IN THE HIGH COURT OF MALAYA AT TAIPING
IN THE STATE OF PERAK DARUL RIDZUAN, MALAYSIA
[NO. 45A - 08 - 06/2014]

PUBLIC PROSECUTOR

v.

1. NADARAJAN VELLESAMY

2. VIKNESWARAN REVINDRANATHAN

CRIMINAL LAW: *Dangerous drugs - Trafficking - Accused negotiated sale of cannabis to an agent provocateur - Negotiations culminated into a deal - Accused agreed to provide supply of drug by kilos - Accused was on motorcycle where drugs were found - Whether act of selling and supplying was within meaning of s. 2 of Dangerous Drugs Act 1952 - Whether there were series of act leading to sale of drugs - Whether negotiations and meeting show voluntariness of accused - Whether accused was duped and entrapped into making deal*

CRIMINAL LAW*: Common intention - Trafficking - Both accused was on same motorcycle where drugs were found - Whether intention of accused could only be gleaned from circumstances of case - Whether accused worked as a team - Whether there was prior meeting of minds between both accused for sale of drugs*

CRIMINAL PROCEDURE*: Defence - Innocent bystander - Accused persons were on same motorcycle where drugs were found - Accused was present to help a friend in need of transportation - Entrapment - Whether it was outrages for a person to be trapped by police and make them suffer consequence of being hanged*

EVIDENCE: *Agent provocateur - Credibility - Statement made in course of transaction - Whether admissible as evidence*

[Accused persons found guilty and sentenced to death by hanging.]

Case(s) referred to:

Aung Thun v. PP [2013] 1 LNS 985 CA ***(refd)***

Balachandran v. PP [2005] 1 CLJ 85 FC ***(refd)***

CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd [2006] 2 CLJ 409 CA ***(refd)***

Dato Mokhtar Hashim & Anor v. PP [1983] CLJ Rep 101 FC ***(refd)***

Hari Bahadur Gale v. PP [2012] 2 CLJ 1006 CA ***(refd)***

Krishnan v. PP [1981] 1 LNS 206 FC ***(refd)***

Mat v. PP [1963] 1 LNS 82 HC ***(refd)***

Matthew Lim v. Game Warden Pahang [1959] 1 LNS 57 HC ***(refd)***

Munusamy Vengadasalam v. PP [1987] CLJ Rep 221 SC ***(refd)***

Muthusamy v. PP [1947] 1 LNS 71 HC ***(foll)***

Namasiyiam Doraisamy v. PP & Other Cases [1987] CLJ Rep 241 SC ***(refd)***

PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***

PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***

Prasit Punyang v. PP [2014] 7 CLJ 392 CA ***(refd)***

Sahri Tahe v. PP [2016] 1 LNS 179 ***(refd)***

Sayat Ahmad Nazir Ahmad v. PP [2014] 7 CLJ 1025 CA ***(refd)***

Wan Mohd Azman Hassan v. PP [2010] 4 CLJ 529 FC ***(refd)***

Zulkefly Had v. PP [2014] 6 CLJ 64 CA ***(refd)***

Legislation referred to:

Dangerous Drugs Act 1952, ss. 2, 39B(1)(a), (2), 40A

Criminal Procedure Code, ss. 180(1), (2), (3), (4), 182A, 402B

Penal Code, s. 34

Evidence Act 1950, ss. 114(g), 145(1), 155(c)

JUDGMENT

Introduction

[1] Both accused were charged with the offence of trafficking in 2928 grams of cannabis, under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA 1952'), which is punishable with death under s. 39B(2) of the same Act.

[2] The charge read as follows:-

> "Bahawa kamu bersama-sama pada 14 Januari 2014 jam lebih kurang 7.20 petang bertempat di kawasan parking Pasaraya TF Value Mart, hadapan Restoran Marybrown, Jalan Lintang di dalam Daerah Sungai Siput Utara, di dalam Negeri Perak Darul Ridzuan telah mengedar dadah berbahaya iaitu sejumlah berat 2928 gram Cannabis dan dengan itu kamu telah melakukan satu kesalahan dibawah Seksyen 39B (1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah Seksyen 39B (2) Akta yang sama".

The prosecution's case

[3] ASP Mohd Suffian Bin Saari ('SP1') was the head of the Crime Investigation Department of the Narcotics Division in Perak. He

was the agent provocateur. He had on the 4 January 2014, received information from an unnamed source that an Indian man that goes by the name Viki, deals in drug transactions by the kilos. Viki was the second accused. SP1 instructed the source to inform the second accused that he wishes to buy drugs from the latter. SP1 was informed the following day that the second accused had agreed to deal with him. SP1 then called the second accused at the number 014-6012583, and introduced himself as 'Abal' from Grik. They had agreed to meet the following day at the Restoran Aziz Tomyam in Chemor Ipoh.

[4] The rendezvous happened as planned on the 6 January 2014. SP1 and Detective Corporal Syafie met up with the second accused at around 8.00 pm. The second accused did not come alone. He was accompanied by the first defendant, and had introduced the latter as Rajan. They both came on a Modenas motorcycle.

[5] SP1 told the second accused that he was interested in buying drugs by the kilo. The discussion was only between SP1 and the second accused, and it went on for about twenty minutes. SP1 was informed by the second accused that a kilogram of drugs would cost RM2,700.00. No deal however was concluded that night.

[6] Six days later on the 12 January 2014, SP1 received a call from the second accused. The latter had agreed to supply SP1 with five kilograms of drugs. They then planned to meet up the following day at the parking lot of the TF supermarket in Sungai Siput. The Marybrown restaurant was located in front of this supermarket.

[7] Come the 13 January 2014, SP1 met the first and second accused at the designated meeting place at 8.00 p.m. Both accused came on a motorcycle. The second accused did not come supplied with

five kilogrammes worth of drugs as requested by SP1. SP1 saw the second accused making a phone call, and after the phone call ended, told SP1 that he could not supply SP1 with the drugs, as his 'boss' had some problems in Taman Guam in Ipoh. The second accused then told SP1 that he could only supply him the following day. They then agreed to meet at noon the next day.

[8] The following day on the 14 January 2014, SP1 and Detective Corporal Syafie waited at the same place, at 1.00 p.m. SP1 then contacted the second accused on the same phone number that he had been calling. He told the second accused that he had already arrived.

[9] The first and second accused came an hour later on the same motorcycle that he saw them on the previous day. The second accused told SP1 that he had the supply, and asked SP1 to show him the money. SP1 took the money from Detective Corporal Syafie who was waiting in the car. SP1 showed them the sum of RM13,500.00 in cash. The first accused was all this while next to the second accused and SP1.

[10] The first accused then left on the same motorcycle, leaving the second accused behind with SP1 and Detective Corporal Syafie. The second accused said that the first accused was making arrangements to get the drugs. SP1 and the second accused then proceeded to have a drink at a Chinese restaurant behind the TF supermarket, while Detective Corporal Syafie waited in the car. A couple of hours passed without any activity. The second accused and SP1 then left the restaurant and proceeded to wait in front of the TF supermarket.

[11] The first accused came back around 5.00 p.m. He then spoke to the second accused. The second accused then told SP1 that they had to go and get the drugs. Forty-five minutes later, the second

accused called SP1, and said that he could only manage to get three kilograms for the price of RM8,100.00. SP1 agreed and waited. It was only at 7.00 p.m. when both accused came back on the same motorcycle. They showed SP1 the three kilograms worth of drugs in the basket of their motorcycle. According to SP1, there were three compressed packages containing cannabis in a black plastic bag.

[12] It was the opportunity that SP1 had waited for. He then scratched his head, which was a signal to ASP Mohd Fikri Bin Hashim ('SP5') and his team to move in. SP5 and his team arrested both accused. According to SP5, the second accused had put up a struggle, but was successfully apprehended. SP5 then inspected the motorcycle's basket, and found a black plastic bag containing three compressed packages of substance that he suspected were cannabis. SP5 proceeded to seize the drugs.

[13] SP5 and his team had been in three unmarked cars near the rendezvous point for SP1 and both accused. They had been observing the activities between SP1, Detective Corporal Syafie and both accused from 1 p.m. until the arrest which was around 7.20 p.m.

[14] SP5 had seized the drugs, the Modenas motorcycle and the keys to it, two mobile phones from the first accused with the make Samsung GT-S5570 (exhibit P-18B) and Nokia C200 (exhibit P-18A) respectively, one Samsung GT-E 1195 (exhibit P-18C) mobile phone from the second accused, and a Nokia 101 mobile phone from SP1. He then handed over these items to the Investigating Officer, ASP Mohd Radzi Bin Abdul Rahim ('SP7').

[15] SP7 had forwarded the seized drugs to Dr. Silverraji A/L Samiveloo ('SP2'), a chemist with the Jabatan Kimia Malaysia,

whom after analysing the drugs using the standard and recommended methods concluded that they were cannabis weighing 2,928 gram.

[16] SP7 had also forwarded the mobile phones seized from both accused and SP1 to the police's forensics department for analysis. These mobile phones were received and analysed by DSP Safawi Bin Mat Salleh ('SP6').

[17] SP6 had used a software called 'XRY' to extract the data from all the mobile phones forwarded to him. SP6 had also prepared several reports based on the analysis done and data extracted from all the mobile phones. The report on the data extracted from mobile phone used by SP1 was marked as exhibit P-27, and the report on the data extracted from the mobile phone seized from the second accused marked as exhibit P-29.

[18] The summary of SP6's report and his evidence through examination-in-chief are as follows:-

(a) The mobile phone seized from the second accused uses the number 014-6012583;

(b) The mobile phone used by SP1 uses the number 019-94623422;

(c) The data extracted from both mobile phones used by SP1 and the second accused shows that there were many calls made to each other;

(d) The details of the short messaging services ('sms') sent from SP1's mobile phone to the second accused's mobile phone were as follows:-

Message	Time and date	Time and date the

	message sent from SP1's mobile phone	message received on the second accused's mobile phone
"bro...Bila bole..Tolong kol"	9:11:56 a.m. 12 January 2014	9:12:11 a.m. 12 January 2014
"bro kol balik"	2:15:45 p.m. 13 January 2014	3:59 p.m. 13 January 2014
"OK bro"	5:22:16 p.m. 13 January 204	5.22.30 p.m. 13 January 2014
"bro..Cukup pukul 7 tadak sampai...Saya chow"	6.43.45 p.m. 14 January 2014	6.43.58 p.m. 14 January 2014

[19] SP6 has upon analysing the data extracted from the second accused's mobile phone, concluded that the sms sent from SP1's mobile phone were received on the second accused's mobile phone.

The court's duty at the end of the prosecution's case

[20] The court shall, in accordance with s. 180(1) Criminal Procedure Code ('CPC'), consider and decide whether the prosecution has established a *prima facie* case against the accused, at the end of the prosecution's case. The accused shall be acquitted if there was no finding of a *prima facie* case, and conversely call upon the accused to enter his defence, if a *prima facie* case has been made out; s. 180(2) and (3) CPC.

[21] In *Balachandran v. PP* [2005] 2 MLJ 301 (FC), the apex court held that a *prima facie* case is made out when the prosecution has successfully adduced sufficient evidence to prove each and every single ingredient of the offence alleged, which if unrebutted or unexplained, will result in conviction. This is also provided under s. 180(4) CPC.

[22] It is incumbent for the court to undertake a positive and maximum evaluation of the prosecution's evidence, by assessing the prosecution's witnesses, and drawing inferences from the evidence produced by the prosecution. The court is however duty bound to draw the inference that is favourable to the accused; *PP v. Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393 (FC)

Findings of the prosecution's case

The ingredients of the charge

[23] For the prosecution to make out a *prima facie* against both accused, they would be required to establish:-

(i) That the drugs are scheduled as dangerous drugs under DDA 1952; and

(ii) That both accused had the common intention to sell the impugned drugs.

Whether the drugs are scheduled as dangerous drugs under DDA 1952

[24] SP5 had in his report (exhibit P-11) and his testimony in court, concluded that the three packages seized from the accused were

cannabis, a dangerous drug as stipulated under s. 2 DDA 1952, weighing 2928 gram.

[25] Mohamed Azmi SCJ, delivering judgment for the Supreme Court (as it then was), in *Munusamy Vengadasalam v. PP* [1987] 1 MLJ 492 (SC), said this:-

"As a rule, a chemist in drug cases does not give any opinion as to ownership, control or possession of the substance sent for analysis, but he merely reports the result of the chemical examination of the substance. The only reason for sending the exhibits to the chemist is to determine their identity and to confirm what other witnesses have suspected. This type of opinion must in our view be distinguished from opinions which are of very technical or complicated nature, such as those given by handwriting, trade mark, copy right or ballistic experts. Without being derogatory it is common knowledge that even animals, such as snuff dogs when sufficiently trained, are able to detect certain dangerous drugs. We are therefore of the view, that is this type of cases where the opinion of the chemist is confined only to the elementary nature and identity of substance, the court is entitled to accept the opinion of the expert on its face value, unless it is inherently incredible or the defence calls evidence in rebuttal by another expert to contradict the opinion. So long as some credible evidence is given by the chemist to support his opinion, there is no necessity for him to go into details of what he did in the laboratory, step by step."

[26] I find that SP2's evidence, by way of his report, was not inherently incredible, and neither was it credibly challenged. It would therefore be safe for me to conclude, that the drugs seized from the accused were of the type and weight as set out in the charge against both accused. The prosecution has successfully

proven the nature and identity of the drugs seized from both accused.

Whether both accused were trafficking in the drugs

[27] The prosecution's case, based on the evidence produced, was premised on the negotiated sale of the cannabis by the accused to an agent provocateur, namely SP1. The Court of Appeal in *Sayat Ahmad Nazir Ahmad v. PP* [2014] 7 CLJ 1025 (CA), held that it is settled law that it is not necessary to invoke a presumption of possession, custody or control for a case of trafficking premised on s. 2 DDA 1952. The appellate court further held that knowledge may be inferred from the facts and circumstances of the case where there was a direct evidence of trafficking under s. 2 DDA 1952.

[28] The prosecution sought to establish from the evidence, that both accused were selling the drugs to SP1. The prosecution's case was premised on s. 2 DDA 1952, which defined trafficking as follows:-

includes the doing of any of the following acts, that is to say, manufacturing, importing, exporting, keeping, concealing, buying, selling, giving, receiving, storing, administering, transporting, carrying, sending, delivering, procuring, supplying or distributing any dangerous drug otherwise than under the authority of this Act or the regulations made under the Act.

[29] SP1's testimony was crucial to the prosecution's case. SP1 had obtained information from an unnamed source, that the second accused sells drugs. SP1 then asked his informer to inform the second accused that he was interested in buying drugs in bulk,

namely by the kilos. He was then informed that the second accused had agreed to deal with him. After obtaining the second accused's mobile phone number, SP1 proceeded to call the second accused at the number 014-6012583. It was agreed that they were to meet the following day at the Restoran Aziz Tomyam in Chemor Ipoh.

[30] SP1 met up with the second accused as planned. SP1 had gone with a Detective Corporal Syafie. The second accused however did not come alone, as the first defendant had accompanied him.

[31] After introducing each other, SP1 proceeded to tell the second accused what he had already mentioned in his telephone conversation. The second accused had informed SP1 that a kilogram of drugs would cost RM2,700.00. Throughout the conversation between SP1 and the second accused, the first accused was seated on the same table.

[32] There was no deal concluded that night. SP1 received a call from the second accused some six days later, who told him that he would be able to supply five kilograms of drugs. The call was also made from the number 014-6012583. It was then planned by both of them to meet up the following day in front of the TF supermarket in Sungai Siput.

[33] Similar to the first meeting, both accused came together. They met at the designated meeting place at 8 p.m. However, the accused did not come with any drugs. SP1 was told that the second accused could only supply him the next day. Throughout this time, SP1 was standing outside his car whilst both accused stood near him. It was then planned for them to meet the following day at the same place at noon.

[34] The following day, both SP1 and Detective Corporal Syafie waited at the same place as planned. As none of the accused was around, SP1 called the second accused at the number 014-6012583 to let him know that he was there. Both accused arrived about an hour later on a motorcycle.

[35] The second accused told SP1 that he would be able to supply the drugs to SP1, but had asked SP1 to show him the money. That he did. SP1 showed the second accused the sum of RM13,500.00 in cash. The first accused was all this while next the second accused.

[36] After being shown the cash, the first accused left with his motorcycle. Only the second accused stayed with SP1. The latter was told by the second accused that the first accused had gone to get the drugs.

[37] The second accused came back a few hours later at around 5.00 p.m. but empty-handed. The first accused then spoke to the second accused. He then informed SP1 that he had to go off with the first accused to get the drugs, and told SP1 to wait again. It was only forty-five minutes later when the second accused called SP1, and told him that he could only manage to get three kilograms. The second accused told SP1 to get RM8,100.00 ready.

[38] SP1 waited again. At around 7 p.m. both accused came back on the same motorcycle. SP1 was then shown the drugs kept in a black plastic bag in the basket of their motorcycle. What transpired then was the arrest of both accused upon SP1 giving the raiding team the planned signal.

[39] As both accused were charged pursuant to s. 34 Penal Code, it was necessary for the prosecution to prove that both of them had

the intention to traffic in the drugs seized. To achieve that, the prosecution would need to establish that both accused were in the place and took part in the crime or had nexus to it; see *Aung Thun v. PP* [2014] 1 MLJ 784 (CA).

[40] These facts, taken from the onset, show the negotiations that had taken place between the second accused and SP1 that culminated into a deal agreed. SP1 had made it known to the second accused that he wanted to purchase drugs in kilos. The negotiations between SP1 and the second accused were done over a few telephone calls and two meetings.

[41] The second accused's phone number given by the informer to SP1 was 014-6012583. This was the only number that SP1 had used to contact the second accused. I accept the evidence by SP6 that the mobile phone that was seized from the second accused (exhibit P-27) had the same number, which was 014-6012583. There was no credible challenge made to SP6, which raised any doubt on his findings. I have also considered the messages exchanged between the first accused and SP1's mobile phone, and found that the messages and telephone calls made were done within the negotiation period that SP1 and the second accused were involved in.

[42] In fact, it was during the first meeting that the second accused told SP1 that he would be able to supply drugs by the kilos. It was also at that meeting that the second accused informed SP1 that it would cost him RM2,700.00 per kilogram. Although no deal was concluded that night, the deal had been put into motion. SP1 wanted to buy drugs by the kilos, and the second accused had agreed to provide the supply. What remained then was for the deal to materialise.

[43] It was about six days later when the second accused told SP1 that he had a ready supply of drugs for SP1, who then told the second accused that he wanted to purchase five kilograms. Although it was agreed for them to meet the following day to conclude the deal, that did not happen until the day after. On the day concerned, SP1 had shown both accused RM13,500.00 in cash. This amount was for the purchase of five kilograms. However, this was reduced to three kilograms, and that the second accused had told SP1 to prepare RM8,100.00, which was also agreed. This eventually led to both accused returning later with the drugs that were kept in the basket of the motorcycle that they were on. Both accused were on the same motorcycle where the drugs were found.

Common intention

[44] Learned counsel for the first accused submitted that there was no common intention between the first accused and the second accused. Learned counsel referred to the fact that the SP1 had only received information of a person named "Viki" from the informer. He highlighted the fact that SP1 had in his testimony confirmed that he had only spoken to the second accused, and that although the first accused was present when SP1 first met up with the second accused, he was not involved in the negotiations. Reference was also made to SP1's cross-examination by the first accused's learned counsel, where the former agreed that the first accused was merely riding the motorcycle and the second accused the pillion rider. It was submitted that the first accused had never taken any active participation in the negotiations between the second accused and SP1, and that his role was merely to accompany the second accused by ferrying him to all the meetings.

[45] The Supreme Court in *Namasiyam v. PP* [1987] 2 MLJ 336 (SC), held that common intention must be proved either by direct or circumstantial evidence, that there was firstly, a common intention to commit the offence, and secondly the participation of the accused in furtherance of that common intention. The Court of Appeal in *Sahri Tahe v. PP* [2016] 4 MLJ 69 in referring to s. 34 PC held as follows:-

"This section is intended to make a person liable for the commission of an offence not committed by him, but by another person with whom he shared the common intention. It is also to deal with cases in which it is difficult to prove exactly what part was played by each of them in the commission of the offence or in cases where it is difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all…"

[46] In *Dato Mokhtar Hashim v. PP* [1983] 2 MLJ 232, the court held:

"Under section 34 of the Penal Code, to succeed the prosecution must prove that the criminal act was done in concert pursuant to the prearranged plan or arrangement. In practice it is of course difficult to produce direct evidence to prove the intention of an individual. In most cases, however, it can be inferred from his act or conduct or other relevant circumstances of the case. See Mahbub Shah v. King Emperor. The doctrine of common intention is an expressed in section 34 of the Penal Code, itself which reads-

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

The court also added that the leading feature of s. 34 PC is the element of participation in action.

[47] The intention of the first accused could only be gleaned from the circumstances of the case. Here, both accused were present when SP1 met to negotiate for the sale of the drugs. The first accused was always next to the second accused whenever they met SP1. On the day that they were arrested, the drugs were not delivered yet when SP1 first met them. The first accused, according to SP1, left him with the second accused for a while. According to the second accused, the first accused had gone to arrange for the five kilograms of drugs. Now when the first accused returned, he was empty-handed in that the drugs were still not delivered. The second accused then spoke to the first accused, and they then both left on the same motorcycle. When both accused returned, the second accused, who rode pillion, got off the motorcycle and showed the drugs, which were in the basket of the motorcycle to SP1. When this was done, the second accused was clearly in close proximity, as he was on the same motorcycle.

[48] The facts show that both accused did not have the drugs on them when they first met SP1 on the day concerned. Both accused had left SP1 and returned around 7.00 p.m. with the drugs, which was then showed to SP1. They were both on the same motorcycle. The fact that the first accused had always accompanied the second accused is also a relevant factor. They clearly worked as a team. It is therefore safe to conclude that there was a prior meeting of minds between both accused for the sale of the drugs.

[49] It is also my finding that the when SP1 showed the accused the sum of RM13,500.00 initially for the purchase of five kilograms as consideration for the sale and supply of five kilograms, this

evidence constitute the act of trafficking in s. 2 DDA 1952. Although the accused could only get three kilograms, it was also agreed that the purchase price would be RM8,100.00. The act of selling and supplying within the meaning of s. 2 DDA 1952 has been completed. I therefore find that the prosecution has successfully established that both accused were trafficking in the drugs seized.

[50] In attempting to exonerate the first accused, learned counsel sought to invoke the presumption under s. 114(g) Evidence Act 1950 ('EA 1950') for the prosecution's failure to call the first accused's wife. It was established through SP7 that he had taken a statement from the first accused's wife, and that the latter had informed him that she had worked as a Guest Service Assistant at the Fairpark Hotel in Ipoh. It was further established that the motorcycle that the first accused rode was registered in his wife's name, and that the first accused had gone to fetch her from work at around 3.30 p.m. It was submitted that the first accused's wife would be able to provide evidence, that the first accused had indeed picked her up from work at around 3.30 p.m.

[51] I fail to see how the first accused's wife testimony could help to exonerate the first accused's participation. If indeed the first accused had left the scene to pick her up that does not help to exculpate his participation. The pertinent fact is that first accused was present during the negotiations and when the drugs were shown to SP1 to complete the sale. The first accused's absence for a period of time if true, does nothing to absolve his participation.

[52] It was also submitted by the learned counsel for the first accused, that s. 114(g) EA 1950 should also be invoked against the prosecution for failing to tender the recording captured by

the TF Supermarket's Close Circuit Television Camera ('CCTV'). It was submitted that the CCTV placed outside the supermarket could shed some light on the alleged transaction that took place, and that the prosecution's failure to procure and produce the recording is adverse to its case.

[53] I fail to see how any recording could help to strengthen the evidence of the prosecution. The testimony of SP1 alone is sufficient. There was nothing vague about his testimony that would require the prosecution to rely on any CCTV recordings. In any event, SP7 had during the course of his investigation, visited the supermarket, and discovered that there were no cameras pointing towards the location where the accused and SP1 were located.

[54] Similar to the first accused, the second accused too sought to invoke the provisions of s. 114(g) EA 1950. Unlike the first accused however, the second accused's attempt is premised on the prosecution's failure to produce the telephone records of the second accused. The importance of the telephone records is to show the involvement of what he says was SP1's informer, a man named Govindaraju a/l Raveandranathan, also known as Gopi. It was submitted that Gopi was a known drug dealer, and that SP1 had been dealing with him since January 2014. The theory put forward was that Gopi would sacrifice any of his 'runners' tasked to deliver drugs, by giving the police information, and that in return, he would be given the freedom to continue his trade. Gopi would then demand money from the families of the runners arrested for him allegedly to negotiate their release from the police. In this case, it was submitted that Gopi had taken RM70,000.00 from the family of the second accused.

[55] Learned counsel also highlighted that both SP1 and SP7 had utilised Gopi in another drug case, where it ended in the arrest of a man named Ganesh Kumar. SP1 was apparently the arresting officer, and SP7 the investigating officer in that case, and that they had in this case also used Gopi. The fact is however, Gopi has since died, allegedly due to blunt trauma to his head. Although learned counsel for the second accused tendered a copy of his death certificate, it was not marked as an exhibit (IDD-36). Nevertheless, the prosecution did not dispute his death.

[56] It was claimed that Gopi's occupation was to repossess vehicles. He had apparently told the second accused to meet him at the car park of the supermarket with the promise of returning the latter's motorcycle that he had repossessed. Learned counsel also submitted that SP1 had been dealing with Gopi since 1 January 2014, and that the prosecution had only prepared the second accused's telephone record from 8 January 2014, although he had requested the records from 1 January 2014. Had he obtained the records from 1 January 2014, it would show that SP1 had been dealing with the second accused before the 4 January 2014.

[57] Learned counsel for the second accused submitted that the telephone records tendered in court shows that there were some messages and calls made to and also received from Gopi. Gopi's number, it was claimed, was 010-3770089 and 010-3771957. These messages and calls suggest that Gopi had played an active role. Both SP1 and SP7 had denied any knowledge of Gopi's telephone number. SP7 under cross-examination admitted that he did not investigate these numbers and that only the telecommunication service provider such as Celcom or Digi could provide that information. Learned counsel submitted that

the prosecution's failure to call anyone from the telecommunication service provider and its failure to provide the second accused's mobile phone records from 1 to 7 January 2014, gives rise to an adverse inference against the prosecution under s. 114(g) EA 1950. Learned counsel submitted that the prosecution had withheld and suppressed crucial evidence that could exonerate his client.

[58] SP6 had under cross, explained that the XRY software that he had used to extract the information from the mobile phones and their sim card, would retrieve all information contained in them. SP6 also stated that the information retrieved were as they were, and that he did not erase any information. When pressed further by learned counsel for the second accused, SP6 stated that if the information for a certain period were not retrieved, it could only have meant that the user would have deleted the information. He was adamant that the software could not erase any detail once they are extracted.

[59] SP7 under cross also stated that he had only focused on the details contained from the time that SP1 was in communication with the second accused, and that he did not see any need to investigate the calls made before then. SP7 had nevertheless attempted to obtain the telephone bills for the mobile phone seized from the accused from Celcom and Digi. A letter prepared by an Inspector Mohd Al Shukri bin Nasir was tendered as evidence of that attempt (exhibit P34). He was informed that they only kept records for two months.

[60] The contention by learned counsel for the second accused that the prosecution had suppressed evidence is therefore without merits. I find that the police had only retrieved information that are pertinent, namely from the time that SP1 made contact with

the second accused. Although learned counsel for the second accused had incessantly crossed SP1 and SP7 on Gopi, I find their testimony credible. The proposition put forward that Gopi had set up the second accused is at this point in time, unsupported by any cogent material to substantiate it.

[61] In any event, the telephone records and the messages put forward in evidence were not entirely crucial for the prosecution's case. SP1's testimony pertaining to the meetings and negotiations held with both accused were sufficient to establish the prosecution's case that there were a series of continuous act leading to the sale of the drugs by both accused. These meetings show the voluntariness of both accused. I find no evidence to suggest that both accused were duped or entrapped into making the deal. Entrapment, I might add offers no defence; see *Wan Mohd Azman Hassan v. PP* [2010] 4 CLJ 529 (FC).

Conclusion at the end of the prosecution's case

[62] I have considered all the evidence adduced by the prosecution, and subjected them to maximum evaluation, and am satisfied that the prosecution has adduced credible evidence to successfully prove a *prima facie* case against both accused, as envisaged under s. 180(4) CPC.

[63] Both accused were therefore called to enter their defence. They elected to give evidence on oath.

The defence

[64] Both accused chose to tender their witness statements pursuant to s. 402B CPC. The first accused's witness statement was

marked as exhibit WSD-1 and the second accused's statement marked as exhibit WSD-3. Other than the two accused giving evidence for the defence, the first accused had also called upon his wife, Logeswary A/P Segaran ('SD3') to testify. The second accused had called upon Mohamed Salleh Bin Jaafar Sidek ('SD4'), a registration officer from the Larut, Matang & Selama National Registration Department, and his sister, Geetha A/P Revindranathan ('SD5') to give evidence.

The first accused

[65] The first accused claimed that he had merely accompanied the second accused to meet the latter's friends on the 6 January 2014. He admitted being at the same table with the second accused and two other men, at the Restoran Aziz Tomyam in Chemor, Ipoh. The two other men, he claimed was an Indian man and a Malay man. He did not know who they were but eventually found out that the Indian man's name was Gopi.

[66] The second accused conversed with the Indian man in Tamil but the first accused claimed that he did not know what the conversation was about, as he had kept occupied with his mobile phone. The first accused nevertheless overheard the first accused and Gopi talking about a motorcycle, but that was about it.

[67] The first accused also admitted to being present at the TF Supermarket's car park together with the second accused on the 13 January 2014. Similar to the first meeting, the first accused claimed that he had merely helped the second accused by ferrying the latter there on the motorcycle belonging to his wife, as the second accused had no transportation. The second accused

told him that he wanted to meet the same men that he had met previously.

[68] While there, the first accused saw the second accused talking to Gopi. He claimed not to have heard their conversation, as he was ten feet away. He did not see the other man there, namely the Malay man. At one point in time he had gone to the toilet and saw that Gopi was no longer around when he returned. He and the second accused then left. The first accused did enquire with the second accused what had transpired. He was told that the men had offered their help to get the second accused's motorcycle back, which had apparently been repossessed in December 2013.

[69] The following day at approximately 2.30 p.m., the second asked the first accused to accompany him to retrieve the former's motorcycle. They headed to the TF supermarket. Upon reaching there, the first accused saw the Malay man that he had met previously waiting. Gopi was not in sight. The second accused and the Malay man had a chat, but the first accused did not know what the conversation was about, as he was ten feet away. He then recused himself at around 3.30 p.m. to pick up his wife who worked at the Fair Park Hotel in Ipoh. He had picked his wife up from work and sent her home in Klebang, Ipoh. He had to return back to where he had left the second accused, as the latter told him that he did not get his motorcycle back.

[70] Upon reaching there at around 7.00 p.m., the first accused saw that Gopi was there with the second accused. Gopi then told him to park his motorcycle next to his motorcycle. He obliged. Gopi then asked both him and the second accused to meet the Malay man who was then seated in a car about thirty meters away. He saw Gopi going over to the place where both motorcycles were

parked. At the same time, the police suddenly swooped in and arrested him and the second accused. The police told him that they had found drugs in his motorcycle's basket. He was astounded as he was certain that there was no plastic bag in the basket, and that he had only left his mobile phone in there.

[71] SD2 also chose to give evidence through a witness statement (exhibit WSD-2). In her statement, SD2 stated that she worked at the Fair Park Hotel, and that the first accused had sent her to work on the day that the first accused was arrested. SD2 claimed that the first accused had picked her up from work at 3.45 p.m. and sent her back home. The first accused then left, saying that he had to pick up a friend from Sungai Siput.

[72] Under cross-examination, SD2 admitted that she and the first accused had two other vehicles in their possession other than the Modenas motorcycle used by the first accused, namely a car, and a Honda scooter. The learned Deputy Public Prosecutor ('DPP') in cross-examination confronted SD2 with her cautioned statement (exhibit P-38). She acknowledged that the signature in the statement was hers. The learned DPP then sought to rely on s. 145(1) and s. 155(c) Evidence Act 1950 ('EA 1950') to impeach SD2.

[73] In seeking to impeach SD2, the learned DPP highlighted the relevant parts of the statement in red, which he claimed contradicted her testimony during cross-examination. A copy of this statement was also extended to the both accused's counsel. The learned DPP submitted that the discrepancies were material.

[74] In impeachment proceedings, s. 155 EA 1950 must be read together with s. 145 EA 1950. In *CGU Insurance Bhd v. Asean Security Paper Mills Sdn Bhd* [2006] 3 MLJ 1 (FC), the Federal

Court held that it is mandatory for the procedure under s. 145(1) EA 1950 to be adhered.

[75] In conducting the impeachment proceedings, I had closely adhered to the impeachment procedures set out in the case of *Muthusamy v. PP* [1948] 1 MLJ 57, which was approved by the apex court in *Krishnan v. PP* [1981] 2 MLJ 121 (FC).

[76] I had compared the alleged discrepancies in SD2's statement against her testimony, and concluded that there were material contradictions. In making that finding, I therefore allowed the prosecution's application to impeach SD2.

[77] SD2 was shown the statement, and her attention was directed to the parts highlighted in red. The statement was read out to her in Tamil through the court's interpreter. She was then given the opportunity to explain each and every highlighted statement, that the prosecution claimed contradicted her testimony in court. The following is the transcript of SD2's explanation, with her answers in italic:-

(1) <u>Kenyataan</u>

A: Saya keluar bekerja pada jam 0620 hrs dari rumah saya ke hotel Fair Park menaiki skuter saya.

<u>Penjelasan saksi</u>

Saya bagi kenyataan ini pada 15/1/2014, setelah OKT 1 ditangkap pada 14/1/2014. Pada masa saya memberi kenyataan, saya dalam keadaan yang gelisah, dan saya juga menangis masa tersebut. Saya tidak pasti apa yang telah saya beritahu.

(2) Kenyataan

A: Saya pulang ke rumah saya dan saya dapati suami saya tiada di rumah.

Penjelasan saksi

Saya telah beritahu pegawai tersebut bahawa OKT 1 tidak berada di rumah, iaitu dia keluar selepas saya balik kerja. Saya beritahu bahawa dia ada dirumah, tetapi dia keluar selepas saya balik kerja.

(3) Kenyataan

S: Adakah kamu tahu bila suami kamu keluar?

A: Tidak tahu.

Penjelasan saksi

Saya beritahu IO bahawa saya tidak tahu ke mana OKT 1 pergi, kerana saya dalam keadaan gelisah dan menangis, tapi saya tahu OKT 1 tolong OKT 2 kerana OKT 1 telah menelefon saya.

(4) Kenyataan

S: Adakah dia ada beritahu kemana dia pergi?

A: Tidak diberitahu.

Penjelasan saksi

Selalunya OKT 1 ada beritahu saya ke mana dia pergi, dan dia ada beritahu, tetapi pada masa tersebut saya gelisah dan menangis.

[78] Counsel for both accused then proceeded to question her. In essence, SD2 claimed that she was in a state of disarray when making the statement, and that the recording officer had never neither explained nor read back the statement taken. SD2 also claimed that the recording officer did not translate the contents of the statement in Tamil to her.

[79] At the end of the impeachment proceedings, I was mindful of the need to assess SD2's evidence as a whole against the other evidence, only at the end of the defence's case, and not make a ruling immediately; see *Dato' Mokhtar Hashim v. PP* (*supra*). I had therefore kept in abeyance my assessment of SD2's credibility.

The second accused

[80] The second accused claimed that Gopi and his friends had repossessed his motorcycle sometime in December 2013. Gopi had on the 1 January 2014, called him and claimed that he could help to get his motorcycle back cheap through a Malay man. He had been in communication with Gopi through the number 010-3770089 from the 1 January 2014 to 6 January 2014.

[81] On the 4 January 2014, Gopi had arranged for him to meet with a man named Suffian, whom he claimed could get his motorcycle out for a small price. The first accused told Gopi that he had to think about it, as he only had RM200.00. He did not want to commit yet.

[82] Together with the first accused, the second accused met up with Gopi and Suffian on the 6 January 2014, at the Restoran Aziz Tomyam in Chemor, Ipoh. Gopi told him to put forward some

money upfront, and told him to get RM500.00. The second accused was not sure that he could get that much money.

[83] On the 8 January 2014, Gopi called him again using the same number. This time around, he was told that there was an Abang Mat who could sell him a motorcycle cheap at RM700.00. Gopi gave him Abang Mat's mobile phone number, which was 010-3805050. The second accused told him that he needed to see the motorcycle first.

[84] On the 12 January 2014, Abang Mat messaged him asking *'macam mana harga"*. He did not respond. He denied ever contacting Suffian to supply five kilograms of drugs. He also claimed that Gopi had contacted him and urged him to buy the motorcycle using some other numbers, namely 010-3771957 and 019-4623422.

[85] The second accused had agreed to meet Gopi at the TF supermarket on the 13 January 2014. He had asked the first accused's help, as he had no transportation. Suffian, the second accused claimed, was there but seated in a car. There were no discussions about drugs, They had only discussed about the motorcycle.

[86] The man named Abang Mat then came with an EX5 motorcycle. The second accused claimed to been surprised at the asking price of RM700.00 as the motorcycle had looked new, but Abang Mat told him that it was a stolen motorcycle. The second accused did not agree to buy, but was then assured by Gopi that he would bring the second accused's motorcycle the following day.

[87] The next day at around 2.30 p.m. the second accused went with the first accused to the TF supermarket, and waited at the

parking lot. Gopi was not there. Only Suffian was. Suffian told him that he could get a motorcycle for him. They waited until 4.00 p.m. but Gopi only came at 4.30 p.m. He did not come with the motorcycle as promised, but told the second accused that someone would come with it later. Gopi then left. The first accused too left to pick up his wife.

[88] A while later Gopi sent a message that stated *"bro..cukup pukul 7 tadak sampai..saya chow"*. Gopi came back at around 7.00 p.m. and parked his motorcycle at a distance. The second accused asked Gopi about the message that he had received, and was told that Gopi had merely forwarded to him the message that he had sent to his friend that was supposed to have come with the motorcycle.

[89] The first accused came back, and was told by Gopi to park his motorcycle next to his. Gopi told the second accused that his motorcycle would arrive in about ten minutes. He then told both the first and second accused to go over to Suffian to discuss. The first accused had left his mobile phone in his motorcycle's basket, while the second accused loaned his mobile phone to Gopi, as the latter claimed that he had run out of prepaid credit. They then walked over to Suffian's car and were arrested by the police.

[90] The second accused claimed that the messages between him and Gopi for the period 1 January 2014 to 14 January 2014 were not contained in SP6's report. One of it was a message that read *'motor awak on the way. Tunggu"* from the number 010-3770089. He also claimed that there were some calls and messages that Gopi had sent using the numbers 010-2770089, 019-4623422, 014-6018413 and that these numbers were not in the report. He also claimed to have struggled when being

apprehended by the police, as he was caught from behind, and that it was dark then.

[91] The second accused had also called upon SD-4, a registration officer from the Larut, Matang & Selama National Registration Department to give evidence. SD4 was referred to the death certificate of Gopi and confirmed its authenticity.

[92] The final witness called by the second accused was his sister, SD5, a housewife. Her husband works as a lorry driver. She claimed that Gopi had called her on the day that the second accused was arrested, and that he had offered to procure his release, subject to being paid RM100,000.00. Gopi claimed to know the police officer concerned, and could get favours. SD5 claimed that she could only raise RM70,000.00 and that this sum was paid to Gopi, but nothing came out of it.

Duty of the court at the end of the conclusion of the trial

[93] At the conclusion of the trial, the court will need to adhere to the provisions of s. 182A CPC, which states as follows:-

182A – Procedure at the conclusion of the trial

(1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.

(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal.

[94] Although the burden lies on the prosecution throughout the trial to prove the accused's guilt beyond reasonable doubt, no similar burden is placed on the accused to prove his innocence, as he is presumed innocent until proven guilty. An accused merely need to cast a reasonable doubt on the prosecution's case for an acquittal; s. 182A CPC; *PP v. Abdul Rahman bin Akif* [2007] 5 MLJ 1.

[95] It is also incumbent upon the court to consider and critically analyse all the evidence produced, be it the prosecution's or the defence; *Prasit Punyang v. PP* [2014] 4 MLJ 282 (CA); *Zulkefly Had v. PP* [2014] 6 CLJ 64 (CA).

[96] In *PP v. Mohd Radzi Abu Bakar* (*supra*), the Federal Court in approving *Mat v. PP* [1963] MLJ 263, held that the following steps should be followed, at the end of the defence's case:-

(a)	If you are satisfied beyond reasonable doubt as to the accused's guilt.	Convict
(b)	If you accept or believe the accused's explanation.	Acquit
(c)	If you do not accept or believe the accused's explanation.	Do not convict but consider the next steps below.

(d)	If you do not accept or believe the accused's explanation and that explanation does not raise in your mind a reasonable doubt as to his guilt.	Convict
(e)	If you do not accept or believe the accused's explanation but nevertheless it raises in your mind a reasonable doubt as to his guilt.	Acquit

Analysis of the defence

[97] The first accused's defence in essence is that of an innocent bystander. He claimed to have been a victim of circumstances, in that he was merely present with the second accused to help a friend in need of transportation. The first accused also denied being involved in trafficking in the seized drugs, in that the meetings that the second accused had with SP1, pertained to the second accused's attempt to retrieve his motorcycle, which had been repossessed. Central to this issue is a character named Gopi, whom the second accused claimed was the person who had repossessed his motorcycle, and had offered to retrieve it for him at a price.

[98] Similar to the first accused, the second accused's defence in essence is also focused on the character named Gopi. He claimed that all the meetings that SP1 had referred to were primarily between him and Gopi, and that the purposes of the meeting were for the retrieval of his motorcycle. The second accused also claimed that there were some calls and messages in the

mobile phones retrieved that were not produced in SP6's report. These details would have supported his claim. In essence, the second accused claimed that he was entrapped, and that he was entirely innocent of the charges levelled against him.

[99] It was also submitted that SP1 and SP7 had been involved in a previous drug bust, where Gopi was alleged as the informer. The prosecution subsequently withdrew the case against the person arrested in that case. Learned counsel for the second accused attempted to show the similarity between the previous case and this case, in that Gopi was the informer and was in the business of setting up others so that the police could then arrest them for trafficking. It was submitted that Gopi had played an active role beyond that of an informer. This would mean that Gopi took an active participation in the transaction, and had set up to entrap both the first and second accused, in cohorts with the police.

[100] I have great difficulty in accepting the both accused's version of events, in particular on the existence of a man named Gopi. I took note of the undisputed fact that Gopi is dead. For this reason, Gopi could not have been procured to give evidence in court. To accept the accused's version would simply mean that the police had planned to entrap two innocent persons with the help of Gopi. I find it incredible to believe that the police are capable of doing so. I am not for once suggesting that policemen are incapable of committing wrongs, but to conclude that the police had made an elaborate plan to entrap two innocent persons, and make them suffer the consequence of being hanged for something that they have not done, is quite simply outrageous.

[101] It is settled law, that an agent provocateur's credit is presumed to be worthy, and that any statements made to him in the course

of the transaction is admissible as evidence; s. 40A DDA 1952; *Hari Bahadur Gale v. PP* [2011] 5 MLJ 785.

[102] SP1 in my observation was steadfast in giving evidence. As one would expect, he was subjected to intense cross-examination by counsel for both accused. Never once did SP1 flinch. I saw no signs or evidence that had the effect of doubting his credibility. I have as such chosen to believe and accept SP1's testimony above that of the first and second accused.

[103] On this basis, I also reject the evidence of SD5, who claimed to have been in touch with Gopi, where the latter had allegedly demanded money to procure the second accused's release. I also noted that SD5 had never made any report pertaining to this allegation. If there is any semblance of truth to her allegation, one would expect her to make a report to alert the police. Her brother after all, was facing the gallows if found guilty.

[104] The first accused in his witness statement, claimed that he had first accompanied the second accused in the meeting on the 6 January 2014. The second accused on the other hand, claimed that he first met SP1, and allegedly Gopi on the 4 January 2014. The first impression that one gets is that the second accused had met SP1 for the first time on the 4 January 2014 without the first accused. However this was not the case, as counsel for the second accused had in cross-examining SP1 put forward the following questions:-

4. Pada 6/1/2014, kamu jumpa kedua-dua OKT di restoran Tomyam?

Ya.

5. Pada 6/1/2014, itu adalah perjumpaan pertama kamu dan kedua-dua OKT?

Ya.

[105] The discrepancy here is telling. It could only mean that the second accused's version contained in his witness statement was a lie. His credibility is questionable.

[106] As for the first accused, who claimed ignorance of the transactions, SP1 had maintained that the first accused was always next to the second accused every time they met. On the day of the arrest, SP1 maintained that the first accused was next to the second accused when SP1 showed them the cash. Although the first accused had left on his own for a couple of hours, he came back and left together with the second accused. They both came back forty-five minutes later with the drugs. According to SP1, the first accused was next to the second accused when the drugs were shown.

[107] It is my finding that the first accused was involved with the second accused in the transaction. It is highly incredible for him not to have heard and knew what the conversation between SP1 and the second accused was about. He was present every time SP1 met the second accused. The first accused had also left with the second accused, and came back together with the drugs on the day concerned. It is safe to conclude that the first accused and the second accused worked hand-in-hand.

[108] I have given great care in analysing the testimony of the first accused and his wife SD2. The latter had in her witness statement claimed that the first accused had sent and fetch her from work. This runs contrary to her statement to the police,

where she stated that she had gone and came back from work on her own.

[109] I detected some inconsistency in her testimony. Under cross-examination, prior to the prosecution's move to impeach her, SD2 claimed that the first accused was at home when she arrived. The relevant transcription of her cross are as follows:-

33. Pada hari tersebut kamu pulang rumah sekitar 3.30 p.m?

Saya balik kerja antara 3.30 p.m hingga 3.45 p.m.

34. Apabila kamu pulang ke rumah, kamu tak nampak OKT 1 berada di rumah?

Dia ada di rumah.

35. Maksud kamu, bila kamu sampai,dia ada di rumah?

Ya.

[110] Now if indeed the first accused had gone to fetch her from work and sent her back, why would the first accused be at home when she arrived at her house? To my mind, this could only mean that SD2 was not telling the truth. She was so intent on testifying in favour of her husband, that she was caught being inconsistent. It is only natural that a wife would want to do what is best for the husband, particularly if he was facing the gallows. Nevertheless, that does not excuse her from telling the truth.

[111] I also find that there is no credible evidence to suggest that SD2's statement to the police was inaccurate, allegedly due to stress. The questions put forward to her were innocuous and easy. How much duress can one be put under when questioned about which vehicle she used, and what she had done for the day. It would have perhaps been different if she had been one of

the suspects, and that many probing questions were posed to her. On the contrary, the questions put to her were simple and few.

[112] I also do not find any merits to her contention that she was not given an interpreter when making the statement. The language used was Bahasa Malaysia. SD2 is also fairly young. She was only twenty-nine years old at that time. Seeing that she was gainfully employed as a Guest Service Assistant at a hotel, she would have had education in this country, and that Bahasa Malaysia would be one of the subjects that she had taken. I find it very difficult to believe that a young person such as SD2 has difficulty understanding simple Bahasa Malaysia. I must add that she had initialled on every page and signed on the final page of the statement agreeing that the statement given was accurate and the truth.

[113] On that basis, I therefore rule that SD2's testimony is to be impeached. The consequence is that SD2's credibility is unworthy, and her evidence in court becomes worthless; see *Matthew Lim v. Game Warden Pahang* [1960] 1 MLJ 89. I will as such not consider SD2's testimony.

[114] Learned counsel for the second accused submitted that SP1's phone number that was used to contact the second accused was not disclosed by the prosecution. This is clearly inaccurate. Evidence has been led to show that the mobile phone used by SP1 had also been seized and forwarded to SP7 (exhibit P-18D), who subsequently forwarded it to SP6. The data from SP1's mobile phone was also extracted by SP6 and produced in his report (exhibit P-27). SP6 had testified that the messages from SP1's mobile phone were sent and received by the second accused's mobile phone. This lends credence to the

prosecution's case that SP1 had in been in touch with the second accused pertaining to the drug transaction.

[115] The second accused put much reliance on the fact that the reports by SP6 were incomplete, and that there were several numbers used by Gopi to contact the second accused. It was submitted that this will prove that Gopi had exceeded his role as an informer by pIaying an active role, and that he loses the protection pursuant to s. 40 DDA 1952. It was submitted that the prosecution's failure to call him as a witness is therefore fatal.

[116] I do not find any credence to this proposition. Firstly, it is undeniable that Gopi is dead. In any event, as I have stated earlier, I rejected the proposition that Gopi was actively involved in setting up both the accused.

[117] I have chose not to accept SD5's allegation that Gopi had procured RM70,000.00 to procure the second accused' release. This allegation to my mind was merely an afterthought. It was never raised during the prosecution's case.

[118] The second accused's contention that he had put up a struggle when being arrested, as it was dark and that he was caught from behind is clearly baseless. The first accused's learned counsel had when cross-examining SP1 suggested that the area was well lighted, to which SP1 agreed. This was not rebutted. The relevant transcript is as follows:-

23. *Setuju dengan saya keadaan di kawasan tersebut cerah dengan lampu?*

Setuju.

[119] I also find that both accused has failed to raise any reasonable doubt as to their involvement to negate the provisions of s. 34

Penal Code. Both accused were involved from the onset. The acts committed by both of them satisfy the provisions of s. 34 PC.

Decision

[120] I have conducted a maximum evaluation of both accused's evidence and that of the prosecution's. It is this court's findings, that the prosecution has proved its case beyond reasonable doubt against both accused, and that they have failed to raise any reasonable doubt as to the prosecution's case.

[121] I therefore find both accused guilty of the charge, and sentence them to death by hanging, as prescribed by the law.

Dated: 10 OCTOBER 2017

(MOHAMED ZAINI MAZLAN)
Judicial Commissioner
Taiping High Court

COUNSEL:

For the prosecution - Mohd Azrul Faidz Abdul Razak

For the first accused - Ranjit Singh; M/s Ranjit Singh Sandhu & Co

For the second accused - P Ravee; M/s P Ravee & Co