

Public Prosecutor v Rosman bin Abdullah
[2010] SGHC 271

Case Number : Criminal Case No 19 of 2010
Decision Date : 14 September 2010
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Crystal Ong, Toh Shin Hao and Geraldine Kang DPPs (Attorney-General's Chambers) for the prosecution; Ram Goswami (K Ravi Law Corporation) and Joseph Tan (DSCT Law Corporation) for the accused
Parties : Public Prosecutor — Rosman bin Abdullah

Criminal Law

14 September 2010

Tay Yong Kwang J:

Introduction

1 The accused was born on 19 February 1969. He was tried and convicted on the following capital charge under the Misuse of Drugs Act ("MDA")(Cap 185):

That you, Rosman bin Abdullah,

on the 20th day of March 2009 at about 6.04pm, at Strand Hotel, Room 201, 25 Bencoolen Street, Singapore, did traffic in a controlled drug specified in Class A of the First Schedule to the Misuse of Drugs Act, Chapter 185, to wit, by having in your possession for the purpose of trafficking five (05) packets of granular/powdery substance containing not less than 57.43 grams of diamorphine at the aforesaid place, without any authorization under the said Act or the Regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) read with section 5(2) and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

Six other related non-capital charges under the MDA were stood down at the commencement of the trial.

The prosecution's case

2 On 20 March 2009, officers from the Central Narcotics Bureau ("CNB") conducted an operation at the Strand Hotel in Bencoolen Street. At about 6pm, the CNB officers raided Room 201 in the hotel after confirming that the accused was in the room. The accused was with a female, Aneeza d/o Abdul Majeed ("Aneeza").

3 A search of the room was conducted and substances believed to be controlled drugs were found on the bed and the dressing table. SGT Muhammad Fardlie ("Fardlie") then proceeded to question the accused in Malay. Fardlie asked the accused whether there were more drugs in the room. The accused replied that there were more drugs in the room safe and that there were four bundles of heroin inside. He also gave the combination number to open the safe as 6158.

4 The CNB officers proceeded to open the safe using the number provided by the accused. Inside the safe was a red "Nescafe 3-in-1" bag which contained four black bundles. Fardlie then used another officer's pocket book to record a statement from the accused. This statement was the subject of a trial within a trial ("TWT No. 1").

5 The accused and Aneeza were arrested and brought to CNB Headquarters later. There, ASP Gary Chan recorded a statement from the accused under section 122(6) of the Criminal Procedure Code (Cap 68) ("CPC"). This statement was the subject of a second trial within a trial ("TWT No. 2").

6 The four black bundles seized from the room safe in the hotel were opened up at CNB Headquarters. They were subsequently analysed by the Health Sciences Authority and found to contain 57.43 grams of diamorphine. One of the black bundles actually comprised two smaller plastic packets. There were therefore a total of five packets, the subject of the capital charge. The accused's urine samples were also analysed and found to be positive for methamphetamine but not for morphine.

7 Aneeza, 32 years of age, testified that she met the accused in a club about two weeks before 20 March 2009. She had been staying with the accused in Room 201 for two or three days. The room was booked by the accused. They spoke to each other in English and in Malay. She found his command of English to be quite good. Both of them consumed "Ice" using the instruments kept in the room safe. Aneeza had access to the room safe as she had been told by the accused that the combination number to open it was 6969. The last occasion on which she opened the room safe was on 19 March 2009 around midnight. The red Nescafe bag was then not inside the room safe. When she tried to open it again around noon on 20 March 2009, she could not do so as the combination number had apparently been changed. The accused was not in the room at that time. She thought the accused did not want her to consume "Ice" so she went to bed again.

8 At about 4pm, the accused returned to the hotel room with some snacks. They ate and then had sex. Aneeza asked him whether he had changed the combination number of the hotel safe and when he confirmed that he had, she did not ask him further. They talked for a while and she then suggested consuming "Ice". However, the room was raided by the CNB officers.

9 Aneeza was told to sit on a chair in one corner of the hotel room near the windows while the CNB officers searched the room and one of them questioned the accused. Her position was practically opposite the location of the hotel safe which was placed on a shelf in a wood cabinet. She overheard a CNB officer asking the accused in English what was in the safe and the accused replying, "Heroin". She was shocked as that was the first time she heard there was heroin inside. She also heard the accused telling the CNB officer the new combination number to the safe which she had since forgotten but which was not 6969. There was some conversation between the CNB officers and the accused in Malay but Aneeza could not recall what was said. She understood Malay and knew that the Malay word "ubat" meant heroin.

10 Aneeza was charged in court with a capital offence but was subsequently given a discharge not amounting to an acquittal. She pleaded guilty to possession and consumption of amphetamine and was imprisoned for 18 months. She has served her sentence and was released on 1 April 2010.

11 SGT Chew Thye Kwang was with Fardlie guarding the back of the hotel. They therefore went up to the hotel room a little later than the rest of the raiding party of CNB officers. In the hotel room, SGT Chew heard Fardlie asking the accused whether there was any drug in the room and the latter saying the words "ubat" and "safe". SGT Chew, who is not proficient in Malay, understood "ubat" (or medicine) to be the street slang for heroin. They escorted the accused to the room safe where

Fardlie asked for its combination number. The accused said in English it was 6158. SGT Chew did not recall the word "heroin" being uttered.

12 SSG Thilakanand, whose main task that day was to guard the accused after his arrest, heard a conversation between the accused and Fardlie in the hotel room during which the accused mentioned "ubat", "safe" and some numbers. SSG Thilakanand was not fully conversant in Malay. He saw Fardlie keying in some numbers at the safe whereupon the door of the safe was opened. He then saw Fardlie recording a statement from the accused who was seated on the bed. He could not recall whether anyone in the hotel room mentioned the word "heroin".

13 SSG Nizammudin was among the party of CNB officers who were in the hotel room that day. He heard Fardlie asking the accused whether there were any more drugs to declare and the accused saying "ubat" and "safe", using his head to point towards the safe. SSG Nizammudin is a Tamil and he could only understand a little of the Malay language. He knew that "ubat" was the street name for heroin. He did not hear the accused utter "heroin". He then saw Fardlie bringing the accused to where the safe was and asking the accused what the combination number of the safe was. The accused told Fardlie it was 6158. SSG Nizammudin then opened the safe using the number given and placed the exhibits therein in an exhibit bag.

14 SSI Khong Chung Leong testified that Fardlie told him that the accused had revealed that there was heroin in the safe and that the combination number to open it was 6158. When the safe was opened, Fardlie said there were four bundles inside. He did not hear the accused say "heroin".

TWT No. 1

15 This relates to the accused's statement recorded by Fardlie in the hotel room on 20 March 2009 from about 6.25pm to 7.18pm.

16 Fardlie testified that he spoke to the accused in Malay in the hotel room. He was one of the two Malay CNB officers present that day and the other, a female officer, was guarding Aneeza. Fardlie asked the accused whether there were any more drugs in the room. The accused replied in a mixture of Malay and English that there were drugs inside the safe. When Fardlie asked him about the quantity of the drugs, the accused said "Ubat, empat batu" (literally, "Medicine, four stones") meaning there were four bundles of heroin inside. The conversation was in a normal tone of voice. There was no raising of voice.

17 Fardlie recorded the words of the accused in SSG Nizammudin's pocket book as he did not bring his pocket book that day. Both Fardlie and the accused were seated on the bed. Fardlie recorded in English because it was his practice to write in English, then read back and translate.

18 He disagreed that the accused had told him the four bundles contained Erimin. The four bundles and the other exhibits seized were placed on the bed during the recording of the statement. The four bundles were not opened up then and so Fardlie did not know for a fact what drugs they contained and whether the case would lead to a capital charge or not. He could not therefore have insisted that they contained heroin despite the alleged assertions by the accused that they contained Erimin. He denied making any inducement or promise to the accused while recording the statement, in particular, a promise that the charge against the accused would not be a capital one. He also denied having told the accused not to cover up for one Mahadhir, a name mentioned in the CNB briefing before the raid on the hotel room. However, Fardlie did not know who Mahadhir was or what the relationship between him and the accused was. He agreed that he had not stated in the subsequent arrest report that the accused told him "Ubat, empat batu". However, the purpose of the arrest report was to record the

accused's arrest and the drugs seized. There was no need to state the contents of any conversation with the accused.

19 SSG Thilakanand, who had testified at the main trial, said he heard the accused and Fardlie having a conversation but could not understand it fully as he was not fully conversant in Malay. He agreed that he would not have understood if a promise was indeed made to the accused in Malay. The accused did not make any complaints. No one was shouting and both Fardlie and the accused were very calm and behaved normally.

20 The accused agreed that the four bundles found in the room safe were placed on the bed before the recording of the statement in question. The accused was handcuffed and seated on one corner of the bed while Fardlie sat beside him. They spoke to each other in Malay. Fardlie showed the accused Mahadhir's photograph and asked the accused whether he knew Mahadhir. The accused replied that he knew him while in prison. Fardlie said he knew that the four bundles contained heroin and that the accused was supposed to pass them to Mahadhir. The accused told Fardlie that all he knew was that there was Erimin in the four bundles. Fardlie told him not to lie, said that he (Fardlie) knew the truth and promised the accused that there would be no death penalty involved. He insisted that the accused was aware of the contents of the four bundles.

21 The accused was feeling afraid as he was told there was heroin in the four bundles. If he denied knowing the contents, he would not have the benefit of the offer of a non-capital charge. Fardlie wanted him to admit that the four bundles contained heroin and that he was supposed to pass them to Mahadhir. He could not remember anything else said by Fardlie. The accused asserted that when asked by Fardlie earlier whether there were other drugs to surrender, he said in Malay that there were more "barang" (things) in the safe. Fardlie did not ask him what kind and quantity of drugs were in the safe. The accused denied having said "Ubat, empat batu" as alleged by Fardlie.

22 Under cross-examination, the accused said he kept the four bundles in the safe as Erimin was an illegal drug. Asked why nine slabs of Erimin were left on the bed and not kept in the safe if that was so, he said that the four bundles were meant for Mahadhir while those on the bed were meant for his consumption. They did not belong to the accused. He admitted that the four bundles contained heroin because of Fardlie's offer of a non-capital charge if he implicated Mahadhir. He wanted to cooperate with Fardlie so as to have a lesser charge. However, in the statement in question, he did not implicate Mahadhir. He was certain that the four bundles contained Erimin. He was aware that the sentence for heroin was heavy compared to that for Erimin. He had no dealings with heroin at all.

The decision of the court in TWT No. 1

23 The burden is on the prosecution to prove beyond reasonable doubt that the statement recorded from the accused was made by him voluntarily, free from any inducement, threat or promise.

24 I believed the evidence of the CNB officers. Fardlie had no reason to offer the alleged inducement to the accused as he was not even aware at that time who Mahadhir was or what his relationship to the accused was although he was aware that Mahadhir was one of the subjects of the CNB's investigation. Further, as admitted by the accused, he did not implicate Mahadhir in his statement in any event despite the alleged inducement.

25 The four bundles were not opened up in the hotel room. It was not certain then that they contained heroin and if they did, what the quantity was. It could not therefore be said that the case necessarily involved a capital charge at that point in time.

26 It was submitted that there would have been no need for the statement in question to be recorded if the accused had already made an oral admission earlier (that there were four bundles of heroin in the safe). However, recording of a statement is part and parcel of the CNB's investigative process.

27 The accused was also not able to give a consistent explanation for keeping four bundles of Erimin in the safe while displaying nine slabs of the same drug openly on the bed.

28 Considering the totality of the evidence adduced in TWT No.1, I was satisfied beyond reasonable doubt that the accused's statement was a voluntary one made without any inducement, threat or promise. I therefore ruled that the statement was admissible.

The trial proper resumes

29 The statement in question in TWT No. 1 was admitted as exhibit P-66. It comprised 33 sets of questions and answers. In that statement, the accused admitted ownership of the red Nescafe bag found inside the safe and of the four bundles. He admitted that they contained heroin and that they were "for me to sell". When questioned by Fardlie whether he knew what the quantity of heroin was, the accused replied that each bundle contained one big packet of the drug and weighed about 800 to 900 grammes. He explained that he would repack the heroin into smaller packets of about 8 grammes each and sell them for around \$300 each. He acknowledged that the weighing scale found on the dressing table belonged to him.

30 When shown the photograph of Mahadhir, the accused said that was "May Day" whom he knew while in prison. He admitted that the other drugs and paraphernalia found in the room were also his and that those drugs were for his consumption. When asked about Aneeza, he said she was his girlfriend and that "she only knows that I consume drug but she does not know of me selling drug".

31 Fardlie explained that the weight of one sachet of heroin was usually about 8 grammes and that it would be sold for between \$250 and \$350. He also said that Aneeza was not in the room during the recording of this statement although she was brought in at one stage for the accused to identify her. Fardlie and the accused had no difficulty understanding each other.

32 ASP Gary Chan was with the Investigation Division of the CNB at the material time. On 20 March 2009, he was informed to take over the case at Strand Hotel. When he arrived at the hotel room at about 8pm, he was briefed on the events. After directing photographs to be taken of the hotel and the room in question, he instructed that the accused and Aneeza be brought to their respective residences for a search to be done.

33 At close to midnight, the accused and Aneeza were escorted to the Special Investigation Team's office in the CNB Headquarters. Mahadhir, who was arrested elsewhere, was also brought to that office. Photographs were taken of all the seized exhibits. Following that, ASP Gary Chan weighed the five packets of drugs in the presence of the accused, Aneeza and Mahadhir. The accused was then brought for a pre-statement medical examination after which he was brought before ASP Gary Chan for his statement to be recorded pursuant to section 122(6) CPC. This statement was the subject of TWT No. 2.

TWT No. 2

34 The total weight of the four bundles was 1033.08 grammes and that was the amount of heroin mentioned in the original charge. At about 2.14am on 21 March 2009, the process of recording the

statement began. The accused chose to speak in Malay and therefore Mohammed Ali, a certified interpreter, sat in during the recording of the statement by ASP Gary Chan in the Special Investigation Team's office. The accused chose not to make any amendment, deletion or addition at the conclusion of his statement. He did not have any complaints.

35 It was put to ASP Gary Chan that the following conversation took place but he denied it. The accused was said to have told ASP Gary Chan that Mahadhir had told him to collect Erimin and that the accused did not know heroin was involved until after the four bundles were opened up. He was also said to have told ASP Gary Chan that Mahadhir had played him (the accused) out. ASP Gary Chan then told the accused, "Never mind, now you admit the drug belong (*sic*) to you. Later, I will reduce the charge to a non-hanging one." Upon hearing that, the accused was said to have felt relief and was thus induced to give a statement.

36 According to ASP Gary Chan, the accused was cooperative and forthcoming in his answers.

37 The interpreter, Mohammed Ali, is 74 years old. He works as a free-lance interpreter for various law enforcement agencies. He had an eye operation recently and also could not hear very well.

38 On the day in question, he was in the SIT office before the accused was brought in. The accused had no objection to him playing the role of interpreter. The accused spoke in Malay and Mohammed Ali interpreted what he said into English. After ASP Gary Chan finished recording the statement, the interpreter read it to the accused in Malay. The accused declined to make any changes to his statement. The recording ended at 2.50am.

39 Under cross-examination, Mohammed Ali said that the accused could speak English too. However, he still assisted by interpreting to the accused in Malay what ASP Gary Chan said in English. The charge, the mandatory death penalty for the offence and the notice of warning were explained to the accused. Mohammed Ali denied that the accused told ASP Gary Chan in English that Mahadhir had asked him to collect Erimin. Mohammed Ali did not even know who Mahadhir was and did not hear any conversation between ASP Gary Chan and the accused in English. He did not hear the accused say that he knew the four bundles contained heroin only when they were opened up in CNB Headquarters or that Mahadhir had played him (the accused) out. The only thing that the accused said was that the girl was not involved. He also did not hear ASP Gary Chan tell the accused to admit that the drugs were his in exchange for a non-capital charge later.

40 The accused testified that he did tell ASP Gary Chan the following:

(a) he did not know anything about the heroin;

(b) he wanted to send the Erimin to Mahadhir;

(c) he knew about the heroin only after the four bundles were opened up.

41 The accused alleged that ASP Gary Chan then told him, "Never mind, if you admit, you will be given a lighter charge. There will be no death penalty". He claimed that upon hearing that assurance, he felt relieved as he believed ASP Gary Chan who was the investigating officer in charge of his case.

42 In cross-examination, the accused said that he was shocked and scared when the capital charge was read to him by ASP Gary Chan. He was still hoping that Fardlie would keep his promise that it would not be a charge involving the death penalty since he had cooperated with him in the hotel room and made the admission. He believed that Fardlie would recommend that the charge be reduced.

The decision in TWT No. 2

43 The issue in TWT No. 2 is similar to that in TWT No. 1 – whether the accused was induced by the recording officer into making a statement.

44 The interpreter's evidence was consistent with that of ASP Gary Chan. The interpreter was candid even if he appeared confused about which document was the charge and which was the notice of warning. He was genuinely surprised when asked about Mahadhir whom he had not heard of. I had no difficulty believing that he was telling the court exactly what he recalled about the recording of the accused's statement. I was satisfied beyond reasonable doubt that ASP Gary Chan did not make the inducement alleged by the accused.

45 Accordingly, I ruled that the section 122(6) CPC statement was a voluntary statement made without any threat, inducement or promise. It was admitted into evidence as exhibit P68.

The trial proper resumes

46 In the said section 122(6) CPC statement, the accused said the following four sentences:

The girl name Aneeza do not know anything about the drug in the room. She only know that there is Ice in the room. She do not know about the Heroin. I admit to the drug possession is belong to me.

ASP Gary Chan explained that the statement was ungrammatical but he recorded faithfully what the interpreter said. After that, he took over all the exhibits seized from the hotel room and kept them in his office safe.

The case for the accused

47 Defence counsel correctly did not submit that there was no case to answer. The accused elected to testify when he was called upon to make his defence to the charge. He called no other witness.

48 The accused, aged 41, said that he is single. He has a technical certificate in maintenance fitting. He said that Aneeza was his girlfriend and that they stayed together for five days in the hotel before their arrest on 20 March 2009.

49 The accused got to know Mahadhir while they were both in prison in 2003. Mahadhir contacted him by telephone on 18 or 19 March 2009, asking him to contact another person in order to collect Erimin. Subsequently, the accused went to Mahadhir's flat on 19 March 2009. He was supposed to take the money while Mahadhir was supposed to collect the Erimin himself. However, Mahadhir said he had a fever that day and asked the accused to bring the money to collect the Erimin for him. The accused agreed and proceeded to the Si Mei public housing estate.

50 There, the accused handed over the money to a Chinese man and took the Nescafe bag (the

one found in the hotel safe) from him. He could see that there were four black bundles inside the bag but did not ask what they contained as he knew that he was to collect Erimin for Mahadhir. He did not suspect anything and did not even touch the four bundles. After that, he telephoned Mahadhir but Mahadhir did not answer his call. He then returned to Mahadhir's flat intending to hand over the bag to him.

51 Nobody answered the accused's knocks on the main door. He was concerned that the bag would be stolen if he left it outside Mahadhir's door. He therefore brought it back to the hotel room at around 3am and kept it in the safe. Aneeza was not in the room at that time.

52 After a short while, Aneeza returned to the hotel room. Both of them then left to go clubbing at the Marriott Hotel and later at Orchard Towers. They returned to the room sometime after 6am. When the accused was near the hotel, he received a call from Mahadhir who asked him to bring the "barang" to him. However, the accused was tired from his outing and went to sleep.

53 Sometime past noon, Mahadhir called the accused again about the "barang". The accused told him he was waiting for a friend and would bring the "barang" to Mahadhir after that. The accused explained that "barang" meant the Erimin that he had collected. After the accused had met his friend at the ground level of the hotel, Mahadhir called again. The accused said he would return to his room to get the Erimin and bring it to him. He bought some food and went back to his room. A few minutes later, the CNB officers raided the room.

54 After the accused was handcuffed, he was told to sit on the bed. Fardlie approached him later and asked him in Malay whether he had any "barang" to surrender. The accused replied that there were more inside the safe. He gave the combination number of the safe to Fardlie. Fardlie asked what kind of drugs were inside and the accused told him it was Erimin. Fardlie did not ask about the quantity. The accused denied having uttered the words "Ubat, empat batu", "Ubat" or "heroin" before the safe was opened.

55 The accused was certain that the four bundles in the safe contained Erimin as that was the drug that Mahadhir asked him to collect. Although he knew that Erimin was also illegal, he agreed to collect it for Mahadhir as he was aware that Erimin is not a class A drug under the Misuse of Drugs Act (Cap 185) and does not attract the death penalty. If he had been asked to collect heroin, he would not have done it because of the severe punishments provided by law for trafficking in heroin, including the death penalty should the amount of heroin be 15 grammes or more.

56 When Fardlie questioned the accused in the hotel room about the contents of the four bundles, he replied in Malay that they contained Erimin. Fardlie then told him not to lie, that he (Fardlie) knew the contents were heroin and that the accused was supposed to bring the four bundles to Mahadhir. Fardlie wanted the accused to cooperate and tell the truth and to admit that the contents were heroin meant to be delivered to Mahadhir. He promised the accused a lighter sentence, i.e. there would be no death penalty. The accused was relieved and hoped that the promise would be kept. He then made the statement which was the subject of TWT No. 1.

57 The accused said that after Fardlie made the promise to him, he (the accused) fabricated the said statement. It was not true that the four bundles were for him to sell. They did not even belong to him.

58 When the four bundles were cut open at CNB Headquarters, the accused, Aneeza and Mahadhir were present. The accused glanced at Mahadhir questioningly but Mahadhir merely gestured by shaking his handcuffed hands with his open palms moving from side to side.

59 For the section 122(6) CPC statement, the accused told ASP Gary Chan that Mahadhir had asked him to deliver the Erimin but the officer promised him a non-capital charge if he were to admit that the four bundles were heroin. This conversation between them was in English although the Malay interpreter was present. It was possible that the interpreter could not hear the conversation. ASP Gary Chan did not record what the accused said about Erimin. While the first three sentences in this statement (see [\[46\]](#) above) were true, the fourth sentence was said by the accused only because of the promise of a non-capital charge. In using the word "drug", the accused was referring to heroin as that was the drug the officer wanted him to admit to. This was after the four bundles had been cut open.

60 In respect of the earlier statement recorded in the hotel room, the accused said he also fabricated the answer that he wanted to repack the four bundles into smaller packets. If he had wanted to do that, there would have been plastic packets and other items used for repacking found in the hotel room but there was none. Although he had the four bundles in his possession for about 18 hours, he did not attempt to repack them at all.

61 In cross-examination, the accused said that he shared the cost of the hotel stay (\$120 per night) with Aneeza. The other drugs found in the hotel room also came from Mahadhir. The Erimin was for consumption as well as for sale. The accused admitted that he had dealt in Ice and Erimin for two to three months. He was Mahadhir's runner. He agreed that he had not come across Erimin wrapped up the way the four bundles were. He kept the four bundles in the safe because they did not belong to him and anyone could have gone into the hotel room and seen the illegal drug if it was left in the open. He changed the combination number of the safe as he did not want Aneeza to know that he was dealing in drugs although she knew that he was consuming drugs. The accused was not calling Mahadhir to be his defence witness as Mahadhir would definitely deny what the accused had said in court.

62 In re-examination, the accused added that he and Mahadhir had an agreement that the accused was not allowed to open anything that he collected for Mahadhir. Although he informed both Fardlie and ASP Gary Chan that Mahadhir asked him to collect Erimin only, they did not record what he told them. Mahadhir would hand the accused \$10,000 to \$15,000 each time to pay the supplier of the drug that he collected on Mahadhir's behalf. The drugs that the accused collected were always in black bundles. Mahadhir did not pay the accused for collecting the drug. Instead, he asked the accused to look for customers and would sell him the drug at a lower price so that the accused could benefit from the difference. He had never gone with Mahadhir to collect drugs. He could not hand over the four bundles to Mahadhir after collecting them as no one answered his knocking at Mahadhir's flat that early morning. Mahadhir told him later that day that he had dozed off and that his step-mother heard the accused's knocking but refused to open the door.

The decision of the court

63 On the issue whether the accused knew that the four bundles contained heroin, I accepted that the accused did say the words "Ubat, empat batu" when he was asked about what was inside the safe. There is no dispute that these words meant, in drug jargon, four bundles or roughly four pounds of heroin. The words "ubat" and "safe" were heard by at least three other CNB officers (besides Fardlie). Although Aneeza testified that the accused said "heroin" instead of "ubat", it must be remembered that she and the accused could speak both English and Malay and she could have recalled wrongly that the accused said the English word instead of the Malay word. The raid by the CNB on the hotel room also took place very suddenly and things were moving fast with many officers in and around the room. I did not see Aneeza as a vengeful former girlfriend who was out to get the accused into trouble.

64 I have already stated why I rejected the accused's evidence about the alleged inducement pertaining to the statement recorded in the hotel room. That statement was explicit about what the accused intended to do with the heroin that he had kept in the safe (see [\[29\]](#) above). Similarly, the section 122(6) CPC statement incriminated the accused as he admitted to possessing the heroin after the capital charge was read and explained to him. He did not even claim at that stage that he thought the four bundles contained nothing more than Erimin. The accused was also inconsistent in his evidence regarding the way Erimin was usually packed. I rejected his evidence that Mahadhir had told him he was collecting only Erimin. In any event, he failed to call Mahadhir as his witness without good reason and an adverse presumption must be drawn against him in that Mahadhir's evidence would not have been in his favour. The accused was unable to rebut the presumption of knowledge of the nature of the drug under section 18(2) MDA which he had been proved to be in possession of. In addition, it was clear that the accused had actual knowledge that the four bundles contained heroin.

65 The prosecution has proved that the accused was in possession of more than 2 grammes of diamorphine. Under section 17(c) MDA, the accused is presumed to have had the drug in possession for the purpose of trafficking unless it is proved otherwise but the prosecution has said it is not relying on this presumption. The prosecution's case is made out by the accused's statements made to Fardlie in the hotel room and by the section 122(6) CPC statement made to ASP Gary Chan. I found the said statements to be entirely reliable. Where, when and how the accused intended to repack the heroin into smaller packets for sale were matters known only to the accused. After all, he had experience in selling drugs although he claimed he did not deal in heroin. Further, the sheer amount of heroin found in his possession showed that the drug was obviously meant for trafficking and not for consumption. The accused's urine samples also showed no sign of consumption of heroin.

66 I was satisfied beyond reasonable doubt that the accused was guilty as charged. I therefore convicted him and passed the mandatory death sentence on him.

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