Low Lin Lin v Public Prosecutor
[2002] SGHC 199

Case Number : MA 57/2002

Decision Date : 30 August 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Sant Singh and Foo Cheow Ming (Sant Singh Partnership) for the appellant; Hamidul Haq (Deputy Public Prosecutor) for the respondent

Parties : Low Lin Lin — Public Prosecutor

Criminal Law – Offences – Possession of cocaine – Presumption of possession – Whether invocation of presumption proper – Accused leaving bag unattended in public place – Evidence of witness linking cocaine to accused – Whether accused having possession or control of cocaine – ss 8(a) & 18(1) Misuse of Drugs Act (Cap 85, 2001 Ed)

Evidence – Principles – Adverse inference – Prosecution's failure to adduce certain evidence – Whether prosecution deliberately withholding evidence – Whether appropriate to draw adverse inference – s 116 illustration (g) Evidence Act (Cap 97, 1997 Ed)

Evidence – Weight of evidence – Accomplice – Prosecution not charging its witness with same offence as accused – Whether witness an accomplice – Whether to treat such witness as an accomplice – Whether witness credible

Evidence – Witnesses – Corroboration – Credibility of prosecution witness – Whether independent corroborating evidence necessary – Whether appellate court should disturb trial judge's assessment of witness's credibility

Judgment

GROUNDS OF DECISION

The appellant was charged in the district court with possession of 0.27 grams of cocaine, an offence under s 8(a) of the Misuse of Drugs Act (Cap 185). She was sentenced to 18 months' imprisonment and appealed against her conviction. After hearing her arguments, I dismissed her appeal and now give my reasons.

The agreed facts

2 At about 10.30 pm on 29 September 2000, the appellant met two friends at the Double-O Pub at Mohamed Sultan Road: one Sybil Foo Yen Pin ('Sybil') and one Tan Chong Han Jerry ('Jerry'). Later that night, at about 11.45 pm, the three of them left Double-O go to Velvet Underground, a club at Jiak Kim Street. When they reached Velvet Underground, the appellant met another friend, Lee Soo Han ('Soo Han'), who was seated at Tables 6 and 7 with a group of friends. The appellant left her handbag on the backrest of the sofa there. The appellant had a few drinks at Velvet Underground before leaving with Jerry and Sybil for Zouk, another club located on the same premises, leaving behind her handbag at Tables 6 and 7 with Soo Han's party.

3 When the appellant returned alone to Velvet Underground at about 1.30 am on 30 September 2000, she and Soo Han joined another group of people who were seated about three tables away from Tables 6 and 7. Soo Han's friends, who had originally been at Tables 6 and 7, left Velvet Underground at about 2 am on 30 September 2000, leaving the appellant's handbag behind. One of Velvet Underground's staff, Diana Chong, noticed the handbag and informed the manager, Alex Choy.

They retrieved the handbag and searched it. When they found a plastic packet of whitish substance inside the wallet, they handed over the handbag to the security manager, Simon Sim.

4 As the Central Narcotics Bureau ('CNB') was conducting an operation at Velvet Underground at the time, Simon Sim handed over the handbag to one ASP Jason Tan ('ASP Tan'). In the meantime, the appellant had returned to Tables 6 and 7 to look for her handbag, and was informed by Diana Chong that it was being held by security at the ticketing booth. When the appellant and Soo Han approached the ticketing booth, ASP Tan held up the handbag and asked generally to whom it belonged. The appellant claimed ownership of the handbag and ASP Tan searched it in her presence. When ASP Tan saw the packet of substance in the wallet, he referred her to Insp Sentilnathan, who searched the handbag again and recovered the packet of substance. When questioned, the appellant claimed that it did not belong to her and that she did not know what it was. Insp Sentilnathan then arrested the appellant.

5 The appellant gave a urine sample to the CNB at 3 am on 30 September 2000. The urine sample tested negative for opiates, cannabis, amphetamines and ketamine. The appellant provided another urine sample on 31 October 2000 which was tested for cocaine but the test also proved negative. The appellant was later charged with possession of cocaine in July 2001.

The prosecution's case

6 The prosecution's main witness was Sybil, who testified that she had discussed trying cocaine with the appellant some months before the incident in question. On 28 September 2000, the appellant told Sybil that she had brought back some cocaine from a recent trip to Hong Kong, and the two agreed to meet the next day to try the cocaine. While at Double-O on the night of 29 September 2000, Sybil and the appellant went to a public toilet in the same building complex after failing to find a toilet on Double-O's premises. There was a queue of women at the toilet and Sybil got into the same cubicle as the appellant. The appellant took a packet of white substance from her wallet and placed some of the substance on the toilet seat cover. She snorted some of the cocaine with a rolled-up currency note and Sybil followed suit. The remaining substance was placed back inside the appellant's wallet.

7 When Sybil, the appellant and Jerry left Double-O for Velvet Underground and Zouk, as described in the agreed facts, Sybil was carrying her belongings in her hands throughout the entire evening, and did not place them in the appellant's handbag at any point in time. Sybil stayed at Zouk with Jerry until 2 am when they decided to go home. While leaving, they saw a crowd at the entrance to Velvet Underground and a man in an orange T-shirt hold up the appellant's bag. When Sybil saw the appellant acknowledge the bag as hers, she immediately left with Jerry as she suspected that the man was a CNB officer and she knew that there was cocaine in the handbag.

8 Sybil had given a statement to the CNB on 31 October in which she had not mentioned consuming cocaine with the appellant in the public toilet. She also stated that she did not know whether the appellant or her friends abused drugs. When asked to explain the inconsistencies between her statement and her testimony, Sybil explained that she did not mention consuming cocaine initially as she was worried about getting into trouble. She also claimed that the appellant had asked her several times, from as early as 30 September 2000, to not tell the truth to the CNB. However, Sybil decided to tell the truth when the CNB contacted her for another statement on 19 February 2001 as she was afraid of getting into more trouble if she continued to lie. Sybil added that, when she informed the appellant that she had made certain admissions in her statement of 19 February, the appellant asked her to change her statement, and threatened her with jail when Sybil refused.

9 The other two witnesses called by the prosecution were Dr Lui Chi Pang from the Narcotics Laboratory at the Health Sciences Authority and Jerry. Dr Lui explained that the test done on the appellant's urine did not show the absence or presence of cocaine as the Narcotics Laboratory had been asked to test for ketamine. As such, the time range for the test was set for between 4.6 minutes to 9 minutes, outside the range for cocaine or its metabolite, "e-m-e", which was 10.9 minutes and 3.1 minutes respectively. Furthermore, cocaine stayed in the system for only up to five days, such that the second urine sample provided by the appellant one month after her initial arrest would have proved negative in any case.

10 Finally, Jerry testified that, when Sybil and the appellant left to go to the toilet at Double-O, they were away for about 10 to 15 minutes. He did not notice any unusual behaviour when they returned, and did not recall any incident in which Sybil placed her belongings in the appellant's bag when they were leaving Double-O.

The appellant's case

11 While the appellant agreed with Sybil's claim that the two of them had gone to the toilet together while they were at Double-O, and that they had shared a cubicle together, she completely denied taking cocaine that night, or any drugs previously. Indeed, the appellant's position was that she had left both her handbag and her wallet behind in Double-O when she went to the toilet with Sybil.

12 The appellant also claimed that when she left Double-O for Velvet Underground that evening, Sybil put her wallet and keychain in the appellant's bag, and that this was not the first time this had happened, as Sybil had the habit of putting her belongings in other people's bags. When they reached Velvet Underground and the appellant was at Tables 6 and 7, Sybil asked the appellant for permission to remove her (Sybil's) wallet from the handbag. The appellant agreed and Sybil returned later to tell the appellant that she had taken her wallet, and to ask the appellant to go along to Zouk with her.

13 As for her subsequent retrieval of her handbag from ASP Tan, the appellant claimed that, when she and Soo Han approached the ticketing counter, she noticed a group of men wearing differently-coloured t-shirts, and concluded from their dress and demeanour that they were police officers. She had no qualms about claiming her handbag from ASP Tan as she had nothing incriminating in her bag, and she was thus very shocked when the packet of substance was found inside her wallet.

14 The appellant also denied asking Sybil to lie on her behalf, or to declaring to Sybil that she would never admit to owning the cocaine now that her urine test had come out negative. Although she did contact Sybil in February 2001 when she heard that Sybil had been contacted by the CNB for a second interview, she claimed that she did not press Sybil when the latter declined to talk about her interview.

15 Finally, the appellant accused Sybil of being the real owner of the cocaine, and claimed that the latter had implicated the appellant in order to lift suspicion from herself. She surmised that Sybil had either placed the cocaine in her wallet when Sybil retrieved her own wallet from the appellant's bag while at Velvet Underground, or that Sybil had sneaked back to Velvet Underground to place the cocaine in the appellant's wallet while the appellant was busy socialising at Zouk.

The trial judge's findings

16 The trial judge first considered whether the presumption of possession found in s 18(1)(a) of

the Misuse of Drugs Act (the 'MDA') operated in the present case. On the evidence adduced, the trial judge found that the appellant had "possession" of her handbag, such that the s 18(1) presumption could be invoked. This led to the further presumption in s 18(2) that the appellant had knowledge of the nature of the drugs. The appellant was hence obliged to rebut the prosecution's case on a balance of probabilities, which the trial judge felt that she had failed to do.

17 The trial judge was of the further view that, even if the presumptions were not relied on, the evidence adduced was sufficient to prove the appellant guilty beyond reasonable doubt. Although the defence had mounted many attacks on Sybil's credibility as a witness, the trial judge, after looking at the arguments in detail, concluded that Sybil's credit had not been impeached. At the same time, the trial judge took the view that the appellant was a deceitful witness whose account of events was glibly inventive. She hence accepted Sybil's evidence over the appellant's, and, being satisfied that the charge had been proved beyond reasonable doubt, convicted the appellant of it.

The appeal to this court

18 Before me, the appellant concentrated on two main issues; namely, whether the presumption in s 18(1) of the MDA had been properly invoked; and whether the trial judge had erred in convicting the appellant of the charge.

The presumption in s 18(1) of the MDA

19 Section 18(1)(a) of the MDA provides:

> Any person who is proved to have in his possession or custody or under his control anything containing a controlled drug … shall, until the contrary is proved, be presumed to have had that drug in his possession.

In *Van Damme Johannes v PP* [1994] 2 SLR 246, the Court of Appeal decided that neither physical possession nor physical control was required in order for the above presumption to be invoked. As such, although Van Damme had actually ceded physical possession and control of the suitcase of drugs to the Singapore Airport Terminal Services (SATS), he nevertheless retained possession of the suitcase for the purposes of s 18(1) as he had the baggage tag to the suitcase and could obtain access to it if he approached the Lost and Found staff.

20 In the present case, the appellant had never denied her ownership of her handbag, and the trial judge placed much reliance on her testimony that (i) she habitually placed her handbag on the sofa backrest, and (ii) Tables 6 and 7 were tables habitually occupied by her friends. Furthermore, the appellant had testified that Sybil had to seek her permission before she could retrieve her own belongings from the appellant's handbag. As such, the trial judge concluded that the appellant had retained possession of the handbag, such that the presumptions in s 18(1) should be applied against the appellant.

21 The trial judge's reasoning was challenged by the appellant, who, before me, emphasised that the bag had been left unattended. The appellant also sought to distinguish *Van Damme Johannes*, pointing out that, in that case, the suitcase was at all times in the control of the SATS, having being checked in at the airline's luggage counter. The in-flight spur area from which the suitcase was recovered was not a public area, access to it being restricted to airport staff and public officers. Although Van Damme did not have physical possession and control of the suitcase during that time, he was nevertheless the acknowledged owner of the suitcase, and no ordinary member of the public

would have been able to have access to the suitcase without first presenting the luggage claim ticket to the airline.

22 In *PP v Ho So Mui* [1993] 2 SLR 59, the Court of Appeal noted that the question of what amounts to "possession" for the purposes of s 18(1) is "one of fact and necessarily varies from case to case". I agreed with the appellant's contention that the facts in *Van Damme* were very different from those in the present case. I noted that the appellant had left her handbag in a public place for at least an hour. Even presuming that the appellant's friends at Tables 6 and 7 acknowledged her ownership of the bag, nevertheless none of them felt any responsibility for it or they would not have simply left it behind when they decided to leave Velvet Underground. Furthermore, not all of the persons seated at Tables 6 and 7 were known to the appellant, and the bag itself was of a relatively 'open' nature (being fastened by a single button only). In light of these circumstances, I felt that it would be going too far to find that the appellant had possession on the basis of her ownership of the handbag and her placing it with her friends alone.

23 The above said, I was nevertheless of the view that the invocation of the presumption was appropriate in the circumstances of the case. By Sybil's account, the cocaine was already in the appellant's handbag before she even went to Zouk and left her handbag behind. If this was believed, the prosecution would have succeeded in proving that the appellant had possession or control of the drugs, thus triggering the s 18(1) presumption of possession. As explained below, I saw no reason to disturb the trial judge's finding that Sybil's account should be believed, and hence agreed with the conclusion that the s 18(1) presumption applied. It followed from this that the trial judge was entirely correct in requiring the appellant to prove her defences on a balance of probabilities.

Whether the trial judge should have preferred Sybil's evidence to the appellant's

24 The invocation of the s 18 presumption aside, the only way to prove the case against the appellant was to accept Sybil's evidence and, as a corollary, reject the appellant's, as Sybil was the only person who was able to explain the presence of the cocaine in the appellant's wallet. The appellant as such raised several arguments before me meant to demonstrate that the trial judge had erred in accepting Sybil as a reliable witness. As shall be seen below, I was not convinced that the trial judge had reached the wrong conclusions on Sybil's and the appellant's respective credibility.

The standard by which to judge Sybil's evidence

25 The first criticism made by the appellant of the trial judge's findings was based on para 87 of the grounds of decision, in which the trial judge had commented:

> As to the submissions concerning Sybil's drug history and her lack of truthfulness in the first statement, if the gist of these submissions was that I should treat her evidence with caution, then that was precisely how I treated the evidence of all the witnesses.

The appellant argued that this was the wrong approach to take, as Sybil was not just any other witness. Instead, she had on her own admission consumed cocaine with the appellant, and should hence have been treated like an accomplice, with all the attendant caution implicit in such treatment. The prosecution for its part contended that Sybil was not an accomplice as the only crime she had been committed was consumption of drugs, while the appellant had been charged with the possession of drugs.

26 I agreed with the prosecution's contention that Sybil was not an accomplice in the strictest sense of the word. At the same time, it was manifestly clear to me that Sybil could not be treated like any other witness. Her own confessed act of consumption was so closely tied with the issue of the appellant's possession of the cocaine that she would definitely have to be considered an interested witness, and a very interested one at that. For this reason, I took the view that Sybil's evidence ought to have been treated with the same caution afforded the evidence of accomplices, even though she was not strictly speaking an accomplice.

27 Having said the above, I was satisfied that the trial judge did subject Sybil's evidence to the high level of scrutiny which should be accorded the testimony of accomplices.

Sybil's credibility as a witness

28 Section 116 of the Evidence Act (Cap 97) provides that the court may presume:

> (b) that an accomplice is unworthy of credit and his evidence needs to be treated with caution

The above was interpreted in *Chai Chien Wei Kelvin v PP* [1991] 1 SLR 25 as meaning:

> Whether or not the court should believe the evidence of the accomplice would depend on all the circumstances of the case and the evidence must be tested against the objective facts as well as the inherent probabilities and improbabilities…

Treating Sybil's evidence with caution

29 The appellant raised several issues as tending to show the unreliability of Sybil's evidence. The first was the inconsistencies between Sybil's statement to the CNB on 31 October 2000, in which she stated that she did not know whether the appellant abused drugs, and her statement of 19 February 2001, in which she gave a full account of the consumption incident in the toilets outside Double-O. A second issue was an alleged promise of immunity made by the Investigating Officer (the 'IO') to Sybil when the second statement was made, arguing that since the IO did not have the legal authority to offer immunity, Sybil's fate remained open-ended and there was hence incentive for her to lie in an effort to get herself out of trouble. A final issue was that Sybil had not disclosed that the appellant had asked her to lie until the trial itself, such that Sybil must have been improvising her testimony in order to exaggerate the culpability of the appellant.

30 I found that it was clear from the grounds of decision as well as from the Notes of Evidence that the trial judge was well aware of the inconsistencies in the statements and sought an explanation from Sybil. The explanation that Sybil provided - namely that she had lied in her statement of 31 October 2000 as she feared getting involved in the CNB investigations, but fear and guilt in the intervening months led her to tell the truth to the CNB – was to my mind perfectly reasonable and I concluded that the trial judge had not erred in accepting it. The same applied to Sybil's initial non-disclosure of the appellant's request for her to lie. Again, the trial judge was well aware of this non-disclosure and had demanded an explanation from Sybil for it. I was of the opinion that Sybil's explanation – that her main reason for not telling the truth on 31 October 2000 was to keep herself out of trouble, and she did not think that the appellant's request was very important as she thought it came naturally – was not such as to arouse suspicion.

31 As for the alleged promise of immunity, I was not convinced it detracted in any way from the reasonableness of her explanation. For one thing, the alleged promise of immunity was only made after Sybil had confessed everything to the CNB. Sybil was as such leaving herself open to criminal charges by telling the truth. I also considered whether a promise of immunity had in fact been made by the IO. What had actually transpired on 19 February was that, after confessing that she had consumed cocaine, Sybil asked the IO if she was going to be charged. The IO then told her that since the focus of the investigation was presently on the possession of the drugs, not consumption, Sybil would not have to worry about getting in trouble. In the circumstances, I took the view that it would be extremely far-fetched to consider that a promise of immunity had been made.

Testing the evidence against objective facts

32 The appellant's arguments under this head related to the colour of the appellant's wallet on the night in question. While both the prosecution and the appellant agreed that the wallet was a black wallet, Sybil testified that she thought the appellant was using a green snakeskin wallet. The appellant hence contended that Sybil's mistake as to the colour of the wallet showed that she was also lying when she said that she saw the appellant take the cocaine out from the wallet.

33 While it is patently obvious that Sybil made a mistake as to the colour of the wallet, I failed to see how the mistake could be said to lead logically to the conclusion that Sybil was also lying about the consumption incident. Sybil had earlier testified that she did not often notice things such as wallets and clothing, and the appellant herself had conceded that she often changed her wallets and bags to match her clothing. Sybil's attention during the consumption episode would have been focussed on the cocaine, and I did not see anything sinister in her inability to remember the colour of the wallet.

Weighing the inherent probabilities and improbabilities in the evidence

34 The final attempt by the appellant to undermine the trial judge's assessment of Sybil's credibility came from a series of arguments purporting to show the improbability of Sybil's account of the cocaine consumption. In particular, the appellant took issue with Sybil's claim that the cocaine was consumed in a public toilet with a queue waiting outside, and that the cocaine was cut into lines on the toilet seat cover itself. However, I noted that Sybil did testify in the court below that their original intention had been to use the toilets at Double-O, only to find that they were still being constructed. The appellant herself had also admitted under cross-examination the following: that she would have expected a certain amount of privacy in the cubicle of a ladies' toilet; that the toilet at Robertson Walk was far from being as dirty as a toilet in a hawker centre; and that snorting cocaine would not generate the type of noise or smell which might arouse the suspicions of the persons queuing outside.

35 As for the appellant's claim that Sybil's and her getting into a single cubicle together would have aroused the attention of third parties, I noted that the appellant herself had claimed that she and Sybil had gone together into a single cubicle, but to urinate and not to consume drugs. It followed that I could hardly accept that such an act was improbable when the appellant herself had accepted that there was nothing odd in it.

36 One last criticism made by the appellant under this head was of Sybil's testimony that she "didn't feel anything" after consuming the cocaine, contending that her inability to describe the effects of cocaine were more consistent with the fact that they had not in fact consumed any cocaine. The appellant also suggested that Sybil ought to have commented on the lack of feeling to the appellant immediately afterwards. However, I noted that, in the trial below, Sybil had not been

questioned on her lack of sensation, the appellant's counsel having let the matter drop during cross-examination. To take issue with it now would run foul of the rule in *Browne v Dunn* 1893] 6 R 67, which states that any matter upon which it is proposed to contradict the evidence-in-chief given by the witness must normally be put to him so that he may have an opportunity of explaining the contradiction, and failure to do this may be held to imply acceptance of the evidence-in-chief.

37 I was also aware that the amount of cocaine consumed was in all likelihood very small. 0.27 grams of cocaine had been seized from the appellant at Zouk, constituting the remainder of the original quantity in the sachet. Sybil's testimony was that the appellant only poured "some" out, sufficient only for two lines of two cm per person. In the absence of expert evidence on the effects of consumption – evidence which was open to the appellant to adduce – and counsel's failure to question Sybil on the effects of the cocaine during the trial, I concluded that it would be inappropriate to make too much of the absence of any after-effects from the cocaine.

38 All in all, I took the view that the appellant's arguments under this head did not go very far in supporting her argument that the trial judge failed to consider the inherent improbabilities in Sybil's account. I found that the account was not improbable in the first place, and the appellant's own admissions under cross-examination led me to conclude that the appellant had exaggerated the alleged improbabilities in the story in an attempt to save her own skin.

Whether independent corroborating evidence was needed

39 It followed from my findings above that I also rejected the appellant's argument that the trial judge ought to have sought independent corroborating evidence before relying on Sybil's evidence to convict the appellant. The need for such evidence depended on the trial judge's assessment of the flaws (if any) in Sybil's evidence and whether she felt that it would be safe to convict the appellant on Sybil's evidence alone. I found that, of the many criticisms made by the appellant, few were valid and Sybil was nevertheless able to provide reasonable explanations for them. It is trite law that an appellate court will be slow to disturb the findings of a lower court unless they were clearly reached against the weight of the evidence – *Lim Ah Poh v PP* [1992] 1 SLR 713. The trial judge has the benefit of observing the witnesses in person, an advantage denied to the appellate court, and the prima facie reasonableness of Sybil's explanations militated strongly against my overturning of the trial judge's assessment of Sybil as an "honest and credible" witness.

The credibility of the appellant's defence

40 At the same time, I agreed with the trial judge's conclusion that the appellant's defence should be disregarded. As the trial judge has pointed out, the appellant's own testimony was rife with inconsistencies, notably her ability to remember recall the exact sequence of events by which Sybil allegedly retrieved her possessions from the appellant's handbag while at Velvet Underground, while at the same time claiming that this was a common occurrence and that she had not kept her eye on Sybil while they were at Velvet Underground. The appellant also came up with far-fetched explanations to refute the prosecution's suggestion that a person who wanted to plant cocaine in the appellant's handbag would simply slip it into the bottom of the bag rather than take the extra trouble of putting it in the appellant's wallet.

41 A third example was the appellant's claim that she had contacted Sybil after she found out about the latter's interview with the CNB on 19 February 2001 because she was curious as the CNB had not contacted her for a long time. However, the prosecution was able to show that the appellant had been interviewed by the CNB only two weeks prior to Sybil's interview, thereby showing her claim of curiosity to be a lie. In light of this disclosure, it would not be unreasonable to draw the inference

that the appellant was concerned that Sybil should break down and confess to the CNB.

42 The appellant also made much of the fact that she had admitted ownership of her handbag to ASP Tan, contending that it demonstrated her innocence. At the same time, she took issue with the trial judge's finding that she had had many drinks that evening and would not have been able to identify ASP Tan as a law enforcement officer in the short time span afforded her.

43 I agreed that it would not have been fair in the circumstances to conclude that the appellant did not know that ASP Tan was a law enforcement officer. Although the appellant had had some ten to twelve drinks that evening, her testimony in court was that she was "happy, high", not inebriated, and it was accepted that the appellant had a high tolerance for drink. Furthermore, I noted that the trial judge was willing to accept both Sybil and Jerry's testimony that they too recognised ASP Tan as a law enforcement officer, although the former, too, had consumed drinks.

44 The above said, I did not find the appellant's act of claiming her bag from a known law enforcement officer to go very far at all in showing her innocence of the charge. As the trial judge noted in her grounds of decision, there were other reasons for the appellant's actions. Chief among them was the fact that the handbag could have been traced back to the appellant, since she had informed both Diana Chong and Soo Han that she had lost her handbag. Furthermore, the handbag contained the name-cards of the appellant's friends, and the handbag could have been traced back to her through them. If the appellant was lucid enough to notice ASP Tan's clothing that night and to reason out that he was a law enforcement officer, she would also have been capable of concluding that she should acknowledged ownership of her bag since it could always be traced back to her.

Other issues raised by the appellant

45 Apart from the foregoing, the appellant raised two further points which she contended the trial judge ought to have taken account, and which, if they had, would purportedly have militated against a finding of guilt.

The absence of 'crucial' pieces of evidence

46 First, the appellant contended that the IO had failed to test the appellant's urine sample properly, and also did not produce the currency note which was used by the appellant and Sybil to snort the cocaine. The appellant argued that these omissions gave rise to an adverse inference which undermined the prosecution's case.

47 Section 116 of the Evidence Act provides that the court may presume:

> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it

The prosecution for its part had explained that the CNB were not expecting the drug concerned to be cocaine, and hence did not test the appellant's urine sample for it. As Dr Lui explained in the court below, it was too late to test the urine sample for cocaine by the time the CNB realised that the drugs in the packet were in fact cocaine. In any event, since the urine test might or might not have shown that the appellant did consume cocaine, such that it was a neutral point which should not influence the decision. As for the currency note, the prosecution explained that the CNB were not in a position to seize seemingly innocuous items in the possession of the appellant as they would not have known that a currency note was used to snort the cocaine until much later in the investigations.

48 Illustration (g) is an evidentiary device meant to penalise parties who withhold evidence, and the following passage from *Mususamy v PP* [1987] 1 MLJ 492 is useful:

> It is essential to appreciate the scope of s 114(g) [now s 116(g)] lest it be carried too far outside its limit. Adverse inference under that illustration can only be drawn if there is withholding or suppression of evidence and not merely on account of failure to obtain evidence.

Furthermore, it would not be appropriate to draw an adverse inference if a reasonable explanation for the failure to produce is given – *Murugan v Lew Chu Cheong* [1980] 2 MLJ 139. In the present case, while the absence of evidence on the urine test and the currency note were most unfortunate, I concluded it would not have been appropriate in the circumstances to draw an adverse inference against the prosecution.

49 I was also mindful that it was not crucial to the prosecution's case against the appellant to produce such evidence, as it is clear that a conviction may be warranted on the testimony of one witness alone, so long as the court is aware of the dangers and subjects the evidence to careful scrutiny. This is so whether the witness is an accomplice – *Chua Poh Kiat Anthony v PP* [1998] 2 SLR 713 – or an interested witness – *Tan Khee Koon v PP* [1995] 3 SLR 724, *Kwang Boon Keong Peter* [1998] 2 SLR 592.

Whether certain pieces of prejudicial evidence should have been admitted

50 The final argument canvassed by the appellant was that the trial judge should not have admitted evidence pertaining to the importation or consumption of cocaine by the appellant, since she was not being charged with either of these offences, but with possession of cocaine. I found this objection to be wholly without merit. As the prosecution has pointed out, the evidence on importation was only incidentally mentioned by Sybil, as part of her explanation as to why she and the appellant ended up in the toilets near Double-O snorting cocaine. It was very clear to me that such evidence had not been relied on by the trial judge in convicting the appellant.

51 As for the evidence of consumption, it was patently clear that such evidence was relevant to the case at hand. Although the appellant was charged with possession and not consumption, Sybil's account linked the accused to the cocaine found in the handbag and, if believed, would demolish the appellant's defence. Although the evidence of drug consumption by the appellant may indeed have been extremely prejudicial to her, I failed to see how the trial judge could have justified excluding it, given how crucial it was towards establishing the appellant's guilt.

Conclusion

52 The present case turned ultimately on whether Sybil's or the appellant's testimony should be believed. Given that Sybil was able to provide prima facie reasonable explanations for those few inconsistencies in her statements, while the appellant's story was full of logical and factual flaws, I concluded that the trial judge was justified in preferring Sybil's evidence, and accepting it in its entirety. It followed that the appellant was unable to rebut the presumption of possession. I would also add that if the s 18 presumption had not applied, Sybil's evidence was such that the prosecution would have proved its case beyond reasonable doubt. Consequently, I dismissed the appeal.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore