Lee Lye Hoe v Public Prosecutor
[2000] SGCA 55

Case Number	: CA 5/2000
Decision Date	: 02 October 2000
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ
Counsel Name(s)	: Surian Sidambaram (Surian & Partners) with Zero Nalpon (Nalpon & Partners) for the appellant; Jaswant Singh (Deputy Public Prosecutor) for the respondent
Parties	: Lee Lye Hoe — Public Prosecutor

JUDGMENT:

Grounds of Judgment

The appellant was charged with and tried for the following offence:

> You, LEE LYE HOE, on or about the 11th day of April 1999, at or about 6.45am at Blk 31 Dover Road #03-111, 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 8 slabs of substance containing 12,722 grams of opium containing not less than 248.64 grams of morphine at the aforesaid place without any authorisation 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.

2 At the end of the hearing in the court below, the learned trial judge convicted the appellant as charged and imposed the mandatory death penalty on her. We heard her appeal on 21 August 2000 and dismissed it without calling on the deputy public prosecutor. We now give our reasons.

The salient facts

3 The relevant facts of this case were largely undisputed. On the morning of 11 April 1999 at around 6.30am, the appellant left her flat on the third storey of Block 31 Dover Road. She walked to the staircase landing nearest to her flat, and there received a blue travel bag and a large red plastic bag from a man, later ascertained to be one Lim Beng Soon ('Lim'). The blue travel bag had a huge tear near its zipper.

4 After handing over the bags to the appellant, Lim headed back to the carpark below Block 31 Dover Road while the appellant returned to her flat. The appellant brought the two bags into the master bedroom of her flat, and proceeded to take out its contents which turned out to be eight slabs of opium wrapped separately in masking tape and weighing a total of some 12kg. The appellant proceeded to wrap each individual slab of opium neatly with newspapers before placing them one-by-one into separate plastic bags. She then placed the eight plastic bags of opium slabs under her bed in the master bedroom and pulled the bedspread over so that the bags were blocked from view.

5 Approximately 15 minutes after the appellant had returned to her flat, a team of Central Narcotics Bureau ('CNB') officers raided the unit. The appellant opened the door only after the officers had knocked for around three to four minutes and after one of them had started to cut the padlock on the iron grill outside the front door. Upon entering the flat, W/Cpl Jessilyn Tan Poh Choo (PW27) ascertained the appellant's particulars while Sgt Ronie Chua (PW22) proceeded to secure the premises during which he discovered the plastic bags under the bed in the master bedroom. The following exchange was then recorded by W/Insp Jenny

Tan (PW24) as having taken place between the appellant and herself in the master bedroom of the flat:

> Q: What are those?
> A: Opium
>
> Q: How many?
> A: 8 slabs
>
> Q: Belong to who?
> A: Not mine.
>
> Q: Why in your room?
> A: I brought in from outside my home.
>
> Q: Why you bring them into your home?
> A: (She refuses to answer the question)

6 The appellant was taken back to the CNB where various statements were then taken from her over the course of the next few days. These statements, which formed the mainstay of the prosecution's case, were admitted by the trial judge in the court below without any challenge as to their voluntariness. We now set out in brief the gist of each of these statements.

The s 122(6) Criminal Procedure Code or cautioned statement (P122)

7 This statement was recorded by the investigating officer in the afternoon of 11 April 1999. In this statement, the appellant stated:

> A Chinese man asked me to keep some packets for him. He told me that he would collect the packets from me one or two days later. When I took the packets to my master bedroom, I then discovered that the packets were opium. I immediately went out of my flat to look for the Chinese man but he had already gone. I was thinking whether to call the police or to wait for the Chinese man to collect the packets back from me. When the police came, I opened the door and led the policemen to my bedroom where the packets were. I do not know the name of this Chinese man. I can only recognise him by sight. I do not know why this Chinese man handed these packages to me to keep for him.

The investigation statements

P124, recorded on 13 April 1999

8 The appellant stated here that she received a page on the night of 10 April 1999. When she called back, a man speaking in Hokkien introduced himself as 'Ah Tan' and claimed that he was a friend of her late husband's. He then asked the appellant to keep something for him. She asked him what the thing was to which he replied that they were just a few packets of things, and did not disclose further. The appellant nevertheless agreed to keep the things for him. The next morning on 11 April 1999, she received a telephone call from another Chinese man, who told her that he had the things with him on the ground floor and was coming up to the third storey to pass the things to her but that he did not know her unit number. She then told him that she would be standing at the door of her flat. Thereafter, the appellant stood outside her door and saw a Chinese man come up the stairs with a blue bag and a red plastic bag. The man placed the bags on the floor and then went back down the stairs again without speaking to the appellant.

9 The appellant took the two bags into the master bedroom of her flat. She detected a strong odour of opium upon which she looked into the bags and saw several packets of things wrapped in brown masking tape. She proceeded to wrap the packets in newspapers and put each packet separately into plastic bags. She then placed all eight bags under her bed. She then contemplated whether to call the police or to wait for Ah Tan to come and collect the packets from her.

P125, recorded on 15 April 1999

10 In this statement, the appellant said that she had wrapped the packets of opium because the odour emanating from them was unbearable. After placing the packets under her bed, she waited to see if Ah Tan would call her. If he did not call her, she would then tell her sons about the opium when they woke up.

11 The appellant further stated that Ah Tan never called her at home or at her food stall at the Dover Road hawker centre. She said that she had only contacted him once, and that was at the time when she had returned his page on the night of 10 April 1999. He had not offered her any payment for her assistance in storing the things, but did tell her that he would come and collect the packets from her in a day or two.

12 When shown a photograph of Henry Tan Kok Hwa, the man later ascertained to be the 'Ah Tan' in question, the appellant recognised him as a friend of her late husband's but denied knowing his name as her late husband never introduced him to her. She further said that she had never spoken to Henry Tan before. Neither did she know if Henry Tan was the person who had called her. She added that Henry Tan never came by her house or stall following her husband's death.

P126, recorded on 21 April 1999

13 The appellant said here that Ah Tan had spoken to her about a week before 10 April 1999. She could not recall however the substance of their conversation.

14 On the night of 10 April 1999, she returned an earlier page and the person on the line told her that he was Ah Tan, a friend of her late husband's. He then asked her to keep a few packets of things for him which he said would be delivered to her in one or two days' time. She claimed to have asked him what the packets contained but he did not tell her.

D5, recorded on 29 April 1999

15 In this statement, which was admitted upon the application of the defence, the appellant stated that when she discovered that the packets contained opium, she waited for Ah Tan to call her. If he did not do so before her sons woke up, she would call the police. She did not however think of calling Ah Tan although she had his telephone number stored on her pager.

16 When shown a photograph of Henry Tan Kok Hwa, she again denied knowing if this was the same Ah Tan who had asked her to store the packets of opium for him.

17 At the close of the prosecution's case, the learned trial judge found that the facts as disclosed by the appellant's police statements were sufficient to found a prima facie case and called upon the appellant to enter her defence.

The defence

18 The appellant elected to give evidence.

19 The appellant was a 51-year-old divorcee. She could not recall when she divorced her husband, but said that the latter moved back in with her subsequently although they never remarried. Her husband was an opium addict.

20 The appellant lived with her two sons at the Dover Road flat. She ran a seafood stall at the Dover Road hawker centre with her elder son, Ying Khui Hock (DW2). She met Henry Tan, whom she knew as 'Ah Tan', through her late ex-husband. She testified that Ah Tan visited the family very often both at home and at the stall and was very close to them. In this connection, Henry Tan, his wife and his daughter were all invited to Ying Khui Hock's wedding in January 1997 and his daughter's car was even lent to the latter for use during the celebration. Meanwhile, Henry Tan also helped the appellant's family in various ways over the years. In particular, he lent the appellant's ex-husband $40,000 to pay off his gambling debts and further gave the family a loan of $25,000 to renovate their flat. In addition, he also provided the funds for Ying Kee Yeow (DW3), the appellant's younger son's education in Australia. None of these debts were ever repaid by the appellant or her family nor did Ah Tan ever demand repayment of them. Henry Tan further played a pivotal role in getting the appellant and her husband to reconcile after their divorce. After the husband's death in February 1998, Henry Tan continued to persuade Ying Khui Hock to enter into a joint venture restaurant business with him and also continued to visit the appellant to find out how she was getting on.

21 The appellant gave evidence that when her ex-husband was alive, he often kept things for Ah Tan at their flat. She claimed that her ex-husband told her that the things were dried foodstuffs from Pasir Panjang and were kept at their flat as it was closer to Pasir Panjang than Ah Tan's own home. The appellant described that the things came in boxes of varying sizes and were tightly sealed so she could not see their contents. The boxes would be delivered either by Ah Tan himself or one of his workers and would be collected back either several hours or one or two days later.

22 Ah Tan continued to keep things at the appellant's flat after the husband's death. In February 1999, Ah Tan telephoned the appellant and told her that he had a few packets of things to be kept at her flat and that he would collect them from her two days later. Following this, a sealed-up box was sent to her by one of Ah Tan's workers. As indicated, Ah Tan himself came and collected the box two days later.

23 About a week before her arrest on 11 April 1999, Ah Tan called the appellant again and told her that he had a few packets of things to be kept in her flat. She asked him what the things were to which he replied that they were just 'a few packets of things'.

24 On the night of 10 April 1999, Ah Tan paged the appellant again. She was at a wedding dinner that night and did not return the page until later. The page turned out to have been from Ah Tan, whose voice the appellant said she could recognise when she returned the page a few hours later. Again, Ah Tan told her that he had a few packets of things to be put in her flat. It was agreed that Ah Tan's worker would deliver the things and would call the appellant when he arrived at her block of flats the next morning. Ah Tan further told her that he would collect the things from her two days later.

25 On the morning of 11 April 1999, the appellant received a telephone call sometime between 6.15am and 6.20am. The caller, speaking in Hokkien, told her that someone had left some things with him to be passed to her. She instructed him to bring the things up to the third storey lift landing, and thereafter went out of her flat to meet the caller.

26 At the third storey lift landing, the appellant met a Chinese man who had with him a travelling bag and a plastic bag. She confirmed that he was sent by Ah Tan to deliver the things and thereafter told him to leave the things on the floor. She then brought the things into her flat. She testified that the things were heavy and that she did not take a good look at them before returning to her flat.

27 At the flat, the appellant took the two bags into the master bedroom. The travel bag was unzipped. When she placed the bags on the floor, she discovered an odour emanating from them, one which she recognised to be the smell of opium. Shocked, she ran out of her flat to look for the man who had delivered the bags to her. Her intention, she claimed, was to find out if he had delivered the wrong things to her. She knew that opium was an illegal substance. She failed to locate the man and after one or two minutes, returned to her room. The smell from the opium became unbearable. The appellant then went to the living room of

her flat and obtained some newspapers with which she used to wrap the opium slabs individually. Thereafter, she went to the kitchen to get several plastic bags in which she placed each slab separately. She claimed that all this was done in order to reduce the odour which she said was unbearably strong.

28 Subsequently, the appellant tried to wake her elder son Ying Khui Hock but before she could wake him fully, the CNB officers started knocking at her door. Afraid that her grandson would be frightened by the noise, she let the officers in. The appellant alleged that it did occur to her to call the police the moment she discovered the opium, but that she did not do so as her son's in-laws were staying at the flat at that time and she was worried about how involving the police might appear to them. She further claimed that it also did occur to her to call Ah Tan but that she did not do so as she was nervous and frightened.

29 When asked by her counsel why she did not respond to W/Insp Jenny Tan's question at her flat as to why she had brought the opium into her house, the appellant replied that she was frightened and did not know how to answer the question. She testified to the effect that as the person making the delivery was merely a worker, she could not be sure if the drugs belonged to Ah Tan. As such, she did not dare say anything in answer to W/Insp Jenny Tan's final question.

30 The appellant confirmed that the charge against her as well as its consequences were read and explained to her after she was brought back to the CNB. Thereafter, the notice of warning was also read and explained to her, after which she was invited to give a statement which she did. She further admitted that at the time when she made her cautioned statement under s 122(6) of the Criminal Procedure Code (Cap 68) (i.e., P122), she was almost certain that Ah Tan was in fact involved with the opium. Nevertheless, she did not mention his name when giving this statement as she wanted him to admit his own involvement. She knew however at the time of giving this statement, that Ah Tan had been arrested along with several others as she had seen them at the CNB when she herself was taken in for questioning.

31 When referred to her subsequent investigation statements by her counsel, the appellant corrected various parts of them and admitted that several of those parts were incorrect. In particular, the appellant admitted that she had lied when she said in her statements that Ah Tan never called her at home or at her stall but could not explain why she had told such a lie. She further admitted that she had not told the truth in her statements when she stated that she did not know Ah Tan's name, or that she had never spoken to him before or that she did not know if the person who had paged for her on 10 April 1999 was Ah Tan. As before however, the appellant was unable to proffer any explanation for her misstatements.

32 When asked why she had not mentioned the fact that she had come out of her flat again to look for the Chinese man upon discovering the opium in her investigation statements, the appellant simply said that she had forgotten to mention it.

33 In response to a question posed by the learned trial judge, the appellant testified that she had the intention of calling the police the moment she discovered the opium. She further said that had she called the police, she would have told them that someone had left things in her flat and that the things were opium. She stressed also that she would have given Ah Tan's name, description and telephone number to the police. When asked why she did not then mention Ah Tan to W/Insp Jenny Tan during the questioning session in her flat, the appellant simply replied that she could not recall the reason for not having done so.

34 During cross-examination by the learned DPP the next day, the appellant retracted her earlier testimony and claimed that it never occurred to her to call the police at all. She further alleged that her prior allegation that she had intended to call the police was untrue. The appellant maintained that although she knew, at least by 12 April 1999, that Ah Tan was definitely involved with the opium, she nevertheless did not mention his relationship with her family in any of her police statements as she wanted him to admit his connection to the drugs himself.

35 In re-examination, the appellant again changed her testimony and reverted to her original stand that she did in fact intend to call the police upon discovery of the opium. She further said that her evidence in cross-examination about not having intended to call the police was not the truth, and admitted that she owed Ah Tan a 'great favour'.

36 The appellant's two sons were also called to give evidence for the defence. The gist of their evidence however did not relate

to the main issues of the case. As such, we will not trouble ourselves with it in this judgment.

The decision below

37 At the end of the hearing, the learned trial judge found that the appellant was indeed in possession of the opium at the time of her arrest. She knew that the substances were opium as she herself had admitted that she recognised its odour. As the quantity of opium in this case exceeded the statutory minimum of 100g, the presumption under s 17 of the Misuse of Drugs Act (Cap 185) ('the MDA') came into operation. The appellant was thus presumed to have been in possession of the opium for the purpose of the trafficking and unless she could rebut that presumption, would be found guilty of trafficking in opium.

38 Upon analysing the evidence presented before him, the learned trial judge found that the appellant had not rebutted the presumption of trafficking on a balance of probabilities and sentenced her to suffer the mandatory death penalty.

The law

39 The law relating to the offence of drug-trafficking and the operation of the various statutory presumptions contained in the MDA are clear and well settled. There are, under the MDA, essentially two types of drug-trafficking: The first is trafficking by one of the acts as defined in s 2 of the statute, while the second is possession of the drugs for the purpose of trafficking. The latter type, which is that with which we are concerned in this appeal, is created by s 5(2) of the MDA. While the prosecution may rely on the presumptions in ss 18 and 21 when proving offences of the first type, its burden is heavier where offences of the second type are concerned for actual possession of the drugs must then be proved. As such, in making out the charge against the appellant in the present case, the prosecution has the task of adducing evidence to show that the appellant was in possession of the opium at the relevant time: see *Low Kok Wai v PP* [1994] 1 SLR 676; *PP v Wan Yue Kong and ors* [1995] 1 SLR 417 and *Lim Lye Huat Benny v PP* [1996] 1 SLR 253. This it may do by proving firstly, that the appellant had physical control of the quantity of opium in question at the material time and secondly, that she knew that what she had under her physical control was opium: see *Fun Seong Cheng v PP* [1997] 3 SLR 523; *Su Chee Kiong v PP* [1999] 1 SLR 782 and *Gulam bin Notam Mohd Shariff Jamalddin and anor v PP* [1999] 2 SLR 181. Once the above is satisfied, s 17 of the MDA then comes into operation, creating a presumption that the accused was in possession of the offensive substances for the purpose of trafficking in them. The relevant provisions of s 17 read as follows:

> 17. Any person who is proved to have had in his possession more than –
>
> (a) 100 grammes of opium;
>
> …..
>
> whether or not contained in any substance, extract, preparation or mixture shall be presumed to have had that drug in possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

Hence, the mere fact that an accused is found to be in possession of 100g or more of opium would automatically trigger the presumption of trafficking.

40 This presumption however is not irrebuttable. In *Van Damme Johannes v PP* [1994] 1 SLR 246, it was explained by this court that once the presumption is brought into play, the onus then falls on the accused to discharge the presumption. It would then be up to the court to decide whether or not to believe him; to assess his credibility and veracity; to observe his demeanour; to listen to what he has to say; to go through the evidence and determine whether his story was consistent and finally to make a

judicial decision.

41 Hence, once the presumption is triggered, the burden falls on the accused to show on a balance of probabilities that he was not in possession of the drugs for the purpose of trafficking.

Our decision

The question of possession

42 The first issue which needed to be determined in this appeal therefore was the question of whether or not the prosecution had even succeeded in proving that the appellant was in possession of the opium at the time of her arrest, for, as mentioned earlier, possession of the drugs must be proved beyond a reasonable doubt before the presumption in s 17 of the MDA may be relied upon.

43 In *Fun Seong Cheng v PP* (*supra*), this court stated at p 537 that:

> Physical control is not enough for the purpose of proving possession. There needs to be *mens rea* on the part of the accused. *In Warner v Metropolitan Police Commissioner* [1969] 2 AC 256, a case where the House of Lords was trying to determine the meaning of 'possession' for the purpose of s 1 of the Drugs (Prevention of Misuse) Act 1964, Lord Pearce had this to say:
>
> > One may, therefore, exclude from the 'possession' intended by the Act the physical control of articles which have been 'planted' on him without his knowledge. But how much further is one to go? If one goes to the extreme length of requiring the prosecution to prove that 'possession' implies a full knowledge of the name and nature of the drugs concerned, the efficacy of the Act is seriously impaired, since many drug pedlars may in truth be unaware of this. I think that the term 'possession' is satisfied by a knowledge only of the existence of the thing itself and not its qualities…
>
> In *Tan Ah Tee v PP* [1980] 1 MLJ 49; [1978-1979] SLR 211, a case concerning the meaning of 'possession' in the Misuse of Drugs Act 1973, Lord Pearce's dicta was cited with approval by the Court of Appeal. Wee Chong Jin CJ, delivering the judgment of the Court of Appeal, said:
>
> > In our opinion, the word 'possession' in the Act should be construed as that word has been construed by Lord Pearce and we would respectfully adopt his reasons as contained in his speech.
>
> A long line of cases have since followed *Tan Ah Tee v PP* and *Warner v Metropolitan Police Commissioner*.

In the recent case of *Gulam bin Notan Mohd Shariff Jamalddin v PP* (*supra*), we confirmed that the above passages from *Fun Seong Cheng's* case are still good law and applied them accordingly. What needs to be proved in each case therefore is that the accused had knowledge of the existence of the 'thing' in question.

44 Applying the law to the facts of the instant case, we found that the prosecution had more than amply proven that the appellant was indeed in possession of the opium when the CNB officers raided her flat on the morning of 11 April 1999. Clearly the opium was within her physical possession, for they were found in her master bedroom and she had in any case admitted having brought them into her flat from outside. She further never denied that she knew that the substances contained in the two

bags were opium. With this knowledge, she proceeded to wrap each slab of opium neatly with newspapers in her bedroom and thereafter placed each neatly-wrapped slab into separate plastic bags and tied them up. She then even bothered to put the things under her bed and pulled the bedcover over so that they would be hidden from view. Not once did the appellant ever attempt to reject possession of the substances after she had discovered their true nature. Clearly we found that on the evidence, the prosecution had more than adequately satisfied its burden of proving that the appellant knew that what she had in her physical possession was opium and in our view, that is all that is required to trigger the presumption of trafficking in s 17.

The presumption of trafficking – whether rebutted?

45 Having found the fact of possession to have been proved by the prosecution, the onus then shifted to the appellant to show that she was not in possession of the opium for the purpose of trafficking.

46 The appellant did not deny that she knew of the existence and nature of the drugs soon after she had returned to her flat. Neither did she advance the assertion that the drugs were for her own consumption. Her only defence appeared to be that she did not know that the bags contained opium at the time when they were passed to her by Lim at the third storey lift landing of her block of flats, and this, her counsel argued was sufficient to rebut the presumption of trafficking.

47 In our view, the above argument by counsel was wholly misconceived. While the appellant's lack of knowledge of the contents of the bags when she received them might have the effect of disproving possession of the opium on her part, it clearly did nothing towards rebutting the presumption of trafficking. Quite the contrary, we had no doubt that the appellant's subsequent behaviour in the flat upon discovering the opium clearly supported the presumption of trafficking rather than had the effect of rebutting it. The appellant testified that she knew that the items contained in the bags were opium when she returned to her master bedroom. She further conceded that she knew that opium was an illegal substance. In these circumstances, one would have expected that her immediate reaction would have been to call the police, to wake her sons, or to call Ah Tan to find out why he had passed the opium to her. Yet not one of these courses of action did the appellant adopt. She instead took the trouble to individually wrap and pack each slab of opium with newspapers, and even placed them into separate plastic bags. Her allegation that she was frightened and anxious and did not know what to do clearly did not hold water when one considers the neatness and meticulousness with which she had packed each slab of opium. If she had indeed been scared or worried as she claimed, then in all likelihood the slabs, if wrapped at all, would have been wrapped altogether and haphazardly, rather than individually. The neatly-wrapped slabs of opium as found by the CNB officers clearly demonstrated the work of a person with a calm and composed frame of mind who knew exactly what she was doing rather than one fraught with angst and anxiety.

48 With respect to the allegation that she had wrapped the slabs of opium in order to reduce the odour of the opium, we found that this too was a ludicrous suggestion and as such, rightly disbelieved by the learned trial judge. The appellant had herself admitted that her late ex-husband was an opium addict, and that was how she came to recognise the odour of the drug. This being the case, it seemed to us that the appellant must have been quite used to the smell of opium and could not possibly have been overly offended by it. As such, it is difficult to see why there should be such a pressing need or want for her to reduce the odour of the drugs and her evidence to the effect that she could not stand the smell of the opium should thus be treated with circumspect. If the appellant's reason for wanting to reduce the odour was because her son's in-laws were visiting and staying in the flat at that time and she did not want them to notice the smell, which she in any event denied to be the case, this too was a flimsy reason which we found to be unbelievable. There was no reason why the appellant should have been worried about her guests noticing the smell if she herself was innocent of the drugs or if the drugs had been wrongly handed to her as she claimed. In any case, we were of the view that if the smell was indeed bothering the appellant to such a grave extent, the simplest thing for her to do would have been to throw the bags of opium away for she had no reason to keep them if her claim that she did not have anything to do with the drugs was true.

49 With respect to the appellant's evidence to the effect that she did not implicate Henry Tan in her statements because it was his worker who had delivered the bags to her and as such she could not be sure if the opium came from Henry Tan, we found

this explanation to be similarly devoid of merit. The appellant herself testified in court that before accepting the bags, she first confirmed with Lim if he had been sent by Ah Tan to deliver the things. In the premises, she must have known that the things were from Henry Tan. Next, if she was still unsure as to whether the opium in fact belonged to Henry Tan, she could have called him to check the moment she discovered the drugs. Yet she did not do so despite the time lag of 15 minutes between her discovery and the subsequent raid on her flat. In addition, there was also considerable delay on the appellant's part in opening the door for the CNB officers despite the fact that she was already wide awake at that time, as evidenced by the fact that one of the officers had even begun to cut the iron grille and padlock before the appellant came to the door. In these circumstances, the inescapable conclusion once again appeared to be that the appellant knew beforehand that she was to receive the drugs from Lim that morning and that she knew fully well that she was engaging in some illicit activity.

50 There was no doubt that the appellant was given ample opportunity to relate Henry Tan's involvement with the opium but yet not once did she explain his involvement or his relationship to her and her family until the trial. It is telling that when W/Insp Jenny Tan questioned her in the flat, the appellant remained silent when asked why she had brought the opium into her house. She claimed to have been confused and frightened and that it did not occur to her to exculpate herself in any way nor did she wish to implicate anyone. Subsequently however, when her investigation statements were taken, the appellant again failed to tell the whole truth about Henry Tan's involvement with the drugs as well as his earlier dealings with her family, preferring instead to fudge his identity. Bearing in mind the fact that the opium had been found in the appellant's bedroom and that she had admitted having brought them into her flat from outside, one would have expected the appellant to have attempted to explain and exonerate herself in the face of the extremely compelling evidence against her. The many instances of her failure to do so, when taken collectively, clearly fortified the inference that the appellant was in some way involved with the opium.

51 Another factor strongly suggestive of the appellant's guilt was the suspicious manner of the delivery of the bags of opium to her. It will be recalled that the appellant had asked Lim to meet her at the staircase landing of the third storey rather than at her flat itself. When queried about this, the appellant gave the feeble excuse that this was done as Lim did not know her unit number. We found this explanation to be unconvincing. There was no reason why the appellant could not have given her unit number to Lim or for her to have waited at the entrance of her flat for him. After all, it appeared that previous deliveries of things to her or to her late ex-husband by Ah Tan or his workers had always been done directly to her flat. There was no suggestion that the appellant or her husband ever had to come out of the flat to collect the things from the workers. Consequently, there was no reason why an exception had to be made in the present case, unless the appellant was concerned not to alert the other occupants of her flat as to what was truly going on. The appellant also stated in her investigation statements that while at the staircase landing, she saw 'so much things' in both bags and became frightened. Indeed, it is difficult to see why there was any reason for her to be afraid if this was but another of Ah Tan's regular deliveries to her, all of which had hitherto not led her to any trouble. In the premises, it appeared that the appellant's fear could only have been derived from her own guilty knowledge that she was dealing with drugs. It is further pertinent that the appellant must have felt the weight of the bags when she started dragging them back to her flat from the corridor. Despite noticing that the bags were unusually heavy, the appellant's first reaction was not to try and look for Lim immediately or to examine the contents then and there. Instead, she was content to drag the bags all the way from the staircase landing right into the master bedroom of the flat first, close and lock the main door, before opening to see what the bags contained. Again, such behaviour on her part strongly suggested that she already knew what was in the bags when she received them. With regard to the reference in her cautioned statement to the fact that she had run out of her flat again to look for Lim upon discovery of the opium, we were of the view that little weight should be given to this for the following reasons. Firstly, the only time that this was mentioned was as said, in the appellant's cautioned statement. Thereafter, the appellant failed to mention this fact in the rest of her investigation statements to the police. Next, SSgt Yeoh Seng Hock (PW16) who had been observing the appellant that morning from the exit driveway of the carpark to Block 31 Dover Road did not notice the appellant re-emerging from her flat and walking to the stairwell to look for Lim as she claimed to have done. Finally, the appellant's subsequent behaviour in wrapping each slab of opium neatly and impeccably is simply inconsistent with that of a person who did not wish to be in possession of the drugs and who was anxious to return them to the person who had given them to her.

52 It is further pertinent at this stage to point out that even if the appellant was unaware that opium would be delivered to her and that she intended upon their discovery to return the drugs back to Henry Tan when the opportunity arose, this alone is sufficient to constitute the offence of trafficking under s 5(1)(a) of the MDA. It was clarified in *Lee Yuan Kwang & Ors v PP*

[1995] 2 SLR 349 that under s 5(2) of the MDA, a person commits the offence of trafficking if he had in his possession that drug for the purpose of trafficking. The appellant in this case, like the fourth appellant in *Lee Yuan Kwang*, claimed that she had vacillated upon discovering the drugs about whether to call the police or to return the drugs to their true owner. It will be recalled that her evidence as to whether or not she had intended to call the police upon discovering the opium was extremely flimsy and that she had thrice changed her testimony on this account without offering any reasonable explanation for doing so, thus leading the learned trial judge to find that the evidence supporting her innocence was not credible. It is clear after *Lee Yuan Kwang*'s case that a mere bailee or custodian of drugs may be said to have had possession of the drugs for the purpose of trafficking if by a future act, possession of the drugs would have been transferred back to their true owner: see also *Loh Kim Cheng v PP* [1998] 2 SLR 315. As such, even if the appellant had been waiting for Henry Tan to call her and had intended to return the drugs back to him or to his worker, this alone would constitute the offence of trafficking.

53 Counsel for the appellant further advanced the point that Henry Tan was a close family friend who had often kept things at her flat without trouble, and as such, there was no reason for her to suspect that he would be involved in illegal activities or that he should be passing her drugs to keep for him. In our view, this part of the appellant's claim should not be given any weight for aside from the appellant's own testimony, which was found by the learned trial judge to be generally unworthy of credit, there was no other evidence before the court to support the appellant's assertion. It was in fact pertinent to us that while both Henry Tan and Lim Beng Soon, the deliveryman, were available as witnesses and were in fact offered as witnesses to the defence, the appellant nevertheless chose not to call either of them to testify for her. The burden of rebutting the statutory presumption of trafficking having been cast by the legislature upon the appellant, we had no doubt that an adverse inference under s 116(g) of the Evidence Act (Cap 97) ought to be drawn against her for her failure to call both Henry Tan and Lim as witnesses. It may thus be assumed that any evidence given by the two men had they been called would have been unfavourable to the appellant.

54 Finally, the defence contended that the learned trial judge erred in placing too much weight on the appellant's inconsistencies, contradictions and unanswered questions at the trial. In our opinion, even if the learned trial judge had in fact placed undue weight on several of the relatively more minor inconsistencies made by the appellant, the objective evidence as a whole still supported the finding that the presumption of trafficking had not been rebutted by the appellant. The defence placed great emphasis on the fact that the appellant had only five years of primary education and was a simple-minded woman who was easily confused. She was moreover under tremendous stress during the trial and broke down several times. While the appellant might not have known that being in possession of more than a certain specified quantity of opium was a capital offence, or that she did not think she was doing anything wrong by merely storing the drugs for a few days, this was irrelevant for our purposes as ignorance of the law or its consequences for that mater, is never a defence to a criminal charge. In respect of the appellant's evidence given at the trial, we noted that the learned trial judge had been extremely indulgent and patient with her and had given her ample opportunities to explain herself more clearly and to correct her mistakes, whenever any had been made. The appellant herself had often asked for time to answer a lot of the questions, including those posed by her own counsel, and each time, her request was always granted without question. In spite of this however, all that the appellant could come up with was usually that she either could not remember, that she did not know how to answer the question or that she simply did not know why she had said or done a particular thing. In these circumstances, the learned trial judge could hardly be faulted for having made a negative assessment of the appellant's veracity and we saw no reason to disturb his finding.

Conclusion

55 In light of the above reasons, we found that the learned trial judge was correct in concluding that the appellant was guilty of the offence as charged and that she had failed to rebut the presumption under s 17 of the MDA. We thus felt no hesitation in dismissing the appeal.

Appeal dismissed.

Yong Pung How	L P Thean	Chao Hick Tin
Chief Justice	Judge of Appeal	Judge of Appeal