

Amran Bin Eusuff & Anor v Public Prosecutor
[2002] SGCA 20

Case Number : Criminal Appeal No 23 of 2001
Decision Date : 01 April 2002
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ
Counsel Name(s) : —
Parties : —

Between

1. **Amran Bin Eusuff**
2. **Rabu Bin Rahmat ... Appellants**

And

Public Prosecutor ... Respondent

Citation: Criminal Appeal No 23 of 2001

Jurisdiction: Singapore

Date: 2002:04:01
2002:03:18

Court: Court of Appeal

Coram: Yong Pung How, CJ
Chao Hick Tin, JA
Tan Lee Meng, J

Counsel:

Luke Lee (*Luke Lee & Co*) and David Tan Tee Boon (*Lawrence Chua & Partners*) for the first appellant

Ho Meng Hee (*Ho Meng Hee & Co*) and Johan Ismail (*Johan Ismail & Co*)
for the second appellant

Peter Koy and Paul Chia (*Deputy Public Prosecutors*) for the respondent

[Delivered by Yong Pung How, CJ]

HEADNOTES

Criminal Law – Entrapment – Whether entrapment is a valid defence to a criminal charge

Criminal Law –

Misuse of Drugs – Trafficking in controlled drugs – Whether accused persons were involved in the sale and delivery of more than 500 grams of cannabis – Section 5(1)(a), 33 of the Misuse of Drugs Act

Criminal Procedure

– Appeal – Power of an appellate court to reverse findings of fact – Whether any reason to interfere with trial judge’s findings of fact

Evidence

– Admissibility of statement given to CNB officers – Test for the admissibility of confessions under section 24 of the Evidence Act – Factors affecting the admissibility of a confession – Whether the statements made by the Second Accused were admissible

Evidence

– Admissibility and weight of a confession by a co-accused – Admissibility of co-accused confession pursuant to section 30 of the Evidence Act – Whether the First Accused's confession can be used against the Second Accused because it is reliable

Sentencing

– Trafficking more than 500 grams of cannabis – Entrapment – Whether there is a judicial discretion to reduce the sentence from one of death to life imprisonment on account of the entrapment – Section 33 and the Second Schedule of the Misuse of Drugs Act

Facts

Amran bin Eusuff ('Amran') and Rabu bin Rahmat ('Rabu') were jointly charged with committing an offence under s 5(1)(a) of the Misuse of Drugs Act, read with s 34 of the Penal Code and punishable under s 33 of the Misuse of Drugs Act for trafficking in more than 500 grams of cannabis, in furtherance of a common intention of them both, by delivering 2174.86 grams of cannabis to an undercover CNB officer, Mohd Nabil bin Shahar on 3 May 2001.

On 1 May 2001, Corporal Fazuri bin Isnin ('CPL Fazuri') of the CNB received information that a person named "Daud" was looking for a buyer of cannabis. The next day, he managed to get in contact with Daud and his partner who was called "Abu". CPL Fazuri posed as a buyer named "Boy" and negotiated with both of them to purchase 3 kg of cannabis to be delivered on 3 May 2001. On that date, two CNB officers posed as Boy's men. These officers met with Amran and Rabu, who introduced themselves as "Daud" and "Abu" respectively. Both Amran and Rabu got into a car that the undercover officers were in. The car was driven to Bukit Merah View where Rabu alighted to collect the drugs. He returned to the car and handed the drugs to one of the undercover officer. The CNB officer then signalled to his colleagues to move in to arrest the two suspects whereupon the undercover car was intercepted. Amran and Rabu tried to flee but were eventually arrested.

Amran made two long statements to the Investigating Officer. He admitted that he and Rabu negotiated the sale of cannabis to CPL Fazuri and that he went with Rabu to deliver the drugs to the undercover CNB officers. He admitted that he did so for the commission he was promised. As for Rabu, he also made two long statements to the Investigating Officer. In the first one, he denied flatly that he was involved in drug trafficking. However, in the second statement, he admitted that he procured the drugs to sell to Boy.

During the trial, Amran claimed that he did not own the drugs and that he was entrapped to commit the offence. Rabu argued that he made the statements to the CNB involuntarily and that he was actually not involved in the trafficking at all. The trial judge rejected all the defences raised by both accused, convicted them of drug trafficking and sentenced them to death. Both accused appealed against his decision.

Held

, dismissing both appeals:

1. Entrapment is not a valid defence to a criminal charge. The central thesis of our criminal law is that a person who voluntarily, and with the necessary intent, commits all the elements of a criminal offence is guilty of that offence, regardless of whether he was induced to do so. Amran

- admitted to the offence and could not be exonerated on the grounds of entrapment. (¶¶ 29,30)
2. Rabu's appeal against conviction was an appeal against the trial judge's findings of fact. The usual caution that an appellate court should not overturn a trial judge's finding of fact unless it is clearly wrong, applied. (¶ 32)
 3. The burden was on the prosecution to prove that the statements made by Rabu were made voluntarily. The test for the admissibility of such statements is partly objective and partly subjective. The prosecution must show objectively that there was no threat, inducement or promise. If it failed to prove that, it must show that although there was an objective threat, inducement or promise, it did not actually operate on the mind of the accused in question. (¶ 34)
 4. Reading a previous statement made by an accused person back to him at the start of the recording of another statement to refresh the memory of the accused does not amount to an objective threat. It is a self-induced threat which does not cause a statement to be inadmissible. (¶ 36)
 5. The denial of family visits would not make Rabu more susceptible to making an involuntary and inadmissible statement as compared to other accused persons. Such a measure is necessary during the period of interrogation. (¶ 41)
 6. The trial judge rightly decided that Rabu was not unwell or deprived of food and sleep to the extent that he could not make a voluntary statement (¶ 41)
 7. Amran's confession was admissible as against Rabu, pursuant to s 30 of the Evidence Act. It was also reliable because Amran implicated himself fully for a serious offence carrying a mandatory death penalty, he did not seek to shift the blame to Rabu and gave evidence which was credible as a whole. (¶ 47)
 8. The evidence against Rabu was overwhelming. His statements to the CNB, Amran's evidence against him and the independent evidence available clearly pointed to his guilt. (¶ 53)
 9. Under s 33(1), read with the Second Schedule of the Misuse of Drugs Act, the court does not have any judicial discretion to reduce Rabu's sentence from one of death to life imprisonment. It is irrelevant whether Rabu had been entrapped to commit the offence. (¶¶ 54,55)

Case(s) referred to

Chin Seow Noi & Ors. v PP [1994] 1 SLR 135 (folld)
 Gulam bin Notan v PP [1999] 1 SLR 26 (folld)
 How Poh Sun v PP [1991] 1 SLR 220 (folld)
 Ng Ai Tiong v PP [2000] 1 SLR 454 (folld)
 SM Summit Holdings v PP [1997] 3 SLR 922 (folld)

Legislation referred to

Misuse of Drugs Act (Cap 185, 1998 Ed.), ss 5(1)(a), 33, Second Schedule
 Penal Code (Cap 224, 1985 Ed.), s 34

Judgment

GROUND OF DECISION

This was an appeal against the decision of Judicial Commissioner Tay Yong Kwang, who convicted the appellants, Amran Bin Eusuff ('Amran') and Rabu Bin Rahmat ('Rabu') of an offence pursuant to s 5(1)(a) of the Misuse of Drugs Act (Cap 185) ('the Act') read with s 34 of the Penal Code (Cap 224) and punishable under s 33 of the Misuse of Drugs Act. The judge sentenced both appellants to suffer death.

The charge

2 The charge against Amran and Rabu read as follows:

That you, 1) Amran Bin Eusuff and 2) Rabu Bin Rahmat, on or about the 3rd day of May 2001 at about 8.10 p.m. at along Bukit Merah View in motor car SZA 5202 M, Singapore, in furtherance of the common intention of you both, did traffic in a controlled drug specified in Class 'A' of the First Schedule of the Misuse of Drugs Act, Chapter 185, to wit, by giving to one Mohd Nabil Bin Shahar 6 blocks of vegetable matter containing 2174.86 grams of cannabis at the said place, without any authorisation under the said Act or the regulations made thereafter, and you have thereby committed an offence under section 5 (1)(a) 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, Chapter 185

The prosecution's case

3 The prosecution presented the following facts. On 1 May 2001, at about 8:30 p.m., an agent contacted Corporal Fazuri Bin Isnin ('CPL Fazuri') of the CNB and informed him that a man named "Daud" was looking for a buyer of cannabis. CPL Fazuri told the agent to contact Daud to recommend him as a buyer called "Man Boy". When contacted, Daud asked the agent to relay the message to CPL Fazuri to call him at telephone number "4688965" the next night to discuss the deal. This number belonged to a public telephone at a coffeeshop along Sixth Avenue.

4 On 2 May 2001, at about 8 p.m., CPL Fazuri called Daud at the pre-arranged number and told him that he wanted to buy 1 kg of cannabis. Daud said he had to check the stuff and the price first. He called back about ten minutes later and informed CPL Fazuri that the price would be cheaper if he were to buy 3 kg of cannabis instead. CPL Fazuri said that he would check with his partner and call Daud back. About 15 minutes later, CPL Fazuri called and told Daud that he would take 3 kg if the price was right. Daud said that he wanted \$6,000 for the drugs and CPL Fazuri bargained with him to reduce the price. Daud then handed the phone over to a person called "Abu". Abu continued the negotiations with CPL Fazuri and finally agreed to accept \$5,000 for the drugs. He told CPL Fazuri that either he or Daud would contact him the next day to confirm the time and place of delivery of the drugs.

5 The next day, Daud called CPL Fazuri to arrange a meeting with him later that evening at the 7-eleven store along Sixth Avenue to collect the drugs. CPL Fazuri told Daud that he would send his men to meet Daud and Abu. Daud agreed to the arrangement and told CPL Fazuri that either he or Abu would call again in the evening for a final confirmation. At 7 p.m., Abu called CPL Fazuri to tell him that he had only 2.5 kg of cannabis and that it was selling for \$4,400. CPL Fazuri agreed to buy the drugs at that price. He also informed Abu that the registration number of the car that his men would be driving was "SZA 5202 M". Abu then told CPL Fazuri to instruct his men to pick Daud and him up at the 7-eleven store along Sixth Avenue at 7:45 p.m..

6 After the conversation with Abu, CPL Fazuri briefed the CNB officers involved in the operation to arrest Abu and Daud for trafficking cannabis. The plan was that Corporal Mohd Nabil Bin Shahar ('CPL Nabil') and Sergeant Noor Aldi bin Alip ('SGT Aldi') would act as Man Boy (CPL Fazuri)'s men. They would drive the car bearing the registration plate of "SZA 5202 M" to meet Daud and Abu and be led by the pair to another place to collect the drugs. Three other teams would follow the undercover car in three separate cars. CPL Fazuri would call CPL Nabil's handphone just before the latter was due to meet Daud and Abu. The telephone line would be kept on so that CPL Fazuri could monitor the conversation in the car. Once the cannabis was handed over, CPL Nabil would give a pre-arranged signal by saying the words "barang bagus". Upon receiving this signal, CPL Fazuri would notify the rest of the teams to move in and arrest the suspects.

7 After the briefing, SGT Aldi drove the undercover car and CPL Nabil was the front seat passenger. They parked the car near the 7-eleven store at Sixth Avenue as arranged. At about 7:50 p.m., Amran and Rabu approached their car and asked if they were sent by Man Boy. Amran then introduced himself as "Daud" and Rabu said he was "Abu". Both men entered the car. Daud sat behind CPL Nabil and Abu sat behind SGT Aldi. Amran then instructed SGT Aldi to proceed to Bukit Merah View and stop along the road in front of Block 117, Bukit Merah View. During the drive, Rabu did not say anything but Amran asked CPL Nabil if he had the money for the drugs. When the car stopped, Rabu alighted on his own accord and crossed the road. He headed towards Block 123, Bukit Merah View and was out of sight of the people in the car. While Rabu was collecting the drugs, Daud told CPL Nabil that the stuff was still wet which meant that the drugs were good.

8 About five minutes later, Rabu reappeared with a yellow paper bag in his hands. SGT Aldi made a U-turn to pick him up. Rabu handed the bag over to CPL Nabil and when he saw that the bag contained some bundles, he said "barang bagus". As arranged, the rest of the CNB officers moved in to effect the arrest of Amran and Rabu. One team's car intercepted the undercover car. When the undercover car stopped, both men ran out and tried to escape. They put up a violent struggle to evade arrest and suffered minor injuries in the course of their struggle. However, both were eventually subdued and arrested by the CNB officers.

9 The suspects were brought to a carpark near Delta Swimming Complex where Inspector Senthil Kumaran ('Insp Senthil') recorded their oral statements. Amran admitted that he knew that the yellow paper bag contained 2.5 kg of "ganja" or cannabis. However, he said that the drugs belonged to Rabu and that they were for "Boy". He admitted that he arranged for Rabu to sell the drugs to "Boy". On the other hand, Rabu said that the contents of the yellow paper bag were Amran's. He claimed that he did not know what was inside the bag.

10 After that, CNB officers proceeded to search the homes of Amran and Rabu. However, Amran's residence had already been demolished and nothing incriminating was found in Rabu's home. Subsequently, the suspects were brought to the Jurong Police Regional Headquarters for their urine tests. At about 2:15 p.m., Amran and Rabu were brought to the Major Investigation Branch ('MIB') of the CNB.

11 At the MIB, Insp Senthil briefed Assistant Superintendent Daniel Tan ('ASP Tan'), the Investigating Officer of the case. CPL Nabil also handed the yellow paper bag over to ASP Tan who weighed the drugs in the presence of the suspects and locked them in his metal cabinet. ASP Tan instructed the arresting officers to bring the suspects for a pre-statement medical examination. When Amran and Rabu returned to MIB that night, ASP Tan served them both a copy of the charge against them and a Notice of Warning under section 122(6) of the Criminal Procedure Code. Between about 4 a.m. to 4:42 a.m., he recorded down their cautioned statements separately. Rabu denied that he knew what was in the yellow paper bag while Amran stated that it was Rabu who owned the drugs. Then, he instructed his men to bring the two suspects for their post statement medical examination and left for home.

12 Dr. John Chiam ('Dr. Chiam') of the Alexandra Hospital conducted the pre statement medical examination for both Amran and Rabu. He testified that he found recent abrasions on the forehead, nose, right cheek and lip of Amran. As for Rabu, he found a bruise on his forehead and his right hand and back as well as an abrasion on his left shoulder. Dr. Tan Sing Huang, also a doctor at the Alexandra Hospital, conducted the post statement medical examination. She found seven injuries on Amran instead of the four found by Dr. Chiam. However, she found approximately the same injuries noted by Dr. Chiam on Rabu. She also testified that both Amran and Rabu did not complain to her that

any CNB officer has assaulted them.

13 When ASP Tan returned to MIB on 4 May 2001, he took the drug exhibits pertaining to the case to the Centre for Forensic Science ('CFS') and handed it over to Dr Lui Chi Pang for analysis. Subsequently, ASP Tan received six certificates from the CFS which revealed that the drugs recovered from Amran and Rabu in the yellow paper bag were 2174.86 grams of cannabis.

14 Dr. Ann Young, also an analyst with the CFS testified that Iskandar Zulkarnain Bin Abd Aziz handed the urine samples of Amran and Rabu for analysis on 4 May 2001. She found that Rabu, but not Amran, tested positive for cannabis consumption. Another analyst with the CFS, Dr Natarajan also gave evidence that he received the urine sample of Rabu on 4 May 2001 from Iskandar Zulkarnain. Upon analysis, he found that Rabu's urine sample contained cannabis.

15 Lastly, the prosecution relied on the long statements made by Amran and Rabu to show that both were involved in trafficking cannabis. Amran made a long statement on 8 May 2001 and a further one on 15 May 2001. In the statement recorded on 8 May 2001, he described the events of 2 and 3 May 2001 as the following: On 2 May 2001, he spoke with Boy and told him that he could obtain some cannabis for him. On 3 May 2001, he and Rabu contact Boy to negotiate the sale of the cannabis. When Rabu reached an agreement with Boy, Rabu passed the phone to him. At this point, Boy informed him that his men would pick him and Rabu up at about 7:45 p.m. that night to collect the drugs. When the car arrived, Rabu and him got in. The car drove to Bukit Merah View where Rabu left to collect the drugs. Shortly after that, the car was intercepted and he was arrested. In his statement recorded on 15 May 2001, he admitted that he promised Boy to get the drugs for him because he wanted the commission that Boy promised him badly.

16 Rabu made a long statement on 9 May 2001. He denied that he was involved in the negotiations for the sale of the cannabis. He admitted that, on 3 May 2001, he followed Amran into the undercover car. Furthermore, he admitted that when the car reached Bukit Merah View, he left the car to collect a yellow paper bag from another person waiting at Block 123, Bukit Merah View. However, Rabu denied that he knew what was in the bag. He claimed that he merely followed Amran's instructions to collect the bag.

17 However, in his long statement recorded on 15 May 2001, Rabu changed his story. He admitted that he was involved in procuring and selling the cannabis to CPL Fazuri. His version of what happened on 3 May 2001 was the following: that day, Amran asked him whether he could obtain some cannabis for him and he replied that he would try. At about 7:15 p.m., Amran asked him to talk to Boy who wanted 3 kg of cannabis. Rabu said that he would try to get the drugs and subsequently, he contacted a person called "Daud" (not Amran), whom he met in Batam previously. Daud told him that he could supply him with 2.5 kg of cannabis at \$4,400. Rabu then informed Amran who in turn told Boy that only 2.5 kg of cannabis was available. Boy agreed to both the quantity and price. Rabu also knew that Amran had been promised a commission for setting up the sale.

Amran's case

18 Amran did not dispute most of the prosecution's case. In his defence, he testified that he did not own the drugs and that he was entrapped into committing the offence. However, in his closing submissions, Mr. Luke Lee, counsel for Amran, conceded that entrapment was not a defence to the charge. Furthermore, Mr. Lee conceded that Amran had admitted to all the essential facts constituting the charge even though he denied ownership of the drugs. Ownership was not an essential element of drug trafficking. Amran pleaded for leniency in court but Mr. Lee also conceded

that no leniency was possible since Amran was charged with an offence that was punishable with a mandatory death penalty.

Rabu's case

19 Rabu's gave the following version of the facts in court: He went to Batam on 30 April 2001 and returned to Singapore on 2 May 2001, arriving at the World Trade Centre at about 8 p.m.. He had his dinner at the hawker centre near the World Trade Centre and returned home after that. He did not go to the coffeeshop at Sixth Avenue or speak to Boy that day. He pointed out that Boy spoke to a person called "Abu" and testified that he was not "Abu" since he was never known by that name.

20 On 3 May 2001, he did go to the coffeeshop at Sixth Avenue at about 5 p.m.. Amran arrived at the coffeeshop at about 7:15 p.m. but they did not speak to each other until Amran had finished with his telephone call. Amran told him that his friends would be coming to the coffeeshop in a car and that they were proceeding to Bukit Merah View. He was invited to come along with Amran and he did so because he thought that Amran wanted to give him some tips about racing horses. He did not ask Amran any other questions about the purpose of the trip. He testified that he introduced himself as "Rabu" to Amran's "friends", i.e. the undercover CNB officers. During the journey, there was no mention about drugs. He did not talk to the CNB officers. It was Amran who instructed the officers to proceed to Bukit Merah View.

21 When the car reached its destination, Amran asked him to go to Block 123 to collect a plastic bag. He decided to collect the bag as a favour to Amran. Thus, he went to the void deck of Block 123 where he met a man, called "Ahmad", whom he had never seen before. Ahmad refused to tell him what he promised to give Amran and Rabu did not press the issue. He followed Ahmad to the landing between the second and third floor. Ahmad then took a paper bag that was tied up from a heap of rubbish and handed it to him. He took the bag without opening it and gave it to Amran in the car. Rabu testified that he did not know the contents of the bag.

22 When he entered the car, SGT Aldi drove off. In the car, Amran handed the paper bag to the front seat passenger. Rabu gave evidence that he only realised that the bag contained cannabis when the front seat passenger opened up the bag and he smelt the drugs. He heard the front seat passenger say "barang bagus". Soon after that, the car was intercepted. Rabu suspected that CNB officers were conducting arrests and he attempted to flee because he thought he might be implicated for drug trafficking or at the very least for drug consumption. He had consumed cannabis while he was in Batam. However, he was eventually arrested.

23 This version of the facts contradicted his long statement to the CNB recorded on 15 May 2001. In court, Rabu claimed that the contents of that long statement, together with his statement that was recorded on 9 May 2001, were inaccurate because he had made them involuntarily.

24 A *voir dire* was conducted. Rabu alleged that he was suffering from a toothache and was not feeling well. He testified that he suffered from a lack of sleep and missed his family. In addition, when he made the statement on 15 May 2001, ASP Tan read the statement made on 9 May 2001 and he felt that this was a signal that he must give a different answer when he recorded the later statement. Furthermore, he alleged that ASP Tan told him that if he co-operated, his sentence for the offence may be reduced. For these reasons, he contended that his statement was involuntary as they were made as a result of a threat or inducement. He alleged that ASP Tan did not record the full facts and contended that the accurate version of the facts was that he did not know anything about the drug deal or the contents of the paper bag that he collected.

The decision below

25 Tay JC decided that the prosecution had proven its case against Amran beyond reasonable doubt. He found that Amran's version of the facts coincided with essentially all of the prosecution's case. It was immaterial that Amran did not own the drugs. In addition, he dismissed Amran's defence of entrapment because such a defence was unavailable in Singapore. In any case, he found that Amran participated voluntarily in the drug deal.

26 The judge also concluded that the totality of evidence put it beyond reasonable doubt that Rabu was guilty of trafficking cannabis. The judge decided that Rabu made the statements to the CNB on the 9 and 15 May 2001 voluntarily. He relied on the statement made on 15 May 2001 as evidence that Rabu knew about and became involved in selling Boy 2.5. kg of cannabis. He accepted the testimony of ASP Tan and Ms. Sofia, the Malay interpreter who was present during the recording of both statements in question. Both emphatically denied that any threat, inducement or promise were offered to Rabu during the recording of his statements. The judge also accepted Amran's testimony that Rabu was actively involved in the trafficking. He applied section 30 of the Evidence Act and *Chin Seow Noi & Ors. v PP* [1994] 1 SLR 135 to admit Amran's oral evidence and written statements as against Rabu as these amounted to confessions by Rabu's co-accused. Lastly, the judge held that Rabu's conduct on 3 May 2001 was more consistent with the prosecution's case that Rabu was aware that a drugs deal was taking place.

The appeal

Amran's appeal

27 In his Petition of Appeal, Amran appealed against the judge's findings of fact that he directed the undercover car to Bukit Merah View and that he sat behind the driver during the journey. He also contended that he was entrapped to commit the offence.

28 However, before us, Counsel for Amran stated that he had advised his client that the appeal was unlikely to succeed. We agreed. Amran had already admitted to all the essential elements of the charge against him by his own evidence, in court as well as in his statements to the CNB. He gave evidence that he facilitated the sale between Abu and CPL Fazuri of 2.5 kg of cannabis at \$4,400 to obtain a commission which he badly wanted. He also took part in the delivery of the drugs by going with Rabu and the undercover CNB officers to Bukit Merah View to collect the drugs. Amran did not dispute all these facts in this appeal.

29 In addition, the defence of entrapment was obviously unavailable to exonerate Amran from liability. It is trite law that entrapment is not a valid defence to a charge. In *How Poh Sun v PP* [1991] 1 SLR 220, another case on drug trafficking where the defence of entrapment was raised, this court held at p 224:

The observation of the Law Lords that the defences of agent provocateur and entrapment do not exist in English law would also reflect the position in Singapore. It is not the province of the court to consider whether the CNB should have proceeded about its work in one way or the other. The court can only be concerned with the evidence before it

30 The rationale for this position was elaborated in *SM Summit Holdings v PP* [1997] 3 SLR 922, 937 in

the following terms:

Sang

and the line of Singapore cases following *Sang* (e.g. *PP v Rozman bin Jusoh and Razali bin Mat Zin* [1995] 3 SLR 317, *Ajmer Singh v PP* [1986] SLR 454, *Chan Chi Pun v PP* [1994] 2 SLR 61; *How Poh Sun v PP* [1991] 1 SLR 220) have held that entrapment is not a substantive defence to a charge of a criminal offence. This is not surprising since it is *a central thesis of our criminal law that a person who voluntarily, and with the necessary intent, commits all the element of a criminal offence is guilty of that offence, regardless of whether he was induced to act by another, whether a private citizen or law enforcement officer*

31 In conclusion, we found that the trial judge had rightly convicted Amran of the charge against him since Amran had admitted to voluntarily committing all the elements of drug trafficking. The fact that he was induced to act by a law enforcement officer could not exonerate him from his guilt.

Admissibility of Rabu's statements to the CNB

32 In his appeal, Rabu sought to revisit the issue on whether he had made the statements on 9 and 15 May 2001 to the CNB voluntarily. The appeal on this matter was purely factual. The usual caution that an appellate court should not overturn a trial judge's findings of fact unless they are *clearly* wrong applies (*Ng Ai Tiong v PP* [2000] 1 SLR 454).

33 The law governing the admissibility of these statements was not in dispute. Section 24 of the Evidence Act governs the admissibility of confessions made to CNB officers. It reads:

A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.

34 In *Gulam bin Notan v PP* [1999] 1 SLR 26, the Court of Appeal restated the law on the admissibility of confessions made to CNB officers. The court held that the prosecution had the burden to prove beyond reasonable doubt that the confession was made voluntarily although it need not remove "every lurking shadow of influence or remnants of fear". The court described the test of voluntariness as a partly objective and partly subjective one. The prosecution must prove objectively that there was no threat, inducement or promise, i.e. there were no circumstances that made it reasonable for an accused to suppose that he would gain some advantage for himself or avoid some evil of a temporal nature to himself if he made the statement. If the prosecution failed to prove this, it must then show beyond reasonable doubt that although there was objectively a threat, inducement or promise, it did not actually operate on the mind of the accused in question.

35 In his appeal, Rabu placed strong reliance on the trial judge's finding that ASP Tan had asked Ms. Sofia to read his earlier statement back to him at the beginning of the recording of the later statement. First, he argued that this itself constituted a threat which Rabu had actually succumbed to. Secondly, he argued that because ASP Tan had previously made such a threat, it was likely that ASP Tan had also offered a lighter sentence to Rabu if he co-operated. He also urged the Court to consider that he was particularly susceptible to any inducements or threats because he was unwell

and was deprived of food, sleep and family visits.

36 The trial judge dealt with all these arguments comprehensively. He found that there was nothing sinister about reading Rabu's earlier statement back to him at the beginning of the recording to refresh his memory. We agreed that such a situation could not amount to a threat objectively. It is not reasonable for an accused person to believe that he will avoid some evil of a temporal nature to himself by making an incriminating statement merely because the investigating officer reads back his previous statement. An accused who views the reading back of his own statement as a threat must clearly be labouring under his own delusions. It is trite law that such self-induced threats will not cause a statement made pursuant to it to be inadmissible.

37 At this juncture, we would deal with Rabu's argument that the trial judge had erred in finding that ASP Tan did not offer him an inducement of a lighter sentence if he co-operated. Rabu contended that since ASP Tan caused Ms. Sofia to threaten him by reading his previous statement back to him, it was probable that ASP Tan also offered him an inducement and the judge should have found in his favour. This argument clearly involved a leap of logic and we rejected it. Even if ASP Tan did threaten Rabu once (which clearly had not been shown on the facts), it did not necessarily imply that he offered another separate inducement as well. No other reasons were raised to show that the judge was clearly wrong in finding that ASP Tan had not offered a lighter sentence to Rabu if he co-operated.

38 Finally, we also rejected Rabu's argument that he had made the statements in question involuntarily because he was "not fit" to make those statements when they were recorded. Rabu claimed that he was unwell and complained that he was deprived of food, sleep and family visits. In his written submissions, Counsel for Rabu argued that these circumstances made Rabu more susceptible to any form of threat or inducement held out to him. He urged the Court to find that the statements were made involuntarily because he actually felt that he was threatened and offered inducements to make them.

39 We rejected this argument on two grounds. First, it was unnecessary to consider whether the circumstance actually operated on Rabu when he made the statement (the subjective limb). Rabu did not raise a reasonable doubt that an inducement or a threat that would reasonably affect an accused and cause such a person to make statements involuntarily did not exist (the objective limb). Under *Gulam bin Notan v PP*, it was unnecessary to consider the subjective limb of the test of voluntariness when the objective limb of the test had not been met.

40 Secondly, the facts that Rabu sought to rely on to prove that he was more susceptible to any inducement had not been proven. In the trial below, the judge had the advantage of observing ASP Tan and Ms. Sofia and preferred their testimonies about the conduct of the recording of Rabu's statements. He noted particularly, that Ms. Sofia had no interest in ensuring that Rabu made an incriminating statement. The judge accepted the evidence of ASP Tan and Ms. Sofia that Rabu did not appear unwell and that he said nothing about feeling unwell or being unable to carry on with the statements at anytime. He was also satisfied that Rabu had not been deprived of food or sleep to such an extent that he could not comprehend what was going on during the recording of the statement. As for Rabu's complaint about his toothache, the judge found that the tooth problem only featured after the recording of the two statements in issue.

41 In the present appeal, Rabu failed to raise any grounds to show that the judge was *clearly wrong* in his assessment of the witnesses and evidence before him. Consequently, we affirmed the trial judge findings of fact on this issue. Furthermore, although Rabu had been denied family visits, this would not make him more susceptible to inducements compared to any other accused person since the

deprivation of family visits is necessary during the period of interrogation. Rabu had no basis to argue that he was more susceptible to an inducement or threat because he felt unwell and was deprived of food, sleep and family visits.

42 In summary, we concluded that none of Rabu's contentions to support his argument that he made the statements on the 9 and 15 May 2001 involuntarily were valid. We agreed that the trial judge rightly admitted and gave due weight to these statements.

Admissibility and weight of the confessions of a co-accused

43 Rabu also appealed against the decision of the trial judge to accept Amran's evidence. The law on confessions of a co-accused is clear. Section 30 of the Evidence Act (Cap 97) reads:

When more persons than one are being tried jointly for the same offence and a confession made by one such persons affecting himself and some other of such person is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession

44 In *Chin Seow Noi v PP* [1994] 1 SLR 135, the Court of Appeal held that the natural construction of s 30 meant that the confession of a co-accused may be made part of the substantive evidence against the accused in the same manner it formed part of the evidence against the confessing co-accused. The court noted that a co-accused's confession may not always be reliable because the maker of the statement may lie to shift the blame on the other accused. However, this went to the weight of the evidence, not its admissibility.

45 Amran's oral evidence and written statements to the CNB amounted to confessions since, by them, he had admitted to the essential elements of drug trafficking. Pursuant to s 30 of the Evidence Act, these confessions were admissible and could be taken into consideration against Rabu.

46 Amran gave evidence that Rabu was aware of the drug deal, negotiated it and went with him into the undercover car to obtain delivery of the drugs to sell to Boy. Rabu argued that this evidence should be rejected because it was unreliable. Amran had an incentive to lie and shift the blame on Rabu since he believed that he could obtain leniency from the Court.

47 We did not accept this argument. In his confessions, Amran implicated himself fully for a serious offence that carried the mandatory death penalty. He accepted his own role in the matter fully. Although Amran did dispute the fact that he gave directions to the CNB officers to go to Bukit Merah View, this was merely a minor discrepancy. In the rest of his testimony, Amran did not seek to push the blame onto Rabu to lessen his role in the offence. Amran's evidence was convincing and credible as a whole. The judge had the opportunity to observe both Amran and Rabu on the stand and chose to believe Amran's version of the facts as stated in his confession. Rabu failed to show that the judge obviously erred in his assessment of the weight of Amran's confession.

Independent evidence against Rabu

48 The trial judge found that there was sufficient independent evidence to convict Rabu. Rabu contended that the judge made two main errors of fact. The first error was finding that he took part in the negotiations with CPL Fazuri to sell the drugs. Secondly, he argued that the judge wrongly

found that he knew the true purpose of the journey in the undercover car and the contents of the yellow paper bag.

49 The judge's findings were clearly supportable. Rabu argued that he could not have taken part in the negotiations with CPL Fazuri on 2 May 2001 at about 8 p.m. at the coffeeshop at Sixth Avenue. This was because he had just arrived in Singapore from Batam. However, the prosecution produced documentary proof in the form of the records kept by the Singapore Immigration and Registration to show that Rabu had disembarked from the ferry at the World Trade Centre Terminal at 7:32 p.m.. It was *possible* for him to be at Sixth Avenue at about 8 p.m. since would take less than half an hour to get from World Trade Centre to Sixth Avenue by cab. The trial judge had a proper basis for believing Amran's testimony that Rabu was at the coffeeshop on 2 May 2001 and that Rabu took part in the negotiations for the drugs deal with CPL Fazuri. It also followed that the judge's finding that Rabu was the "Abu" who spoke to CPL Fazuri that day could not be seriously challenged.

50 The judge's finding that Rabu knew the true purpose of the journey to Bukit Merah View also could not be faulted. Rabu claimed that he did not know that the people in the undercover car intended to obtain drugs at Bukit Merah View. He testified that he was simply accompanying Amran on a journey with unknown men so that Amran could talk to him about horses. The judge found this explanation incredulous. It was illogical for a fully-grown up man to go along with Amran to Bukit Merah View with strangers without even first enquiring about the purpose or the length of time that they would stay there. In any case, there was no talk about horses and it was inconceivable that a person expecting to talk about horses would later just sit in the car silently while Amran and the front seat passenger continued talking. The judge drew the inference that Rabu's conduct in the car was much more consistent with someone who already knew the purpose of the trip and who needed no explanation from anyone. In light of the evidence, this inference was perfectly justifiable.

51 Furthermore, other than Amran, CPL Nabil and SGT Aldi testified that when the car reached Bukit Merah View, Rabu alighted *on his own accord* to collect the paper bag. The judge chose to believe these witnesses over Rabu. The Notes of Evidence did not show that the judge was clearly wrong to accept the testimonies of the CNB officers that Rabu acted on his own accord to collect the yellow paper bag.

52 Rabu's attempt to evade arrest was also consistent with his knowledge of what has been going on. He explained that he bolted because he feared being caught for drug consumption. On appeal, he added that he tried to escape to avoid the beatings by the CNB officers who were trying to effect his arrest. However, in view of the totality of the evidence, the true reason for his attempt to evade arrest for drug trafficking was that he knew that the yellow paper bag that he delivered to Boy's men contained cannabis.

53 The evidence against Rabu was overwhelming. His statements to the CNB, the independent evidence available and Amran's testimony against him painted a consistent picture that he was heavily involved in the drug transaction on 3 May 2001. He negotiated with CPL Fazuri for the sale of the drugs and he contacted the supplier in Batam to provide the drugs. On the 3 May 2001, he and Amran entered the undercover car to go to Bukit Merah View to collect the drugs. Upon reaching the destination, he got down on his own accord and went to pick up the drugs from the supplier, brought it back to the car and passed them to Amran who in turn delivered it to CPL Nabil. We found that his appeal against conviction was devoid of merits and we upheld his conviction.

Sentencing

54 Counsel for Rabu also made submissions on Rabu's sentence at the end of his oral submission. He suggested that if the Court intended to uphold Rabu's conviction, it should exercise its judicial discretion to reduce Rabu's sentence from one of death to life imprisonment. He submitted that the Court should consider the fact that Rabu was entrapped into committing the offence as a mitigating factor in sentencing him.

55 This argument was totally misconceived and we rejected it. Section 33(1) read with the Second Schedule of the Act prescribes a *mandatory* death sentence for persons convicted under s 5(1)(a) of the Act for trafficking more than 500 grams of cannabis. There was no room for judicial discretion in sentencing in the face of the clear wording of the section.

Conclusion

56 For the foregoing reasons, we dismissed the appeals of Amran and Rabu and upheld their convictions and sentences.

Sgd:

YONG PUNG HOW
Chief Justice

Sgd:

CHAO HICK TIN
Judge of Appeal

Sgd:

TAN LEE MENG
Judge

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