



**IN THE HIGH COURT OF MALAYA AT IPOH  
IN THE STATE OF PERAK DARUL RIDZUAN, MALAYSIA  
[CRIMINAL TRIAL NO: 45A-010-12/2015]**

**TIMBALAN PENDAKWA RAYA**

**... PENDAKWA RAYA**

**Lawan**

**1) MUHAMMAD AZHAR MUHAMMAD ZAINI**

**2) AHMAD ASRAF MOHD NASIR**

**3) MUHAMMAD NAIM MUHAMMAD ZAINI**

**... TERTUDUH-TERTUDUH**

***CRIMINAL LAW:** Dangerous drugs - Trafficking - Cannabis weighing 4540g - Selling of dangerous drugs - Drugs were sold to agent provocateur - Drugs contained in a bag handed over by accused to agent provocateur - Whether ingredients of trafficking proven beyond reasonable doubt*

***CRIMINAL PROCEDURE:** Defence - Denial - Offence of drug trafficking - Defence denied sale of drugs - Accused alleged he collected bag from someone and did not check contents of bag but believed it contained traditional medicine - Whether accused raised reasonable doubt in prosecution's case*

***CRIMINAL LAW:** Common intention - Trafficking - Accused merely passengers in car - Co-accused alleged accused had knowledge of drugs - Whether safe to conclude that accused had common intention to traffic drugs based on bare oral assertion of co-accused*

***EVIDENCE:** Agent provocateur - Admissibility of evidence - Corroboration - Offence of drug trafficking - Drugs were sold to agent provocateur - Agent provocateur abetted commission of offence - Whether there was a presumption that agent provocateur was a creditworthy witness by virtue of s. 40A(1) of Dangerous Drugs Act 1952 - Whether evidence of agent provocateur could be accepted without any corroboration*

**[First accused found guilty and sentenced to death. Second and third accused were acquitted and discharged.]**

**Case(s) referred to:**

*Abdul Salim Abdul Razak v. PP & Another Appeal [2014] 1 LNS 346 CA (refd)*

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

*Chai Tee Keiong v. PP [2013] 1 LNS 975 CA (refd)*

*Mohd Azlan Mat Nor & Anor v. PP [2014] 1 LNS 350 CA (refd)*

*Muniandy & Ors v. Public Prosecutor [1966] 1 LNS 110 FC (refd)*

*Public Prosecutor v. Saimin & Ors [1971] 1 LNS 115 HC (refd)*

*Tengku Mahmood v. Public Prosecutor [1974] 1 LNS 176 HC (refd)*

*Wan Marzuki Wan Abdullah v. PP [2008] 4 CLJ 631 CA (refd)*

**Legislation referred to:**

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

## JUDGMENT

- [1] On 25 August 2015, a black bag containing substance suspected to be cannabis (exhibit P7) was recovered from a car bearing registration number PLF 2482. The occupants in the car were the three accused persons. The first and third accused are siblings. The three accused were subsequently charged as follows:

**“Bahawa kamu, pada 25 Ogos 2015 jam lebih kurang 2.00 petang di tepi jalan berhampiran gerai makan No. Lot 1042, Batu 19, Kuala Dal, Padang Rengas, Kuala Kangsar di dalam Daerah Kuala Kangsar, di dalam Negeri Perak Darul Ridzuan di dalam mencapai niat bersama kamu telah telah mengedar dadah berbahaya iaitu sejumlah berat 4540 gram Cannabis dan dengan itu kamu telah melakukan satu kesalahan di bawah Seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 yang boleh dihukum dibawah Seksyen 39B(2) Akta yang sama dibaca bersama seksyen 34 Kanun Keseksaan”.**

### Case for the prosecution

- [2] The prosecution called 7 witnesses to prove its case. The evidence was that on 17 August 2015, on information received, ASP Fikri (SP7) set up an undercover sting operation to arrest a suspected supplier of drugs. He instructed narcotics officers Koperal Jafri @ Sany bin Othman (“Jafri”) (SP4) and ASP Suffian to pose as prospective buyers of cannabis from the supplier. Jafri and ASP Suffian proceeded to Taiping the same day, and were introduced to the informer by one Inspector Sahidi.

- [3] Jafri testified that evening the informer took him and ASP Suffian to Selama, Kedah, and introduced them to the first accused who referred to himself as “Weng”. There were some preliminary negotiations between him and the first accused for about 20 minutes for the purchase of cannabis. After exchanging phone numbers with the first accused, he and ASP Suffian returned to Taiping.
- [4] The next morning, the first accused messaged Jafri about the availability of drugs. Later, the same day the first accused telephoned him to obtain his confirmation to purchase cannabis. Jafri confirmed his interest and inquired whether the price could be reduced. The first accused agreed to reduce the transaction price to RM 1,900.00 a block, if a larger quantity was purchased.
- [5] According to Jafri, he met the first accused again two days later, on 19 August 2015, at the latter’s request. The meeting took place at about 3 pm at a roadside food stall in Taman Bunga Raya at Kuala Kangsar. The third accused had accompanied the first accused to this meeting but did not come inside the stall. Jafri said he and the first accused further negotiated the sale of cannabis by the first accused to him. They agreed on the quantity and price. The first accused agreed to sell 10 blocks of cannabis to Jafri for RM 19,000.00. Jafri left after informing the first accused that he would contact him as soon as was able to raise the monies.
- [6] On 24 August 2015, the first accused telephoned Jafri again to inquire when the transaction could take place. Jafri asked the first accused for 2 days to raise the agreed sum of RM 19,000.00.

- [7] On 25 August 2015, the first accused contacted Jafri and informed him that he would only be able to deliver 5 blocks of cannabis at RM 1,900.00 each block. Jafri agreed to this and requested the first accused to come to the Kuala Kangsar bus station with the drugs.
- [8] Jafri then notified ASP Fikri of the delivery that was to take place later that day. A briefing was held by ASP Fikri that was attended by Jafri and the other narcotics officers involved in this sting operation. Jafri and ASP Suffian then proceeded to the bus station in a car bearing registration number WYJ 7984 to await the first accused. The first accused arrived at 1.30 pm, in a Proton Saga bearing registration number PLF 2482 with the second and third accused in the car with him.
- [9] Jafri requested the first accused to follow his car and drove to a food stall in Kampung Kuala Dal, where ASP Fikri and team were waiting in ambush to apprehend the suspected drug trafficker. Jafri parked his car along the stall. The first accused parked his car next to his car. Jafri invited the accused persons for a drink at the stall. Later, Jafri asked the first accused if he had brought the “barang” and the latter replied that it was in the car. They exited the food stall about ten minutes later and walked to where PLF 2482 was parked as Jafri wanted to examine the “barang”. The second accused informed him that the cannabis was in the bag.
- [10] The first and second accused, opened the driver and front passenger car doors, respectively, and got into the car. The third accused opened the rear right door behind the driver and picked up a black bag from the foot rest area and placed it on the rear passenger seat and unzipped the black bag. He then walked to the rear left door and sat behind the second accused. Upon

satisfying himself that the bag contained cannabis, Jafri gave the pre arranged signal to the ambush team that laid in wait. ASP Fikri his team surrounded PLF 2482 and the accused persons were arrested.

- [11] In cross examination, it was put to Jafri that it was untrue that he had negotiated with the first accused to buy cannabis. It was also put to him that his version of the facts was not true as the only time the first accused had met Jafri in Kedah was on 17 August 2015. The informer, a person called Sham, had taken him to meet Jafri. At this meeting, Sham expressed the desire to buy cannabis from the first accused but the latter informed Sham that he was not involved in drugs. Jafri categorically denied these allegations.
- [12] It was further put to Jafri that the black bag was transported to the food stall at Kampung Kuala Dal at the behest of Sham. The bag had been handed to the first accused by one Siva for the same to be handed to Sham. The first accused was led to believe by Sham there was traditional medicine in the black bag. Sham was present at the food stall. Jafri denied these allegations.
- [13] It was also put to Jafri that on 25 August 2015, he never met the accused persons at the Kuala Kangsar bus station nor requested them to follow his car to the food stall. It was suggested to Jafri that he was present in the vicinity of the food stall not because of any pre arranged meeting with the first accused to deliver drugs but because he had received information from Sham, that there were drugs in PLF 2482 and he was waiting there with the ambush team. Jafri emphatically denied all these allegations.
- [14] The next witness was ASP Fikri. He confirmed that he had instructed Jafri to pose as a drug buyer to buy drugs from a suspected drug supplier. He also confirmed that on 25 August

2015, he and his men positioned themselves in the vicinity of the food stall to await the drug supplier. Jafri had been instructed to bring the drug supplier to the food stall.

- [15] ASP Fikri said upon receiving the pre arranged signal from Jafri, he and his team surrounded the car in which the accused persons were seated and instructed them to step out. They complied. He seized the black bag that was on the rear seat of the car. He opened it in the presence of the three accused persons and found 5 blocks of compact dried plant which he suspected was cannabis. The first accused fainted when he introduced himself as a police officer.
- [16] All the items were seized and the accused persons brought to the Kuala Kangsar Police Station. There he lodged a police report and issued a search list to the accused persons. He marked the exhibits by putting his signature on them. The exhibits, which included four handphones seized from the accused persons, were handed to the investigating officer (SP8) Nurleyana Diana binti Stephenson.
- [17] The investigating officer testified that she made her own markings on the exhibits. She then packed the drug exhibits into a box and sealed it with the PDRM seal. The exhibits were handed to chemist Gunalan Varatharajan (SP3) who analysed the exhibits and found them to contain a total of 4540 grams of cannabis, a dangerous drugs as listed under the First Schedule and section 2 of the Dangerous Drugs Act 1952 (“the Act”).
- [18] In cross examination, the investigating officer admitted that she did not send the phones for forensic examination or investigate the incoming and outgoing numbers in the mobile phones. It was put to the investigating officer that if had she done so, it would shown the accused persons were innocent carriers who had no

knowledge of the contents of the bag and that the black bag had been handed to the first accused by one Siva for the same to be delivered to Sham.

**[19]** The other two prosecution witnesses were Zamzul bin Md Zam (SP5) and Mohamad Sham bin Mohd Noor (SP6). Zamzul bin Md Zam was the registered owner of PLF 2482. He had let out his car to Layar Lagenda Service for two years under a written contract from 5 September 2013 to 5 September 2015. Mohamad Sham, a clerk with Layar Lagenda Service confirmed this fact and added that on the night of 24 August 2015, at about 10 p.m, the third accused had hired PLF 2482 for two days at a daily rental of RM 150.00. The third accused had no cash and had charged motorcycle KBF 7569 as security for the rent due.

**[20]** That in substance was the evidence for the prosecution case.



**Ingredients of the offence**

[21] It was the prosecution's case that the accused persons had pursuant to a common intention sold the drugs to Jafri. The prosecution relied on section 2 of the Act to prove that the sale of the drugs constituted trafficking. Section 2 defines trafficking as follows:

**In this Act, unless the context otherwise requires — trafficking includes the doing 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.**

[22] In *Wan Marzuki bin Wan Abdullah v. Public Prosecutor* [2008] 4 CLJ 631 the Court of Appeal held that actual delivery of the drugs to the agent provocateur was not essential to prove trafficking by sale. It was observed in this regard:

In our judgment whether there is actual delivery is a question of fact and of degree. It depends on the particular facts on an individual case. Varying fact patterns may be envisaged. An accused (as vendor) may physically hand the drug to the buyer (usually an agent provocateur). Or he may place it near the buyer. Or he may make it readily available for the buyer to take control of it as happened in *Sa'ari Jusoh*. Or he may place it in a vehicle or a room and hand the keys to the same to the buyer, in all these cases there is actual delivery. There may be cases where delivery is constituted by more than one act. Take this very case.

The acts of the appellant in bringing the drug to the petrol station and placing it near PW5 when taken cumulatively constitute actual delivery.

[23] In *Mohd Azlan bin Mat Nor & Anor v. Public Prosecutor* [2014] 5 MLJ 375 and *Abdul Salim bin Abdul Razak v. Public Prosecutor and Another Appeal* [2014] 5 MLJ 729 the Court of Appeal held that where the prosecution case against an accused is premised on trafficking by selling under section 2 of the Act, possession need not be proved.

[24] It was thus incumbent on the prosecution to prove:

- i. that the substance found in the black bag was dangerous drugs within the definition of section 2 of the Act ; and
- ii. that the black bag of drugs was delivered to Jafri at the R&R by the accused persons in pursuance of a sale reached earlier that morning with the first accused ; and
- iii. that the accused persons had common intention to sell the drugs mentioned in the charge to Jafri.

### **Burden on the prosecution**

[25] In *Balachandran v. PP* [2005] 1 CLJ 85, the Federal Court explained the burden of proof on the prosecution in these terms:

Section 180(1) makes it clear that the standard of proof on the prosecution at the close of its case is to make out a *prima facie* case ... A *prima facie* case is therefore one that is sufficient for the accused to be called upon to answer.

This in turn means that the evidence adduced must be such that it can be overthrown only by evidence in rebuttal. ... A litigating party is said to have a *prima facie* case when the evidence in his favour is sufficiently strong for his opponent to be called on to answer it. A *prima facie* case, then, is one which is established by sufficient evidence, and can be overthrown only by rebutting evidence adduced by the other side. ... In order to make a finding either way the court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established. ... Thus if the accused elects to remain silent he must be convicted. The test at the close of the case for the prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the affirmative then a *prima facie* case has been made out. ...

### **Finding at close of the prosecution case**

[26] As regards ingredient (i), the evidence of the chemist was not challenged and it established that the substance contained a total of 4540 grams of cannabis, which is a dangerous drug as listed under the First Schedule and section 2 of the Act. The complaint by defence that there was a gap in the evidence of the chemist was baseless as the chemist in his evidence had testified that the drugs were under his control from the time he received it till he completed the analysis.

[27] As regards ingredient (ii), the defence contended that the prosecution had failed to adduce credible evidence to show there

was a sale of drugs to Jafri. It was said that the evidence of Jafri should not be accepted in the absence of phone records to show there was communication between him and the first accused as alleged by him. I found no merit in this submission. Jafri was an agent provocateur and by virtue of section 40A(1) of the Act, there was a presumption that he was a creditworthy witness and evidence could be accepted without any corroboration. In any event, his evidence was corroborated by ASP Fikri.

**[28]** As regards ingredient (iii), the evidence showed that the first accused had agreed to sell cannabis to Jafri. The third accused rented a car. All three accused brought the drugs to the Kampung Kuala Dal food stall to deliver it to Jafri. The drugs were shown to Jafri. These facts showed that the accused persons had a common intention to traffic in drugs and had acted in concert pursuant to a prearranged plan.

**[29]** On a maximum evaluation of the evidence, I found at the end of the prosecution case that there was credible evidence to show that the drugs were delivered to Jafri by the three accused persons pursuant to a sale reached earlier between the first accused and Jafri on the morning of 25 August 2015.

**[30]** I therefore ruled that the prosecution had made out a *prima facie* case and called on the accused persons to make their defence.

### **Case for the Defence.**

**[31]** All three accused elected to give evidence on oath. All three accused denied the prosecution's version of the facts. They asserted that they were innocent parties who had no knowledge of the contents in the black bag. They emphatically denied that

they had rented the car to undertake an assignment to deliver the drugs to Jafri.

- [32] The first accused, aged 24 gave evidence to this effect. He lived in Selama, Kedah and wanted to go sightseeing. He asked his brother, the third accused to rent a car. He and the third accused then drove to Penang. They reached the second accused's house at about 2 in the morning and stayed the night there. At about 9 am the next morning, whilst he was having breakfast with the other two accused, he received a phone call from Sham who informed him that his father (Sham's father) was unwell and requested his assistance to collect a bag of traditional medicine from one Siva and for the same to be delivered to him in Kuala Kangsar. The first accused was told to wait for Siva's call.
- [33] Siva telephoned the first accused a little later and requested him to pick up the medicine from the R&R at Juru. According to the first accused, on reaching the said R&R, he phoned Siva and the latter asked him to wait near the toilets. He waited alone for Siva who showed up with the black bag and handed it to him. He took the black bag and placed it on the rear seat of the car where the third accused was asleep. The second accused who was seated in the front passenger seat was busy playing with his phone and did not ask what was in the black bag. The third accused woke up after a while and inquired about the black bag and he told him "kamu tidak perlu tahu".
- [34] According to the first accused, he then drove to Kuala Kangsar to deliver the bag to Sham. On reaching Kuala Kangsar, he contacted Sham, who asked to meet him at the Kampung Kuala Dal food stall. Sham sent him the location of the food stall to his phone. On reaching the stall, they parked the car and entered the stall and ordered food and drinks. At this point, he noticed Sham

seated in one corner of the food stall. He walked up to him and informed him that the black bag was in the car. Sham requested him to finish his meal and to wait for him in the car.

**[35]** The first accused denied that Jafri was at the food stall and he and the other accused had spoken to the latter.

**[36]** Continuing with his testimony, the first accused said that after the three of them had eaten, they got into the car and waited for Sham to collect the bag. Suddenly, a group of men surrounded their car and instructed them to step out and arrested them. The police unzipped the black bag on the rear seat. He fainted when the police told him there were drugs in the bag. The first accused explained that he fainted because he had read in news papers that the sentence for drug trafficking is death.

**[37]** The first accused accepted that he had met Jafri on 17 August 2015. According to him it was Sham who took him to meet Jafri. Sham and he had been friends since young. In the course of conversation, Sham inquired if he could sell cannabis to him. He informed Sham that he was not involved in drugs. The first accused maintained that he never met or contacted Jafri again.

**[38]** I turn now to the evidence of the second accused. He was 25 years of age. He testified that he only knew the first and third accused were visiting him when they called him close to midnight on 25 August 2015 to ask if they could stay at his place. He confirmed that the first accused received a phone call the next morning whilst they were having breakfast. After the phone call, the first accused drove them to R&R Juru. The first accused parked the car and got out to meet someone. Later he came back with the black bag and said they were going to Kuala Kangsar for sightseeing. The second accused said he took over the wheels after they had cleared the Kuala Kangsar toll.

- [39] The first accused informed him they were going for lunch and gave him directions to go to the Kampung Kuala Dal food stall. On reaching the place, he parked the car and the three of them entered the stall. His evidence as to what happened thereafter was consistent with the evidence to the first accused. He vehemently denied that he had said to Jafri that “ganja ada dalam beg” as alleged by Jafri. He maintained that he had no knowledge of the contents of the black bag. He also denied that he had come there in furtherance of a prearranged plan with the first and third accused to deliver the drugs to Jafri.
- [40] The third accused was 22 years of age. His version of the events was consistent with that of the first and the second accused. He denied that on the afternoon of 19 August 2015, he had accompanied the first accused to Kuala Kangsar to meet Jafri at a food stall at Taman Bunga Raya. When asked to explain why he had rented the car, he explained that he did so as the first accused did not possess a driving license. The first accused had asked him to rent a car to go sightseeing in Kuala Kangsar. He denied any knowledge of drugs in the black bag. He only knew there were drugs when the police unzipped the bag and showed them.
- [41] The third accused also denied that on 25 August 2015 he had lifted the black bag from the rear foot rest and placed it on the rear seat for Jafri and unzipped it for Jafri to see. He also denied that he had come there in furtherance of a prearranged plan with the first and second accused to deliver the drugs to Jafri.

### **Burden on the Defence**

- [42] The burden of proving the guilt of an accused is with the prosecution. On the other hand, burden on the defence is to raise

a reasonable doubt in the prosecution case. The term reasonable doubt was elucidated in *PP v. Saimin & Ors* [1971] 2 MLJ 16:

The following definition of “reasonable doubt” is often quoted:

“It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge.”

It has again been said that “ ‘reasonable doubt’ is the doubt which makes you hesitate as to the correctness of the conclusion which you reach. If under your oaths and upon your consciences, after you have fully investigated the evidence and compared it in all its parts, you say to yourself I doubt if he is guilty, then it is a reasonable doubt. It is a doubt which settles in your judgment and finds a resting place there.” Or as sometimes said, it must be a doubt so solemn and substantial as to produce in the minds of the jurors some uncertainty as to the verdict to be given. A reasonable doubt must be a doubt arising from the evidence or want of evidence and cannot be an imaginary doubt or conjecture unrelated to evidence.

### **Analysis of defence evidence**

[43] At the end of the defence case, the Court is required to examine all the evidence presented in this case to determine whether it



has raised any doubt in favour of the accused persons. The Court must be mindful that in a criminal trial it is not for the defence to prove anything and that all that is required of it is to tender an explanation that is reasonable and probable and which casts a doubt either as to the truth of the prosecution case or as to the guilt of the accused.

- [44] There are two conflicting versions here. First, the prosecution's version that there was a sale of drugs to Jafri, who had acted as an agent provocateur. Next, the defence version that there was no sale. The black bag was brought to the Kampung Dal food stall to be delivered to Sham in the belief it contained traditional medicine.
- [45] The testimony of the accused persons was diametrically opposed to that of Jafri and ASP Fikri which raised the issue of credibility. In approaching issues of credibility it is always necessary to bear in mind the tests that a trier of fact should ordinarily apply when evaluating oral evidence. One of the tests is motive. The presence or absence of motive on the part of a witness is a relevant consideration which a trial court should take into account. Another material consideration are probabilities of the case. If a witness' evidence is improbable, this would be a good reason for rejecting his evidence or according it very little weight. By the same token, where the evidence of a witness accords with the probabilities of the case, it would be a serious misdirection on the part of the trial court to give it little or no weight on grounds of credibility. See *Tengku Mahmood v. Public Prosecutor* [1974] 1 MLJ 110 and *Muniandy & Ors v. Public Prosecutor* [1966] 1 MLJ 257.
- [46] It is with these principles in mind that I evaluate the evidence in this case.

- [47] It cannot be gainsaid that if I believe the testimony of Jafri and ASP Fikri then, the defence of the first accused must necessarily fail, for, on their version, it was abundantly clear that there was sale of drugs.
- [48] Having considered both versions, I was entirely satisfied that Jafri and that of ASP Fikri were witnesses of truth. Having seen them give their evidence, and having observed their demeanour, especially under cross-examination and having tested it against the totality of the evidence I was satisfied that they were telling the truth that there was a sale of drugs to Jafri. Both Jafri and ASP Fikri had no reason to falsely implicate the first accused. It was true that Jafri was an agent provocateur but the testimony of such a witness by reason of section 40A of the Act is not to be presumed unworthy of credit by reason only of his having attempted to abet or abetted the commission of an offence by any person under section 39B if the attempt to abet or the abetment was for the sole purpose of securing evidence against such person, as was the case here.
- [49] The gist of the defence of the first accused appears to be that he was being a Good Samaritan and doing an act of kindness by collecting the black bag from Siva. He did not check the contents as he believed it was traditional medicine. This explanation was difficult to accept as the first accused had alleged that when he met Sham and Jafri on 17 August 2015, Sham had expressed a desire to buy cannabis. If indeed, this was true, this ought to have raised a suspicion in his mind that there could be drugs in the black bag. Next, and crucially, the bag was handed to him in circumstances that ought to have aroused his suspicion. He had reached the R&R before Siva. On his own version, Siva arrived about an hour later. It was odd that Siva requested him to wait near the toilets instead of just bringing the

black bag to him. It is therefore impossible to give the slightest credence to his explanation that he thought there was traditional medicine in the black bag.

**[50]** Further, the fact that the first accused had no monies even to pay a cash deposit to rent a car was significant. It will be recalled that a motorcycle that belonged to a third party was given as security to the car rental company until the rental due was settled. It was curious and unconvincing that someone without even the financial ability to pay the requisite deposit would rent a car to go sightseeing. How did the first accused propose to pay for the sightseeing expenses or raise the monies to pay the car rental on returning from his trip. He proffered no explanation in this regard. Given the impecuniosity of the first accused, it was difficult to believe and I did not accept his evidence that the car was rented for the purpose of sightseeing. It was clear on the evidence that the car was rented for the purpose of delivering the drugs which the first accused had agreed to sell to Jafri.

**[51]** Applying the test formulated in *PP v. Saimin & Ors* [*supra* (43)] I find that the explanation given by the first accused has failed to raise a reasonable doubt in the prosecution's case. On the other hand, I am entirely satisfied, upon the evidence as a whole, both oral and otherwise, that the prosecution has established the charge of trafficking in dangerous drugs against the first accused beyond all reasonable doubt.

**[52]** That brings me to the defence of the second and third accused. They maintained that they did not know there were drugs in the black bag and had tagged along in the car in the belief they were going sightseeing. They were merely passengers in the car. Obviously, this would be a lie if Jafri's version that the second accused had told that the drugs were in the black bag and the

third accused had unzipped the bag for him to see the drugs was true.

[53] Having considered the evidence of the second and third accused, I do not believe them that they did not know there were drugs in the car. I prefer and accept Jafri's testimony on this issue. The question that then arises is whether it would be safe to conclude that they had the common intention to traffic in the drugs based on the bare oral assertion of Jafri.

[54] It is trite law that an agent provocateur's evidence requires no corroboration and that the second and third accused can be convicted on the uncorroborated evidence of the agent provocateur if the court accepts the truth of the evidence. The desirability of some corroboration was recognised by the Court of Appeal in *Chai Tee Keiong v. Public Prosecutor* [2014] 2 MLJ 246. It was held:

It is salutary to say that the evidence of SP3 as an agent provocateur requires no corroboration and the appellant can be convicted on the uncorroborated evidence of SP3. But, notwithstanding s. 40A of the DDA, the courts still look for some sort of corroboration. Thus, in *Public Prosecutor v. Mohamed Halipah*, the High Court also found that the evidence of the agent provocateur was corroborated by Inspector Ariffin and the cautioned statement of the accused. Again, the Federal Court in *Pendakwa Raya v. Mansor bin Mohd Rashid & Anor* [1996] 3 MLJ 560 noted that even if the character called Cholar was an agent provocateur, there was sufficient supportive credible evidence of the offence of trafficking. Finally, in *Public Prosecutor v. Padi bin Abdullah* [1989] 2 MLJ 60, the High Court held that the evidence of the agent provocateur was amply corroborated by

members of the police personnel, namely PW2, PW3 and PW6.

[55] In the absence of any supporting evidence, in my view, it would not be safe to convict the second and third accused. In the result, I conclude that the prosecution had not discharged its burden of proving the charge against the second and third accused beyond reasonable doubt.

### **Conclusion**

[56] For the foregoing reasons, I found the first accused guilty and convicted him for drug trafficking. He was sentenced to death in accordance with the law. The second and third accused were accordingly, acquitted and discharged.

**Dated:** 24 FEBRUARY 2017

**(SM KOMATHY SUPPIAH)**

Judicial Commissioner  
High Court of Malaya  
Ipoh

**Date of Decision:** 26 JANUARY 2017

### **COUNSEL:**

*For the three accused - Naran Singh & Muhammad Farhan Ahmad Fadzil; M/s Naran Singh & Co*

*For the public prosecutor - Wan Azimah Yaacob; Deputy Public Prosecutor*