; Anand Naidu A/L Raman

JUDGMENT:

Grounds of Decision

Charge

1. The 1st Accused Tan Siew Lam aged 37, a Singaporean, and the 2nd Accused Anand Naidu A/L Raman aged 23 a Malaysian, were tried jointly. There was no objection to their joint trial by their respective Counsel.
2. The 1st Accused was tried on an Amended 1st Charge for *trafficking* 3 packets of morphine with a net weight of 62.76 grams without authorisation being a controlled drug *by having the same in his possession for the purpose of trafficking on 1st February 2000 at about 10.15pm between the carpark of Blk 164 Bishan Street 13 and Lift B at 8th floor level of Blk 163 Bishan Street 13, Singapore thereby committing an offence under s 5(1) read with s 5(2) punishable under the Misuse of Drugs Act, Cap 185 (MDA).*

Other charges against the 1st Accused were stood down.

3. The 2nd Accused was similarly charged for *trafficking* by *giving* the 3 packets containing 62.76 grams of morphine to the 1st Accused Tan Siew Lam on 1st February 2000 at about 10.15pm at the car park of Blk 164 Bishan Street 13, an offence under s 5(1) punishable under the MDA.

Prosecution Case

4. The undisputed facts were that at about 10.10pm on 1st February 2000, a number of Central Narcotics Bureau (CNB) officers on surveillance to keep a look-out for the 1st Accused in the vicinity of the flat where he resided i.e. Blk 163 Bishan Street 13 #08-168 saw a Malaysian registered vehicle JEQ 8706 with an Indian driver driving to the carpark of Blk 164 Bishan Street 13 which was lit with street lamps, and parking his vehicle. He was seen alighting from the said vehicle by Senior Staff Sergeant Tan Yian Chye (S/S/Sgt Tan) CNB who sat in a parked car about 30 – 35 meters away. S/S/Sgt Tan identified him as the 2nd Accused in Court and said the 2nd Accused was then wearing a dark coloured cap on his head. S/S/Sgt Tan said he then saw the 2nd Accused walk to the nearby void deck of Blk 164 where there was a telephone and made a phone call. The 2nd Accused then returned to the said vehicle at 10.15pm. He opened the driver's side door and stood beside the door. A short while later, the 1st Accused, Tan Siew Lam, who was empty handed, emerged from the direction of Blk 164. He approached the 2nd Accused from the other side of the driver's open door whereupon the 2nd Accused took an orange coloured plastic bag from the driver's seat and handed the same to the 1st Accused over the top of the said door. Thereafter, the 1st Accused was seen walking away towards the direction of Blk 163 Bishan Street 13 which is behind Blk 164. At 10.17pm the 2nd Accused drove off in the vehicle

JEQ 8706 and stopped it beside Blk 162 Bishan Street 13. He alighted from the vehicle and walked towards Blk 167 to a public phone. There, at 10.20pm the 2nd Accused was arrested by a number of CNB officers. His Malaysian Passport and driving licence were seized. Also seized from the driver's seat was a red packet with \$168/- in it. A black and red cap was found on the 2nd Accused's person.

Sergeant Eddie Wee Thiam Poh (Sgt Eddie Wee) observing from about 2 or 3 meters from where the 2nd Accused parked his car, confirmed S/S/Sgt Tan's account. He additionally stated that when the 2nd Accused went to the public phone at the void deck of Blk 164, he walked past him and heard the 1st Accused saying over the phone **'Come down. I am here'**.

Later the 2nd Accused was interviewed by Staff Sgt Ang Oon Tho (S/S/Sgt Ang) at the carpark of Blk 167 of Bishan Street 13 inside his car and the questions and answers were recorded in the officer's pocket book and signed by the 2nd Accused. The 2nd Accused told S/S/Sgt Ang that he had no drugs in the car, that he was at the scene to take an 'ang pow' from a male Chinese whom he did not know who called him through his handphone **92297274** at 9pm and that he had not handed anything over to the said Chinese person.

5. As for the 1st Accused, before he arrived and was seen to take delivery of the orange coloured plastic bag from the 2nd Accused, he was spotted at about 10.15pm coming out of his unit #08-168 of Blk 163 Bishan Street 13 by one Cpl Surainy Bin Supahan (Cpl Surainy) of the Intelligence Division of CNB. He was seen talking on the handphone as he walked down from the staircase to the ground floor. He was empty handed. After he reached the ground floor, he walked in the direction of Blk 164. A few minutes later, at about 10.20pm, Cpl Surainy saw him returning from the direction of Blk 164 and walking back towards Blk 163, this time, towards the lift lobby of the said Block.

5.1 Ronnie See Su Khoon, a Station Inspector, (Ronnie See) attached to the Enforcement Division of CNB, who had taken up position on the 8th floor of Blk 163 Bishan Street 13 with other officers arrested the 1st Accused as he emerged from inside lift B on the 8th floor. The 1st Accused was then holding an orange plastic bag in his left hand, a bunch of keys and a handphone in his right hand. These were seized. Stn Insp Ronnie See ascertained the 1st Accused's name to be Tan Siew Lam and he identified him in Court as the person whom he had arrested at the aforesaid place and time. The 1st Accused was taken to the 21st floor lift landing and physically searched and asked some questions at about 10.18pm. As a result of the questions by Stn Insp Ronnie See, the 1st Accused made certain statements which were recorded by the Inspector in his pocket book shortly afterwards in the 1st Accused's flat for which they had left. The entry in the pocket book was signed by the 1st Accused.

5.2 The questions and answers were as follows:

SI Ronnie See : "*Chua Long Lau Bin See Sim Mee*" (Pointing at the Orange colour plastic bag)
(What is inside the plastic bag?) Pointing at the orange colour plastic bag.

Accused : "*Peh Hoon.*"
(Heroin)

SI Ronnie See : "*Luah Chuay Peh Hoon?*"
(How much heroin?)
"*See Pau.*"

Accused :

(Four packets)

SI Ronnie See : "*See Pau Peh Hoon See Siang Eh?*"
(Four packet of heroin belongs to who?)

Accused : "*See Wah Eh*"
(It's mine)

SI Ronnie See : "*Lee Kiah Toh Chit Keng Chu?*"
(Which house are you staying?)

Accused : "*Puak Lau.*"
(8th level)

SI Ronnie See : "*Kwee Ho Mng Pai?*"
(What is the unit number?)

Accused : "*East Luck Puak*"
(168)

SI Ronnie See : "*Chit Kuah Soh See Sim See Kee Puak Lau, East Luck Puak?*"
(Is this bunch of keys to #08-168?)

Accused : "*See*"
(Yes)

6. Inside the flat, amongst other things, Stn Insp Ronnie See and the other officers found and seized:

- 1) in the wardrobe in the master bedroom:
 - i) a stack of empty plastic sachets;
 - ii) a plastic packet containing empty plastic sachets and
 - iii) a brown bundle containing empty plastic sachets.
 - iv) a red plastic bag containing white envelopes with digital weighing scale;
 - v) 4 lighters;
 - vi) a pair of pincers and scissors;
 - vii) 3 plastic spoons;
 - viii) a small red plastic bag;
 - ix) 2 bundles and some empty plastic sachets and
 - x) two stacks of red packets – one containing S\$1156/- and the other S\$1792/-

Altogether, about 2000 empty sachets were found in the wardrobe. Stn Insp Ronnie See stated that these items are used in the trafficking of drugs. The pair of pincers and lighters were used for heat-sealing the sachets containing drugs. The 1st Accused when asked by Stn Insp Ronnie See if all the exhibits belonged to him had nodded his head. All the exhibits were eventually handed to Insp Tan Choon Hee the Investigating Officer of the case including the orange plastic bag with its contents which had not been opened.

According to the Investigating Officer, the contents of the orange plastic bag revealed 3 newspaper bundles in each of which was a plastic packet of yellowish granular substance. They were labelled as *G1a-1*, *G1b-1* and *G1c-1* by the Investigating Officer and photographed.

The Investigating Officer confirmed the recovery of 4 red packets with S\$168/- in each packet similar to the one recovered from the 1st Accused with S\$168/- and two other stacks of red packets one of 40 packets containing S\$28/- each totalling S\$1,120/-, the other 17 packets containing S\$68/- each totalling S\$1,156/-. He also took possession, amongst other things, 3 mobile phones

from the 1st Accused, the number of one of them was 96714234.

These plastic packets with their granular substance together with the pair of scissors, the pair of pincers and the 3 plastic spoons were handed over by the Investigating Officer to Dr Liu Chi Pang, Scientific Officer of the Department of Scientific Services who analysed all the aforesaid exhibits and issued six certificates under s 16 of the Misuse of Drugs Act certifying the following:

i) **Exh. P59**

Lab No. N1-2000-00263-009

One plastic bag of 445.5 grams of granular/powdery substance analysed and found to contain not less than 21.76 grams of morphine.

ii) **Exh. P60**

Lab No. N1-2000-00263-010

One packet containing 440.1 grams of granular/powdery substance analysed and found to contain not less than 20.89 grams of morphine.

iii) **Exh. P61**

Lab No. N1-2000-00263-011

One packet containing 440.9 grams of granular/powdery substance analysed and found to contain not less than 20.11 grams of morphine.

Dr Liu stated that the purity level of the substance varied from 4.6% to 4.9%. The pair of scissors, 2 pincers and three plastic spoons were also examined by Dr Liu and found to be stained with diamorphine as Exhibits **P63**, **P64** and **P65** showed. The 3 spoons were also found to be additionally stained with morphine.

8. Ng Choon Howe, Senior Manager with Singtel Mobil Pte Ltd and in charge of the GSM switch, produced the *Call Trace Report* for mobile phone no. 96714234. According to the *Report* there was an incoming call on 1st February 2000 to mobile phone No. **96714234** at 22.1219 hours (10.1219pm) lasting a duration of 10 seconds. The call was made from a telephone no. **3543208**.

9. Yap Siew Choo another witness from Singtel testified that telephone No. **3543208** was a pay telephone housed in the void deck of Blk 164 Bishan Street 13.

10. At the close of the Prosecution's case, Counsel for each of the Accused did not make a 'no case' submission.

Prima Facie Case

11. I was satisfied at the end of the Prosecution's case, that the Prosecution had proved a *prima facie* case against each of the Accused in respect of the charge each faced in view of the following unchallenged evidence:

1st Accused

11.1 The 1st Accused was seen taking delivery of an orange plastic bag from the 2nd Accused in the car park as stated earlier. He was seen walking with it towards the lift bay in Blk 164. The 1st Accused took lift B to the 8th floor where he resided. When the door of lift B opened, CNB officers who were waiting for him, arrested him with the red plastic bag held in his hand which

later revealed 3 packets of substance containing morphine having a gross weight of about 1,321.5 grams and a **nett weight of 62.26 grams of morphine**. The 1st Accused admitted in his oral statement at his flat which was recorded and signed by him and which was unchallenged by him that there were 4 packets of heroin in the orange plastic bag and that they belonged to him and that he was staying in flat No. 168 of the 8th floor in which flat, paraphernalia relating to re-packing and sealing of drugs was found. The door of the 1st Accused's flat had been opened with the keys found in his possession. Although the 1st Accused stated there were 4 packets of heroin in the orange plastic bag, the fact is that 3 packets containing 62.26 grams of morphine were still found. The other discrepancy relating to the 1st Accused calling the drugs heroin when it was morphine again was of no consequence as both are controlled drugs.

11.2 The 1st Accused, was, on the Prosecution's evidence and admittedly as set out above, therefore clearly in possession of the morphine in the quantity charged. The presumption in s 17(1) of the MDA escalated his possession of more than 3 grams of morphine to possession for the purpose of trafficking. The further presumption in s 5(2) of the said Act, escalated the possession for the purpose of trafficking to trafficking. The 1st Accused was, in the circumstances, *prima facie*, trafficking in the said amount of morphine and the onus was on the 1st Accused to prove on a balance of probabilities that he was not and as such, I called upon him to enter his defence.

2nd Accused

11.3 The 2nd Accused, a Malaysian who had arrived from Johore Bahru, that night was seen *giving* the orange coloured plastic bag which he took from his car seat by both S/Sgt Tan and Sgt Eddie Wee. That bag containing three packets of morphine (with 62.26 grams of morphine) was immediately afterwards found in the possession of the 1st Accused who had walked away with it after receiving it and gone up lift B in Blk 164. S/Sgt Tan and Sgt Eddie Wee identified the orange plastic bag as similar to the one the 2nd Accused gave to the 1st Accused. They also identified the 2nd Accused in Court.

11.4 The only irresistible *prima facie* inference I could draw was that the orange plastic bag found on the 1st Accused with the morphine in question was the same one *given* to him by the 2nd Accused and it contained the said morphine when so given by the 2nd Accused. Under s 18 of the MDA, the 2nd Accused is presumed to have known the nature of the drug in the said bag namely that it was morphine. The 2nd Accused therefore had the morphine in his possession when he gave it to the 1st Accused. As he was in possession and observed by CNB officers *giving* the said bag containing the morphine to the 2nd Accused, he was under the definition section of the MDA, s 2(a), trafficking in the said morphine. In section 2 traffic is denied amongst other things, as:

"(a) to sell, give"

11.5 The Prosecution had also, therefore, made out a *prima facie* case of trafficking against the 2nd Accused which if unrebutted, would warrant his conviction. I called upon him to enter his defence. It was for the 2nd Accused to prove the contrary.

The Defence

12. Both Accused elected to give evidence on oath.

1st Accused

13. Briefly, the 1st Accused's evidence was that at about 9.00pm on 1st February 2000 he was waiting for his boss, one Ah Seng, a Malaysian, in his rented flat where he stayed alone, to come and deliver some goods to him. At about 10.00pm, Ah Seng telephoned him and said he was not free but had arranged for someone else, an Indian, to make the delivery to the 1st Accused

and the money in respect of the goods would be collected from him later. Ah Seng told him to go to the carpark of Blk 164 and upon seeing an Indian man arriving there by car, he was to ask him if he was a friend of one Ah John, so that the Indian man could then deliver the goods to him but not to open the plastic bag in front of the Indian as he did not know what would be inside the said bag. The 1st Accused testified that he himself did not know Ah John. He did so accordingly by going down to the said carpark carrying his handphone and a bunch of keys. There he took delivery of an orange coloured plastic bag similar to **Exh. P108** which contained the goods from an Indian after asking him if he is a friend of 'John'. He gave the Indian whom he identified as the 2nd Accused an 'ang pow' packet containing \$168/- for Chinese New Year which was a few days away. He then added that at first the 2nd Accused did not want to take the 'ang pow' but when told it was for Chinese New Year, he took it. The 1st Accused said that he had not met the 2nd Accused before now nor had he spoken to him over the telephone. The 1st Accused said he was soon afterwards arrested with the said goods.

13.1 The 1st Accused further admitted that the goods he was intending to collect, was heroin and agreed that he had witnessed the opening of the newspaper bundles by the Investigating Officer taken from the orange plastic bag in which there were the 3 packets of substance which he said was heroin. He went on to say that he had ordered 4 packets of heroin. He could not tell the difference between diamorphine (heroin) although he knew that in Mandarin morphine was called 'ma fei'. He did not know why he had only received 3 packets.

13.2 The 1st Accused confirmed that his mobile phone number was 96714234 and calls to the phone would automatically go to a voice box if unanswered. This mobile phone was seized from the 1st Accused upon his arrest at 8th floor level when he emerged from the lift. He also confirmed that all the drug paraphernalia found by CNB officers in the flat belonged to him.

2nd Accused

14. The 2nd Accused was a second year student studying for his diploma in computer science at an Informatics institution in Johore Bahru. His defence was that he did not know what was contained in the orange plastic bag when he delivered it to the 1st Accused. On the evening of 1st February 2000 at about 6.00pm, he had been contacted by one John a Malaysian whom he knew for 2 – 3 months. John was then in Singapore. The 2nd Accused said he told John he was coming to Singapore with his mother as his mother wanted to cash some S\$ dollars from her POSB Bank ATM machine at Woodlands. John asked the 2nd Accused to pick him up at Ang Mo Kio MRT station and give him a lift back to Johore Bahru. He agreed. He left his mother at Woodlands at 9.30pm and arranged to come back and pick her up at 10.00 pm as she also wanted to do some shopping.

When he met John about 10 minutes later at the MRT station at Ang Mo Kio, John told him he had to go and deliver a plastic bag to a friend in Bishan but could not do so as his girlfriend was coming to join him at the said MRT station in 30 to 45 minutes. The 2nd Accused said to save time he volunteered to deliver the orange plastic packet which he said was similar to the one in Court, thinking it was some Chinese New Year food or decoration stuff as Chinese New Year was a few days away. John then told him where to go and would call the person and ask him to come down and take the goods from him. John had not told him what the contents of the orange plastic bag were. Nor had he asked him. He also did not look inside the bag then or later to ascertain what it contained. He said he trusted John.

The 2nd Accused confirmed that he then delivered the said plastic bag and contents to the 1st Accused at the carpark of Blk 164 Bishan Street 13 who in turn handed him an 'ang pow' packet - Exhibit P116 - after being told it was for Chinese New Year. He took the packet reluctantly only because he thought it would contain S\$10/- - S\$15/-. After leaving Blk 164, he opened the packet and found it contained S\$168/- and he was shocked but happy as it was a lot of money and he stopped at the nearby Blk 167 and made a telephone call to his girlfriend in Johore Bahru to tell her of the 'ang pow' and to take her out the next day. He was arrested when making the telephone call.

Concerning the statements to S/S/Sgt Ang, the 2nd Accused went on to say that he had lied concerning each of the statements to S/S/Sgt Ang that he was at the scene to take an 'ang pow' from a male Chinese; that the male Chinese had called him through

his pager 92297274; that he had called him at 9.00pm and that he had not handed over anything to that Chinese person. He so lied because he was frightened. He did not want to get involved with drugs. For the same reason he had not told S/Sgt Ang at the scene or the Investigating Officer upon his arrest about John sending him to deliver the goods. He could not think at that time. He had not been told by John to expect money for his services nor did he expect to be paid any money. He only came to realise he had delivered drugs after he was arrested and questioned. The 2nd Accused said it did not cross his mind to tell John that since he had to wait for his girlfriend and also send the goods to Blk 164 in Bishan, all these would take time and that he could not afford to wait for him and would be going back to his mother whom he had to pick up at 10.00pm and that the John should make his own way back to J.B. Instead, he explained his mother would not mind waiting if he was a bit late. Finally the 2nd Accused denied he knew what he had delivered to the 1st Accused were drugs.

Evaluation and Findings

1st Accused

15. No closing submission was made by Counsel for the 1st Accused.

The 1st Accused had admitted in his defence that he took delivery of the orange coloured plastic bag and its contents from the 2nd Accused and that it was seized from him by CNB officers when he was carrying it when he arrived by lift B at the 8th floor of Blk 164 Bishan Street 13. He did not challenge the fact that the bag was found to contain 62.26 grams nett weight of morphine. The 1st Accused therefore had failed to rebut his possession of the morphine in question and the *prima facie* case proved against him that he was in possession of the morphine for the purpose of trafficking and was therefore trafficking in it by the further presumption under s 5(2) of the MDA. In fact the 1st Accused in his evidence clearly admitted that he was engaged in the sale of heroin i.e. trafficking in drugs and that the drug related paraphernalia used for re-packaging of drugs found in his flat belonged to him.

I would like however, to deal with what may appear at first sight, to be one small distracting aspect of the case. The 1st Accused had said he had ordered heroin. However, morphine was delivered to him as the facts showed. The implication was that he was not therefore in knowing possession of heroin as what was delivered to him was morphine i.e. something else. I took judicial notice of the fact that the basic and obvious difference between diamorphine (heroin) and morphine is that whilst both are opium derivatives, diamorphine is a further distillation of morphine. In my opinion, the mistaken notion of the 1st Accused that he was in possession of diamorphine when it was morphine did not matter in the least since both are controlled drugs, any one of which the 1st Accused could not possess without authorisation. In *Tan Ah Tee & Anor v P P* [1978 – 1979] SLR 211; [1980] IMLJ 49, the Court of Criminal Appeal endorsed the ratio of Lord Pearce in *R v Warner* [1969] 256 as follows:

"If one goes to the extreme length of requiring the prosecution to prove that 'possession' implies a full knowledge of the name and nature of the drug concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities, and that ignorance or mistake as to its qualities is not an excuse."

It was plain therefore that on the presumed and proved facts and in the light of the 1st Accused's own incriminating admissions in Court, his intention was to repackage the three large packets of morphine received from the 2nd Accused into small sachets for retailing them amongst drug pedlars and drug addicts and so traffic in them. I therefore found him guilty as charged in respect of the offence of trafficking and convicted him.

I sentenced him according to law.

2nd Accused

16. Essentially, the 2nd Accused's defence was that he volunteered to do an errand for a friend John who then handed to him the orange plastic bag with its contents to deliver to the 1st Accused in the carpark of Blk 164 Bishan Street 13. Believing the bag contained some food or decorations for the Chinese New Year some days away he had gone on and made the delivery to the 1st Accused by giving the said plastic bag to him. He had not at any time known or suspected that the bag contained drugs as he trusted John.

Having considered on the facts and circumstances of the whole affair which formed the basis of the charge against the 2nd Accused, I rejected the 2nd Accused's defence relating to the absence of knowledge as to the true contents of the said plastic bag he gave to the 1st Accused.

17. The 2nd Accused after leaving his mother at Woodlands at 9.30pm had promised to return at 10.00pm to pick her up. It was his evidence that John had asked him at about 6.00pm in a telephone call when he was still in Johore Bahru to pick him up at the Ang Mo Kio MRT station and to take him back to Johore Bahru to which he had agreed. Had he done just that he would have returned in time to pick up his mother from Woodlands at 10.00pm. The 2nd Accused failed to give a satisfactory explanation as to why he did not simply tell John in view of John's new engagements that he would have to make his own way back to Johore Bahru as waiting for his girlfriend for about 45 minutes and going to deliver the orange plastic bag to the 2nd Accused in Bishan about ten to fifteen minutes away and in addition doing the return journey would take a lot of time - probably an hour extra and he would be very late in returning to pick up his mother. Instead the 2nd Accused had reacted strangely by volunteering to go and deliver the plastic bag to the 1st Accused.

17.1 His reason that it would save time while John waited for his girlfriend did not impress me. If Blk 164 Bishan Street 13 was about ten to fifteen minutes away, the return journey could be done in half an hour and he should have asked John to join him in the car for the delivery to the 1st Accused of the plastic bag especially as the 2nd Accused on his own admission had never been to Bishan and there were a very large number of blocks of flats in Bishan. They could both return in time to the MRT Station to meet John's girlfriend i.e. be within the half hour to forty minutes that she was going to take to come. John would also have been free to communicate with his girlfriend over his mobile phone and to explain to her to wait for him at the station if he was delayed in returning. The 2nd Accused however did not raise all these matters with John. John's sudden story to the 2nd Accused after his arrival about waiting for his girlfriend should have raised a suspicion in the 2nd Accused's mind so much so that if he had not enquired or examined the plastic bag for its contents straightaway, he should have done so on the way to Bishan along the road by stopping and checking the bag's contents as he admittedly knew that trafficking in drugs carried a death penalty in Singapore. He had all the opportunity to do so. The contents of the plastic bag were readily accessible to view as the plastic bag was not sealed.

17.2 The 2nd Accused's further explanation that he trusted John was not credible and worthy of belief. He did not know John's full name nor address in Johore Bahru nor where he worked and had only been his acquaintance for 2 or 3 months meeting him on occasions to play pool with him. It was not possible that he reposed trust in a man about whom very little was known by him. It should have appeared wrong to the 2nd Accused who was an adult and an educated person that he should deliver goods to a total stranger whose name he did not know and who would come and meet him in a carpark and whom he could not later trace if he was in trouble.

17.3 Counsel for the 2nd Accused stressed in submission that the 2nd Accused's lack of knowledge is shown by his *volunteering* to deliver the plastic bag to save time and there being no evidence that John had requested him to deliver the plastic bag which request would have aroused his suspicion. Therefore the Court should infer that he was acting innocently. His innocence it was submitted, was further underlined by the 1st Accused's evidence that 'Ah Seng' (who was known to the 2nd Accused as John) had told him not to open the plastic bag upon delivery at the carpark because the 2nd Accused did not know of the bag's contents. Further the 1st Accused had also stated that the 2nd Accused initially had refused to accept the ang pow from him but only accepted it when told it was for Chinese New Year indicating thereby that he was not doing the errand

for reward. The evidence of the 1st Accused, Counsel added, corroborated the 2nd Accused's own version that he was unaware of or lacked knowledge of the true contents of the plastic bag.

17.4 The Prosecution countered by submitting that the 1st Accused had no other purpose of giving evidence from the witness box but to contrive evidence and give support to the 2nd Accused's lack of knowledge of the drugs that he gave to the 1st Accused. The 1st Accused's motive to help the 2nd Accused to establish his defence was clearly seen from the fact that when in the witness stand he did not defend himself but readily admitted to taking delivery of the drugs from the 2nd Accused and to being in possession of drug paraphernalia in his flat and to being engaged in trafficking in drugs and had gone on further to instruct his Counsel not to make any submission at the close of the Defence case.

17.5 I accepted the Prosecution's submission as to the 1st Accused's motive as plausible. I found it unconvincing that the 1st Accused who was admittedly engaged in trafficking of drugs should be told or reminded by his supplier Ah Seng not to open the plastic bag to ascertain the drugs as no such offending recipient is ever likely to do so especially in a public place because of the surreptitious nature of the operation, the idea behind it being to quickly take delivery and leave for fear of there being a surveillance by CNB officers. Since payment was specifically arranged for a later date separately by Ah Seng (John), as admitted by the 1st Accused, the need to check the contents of the bag did not arise as the 1st Accused would be checking the same when he went back to his room. He would therefore only have to pay subsequently on the basis of what was delivered to him. It was the Accused's evidence that he made three telephone calls to John from the telephone at the void deck of Blk 164, the first informing him he was in the carpark and to inform his friend (1st Accused) to come down when the phone was suddenly disconnected, the second to enquire if John's girlfriend had arrived but he could not make a connection and the third call to another telephone no. 9671423 belonging to John which went unanswered resulting in a voice mail message being generated. Again, both the 1st Accused's and 2nd Accused's credibility was seriously in doubt on the issue when the 1st Accused said he did not receive any telephone call from the 2nd Accused that evening or the 2nd Accused saying he did not make any call to the 1st Accused. The Prosecution's evidence established that a phone call was made from the public telephone no. 3543208 at the void deck of Blk 164 and that call was made to a mobile phone held by and recovered from the 1st Accused i.e. no. 9671423 at 10.12pm. I was satisfied that this was the call lasting about 10 seconds in which the 2nd Accused spoke to the 1st Accused to come down. This brief conversation was overheard by Sgt Eddie Wee who was nearby to the 2nd Accused when he made the call. I could not comprehend the 2nd Accused's evidence that he thought he was making the third telephone call to John who had given him the telephone no. 9671423 as his number in Johore Bahru, previously, which number he had stored and retrieved from his pager just prior to calling him the third time. If it was John's telephone number, there was no explanation why the 1st Accused was holding a telephone with that number when he was arrested. There was no reason why when the 2nd Accused rang no. 9671423, the 1st Accused should not have answered the call allowing the call to go into a voicemail mode as it was the very phone he had with him when arrested and he was expecting a delivery. The irresistible inference I drew was that the 1st Accused answered the call made by the 2nd Accused and was told by the 2nd Accused 'Come down. I am here'. I therefore also disbelieved the 2nd Accused's version that earlier he had made two other calls to John. I was satisfied on the evidence that only one telephone call was made by the 2nd Accused and that was made to the 1st Accused telling him to come down as he was already there. The 2nd Accused therefore could not have uttered similar words to John as a signal to convey his presence at the scene (during the first telephone conversation) as was submitted by his Counsel leaving to John to call the 1st Accused.. The 1st Accused's evidence in favour of the 2nd Accused that he received no telephone call from him, was therefore unworthy of belief.

17.5 I could not also fathom why if the 2nd Accused's version of events was truthful, he did not immediately upon his arrest volunteer to inform S/Sgt Ang by telling him about John having given him the drugs at the Ang Mo Kio MRT station of which he had no knowledge, for delivery. Instead the 2nd Accused admittedly lied to the CNB officers when he made his voluntary out of Court statement to S/Sgt Ang in response to questions. Of course, it cannot be said that because a witness

has been proved a liar on one or two points, then the whole of his evidence must in law be rejected. I was mindful that to simply come to this conclusion would be wrong. When a lie or lies comes to light, it is imperative that the witness's evidence must be scrutinised with great care and indeed suspicion.

17.6 Having scrutinised with care the 2nd Accused's evidence, I found that he was not a truthful witness. The 2nd Accused far from being frightened into telling lies as was submitted by his Counsel, should and would have felt incensed and outraged if he had been innocently duped by a trusting friend to deliver drugs to the 1st Accused and as such he would have naturally and readily told the CNB officer at the scene about what John had done to him which would have led to John's arrest whilst John waited at the Ang Mo Kio MRT station for the 2nd Accused to arrive and the 2nd Accused would then have vindicated himself. I may add that the 2nd Accused admittedly also did not tell the Investigating Officer about John and his role at any time. If the 2nd Accused was frightened at the time of his arrest, he would have come to terms with his fright in the next few months and told the Investigating Officer about what John did to him. But the 2nd Accused did not do so.

17.7 I was satisfied in the light of all the circumstances that the 2nd Accused's account of what happened was not a credible account. His admitted lies added a damaging complexion to his case resulting in my finding in the end that he was an untruthful witness. The lies were namely that he was at the scene to take an 'ang pow' when he was not; that he was called by a Chinese person (1st Accused) through his handphone 92297274 at 9.00pm when he was not and that he had not handed anything to the 1st Accused when he in fact had. The lies and admissions in my opinion were deliberate, related to a material issue in the case and were motivated by a realisation of guilt and fear of the truth. The Accused's lies therefore corroborated the Prosecution's version of events that the 2nd Accused had knowledge that he had carried and given a controlled drug to the 1st Accused: *Lucas* [1981] QB 720 at 724.

17.8 In any case, the 2nd Accused by not questioning John about the contents of the orange plastic bag or examining it himself either in the presence of John or later on his way to deliver it to the 1st Accused when there was nothing constraining him to look into the plastic bag showed that he was wilfully shutting his eyes to the truth and was prepared to do anything including act illegally irregardless of the consequences. I therefore further equated his wilful blindness to knowledge, namely, that he knew that he took, conveyed and **gave** the plastic bag in question containing the drug inside it knowing it contained a drug.

17.9 As the 2nd Accused had therefore not proven an absence of knowledge of that which he possessed beyond a reasonable doubt, the presumptions in the MDA against him became final and conclusive. He therefore knowingly had possession of the 62.76 grams of morphine and trafficked in it when he **gave** it to the 1st Accused thereby failing to prove the contrary on a balance of probabilities - namely that he did not traffic in the said drug.

20. I therefore found the 2nd Accused guilty as charged and convicted him and sentenced him according to law.

Amarjeet Singh

Judicial Commissioner

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