Chin Siong Kian v Public Prosecutor
[2000] SGCA 8

Case Number : Cr App 21/1999

Decision Date : 12 February 2000

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; L P Thean JA

Counsel Name(s) : Ho Meng Hee (Ho Meng Hee & Co) and Eugene Lee (Chris Chong & CT Ho Partnership) (both assigned) for the appellant; Low Cheong Yeow (Deputy Public Prosecutor) for the respondent

Parties : Chin Siong Kian — Public Prosecutor

Criminal Law – Complicity – Common intention – Trafficking in controlled drugs – Whether common intention between appellant and co-accused to put latter in possession of drugs – ss 5(1)(a), 5(2) Misuse of Drugs Act (Cap 185, 1998 Ed) – s 34 Penal Code (Cap 224) – s 30 Evidence Act (Cap 97, 1997 Ed)

Criminal Law – Statutory offences – Misuse of Drugs Act – Trafficking in controlled drugs – Joint trafficking – Circumstantial evidence – Whether prima facie case established at close of prosecution's case – Whether defence believable – Whether prosecution established case beyond reasonable doubt – ss 5(1)(a), 5(2), 17 Misuse of Drugs Act (Cap 185, 1998 Ed)- s 34 Penal Code (Cap 224) – s 30 Evidence Act (Cap 97, 1997 Ed)

Criminal Procedure and Sentencing – Charge – Alteration – Request for amendment of charge to joint charge at close of prosecution's case – Whether appropriate for court to allow amendment at that stage – s 163(1) Criminal Procedure Code (Cap 68)

Evidence – Proof of evidence – Confessions – Confessions of co-accused – Whether co-accused's confessions may be used to incriminate accused – s 30 Evidence Act (Cap 97, 1997 Ed)

(delivering the grounds of judgment of the court): On 6 September 1999 the appellant, together with another Wan Yue Kong (`Wan`), was convicted and sentenced to death by Judicial Commissioner Amarjeet Singh (`the trial judge`) under a joint charge of drug trafficking. He appealed against his conviction and sentence. At the conclusion of the hearing we dismissed the appeal and now give our reasons. We should add that Wan did not file any appeal.

The appellant was originally charged in the High Court with the following offence:

> *That, you, Chin Siong Kian, on or about the 2nd day of March 1999, between 3.50pm to 3.55pm, at the ground floor lift landing of Block 106 Jalan Bukit Merah, Singapore, did traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by giving ten (10) packets of substance containing not less than 122.9 grams of diamorphine in a red plastic bag to one Wan Yue Kong, Nric S7121997F, 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) and punishable under section 33 of the Misuse of Drugs Act.*

A separate capital charge was framed against Wan in relation to the same transaction. Wan also faced a second non-capital charge which was stood down.

Both the appellant and Wan were jointly tried in the same court. At the close of the prosecution`s case the court allowed the prosecution`s application that the capital charges against the two

accused be amended to a joint capital charge. In allowing the amendment, the trial judge permitted counsel to further cross-examine any of the prosecution`s witnesses if they so wished. Counsel for the appellant did avail himself of this opportunity.

The amended joint charge against the accused read:

> *You,*
>
> *Wan Yue Kong (Nric S7121997-F)*
>
> *Chin Siong Kian (M`sian Nric 770504-01-5603)*
>
> *are charged that in furtherance of the common intention of both of you, on or about the 2nd day of March 1999, between 3.50pm and 3.55pm, at the ground floor lift landing of Block 106 Jalan Bukit Merah, Singapore, did jointly traffic in a controlled drug specified in Class "A" of the First Schedule to the Misuse of Drugs Act (Cap 185), to wit, by having in your possession for the purpose of trafficking, 10 packets containing not less than 122.9 grams of diamorphine 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) of the Misuse of Drugs Act and section 34 of the Penal Code (Cap 224) and punishable under section 33 of the Misuse of Drugs Act.*

The prosecution`s case

On 2 March 1999 a group of Central Narcotics Bureau (`CNB`) officers were keeping surveillance on Wan at Block 403, Clementi Avenue 1. At around 3.10pm Wan and a female Chinese (later ascertained to be one `Bee Lian`) took a taxi from Clementi Avenue 1 to come to the car park of Block 106 and Block 107 of Jalan Bukit Merah. These two blocks face each other, with a car park located in-between. Having alighted from the taxi, Wan walked in the direction of the lift landing at Block 106 while Bee Lian walked towards Block 107.

At the time, one Chee Kiat Chong (`Chong`), a friend of Wan, who was sitting in a coffee shop at Block 107, saw Wan`s arrival in the taxi. About five minutes later, Wan came into the coffee shop and asked Chong whether he would want to go to Tiong Bahru Plaza later. Wan then walked out of the coffee shop and returned about five to ten minutes later to join Chong at the latter`s table. He also ordered some food. About ten minutes later, Wan received a call on his hand phone, whereupon he, without finishing his food, left the coffee shop and walked towards Block 106. Soon thereafter, Chong noticed a Malaysian registered car, with a registration number beginning with `W`, parked near to Block 106.

The arrival of a Malaysian registered car with the number plate WAF 7185 was seen by S/Sgt Lim and Sgt Kassim who were keeping watch at the entrance to the car park. The driver of the car, later ascertained to be the appellant, alighted and opened the boot of the car, took out a red plastic bag and walked in the direction of the lift landing of Block 106. S/Sgt Lim`s and Sgt Kassim`s evidence was that the red plastic bag appeared to contain light coloured bundles. Shortly thereafter, S/Sgt Lim and Sgt Kassim saw the appellant leaving the car park in WAF 7185. Chong also saw the car leaving. The two officers tailed the car until the Woodlands Immigration Checkpoint where the appellant was

arrested by a party of CNB officers led by Insp Lester Lim. A search of the appellant`s person and the car produced nothing incriminating.

In the meantime, Wan returned to the coffee shop. After finishing his food, he told Chong that he was leaving for Tiong Bahru Plaza. Chong agreed to follow Wan. Both walked towards Block 106 and Wan contacted Bee Lian to ask her to come down. The three of them then took a taxi to Tiong Bahru Plaza. As they were about to alight from the taxi at the destination, they were arrested by CNB officers. They were then taken back to Block 106, Jalan Bukit Merah, unit [num]06-1846. This unit (rented from HDB) belonged to Wan`s uncle, one Mark Siak Kong, who had allowed Wan to use it. A search was done outside the unit and two keys were found at a ventilation opening and with the two keys the officers opened the metal grill and wooden door of the unit.

The CNB officers who conducted the search inside the flat included the investigating officer, W/Insp Cindy Goh, and S/Sgt Tai Kwong Yong (`S/Sgt Tai`). In a `Marlboro` cardboard paper box that was placed next to a double-decker bed in the living room cum bedroom, S/Sgt Tai saw two red plastic bags in it. One of the red plastic bags was bigger and double-layered, ie there was another red plastic bag inside it. This bigger red plastic bag was found to contain ten bundles of substance, which were later analysed and found to contain diamorphine. Inside the smaller red plastic bag was another white plastic bag where there were two bundles of substance which were analysed and found to also contain diamorphine.

Other than the two red plastic bags described above, the following were also found in the `Marlboro` box:

(1) a red plastic bag which contained clothes;

(2) a red plastic bag which contained a kettle;

(3) a red plastic bag which contained some empty envelopes;

(4) an empty red plastic bag;

(5) a black plastic bag which contained cash amounting to $3,500;

(6) three clothes hangers;

(7) a sieve set; and

(8) a few pieces of newspapers at the bottom of the box.

Because at the time Wan indicated that there were `some more`, S/Sgt Tai found from under the coffee table, another packet of substance which was later analysed to also contain diamorphine. This packet of substance had no relevance to this appeal. A TANITA digital weighing scale was also found there.

At the end of the search, IO W/Insp Goh put a number of questions to Wan in Hokkien. The questions and answers were recorded by IO W/Insp Goh in her field book and were read back to Wan, who affirmed it by signing against the recording.

Scientific analysis of substance seized

The ten bundles of substance found in the larger red plastic bag in the Malboro box, which were of a gross weight of 4,496g, were analysed by the Department of Scientific Services to contain not less than 122.9g of diamorphine. Their purity level was 2.7%. The two bundles found in the smaller plastic bag was of a gross weight of 883.7g and contained not less than 9.01g of diamorphine. Their purity level was only 1%.

Fingerprint evidence

The various items seized were also examined for fingerprints. The fingerprints lifted from the weighing scale matched the right middle finger of Wan. The other finger impressions obtained were obscure.

Statements made by Wan

A number of statements were recorded from Wan, as well as from the appellant, by IO W/Insp Goh. Wan did not challenge the admission of his statements. Some parts of Wan`s statements implicated the appellant and were relied upon by the prosecution. We now set out those pertinent parts of Wan`s statements:

> *Oral statement of Wan recorded on 2 March 1999*
>
> *Q: Ri quo si mi mai? (What`s your name?)*
>
> *A: Wan Yue Kong.*
>
> *Q: Pei Hun si mi si ri eh? (Is the heroin yours?)*
>
> *A: Pei Hun rong zong wa eh, gar ei nan bo guang hi. (All the heroin is mine and has nothing to do with them).*
>
> *Q: Hi dao eh Pei Hun sin mi si ri eh? (The heroin over there, is it yours?) [Pointing to some packets of heroin under the coffee table]*
>
> *A: Si, nong zong si wai eh (Yes, all mine)*
>
> *Cautioned statement of Wan recorded on 4 March 1999*
>
> *The heroin belongs to me and have nothing to do with my girlfriend Jo Jo [ie Bee Lian] and my friend Ah Chong. Both of them accompanied me to Tiong Bahru Plaza to buy things. Both of them did not know anything about the heroin.*
>
> *The long statement of Wan recorded on 5 March 1999 at 1055hrs*
>
> *2 On Monday night (1.3.99), I was in a hotel ... About 3 to 4 am, my girlfriend "Jo Jo" called me on my handphone ... I took a taxi and went to her house ...*
>
> *3 When I arrived at my girlfriend`s house, we chit-chat until about 8 am ... shopped around at Chinatown areas until about 12 noon. We then took a taxi to*

my flat at Blk 403 Clementi Ave 1 [num]13-196 ... At about 2 pm, I received a call on my handphone. ***The call was from Malaysia and the caller was "Ah Seng". He told me in Hokkien that the "mi kia" (stuff) had arrived. He asked me to go to Block 106 Jalan Bukit Merah at about 3 pm to wait for his call*** *... we decided to leave in a taxi together.*

4 At about some time after 3 pm, the taxi arrived at the car park of Blk 106 Jalan Bukit Merah ... We alighted and my girlfriend walked back to her house while ***I went to the coffee-shop at Blk 107. In the coffee-shop, I ordered some food. About 10 minutes later, my handphone rang again. A male voice said in Mandarin that "dong xi" (stuff) had arrived and asked me to go to Block 106, he told me he is carrying a red plastic bag.*** *I told the caller in Mandarin that I was wearing "chocolate" shirt and a long jeans. I told him I am tall and skinny.* ***I cannot recognise the voice and the caller did not say who he was, but I knew he is not "Ah Seng". I hanged up and walked to the lift entrance on the ground floor of Block 106 ... I have not finished my food*** *.*

5 ***When I reached the lift entrance, I saw a Chinese man wearing white round neck T-shirt and a pair of dark-coloured jeans. The Chinese man is about my height. He was holding a red plastic bag standing next to the public phone near the lift entrance.*** *I could not remember he was holding the plastic bag with which hand.* ***There was no other person around him. I looked at him and when he saw me, he put the red plastic bag on the floor near the public phone and walked towards the car park at Block 106. I then picked up the red plastic bag that was tied with a knot and took the lift to the 6th storey ...***

6 ... I then took two keys from the ventilation opening on the left side of the door. I used the two keys to open the metal gate and the wooden door of the unit. ***I went to the flat and placed the red plastic bag in a paper box in the living room and left the flat.*** *I did not open the plastic bag to check the contents. The red plastic bag was still tied when I left the flat. I then locked the wooden door and the metal gate and left the two keys at the higher ventilation opening ... I went back to the coffee-shop at Blk 107 to finish up my food. When I reached the coffee-shop, I saw "Ah Chong" was seated at a table, drinking coffee. I met him by chance. We did not arrange to meet each other on that day. I then sat with him. I asked "Ah Chong" whether he wants to go Tiong Bahru Plaza together with my girlfriend. He agreed.*

7 ... A while later, my girlfriend met us ... Three of us then walked to the main road to hail a taxi ... The taxi then arrived at the taxi stand outside Tiong Bahru Plaza. Before we could alight, some men rushed to the taxi and arrested three of us. [All emphases added.]

The long statement of Wan recorded on 5 March 1999 at 1435hrs

9 ... At the 6th storey, we were brought to the flat [num]06-1846. I saw an officer recovered the two keys from the ventilation opening that I had earlier placed. One officer then used the two keys to open the metal gate and the

wooden door and all three of us were brought into the flat.

10 In the flat, CNB officers then searched the flat. ***I saw one officer untying the red plastic bag that I had earlier placed in the paper box. I saw the officer took out one packet wrapped with plastic sheets from the red plastic bag ... The woman officer then asked me in Hokkien the heroin belongs to who and I answered that the heroin are mine and has nothing to do with my girlfriend and "Ah Chong". She also asked me about the heroin found under the coffee-table and I said its mine. The woman officer then read to me in Hokkien and I signed on her book ...***

11 In 1989, I came to know one "Ah Chai" in RTC ... Two days before my arrest, about sometime midnight I received a call from Malaysia on my handphone. The caller said he is "Ah Chai" ... He then told me that he gave my handphone number to "Ah Seng" from Malaysia and that "Ah Seng" will call me ... About three hours later, my handphone rang and a male voice spoke in Hokkien said that he is "Ah Seng" ... he said he will pass me something and told me to pass these things to another "Ah Seng" in Singapore. I asked him what these things were, he said I should know. I believe these things were heroin because usually Malaysians say bringing things to Singapore, they meant heroin. I then said I do not know this Singapore "Ah Seng" asked him why he did not want to do it himself. He said he did not trust this Singapore "Ah Seng". I then said since that "Ah Seng" is not to be trusted, why he still want me to do it. He said he had given the Singapore "Ah Seng" my handphone number and that the Singapore "Ah Seng" will call me. He then said he will give me some coffee money for doing the favour. He also said that he will get someone to pass me the money after I passed the thing to "Ah Seng". He did not mention the amount, but I guess it will be at least a few thousands dollars, I then agreed to do it.

14 ***In paragraph 6, I stated I did not open the red plastic bag to check the contents. What I meant was that I did not open up the plastic bundles. When I reached the flat with the red plastic bag, I did untie it and saw a white plastic bag on top of another red plastic bag. I took out the white plastic bag which was tied and placed it inside the paper box. I then tied the red plastic bag containing another red plastic bag and put it in the same paper box.*** *The packet of yellow heroin found under the coffee table was bought by me three weeks ago. I kept that for my own consumption because it is of good quality. [All emphases added.]*

The long statement of Wan recorded on 6 March 1999

16 ***When I took out the white plastic bag from the original red plastic bag, I saw another red plastic bag in the original red plastic bag. I then tied the original red plastic bag without paying attention to the contents. I did not untie the white plastic bag to check the contents.*** *I did not check the contents as my role was to pass these plastic bags to Singapore "Ah Seng". The reason for taking out the white plastic bag from the original red plastic bag was because the original red plastic bag was too bulky to put into the paper box.*

17 This flat at Block 106 Jalan Bukit Merah [num]06-1846 belongs to my

maternal granduncle ... I call him "Ah Gu" ... Some months back, I took the two keys that led to the flat from him. I told him that I would go to the flat to sleep in some afternoons ... Other than the heroin, cash of about three thousand over dollars, the weighing scale and some empty plastic bags, I did not keep any other things in the flat.

19 During the first call from the Malaysian "Ah Seng", he mentioned a place for me to collect the things. I cannot remember the place, but I know it was very far for me and ***I told him to come to Block 106 Jalan Bukit Merah. He then agreed. I decided to ask him to pass me the things at Block 106 Jalan Bukit Merah because I wanted to keep the things at my "Ah Gu" flat and wait for "Ah Seng" to collect for me. I did not want to carry the things around as I find it risky to do so*** *. [All emphases added.]*

The long statement of Wan recorded on 20 March 1999

27 ... it is true that the Chinese man put the red plastic bag on the floor and I picked it from there. He did not pass the red plastic bag to me personally ...

Statements of the appellant

The appellant made altogether five statements to IO W/Insp Goh. He also made one cautioned statement to Insp Daniel Tan:

(1) oral statement on 3 March 1999;

(2) cautioned statement of the same date;

(3) s 121(1) statement on 9 March 1999;

(4) s 121(1) statement on 10 March 1999 (am);

(5) s 121(1) statement on 10 March 1999 (pm);

(6) s 121(1) statement on 16 March 1999.

He did not challenge the admission of the first three statements given to IO W/Insp Goh, but contended that he was induced to make the fourth and fifth statements (5 & 6 above). In a trial-within-a-trial, he alleged that IO W/Insp Goh said that he would be allowed to see his family members if he made a satisfactory statement. He said he had earlier made several requests that he be allowed to see his family members. The appellant`s father also gave evidence that since learning of his son`s arrest on 8 March 1999, he had sought through an intermediary to obtain permission to see the son without success. It was only on 23 March 1999 that the appellant saw his father.

The trial judge after hearing the rebuttal evidence from the prosecution witnesses involved in the taking of the statements and analysing the same in the light of the evidence adduced by the appellant`s witnesses, ruled that the two statements `appeared to (have been) made as a result of

inducement uttered and emanating from the investigating officer, the inducement being that if (the appellant) gave a satisfactory statement he would be allowed to see his family`. Accordingly, he held that the prosecution had not proven beyond a reasonable doubt that the two statements were voluntarily made and refused to admit the same.

The relevant parts of the four statements of the appellant which were admitted into evidence were the following:

> *Oral statement recorded on 3 March 1999*
>
> *Q: Who are these three persons? (I showed accused P1, P2, P3) [P1 - photo of Ah Chong, P2 - Photo of Wan, P3 - photo of Bee Lian]*
>
> *A: I know the male person in the second photograph [Recorder`s note: accused pointed at P2 (i.e. Tan)].*
>
> *Q: Who is he?*
>
> *A: I know him as "Ah Beng".*
>
> *Q: Did you see him on 2.3.99?*
>
> *A: Yes, I saw him before I was arrested.*
>
> *Q: Where did you see him?*
>
> *A: Blk 106, Redhill.*
>
> *Q: What did you see him for?*
>
> *A: I brought clothings to him.*
>
> *Q: How you bring the clothings to him?*
>
> *A: In a red plastic bag.*
>
> *Q: What are the clothings inside the red plastic bag?*
>
> *A: Seven or eight pieces of clothings*
>
> *Q: **Why did you bring the clothings to him** ? [**Recorder`s note: Accused was thinking for a while**]*
>
> *A: **"Ah Beng`s" friend known as "Ma Lau" asked me to bring some clothings to "Ah Beng" in Singapore** and at the same time ask whether "Ah Beng" has any job for me.*
>
> *Q: Do you know the other two persons in the other two photographs? [I pointed to "P1" and "P3"]*
>
> *A: I do not know them. [All emphases added.]*

Cautioned statement recorded on 3 March 1999

I have nothing to say. I handed a plastic bag containing clothing to "Ah Beng". I do not know the full name of "Ah Beng".

Section 121(1) statement recorded on 9 March 1999

2 On two or three nights before 2.3.99, my Malaysian friend "Ma Lau" handed me one red plastic bag and told me that the plastic bag contain working clothes. I then took the plastic bag to my room. ***I opened the red plastic bag and saw about 6 or 7 pieces of clothes. There was one blue T-shirt, two grey collared T-shirts, one black T-shirt, a pair of blue Jeans, a pair of yellow shorts and some clothings*** *which I did not see carefully. I then tied the plastic bag. I was alone in my room when I checked the clothings in the plastic bag. I then kept the plastic bag next to the door in my rented room in Johor Jaya Tetap Lapan ...*

3 On 2.3.99, at about 11 in the morning, I went to work in a games arcade in Johor Jaya. A while later, "Ma Lau" came to see me at my work place. He told me that there is job in Singapore. I asked him whether he is sure of the job. "Ma Lau" said he does not really know and asked me to find out from "Ah Beng" in Singapore. I asked him which "Ah Beng". "Ma Lau" then said we have met this "Ah Beng" before. I then told "Ma Lau" that I have some impressions of this "Ah Beng". "Ma Lau" then told me that I can find "Ah Beng" in Redhill. I told "Ma Lau" that I am not familiar with Redhill areas, but I said I will find my way there. "Ma Lau" then reminded me to bring the red plastic bag of clothings he handed over to me two or three days ago. I then got someone to stand in for me so that I can go to Singapore. Then I left for my rented room together with "Ma Lau".

4 In my rented room, I took the same red plastic bag of clothings that "Ma Lau" handed to me without checking the contents. I brought the plastic bag to downstairs and met "Ma Lau". "Ma Lau" then gave me a phone number 96811655 which I wrote on a piece of paper and told me that the number belongs to "Ah Beng". I then asked "Ma Lau" why can`t he just call "Ah Beng" directly and asked whether there are any jobs. "Ma Lau" said it is better that someone goes to Singapore personally. I told "Ma Lau" that I did not feel like going to Singapore as I have to pay S$30 at the Customs just to come to Singapore. "Ma Lau" then told me that if I manage to find a job in Singapore, it is worth paying the $30. Then I decided to go to Singapore. "Ma Lau" then handed over to me his car keys for me to drive to Singapore.

5 I then walked towards "Ma Lau`s" car, which was parked nearby. "Ma Lau`s" car is a Honda and ***the registration number is WAF 7185*** *. I then placed the red plastic bag of clothings on the floorboard of the rear seat and drove off. The red plastic bag was tied and I did not open up to check the contents. [All emphases added.]*

Section 121(1) statement recorded on 10 March 1999 (am)

7 ***On the day when "Ma Lau" handed me the red plastic bag of clothings, he did told me that the clothes were meant for both of us to wear when we worked in Singapore ... some time back we have ever discussed about going to Singapore to work and the working clothes were meant for that.***

8 I then drove alone the car WAF 7185 from Johor Jaya to the Johor Customs, and after clearing the Customs, I drove to Singapore Customs in Woodlands. At about sometime after 2 in the afternoon, I cleared the Singapore Customs, I drove my car to the shop nearby and bought two bunches of grapes. I then make a call to the games arcade and spoke to "Ma Lau" and confirmed with him the telephone number of "Ah Beng" again ... During the journey to Singapore, the red plastic bag of working clothes were still placed at the same spot.

9 From Wodlands, I drove to a highway ... to Yishun. From Yishun, I drove to somewhere near Jalan Kayu and then to another highway and then exit to PIE. From PIE, I drove to City Plaza at Geylang and then to Golden Mile ... and finally arrived at Redhill area. I then saw Blk 106 at Redhill and drove towards the block. I then drove into the car park of Blk 106, I stopped the car at the car park without parking as most of the lots were occupied. I stopped the car nearer to Block 106, there was another block opposite Block 106, but I do not [***sic*** *] the number of this block.*

10 I then alighted from my car, and opened the rear passenger door and took out the red plastic bag from the floorboard ... I walked to Block 106 and make a call from a public card-phone near the lift lobby. I put down the plastic bag next to me and I called 9681165. A male voice answered the call and spoke in Hokkien "who is that". I said in Mandarin that I am here to look for a job. I then asked him where he is. He asked me in Hokkien where I was, ***I said I am now at the lift lobby of Block 106. He said he is coming over now. I then hanged up the phone and waited. About one or two minutes later, I saw one Chinese man walking towards me. I asked him in Mandarin whether he is "Ah Beng". He answered "Yes". I asked him whether there is any job for me, he said not at the moment. I then decided to leave, carrying the plastic bag. "Ah Beng" then asked me in Hokkien what is inside the plastic bag. I said clothings. "Ah Beng" then suggested that I leave the clothings with him first. I then handed the plastic bag to "Ah Beng". I saw "Ah Beng" quickly took the plastic bag and went into the lift immediately*** *. I then make a call from the same public phone. I called the games arcade No. 0127033831 and spoke to one "Ah Wing" who stood in for me. I asked him to pass a message to "Ma Lau" that there is no job.*

11 I then hanged up the phone and walked back to the car and drove off. [All emphases added.]

From these statements of the appellant, it could be seen that his defence was that he came into Singapore in the hope of getting a job here through Wan whom he was to meet at Block 106, Jalan Bukit Merah. The red plastic bag which he had passed to Wan contained only working clothes for himself and `Ma Lau` to wear should they manage to find jobs here in Singapore.

Amendment of charge

At the conclusion of the prosecution`s case, the prosecution requested for an amendment of the capital charges preferred against Wan and the appellant to a joint charge against the both of them (see [para ]5 above). It was clear to the trial judge that the amendment was necessitated by the court`s ruling that the statements made by the appellant on 10 March (pm) and 16 March 1999, which contain incriminatory confessions, were ruled to be inadmissible. Thus, the prosecution had to rely on the statements of Wan and in order that the prosecution may so rely, both of them had to be charged for the same offence. Section 30 of the Evidence Act (Cap 97, 1997 Ed) provides:

> *When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration the confession as against the other person as well as against the person who makes the confession.*

The request for the amendment of the charges was strenuously objected to by counsel for the appellant on the ground that the amendment would be very prejudicial to the appellant. However, the trial judge felt that as the prosecution could have preferred a joint charge against the appellant and Wan at the beginning, it was entitled to prefer such a charge before the close of the prosecution`s case. He said:

> *Questions of joinder whether covering offences or offenders is essentially a matter of practice and a question to be determined in the light of experience and the needs of justice, general principles being subordinated to the particular facts of the case. I was of the view that the Amended 1st Charge in the circumstances of the present case was proper. The important consideration here was that the Prosecution was relying only on the evidence adduced thus far and no fresh evidence or cross-examination of any witness or other witnesses was sought by the Prosecution to establish or support the Amended 1st Charge. There was therefore no prejudice to the 1st and 2nd Accused. The case against one or the other or both would fall or be sustained on the evidence already adduced in the light of such law as was applicable.*

As a further safeguard, after having the amended charge read to Wan and the appellant, the court gave liberty to their counsel to further cross-examine any witnesses. The investigating officer was, among others, recalled by counsel for the appellant for that purpose. She was asked if she had searched and found a red plastic bag containing the sort of clothing the appellant had described in his statements. She said she did search the box and found no such clothing. In a red bag in the `Marlboro` box there were women`s clothing which belonged to the deceased wife of Wan`s uncle and pyjamas which belonged to Wan`s uncle. IO W/Insp Goh had brought all the contents of the `Marlboro` box to court. She said she did a search of the flat and did not find clothing of the nature described by the appellant.

Prima facie case

At the conclusion of the further cross-examination of the prosecution`s witnesses by the appellant`s

counsel, whilst Wan`s counsel did not make a submission of no case to answer, the appellant`s counsel did. The trial judge held that a prima facie case had been established on the following ingredients of the joint charge:

> *(i) That the 1st Accused (Wan) had possession of the 10 packets of diamorphine weighing not less than 122.9 grams at the ground floor lift lobby of Blk 106 on the date and time mentioned in the joint charge.*
>
> *(ii) That the 1st Accused had by virtue of the possession and as a result of the application of certain presumptions escalating the offence, committed the* ***criminal act*** *of trafficking.*
>
> *(iii) That the 2nd Accused (the appellant) had acted in concert with the 1st Accused pursuant to a pre-arranged plan and in furtherance of the common intention of them both to put and had as such put the 1st Accused in possession of the said diamorphine rendering the 2nd Accused liable as well for the escalated* ***criminal act*** *of trafficking of the 1st Accused as a result of the application of s. 34 of the Penal Code Cap 224 thereby showing that both were trafficking in the said diamorphine. [Emphasis is added.]*

Conclusion of trial

At the conclusion of the trial and after hearing the appellant`s oral evidence as well as the arguments of the prosecution and the defence, the trial judge accepted the statements made by Wan as an accurate reflection of what took place between Wan and the appellant on 2 March 1999, between 3.50pm to 3.55pm, at the ground floor lift landing of Block 106, Jalan Bukit Merah. The appellant`s defence was rejected by the trial judge as being `so incredible that it was incapable of belief`. The trial judge relied on the direct evidence given by the CNB surveillance officers, the confessions made by Wan and all the `tightly knit strands of circumstantial evidence` to reach the irresistible conclusion that the red plastic bag which the appellant had passed to Wan contained the packets of diamorphine which Wan had confessed to receiving. The trial judge therefore convicted the appellant and Wan under the amended joint charge and sentenced them to suffer death.

The appeal

In this appeal, counsel for the appellant essentially repeated the arguments that had been canvassed at the trial. They may be categorised under the following heads, namely, that the trial judge had erred:

(1) in allowing the prosecution to amend the charge against the appellant at the close of the prosecution`s case;

(2) in ruling that the prosecution had made out a prima facie case against the appellant at the close of the prosecution`s case; and

(3) in disbelieving the appellant`s evidence given in his defence.

(1) AMENDMENT OF THE CHARGE

Counsel for the appellant argued that the amendment to a joint charge was highly prejudicial to his client as pursuant thereto the prosecution was able to rely on **Chin Seow Noi v PP** [1994] 1 SLR 135 to secure a conviction solely on the basis of a confession of a co-accused. Counsel also relied on **Lee Ngin Kiat v PP** [1993] 2 SLR 511 to contend that the court in exercising its power to allow an amendment must exercise it judiciously and must bear in mind the possibility of prejudice to the accused.

In the present case the amendment of the charge was sought by the prosecution. The trial judge permitted the amendment in exercise of his powers under s 163(1) of the Criminal Procedure Code (Cap 68) which provides that `any court may alter any charge or frame a new charge, whether in substitution for or in addition to an existing charge at any time before judgment is given`. In **Lew Cheok Hin v R** [1956] MLJ 131 , a magistrate`s appeal case, Taylor J held that `an amendment [of a charge] may be made at any stage and, in general, the earlier the better but ***it is at the close of the evidence for the prosecution that the Court is in the best position to decide exactly what is the case which the accused is required to meet***` (emphasis is added). This statement of the law was applied by the Malaysian Court of Appeal (in interpreting an equivalent Malaysian provision) in **PP v Jorge Enrique Pellon Tellon** [1998] 4 MLJ 183 .

It was quite clear that following the trial judge`s decision not to admit two of the statements made by the appellant which had contained confessions relating to the appellant`s guilt, the prosecution had to reassess the position. Thus, the need for the amended joint charge. In any case, the amendment was sought prior to the defence being called. The two accused were given fresh opportunities to recall any prosecution witnesses whom they wished to further cross-examine. As mentioned earlier, this opportunity was, in fact, made use of by the appellant`s counsel who recalled and further cross-examined some prosecution witnesses, including IO W/Insp Goh. Ample opportunity was given to the appellant to rebut and meet the amended charge.

In the light of the authorities on how s 163(1) should be applied, we held that the trial judge did act correctly when he allowed the amendment of the charge. The principle stated in ***Lee Ngin Kiat v PP*** (supra) remains applicable. But it should be viewed in the right perspective as in ***Lee Ngin Kiat*** this court was concerned with the situation where an appellate court proceeded to amend the charge well after the trial had been concluded. Obviously in that situation, even greater caution must be exercised in permitting an amendment.

(2) WAS PRIMA FACIE CASE ESTABLISHED

Under the amended charge, all that the prosecution need show to establish a prima facie case were the following:

(a) possession of the said quantity of diamorphine by Wan;

(b) the possession was for the purpose of trafficking the said drugs; and

(c) the criminal act of trafficking in drugs was committed in furtherance of a common intention between the appellant and Wan, namely, the plan was that the appellant was to put Wan in possession of the said drugs at the material place and time.

On the evidence, there could be no doubt that the ingredient of possession was established. This was clear from the confessions of Wan as well as the testimony of the CNB officers who searched the flat

that day. There was no dispute that Wan, on 2 March 1999 at the ground floor lift landing of Block 106, Jalan Bukit Merah, had received from a person a red plastic bag containing the ten packets of diamorphine and knowing it to be diamorphine. He brought it up to the flat. He was in possession of the drugs. The presumption found in s 17 of the Misuse of Drugs Act (Cap 185, 1998 Ed) then operated to establish the second ingredient. Section 17 provided that a person found in possession of more than 2g of diamorphine (in this case, 122.9g) would be presumed to have had the drug in possession for the purpose of trafficking unless it was proved otherwise.

Turning to the third ingredient, the question to be determined was whether it had been shown that there was a common intention between Wan and the appellant to put Wan in possession of the said quantity of drugs. In the nature of things, such intention would have to be gathered from the conduct of the parties and all the surrounding circumstances. In this instance, besides the evidence of the CNB officers, again the statements of Wan were most pertinent. From those statements it was clear that there was a plan to deliver drugs to Wan and he had arranged for the drugs to be given to him specifically at Block 106, Jalan Bukit Merah. On 2 March 1999, at about 3.50pm, when Wan was in the coffee shop at Block 107, Jalan Bukit Merah, he received a phone call, whereupon he proceeded to the ground floor lift landing of Block 106. At the same time, the appellant was observed arriving at the car park of Block 106 in a Malaysian registered car WAF 7185. Wan saw a male Chinese waiting by the phone booth near the ground floor lift landing of Block 106. The Chinese male was holding a red plastic bag and when he saw Wan he placed the bag on the ground near to the phone booth and walked away towards the car park. Wan then picked up the red plastic bag from the ground and immediately took the lift up to unit [num]06-1846.

Even the events recounted in the appellant`s admitted statements were consistent to a large extent with those of Wan. The appellant stated that upon arriving at Block 106, Jalan Bukit Merah, he went to the public telephone to make a phone call and was told to wait there at the ground floor lift landing of Block 106. Shortly thereafter, Wan arrived. He exchanged a few words with Wan and then passed the red plastic bag to him. The appellant then noticed that Wan took the lift up immediately. Although Wan could not identify the appellant as the person who passed him the red plastic bag, the appellant, on the other hand, had positively identified Wan as the person to whom he had given a red plastic bag at the material place and time. But as far as Wan was concerned, there was only one transaction that afternoon. Thus, the only material difference between the appellant`s account and Wan`s account was as to the contents of the red plastic bag that was passed over to Wan. According to the appellant, the contents were clothes. But according to Wan, he took the red plastic bag up to unit [num]06-1846 and left it in a paper box in the living room. After that he left the flat. Upon Wan (and his two friends, Bee Lian and Chong) being brought back to the said unit following their arrest, he witnessed a CNB officer examining the red plastic bag which he had earlier placed in the paper box. From this red plastic bag, Wan saw the CNB officer take out ten packets of substances which were later analysed to contain diamorphine.

On the evidence, it was clear that the prosecution had established a strong prima facie case against the appellant which, if unrebutted, would warrant a conviction of the appellant. Counsel for the appellant raised, in the main, the following argument to question the reliability of the prosecution`s evidence. Firstly, it was contended that the trial judge did not give sufficient weight to the fact that the appellant`s fingerprints were not found on either the ten packets of drugs or the red plastic bag in which the drugs were found. This was how the trial judge dealt with the point:

> *It is well known that a person who handles objects need not necessarily leave a finger impression on the object as finger impressions left behind are dependent on many factors such as perspiration from the sweat glands of the hand, the presence of dirt on the fingers, whether the substance handled is soft, dusty, oily or greasy to give a few examples. Apart from these examples it may well be*

that an offender has taken precaution to avoid leaving fingerprints behind on the object/s he has handled. In this case the red plastic bags were flimsy and the 2nd Accused had mostly been handling the bags by the carrier handles.

We felt that the trial judge had dealt with this contention fairly and adequately.

Secondly, counsel for the appellant highlighted the fact that the round-neck T-shirt which the appellant was wearing at the material time and which was seized from him was of a greyish-greenish colour whereas Wan had described the person from whom he had taken the drugs as having worn a white T-shirt. The trial judge had made the following observation with respect to this issue:

I observed the round-neck T-shirt in Court. It appeared to me to be light grey and I recorded my observation of the same. It was of a shade which I was satisfied could be mistaken for white depending on the type of lighting there was in the ground floor lobby of Blk 106. The colour therefore was a matter of perception only. The difference was not one of a totally different darker colour.

It is clear that the trial judge had given due consideration to the alleged discrepancy and we would agree with the way he viewed it.

Thirdly, the appellant`s counsel contended that the trial judge was in error in placing too much weight on Wan`s statements as certain parts of Wan`s statements were inherently incredible, in particular, the following portion:

In 1989, I came to know one `Ah Chai` in RTC ... Two days before my arrest, about sometime midnight I received a call from Malaysia on my handphone. The caller said he is `Ah Chai` .. He then told me that he gave my handphone number to `Ah Seng` from Malaysia and that `Ah Seng` will call me ... About three hours later, my handphone rang and a male voice spoke in Hokkien said that he is `Ah Seng` ... he said he will pass me something and told me to pass these things to another `Ah Seng` in Singapore. I asked him what these things were, he said I should know. I believe these things were heroin because usually Malaysians say bringing things to Singapore, they meant heroin. I then said I do not know this Singapore `Ah Seng` asked him why he did not want to do it himself. He said he did not trust this Singapore `Ah Seng`. I then said since that `Ah Seng` is not to be trusted, why he still want me to do it. He said he had given the Singapore `Ah Seng` my handphone number and that the Singapore `Ah Seng` will call me. He then said he will give me some coffee money for doing the favour. He also said that he will get someone to pass me the money after I passed the thing to `Ah Seng`. He did not mention the amount, but I guess it will be at least a few thousands dollars. I then agreed to do it ...

Essentially, what counsel contended was hard to believe was that Wan was to have obtained drugs from someone whom he had never met or known before (a Malaysian `Ah Seng`) and to pass them to someone who was not to be trusted (a Singapore `Ah Seng`). Like the trial judge, we did not think this account was that incredible, bearing in mind that the drug trafficking network was highly secretive and impersonal - each person to know only what he needed to know. It was hardly surprising that drug traffickers, in order to minimise chances of detection, were constantly seeking new contacts to facilitate the movement of drugs. Furthermore, we did not think too much should be placed on the fact that Wan said he did not have the contact numbers of `Ah Chai` and the

Malaysian `Ah Seng`. This could be because Wan did not want to further expose other parties in this drug trafficking network.

Another reason advanced to suggest that Wan`s statements should not be given too much weight was that Wan`s intention must have been to shield his girlfriend, Bee Lian and his friend, Chong. All we need say is that Wan did not identify the appellant as the person who passed him the red plastic bag. Wan took the responsibility himself. He did not specifically shift it to the appellant.

Fourthly, the appellant contended that the trial judge had failed to give sufficient consideration to the fact that the investigating officer did not do a very thorough search in the flat for the alleged clothes brought by the appellant to Wan. In our judgment, this contention was without merit. As Wan had said that he placed the red plastic bag he received into the `Marlboro` box it was only natural that the investigating officer would concentrate her attention there. Even then, she did conduct a search of the rest of the flat and found some other plastic bags which were flat and dusty, indicating that those bags had been lying around for some time already. We agreed with the trial judge that the search was sufficiently thorough.

We should add that there were also other contentions raised by the appellant`s counsel, such as (a) the trial judge`s erroneous application of the ***Browne v Dunn*** rule; (b) his conclusion on why the appellant drove by a long route from Woodlands to Redhill; (c) his view that the kind of clothes which the appellant allegedly brought to Wan need not be carried in a double-layered plastic bag. In our view, these were incidental issues, and even if they were valid, could not affect the prima facie case that had been made out against the appellant.

The test to be applied at the close of the prosecution`s case was laid down by the Privy Council in **Haw Tua Tau v PP** [1980-1981] SLR 73 [1981] 2 MLJ 49 . This test was succinctly summarised by LP Thean J (as he then was) in **Tan Siew Chay v PP** [1993] 2 SLR 14 at 38, in these terms:

> *We assume (a) that the evidence on the primary facts is true, unless the evidence is inherently incredible, and (b) that there will be nothing to displace the inferences as to further facts or the state of mind of the accused which would reasonably be drawn from the primary facts in the absence of any further explanation. The application of limb (b) necessarily involves the court drawing inferences from the primary facts, and, in drawing such inferences, the court looks at the totality of the evidence and consider what inference, if any, that can reasonably be drawn therefrom.* ***But, in considering any inference to be drawn, the court at this stage does not apply the test whether the evidence looked at in its totality would inevitably and inexorably lead to only one inference or inferences for establishing the essential elements of the charge.*** *[Emphasis is added.]*

The last sentence in the above extract clearly had the test propounded in **Ang Sunny v PP** [1965-1968] SLR 67 [1966] 2 MLJ 195 in mind, where it was held that before circumstantial evidence could be used to secure an accused`s conviction, it must lead to the irresistible inference and conclusion that the accused committed the crime. But that test was only applicable at the close of the trial and not at the stage of ***the close of the case for the prosecution*** . This was the important distinction drawn in ***Tan Siew Chay*** , which was affirmed in **PP v Oh Laye Koh** [1994] 2 SLR 385 .

In the present case, to an extent, the evidence led by the prosecution against the appellant is circumstantial in nature as no CNB officer actually witnessed the passing of the red plastic bag by the appellant to Wan and Wan could not identify the person who left the bag on the floor at the ground

floor landing of Block 106 and which bag he picked up and placed in the `Marlboro` box in the flat. The appellant contended that it could have been someone else who passed the drugs to Wan. The question as to what inference may reasonably be drawn from a given set of facts was addressed by LP Thean JA, in **Tan Chuan Ten v PP** [1997] 2 SLR 348 , as follows:

> *A reasonable inference is one which, on looking at the totality of the evidence, one can say that there is a reasonable degree of probability, not just a mere possibility or a strong suspicion, that [the] fact which the court infers did occur. Such an inference does not have to be the only inference that the court can reasonably draw from the evidence. There may be another or other inferences which the court can reasonably draw and any one of them may be relied upon to establish a prima facie case.*

Wan quite clearly stated that he received only one red plastic bag that day on the ground floor lift lobby of Block 106. There was no other transaction. The evidence of the CNB officers as to what they witnessed that day at Block 106 was consistent with that. By the operation of s 30 of the Evidence Act, the confessions of Wan could be used to incriminate his co-accused, the appellant: see **Chin Seow Noi v PP** [1994] 1 SLR 135 . In the light of Wan`s statements, as well as the statement of the appellant that he did pass a red plastic bag to Wan (albeit that he said it contained clothes), the inference which could reasonably be drawn was that the plastic bag which the appellant had given to Wan had, to his knowledge, contained the prohibited drugs. We, therefore, agreed with the trial judge that a prima facie case had been established that there was a common intention between the appellant and Wan to put the latter in possession of the said drugs. The appellant was rightly called upon to enter his defence.

(3) THE APPELLANT`S EVIDENCE

In his testimony, the appellant re-stated the defence he indicated in his statements to the police, namely, that he travelled to Singapore to meet Wan for the purposes of finding out whether there were job opportunities here for him and his Malaysian friend `Ma Lau`. The red plastic bag which he had brought along and passed over to Wan contained only clothing and not drugs.

The appellant gave an account of how he and `Ma Lau` became good friends. The two of them had discussed the possibilities of finding work in Singapore. On 2 March 1999 `Ma Lau` told the appellant that there was a job available in Singapore. However, when asked whether he was sure, `Ma Lau` replied that he did not know and that the appellant should find out from `Ah Beng` in Singapore. `Ma Lau` then gave the appellant `Ah Beng`s` hand phone number and told him that he could find `Ah Beng` in Redhill, although an exact address was not given. The appellant initially expressed reluctance at having to spend S$30 at the Singapore Immigration/Customs just to drive the vehicle into Singapore. However, he was persuaded after `Ma Lau` told him that it would be better if he were to see `Ah Beng` personally and that if he managed to obtain a job then the expenses incurred would have been worth it. `Ma Lau` gave the keys to his car to the appellant to drive to Singapore.

In our judgment, the trial judge was amply justified to have found that he could not believe the appellant`s claim that he had come to Singapore to look for a job. Quite apart from the fact that the appellant said that he did not know the name of `Ma Lau` (consistent with the fact that he wished to protect `Ma Lau`) it made no sense for the appellant to drive all the way, plus incurring the expenses, when a phone call to Wan would have informed him whether there was any job opportunities in Singapore. He knew Wan`s telephone number. All the more incredible was the fact that according to the appellant when he met Wan at the ground floor of the lift landing of Block 106

he barely spoke for a couple of minutes with Wan. There was even no discussion of the sort of jobs the appellant wanted or the salary he expected.

Another factor which cast serious doubts on the defence that he came to Singapore to look for a job was that the appellant knew, from his many earlier visits to Singapore from January 1999 to 2 March 1999, that it was then difficult to find work in Singapore due to the downturn of the economy. Yet he did not tell `Ma Lau` of this when the latter asked him to go to Singapore, for which journey he would have to incur an expense of S$30, plus having to take a day off from work.

The trial judge also found the appellant`s assertion that the red plastic bag which he passed onto Wan contained only clothes, namely, a few T-shirts, a pair of jeans and shorts and pants just in case Wan had a job here waiting for the appellant, to be a sham. Curiously, according to the appellant, the clothes, especially the jeans and shorts could only fit `Ma Lau` though the appellant could wear the T-shirts. Why the need to bring the clothes when no job was yet secured? Why should `Ma Lau`s` clothes be in the plastic bag when he was not even here to take up any job? The appellant would have to return to Johore Bahru to return the car to `Ma Lau` the same day. The appellant would have to come to Singapore again if he wished to take up any job offer (assuming one was available) and that would have been the proper time to bring the clothes. It was of significance to note that the investigating officer did not find any clothes in the flat which corresponded with the description given by him. A red plastic bag of clothes were found in the `Marlboro box`, but they were ladies` dresses and two pyjamas.

Again, the appellant could not satisfactorily explain why he left the bag of clothes with Wan, a person with whom the appellant was not even familiar with and had never met before. He got himself entangled in a bundle of contradictions to explain about the alleged clothes. In his first oral statement, he said that he met Wan to pass him some clothing which `Ma Lau` had asked him to give to Wan. This was later contradicted by the appellant`s own testimony when he said that he just decided to bring the clothes along and it was not for any particular reason. On further questioning, the appellant said that `Ma Lau` had told him to leave the bag of clothes with Wan only if a job was confirmed. `Ma Lau` did not give any instructions on what the appellant should do if no job was confirmed. Asked what he was going to do if there were no job openings, the appellant said that he would just have to bring back the bag of clothing. However, for some inexplicable reason, the appellant then decided to leave the clothes with Wan when such was neither `Ma Lau`s` instructions nor his own initial intention.

It seemed to us clear that the trial judge had taken pains to scrutinise the statements of Wan to ensure that there were no reasons for Wan to want to conceal or misrepresent facts, since those statements were not subject to cross-examination. He said:

> *I was aware of the dangers of accepting his statements in so far as they might affect the 2nd Accused but was satisfied there were none. I could find no ill motive or any intention to do so. Indeed none had been canvassed before me by Counsel for the 2nd Accused and even to a direct question from the Court to the 2nd Accused as to whether the 1st Accused had any previous problems with him, the 2nd Accused had only replied, `I don`t know why he said that!`*

He was satisfied as to the truth of Wan`s statement.

Judgment

We entirely agreed with the trial judge that the defence should be rejected. It was cooked up by the appellant to explain what was in the red plastic bag he was seen taking out of the boot of the car. The account of the events given by Wan was similar to that of the appellant, but for the fact that the appellant claimed that what he handed to Wan in the red plastic bag were clothes and not drugs. With the rejection of the defence, and in the light of the other evidence, the irresistible conclusion had to be that the appellant passed the plastic bag of drugs to Wan under a pre-arranged plan. With Wan having been proved to be in possession of the drugs, he was by s 17 of the Misuse of Drugs Act (`MDA`) deemed to be in possession of them for the purposes of drug trafficking and by virtue of s 5(2) of the MDA, Wan had committed the offence of trafficking in drugs. As the appellant had put Wan in possession of the drugs in furtherance of a common intention, then by virtue of s 34 of the Penal Code (Cap 224), both were liable for the criminal act of possession for the purposes of trafficking. A case where the fact-situation was similar to the present is **Foong Seow Ngui v PP** [1995] 3 SLR 785 .

In the premises, we found the charge against the appellant established beyond a reasonable doubt and dismissed the appeal.

Outcome:

Appeal dismissed.