WAHYUDIN v. PP

COURT OF APPEAL, KUCHING
HAMID SULTAN ABU BACKER JCA
ABANG ISKANDAR JCA
BADARIAH SAHAMID JCA
[APPEAL NO: Q-05(M)-178-05-2017]
15 JANUARY 2019

CRIMINAL LAW: *Offences – Trafficking in dangerous drugs – Appeal against conviction and sentence – Whether there was break in chain of evidence – Whether there was discrepancy in gross weight of alleged exhibits seized – Failure of prosecution to call material witness – Whether adverse inference ought to be invoked against prosecution under s. 114(g) of Evidence Act 1950 – Defence of innocent carrier – Whether established – Whether there was proper Alcontara notice given to investigating authority – Consideration of accused's caution statement and oral evidence – Failure to rebut presumption of trafficking and possession on balance of probabilities – Whether conviction and sentence affirmed – Dangerous Drugs Act 1952, s. 39B(1)(a)*

CRIMINAL PROCEDURE: *Appeal – Appeal against conviction and sentence – Trafficking in dangerous drugs – Whether there was break in chain of evidence – Whether there was discrepancy in gross weight of alleged exhibits seized – Failure of prosecution to call material witness – Whether adverse inference ought to be invoked against prosecution under s. 114(g) of Evidence Act 1950 – Defence of innocent carrier – Whether established – Whether there was proper Alcontara notice given to investigating authority – Consideration of accused's caution statement and oral evidence – Failure to rebut presumption of trafficking and possession on balance of probabilities – Whether conviction and sentence affirmed – Dangerous Drugs Act 1952, s. 39B(1)(a)*

An Indonesian woman ('Eva') was arrested at the Kuching Airport. During interrogation, PW5 found that Eva was supposed to check-in at Hotel Fifty Six ('hotel'). PW5 went to the hotel to get further information and discovered that there was one Indonesian man, later identified as the appellant, who had checked-in in another room. PW5 went to the appellant's room and introduced himself. After a search was made, PW5 found a black bag with a tag of Malaysian Airlines with the appellant's name on it and some new clothes in the bag. A hidden compartment was also found in the bag with two packages wrapped in a purple plastic wrapper. The appellant was brought to the police station together with the seized items. The two packages wrapped in the purple plastic wrapper was then handed over to the chemist ('PW2') who then conducted an analysis on the contents of the two packages and found them to be dangerous drugs, *to wit*, methamphetamine, weighing 2,290g. The appellant was duly charged at the High Court for the offence of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA'). At the end of the prosecution's case, the Judicial

Commissioner ('JC') found that the prosecution had established a *prima face* case against the appellant and he was thus called to enter his defence. The JC was of the view that the evidence led by the prosecution had established the factum of possession by way of invoking the presumption of possession under s. 37(d) of the DDA 1952 and by virtue of the weight of the dangerous drug that far exceeded the statutory threshold amount, the JC had invoked the presumption of trafficking under s. 37(da) of the DDA 1952. The appellant's version was that he had been invited to Hong Kong by Eva, his cousin, who had told him he would be paid five million Rupiah for a task to bring back items relating to a garment business. A Chinese lady had delivered a bag to Eva, and the appellant had assisted Eva to check the contents of the bag, which contained some new clothes and shoes. According to the appellant, nothing incriminating was found in the bag. He was then asked by Eva to bring the bag to Kuching for a person named John. The appellant said that he did not know that the bag contained drugs at that time and that he did not know John, as John was mostly in contact with Eva. The appellant's defence was that he was an innocent carrier. The High Court, however, found that the defence failed to cast a reasonable doubt on the prosecution's case and that the appellant failed to rebut both the presumptions of possession and trafficking on the balance of probabilities. The appellant was therefore found guilty and was sentenced to death. Aggrieved, the appellant appealed. It was the appellant's submission that there existed material breaks in the chain of evidence in relation to the alleged exhibits seized from the appellant with regards to (i) the discrepancy in the gross weight of the alleged exhibits seized; (ii) PW2's spare key to his locker that was unaccounted for; (iii) failure of the prosecution to call the store keeper as a witness; and (iv) the absence or presence of the black sponges on the alleged drugs exhibits handled by PW5, PW6 and PW2 and the discrepancy in the description of the red wax seals.

Held (dismissing appeal)
Per Abang Iskandar JCA delivering the judgment of the court:

(1) The complaint of the appellant was that the gross weight of the seized drugs exhibits given by PW6 was 1310g in respect of exh. P11 and 1820g in respect of exh. P13, whereas the gross weight given by the chemist PW2 was stated as 1285g in respect of exh. P11 and 1804.71g in respect of exh. P13. The witnesses who handled the exhibits, however, testified to the effect that the exhibits that they were confronted with in court were the very exhibits that they had handled in the course of the investigation into this case. They had identified them by way of the markings they had made on the exhibits. As regards to the gross weight's difference of the exhibits, the explanation given was that the police witness and PW2 had used different weighing machines when they did their respective weighing of the exhibits. From the long line of decided cases on this 'different weight' issue, the existence of a

discrepancy may not be necessarily fatal to the prosecution case, as long as such discrepancy could be explained satisfactorily within acceptable reasons. Thus, the appellant's complaint regarding this issue was without merit. (paras 10-14)

(2) The issue of PW2's spare key to his locker that was unaccounted for arose because of what PW2 had earlier testified in a separate trial involving another accused person where he was also the chemist who had analysed the drugs that formed the subject matter of the charge there. PW2 had testified in the course of his evidence in that other case that he had two sets of keys to his locker. On account of this, the appellant had submitted that other staff of PW2 could have access to the locker thereby insinuating further that the drug exhibits could be tampered with. PW2 testified that he could not recall what he had said in the other case. The JC, who had the advantage of observing the demeanour of this witness, had found no reason why he ought not to believe the testimony of PW2 on his explanation and on the fact that PW2 had identified positively the exhibits in court as the very exhibits which he had analysed after he had received the same from the police. There was no cogent reason to deviate from his findings on the issue. (para 15)

(3) Not all and every person who has handled the exhibits in its historical journey must be called to give evidence in court or else an adverse inference shall be invoked against the prosecution under s. 114(g) of the Evidence Act 1950. The mischief that s. 114(g) seeks to address is a situation where there is suppression of material witness or material evidence by the prosecution in a criminal proceeding so as to occasion a prejudice against the accused person leading to a substantial miscarriage of justice. Herein, the non-calling of the store keeper and non-production of the exhibit register book did not cause a gap in the proof of the drug exhibits beyond reasonable doubt. There was thus no reason an adverse inference ought to be invoked against the prosecution. (para 16)

(4) As to the issues on the red wax seal and the absence or presence of the black sponges on the exhibits, these issues were not really of material significance in the scheme of the overall bigger picture, in light of the nature of the available evidence led by the prosecution. The identity of the drug exhibits had been positively identified by the relevant prosecution witnesses. PW6 had positively identified the two incriminating exhibits based on the markings which he had almost contemporaneously made on them. Therefore, the issues raised about the wax and black sponges were *de minimis*. (para 17)

(5) The caution statement and the oral evidence of the appellant had mentioned the name Eva and John. Eva was called as the appellant's witness and she denied having anything to do with the impugned drugs mentioned in the charge that was preferred against the appellant. She had

also denied that she was the trafficker in relation to the said drugs. Nothing much was also known of John. After applying the two-tier test alluded to in the case of *Mohamad Radhi*, it was concluded that John was a figment of the appellant's imagination, or a fictitious person. In light of the evidence led by the appellant and Eva, the JC was correct in finding that the appellant was the drug trafficker. He was not able to rebut the presumption of possession as well as the presumption of trafficking in the said drugs on the balance of probabilities. That ended the matter in so far as the innocent carrier defence was concerned. (paras 23-25)

(6) The appellant was not able to furnish useful information or particulars about the person named John. Indeed according to the appellant, Eva was dealing with John more than him. No address or handphone number of John were given to the police in the course of the investigation, including the caution statement of the appellant. It was unfair to expect the police to trace this person named John whom the appellant had claimed to have handed him the bag in Hong Kong. It could hardly be said that a proper *Alcontara* notice had been given by the appellant to the investigating authority. Further, the submission by the appellant that he was just a simpleton who did the thing he did because he was convinced by Eva, was found to be a far-fetched proposition in light of the not so simple journey that the appellant would have to undergo just to bring four pairs of jeans and t-shirts meant for business in Kuching. The appellant had to come all the way from Indonesia to Hong Kong for what could be patently described as a simple transaction that ought not to require such service involving the appellant having to come all the way from Indonesia. On top of that, he would be paid five million Indonesian Rupiah for his effort with the plane ticket all paid for. The JC was not able to accept the contention that the appellant was a mere simpleton and suffice it to say that this court agreed with the said conclusion. (paras 26 & 27)

(7) The appellant was a trafficker and not an innocent carrier. The evidence before the JC was such that he was justified in concluding as he did that a case beyond reasonable doubt had been established by the prosecution against the appellant on the preferred charge of trafficking in dangerous drugs *to wit* 2,290g of methamphetamine. Thus, this court affirmed both the conviction entered against the appellant and the death sentence by hanging imposed on the appellant. (paras 31 & 33)

***Bahasa Malaysia** Headnotes*

Seorang wanita warganegara Indonesia ('Eva') telah ditahan di Lapangan Terbang Kuching. Semasa disoal siasat, PW5 mendapati Eva sepatutnya mendaftar masuk di Hotel Fifty Six ('hotel'). PW5 telah ke hotel itu untuk mendapatkan maklumat lanjut dan mendapati bahawa seorang lelaki warganegara Indonesia telah mendaftar masuk di sebuah bilik lain. PW5 ke

bilik perayu dan memperkenalkan dirinya. Selepas carian dibuat, PW5 menjumpai sebuah beg hitam dengan tag Malaysia Airlines yang tertera nama perayu atasnya dan beberapa baju baharu dalam beg tersebut. Satu ruang rahsia juga ditemui dalam bag di mana terdapat dua bungkusan yang dibalut pembalut plastik berwarna ungu. Perayu dibawa ke balai polis bersama-sama dengan item-item yang telah dirampas. Kedua-dua bungkusan yang dibalut pembalut plastik ungu kemudian diserahkan kepada ahli kimia ('PW2') yang menjalankan analisis atas kandungan kedua-dua bungkusan dan mendapati terdapat dadah-dadah berbahaya, iaitu methamphetamine, seberat 2,290g. Perayu dituduh di Mahkamah Tinggi atas kesalahan mengedar dadah berbahaya bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB 1952'). Di akhir kes pendakwaan, Pesuruhjaya Kehakiman ('PK') mendapati pihak pendakwaan membuktikan satu kes *prima facie* terhadap perayu dan dia dipanggil membela diri. Pesuruhjaya Kehakiman berpendapat bahawa keterangan yang dikemukakan oleh pihak pendakwaan membuktikan fakta milikan dengan menggunakan anggapan milikan bawah s. 37(d) ADB 1952 dan berdasarkan berat dadah berbahaya yang jauh melebihi amaun ambang batas, PK telah menggunakan anggapan pengedaran bawah s. 37(da) ADB 1952. Versi perayu adalah bahawa dia telah dijemput ke Hong Kong oleh Eva, saudara perempuannya, yang memberitahunya bahawa dia akan dibayar lima juta Rupiah untuk tugas membawa item berhubungan perniagaan pakaian. Seorang wanita berbangsa Cina telah menyerahkan sebuah beg kepada Eva, dan perayu membantu Eva memeriksa kandungannya, yang mengandungi beberapa pakaian dan kasut baharu. Menurut perayu, tiada apa-apa barang yang menimbulkan syak dijumpai dalam beg itu. Perayu kemudian diminta oleh Eva untuk membawa beg itu ke Kuching untuk diberi kepada seorang bernama John. Perayu menyatakan bahawa dia tidak mengetahui beg tersebut mengandungi dadah pada waktu itu dan dia juga tidak mengenali John kerana John hanya berhubung dengan Eva. Pembelaan perayu adalah bahawa dia seorang pembawa tidak bersalah. Mahkamah Tinggi, walau bagaimanapun, mendapati pembelaan gagal menimbulkan keraguan munasabah atas kes pendakwaan dan bahawa perayu gagal menyangkal kedua-dua anggapan milikan dan pengedaran atas imbangan kebarangkalian. Oleh itu, perayu didapati bersalah dan dijatuhi hukuman gantung. Terkilan, perayu merayu. Perayu menghujahkan terdapat pemutusan dalam rantaian keterangan berhubung ekshibit-ekshibit yang dirampas daripada perayu berhubung (i) percanggahan dalam berat kasar ekshibit-ekshibit yang dirampas; (ii) kunci pendua PW2 tidak dapat dikesan; (iii) kegagalan pihak pendakwaan memanggil penjaga setor sebagai saksi; dan (iv) ketiadaan atau kehadiran span hitam pada dadah-dadah yang diekshibitkan yang dikendali oleh PW5, PW6 dan PW2 dan percanggahan dalam penjelasan berkenaan cap meterai merah.

A B C D E F G H I

Diputuskan (menolak rayuan)
Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:

(1) Aduan perayu adalah bahawa berat bersih ekshibit-ekshibit dadah yang diberi PW6 adalah 1310g untuk eks. P11 dan 1820g untuk eks. P13, sementara berat bersih yang diberi oleh PW2 dinyatakan sebagai 1285 gram berkenaan eks. P11 dan 1804.71g untuk eks. P13. Saksi-saksi yang mengendalikan ekshibit-ekshibit, walau bagaimanapun, memberi keterangan bahawa ekshibit-ekshibit di mahkamah adalah ekshibit-ekshibit yang sama yang dikendalikan oleh mereka dalam penjalanan penyiasatan kes ini. Mereka telah mengenal pastinya melalui tanda-tanda yang dibuat oleh mereka atas ekshibit-ekshibit itu. Berkenaan perbezaan berat bersih ekshibit-ekshibit, penjelasan yang diberi adalah bahawa saksi polis dan PW2 telah menggunakan mesin berat yang berbeza apabila mereka masing-masing mengambil berat ekshibit-ekshibit itu. Dari kes-kes yang menangani isu 'berat berbeza' ini, kewujudan percanggahan tidak semestinya menjejaskan kes pendakwaan, selagi percanggahan tersebut boleh diterangkan secara memuaskan dengan sebab yang boleh diterima. Oleh itu, aduan perayu berkenaan isu ini tidak bermerit.

(2) Isu PW2 berkenaan kunci pendua kepada tempat simpanannya yang tidak dapat dikesan timbul kerana PW2 sebelum ini memberi keterangan dalam perbicaraan lain melibatkan tertuduh lain di mana PW2 juga ahli kimia yang menganalisis dadah-dadah yang membentuk hal perkara pertuduhan itu. PW2 telah memberi keterangan dalam perjalanan keterangannya dalam kes yang lain itu bahawa dia mempunyai dua kunci untuk tempat simpanannya. Oleh itu, perayu menghujahkan bahawa pekerja-pekerja PW2 mempunyai akses terhadap tempat simpanan itu dengan itu membayangkan lanjut bahawa ekshibit-ekshibit dadah itu boleh diganggu. PW2 memberi keterangan bahawa dia tidak boleh ingat semula apa-apa yang telah dinyatakannya dalam kes yang lain itu. Pesuruhjaya Kehakiman, yang mempunyai kesempatan memerhati tingkah laku saksi itu, tidak mendapati apa-apa sebab untuk tidak percaya keterangan PW2 berkenaan penjelasannya dan atas fakta bahawa PW2 telah mengenal pasti dengan positif ekshibit-ekshibit di mahkamah sebagai ekshibit-ekshibit yang dianalisis olehnya selepas dia menerimanya daripada pihak polis. Tiada alasan yang kukuh untuk menyimpang daripada penemuan-penemuannya berkenaan isu ini.

(3) Tidak semua dan setiap orang yang telah mengendalikan ekshibit-ekshibit dalam sejarah perjalanannya harus dipanggil memberi keterangan di mahkamah jika tidak anggapan bertentangan akan dibangkitkan terhadap pihak pendakwaan bawah s. 114(g) Akta Keterangan 1950. Salah laku yang ingin ditangani oleh s. 114(g) adalah situasi di mana terdapat sekatan saksi atau keterangan material oleh pihak pendakwaan dalam prosiding jenayah sehingga menyebabkan

prejudis terhadap tertuduh yang membawa pada satu ketidakadilan serius. Di sini, kegagalan memanggil penjaga setor dan kegagalan mengemukakan buku daftar tidak menyebabkan kelompangan dalam bukti ekshibit-ekshibit dadah-dadah melampaui keraguan munasabah. Oleh itu, tiada alasan untuk anggapan bertentangan dikenakan terhadap pihak pendakwaan.

(4) Berkenaan isu-isu cap meterai merah dan ketiadaan serta kehadiran span-span hitam atas ekshibit-ekshibit, isu-isu ini tidak penting dalam gambaran keseluruhan yang lebih besar, mengambil kira sifat keterangan sedia ada yang dikemukakan oleh pihak pendakwaan. Identiti ekshibit-ekshibit dadah telah dikenal pasti secara positif oleh saksi-saksi pendakwaan yang relevan. PW6 telah secara positif mengenal pasti dua ekshibit yang menunjukkan kesalahan berdasarkan tanda-tanda yang telah dia buat padanya. Oleh itu, isu-isu yang timbul berkenaan cap meterai merah dan span-span hitam itu adalah *de minimis*.

(5) Kenyataan beramaran dan keterangan lisan perayu menyatakan nama Eva dan John. Eva dipanggil sebagai saksi perayu dan dia menafikan dia ada kena mengena dengan dadah-dadah berbahaya yang disebut dalam pertuduhan terhadap perayu. Eva juga menafikan dia adalah pengedar dadah-dadah tersebut. Tiada apa-apa yang diketahui berkenaan John. Selepas mengguna pakai ujian dua peringkat yang dimaksudkan dalam kes *Mohamad Radhi*, disimpulkan bahawa John hanyalah imaginasi perayu atau seseorang yang direka. Berdasarkan keterangan yang dikemukakan oleh perayu dan Eva, PK betul dalam mendapati perayu seorang pengedar dadah. Perayu tidak dapat menyangkal anggapan milikan dan juga anggapan pengedaran dadah-dadah tersebut atas imbangan kebarangkalian. Ini membantutkan pembelaan pembawa tidak bersalah.

(6) Perayu tidak dapat memberi maklumat atau butir-butir yang berguna tentang John. Menurut perayu, Eva yang banyak berhubung dengan John. Alamat dan nombor telefon John tidak diberi kepada polis semasa penyiasatan, termasuk kenyataan beramaran perayu. Tidak adil untuk mengharapkan pihak polis mencari orang yang bernama John yang perayu dakwa telah memberikan beg itu kepadanya di Hong Kong. Tiada notis *Alcontara* yang betul telah diberi oleh perayu kepada pihak berkuasa yang menyiasat. Tambahan lagi, hujahan perayu bahawa dia adalah orang yang mudah tertipu yang berbuat demikian kerana dipaksa oleh Eva, adalah satu cadangan yang tidak masuk akal memandangkan perayu telah mengambil perjalanan yang agak sukar hanya untuk membawa empat helai seluar dan kemeja-kemeja yang bertujuan untuk perniagaan di Kuching. Perayu telah datang melancong ke Hong Kong dari Indonesia untuk sesuatu yang boleh dikatakan transaksi yang agak mudah yang tidak memerlukan perkhidmatan melibatkan perayu datang dari Indonesia. Tambahan pula, perayu akan dibayar lima juta Rupiah Indonesia untuk usahanya dengan tiket penerbangan dibayar

sepenuhnya. Pesuruhjaya Kehakiman tidak dapat menerima hujahan bahawa perayu seorang yang mudah tertipu dan memadai untuk menyatakan bahawa mahkamah ini bersetuju dengan kesimpulan tersebut.

(7) Perayu seorang pengedar dan bukan pembawa tidak bersalah. Keterangan di hadapan PK adalah bahawa dia mempunyai justifikasi dalam menyimpulkan bahawa satu kes melampaui keraguan munasabah telah dibuktikan oleh pihak pendakwaan terhadap perayu atas pertuduhan pengedaran dadah berbahaya 2,290g methamphetamine. Oleh itu, mahkamah ini mengesahkan kedua-dua sabitan yang dimasukkan terhadap perayu dan hukuman gantung sampai mati yang dijatuhkan atas perayu.

Case(s) referred to:
Abdullah Zawawi Omar v. PP [1985] 2 CLJ 2; [1985] CLJ (Rep) 19 SC ***(refd)***
Alcontara Ambross Anthony v. PP [1996] 1 CLJ 705 FC ***(refd)***
Ghasem Gharezadehsharbiani Hasan v. PP [2014] 1 LNS 752 CA ***(refd)***
Hasbala Mohd Sarong v. PP [2013] 6 CLJ 945 FC ***(refd)***
Loh Kah Loon v. PP [2011] 5 CLJ 345 FC ***(refd)***
Mohamad Radhi Yaakob v. PP [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC ***(refd)***
Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 SC ***(refd)***
PP v. Mansor Md Rashid & Anor [1997] 1 CLJ 233 FC ***(refd)***
Su Ah Ping v. PP [1979] 1 LNS 100 FC ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, s. 37(d), (da)
Evidence Act 1950, s. 114(g)

For the appellant - Ranbir Singh Sangha; M/s Ranbir S Sangha & Co Advocs
For the prosecution - Tengku Intan Suraya Tengku Ismail; DPP

[Editor's note: For the High Court judgment, please see PP v. Wahyudin [2017] 1 LNS 795 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Abang Iskandar JCA:

The Charge

Bahawa kamu pada 6/11/2014 jam lebih kurang 3.00 pagi, bertempat di Bilik Hotel No 306, Fifty Six Hotel, Lot 2228 & 2229, Section 64, KTLD Jalan Tun Jugah, dalam daerah Kuching, dalam negeri Sarawak telah mengedar dadah berbahaya iaitu methamphetamine seberat 2,290 gram dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah Seksyen 39B(2) Akta yang sama

Brief Facts Of The Case

[1] On 6 November 2014, Inspector Mohd Kairil Mohd Johar (PW5) was informed by his superior officer of an arrest on an Indonesian woman named Eva Slyviana (Eva) at Kuching Airport. PW5 interrogated Eva and found that Eva was supposed to check-in at Hotel Fifty Six (hotel). PW5 went to the hotel to get further information.

[2] PW5 approached an employee of the hotel and the employee said Eva had not checked-in, however, there is one Indonesian man who had checked-in in another room. The man was later identified as Wahyudin ("the appellant"). The employee said, the appellant also asked about Eva as well. PW5 decided to check the room occupied by the appellant.

[3] PW5 went to appellant's room and introduced himself as a police officer. After a search was made, PW5 found a black bag with the label "OR and MI" with a tag of Malaysian Airline with appellant's name on it and some new clothes in the bag. PW5 also found a hidden compartment in the bag with two packages wrapped in purple plastic wrapper. A small sling bag was found on the bed that contained identification papers, e-ticker and hand phones.

[4] The appellant was brought to the police station together with the items seized and PW5 handed them over to the investigation officer (IO), Inspector Abang Zulkernaen bin Abang Kerni (PW6). PW6 gave the two packages wrapped in purple plastic wrapper to the chemist, En Mohd Riduan bin Md Bakhir (PW2). PW2 then conducted an analysis on the contents of the two packages and found them to be dangerous drugs, *to wit,* methamphetamine, weighing 2,290g.

[5] The appellant was duly charged in the High Court for drug trafficking in respect of the methamphetamine that was found from inside his bag. The prosecution had called the witnesses whom it believed were relevant in establishing the case against the appellant as per the charge.

[6] At the end of prosecution case, the learned Judicial Commissioner ("JC") found that the prosecution had established a *prima facie* case against the appellant and he was thus called to enter his defence. When calling for the defence, the learned JC was of the view that the evidence led by the prosecution had established the factum of possession by way of invoking the presumption of possession under s. 37(d) of the DDA 1952. By virtue of the weight of the dangerous drug that far exceeded the statutory threshold amount, the learned JC had invoked the presumption of trafficking under s. 37(da) of the DDA 1952.

Case For Defence

[7] The appellant's version was that, he was invited to go to Hong Kong by Eva, his cousin. He agreed to follow Eva to Hong Kong when she said he would be paid five million Rupiah for a task to bring back items relating

to garment business. He said the bag was delivered to the hotel room in Hong Kong to Eva by a Chinese lady. After the Chinese lady gave the bag to Eva, the appellant assisted Eva to check the contents of the bag in front of the Chinese lady. They took out the contents of the bag, which contained some new clothes and shoes. After checking that the bag did not contain any incriminating material, they placed the clothes and shoes back into the bag. He said he was then asked by Eva to bring the bag to Kuching for a person by the name of John and that someone would collect the bag when he arrived in Kuching. The appellant said that he did not know that the bag contained drugs at that time. He also did not suspect that the bag had a secret compartment. The appellant contended that he did not know much about John, as John was mostly in contact with Eva. The appellant called Eva as his witness and she was DW2 in this case. In essence, the appellant's defence was that he was an innocent carrier.

Findings Of High Court

[8] At the end of the whole trial, the learned JC of the High Court found that the defence failed to cast a reasonable doubt on the prosecution's case. He had also found that the appellant had failed to rebut both the presumptions of possession and trafficking on the balance of probabilities. The appellant was therefore found guilty and was sentenced to death by hanging. Aggrieved with such decision, the appellant had since filed a notice of appeal against it to the Court of Appeal.

The Appeal

[9] Before us, the appellant's learned defence counsel, Mr Ranbir Singh Sangha (Mr Ranbir) emphasised on the issue that had pertained to the alleged break in the chain of evidence in relation to the drug exhibits, the subject matter of the charge. He submitted that there existed material breaks in the chain of evidence in relation to the alleged exhibits seized from the appellant with regards to the following:

(i) the discrepancy in the gross weight of the alleged exhibits seized;

(ii) the absence or presence of the black sponges on the alleged drug exhibits handled by the raiding officer (PW5), investigating officer (PW6) and the chemist (PW2);

(iii) the discrepancy in the description of the red wax seals;

(iv) the chemist's spare key to his locker that is unaccounted for;

(v) the failure to tender the exhibit store register nor call the exhibit store keeper.

[10] We had perused the grounds of judgment of the learned JC and we noted that he had dealt with these issues individually. As regards the discrepancy in the gross weight of the alleged exhibits seized, essentially the complaint of the appellant on this issue was that the gross weight of the seized

drugs exhibits given by the raiding officer (PW6) was 1,310g in respect of exh. P11 and 1820 grams in respect of exh. P13, whereas the gross weight given by the chemist (PW2) was stated at 1,285g in respect of exh. P11 and 1,804.71g in respect of exh. P13. In light of these apparent discrepancies as to the gross weight of the two exhibits, learned counsel for the appellant submitted that the identity of the drugs exhibits produced in court must be suspect, and the possibility of tampering was also suggested, thereby casting a serious and reasonable doubt on the prosecution case. The learned Deputy Public Prosecutor ("DPP") before us submitted that the witnesses called by the prosecution who handled the exhibits were called to testify and they testified to the effect that the exhibits that they were confronted with in court were the very exhibits that they had handled in the course of the investigation into this case. They had identified them by way of the markings they had made on the exhibits. As regards to the gross weight's differences of the exhibits, the explanation given was that the police witness and the chemist had used different weighing machines when they did their respective weighing of the exhibits. The factual scenario surrounding this issue pertaining to the difference in gross weights as recorded by the chemist (PW2) and the raiding officer (PW6) was captured in the grounds of judgment of the learned JC in para. [61] therein, as follows:

> Learned counsel further submitted that if this court were to compare again the weight of the packages AZ1 and AZ2 as testified by the witnesses after having taken into account the weight of the shiny plastic packages, the court would discover that there was a gross difference of 24.984g in AZ1 and 15.286g in AZ2. In short the difference between PW6's and PW2's gross weight findings are as follows:
>
> (i) P11(A) plus P11(A)(1) plus P11(B): 1310g [PW6] – 1285.016g [PW2] = 24.984g
>
> (ii) P13(A) plus P13(A)(1) plus P13(B): 1820g [PW6] – 1804.714g [PW2] = 15.286g.

[11] The learned JC having considered the evidence and having seen the witnesses, had accepted the explanation given in respect of the difference in the gross weight as one that was reasonable and acceptable.

[12] We noted that in coming to that conclusion, the learned JC had addressed his mind to quite an extensive line of high authorities on the issue of weight discrepancies between police witnesses and chemist in drug trafficking cases. From the long line of decided cases on this 'different weight' issue, the existence of a discrepancy may not be necessarily fatal to the prosecution case, as long as such discrepancy can be explained away satisfactorily within acceptable reason. This proposition can find support in the Federal Court decision in the case of *Hasbala Mohd Sarong v. PP* [2013] 6 CLJ 945, which had affirmed the decision of *Loh Kah Loon v. PP* [2011] 5 CLJ 345 where it was commented as follows:

A [22] In this regard, we are minded of the fact that decided cases had shown that the difference in weight of the drug exhibits between the police and the chemist when left unexplained could result in creating a reasonable doubt to the prosecution's case. This is however dependent on the facts of each case ...

B **[13]** The apex court Justices went on to explain what had happened in the *Loh Kah Loon v. PP* (*supra*) as follows:

[24] However, in *Loh Kah Loon v. PP* [2011] 5 CLJ 345, this court upheld the decision of the courts below even though there existed a discrepancy in the weight of the drug exhibits as found by the police and the chemist.
C In that case the High Court as well as the Court of Appeal found it as a fact that there was no doubt in the identity of the drug exhibits because the evidence before the court showed there was no break in the chain of evidence. The movement of exhibits was clearly explained, and the markings on the drug exhibits were positively identified by the witnesses. The courts below were satisfied that the drug exhibits that were seized
D from the appellant were the same exhibits produced in the High Court.

[14] As it had come to pass, the learned JC accepted the explanation given by the prosecution witnesses and also the fact that the relevant witnesses for the prosecution had positively identified the exhibits as the same exhibits that they had handled in the course of their investigation pertaining to this case.
E With respect, we could find no reason to fault the learned JC with regard to his conclusion on the weight discrepancy issue. We found the complaint raised on behalf of the appellant to be without merit.

[15] The next issue on the break in the chain of evidence had been the allegation that chemist's spare key to his locker that was unaccounted for.
F This issue arose because of what the chemist PW2 had earlier testified in a separate trial involving another accused person where he was also the chemist who had analysed the drugs that formed the subject matter of the charge there. In the course of his evidence in that other case, the chemist testified that he had two sets of keys to his locker. On account of this, learned
G counsel for the appellant had submitted that other staff of PW2 could have access to the locker, thereby insinuating further that the exhibit drugs could be tampered with. PW2 testified that he could not recall what he had said in the other case. The learned JC who had the advantage of observing the demeanour of this witness had found no reason why he ought not believe the
H testimony of PW2 on his explanation and on the fact that PW2 had identified positively the exhibits in court as the very exhibit which he had analysed after he had received the same from the police, by way of the markings that he had made on the exhibits. We found no cogent reason to deviate from his findings on the issue. At para. [80] of his grounds of judgment the learned
I JC had stated:

In the present case, to counter the arguments on this point and also on the point relating to the testimony of PW2 that there was only one set of key to PW2's locker, the learned DPP had argued in this case the

> relevant witnesses [PW2, PW5 and PW6] had established in their evidence that they have taken all the necessary steps to ensure that the exhibits were in their custody at all times, and they have identified the said exhibits when the exhibits were produced in court through the marking that they had make. In the circumstances, it cannot be said that the identity of the said exhibits was in dispute or that it had been tampered with. I see no reasons not to agree with the submission of the learned DPP on this point.

[16] Another issue raised had been the failure of the prosecution to call the storekeeper as a witness and the non-production of the exhibit register book. In this regard, learned counsel had urged the learned JC to invoke the adverse inference against the prosecution. We noted that the learned JC had cited the Federal Court case of *Su Ah Ping v. PP* [1979] 1 LNS 100 which has long been held as the high authority for the proposition that not all and every person who has handled the exhibit in its historical journey, must be called to give evidence in court or else an adverse inference shall be invoked against the prosecution under s. 114(g) of the Evidence Act 1950. The mischief that s. 114(g) seeks to address is a situation where there is suppression of material witness or material evidence by the prosecution in a criminal proceeding so as to occasion a prejudice against the accused person leading to a substantial miscarriage of justice. In such a case, the adverse inference may justifiably be invoked against the suppressing party. (See, generally the Supreme Court case of *Munusamy Vengadasalam v. PP* [1987] 1 CLJ 250; [1987] CLJ (Rep) 221; [1987] 1 MLJ 492 per Mohammed Azmi SCJ). In a prosecution, the discretion to call a witness lies with the prosecutor and no one can force the prosecutor whether to call a particular witness but that having been said, an exercise of such discretion by the prosecutor is governed, always, by the consideration that non-calling of a witness may leave a gap in the prosecution's case. (See the case of *Abdullah Zawawi Omar v. PP* [1985] 2 CLJ 2; [1985] CLJ (Rep) 19 per Salleh Abas, LP). As such, did the non-calling of the storekeeper and the non-production of the exhibit register book cause a gap in the proof of the drug exhibits beyond reasonable doubt? The learned JC had answered that in the negative. Having perused through the appeal record, we were in agreement with him in that there was no reason why an adverse inference ought to be invoked against the prosecution.

[17] As to the issues on the red wax seal and the absence or presence of the black sponges on the exhibits, the learned JC was of the view that these issues were not really of material significance in the scheme of the overall bigger picture, in light of the nature of the available evidence led by the prosecution. Again, we would defer to his conclusion as the identity of the drug exhibits had been positively identified by the relevant prosecution witnesses. Here, again we could not overemphasise the significance of what learned Justice Suffian LP had said nearly 40 years ago in the *locus classicus* case of *Su Ah Ping* (*supra*), where His Lordship had occasion to say: "In our judgment, if

A the officer who picked up an object at the scene produced it and identified it as that very object, that is enough …" In this case, the witness PW6 had positively identified the two incriminating exhibits based on the markings which he had almost contemporaneously made on them. It was therefore correct for the learned JC to regard the issues raised about the wax and black
B sponges as, without being derogatory, *de minimis*.

[18] Besides the complaints that the appellant had with regard to the alleged breaks in the chain of evidence, the appellant had also submitted that the learned JC was in error when he failed to rule that the appellant was in fact an innocent carrier, not a drug trafficker. In fact, the essence of the appellant
C defence had been that he was merely an innocent carrier.

[19] The learned JC was aware of this defence and he had devoted a good portion of time appreciating the appellant's defence as such, and at the end of that judicial exercise, he had concluded that the appellant had failed to rebut the presumptions of possession and trafficking that were operating
D against the appellant on the balance of probabilities.

[20] In the course of evaluating the appellant's defence of innocent carrier, the learned JC had discussed the law on the defence of innocent carrier in a drug trafficking case under the DDA 1952. In fact, such a defence is nothing new and it has a close proximity in terms of application with the
E notion of wilful blindness. We now would allude to the learned JC's treatment of this defence in the course of his grounds of decision, like so:

> [107] In order to raise a defence of innocent carrier, an accused must show that he did not have the knowledge and had taken steps to make inquiries
F on the contents of the bag. The defence in the present case had submitted at length that the accused not only did not know about the drugs in the bag but he also taken reasonable steps to ensure that the items that he was carrying was not an incriminating substance. The accused testified that he had taken those measures when he and DW2 checked the bag in the hotel room after it was delivered to DW2 on the 3rd November
G 2014. That is a clear two days before the accused departed from Hong Kong to Kuching where he was arrested.
>
> [108] The prosecution, in urging the court to be wary of the said evidence, submitted that the evidence of the accused and DW2 had checked the bag ought not to be accepted as the truth considering the facts of this case. It was pointed out the quantity of the drugs in this case is quite
H substantial i.e. more than 2 kilogram. If indeed the accused had emptied the bag and checked the contents of the bag, the accused would have realised the bag would still be heavy even when the contents has been emptied. In fact, this was what PW5 discovered when he checked the bag. It was the weight of the bag when it is empty that caused PW5 to suspect
I that something was amiss about the bag. On careful observation, he found there was a slight bump on the bag and after further observation he found traces of glue on the outer lining of the secret compartment.

[109] Now, having considered PW5's evidence, I am of the view that if the accused had checked the bag thoroughly, I do not see why he cannot detect that something was amiss especially considering the weight of the bag when it was empty. The defence had argued that there were no reasons for the accused to suspect something was amiss as he was not suspicious or was not out to look for something amiss with the bag unlike PW5. With respect, I do not accept the said argument. Firstly, what was the purpose of the accused and DW2 checked the bag upon receiving it from the Chinese lady. Based on the evidence of DW2, the reason why she had checked the bag was she feared that she would be cheated by John. In other words she was worried that John would have played her out by stuffing the bag with incriminating matter. It was for that reason that she said she checked the bag and its contents. Upon seeing DW2 checked the bag, the accused as a reasonable person would have also entertained doubt as to what was inside the bag. Yet despite that the accused did not offer any explanation why he was not thorough in checking. If he had, he too would have noticed that the bag was still heavy upon the contents had been emptied.

[110] Based on the evidence, I take the view that his evidence and the evidence of DW2 on the matter is highly suspicious and I do not believe that he did not know what was inside the bag. I believe that the evidence of that he had checked the bag with DW2 was merely a ploy to disassociate themselves with the contents in the hidden compartment of the bag in the event that they were arrested. I take this view by looking at the circumstances of this case as whole. Looking at the evidence, it was clear that the accused knew what he was required to do by accepting the offer to go to Hong Kong with DW2. From his own evidence he knew that he was required to carry bags or to bring back items for DW2. He also knew that DW2 would pay for his expenses and had indeed paid for all his expenses for his whole trip from Jakarta to Kuching. On top of that he will also be paid 5 million rupiah for his task.

[111] Now, since he was tasked to carry the items for his trip back from Hong Kong to Jakarta, the first thing that would raise his suspicion on his task was when he was given the bag to carry back with him. The learned DPP has submitted on this point and I completely agree with him. I reproduced what he said:

> It would definitely raise suspicion in this case, the reason that Eva gave for her trip to Hong Kong which was to collect bag containing clothes for trading was not plausible. If the Accused claimed was right, that he checked the content of the said bag, he would realize that there was only 4 pairs of jeans and 2 t-shirts in it. According to him, he was informed by DW2 that these clothes were for trading as explained by John. And if it is true that he was asked to follow Eva in order to bring this bag and once it being handed to someone else, he will be paid 5 million rupees. Does it not raise any suspicion on the Accused? The clothes inside the bag was very minimal in number, in which it is more economical for them to be couriered or to be posted? Or at least, don't it raised suspicion if someone willing to pay 5 million rupees for only that 6 clothes? If

A the Accused indeed checked, don't it raise suspicion why would there be 2 same items being bought as a sample. Kindly refer to Exhibit P25 and P26, the said jeans are identical! Nothing in evidence that could suggest that the Accused had made an inquiry over these.

B [112] The defence in rebutting the arguments advanced by the prosecution had placed heavy reliance on the arguments that the accused did not make further inquiries on the matter as he trusted DW2, he was a simpleton and was merely relying heavily on the instructions given by DW2. Again the learned DPP pointed out if he was a simpleton and had relied on DW2 for instructions, how did the accused managed to find his C way from Hong Kong to Kuching and arrived at the hotel that had been booked by DW2 all on his own effort? He certainly is not as what was portrayed by the defence. Again, I agree with his submission on this point.

[113] In conclusion, after hearing the evidence of the accused and DW2, I do not accept the defence of the accused that he was an innocent carrier D as claimed. I also do not believe his evidence that he had checked the bag and from the surrounding circumstances of the case, I find that he knew what he was up to and he knew what was inside the secret compartment of the bag. In the circumstances he did not manage to raise a doubt in the prosecution case neither did he managed to rebut the statutory presumption of possession that had been invoked against him. Whether E the accused had rebutted the statutory presumption of trafficking under section 37(da) of the DDA.

[21] We noted too that the learned JC had directed his mind to the relevant decided cases which are authorities on matters related to the defence of innocent carrier in a drug trafficking prosecution. The first case on point F referred to by the learned JC was the *Mohamad Radhi Yaakob v. PP* [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 ("the *Mohamad Radhi* case").

[22] We reproduce below the learned JC's treatment of the appellant's defence on he being a mere innocent carrier, as follows:

G [114] In the course of the submission, the defence had also advanced the arguments that the actual trafficker in this case is John and/or Eva and the accused merely had the bag with him when he was arrested. In other words, he was merely a mere possessor of the bag without knowledge of the impugned drugs. In view of the arguments, it is necessary for this court to consider the principles as laid down in the case of *Mohamad Radhi* H *v. Public Prosecutor* [1991] 3 CLJ 2073; which is commonly referred to as the *Radhi* direction.

[115] In the case of *Yee Wen Chin v. PP* [2008] 6 CLJ 773, the Radhi direction was explained in the judgment of Gopal Sri Ram JCA as follows (at p 784): "In the course of cross-examining the prosecution witnesses it I was extracted from PW5 that the information he had received was that Woo Kok Mend was trafficking in drugs at the place in question. The defence quite properly took advantage of this fact to demonstrate that Woo was the real trafficker and that the accused was entirely innocent. The accused was clearly entitled to do this in view of the decision in

Mohamad Radhi v. Public Prosecutor [1991] 3 CLJ 2073; [1991] 1 CLJ (Rep) 311 SC. That case is authority for the proposition that a person charged with trafficking is entitled to an acquittal on that charge by showing that he was a mere possessor of the drugs whilst another was the true trafficker. Whenever such a defence is taken two separate exercises must be carried out by the trial judge. He must first determine as a fact whether that other is a real person or a mere figment of the accused's imagination invented for the purpose of the trial. Next, if he finds that other person to be real the judge must then determine whether that other person is the real trafficker. This is called the *Radhi* direction and must be administered by a court unto itself when such a defence is taken. See *Sochima Okoye v. Public Prosecutor* [1995] 3 CLJ 371 CA.

[23] Now, having gone through the records of this appeal, we were satisfied with the conclusion arrived at by the learned JC in light of the evidence led by the appellant and by DW2, applied by him in the context of the applicable law on the defence of innocent carrier. He was correct in arriving as he did at the finding that the appellant was the drug trafficker in this case. He was not able to rebut the presumption of possession as well as the presumption of trafficking in the said drugs on the balance of probabilities after having considered all the available evidence placed before him, including the caution statement of the appellant as well as the oral evidence of Eva, the DW2.

[24] The fact that the caution statement of the appellant was aligned with what he testified under oath in court did not necessarily mean that what he had alluded to in both instances must be the truth or must be given credence such that the presumptions were thereby rebutted on the balance of probabilities, or that a reasonable doubt must have been created by such evidence as to cast a reasonable doubt on the prosecution's case. The appellant's evidence, including his caution statement must be evaluated in light of the entirety of the evidence adduced before the court.

[25] The caution statement and the oral evidence of the appellant in this case had mentioned the name Eva and John. It was suggested by the appellant that real trafficker was either, his own cousin namely DW2, or the character mentioned as John in his evidence and in his caution statement. DW2 was called as the appellant's witness and she denied having anything to do with the impugned drugs mentioned in the charge that was preferred against the appellant in this case. More significantly, she had also denied that she was the trafficker in relation to the said drugs. That had left John as the suspected trafficker. But nothing much was known of John who had purportedly given the appellant the bag that had contained the drugs in Hong Kong for the purpose of the appellant handing it over to someone who would be picking the said bag in Kuching from the appellant. The learned JC had considered this matter in his appreciation of the appellant's defence of innocent carrier. After applying the two-tier test alluded to in the *Mohamad Radhi* case (*supra*)

the learned JC had concluded that John was a figment of the appellant's imagination, or otherwise known as a fictitious person. That ended the matter in so far as the innocent carrier defence was concerned. With respect, we were in agreement with the learned JC in that regard.

[26] In regards to the *Alcontara* notice issue, we would need to say a little more in the context of the evidence in this appeal before us. It is this. We noted that the appellant was not able to furnish useful information or particulars about the person in Hong Kong called John who had purportedly handed him the bag that contained the dangerous drugs. Indeed according to the appellant, Eva was dealing with John more than him. No address nor handphone number of John were given to the police in the course of investigation, including the caution statement of the appellant. In such a situation, it would be unfair to expect the police to trace this person named John whom the appellant had claimed to have handed him the bag in Hong Kong. It can hardly be said that a proper *Alcontara* notice had been given by the appellant to the investigating authority. In the *Alcontara Ambross Anthony v. PP* [1996] 1 CLJ 705 case itself, the accused person had given the personal particulars of Che Mat, whom the accused had claimed was the owner of the keropok when he was stopped by the police. He had told the police that the cargo in the gunny sacks in his car boot was keropok as told to him by Che Mat. He proceeded to give the particulars of Che Mat, including his telephone number. The keropok later, on further examination, turned out to be dangerous drug, cannabis. The investigating officer, despite admittedly in possession of this particular information about Che Mat, also admittedly did not carry out any investigation to check out the veracity of Alcontara's assertion, backed by specific particulars regarding Che Mat, who could either be a real person or a mere creation of Alcontara's imagination. As was alluded to earlier, Alcontara was convicted on the charge of drug trafficking in the cannabis and was sentenced by the High Court to death by hanging by the learned trial judge who was of the considered view that Alcontara's defence was but an afterthought. His conviction and sentence were affirmed by the Court of Appeal. On appeal to the Federal Court, his conviction and sentence were set aside. It was found by the apex court Justices that Alcontara should not be penalised by the lack of ingenuity on the part of the investigating officer. In essence, Alcontara had been highly prejudiced by the failure by the investigating officer to investigate into the veracity of Alcontara's version of events, which was given at the earliest opportunity, thereby eliminating any possibility of embellishment by Alcontara. Alcontara might have lied to the police, but the omission to investigate by the police had created a reasonable doubt on the prosecution case. He was denied the opportunity of having his defence fairly investigated by the police investigation. That prejudice had occasioned a grave miscarriage of justice against Alcontara. But, on the evidence as adduced before the learned JC, the same cannot be said of the present appellant's version regarding John. The

law report is replete with decisions on the *Alcontara* notice and if an example is needed, then a case such as *Ghasem Gharezadehsharbiani Hasan v. PP* [2014] 1 LNS 752; [2014] 5 MLJ 433 would suffice to illustrate how such a defence may be effectively erected by an accused person.

[27] It was also raised by learned counsel for the appellant that the appellant was a mere simpleton who did the thing he did because he was convinced to do it by DW2, his cousin. The plan was for him to bring the bag to Kuching which would contain four pairs of jeans and two t-shirts for business purposes. From the evidence surrounding this allegation, the learned JC had found the submission by learned counsel on his contention that the appellant was a simpleton to be a far-fetched proposition in light of the not so simple journey that the appellant would have to undergo just to bring four pairs of jeans and two t-shirts meant for business in Kuching whereby he had to come all the way from Indonesia to Hong Kong for what could be patently described as a simple transaction that ought not to require such service involving the appellant having to come all the way from Indonesia. On top of that he would be paid five million Indonesian Rupiah for his effort with airplane ticket all paid for. The learned JC was not able to accept the contention that the appellant was a mere simpleton. Suffice it is for us to say that we agreed with the learned JC's conclusion on the matter.

[28] A few other complaints in regard to the investigation were raised in the written submissions advanced by learned counsel on behalf of the appellant. Among them are the following:

(i) the data from the five hand phones seized that were not tendered by the prosecution;

(ii) the missing monies and personal belongings of the appellant;

(iii) that the appellant's hands were not swabbed;

(iv) that a fitting test was not conducted;

(v) that Eva was the actual trafficker and the appellant was an innocent carrier; and

(vi) that the appellant and Eva did not carry or weigh the bag when it was empty and examined its contents on the floor.

[29] Suffice for us to observe here that an investigation is left entirely to the discretion of the investigating officer. Not all tools of investigation must be applied in the course of an investigation depending on the real need for such tool to be applied in order to establish a certain fact necessary to be established. It would not be wrong to say that it depends on the experience of the particular investigating officer. His ultimate vindication will take place in the court where the sufficiency or otherwise of his investigative work will be unravelled for all to see. As an illustration, we would allude to the apex

court's decision in *PP v. Mansor Md Rashid & Anor* [1997] 1 CLJ 233 where it was adverted by the apex Justices, no less, that in a case of drug transaction involving an *agent provocateur*, it would not be imperative that finger printing or nail clipping examination must be done on the accused person for obvious reasons. In other words, where available evidence was already overwhelming to connect the accused with the drugs seized, not all investigative tools at the disposal must necessarily be applied to establish such factual circumstance. It all would depend on the dictates of the situation at hand confronting the investigating officer.

Our Findings

[30] As such, on the break in the chain of evidence issue, we were of the respectful view that the learned JC was correct when he concluded that there was no break in the chain of evidence.

[31] On the issue of whether the appellant was an innocent carrier, again we agreed with the learned JC that the appellant was a trafficker, not an innocent carrier.

[32] We also agreed with the learned JC that the prosecution had correctly invoked the presumptions of possession and of trafficking of the said impugned drugs and that the appellant had failed to rebut the said presumptions on the balance of probabilities. He had also failed to raise a reasonable doubt as to his guilt.

Conclusion

[33] In the upshot, premised on the above, we had unanimously dismissed the appellant's appeal. We were of the view that the evidence before the learned JC was such that he was justified in concluding as he did that a case beyond reasonable doubt had been established by the prosecution against the appellant on the preferred charge of trafficking in dangerous drugs, *to wit*, 2,290g of methamphetamine. We therefore had affirmed both the conviction entered against the appellant and the death sentence by hanging imposed on the appellant by the learned JC in the High Court.

[34] We had so ordered.