

Public Prosecutor v Abdul Salam bin Musthafa and Others
[2000] SGHC 184

Case Number : CC 39/2000
Decision Date : 07 September 2000
Tribunal/Court : High Court
Coram : Chan Seng Onn JC
Counsel Name(s) : Hay Hung Chun and Raymond Fong (Attorney-General's Chambers) for the prosecution; N K Rajah and Juana Saiful B Manis for the 1st accused; Luke Lee and Johan Ismail for the 2nd accused; Palakrishnan with Thrumurgan and Tan Tee Giam for the 3rd accused
Parties : Public Prosecutor — Abdul Salam bin Musthafa; Suboh bin Ramli; Wong Kok Loong

JUDGMENT:

Grounds of Decision

1. The 1st accused, Abdul Salam Bin Musthafa ('Salam'), is a male Singaporean aged 30. He resides at Block 137 Yishun Ring Road #04-176. He is unemployed. The 2nd accused, Suboh Bin Ramli ('Suboh') also known as 'Joe', is a male Singaporean aged 22. He is an odd-job labourer and stays at Block 407 Clementi Ave 1 #02-50. The 3rd accused, Wong Kok Loong, is a 24 year old male Malaysian.

Charges

2. The 1st and 2nd accused were before me on the following charge:

That you, ABDUL SALAM BIN MUSTHAFA and SUBOH BIN RAMLI, on the 22nd day of December 1999, at or about 3.25 p.m., at Block 489 Jurong West Ave 1 #03-37, and in furtherance of the common intention of you both, did traffic in a controlled drug specified in Class "A" of the First Schedule of the Misuse of Drugs Act, Chapter 185, by having in your possession for the purpose of trafficking, 5 packets and 12 sachets containing not less than 165.67 grams of diamorphine, without any authorisation under the said Act and 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, Chapter 185 and section 34 of the Penal Code, Chapter 224, and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

3. The charge against the 3rd accused was as follows:

That you, WONGKOK LOONG, on the 22nd day of December 1999, at or about 2.20 p.m., at Block 489 Jurong West Ave 1 #03-37, did traffic in a controlled drug specified in Class "A" of the First Schedule of the Misuse of Drugs Act, Chapter 185, by delivering 5 packets and 12 sachets containing not less than 165.67 grams of diamorphine to ABDUL SALAM BIN MUSTHAFA and SUBOH BIN RAMLI, without any authorisation under the said Act and regulations made thereunder, and you have thereby committed an offence under section 5(1)(a) of the Misuse of Drugs Act, Chapter 185, and punishable under section 33 of the Misuse of Drugs Act, Chapter 185.

Evidence of W/Sgt Rahizah Binte Rahim

4. At the trial proper, parties referred to the 3rd storey and 6th storey of the flat at Blk 489 as the 3rd floor and 6th floor, which is American English. For convenience, I have used the same in this judgment. The prosecution led evidence that on 22 December 1999 at about 9.30 a.m., SSgt M Subramaniam and W/Sgt Rahizah Binte Rahim from the Central Narcotics Bureau ('CNB') kept observation at the vicinity of Block 137 Yishun Ring Road.
5. At about 12.25 p.m., Salam was spotted at the void deck of the said block. He was wearing a greyish long-sleeved shirt, with sleeves folded up. He boarded a taxi. The surveillance officers followed in their vehicle. The taxi was tailed to Jurong West St 41 where Salam alighted at the spot marked at P100/P101. He was empty handed. W/Sgt Rahizah saw him walk to Block 491, pass through Block 488 and stop at a shop at the void deck of Block 486. He bought something and continued walking towards Block 487. He was seen carrying a red plastic bag. He crossed over to Block 489. Subsequently, she saw him standing at the lift landing, located near the centre of the void deck of Block 489. Later W/Sgt Rahizah spotted him walking from the 6th floor lift landing towards the left staircase. He walked down the said staircase and stopped at the third floor landing. After that he was seen entering the 2nd unit from the left, which was later ascertained to be unit #03-37 ('flat') on the 3rd floor of Block 489, Jurong West Ave 1. Photograph P4 shows the entrance to the flat and a wooden cupboard adjacent to the steps leading into the flat. The other photographs P5 to P10 show an extremely untidy flat with overturned furniture, clothing, bags, rubbish and other items strewn over the hall, bedrooms and kitchen.
6. At about 2.05 p.m., W/Sgt Rahizah testified that she heard on the radio set that Suboh had arrived in a taxi. She kept a close watch on Block 489. After a while, she spotted a person with a yellow T-shirt walking along the corridor of the 6th floor towards the staircase on the extreme left of the block. He walked down the staircase to the 3rd floor. Then he went inside unit #03-37.
7. At about 2.15 p.m., she heard through the radio set that a Malaysian vehicle JDF 755 had entered the car park. Later she spotted a person walking along the 6th floor corridor towards the left staircase. There was no one else walking on the corridor at that time. She radioed a message that someone was walking along the 6th floor corridor. This person walked down the staircase until the 3rd floor and then turned towards unit #03-37. She saw this person standing in front of unit #03-37 for a few minutes. She radioed a message immediately that the driver of JDF 755 was standing outside unit #03-37.
8. She testified that it was her belief that the person she saw standing outside the unit was the male Chinese driver of JDF 755 because soon after receiving the radio transmission that a male Chinese had entered the lift, she saw someone walking on the common corridor of the 6th floor, the level at which the lift could stop. In this block, the lift does not stop at the 2nd to 5th floors.
9. The person later left the said unit, climbed the staircase to the 6th floor, and walked along the common corridor towards the lift landing at the right. She then lost sight of him as her view of the right side of the 6th floor corridor was obstructed. That obstruction was not due to the trees. After that, she heard on the radio set that he was at the ground floor. She next heard at about 2.25 p.m. that the Malaysian car left the car park.
10. W/Sgt Rahizah continued to keep watch on unit # 03-37. When the two male Malays were leaving the unit, instructions were issued to arrest them. She, SSgt Subramaniam and another party of three CNB officers arrived at the lift landing of Block 489 at about the same time. Both the 1st and 2nd accused were subsequently arrested.
11. During cross-examination, she could not recall if she did or did not see the driver of the Malaysian car appear on the 5th and 4th floor staircases as he was descending. Based on her 'instinct', she was able to say that he had gone down and not up the staircase to the 7th floor. Later on, she was able to recall that she saw the person on the 4th floor because she could see a portion of the staircase on the fourth floor after studying photograph 10 of D7. To my mind, this part of her evidence was more a conclusion she reached rather than an actual recollection of what she saw.

12. She then explained that she kept close observation of the staircase on the 2nd floor and the 1st floor after she saw him leave the said 3rd floor unit. But no one came down to the ground level. Instead she saw a person walking on the 6th floor corridor towards the lift landing. Again based on her 'instinct', she concluded that the person walking on the 6th floor corridor was indeed the same person she observed standing outside unit #03-37. She was confident of that conclusion because nobody came down the staircase to the ground level. Furthermore, the person who went down from the 6th to the 3rd floor, and then back to the 6th floor, was wearing the same light coloured T-shirt. When the person walking along the 6th floor first disappeared from her view, she saw no one appearing subsequently on the 7th floor corridor. She conceded however that she could be wrong that he was the same person. But in the next breath she was very sure that the person who stopped at unit #03-37 was the driver of the car JDF 755.

13. From where she was, she could not tell whether the person was a male or female but she could see that the person had short hair. Based on the polaroid photograph of the 3rd accused taken soon after his arrest, his hair could perhaps be described as being rather long for a man, but would be short when contrasted with a lady having shoulder length hair or longer. I believed that W/Sgt Rahizah was trying to determine from the length of the hair if the person she saw was a man or a woman, and in that context, she said that the person had short hair.

Evidence of SSgt M Subramaniam

14. SSgt M Subramaniam, the other officer keeping surveillance, corroborated substantially the evidence of W/Sgt Rahizah. He saw Salam alight from a taxi at Jurong West Street 41. Salam then proceeded to a provision shop located at the void deck of Block 486 where he bought something. Thereafter he was seen walking towards the direction of Block 489. When SSgt Subramaniam was at the ground level at Block 487, he noticed Salam waiting at the lift landing of Block 489.

15. Salam was next spotted walking down the staircase and entering a flat later established to be unit #03-37. SSgt Subramaniam returned to the car park at Block 484 to re-position his vehicle in such a way that the front of his vehicle faced Block 489, and his view was unobstructed. He recalled parking his vehicle at the 3rd or 4th lot from the right as indicated in D1.

16. At about 2.05 p.m., he heard on the radio set that 'Suboh' was spotted arriving at the vicinity of Block 489 in a taxi. A short while later, he saw a male Malay at the 6th floor common corridor of Block 489 walking towards the left staircase. He kept a close watch whilst seated in his vehicle. He saw him climb down the staircase and enter the same unit which Salam had earlier entered. Although he could not actually see his face, he recognised Suboh's bright yellow T-shirt.

17. At about 2.15 p.m., SSgt Subramaniam heard on the radio set that a Malaysian car bearing registration number JDF 755 was spotted arriving at the vicinity of Block 489. Subsequently, he heard that a male Chinese had alighted from the car. He was carrying a blue plastic bag and was walking towards the lift landing of Block 489. He next heard that the male Chinese was waiting at the lift landing of Block 489 and subsequently taking the lift up the block. A short while later, he noticed a person walking along the 6th floor common corridor of Block 489 towards the left staircase. He then saw him walk down the staircase and later, stand outside unit #03-37 for about 2 minutes. At this point of time, W/Sgt Rahizah made a radio transmission that a male Chinese was standing outside. After a short while, this person was seen leaving. W/Sgt Rahizah made another transmission that a male Chinese was leaving the unit. SSgt Subramaniam saw him take the same staircase up. He was later seen walking along the 6th floor common corridor of Block 489. He could not really see the colour of the T-shirt that the person was wearing because the colour was not striking enough.

18. Later he heard on the radio set that the male Chinese was spotted coming out of the lift at the ground level of Block 489 empty-handed. At about 2.55 p.m., he heard that the Malaysian vehicle left the car park of Block 489. At about 3.15 p.m., he saw both the 1st and 2nd accused coming out of the unit. He immediately radioed a message to the others that both male Malays had

left the unit. One was wearing a bright yellow T-shirt and the other a grey T-shirt. He saw them walk up the staircase to the 6th floor common corridor. He believed that they were going to the lift landing of the said Block. On the instructions of ASP Ang Choe Seng, SSgt Subramaniam relayed a message on the radio set to arrest both accused at the ground level of Block 489. He and W/Sgt Rahizah immediately proceeded to the lift landing of Block 489 to wait for them. SSgt Goh Teck Hock, Sgt Tony Ng and Cpl Peter Loong were also waiting there.

19. Counsel for the 3rd accused seriously challenged SSgt Subramaniam's ability to see the 3rd accused come down the staircase and stop outside unit #03-37 for a while before returning to the 6th floor common corridor via the same staircase. SSgt Subramaniam conceded that he could not ascertain that the person he saw walking along the 6th floor common corridor was a male Chinese. Photographs (marked collectively as D7) taken recently by the defence (some 6 months after the actual surveillance on 22 December 1999) were then used to demonstrate to the witness that his view was obstructed by trees.

20. SSgt Subramaniam's explanation was that the trees had since grown taller, bigger and the foliage was more dense now than 6 months ago. With that explanation, I did not find it inherently incredible, on the basis of the Haw Tua Tau test, that he did see what he said he saw. I had no reason at this stage of the trial, to seriously doubt the reliability of the testimony of SSgt Subramaniam or W/Sgt Rahizah that they saw the 3rd accused descend the staircase to the 3rd floor from the 6th floor common corridor, stand outside unit #03-37 for a short while, before returning via the same staircase to the 6th floor common corridor.

21. Being tasked to keep surveillance on unit #03-37 and the staircase, it was most unlikely for them to pick a location where their view would be blocked. If there was obstruction, they would probably move to another place where they could see clearly. This was exactly what the witness said. SSgt Subramaniam testified that he would shift to another observation position if indeed his view was poor and obstructed. I could find no reason why SSgt Subramaniam and W/Sgt Rahizah would chose to have an obstructed view unless they conspired to sabotage the whole CNB operation.

22. Based on the timing of the transmissions from other officers concerning the arrival of the car JDF 755, the driver's approach to the lift and his entering the lift, and their synchronisation with his observation of the person's appearance on the 6th floor corridor and outside unit #03-37 on the 3rd floor, SSgt Subramaniam disagreed that it was a mere assumption on his part that this driver was the one he saw standing outside unit #03-37, although he could not say for a fact that it was the driver who had stood outside the said unit. It was based on his 'instinct', which I took it to mean his experience as a CNB officer with 9 years of surveillance experience working as a member of a surveillance team, where different members have to observe different parts of the route and where they have to communicate the movements of the subject under observation to other members of the team in real time via radio so as to co-ordinate their coverage of the full trail of the subject in question.

23. Furthermore, I noted that it was relatively quiet in the HDB estate at that time. This naturally made the surveillance much easier. It would not be the same if there were many people taking the lift at Block 489, walking along the common corridor on the 6th floor and using the staircase at the time whilst they were keeping observation of the 3rd accused's movements. In this case, only one person was observed to enter the lift at Block 489 at that time, and one person appeared at the 6th floor common corridor a while later. Under the circumstances, it was extremely unlikely for the person observed to proceed from the 6th floor common corridor to the unit #03-37 to be mistaken for the driver of the Malaysian car JDF 755 on that occasion. Moreover, this surveillance officer was positive that the person walking along the 6th floor common corridor on that day had in fact gone to stand outside the said unit. He believed that the driver of the said car had stood outside the said unit.

24. I noted that counsel for the 1st and 2nd accused had not seriously challenged the observation of these two surveillance officers on the actual route taken by Salam and Suboh to reach the said flat via the lift to the 6th floor. This helped to persuade me that both surveillance officers were indeed able to observe clearly on that sunny day the 6th floor corridor and the flat on the 3rd floor. This was of considerable importance when considering the reliability of their observation in relation to the 3rd accused.

25. In any event, the question at this stage of the trial was whether there was *prima facie* evidence, *inter alia*, that the 3rd

accused had in fact stood outside the said unit #03-37 for a short while on that day. In my opinion, this test was more than amply satisfied for the reasons given.

Evidence of SSgt Goh Teck Hock

26. SSgt Goh Teck Hock testified that at about 2.15 p.m. he heard on the radio set that a Malaysian vehicle JDF 755 had arrived at the car park behind Block 489. He stationed himself at the void deck of Block 487 to keep observation. He saw the driver of JDF 755 alight from his vehicle and use his handphone at the void deck of Block 489. A short while later, he returned to his car, opened the driver's side of the car. He then saw him carry a light blue plastic bag, rectangular in shape and of a size slightly bigger than A4 paper size, with a white string handle attached to it similar to that in P 12 which was found to contain the drugs seized in the flat. But he could not remember if he saw any yellow border on the blue plastic bag. He then instructed Sgt Tony Ng to relay a message to the others that the driver was carrying a blue plastic bag. The driver walked towards the lift landing of Block 489. After that he went inside the lift and the witness lost sight of him. SSgt Goh denied that the accused walked to the end of Block 489 to ascertain the number of the block. About 1 to 2 minutes later, he heard a radio message that the driver was standing outside #03-37.

27. The next time SSgt Goh saw him was when he came out of the lift landing at Block 489. This time, he was empty-handed. He went inside his car, reversed it and parked at another parking lot near to Block 490. At about 2.55 p.m., he drove off from the car park of Block 490. Later at about 3.15 p.m., he heard on the radio set that the 1st and 2nd accused were leaving the flat. On instructions, SSgt Goh together with Sgt Tony Ng proceeded to the lift landing of Block 489 to help arrest them.

28. After the arrest at about 4.20 p.m., ASP Ang Choe Seng asked SSgt Goh to identify a blue plastic bag recovered from unit #03-37. He positively identified the blue plastic bag seized as shown in P12 to be the one that the driver of JDF 755 was seen carrying earlier to the said unit. According to the witness, he only saw this blue bag twice, once when the driver of JDF 755 was carrying it and the second time when he was asked to identify it in the flat.

Evidence of Sgt Tony Ng

29. Sgt Tony Ng was with SSgt Goh Teck Hock. They arrived at the scene at about 1.30 p.m. Apart from keeping watch on Salam who had been reported to him as being inside unit #03-37, they were told to look out for Suboh. Sgt Tony Ng said that they were shown a photograph of Suboh prior to the surveillance on the 22nd December 1999.

30. At about 2.05 p.m., Sgt Tony Ng saw Suboh alight from a taxi in front of Block 489 Jurong West St 41. He wore a yellow T-shirt. He walked towards the lift landing of Block 489 and took a lift up. Later, Sgt Tony Ng heard a radio transmission to the effect that a Malaysian car had arrived and entered the car park. The car number was given. At about 2.15 p.m., Sgt Tony Ng saw car JDF 755 park in front of Block 489 Jurong West Street 41. His observation point was at the edge of the void deck of Block 487 facing Block 489. It was a clear sunny day. He saw the driver alight from his vehicle and then move to the void deck. He was seen making calls on his handphone. He was attired in a grey like T-Shirt. Then he went back to his car for a short while. The driver was next spotted at the lift landing of Block 489 at the ground level. He entered the lift.

31. He failed to see whether the driver was carrying anything in his hands before entering the lift because he was not focusing on the driver at that point of time when he had to send a radio message given to him by his team leader, SSgt Goh, that the driver was carrying a blue plastic bag. Sgt Tony Ng therefore could not be sure whether the driver was or was not carrying anything when he entered the lift. A short while later, he heard a radio message to the effect that the 'Malaysian' driver appeared at the 6th floor. There was another message that this person went down to the 3rd floor.

32. Later, he saw the driver emerge from the lift of Block 489. This time Sgt Tony Ng was positive that the driver was not

carrying anything as he walked back to his car. He then went into his car and sat on the driver's seat for a short while. This witness could not see what the driver was doing. He later reversed and shifted his car to another parking lot. He remained in the car for quite some time before finally driving off.

33. It was suggested twice to Sgt Tony Ng by counsel for the 3rd accused that there was no radio message that the driver of the Malaysian car was on the 3rd level of Block 489 to which the witness positively replied that there was.

Evidence of Cpl Peter Loong

34. Cpl Peter Loong Tean Huat's testified that he saw Suboh in a yellow round neck T-shirt at about 2.05 p.m., alighting from a taxi in front of Block 489 Jurong West St 41. He saw him walk to the lift landing of the said block and take a lift up. Later, he heard on the radio set that Suboh had entered unit #03-37.

35. At about 2.15 p.m., he saw a Malaysian registered motorcar JDF 755 driven by a male Chinese arrive at the car park of Block 489. He had been told earlier to look out for a Malaysian car coming into the car park but was not told of its number plate.

36. Cpl Peter Loong next heard on the radio set that the car had parked. He substantially corroborated Sgt Tony Ng's evidence that it was later reported over the radio that the driver of JDF 755 was taking the lift up Block 489 carrying a blue plastic bag. It was also reported through the radio set that the driver was standing outside unit #03-37. At about 2.25 p.m., he heard another radio message that the driver was spotted walking back to his car empty-handed. At about 2.55 p.m., he saw JDF 755 leave the car park of Block 489 Jurong West St 41 while he remained in the vicinity to keep watch on the unit #03-37. That was the only Malaysian car he observed entering and leaving the car park entrance and exit between Block 491 and 490 during the period of his surveillance.

37. At about 3.15 p.m., he heard on the radio set that Salam and Suboh left the unit. ASP Ang Choe Seng issued instructions on the radio set to arrest both of them. Cpl Loong then went to wait for them at the ground floor lift landing of Block 489. Cpl Loong was injured when he helped to arrest Suboh.

Evidence of other CNB officers

38. SI Ronnie See searched Suboh after his arrest and found five sachets of heroin and a key (see P18) in the right front pocket of his trousers, and another five sachets of heroin, a Motorola pager, a Panasonic handphone, cash of \$99 and a bunch of three keys (see P19) in the left front pocket of his trousers. SI Ronnie See handed over the keys to SSgt Mahmud Bin Abu Bakar who in turn handed them over to ASP Thomas Ng Boon Ho.

39. ASP Thomas Ng used the bunch of 3 keys (see P19) recovered from the 2nd accused to open the padlock to the gate and the main door of the said unit #03-37. No one was in the flat.

40. In the presence of Salam and Suboh, SSgt Rosely Bin Sheron together with SSgt Mohamed Isa Bin Kassim searched the kitchen, storeroom, master bedroom and front bedroom. On the kitchen sink (see P10) was a red plastic bag containing a cellophane wrapper and a stained plastic packet, which was partially torn open (see P20 and P21). This cellophane wrapper and plastic packet looked similar to the packing used for the five bundles of heroin in photographs P13, 14 and 15. In the front bedroom, SSgt Rosely found a green plastic bag (see P11) behind the cupboard marked "A" in the sketch plan of the flat P26A, and at the location indicated by the arrow "A" in photographs P7 and P8. Inside it was a blue plastic bag (see P12) which contained the following:

- a. Five bundles of heroin in granular form in a plastic bag, which was further wrapped in cellophane

(Photographs P13, 14 and 15);

b. A digital weighing scale (see P17);

c. A red plastic bag (see P 16) containing: -

- i. Five plastic spoons
- ii. Numerous empty plastic sachets
- iii. A pencil and a roll of scotch tape
- iv. A sachet of heroin
- v. Eleven sachets of heroin.

41. Seized from Salam were a Nokia handphone (not in a working condition), total cash of S\$260.80cts and Brunei currency \$11, including two pawnshop receipts evidencing the pledging of several items of jewellery for a total sum of S\$3,500.

42. At about 4.25 p.m., SSgt Mohd Isa acted as an interpreter for the 2nd accused when SI Ronnie See recorded the following statement in his pocket book:

SI Ronnie See : The heroin belongs to who?

Accused B2 : I don't know.

SI Ronnie See : Who it belong to?

Accused B2 : Don't know.

43. At 7.20 p.m., urine samples were taken from both accused and sent to the Department of Scientific Services for analysis. To a question from counsel for Salam, ASP Fan confirmed that the Salam's urine was tested positive for heroin.

44. Raids were conducted at the official addresses of the 1st and 2nd accused at Block 137 Yishun Ring Road #04-176 and Block 407 Clementi Avenue 1 #02-50 respectively for controlled drugs but nothing incriminating was found.

45. The following items were seized from the 3rd accused at the time of his arrest: the key to car JDF 755 driven by him, his passport, a yellow Ericsson GF 768 handphone, a grey Nokia 3210 handphone, cash of S\$170 and MR840 and some other personal belongings.

46. The 3rd accused was questioned shortly after his arrest in the Mandarin language by SSgt Ang Oon Tho, who recorded the conversation in his pocket book (see P56) as follows:

Q1: Is there anything inside your car?

A1: Money

Q2: How much money are there?

A2: Thirty over thousand.

Q3: Where all these money come from?

A3: Borrow from my friend.

Q4: Just now where are you?

A4: I was at the 6th floor corridor of Block 489 Jurong West.

Q5: What are you doing there?

A5: Wait for my friend known as 'Tai Saw'.

Q6: Thirty over thousand borrow from whom?

A6: My friend call Tay Chee Siong stay at Block 422 Ang Mo Kio Ave 3 bread shop.

Q7: Is there any drug inside your vehicle?

A7: No.

47. The above oral statements were not challenged and were accordingly admitted into evidence.

48. The 3rd accused's car was searched. A brown envelope containing S\$9,500 and another brown envelope containing S\$24,950 were found underneath the front passenger seat. Between the driver seat and passenger seat were found *inter alia* a Nokia handphone battery, S\$103.65 and MR63.20. The 3rd accused admitted ownership of these items seized.

49. Counsel for the 3rd accused brought to my notice that the two brown envelopes containing the large sums of money seized from the 3rd accused were not tendered in court. I thus directed the learned DPP to call witnesses to establish what had happened to the two brown envelopes that were seized. Mr Matthew Lim Tow Thiam from the Financial Investigations Department of CNB came to testify that he received two brown envelopes containing the cash from SSgt Ang Oon Tho. He took out the money, counted them in the presence of the 3rd accused. Thereafter he kept the money, which was most important as far as he was concerned. Mr Matthew Lim did not return the two brown envelopes to SSgt Ang. He could not recall if there was any writing on the envelope. He could not remember what happened to the two brown envelopes, which were handed over to him. Thus, the investigating officer, ASP Fan Tuck Chee ('ASP Fan'), never saw the two brown envelopes because they were never handed over to him at any time.

Evidence of ASP Fan Tuck Chee

50. ASP Fan tendered the polaroid photographs P 104 to 106 showing the attire worn by the 3 accused persons on the day of their arrest. Clearly, there were blood stains on the T-Shirt of Suboh showing that there was a considerable amount of bleeding apart from his blood stains on the wall where he was leaning his head against as shown at photographs P 5 and P 6.

51. During cross-examination by counsel for the 3rd accused, ASP Fan testified that the phone number 97991601 retrieved from the handphone seized from the 3rd accused belonged to a Singaporean named Amir Bin Sarif.

52. I admitted into evidence the following oral statements from Suboh recorded in English by ASP Fan at about 5.35 p.m. on 22 December 1999, after his counsel confirmed that he was not going to challenge the voluntariness of the statements:

Q1 : Where were you arrested?

A1 : Downstairs.

Q2 : Where were you before you were arrested?

A2 : Inside this house.

Q3 : Who was arrested with you?

A3 : 'Salam'.

Q4 : Who was with you inside this house before you were arrested?

A4 : 'Salam'.

Q5 : 'Salam' was inside this house before you were arrested?

A5 : Yes.

Q6 : Who does this belong to?

A6 : I don't know.

53. When ASP Fan asked question 6, he pointed to the plastic bags containing the drugs recovered from behind the cupboard of the bedroom. The questions and answers were recorded in English in his field book (see P57a). They were read back to Suboh by ASP Fan. Suboh affirmed them to be correct and he signed in the field book followed by ASP Fan. The recording ended at about 5.45 p.m.

Statements recorded under S122(6) CPC

54. As the Section 122(6) statements of the 3 accused persons were not challenged, I admitted them into evidence.

S 122(6) statement of 1st accused:

The thing is not mine. I have nothing to do with the house.

S 122(6) statement of 2nd accused:

I have nothing to say right now.

S 122(6) statement of 3rd accused:

I did not give the heroin to the two Malay men. I only collected money from a Malay man whom I do not know.

Statements of the 1st and 2nd accused recorded under S 121 CPC

55. I also admitted the S 121 CPC statements of Salam and Suboh which were not disputed. As both co-accused basically exonerated themselves but implicated the other, their statements must be carefully scrutinised and tested against other objective evidence to determine which parts were likely to be false and which were likely to be true. As such, it is necessary to set them out in full. I reminded myself that section 30 of the Evidence Act concerning co-accused confessions was not applicable with respect to these two S 121 CPC statements. Hence, I could not take into consideration any portions of the statements of one co-accused implicating the other co-accused as their statements were exculpatory of themselves and did not qualify as confessions.

56. In his statement recorded on 30 December 1999 at 11.20 a.m. at CNB, Salam said:

1. I am also known as 'Salam' to my friends.

2.(Deleted)

3. Since my release from the prisons, I had not been employed and was taking care of my aged mother. Only myself, my elder sister and two elder brothers are staying with my mother. I am the youngest child in a family of eleven children.

4. On the day that I was arrested, I was at home in the morning and I woke up at about 8.00 a.m. or 9.00 a.m. Before taking my breakfast at the market, I tried calling 'Joe' but could not get through. After my breakfast, I tried calling 'Joe' at the public phone on the ground floor of my block of flat to ask for his help. I wanted him to introduce work to me. 'Joe' told me that he has work to do and asked me to go to Blk 489 Jurong West Ave 1. 'Joe' said that he will be at Jurong West after 1.00 p.m. and also gave me directions to the unit. He told me that at Blk 489 Jurong West, I am to go up to the 3rd storey using the staircase which does not have a lift. He also told me that he would be in the first house that I came to if I were to turn right after going up the stairs. Immediately, I took a taxi to Blk 489 Jurong West Ave 1.

5. I am now shown a photograph of a male Malay whom I recognised as 'Joe' (Recorder's note :- Accused is shown a photograph of Suboh Bin Ramli, IC: S7730598-Z whom he identified as 'Joe' mentioned in his statement). I am now shown another photograph of a male Chinese whom I do not know. I have never seen him before (Recorder's note:- Accused is shown a photograph of Wong Kok Loong, IC: A3391382 (FOM) whom he claimed not to know).

6. At about 1 plus in the afternoon, I reached Blk 489 Jurong West and alighted along the main road. I then walked to Blk 489 and took the lift to the 6th storey, after which I walked down the stairs to the 3rd storey. I knocked on the door but there was no response. I then went back to the 7th storey by the stairs and waited there for a while. After about 15 to 20 minutes, I went back to the house at the 3rd storey and knocked on the door again. 'Joe' opened the door and told me that he has work to do. He asked me to go back to the 7th storey and told me that he will come up to look for me after he has finished his work. I do not know what work he was referring to. After a while, 'Joe' came up to the 6th storey and whistled for me to join him. I then walked with him to the lift and he invited me to have lunch with him. We went to the ground floor using the lift and after coming out from the lift, a few men arrested us. I squatted down and was handcuffed. At the same time, I noticed 'Joe' running away towards the carpark but was stopped and he struggled with the men arresting him. I knew that the men were CNB officers.

7. 'Joe' and myself were later brought up to the house at the 3rd storey, the one that I had been to earlier. We were brought to the hall and I remember being asked something like 'where's the thing'. I kept quiet and when asked again, I replied that I do not know. However, I overheard an officer asking 'Joe' the same question and 'Joe' replying that it was already given to someone. The rooms were then searched in our presence and in the room nearer to the corridor, a Malay officer found a blue plastic bag from behind the cupboard and showed us the contents. I saw that there 5 big packets and some small packets of heroin in the plastic bag. I also saw a digital scale and a lot of empty small plastic bags. After which, 'Joe'; and myself were asked to wait in the hall.

8. About one hour or so later, the officer in charge of the case asked me whether I know who the drugs belong to. I replied that I do not know. I was then put back at the hall and a while later, some men came to take photographs of the heroin. After finish taking the photographs, I was brought to the CNB office for urine test. At the CNB office, I saw 'Joe'. I was told by an officer that my urine tested positive of heroin and asked if I had smoked heroin. I told him that I did not smoke heroin but I did consume cough mixture and panadol because I was sick. I did not see a doctor as it was not serious. A childhood friend of mine whom I do not have the contact number of gave me a bottle of cough mixture. I do not know why my urine was tested positive and I believe that it is because of the

cough mixture.

9. After the urine test, I was brought to another CNB office where the heroin was weighed in the presence of 'Joe', myself and another male Chinese. Then, the officers brought to my home at Blk 137 Yishun Ring Road #04-176. A search was conducted but nothing was found. I was then brought to the hospital for a medical check-up and later brought back to the CNB office where my statement was recorded. After the statement, I was again brought to the hospital for another check-up and thereafter referred to the lock-up at CID.

10. I am now asked who the heroin that was recovered in the house at Blk 489 Jurong West belongs to. I wish to say that I do not know but I think that 'Joe' will know because he was in the house before I reached there.

Further statement of Abdul Salam Bin Musthafa, IC: S7002309-A – recorded on 30.12.00 at 3.10 p.m. in CNB MIB room #01-04.

11. My previous statement recorded on 30.12.99 was read back to me in Malay and I affirm it to be true and correct.

12. I first met 'Joe' in Changi Prison sometime in 1996 or 1997. I am not close to 'Joe' although I was in the same hall with him when I was serving my sentence in Changi Prison. In November 1999, I met up with 'Joe' again by chance along Orchard Road. 'Joe' asked me if I had any pager or handphone but I did not have any. 'Joe' then gave me his handphone contact number. One or two weeks later, I went to Orchard Road and contacted 'Joe' as he always hangs out there. We just met up for a meal and I returned home as I was still under police supervision.

13. Since then, I have not met nor contacted 'Joe' until a day before we were arrested when I called him on his handphone. I wanted to meet 'Joe' with the intention of asking him for contacts whom could provide me with work as I needed money for the coming Hari Raya celebration. 'Joe' then asked me to contact him again the next day. That was why I called 'Joe' in the morning on the day which I was arrested.

14. Since I was released from prison in October 1999, I have not been working but I supported myself using money which I obtaining from pawning off jewellery of mine. I bought the jewellery before I was detained in prison. When I was first released from prisons, I managed to get by as my mother, brothers and sisters gave me money to spend. However, as the money that they gave me was not enough to support my drinking at pubs, I pawned off my jewellery and obtained S\$3,500/-. This amount of money saw me through from November 1999 till when I was arrested in December 1999.

15. I am now shown a bunch of three keys and I wish to say that I have not seen them before (Recorder's note:- Accused is shown a bunch of three keys labelled as 'C-1' which were seized on the day of arrest and were used to gain entry to Blk 489 Jurong West Ave 1 #03-37). I also wish to say again that I have never entered into the house at the 3rd storey of Blk 489 Jurong West and that was the first time that I had been there. I also do not know who the house belongs to. I only know that 'Joe' stays somewhere in Clementi. I do not know whether 'Joe' was at Jurong West before or after I arrived as nobody answered the door when I knocked on it for about a minute the first time. I think that my knocking was quite soft and maybe 'Joe' did not hear me. The second time, when I went back to the house, I knocked on the door similarly but for a little longer and 'Joe' opened the door.

16. As to the heroin that was found in the house at Blk 489 Jurong West, I do not know who it belongs to but it may belong to 'Joe' because 'Joe' was in the house and he was also found with

heroin in him. Moreover, I remembered 'Joe' saying to a CNB officer that he had given 'things' to someone else.

57. Suboh gave the following version of the events in his Section 121 statements recorded at CNB on 28 December 1999 at 3.30 p.m.:

I am also known as 'Joe' to my friends but 'Suboh' to my family.

2.(Deleted)

3. On 22.12.99, the morning on which I was arrested, I was at my friend's house at Bukit Batok Central. I had stayed at the house of 'Ali' the night before. At about 12 plus in the afternoon, I woke up and went back to my house at Blk 407 Clementi Ave 1 #02-50. I reached home at about 1.00 p.m. At about 1 plus in the afternoon, my friend 'Salam' called me on my handphone and asked me to go to the 3rd storey of Blk 489 Jurong West Ave 1. 'Salam' also told me that when I reached the 3rd storey, I was to whistle and he would open the door for me. I do not know the unit which 'Salam' wanted me to go to. Over the phone, 'Salam' also asked me if I wanted to help me sell VCDs but I do not know why 'Salam' asked me to go to that house. I also did not ask why he wanted to meet me in the house at Jurong West.

4. After receiving the call from 'Salam', I changed my clothes and left for Jurong West in a taxi. At about 15 minutes later, I arrived at Blk 489 Jurong West Ave 1. After alighting from the taxi at the carpark, I took the lift up to the 6th storey of the flat. I then walked down to the 3rd storey and at the corridor, I whistled. I then saw 'Salam' open the door to one of the houses. I went into the house and noticed that it was very messy. This is the first time that I had been to this house and I do not know whom the house belonged to. 'Salam' was alone in the house. After a while, when I asked 'Salam' where is the VCD, 'Salam' showed me a plastic bag containing more than ten sachets of drugs which was placed on the floor in the living room. The drugs that I was referring to is heroin. More than twenty VCDs were also placed on top of the heroin. I could not remember the colour of the plastic bag. 'Salam' also told me that on that same day, someone handed to him many VCDs in a plastic bag but he was surprised to find that there was also heroin in the plastic bag. I wanted to take some of the heroin that 'Salam' showed me for my own consumption but 'Salam' did not allow me. However, I did not listen to 'Salam' and took about ten sachets of heroin from the plastic bag. I then kept five sachets of the heroin in each of my front trousers pocket. 'Salam' scolded me but I told me that I was under stress and I was already consuming cannabis and 'ecstasy' and I might as well consume heroin.

5. I am now shown a photograph of a male Malay whom I recognised as the 'Salam' whom I was referring to in my statement (Recorder's note :- Accused was shown a photograph of Abdul Salam Bin Musthafa, IC : S7002309-A whom he identified as the 'Salam' he mentioned in his statement). I was also shown another photograph of a male Chinese whom I had never seen before and could not recognise meeting before (Recorder's note :- Accused is also shown a photograph of Wong Kok Loong, IC: A3391382 (FOM) whom he claimed not to have met before).

6. After, I had placed the ten sachets of heroin into my pockets, I went to the toilet. I did not ask 'Salam' anything more about the VCD. After which, I left the house with 'Salam'. When we left the house, 'Salam' opened the padlock to the gate and left the key in the lock itself. I was the one who closed the door and padlocked the gate. I had wanted to pass 'Salam' keys to him but as he was already walking up the stairs, I put the keys in my trousers pocket. My intention then was to return to my home in Clementi. We went up to the 6th storey again to take the lift down to the ground floor.

After we came out from the lift at the ground floor, many men approached us and placed us under arrest. There was a struggle as I did not know why I was arrested and also did not know who the men were initially. I got to know that they were CNB officers later. I also knew that myself and a officer were injured during the struggle. I noticed that 'Salam' was also arrested. A search was conducted on me and the heroin that I had earlier taken was found in my trousers pockets. The keys to the house at the 3rd storey was also found in my pocket. 'Salam' and myself were then brought to the house at the 3rd storey.

7. In the house, a search was conducted in the presence of 'Salam' and myself. My head was aching then from the injury and I was not concentrating during the search. After a while, the officers brought me to the living room and I saw a few packets of heroin. I was then asked who the heroin belongs to and I replied that I do not know. Some time later, photographs of the house and the heroin were taken. I was later brought to a place where my urine was taken and tested. After which, I was brought to another office where the drugs recovered was weighed in front of myself, 'Salam' and an unknown Chinese male. Thereafter, I was brought to my house at Blk 407 Clement Ave 1 #02-50 where a search was conducted. Nothing was found there. The officers and myself then left my house and went to Alexandra Hospital where a doctor examined me. After the medical check, I was brought back to a CNB office where a charge was read to me and my statement was also recorded. I was then brought back to Alexandra Hospital and another check was done on me. After the medical examination, I was brought to the lock-up at CID.

Further statement of Suboh Bin Ramli, IC: S7730598-Z recorded on 29.12.99 at 2.45 p.m. in CNB MIB room #01-04

8. My previous statement recorded on 28.12.99 was read back to me in Malay and I affirm it to be true and correct.

9.(Deleted)

10. The last time that I smoked heroin was sometime in 1991 or 1992. Since then, I had never smoked heroin. On the day that I was arrested, I took ten sachets of heroin from 'Salam' as the heroin was readily available and I did not need to pay any money for it. 'Salam' also did not object to me taking the heroin. I do not know how long the ten sachets of heroin could last me as I am not a heavy heroin user. I also do not know whether I could finish using the heroin which I took. I thought of trying to smoke heroin to relieve my stress.

11. I got to know 'Salam' in 1996 when I was in Changi Prisons as we were inside the same hall. After I was released in May 1999, I did not contact 'Salam'. Sometime in November 1999, I met 'Salam' again at Orchard Road and he asked for my contact number. I then gave him my handphone number 98165351 but he did not give me his contact number in return. Since then, 'Salam' had only contacted me about two or three times and talked only about casual topics. I had only been out with 'Salam' only once as he was under probation and could not go out at night. 'Salam' seldom contacts me and therefore I do not know much about him. I only know that he stays in Yishun or Ang Mo Kio and nothing more.

12. I do not have a permanent job since I was released from prisons in May 1999 and I have been working as an odd-job labourer since then. I could not estimate my earnings but it is not more than S\$2,000/- per month. I seldom ask my family for money but occasionally, I will ask about S\$20/- or S\$30/- from my mother. Often, I will also give my mother about S\$30/- to S\$50/- as spending money. I spend most of my money on cigarettes and do not have any savings. Often, I will meet up with my old friends for soccer games and visiting nightspots.

13. About the heroin recovered in the house at Jurong West Ave 1, I have no idea who the drugs belongs to. It is definitely not mine. I also do not know whether it belongs to 'Salam'. During the time when myself and 'Salam' were inside the house at Blk 489 Jurong West Ave 1, I did not see anybody else inside the house and I had not been into any of the rooms before. While I was in the living room with 'Salam', I did not see him going into any of the rooms. As mentioned in paragraph 4 and paragraph 6 in my earlier statement, after I took the ten sachets of heroin from the plastic bag which 'Salam' had shown me, I went to the toilet. Before I went to the toilet, the plastic bag with the heroin was still on the floor in the living room. However, I did not notice where the plastic bag was after I came out from the toilet. 'Salam' did not go to the kitchen or the toilet with me. He was still at the living room when I came out from the toilet. Nobody ever entered or left the house while I was in there with 'Salam'.

Evidence of occupiers of the flat

58. As the drugs were found in a flat belonging to persons other than the accused persons, the CNB officers naturally conducted investigations on the owners of the flats. Statements were recorded from them. They were also called by the prosecution to testify that they were not involved with the drugs found in the flat. Defence counsel therefore had the opportunity to cross-examine them. However, none of the counsel put to them or even suggested to them that the drugs belonged to them. Accordingly, I ruled out their involvement with the drugs at this trial. But for completeness, I would set out their evidence.

59. The registered owners of the flat at Block 489 Jurong West Ave 1 #03-37 are Hazlie Bin Bolwahab ('Hazlie') and his wife, Sarimah Binte Rahmat ('Sarimah'). They are now staying with their son at Hazlie's parents' flat at Block 517A Jurong West Street 52 #13-555. The flat at Block 489 was originally purchased by Hazlie's parents from HDB sometime in 1984. Hazlie (2nd son in the family of 4 sons) and his three brothers stayed in this flat together with their parents. When Hazlie got married in December 1997, his wife shifted into Block 489. Later in December 1998, Hazlie's father bought the flat at Block 517A and sold the flat at Block 489 to Hazlie and his wife on 1 January 1999. All of the occupants of the flat at Block 489 including Hazlie and his wife shifted to the flat at Block 517A except Hazlie's youngest brother and his wife. Hazlie said that he had never been back to stay at Block 489 since he shifted out. But he had occasionally returned to the flat to collect miscellaneous items and clothing that he had left in the flat and to collect mail from the letterbox. The last time he visited the flat was in October 1999 when he shifted his bedroom set out to the present flat where he is staying. His father and third brother Hazani have been to the flat on separate occasions in December 1999 to take the blender and his motorcycle helmet respectively.

60. According to Sarimah, all of the occupants of Block 489 shifted to Block 517A in December 1998. There was some discrepancy with the evidence of Hazlie that his youngest brother, Hazafi Bin Dolwahab, and his wife remained in Block 489 when the rest moved out. Hazlie and Sarimah said that they have never made duplicate keys to the flat nor have they given the keys to the flat to anybody. Neither have they lost the keys to the flat. According to them, they share one set of keys to the flat at Block 489.

61. The eldest son in the family is Hazral Bin Dolwahab. He is single and employed as a supervisor at Citicab. The last time he went back to the flat was in September or October 1999 when he retrieved his remaining clothes left at the flat, to which he has a set of keys given to him by his father. He confirmed that he did not lose any of the keys nor had he duplicated them or lent them to anybody.

62. The third son is Hazani Bin Dolwahab. He is single and employed as a customer service officer with Smart Voice. He still keeps the key to the flat at Block 489 as some of his personal belongings are kept there. He has not lent nor passed the keys to the flat to anybody. The last occasion he visited the flat was about a week before the raid by CNB officers when he went to collect a motorcycle helmet from the flat. He remembered locking the flat before leaving.

63. Hazafi Bin Dolwahab ('Hazafi') is the youngest son. He said that he is known as 'Ah Pit'. He had met Suboh in the Reformative Training Centre in 1995 and in Changi Prison in 1996. After Hazafi was released from prison, Suboh had met up with him for a drink at a coffee shop in Haig Road. Suboh had also visited him on three occasions in 1998 at his flat at Block 489 Jurong West Ave 1 #03-37 before he and his family shifted out to their present 5 room flat at Block 517A Jurong West Street 52 #13-555 in December 1998. Hazafi maintained that he had never given Suboh the keys to his flat at Block 489 and neither had he lost nor duplicated the keys to the said flat. He said that he had never been back to that flat after moving out. Counsel for Suboh put to Hazafi that he had known Salam in Changi Prison in 1996 and had kept in touch after their release and that he had given the keys to his flat at Block 489 to Salam. However, Hazafi maintained that he has never met Salam.

64. Dolwahab Bin Dron, 51 years of age, is the father of the four sons mentioned above. He said that he is now staying with his wife and three of his sons, his daughter-in-law and grandson in the flat at Block 517A. However, his other son Hazafi Bin Dolwahab (i.e. 'Ah Pit') has shifted to Choa Chu Kang since he got married. He said that every son has a set of keys to the flat. He sold the flat at Block 489 to Hazlie and his wife but they do not stay there. Instead, Hazlie's family lives with him. His wife takes care of their grandson. Dolwahab said that Hazlie has not rented the flat to anybody. The last occasion he visited the flat was about 2 weeks before the raid. He went there to collect his wife's potato blender that was left in the flat. The door was always locked when he visited the flat to retrieve his things from the flat.

65. After reviewing their evidence at this stage of the trial, my observation was that unless one of them had lost the key or given the key to the 1st or 2nd accused, it was unlikely for the 1st and 2nd accused to gain access to the flat with the keys that could open the padlock and the door lock. These two locks had not been changed and the family of Dolwahab apparently could still enter the flat with their original keys. So it was not the case that the 1st or 2nd accused had broken into the flat and then re-installed new locks for their own access to the exclusion of the Dolwahab family.

66. As the youngest son, 'Ah Pit', knew Suboh apparently quite well having invited him to the flat on three previous occasions, it was more likely in my view for Suboh to be given the keys to the said flat by 'Ah Pit'. It was not likely for Salam to be in possession of the keys to the flat as 'Ah Pit' had confirmed that he did not know Salam.

67. At this stage of the trial, my assessment of the evidence was limited to that required by the Haw Tua Tau test to determine if their defence ought to be called.

Drug Analysis

68. The drugs contained in the red plastic bag taken from the blue plastic bag (see P12) were sent to the Department of Scientific Services for analysis. The 5 packets and 12 sachets were analysed to contain not less than 165.67 grams of diamorphine. Of the five plastic spoons in the red plastic bag, three were found stained with diamorphine. In the red plastic bag (see P16) were several empty small plastic bags similar to those used to pack the drugs into sachets.

69. The 10 sachets found on the 2nd accused at the time of his arrest was analysed to contain not less than 6.16 grams of diamorphine.

Voire dire of 1st accused

70. Dr Yeo Kim Hai examined Salam, the 1st accused, at 0140 hours on 23 December 1999 at Alexandra Hospital. He found bruises at Salam's right temple, right cheek and the right side of the nose. There was a small laceration on the right jaw.

71. Sgt Tony Ng and W/Sgt Rahizah testified that they waited outside the ground floor lift landing of Block 489 to arrest Salam.

After identifying themselves, they grabbed the arms of Salam. When Salam refused to go down upon being told to do so by W/Sgt Rahizah in Malay, Sgt Tony Ng said he tackled the right leg of Salam with his left leg to bring him down to his knees. Both CNB officers then forcefully pushed him down to the prone position, pinned him down and handcuffed his hands behind his back. W/Sgt Rahizah testified that the right side of Salam's face was in contact with the ground after he was pushed down. It was in that position that they handcuffed him.

72. Sgt Tony Ng then placed Salam inside a CNB staff car. He did not see SSgt Subramaniam come near Salam when he was guarding him. Thus, he never saw SSgt Subramaniam assault him at all. SSgt Subramaniam also denied assaulting him.

73. Salam testified that he did not resist his arrest nor put up any struggle. Since there was no struggle, the injuries found on him were not the result of his arrest. They were inflicted by the CNB officers. He asserted that he was kicked at his lower right jaw and punched on the right side of his face by SSgt Subramaniam whilst he was bending down to enter the CNB staff car through the right rear passenger door. Then he was pushed into the car by SSgt Subramaniam. He was questioned about a 'key'. SSgt Subramaniam punched again, this time on the right side of his forehead. These assaults caused him to be fearful of the CNB officers who subsequently brought him up to unit #03-37 on 22 December 1999 to question him. He did not complain of the assaults to the doctor who examined him prior to and after the recording of his cautioned statements because the escorting CNB officer was present.

74. Counsel submitted that his oral statements given on 22 December 1999 to SI Ronnie See and ASP Fan whilst in the flat were involuntary because he feared that he would be further assaulted if he did not answer the questions posed to him.

75. The prosecution submitted that the bruises and laceration on the right side of his face were sustained during his arrest when he was pushed down to the ground by Sgt Tony Ng and W/Sgt Rahizah. When he was pinned down, the right side of his face was in fact in contact with the ground.

76. I disbelieved Salam's allegation that he was assaulted. I failed to see how he could have been kicked and punched by SSgt Subramaniam as he was bending down to enter the CNB car. There was simply not enough room between the right door and the accused for SSgt Subramaniam, whilst holding the accused's shoulder, to raise his right foot to inflict the kick on the accused's right jaw and punch him just below the right eye as he was bending down and was about to enter the right side of the rear passenger seat.

77. Salam's evidence that he voluntarily laid down prone on the ground on the instructions of the arresting officers without the officers even touching him prior to his being handcuffed, was simply unbelievable. I accepted the arresting officers' account of the arrest. The injuries in my judgment were caused when he was tackled and pushed forcefully down to the prone position in the course of which the right side of his face and jaw had hit and rubbed against the rough ground, and injuries were thereby sustained. The injuries found were linear as reflected in the medical notes of Dr Ganesan whereas injuries caused by punches according to Dr Ganesan would be more diffused in pattern. Hence, Dr Ganesan was of the view that the injuries found on Salam's face were more consistent with injuries associated with the manner of arrest as described by the CNB officers than with the accused being kicked and punched as alleged by him. Dr Ganesan further testified that he would have noted it down if Salam had complained of any assault. However, there was no such record in his medical notes.

78. After evaluating all the evidence at the 1st accused's *voire dire*, I found that the prosecution had proved beyond a reasonable doubt that all the oral statements were given voluntarily by the 1st accused. No threats, inducements or promises were made to him to obtain the oral statements. Neither was he assaulted. Accordingly, I ruled that the oral statements sought to be admitted by the prosecution were admissible.

Voire dire of 2nd accused

79. The CNB officers involved with the arrest of the 2nd accused at the vicinity of the lift landing on the ground floor of Block 489 were principally SSgt Goh Teck Hock, Sgt Tony Ng, Cpl Peter Loong and SSgt Subramaniam. The other officers who assisted were SI Ronnie See Su Khoon, SSgt Mohamed Isa Bin Kassim and Sgt Deen Goh Teck Kiat.

80. Suboh tried desperately to escape from the arresting officers. Considerable force had to be used to secure his arrest by tackling him to the ground. He was pinned face downwards before the officers finally handcuffed him behind his back. In the process, the accused sustained injuries. So did Cpl Peter Loong who dislocated his left shoulder when he gave Suboh a rugby tackle from the rear left side of the accused's body as the accused was running away. This resulted in both of them falling hard on to the cement floor with Suboh landing on top of Cpl Peter Loong's left shoulder. When Cpl Peter Loong fell on his back, Suboh also fell on his back but landed on top of Cpl Loong. Cpl Peter Loong basically cushioned the fall of Suboh. I observed that Cpl Peter Loong did not suffer any injury to the back of his head during this fall although his head would be nearer the ground. It was unlikely for Suboh to injure the back of his head since he landed on top of Cpl Peter Loong. Then what explanation could there be for the linear laceration measuring 2 cm at the back of Suboh's head?

81. After this fall, Suboh got up and tried to escape again. He was subsequently caught and pinned to the ground face downwards at the adjacent grass verge not too far from the lift landing at Block 489 by SSgt Subramaniam and SSgt Goh Teck Hock. He was subsequently handcuffed. I noted that Suboh never fell on his back again.

82. The 2nd accused alleged that he was hit on the back of his head with handcuffs, kicked on the left back, punched on his left cheek just before he was handcuffed at the grass verge. He also claimed that SSgt Mohamed Isa and Cpl Goh San had kicked him hard on his right chest and abdominal area whilst he was seated cross-legged on the floor in the hall of the flat to which he was brought after his arrest. They wanted to avenge the injury sustained by Cpl Peter Loong. According to Suboh, the kicks were painful. However, the officers denied kicking him. I did not believe that Suboh was kicked at all after his arrest as the medical examination did not reveal injuries consistent with the alleged kicks. This affected Suboh's credibility somewhat for this *voire dire* only.

83. The arresting officers denied hitting him at the back of his head with their handcuffs. They maintained that the head laceration must have been accidentally sustained during the fall when Cpl Peter Loong gave him a rugby tackle to bring him down. The demonstration in court by the CNB officers reinforced my opinion that it was not likely for that fall to have caused a single clean deep linear laceration at the back of the accused's head. If so, then I would be left with the accused's assertion that the arresting officers had hit his head with their handcuffs in the course of his arrest, which I did not find improbable, although the accused would not really be in a position to see who and what had actually hit him when he was lying prone face downwards on the grass verge at Block 489 and pinned down before being handcuffed.

84. The fact that Suboh sustained some injuries was not disputed as Dr Leong Hoe Nam examined him at 2230 hours on the 22 December 1999, and found a linear bruise of 3 cm on his left eye, a fairly deep linear laceration of 2 cm involving the scalp layer at the back of his head on the left side, a semicircular erythema measuring 3 cm on his anterior right chest and three linear erythema on the back. Dr Leong testified that the linear laceration at the head would have significant bleeding. He stitched up the open wound. Apart from it being consistent with the head hitting the ground during a fall, Dr Leong agreed that the linear laceration at the back of the head would also be consistent with a blow of great force by something blunt like a pair of handcuffs. It might cause great pain initially but the pain would subsequently subside. Dr Leong however disagreed that the small 3 cm semicircular erythema on the chest was consistent with a kick on the foot by a person wearing shoes. If it were a kick as described, he would expect a larger and broader area of injury. But this 3 cm semicircular line erythema had no width. I accepted the reasons put forth by Dr Leong on this. Suboh was obviously lying that he had been kicked hard on his right chest.

85. As these assaults were not the basis for challenging the voluntariness of his statements, it is not necessary for me to go into more detail on how these injuries could have been sustained, and whether they had caused Suboh's oral statements to SI Ronnie See on 22 December 1999 at about 4.15 p.m. in the flat to be involuntary. The relevance of ascertaining the likely cause of the deep linear laceration to the back of the 2nd accused's head was to weigh and test the credibility of Suboh and the relevant arresting officers as witnesses of fact. On this part of the evidence, I found that Suboh was more credible in his testimony.

86. I accepted Suboh's evidence that the laceration at the back of his head was painful and that there was substantial bleeding, which had smeared part of the wall of the flat against which he was resting for some time after his arrest. The polaroid photograph of him taken by the CNB shortly after his arrest showed that there were blood stains at the front of his shirt and shirt collar. I believed that he did ask for medical attention. SSgt Mohamed Isa testified that Suboh was moaning in pain while he was in the flat. He told Suboh to bear the pain, and that he would be sent for medical treatment later. When asked whether Suboh was groaning in pain before or after SI Ronnie See asked the questions, SSgt Mohamed Isa said he could not recall. SSgt Mohamed Isa remembered however that Suboh had asked to go to the hospital although he could not recall whether that request was made before or after SI Ronnie See had asked the questions. Counsel submitted that the refusal of medical attention in the face of the severe pain amounted to oppression which sapped his will and led to his giving the oral statements.

87. I took cognisance of the fact that Suboh refused to sign SI Ronnie See's pocket book on which SI Ronnie See had recorded the oral statements despite being invited to do so. Suboh testified that he did not sign because his statements were not given voluntarily and they had not kept their promise to send him to the hospital immediately after he had answered the questions. It was submitted that Suboh would surely have signed the pocket book if he had given his answers voluntarily but he did not.

88. Suboh additionally challenged the voluntariness of his oral statements recorded by SI Ronnie See on the basis that he was induced to make those statements. He testified that he had made repeated requests both in English and Malay to be sent to the hospital. He asked SI Ronnie See to send him for medical treatment for the injury sustained at the back of his head to which SI Ronnie See replied that he would do so if Suboh were to answer his questions first. Suboh testified that SI Ronnie See kept repeating the fact that unless he gave him answers, he would not be brought to the hospital. He believed what SI Ronnie See told him. That led him to give the answers to SI Ronnie See. Before that, Suboh said he refused to answer the questions posed by SI Ronnie See.

89. SI Ronnie See however testified that Suboh had never asked to be sent for medical treatment. I did not believe him.

90. Having regard to the totality of the evidence, I found that the prosecution had not proved beyond reasonable doubt that the oral statements were given voluntarily without being induced to do so as alleged by the 2nd accused. Accordingly, I did not allow the 2nd accused's oral statements recorded by SI Ronnie See to be admitted into evidence.

Voire dire of 3rd accused

91. The prosecution sought to admit the section 121 statements of the 3rd accused recorded by ASP Fan with the assistance of the interpreter, Mr Wu Nan Yong, on 23 December 1999 from 3.50 p.m. to 5.30 p.m. (1st statement), and on 27 December 1999 from 11.20 p.m. to 4.15 p.m. (2nd statement) at CNB.

92. The 3rd accused challenged the admissibility of the 1st statement on the basis that ASP Fan threatened to assault him and at the same time, offered him an inducement. With regard to the 2nd statement, he was induced by ASP Fan to give it.

93. I will first set out the evidence of the CNB officers on the arrest of the 3rd accused. SSgt Yon Boon Ngiap and Cpl Abdullah Mohamed followed the 3rd accused's car JDF 755 on their motorcycle after it left the car park at Block 489 Jurong West Street 41. At the traffic light junction of Upper Thomson Road and Marymount Lane, they stopped the lorry in front of the 3rd accused's car. Then SSgt Yon proceeded to the front passenger side of vehicle JDF 755 taking his crash helmet with him. Cpl Abdullah went to the driver's side of the car.

94. Meanwhile, Senior SSgt Tan Wu Chyuan, who was with Cpl Zulkefli Bin Zakariah, stopped his CNB vehicle right behind JDF 755. They had also tailed the 3rd accused's car from the car park at Block 489 Jurong West Street 41 until it was forced to stop at the traffic light junction. Sgt David Ng and W/Sgt Delphine Tan followed in another CNB car.

95. After the accused's car was sandwiched between the lorry and the CNB car, the CNB officers Sgt David Ng, W/Sgt Delphine Tan and Cpl Zulkefli alighted from their vehicles and ran to the driver's side of the vehicle JDF 755. They tried to open the car door but it was locked. Cpl Zulkefli showed his handcuffs to the driver of the vehicle and shouted "CNB". They also shouted to him to open the car door but he did not. He seemed shocked and surprised.

96. SSgt Yon testified that the vehicle JDF 755 suddenly jerked forward in an apparent attempt to escape. He concluded that the driver had refused to open the car door. Sgt David Ng corroborated SSgt Yon's evidence that the vehicle jerked forward slightly after the CNB officers tried to open the driver's car door but were unsuccessful. SSgt Yon quickly smashed the front passenger car window with his crash helmet and opened the car door. He entered the car, leaned across the driver and opened the car door on the driver's side. SSgt Yon denied that he had smashed the car window to instill fear in the 3rd accused. After unbuckling the safety belt, Sgt David Ng pulled the driver out of the car. Cpl Zulkefli assisted him. They then pushed him against the side of the car and Sgt David Ng handcuffed him behind his back. The 3rd accused did not struggle. Immediately thereafter, they placed the 3rd accused in the back seat of JDF 755 because there were onlookers. Cpl Zulkefli explained that they did not want to create a scene or embarrass the 3rd accused. It was also more secure. Cpl Abdullah and Cpl Zulkefli sat next to him on each side. SSgt Yon then drove the vehicle JDF 755 to Block 1 Upper Thomson Road to avoid causing a traffic congestion at the Marymount Lane junction as the traffic flow there was heavy.

97. None of the CNB officers saw any officer slap the accused's head. No one pushed the accused head down. The CNB officers testified that there was no conversation between the officers and the 3rd accused at the junction of Marymount Lane after he was handcuffed. The accused never explained about his car's central locking system to the CNB officers.

98. The 3rd accused testified however that when he was stopped at the said junction, a group of people came up to him and knocked hard at the car window with a pair of handcuffs as if they were trying to break it. They did not identify themselves. Later he heard voices asking him to open the car door. He tried to open it but could not because the CNB officers were lifting up the external door handle. So he gestured to them to release the door handle. According to the accused, the control button of the central locking system could not be activated to unlock the car if the external door handle was being lifted up. He denied jerking his car forward. He said he was frightened when SSgt Yon smashed the left front car window.

99. The CNB officers pulled him out of the car to the road divider and handcuffed him there. During cross-examination by the learned DPP, the 3rd accused maintained that the officers never pressed his body against the side of JDF 755 to handcuff him. After he was handcuffed, someone pressed his head down. Immediately thereafter he felt 3 to 4 officers slapping his head. On further questioning, the 3rd accused elaborated that he was told to bend his body and put his head down. So he stood at the road divider, bent his body about 70 degrees from the vertical, put his head down and the officers were slapping his head. I noted that he had not alluded to this manner of assault in his examination-in-chief and he appeared to be embellishing his evidence as he was being cross-examined.

100. He asked them what they were doing, who they were and why they had hit him. However, they told him to shut up and look down. Following that, he heard a female voice telling them in Mandarin not to hit him. The beating stopped immediately. Following that, she asked him why he did not open the car door. Before he could answer, the CNB officers told him to shut up and look down. Subsequently, two officers brought him to the back seat of his vehicle. However, it was earlier put to the CNB officers by counsel based on instructions from the 3rd accused that the driver had told them about the car's central locking system apparently to explain why he had not opened the car door. The 3rd accused did not allude to that at all in his testimony. In fact, he was testifying to the contrary that he gave no explanation about the central locking system as he had no chance to explain when the CNB officers told him to shut up. Such inconsistent instructions demonstrated the accused's propensity to fabricate stories as it suited him, even to his own counsel.

101. W/Cpl Delphine Tan did not see any officer pushing the 3rd accused's head down. Neither did she see several officers slapping the 3rd accused's head. She denied asking the driver why he had not opened the door to the vehicle. She denied that

she stopped the other CNB officers from slapping the accused. In fact, she was controlling the traffic at that time, which was obviously necessary. I believed her evidence.

102. It was submitted that the manner of arrest and the assaults were intended to create a climate of fear on the part of the accused to induce him to give his statements later. It was contended that he was slapped several times on his head because the officers were 'frustrated' that the accused had resisted arrest by not opening the car door. I could not understand why the officers should harbour any frustrations or take them out on the accused simply because he refused to open the car door at their insistence and an officer had to smash the window to unlock the car. It also seemed unlikely for the CNB officers to slap the accused in full view of the curious members of the public, who were gathering to watch. I found that the slapping was concocted by the 3rd accused. He did not seem to me to be a credible witness at all. He had no qualms fabricating a story of how W/Cpl Delphine Tan had intervened to stop the slapping. He contradicted his instructions to his own counsel concerning his explanation to the CNB officers about the central locking system in his car when he was arrested at the junction of Marymount Lane. I did not think that the CNB officers would really be interested in the central locking system of his car when they had to worry about the security of the accused, the traffic, and the removal of all the vehicles obstructing the busy road junction at that time.

103. In my opinion, whatever was done was necessary to effect the arrest. The officers did not create any climate of fear so that the accused would later give a statement to the investigating officer.

104. The 3rd accused further said that he was frightened when he saw the injuries of the other two accused persons at the time when they were together with him at CNB to witness the weighing of the drugs. He was thinking that they could have been assaulted. He became afraid because he had been allegedly beaten during his arrest. However, he did not complain of the assaults to the doctors at the Alexandra Hospital because a CNB officer was present during the medical examination. Yet I noted that on the next day, 23 December 1999, when his statement was being recorded, the 3rd accused apparently was no longer afraid to complain to ASP Fan that he was assaulted, which I found a little surprising if what he said was true.

105. According to the 3rd accused, a short, fat, middle-aged male Chinese at the CID lock-up had told him in the early hours of 23 December 1999 that he would surely be assaulted if a statement had not been taken. The 3rd accused became very frightened. Later on the same day, he was brought from the CID lock-up to ASP Fan, who took him to his room and then handcuffed his left hand to a chair. When he arrived, the interpreter was not in ASP Fan's room yet. The 3rd accused alleged that ASP Fan thereafter told him in Mandarin that he had a lot of evidence to charge him in court. He told him that he would have to admit it. The interpreter came in not longer after that. Before ASP Fan recorded his statement, ASF Fan spoke to the 3rd accused directly and told him that he must tell the truth. He did not tell him that his statement could be used against him in court. The 3rd accused was unaware of the purpose of recording his statement. Neither ASP Fan nor the interpreter had told him of the purpose of recording the statement.

106. ASP Fan then started asking the 3rd accused questions. Whenever he answered that he did not know, ASP Fan 'appeared to be very fierce' and continued questioning him. The 3rd accused was frightened when ASP Fan turned 'fierce' in his looks. His tone of voice would change but he did not raise his voice. When the accused replied that he did not know, ASP Fan would insist that he knew the answers. He would want him to tell the truth. On occasions during the recording of the statement, ASP Fan spoke directly to him in Mandarin and the interpreter would keep quiet.

107. When the accused was brought to Subordinate Court No 26 to be charged on 24 December 1999, the two male Malay co-accused had allegedly told him that they were assaulted. Apparently, the 3rd accused became even more fearful of being assaulted by the CNB officers. They had again told him of the assaults when he was in Queenstown Remand Prison.

108. I disbelieved the accused's evidence that each of the two male Malays were so keen to inform the 3rd accused not once, but twice, of what they alleged had happened to them. The 1st accused would be concocting an event of assault for the 3rd

accused to hear. As for the 2nd accused, he would be concocting the slapping to tell the 3rd accused. I found no good reason why they should lie to frighten the 3rd accused. Second, these two male Malays were not called at the *voire dire* of the 3rd accused to corroborate what the 3rd accused alleged they had told him. In any event, fear which did not arise out of the acts of the CNB officers but out of the acts of or information provided or concocted by third parties (i.e. the short, fat, middle-aged male Chinese and the two male Malays), and self-induced or self-generated fear were irrelevant.

109. The 3rd accused alleged that ASP Fan brought him again to his room for the recording of the 2nd statement on 27 December 1999. Before the interpreter came, the 3rd accused asked ASP Fan when he could see his family members. ASP Fan replied, "See first," in Mandarin which the 3rd accused understood to mean to "See the situation first." The 3rd accused agreed with the learned DPP that ASP Fan made no promises to him about seeing his family. Later, the interpreter came in. Again, ASP Fan told him that he must tell the truth. Not long after the commencement of the recording of the statement, the telephone in the room rang. ASP Fan picked up the phone and had a conversation in English with the caller. From the conversation, the 3rd accused gathered it had something to do with him. Immediately afterwards, ASP Fan asked him who Mr Chong was. The 3rd accused replied that he was his brother-in-law. He then asked ASP Fan when he could see his family members. ASP Fan replied, "Give a statement first then only you can see your family members." The 3rd accused said that the first time he was allowed to see his family members was in the middle of January 2000, which was some two weeks later. According to ASP Fan's records, it was the 11 January 2000.

110. Mr Chong Fook Choy, the brother-in-law of the 3rd accused, testified that he contacted ASP Fan at about 12 noon after leaving the office of M/s Palakrishnan and Partners on 27 December 1999. He asked when the family members could see the 3rd accused. However ASP Fan said, "Not for the time being because during the investigation no one was supposed to see him."

111. The 3rd accused said that the interpreter was not all the time in the room. Sometimes he left the room. In his absence, ASP Fan would continue with the recording of his statement and he would ask his questions in Mandarin. The accused would answer in Mandarin.

112. Strangely, for the recording of the second statement on the 27 December 1999, ASP Fan was no longer fierce towards him. Even though the 3rd accused answered ASP Fan that he did not know the answer, he was not fierce anymore. I found the accused's evidence to be quite unbelievable especially when the 2nd statement recorded was more incriminating than the 1st statement.

113. The 3rd accused asserted that he would never have given the statement falsely incriminating himself if ASP Fan had not told him that he could see his family after the recording of the statement. He explained that he did not do it and why should he give such a statement. He thought that once he had given a statement, he would be allowed to see his family members immediately. He also stated affirmatively that if he had been told that the statement might be used against him, he would never have given the statement. In other words, he gave the statement because he was not told that the statement would be used against him. Later, he contradicted himself when he testified that he would still give the statement because he was afraid that he might be assaulted and he had no choice.

114. ASP Fan testified that prior to recording the 1st statement, he informed the 3rd accused that he would be recording a statement from him and it was for the purpose of investigating the case against him. He then asked the accused to tell him what actually happened. Additionally, he informed the accused that the statement may be used against him. He was also informed him that the statement may be used in court. All this was interpreted to the 3rd accused by Mr Wu. ASP Fan agreed that what he told the 3rd accused here was not recorded. It was put to ASP Fan by counsel on instructions that they were not recorded because he never said any of it to the 3rd accused. ASP Fan said that was untrue.

115. I could not objectively construe what ASP Fan had told the accused to be anywhere near being an inducement or a threat. By informing him that his statement might be used against him in court, ASP Fan was in fact being honest and fair to the

accused. Upon being so informed, the accused could then decide for himself whether he would keep quiet. If he decided to say something and he later found that what he said was used against him in court, I could not see any grounds for him to complain.

116. ASP Fan denied telling the accused prior to recording the 1st statement (a) that he was bound to say truly everything he knew about the case, or (b) that he had to tell the truth in relation to what he knew were the circumstances of the case. He again denied having told the 3rd accused that he was bound to say truly everything he knew concerning the case before he recorded the 2nd statement. The interpreter, who was present throughout the recording of both statements, substantially corroborated ASP Fan's evidence. Mr Wu confirmed that section 121 (2) of the CPC was not explained to the accused. Mr Wu further confirmed that ASP Fan never told the 3rd accused that he was bound to state the truth in relation to the circumstances of the case. Mr Wu also recalled that ASP Fan had told the accused that his statement might be used in court which Mr Wu had interpreted. Counsel again asked Mr Wu whether ASP Fan told the accused (a) that he need not say anything that might implicate him, or (b) that the accused was bound to state the truth or to tell the truth. Mr Wu reiterated that ASP Fan did not say that.

117. I noted that counsel showed ASP Fan section 121(2) of the CPC which reads '***Such person shall be bound to state truly the facts and circumstances with which he is acquainted concerning the case save only ...***' and framed his question as if that section 121 (2) was a 'warning' that ought to be administered before recording a section 121 (1) statement from the accused. After being shown section 121(2), it was most tempting for the witness to agree that he must, and therefore he did administer that 'warning' in part i.e. that he had told the 3rd accused that he was bound to state truly the facts and circumstances, forgetting that if that were done, then he ought not to omit telling the accused the second portion of section 121 (2) which states, '***save only that he may decline to make with regard to any fact or circumstance a statement which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.***' If that latter part were omitted, it would amount to a misrepresentation of the true legal effect of section 121 (2) and the statement may well be held to be involuntary on account of an inducement (see *Public Prosecutor v Mazlan bin Maidun & Anor* [1993] 1 SLR 512; *Public Prosecutor v Tan Ho Teck* [1988] 3 MLJ 264.). Either the accused is appraised of the entire section in full or not at all. Despite being tested in this way repeatedly in different ways each time by counsel in his cross-examination, ASP Fan consistently denied that he had told the 3rd accused words to the effect that he was bound to state the truth. ASP Fan's practice was simply to tell the accused the purpose of recording the statement, and then go straight into recording the statement proper. I believed him.

118. ASP Fan denied that the 3rd accused had ever asked him whether he could see his family prior to the arrival of the interpreter for the recording of his statement on 27 December 1999. He never told the accused that he would 'see first'. Nor did he have any conversation in Mandarin with the accused prior to the arrival of the interpreter Mr Wu. ASP Fan maintained that Mr Wu was already in the room before the 3rd accused came in for the recording of the statements. Throughout the recording of the 3rd accused's statements, the interpreter was present and never left the room. ASP Fan's evidence in this paragraph was corroborated by Mr Wu. I again believed him.

119. When ASP Fan was questioned on the telephone call from one of the members of the 3rd accused's family, he confirmed that there was such a call but he was uncertain when it was. Later, ASP Fan said that the call was in the midst of his investigation when the 3rd accused was still remanded at the CID lock-up. But he could not remember whether or not that call was received when he was recording the 3rd accused's statement. However, he remembered the accused's brother-in-law asking when the family members could see him and why he was arrested. ASP Fan told him that the accused was arrested for drug trafficking and at the moment in time, he could not grant any family visits. ASP Fan denied telling the accused to give his statement first before he could see his family members.

120. Mr Wu clearly stated that there was no occasion when ASP Fan directly asked the 3rd accused who 'Chong' was, whereupon the 3rd accused answered that Chong was his brother-in-law. Neither had he heard the 3rd accused ask ASP Fan immediately thereafter whether he could see his family to which ASP Fan replied to the 3rd accused in Mandarin that he should give his statement first, then he could see his family.

121. I did not believe the accused's evidence that he had made repeated requests to ASP Fan at the recording of his 2nd statement. I found ASP Fan and Mr Wu to be credible witnesses and I accepted their version of the events. I thus rejected the accused's evidence that he had been induced to give the statements as alleged.

122. Even if it were true that Mr Chong had called ASP Fan at the time when the accused's 2nd statement was being recorded, it must be observed that the accused was already giving the statement without ASP Fan having promised him anything. This strongly suggested that the alleged inducement that he could see his family after giving his statement did not in fact cause him to give the statement in the first place. It was likely that he would have continued giving the rest of his statement in any event. In my opinion, ASP Fan seemed very clear that he was not going to allow any visits so long as his investigations were ongoing. That was exactly what he told Mr Chong. I could not see any good reason why ASP Fan would turn around and offer the 3rd accused an inducement after receiving the phone call from Mr Chong, and risk having the statement thrown out in court, when the 3rd accused was already cooperating by volunteering his statement. In any event, I accepted Mr Wu's evidence that no such inducement was offered to the 3rd accused and he never heard the 3rd accused making any request to see his family during the recording of his 2nd statement on 27 December 1999. I accepted Mr Wu's evidence that he was present with ASP Fan before the 3rd accused came for the recording of his statements and he remained for the entire recording of the statement and had acted throughout as an interpreter.

123. I also found it incredible that ASP Fan, if he had intended to threaten the accused into giving a statement, would merely look fierce and yet not raise his voice or make verbal threats to strike fear into the 3rd accused to extract involuntary answers to his questions. ASP Fan denied looking at the 3rd accused in a fierce manner. I did not think that the accused would be so readily intimidated by the fierce looks and tone of voice of ASP Fan to give a statement incriminating himself, judging by the accused's stand that he would never have given ASP Fan the statement if he had known that it would be used against him.

124. According to the 3rd accused, he did not have anything in mind as to what the purpose of the statement was and he therefore would be unaware that the statement could be used against him in court. If so, then I was not surprised that he voluntarily gave a statement that incriminated himself as he would not be as guarded when making his statement, which seemed more likely to be the reason why he was willing to give the incriminating statement. His fear of the tone of ASP Fan's voice or his fierce looks, or the inducement that he could see his family members only after he had given the statement were red herrings.

125. I did not accept the accused's evidence that he felt he had no choice but to give a statement. He could well have told ASP Fan that he had nothing more to say apart from what he had said in his voluntary Section 122(6) statement taken earlier from him, which he did not challenge.

126. At the end of the *voire dire*, I found that the prosecution had proved beyond reasonable doubt that both Section 121 (1) statements were voluntarily given by the 3rd accused. Accordingly, they were admitted into evidence.

Statements of 1st and 3rd accused admitted after the *voire dire*

127. The accuracy of the statements admitted after the *voire dire* was not put in issue. Hence, I assumed that they were accurately recorded.

128. The oral statement of the 1st accused (B1) made in the flat at about 4.15 p.m. on 22 December 1999 when he was questioned in English by SI Ronnie See is as follows:

SI (CNB) Ronnie See : Whose house is this?
Accused B1 : (Kept quiet.)

129. At about 4.30 p.m., SI Ronnie See spoke again to the 1st accused in English. SSgt Mohamed Isa acted as the Malay interpreter:

SI (CNB) Ronnie See : The heroin belongs to who?

Accused B1 : Don't know.

SI (CNB) Ronnie See : Who it belongs to?

Accused B1 : Don't know.

SI (CNB) Ronnie See : How you meet accused B2 today? (pointing at accused B2)

Accused B1 : Today, I called Joe (referring to the 2nd accused) to meet me at the doorstep of this unit.

SI (CNB) Ronnie See : Then what happened?

Accused B1 : When I arrived at the doorstep, Joe actually came out from this unit.

SI (CNB) Ronnie See : Then what happened?

Accused B1 : Both of us then took the lift and when the lift door opened, a party of officers came in and arrested both of us. Both of us struggled but we were eventually arrested.

SI (CNB) Ronnie See : Then what happened?

Accused B1 : I was later brought to this unit.

SI (CNB) Ronnie See : Tell me who the heroin belongs to?

Accused B1 : I really don't know.

130. Whilst still in the flat, ASP Fan recorded further oral statements in English from the 1st accused at about 5.05 p.m on 22 December 1999:

Q1 : Where were you arrested?

A1 : Below this block.

Q2 : Where was you before you were arrested?

A2 : I was with 'Joe' at the corridor outside.

Q3 : Why did you meet 'Joe' here?

A3 : I thought that if he got heroin 'lobang', I could ask him to give me a bit for smoking for free.

Q4 : Did you ask him for any heroin?

A4 : No. Because I want to go with him for lunch first.

Q5 : Did 'Joe' give you any heroin?

A5 : No.

Q6 : Who does this belong to?

A6 : I do not know.

131. The 1st accused referred to the 2nd accused as "Joe". When ASP Fan asked question 6, he pointed to the plastic bags recovered from behind the cupboard of the bedroom. The questions and answers were recorded in English in his field book (see P57). They were read back to the 1st accused in English by ASP Fan and the 1st accused affirmed them to be correct, at the end of which the 1st accused signed in the field book, followed by ASP Fan. The recording ended at about 5.15 p.m.

132. I now set out the two Section 122(1) CPC statements of the 3rd accused recorded at CNB by ASP Fan on 23 December 1999 and on 27 December 1999 which I had admitted into evidence:

1st statement recorded on 23 December 1999 at about 3.40 pm in CNB Office at room #01-04

I am also known as "Ah Long" to my friends.

2. On 22.12.99, the day when I was arrested, I arrived in Singapore at about 12.00 p.m. via Woodlands checkpoint. I drove into Singapore alone in a white Proton Wira bearing registration number JDF 755. I then drove straight to Blk 422 Ang Mo Kio Ave 3 to collect a receipt of handphone repair from my Malaysian friend Tee Chee Seong who works in Singapore. His handphone number is 97348221. At the same time, I also borrowed about S\$20,000/- contained in a large brown envelope from him for my illegal game arcade business in Malaysia. I am one of the partners in the business. A short while later, I left for Blk 489 Jurong West Ave 1.

3. At about 1.00 p.m. plus, I reached the carpark of Blk 489 Jurong West Ave 1. I then parked my car at one of the parking lots nearer to Blk 489. I got out from the car and called a number and spoke to the person in Malay. I said to him "Saya suda sambai". The person then asked me to go to the 6th storey in Malay. I then removed a blue plastic bag from the floorboard at the rear passenger seat. After which, I took the blue plastic bag and went up to the 6th storey corridor using the centre lift. After coming out from the lift, I turned right and saw a male Malay. Without speaking to him, I handed over the blue plastic bag to him and he in turn gave me a brown envelope in which I knew contained money. I took the lift back to the ground floor and went back to my car. In the car, I opened the large brown envelope which I got from my friend earlier on and counted the money which amounted to S\$24,950. They were in denominations of S\$1,000, S\$50, and S\$10. After counting the money, I placed both the brown envelopes underneath the front passenger seat. I then drove off intending to go to Ang Mo Kio Centre to collect a handphone which was sent for repairs.

4. On my way to Ang Mo Kio via PIE, I stopped at the traffic lights at the junction of Marymount Road and Thomson Road. Before the traffic lights turned green, I saw a group of men approach my car and knocked on my window. One of them tried opening the door at the driver's side but could not open it. They then smashed the window at the front passenger's seat. I was brought out of the car and handcuffed.

5. I am now shown a blue plastic bag and I recognise it as the blue plastic bag that I had mentioned earlier in my statement (Recorder's note :- Accused is shown a blue plastic bag labelled as 'A1a' which was recovered in a raid on Blk 489 Jurong West Ave 1 #03-37). I am also shown two photographs of two male Malays but I could not recognise if they are the male Malay whom I earlier mentioned contacting in my statement (Recorder's note :- Accused is shown two photographs of Abdul Salam Bin Musthafa, IC: S7002309-A and Suboh Bin Ramli, IC: S7730598-Z). However, I remembered that I have the contact number of the male Malay whom I mentioned speaking to over the handphone. I am now shown a grey Nokia handphone with black cover which I recognised as mine (Recorder's note :- Accused is shown a grey Nokia handphone seized from the accused on the day of arrest and asked to retrieve the number of the male Malay. I found the number to be 97991601.)

6. After I was arrested, one of the men drove my car to the side of the road and searched the car. I was also asked some questions in Mandarin. However, nothing was found and I was then brought back to an office. Later, three men and a women came with two dogs and the dogs started sniffing my car. The door panels and rear sat were also removed but nothing was found. The panels were then fixed back and my urine samples were taken and tested. I was then brought to another office where an

officer weighed some heroin in the presence of myself and two other male Malays. The money recovered from me was then counted by another officer. I was then given dinner before being brought to the hospital for medical check. After the medical check, I was again brought back to the office where the officer read out a charge to me and a statement was also taken from me. After the statement, I was again brought back to see a doctor after which I was placed in the lock-up.

2nd statement of Wong Kok Loong, IC: A3391382 (FOM) recorded on 27.12.99 at 11.20 a.m. in CNB MIB room #01-04.

7. My previous statement recorded on 23.12.99 was read back to me in Mandarin and I affirm it to be true and correct.

8. I am the sixth child in a family of seven. I started working after I had completed Form Two and at the end of 1991, I started to work in Singapore as a painter. I switched to working in the shipyard early last year and in October 1998, I went back to become a painter, working for my elder brother. In July 1999, I stopped working as a painter and went back to Johor Bahru. I was then not working but still entered Singapore frequently to visit friends. Sometime in October 1999, I started operating a game arcade in Taman Lenting at Johor Bahru with a Malaysian friend of mine. I spent about \$3,000/- Malaysian Ringgit on the business, which is from both my savings and loan from friends.

9. A few months ago, at a discotheque 'Golden Palace' in Johor Bahru, I got to know a Malaysian man known as 'Ah Bear'. Since then, we met up often for drinks and on one occasion, 'Ah Bear' asked me if I wanted to work for him and his boss known as 'Ngow Chai' by bringing things to Singapore as he knew that I was in need of money. I have not seen 'Ngow Chai' and I did not give him a reply immediately. After about a month, that is sometime in late October 1999, I met 'Ah Bear' again in the discotheque and I told me that I will take up the job he offered. 'Ah Bear' then asked me to wait for his call and I gave him my handphone number. I do not have the contact number of 'Ah Bear'.

10. After a week, 'Ah Bear' called me and asked me to meet him at the '7-11' store at Pemas in my car JDF 755. He handed over to me a bag and told me to enter Singapore. I then placed the bag in the car boot under the spare tyre. He told me that he will call me after I entered Singapore and give me the contact number of the person whom I was to hand over the bag to in Singapore. About half an hour later, I entered Singapore and 'Ah Bear' called me on my handphone and gave me the phone number of the receiver of the plastic bag, who is a male Malay. I then contacted the person whose number was given by 'Ah Bear'. The person then asked me to go the road along Bukit Panjang Plaza and at that place, I handed over the plastic bag. No money was handed over to me by the male Malay. After that, I immediately drove back to Malaysia and met him at a coffeeshop. He handed \$600/- ringgit to me and told me that it is for bringing three packets of things. 'Ah Bear' did not tell me what the packet of things were.

11. On another occasion which was about a week or so before I was arrested, 'Ah Bear' called me again and I met up with him again at the same '7-11' store. He handed over a bag to me and I again kept it in the car boot under the spare tyre. I entered Singapore and 'Ah Bear' called me on the handphone giving me the contact number. I contacted the receiver and it was a male Chinese who spoke to me in Mandarin. The person asked me to go the Chinatown Point and over at the roadside, I handed over the plastic bag to him. No money was handed to me. I went back to Johor Bahru and met up with 'Ah Bear' at a coffeeshop, different from the previous occasion. This time, 'Ah bear' gave me \$800/- ringgit but did not tell me the number of packets that was brought into Singapore.

12. On the eve of my arrest, 'Ah Bear' called me at about 11.00 p.m. to inform me that I have got to work and at about midnight, he asked me to meet him at the same '7-11' store. He then handed over a

blue plastic bag to me and like the previous times, told me that he would call me again when I am in Singapore. He also told me then to enter Singapore by 12.00 p.m. I then took the plastic bag and left it in the car boot. He did not tell me how much he will be paying me after the delivery. As such, I do not know how many packets were in the bag. However, 'Ah Bear' told me to collect money from the person who collects the bag from me but did not tell me the amount of money I was to collect. After that, 'Ah Bear' left in his own car, a blue Honda CRV. I then went home to sleep. My car was locked and parked at home. Nobody other than myself uses the car.

13. On the day of my arrest, I woke up at about 11.00 a.m. After washing up, I went to my car and hid the plastic bag which 'Ah Bear' gave to me under the spare tyre in the car boot. After which, I left for Singapore in my car. At about 12.00 p.m., I entered into Singapore via Woodlands checkpoint. I used the green lane and was not checked by the police. As 'Ah Bear' did not call me, I went to look for a friend of mine to borrow money for my business. I had arranged with my friend to borrow money and therefore, I forked out time to collect it from him. At the carpark at Ang Mo Kio, I took out the blue plastic bag and transferred to the floorboard of the rear passenger seat. While removing it from the car boot, I saw about one to two packets of yellow substance inside the bag. I wish to say that I do not know what was the yellow substance. After I had collected the money from my friend, 'Ah Bear' called me and gave me the contact number for a male Malay. I keyed in the number into my handphone. Although I had planned to collect a handphone sent for repairs, I went straight to Jurong West as 'Ah Bear' told me that the person is already waiting. I immediately called the number which 'Ah Bear' gave me and the male Malay answered the call. I asked him where he was and he told me that he was at Blk 489 Jurong West. He also told me to call him again when I had reached there. Upon reaching Blk 489 Jurong West at about 1 plus p.m., I called the male Malay and he told me to go to the 6th storey where I handed the plastic bag to him. I also collected some money. After leaving Jurong West at about 2.00 p.m., I headed towards Ang Mo Kio but was arrested somewhere along the junction at Thomson Road and Marymount Road.

14. Although 'Ah bear' did not tell me what the things I brought in were, I believed that the things were illegal as he told me to hide the things well. I never thought that if arrested, I would face the death penalty.

Adjourned for lunch at 12.55 p.m.

Statement resumed at 2.10 p.m.

15. The car which I am using, a white Proton Wira bearing registration number JDF 755 was bought sometime in April 1999. I had to pay \$35,000 ringgit in cash by my mother paid about \$26,000/- ringgit while the rest was paid by me. I still have a few thousand dollars savings in my bank in Malaysia. I agreed to work for 'Ah Bear' because I was short of cash and I owed people money. I owed my friends about \$10,000/- ringgit in total. Every month, my income from operating the game arcade ranges between \$1,000/- to \$2,000/- ringgit and that is often less than my spending on the car, handphone, discotheques. I will borrow money from my friends and that is why I owe people about \$10,000/- ringgit. I used my own car to deliver things for 'Ah Bear' as I do not know that it is so serious.

16. I wish to say that in the Friday morning (24.12.99) when my case was first mentioned in court, I was taken out from my cell in the lock-up at CID and taken to another cell for my breakfast. I was placed in cell 3 at that time and the cell which I was brought to was just next to the officers' room. A while later, a male Malay whom was arrested on the same day with me was brought into the same cell. At that time, only two of us were in the cell. While waiting for our breakfast, the male Malay started talking to me in Malay and asked me what did I say in my statement and also if I recognised anybody.

I told him that I informed the officer that I brought the plastic bag up to the 6th floor and also to collect money and I did not know what was in the plastic bag. The male Malay then told me that he had asked his friend to admit but his friend refused to. He also explained to me that as his friend has the key to the flat and a few sachets on the body, his friend should admit and save him. After that, he stopped talking to me and we were sent to court. His friend was not present then.

17 I am now shown two photographs which I recognised as the two male Malays whom were arrested on the same day as me (Recorder's note:- Accused is shown two polaroid photographs of Abdul Salam Bin Musthafa, IC: S7002309-A and Suboh Bin Ramli, IC: S7730598-Z). I recognise the man in grey shirt as the one who spoke to me while I was in the CID lock-up, asking about my statement to the officer (Recorder's note:- Accused pointed to one Abdul Salam Bin Musthafa, IC: S7002309-A).

Close of Prosecution's Case

133. At the close of the prosecution's case, counsel for all three accused made no submissions. I found that the prosecution had made out a prima facie case against them on the charges. Accordingly, I called them to give evidence in their defence after administering the standard allocution. The 1st and 2nd accused elected to give evidence. The 3rd accused deferred making his election. When the trial reached the stage where he had to decide, he chose to remain silent.

Defence of 1st accused

134. Salam testified that he was unemployed prior to his arrest. He had to return home by 7.00 p.m daily and report every Monday at the police station. He could not get a job because of these restrictions imposed on him after his release from prison on 1 October 1999. He was staying at his mother's flat at Block 137 Yishun Ring Road. His family members comprising his mother, elder sister and two elder brothers supported him initially. But in November 1999, he felt embarrassed to ask them for more money. So he pawned his jewellery on 9 November 1999 for \$3,500 to spend on some clothes, shoes, drinking, cigarettes, entertainment and daily expenses. He gave his mother about \$500 and bought presents for his nephews and sisters. He also spent some money on prostitutes.

135. He met Suboh, who was known to him as 'Joe', sometime in 1996 or 1997 when he was in Changi prison. Suboh was then in the Reformative Training Centre ('RTC'). Occasionally, the RTC inmates would visit the prison.

136. After his release from prison, he met up with Suboh for the first time in November 1999 at Orchard Road. Suboh gave him his handphone and pager numbers. As Salam did not have any handphone or pager, he did not give Suboh any contact numbers. Some two weeks after that first brief meeting, Salam phoned Suboh. They met up again, had some food and chit-chatted. But there was no discussion about finding jobs. This second meeting was also in November. Thus far, Salam did not regard Suboh as his close or good friend.

137. On 21 December 1999, the day before the arrest, Salam discussed job opportunities with his friends over some drinks at a coffee shop at Block 101 Yishun Ring Road. According to Salam, these friends do not consume drugs. They only drink.

138. Salam needed a job badly as he had about \$200 left. He needed money for the Hari Raya festive season which was around the corner. He was also feeling bored doing nothing at home. He had previously asked his brother and his friends to help him get a job. Then he remembered Suboh and called him to ask if he had any job openings. Suboh told him to call again the next day.

139. Salam thought that he might have some contacts for daily-rated jobs since he had been out of prison for quite some time.

Additionally, Suboh might have friends who could help. Salam had not asked Suboh for help in getting a job during those earlier two meetings because he had no intention to work so soon after his release from prison. He wanted to enjoy himself first. Later, he clarified that he could not remember whether he did or did not ask Suboh about job opportunities on the two occasions that they had met in November 1999.

140. At the coffee shop that day, Salam happened to meet for the first time another friend whom he had met at the Drug Rehabilitation Centre. That friend, whom he suspected to be a heroin addict from his appearance, asked Salam if he wanted to buy any drugs. Salam testified that he bought two straws of heroin at \$20 per straw since he was rather bored and his mother did not permit consumption of alcohol at home.

141. Prior to the chance meeting with this drug pusher, Salam had not met any other drug pushers since his release from prison. When asked if he would have bought drugs if he had met another drug pusher earlier, his frank answer was, 'Cannot say'. I had to assess if he would seize an opportunity when one was available. In any event, he could not resist the temptation to buy drugs for his consumption when the first available opportunity was presented to him, although he knew that he was still subjected to the strict Monday reporting routine at the police station. The difficulty here was to assess whether he was indeed involved with Suboh in an alleged drug trafficking enterprise when the golden opportunity presented itself on 22 December 1999, having regard to his desperate need for funds and his inability to get a job for some 2 months. There was no direct evidence but only circumstantial evidence. The important question was whether that circumstantial evidence had become irresistible pointing to the only conclusion that he was involved in a joint drug trafficking enterprise.

142. When cross-examined on how he was going to support his rather lavish spending, Salam explained fairly convincingly what his plans were for the future, and why he spent so much on himself after he pawned his jewellery for \$3,500. He said that was the only time he could enjoy himself after leaving prison. Once he started on a permanent job, he would not be able to do so due to the restrictions of the job, police supervision and time restrictions. He gave the impression that he would curb his spending and limit his outings and enjoyment to perhaps once a week. For that, a job paying him about \$1000 per month would suffice. He would also be satisfied with a painter's job paying him \$50 per day. Salam said that he was a welder at Jurong previously.

143. In my view, that is a fairly skilled job. With this previous job experience, I think that the accused has the necessary skills for a daily-rated labourer's job or even a permanent labourer's job paying an amount of wages that would likely be sufficient for his needs provided he does not spend as lavishly.

144. Continuing with the events of 21 December 1999, Salam testified that he returned home from the coffee shop and joined his family members to break the fast as it was still the fasting month. Thereafter, he went to his room and smoked one straw. This was the first time he started re-consuming heroin after his release from prison. Later he went to bed.

145. The next morning on 22 December 1999, he called Suboh on his handphone but could not get through. He went to the market to have his breakfast. Upon his return and before going upstairs to his mother's flat, he called Suboh at about 9.00 a.m and managed to contact him. Salam told Suboh that he wanted to meet him and discuss job opportunities.

146. What Salam had in mind were jobs like painting whereby he would have flexible working hours or other daily-rated jobs whereby he could leave early and be home by 7.00 p.m. I asked the 1st accused how would he know whether Suboh would have jobs to recommend. He said that he was just trying his luck. He knew that Suboh had been released from jail for quite some time. So he guessed that he must have some contacts. When pressed by the learned DPP whether Suboh had informed him that he had a job ready for him, Salam said that he could not remember the exact words but Suboh said something like "OK, you can come, we will talk about it later." When asked why he bothered to go all the way to Jurong from Yishun when Suboh never hinted whether he had a job ready for him, Salam said that he did not mind going there because he had nothing else to do at home in any case. Even if he did not like the kind of job, they could still go for a walk and have a meal together. He explained that if he were to meet him, he could then talk to him about the job. He need not have to pressurize him on the phone to tell him about the job first.

147. In that telephone conversation, Suboh said that he was not free and that Salam could only see him at about 1.00 p.m. Salam then asked where they should meet. Suboh told him to meet at Block 489, Jurong West Avenue 1. Salam asked for directions and was told that there was a Kentucky Fried Chicken ('KFC') restaurant there and the block behind was Block 489. Suboh told him to take the stairs to the third floor. The flat was the first one on the right. Suboh also told him that there was an unused cupboard placed in front of the unit and he would not miss it.

148. Salam then voiced his concern what if he was not there when he arrived at the flat. Suboh told him to wait downstairs for him. Salam told Suboh that his urine might be tainted with drugs and hence, he could not meet him downstairs in case of spot-checks by the police. Salam asked "How then?". Suboh then said that he would keep the door slightly ajar. He told Salam to go inside the flat, close the door and wait for him, should he not be there. After that phone call, Salam went back to his house, took his bath, consumed the second straw of heroin at about 11.30 a.m. or 12 noon. He left his mother's flat at about 12.30 p.m. He said that he felt high and a bit 'blurry' after consuming the heroin but he was not feeling tired. Then later, he said he was still alert although he was high, which appeared contradictory.

149. He took a taxi to Block 489, Jurong West Avenue 1, because it was safer for him as he had consumed drugs. Furthermore, he was not familiar with the Jurong area. Salam informed the driver that the block was near a KFC outlet. However upon arrival at about 1.00 pm, the taxi driver took a wrong turn and stopped at Jurong West Street 41. The taxi driver told Salam to walk across the block to reach Block 489. Salam did as directed and walked in from the main road.

150. As he was walking towards the block, he saw a kiosk at the void deck of block 486. He bought two cans of soya bean drink and was given a red plastic bag to carry them in. He was feeling very thirsty after consuming the drugs. His throat felt uncomfortable after consuming the second straw of heroin. After buying the drinks, he walked across to Block 487 and glanced upwards to look at Block 489. He saw that there was indeed an old cupboard in front of the unit. This helped him to locate the unit. He took the lift to the 6th floor, walked along the 6th floor common corridor to the staircase on the left end of the block, and walked down to the 3rd floor. He did not take the staircase as directed as he was feeling lazy after consuming the heroin. He explained that he had no difficulty finding the unit because he had already spotted it from the carpark. Further, he stayed in a HDB flat in Yishun, where he would similarly take a lift to the 6th floor and then walk along the common corridor to take the staircase that led down to his mother's flat on the 4th floor. So he was not altogether unfamiliar with the common corridor connections to HDB flats which were not located at lift level.

151. When he reached the unit with the old cupboard outside it, he found that the main door was slightly ajar and he knew that Suboh was not in. The metal gate was not locked but it was closed. He did not notice any padlock. Salam then went inside, closed the door and waited for Suboh. At first, he sat on a chair in the hall and smoked a cigarette. He saw that the whole flat was very messy. He went to the first bedroom and noticed that it was similarly very dirty and messy. He did not enter this bedroom. In any case, it was cramped full with items strewn all over the floor that he could not enter. He then went to the next room and he noticed that the kitchen was dirty. He saw however that the room nearer the kitchen was fairly empty.

152. His impression was that this flat could be a place where Suboh might spend the night. He opined that it was a common practice for young people to spend the night elsewhere instead of their homes. He did not think that anyone lived in the flat because it was so dirty.

153. As his throat was not feeling well, he took some newspapers, placed them on the floor, leaned his back against a small cupboard and rested in the master bedroom near the attached bathroom. There was no bed. He decided to rest in the master bedroom as it was rather spacious. He also wanted to use the attached toilet. Whilst he was there, he consumed 1 cans of soya bean drink and smoked cigarettes to prolong the high feeling from the drug. He found an antique bowl and used it as an ashtray. Altogether he smoked one cigarette in the hall and later, about five cigarettes in the master bedroom.

154. About 30 to 40 minutes later, Suboh arrived. He only saw Suboh when he was at the front of the master bedroom. After they greeted each other, Salam asked if he wanted to go out immediately to discuss about his job contacts over lunch. Suboh told him to rest first as he had some matters to attend to, and that he should wait a while for him. Salam did not mind waiting.

Suboh then stepped out of the master bedroom, and closed the door. Before closing the door, Suboh told him that he would call when he was ready. Salam testified that he did not sleep but he continued to smoke to accentuate the high feeling arising from consumption of the drug.

155. Counsel questioned Salam whether he could see the front door of the flat from where he was seated, to which he replied in the negative.

156. After about 45 minutes, Suboh opened the door to the master bedroom and told Salam, 'Lan, let's go and eat. We can talk outside.' Salam folded the newspapers and put them aside. They then left the flat.

157. At first, Salam testified that Suboh opened the main door, unlocked the padlock to the gate. Later in cross-examination, Salam said that he did not really notice but he thought that Suboh just opened the gate. Salam went out and waited for Suboh, who thereafter locked the door and the gate. They both walked up the stairs with Suboh ahead of him. He just followed Suboh. It did not cross his mind to consider that it might be easier to descend to the ground level via the staircase than to walk up to the 6th floor to take the lift because he was chit-chatting with Suboh at that time.

158. Salam was not carrying anything except his lighter and the 'Salem' cigarette box with one cigarette left. He smoked that last cigarette as he was walking up the staircase to the 6th floor lift landing. He crushed the cigarette box and threw it away near the lift together with the disposable lighter, which had only a small amount of lighter fuel left.

159. All this while, he followed Suboh and walked along the 6th floor common corridor, took the lift and descended to the ground floor. When the lift door opened, they were arrested. Subsequently, they were brought up to the flat #03-37 at Block 489.

160. When SI Ronnie See asked him and Suboh, "Whose house is this?", he kept quiet as he did not know whose house it was, and he had no answer. The CNB officers conducted a search of the unit. The officers retrieved a blue bag from the 1st bedroom (P8). Then SI Ronnie See asked Suboh, "Whose drug is it?". He heard Suboh answer that he did not know.

161. SI Ronnie See turned to question him. Salam did not dispute that his answers, admitted into evidence after the voire dire, were accurately recorded. However, he said that the answers he gave (i.e. that he called Joe to meet him at the doorstep of the flat and that when he arrived at the doorstep, Joe actually came out from the flat) were untrue. Salam explained that he felt frightened, having entered the flat first before Suboh did. So when SI Ronnie See asked the question, he told the CNB officer that Suboh entered the flat first. Furthermore, Suboh had denied knowledge of the drugs. When he saw the huge amount of drugs found, he was afraid that the CNB might accuse him of possession of those drugs because he entered the flat first and Suboh had refused to admit to possession of the drugs.

162. Salam also said that the following answers to ASP Fan were untrue.:

Q2 : Where was you before you were arrested?

A2 : I was with 'Joe' at the corridor outside.

Q3 : Why did you meet 'Joe' here?

A3 : I thought that if he got heroin 'lobang', I could ask him to give me a bit for smoking for free.

163. Salam reiterated that upon realising that Suboh was not admitting that the drugs belonged to him and he had further refused to say who owned the drugs, Salam was afraid that he might be charged for possession. So he gave ASP Fan those answers in fear and in haste. He did not know why he gave such answers. He asserted that he went there to get a job contact from Suboh. I questioned Salam further to find out why he answered in the manner he did:

His Honour : Normally, when you say, "Got heroin 'lobang'," what do you normally mean?

Witness : Any method or any place where heroin can be gotten.

His Honour : "Any place where heroin can be obtained?"

Interpreter : "Obtained", yes.

Witness : Likewise, when you use the word "lobang", it can also mean "job availability".

His Honour : Why do you think that Suboh would have some heroin 'lobang'?

Witness : Before the drugs were discovered, I didn't know that he has any connection with drugs.

But when once the drugs were discovered, I think he must have got some connection. Oh, sorry. Yes.

When the drugs were discovered, I became panicky and gave this answer.

164. Salam denied the learned DPP's suggestion that he went all the way from Yishun to Jurong West not to look for a job 'lobang' but to look for a drug 'lobang'. He also denied that he was ever at the doorway alone or with Suboh when the 3rd accused came to the flat #03-37. He said that he had never seen the 3rd accused before.

Salam was asked:

Q4 : Did you ask him [i.e. Suboh] for any heroin?

A4 : No. Because I want to go with him for lunch first.

165. Salam clarified that he did not want to ask Suboh about the heroin. He just wanted to go out and have lunch with him.

166. When he was taken for the urine test, he made eye contact with Suboh and mouthed the words to him to reveal who the owner of the drugs was. From Suboh's facial expression, Salam knew that he did not want to do that. Salam testified that he also mouthed to Suboh that if the drugs belonged to him, then he should own up and if they were not his, then he should tell who the actual owner was. Suboh did not pay attention to him. Again from his facial expression, Salam realised that Suboh was not going to reveal anything.

167. His counsel then took him through certain parts of his long statement in particular the part where he had walked down the stairs to the 3rd floor after taking the lift to the 6th floor. Salam testified that the following parts of his statement were untrue:

Paragraph 6

"I knocked on the door but there was no response. I then went back to the 7th storey by the stairs and waited there for a while. After about 15 to 20 minutes, I went back to the house at the 3rd storey and knocked on the door again. 'Joe' opened the door ..."

Paragraph 10

"..I think that 'Joe' will know [about the drugs found] because he was in the house before I reached there."

Paragraph 15

"..I also wish to say again that I have never entered into the house at the 3rd storey of Blk 489 Jurong West After I arrived as nobody answered the door when I knocked on it for about a minute the first time. I think that my knocking was quite soft and maybe 'Joe' did not hear me. The second time, when I went back to the house, I knocked on the door similarly but for a little longer and 'Joe' opened the door."

168. Salam gave the same explanation that he was afraid because Suboh had not admitted to ownership of the drugs. So he omitted saying that he had gone into the flat first for fear that he would be entangled in this when in actual fact he had nothing

to do with the flat nor the drugs.

169. Salam also retracted the following portion of paragraph 8 of his statement which he said was also untrue:

I told him that I did not smoke heroin but I did consume cough mixture and panadol because I was sick. I did not see a doctor as it was not serious. A childhood friend of mine whom I do not have the contact number of gave me a bottle of cough mixture. I do not know why my urine was tested positive and I believe that it is because of the cough mixture.

170. He did not admit to ASP Fan that he had consumed a straw of heroin on the 21 December and also a second straw on the 22nd December 1999 because his mind was muddled and he had just been released from prison. He did not wish to be charged in court again, imprisoned or fined. His story about consumption of the cough mixture was false.

171. I observed that Salam could readily spin a good story with sufficient details added to make it more believable. The cough mixture story was a good example. Thus, I had to evaluate his evidence carefully as he was a self-confessed liar. He had no hesitation to lie and falsely implicate the other co-accused just to save his own skin.

172. Salam also gave evidence on how he found he found a Nokia handphone left behind by someone on top of a toilet in a pub. He threw away the SIM card and took the handphone back. He knew that the SIM card belonged to someone else. He testified that in case he was caught with it and if the handphone were inspected, then they would not find the owner's SIM card. He could then tell the person that the handphone belonged to him. This again showed Salam's ability to lie when the occasion required it.

173. Salam explained that he had no intention to buy another SIM card. He did not have a job yet and he could use the public phones. On 22 December 1999, he brought the unusable handphone along with him as he wanted to sell the handphone perhaps for a few hundred dollars as his funds were running low then. He only had \$260 with him. He had the intention to ask Suboh if he would be interested to buy it and if he did not want it, he could always try asking other friends of his in Orchard Road.

174. Salam denied Suboh's version of the events as put to him by Suboh's counsel. He denied that he had the keys to open the gate and door to get into the flat before Suboh arrived. He denied the suggestion that 'Apid' gave him the keys. He maintained that he did not know Hazafi Bin Dolwahan. He denied having brought up any subject on sale of VCDs. Nor had he shown a bag containing drugs and VCDs to Suboh.

175. Salam was candid enough to admit that he was detained for 5 years for suspected drug trafficking activities when he was cross-examined by counsel for Suboh.

Prosecution's case against Salam

176. Basically, the prosecution's case was that Salam had gone to the flat for the purpose of taking delivery and dealing with the drugs found in the flat on 22 December 1999. The prosecution submitted that it was unbelievable that he had gone all the way to Yishun to meet Suboh and discuss job opportunities, when Suboh had not yet promised him a job.

177. Another point highlighted was the accused's familiarity with the flat at Blk 489 because he had not followed Suboh's purported instructions to the flat via the staircase, but had taken a lift instead to the 6th floor and then walked down to the flat on the 3rd floor.

178. The story that Suboh left the door ajar for him was said to be unbelievable because there was no agreement on the actual time that Suboh would be there, except that he would be there after 1 pm.

179. The prosecution also submitted that Salam's story that he sat inside the master bedroom for a total of some 1 hours with the windows closed, with no fan, no air conditioning and with lights switched off and the door closed was incredulous. It was hardly believable that he did not step out of the room during this whole period of time in such unbearable conditions.

180. The prosecution relied on the accused's answer that he met Suboh because he thought that Suboh had heroin 'lobang' and so he could ask Suboh to give some to him to smoke for free. This implied that he had knowledge of the drugs found in the flat. As this answer was given in haste, it was likely that it was true because it reflected what actually happened.

181. It was highlighted that Salam gave a total of four versions for his presence at the unit. The first version was that given to SI Ronnie See when Salam admitted to be the one who took the initiative to call Suboh to meet him at the front of the unit. The second version was that given to ASP Fan at the unit when he told him that he had gone there in the hope of getting drugs to smoke for free. The third version appeared in his investigation statement when he informed ASP Fan that he went there because Suboh called him there to give him some work to do and he never entered the unit at all. The fourth and final version given in court was that Suboh told him to go there to discuss job opportunities and he entered the unit.

182. The prosecution contended that Salam had actually gone to the flat to jointly deal with the drugs with Suboh and to take delivery of the drugs as contained the blue plastic bag from the 3rd accused. It was not a case of innocent association with Salam. When they left the flat, they were on their way for their drug trafficking rounds when they were arrested.

Defence of 2nd accused

183. In his defence, Suboh testified that he received a telephone call from Salam at about 1 p.m. on 22 December 1999. Salam asked him if he wanted to sell VCDs. Suboh accepted his offer. Salam then asked him to go to Hazafi's flat and to whistle to him upon his arrival. When Suboh reached the flat, he whistled to Salam, who then opened the door and invited Suboh in. In the flat, Salam showed Suboh a plastic bag with about 20 VCDs inside. He could not remember the titles except for one which was 'Kama Sutra'.

184. Suboh saw small sachets of drugs in the plastic bag. When he asked Salam whom they belonged to, Salam replied that he did not know. Salam told him that the plastic bag was given to him by someone earlier. Suboh wanted to take some sachets for himself but Salam objected. Nevertheless Suboh took some of it for his own use.

185. Thereafter, he felt a need to move his bowels and he went to the toilet for about 20 minutes. He smoked two cigarettes. After leaving the toilet, he came out into the hall and spent some time talking with Salam. He did not see the plastic bag with the VCDs and drugs again.

186. Thereafter, Salam opened the padlock of the gate with the key he had with him. He left the key in padlock and two other keys attached. He told Suboh to lock up after him. Salam did not wait for Suboh but walked ahead. Suboh locked the padlock and kept the 3 keys with him and went after Salam, who by that time had climbed the staircase to the 4th floor. Suboh managed to catch up with Salam at the lift landing on the 6th floor. He intended to return the keys to Salam. Before he could do so, they were arrested when they emerged from the lift at the ground level.

187. Suboh denied knowledge of the drugs. He did not know the 3rd accused and never saw him that day. Suboh however admitted to possession of the 10 sachets for the purpose of trafficking.

188. He denied that Hazafi had ever given the keys to the flat to him. He testified that he never had possession of the keys to the flat. In the course of the trial, all the 3 keys seized as a bunch from Suboh at the time of arrest were tested on my instructions. It was discovered that one key opened the front gate of Hazafi's father's flat. Due to this fresh evidence, Hazafi was recalled. Hazafi reversed his evidence and admitted that he had lied on oath earlier in his testimony in Court and in his statement given at

the Preliminary Inquiry, which was admitted into evidence. He testified that he had in fact given the keys to the flat to Suboh because Suboh wanted a place to stay. He said that the key to his father's flat was accidentally given when he took out the 2 other keys to give to Suboh.

189. Counsel submitted that Hazafi's evidence was suspect because the flat, being so dirty and untidy, was unliveable. Further it was not likely that Hazafi would permit Suboh to keep the key to his father's flat. Suboh's evidence was that Hazafi had known him and Salam while they were serving detention at Changi Prison. Counsel submitted that Hazafi gave the keys to Salam. However, Hazafi denied knowing Salam at all. On this, Hazafi never vacillated. He said that he knew Suboh. Suboh had even visited him at the said flat on 3 previous occasions. This was not disputed by Suboh. To me, this clearly showed that Hazafi was on fairly good terms with Suboh, which was consistent with his evidence that he had allowed Suboh the use of the said flat.

190. Counsel suggested that Salam and Hazafi had a nefarious connection with each other involving the use of the flat. That was why they denied knowing each other. He relied on the evasive replies given by Hazafi that he could not remember having been detained together with Salam at Orchard Road in November 1999, which was what Salam had told Suboh. Had Salam not known Hazafi, Salam would not have been able to tell him about that incident. Salam admitted that he was arrested at Far East Plaza and was taken to Tanglin Police Station but he denied that he was with Hazafi or that he told Suboh about this incident.

191. Counsel challenged Salam's defence that he had not been to the flat before. He tried to establish that it was Salam and not Suboh who had the keys and was using the flat for his drug activities. He submitted that Salam had given false statements to the CNB officers that Suboh was in the flat before he arrived there. After becoming aware of the observations of the CNB officers, he fabricated another account in his oral evidence to continue pushing the responsibility for the drugs to Suboh.

192. Counsel contended that Suboh had consistently denied that he had anything to do with the flat. The fact that a pair of unidentified slippers were found outside the flat, and three unidentified persons were seen entering the flat about a week before gave rise to a reasonable doubt whether Suboh had possession of the drugs in question because other persons did have access to the flat.

193. It was further submitted that no adverse influence could be brought against Suboh for not saying anything in his defence in his S 122(6) statement because he was tired, his head was injured and the statement was taken about 1.30 a.m. in the morning.

Defence of 3rd accused

194. Although the 3rd accused elected to remain silent, witnesses were called on his behalf to cast doubt on the evidence of the surveillance officers, W/Sgt Rahizah and SSgt Subramaniam that they saw the 3rd accused walk along the 6th floor common corridor, and then down to the 3rd floor where he stopped for a while outside unit #03-37, and then up again to the 6th floor back to where he came from. The CNB surveillance officers admitted that they could not determine the gender or the race of the person who eventually stood outside the unit for a while.

195. Counsel highlighted that both SSgt Subramaniam and W/Sgt Rahizah relied on their 'instinct' to conclude that it was the driver of JDF 755 who stood outside the unit for a while on that day in question. Hence, their evidence was unreliable.

196. Counsel submitted that SSgt Goh and Sgt Tony Ng had a clear view of #03-37 from their observation position. Their failure to steal a glance at #03-37 meant that there were no radio messages alerting them that '*someone was walking along the 6th floor*' or '*the male Chinese is standing outside unit #03-37*'. Otherwise, they would have looked at the unit which they did not.

197. I did not agree because there was sufficient corroborative evidence from other CNB officers that they did hear the message.

198. If SSgt Goh and Sgt Tony Ng had said that they kept a close watch at #03-37 and yet they never saw the 3rd accused stop at #03-37, then counsel would be correct that the evidence of SSgt Subramaniam and W/Sgt Rahizah was unreliable. But if they had not in fact kept watch of the unit, then it would not follow that their failure to see the 3rd accused standing outside the unit would necessarily cast doubt on the evidence of SSgt Subramaniam and W/Sgt Rahizah. In a large operation, each team would naturally have its own function to perform.

199. What was clear was that SSgt Subramaniam's and W/Sgt Rahizah's observations of Suboh and Salam taking the lift to the 6th floor, walking along the 6th floor common corridor and coming down to the 3rd floor and then entering the flat were accurate. Suboh and Salam never challenged that what the surveillance officers saw was not what they did. Their testimony in court confirmed the accuracy of the surveillance of these two officers. If they could not see Salam and Suboh leave the flat and proceed to the lift on the 6th floor, then how could the CNB officers be mobilised to wait for them right outside the lift landing on the ground floor just in time to make the arrests.

200. In my mind, it adequately demonstrated that the surveillance officers could observe the movements reliably of persons moving from the 6th floor common corridor to the 3rd floor flat via the staircase and vice versa. There would of course be instances where the subject could not be seen and then could be seen again in particular as they climbed the staircase. Based on their experience, they would be able to track the subject although there might be instances when they lose direct sight of the subject but they could pick up the movement or trail again when the subject reappeared. This would not be difficult at all in my view since it was in the afternoon on a working day and thus, the place was relatively quiet at that time.

201. The defence called Mr Yoha Anantha to testify that the view from the car park lot where the surveillance officers kept observation from was obstructed by the trees. The unit #03-37 and the staircase leading thereto could not be seen because a particular vertical sub-branch of a tree (Tree B nearest to Block 489 at exhibit D 23) was obstructing the view.

202. The horticultural contractor for Jurong West, Mr Kwek Swee Hin, testified that in February 1999, those trees were pruned to reduce their height. Prior to that, they were about 4 to 5 storeys high. However, that vertical sub-branch in question was not cut. Mr Wong Yew Kwan, a consultant horticulturist and the former Commissioner of Parks and Recreation Department and Director of Botanic Gardens, after examining the tree in question, testified that the vertical sub-branch would have been there in December 1999. He said however that it was likely that it might be shorter and its bushy base could also have been lower in December 1999 than on 8 August 2000, when the photographs were taken to show the obstructed view.

203. As for the taller tree (Tree B nearer Block 487 at exhibit D23) that was obstructing a part of the view of 6th floor corridor, it would appear from the evidence that it was not likely for this tree to have obstructed the view for any significant length of the 6th floor corridor in December 1999. In my judgment, a surveillance officer could easily track the subject along the 6th floor corridor even if a small section was obstructed because the person would be seen disappearing and then reappearing as he walked along the corridor.

Statement of 3rd accused

204. Counsel relied on Suboh's statement to the CNB that he was on the 6th floor corridor, where he handed over his blue plastic bag to the person at the 6th floor lift landing. Prior to that, he was seen talking on his mobile phone at the void deck. He submitted that the phone call was not traced to the mobile phone of Suboh. The 1st accused had a mobile phone but it was not working. Hence, counsel submitted that the 3rd accused did not contact either the 1st or 2nd accused persons when he arrived at Blk 489. The person he telephoned was traced by the CNB but was not called by the prosecution to testify.

205. Counsel surmised that the 3rd accused gave a blue plastic bag to this person. The blue plastic bag he was seen carrying was a common bag that could be purchased in Johore Bahru Malaysia. During a search of the flat on 11 August 2000, there were

3 similar blue bags found inside. In the flat was another green bag identical to the green bag found to contain the drugs. This suggested that the green bag and blue bag containing the drugs could not with any certainty be said to have come from him.

206. Counsel submitted that it could not be reasonably inferred from his statements that he had delivered drugs to the flat. Throughout his statements, he consistently maintained his stand that he never went to the flat. He had only passed the blue plastic bag he was carrying to a male Malay on the 6th floor lift landing. The accused had maintained his stand that he never delivered any blue plastic bag to any person at the said flat on the 3rd floor.

207. It was postulated that the flat could perhaps even be a drug den and be used to store drugs as 3 persons were seen entering the flat by a neighbour sometime in December 1999, after the Dolwahabs had moved out. The 3 persons could not be identified. It was submitted that the drugs could have been there long before 22 December 1999. As such, the circumstantial evidence did not lead inevitably and inexorably to one and only one conclusion that the drugs were delivered by the 3rd accused to the flat. Other probable permutations existed as well.

208. Counsel emphasized that the 3rd accused was not apprehended carrying drugs on his person. Neither were his fingerprints found on the bags containing the drugs. Salam and Suboh had not implicated him at all.

My Findings

(a) 1st accused

209. Salam was not found in possession of the keys to the flat. The keys were found instead on Suboh. Most of the members of the Dolwahab family including Hazafi testified that Salam was not known to them. Hazafi knew Suboh and Hazafi later confessed that he gave the flat keys to Suboh. Thus, it was Suboh and not Salam who had lied about the keys.

210. I believed Salam that he did not have the keys to the flat and that he had never been to the flat before. If he had been there before, he would probably have directed the taxi driver to drive straight into the car park of Blk 489 as was the case with Suboh. The taxi which brought him there in fact stopped some distance away from Blk 489 at Jurong West St 41. Further, I observed that the route (exhibit D1) he took after buying the soya bean drinks at Blk 486 was not diagonally across the car park and directly to Blk 489. Instead he walked to the opposite Blk 487 where he said he looked across to Blk 489 to locate the cupboard outside the flat as described by Suboh. The indirect route taken appeared to be more consistent with unfamiliarity than familiarity with where the flat was located.

211. The empty can of soya bean drink, old newspapers and some antique cups/bowls found in the subsequent joint inspection of the master bedroom of the flat, confirmed important features of Salam's account that he was resting in the master bedroom, smoking cigarettes to prolong the high feeling after having taken a straw of heroin before going to the flat. When he was in the master bedroom, Suboh told him to rest as he had something to attend to. Suboh then closed the master bedroom door. In my judgment, it was at this time that the 3rd accused delivered the blue plastic bag of drugs to Suboh. It was not likely therefore for Salam to be aware of the drug delivery.

212. Salam was recently released from prison. He was looking for a job. The important question was whether he was looking for a legitimate job or was he looking for a 'drug trafficking' job, or was he already by that time involved with Suboh trafficking in drugs.

213. Salam testified that he bought 2 straws of heroin. If he was already a drug trafficker, I could not see any reason why he should have to buy straws of heroin from other traffickers when he himself would have ample supply of straws himself. It did not make sense to me.

214. Salam appeared to be short of money. He did not even have a working handphone or a pager with him. Again, this did not quite fit the profile of a trafficker. A trafficker would need the means of communication to enable his clients to contact him. I did not think that he would distribute his mother's home telephone number to his clients. That he was short of money indicated at least to me that, if he was a trafficker, he was not a successful one. More likely, he was not a trafficker or not a trafficker yet.

215. At the time of arrest, 10 sachets were found on Suboh. It was significant that none was found on Salam. Salam did not know Suboh that well. With a longer period of association with Suboh and if Salam were not to find a legitimate job soon enough, Salam might well be sucked into the lucrative drug trafficking business, given the fact that Salam was already back to consuming heroin about 3 months after his release from prison.

216. However, I was inclined to think that at the time of his arrest, Suboh might not have trusted Salam well enough to let Salam into his trafficking activities which Suboh probably operated from the flat. As such, Salam was not involved yet. But the law in this case does not punish a person for what he might do in the future. Thus, however likely it might be for a jobless Salam to be involved in the future with Suboh in drug trafficking to support an expensive heroin addiction, it was altogether irrelevant.

217. Although Salam retracted a number of his statements to the CNB officers after his arrest which showed him to be a self-confessed liar, nevertheless I was prepared to accept his evidence given at the trial proper after I had carefully scrutinised his evidence. He appeared fairly forthright and candid. I was to some extent impressed by the consistency of his evidence not only on a general level but also in the details despite being tested quite severely in cross-examination by counsel for Suboh and by the DPP. He came out surprisingly well. I was surprised at his candour about his past which he revealed without hesitation during cross-examination by counsel for Suboh. In any event, it did not prejudice him. I reminded myself that a convicted criminal can reform his ways. What was most important was whether he did or did not traffick at that time in the drugs seized. One should not conclude on the basis of past drug trafficking activities that he must therefore be trafficking in drugs again.

218. I tested his evidence against the objective evidence. I was fully conscious of the fact that an accused person might want to tailor his evidence to fit the objective facts as closely as possible to give it a veneer of believability, sufficient to raise at least a reasonable doubt. Much as I would like to think that there was a lurking suspicion that he might well be involved based on the circumstantial evidence, I did not think that it was sufficient for me to convict Salam on the criminal charge based on a high standard of proof of beyond reasonable doubt. The circumstantial evidence did not point irresistibly to the conclusion that he had a common intention to traffick in the said drugs together with Suboh. As would be seen later, I found that the prosecution succeeded only to a limited extent in proving that Suboh was involved with the trafficking but not Salam. Suboh was a sole operator in this case and there was a reasonable doubt in my mind that Suboh had already gotten Salam involved in his drug trafficking enterprise, or that he was prepared at that meeting on 22 December 1999, to allow Salam to participate.

219. In my mind, Suboh might well be planning to rope Salam in. Having regard to the particular circumstances of Salam at that time, I would not be surprised if Salam would be delighted at the opportunity to assist and earn some money. But the arrest in my mind probably occurred before that stage was reached. If they had not been arrested, it might well be that Salam would have seen what Suboh was going to do with the 10 sachets, but that would not be relevant.

220. Accordingly, I acquitted and discharged the accused as the prosecution had failed to prove the charge against the 1st accused beyond reasonable doubt.

(b) 2nd accused

221. Suboh was released from the Reformative Training Centre in February 1998. He was arrested again in November 1998 and released in May 1999. Suboh could not give a proper history of his employment when he was not in prison and how he was able to support his cannabis and ecstasy consumption.

222. Suboh testified that he was not close to Salam. Suboh admitted that he had to stay away from his residence on occasions

to avoid being arrested by the Police for some outstanding matters with the Clementi Police Division HQ.

223. In his statement, Suboh said that he had never been to the flat before. However, Hazafie confessed that he had handed over the key to Suboh sometime in November 1999 when Suboh asked him to allow him to stay in the flat. I believed Hazafie. The fact that the keys to the flat were found on Suboh and not Salam confirmed what Hazafie had said.

224. Suboh's story that he grabbed the 10 sachets for his own consumption from a plastic bag containing VCDs which Salam showed to him in the flat was unbelievable. Having been arrested with the 10 sachets in his trouser pockets on his way out, which would be beyond what would normally be required for self-consumption for a day, Suboh had no alternative but to confess to trafficking in them in his evidence-in-chief in court. In fact, his own counsel referred to his s 122 (6) statement given in relation to the charge of trafficking in the 10 sachets found on him, wherein he admitted to the charge and pleaded for leniency.

225. In my opinion, Suboh was faced with no alternative but to concoct a story as to how he got hold of these 10 sachets from the flat, without being associated with the other packets of drugs found there. Thus he fabricated a story that Salam showed him a bag of VCDs containing drugs, which suggested that Suboh was entirely responsible for the drugs found in the flat. I rejected his story. No VCDs were found in the flat when the CNB officers searched the flat. Neither were there VCDs found at the subsequent joint inspection on 11 August 2000 by the parties. Only an empty VCD/music cellophane wrapper was found on top of the cupboard seen in photograph P6.

226. I further drew an adverse inference against him that he was not at all involved with the drugs, when he declined to state any defence whatsoever, when invited to do so in his s 122(6) cautioned statement, wherein he said "I have nothing to say right now."

227. Suboh had a working handphone and a pager. Clients could therefore readily contact him. He had the keys to the flat. I inferred that he was using the flat as his base for drug trafficking activities from the time that Hazafi had given him the keys. He was clearly going for his drug trafficking rounds when he was caught with the 10 sachets.

228. He could not give a reasonable account of what he did in the flat from 2.05 pm to 3.20 pm. By his own evidence, he saw the sachets of drugs before he went inside the toilet for some 20 minutes. He testified that apart from the time spent in the toilet, he was in the hall of the flat. If the drugs were delivered at the time he was in the toilet, then he would not have seen any drugs prior to his going to the toilet. By that evidence, it suggested that he was present in the hall at the time the 3rd accused delivered the drugs. The irresistible conclusion was that he and not Salam took delivery of the blue plastic bag with the drugs. It was he who had, whilst Salam was resting in the master bedroom, repacked some of the drugs into the sachets, which accounted for the empty torn plastic bag (stained with heroin) and the cellophane wrapper found in the kitchen (which was similar to that used for wrapping the other packets of drugs). After repacking, he then placed 10 sachets in his pockets to get ready for his trafficking rounds. Thereafter, he hid the blue plastic bag containing the drugs and the other drug trafficking paraphernalia behind the cupboard in the flat. There was no reliable evidence to show that Salam knew about this hidden blue plastic bag.

229. In my judgment, Suboh had physical possession of the drugs in the flat as well as the requisite mens rea for trafficking.

S 17 of the Misuse of Drugs Act Cap 185 states:

Any person who is proved to have had in his possession more than

a) ...

b) ...

c) 2 grams of diamorphine

be presumed to have had the drug in his possession for the purpose of trafficking unless it is proved that his possession of that drug was not for that purpose.

230. The 2nd accused failed to adduce any reliable evidence to rebut the presumption against him.

231. Accordingly, the prosecution proved beyond a reasonable doubt that he had trafficked in the drugs. I amended the charge that he trafficked alone in the drugs and I convicted him on the amended charge.

(c) 3rd accused

232. The 3rd accused remained silent. At the end of the trial, I had to consider his s 122(1) statement which was inculpatory in certain parts and exculpatory in other parts. In considering a mixed statement such as this, I applied the approach stated in *Chan Kim Choi v Public Prosecutor* [1991] SLR 34 where Lai Kew Chai J said:

The House of Lords answered the question by ruling that the whole statement constituted evidence of the truth of the facts it asserted and the judge should have directed the jury that both the incriminating parts and the excuses or explanations must be considered in determining where the truth lies, although where appropriate, as it usually would be, the judge might, and should have, pointed out that the incriminating parts were likely to be true whereas the excuses did not carry the same weight. ...In our considered view, the law in Singapore in relation to the evidential status of mixed statements admitted under s 122(5) of the CPC is precisely the same.

233. Tee Chee Seong testified that he had on that day loaned him a sum of \$20,000, which was in small denominations and with no \$1000 notes. At the time of his arrest, he had a total of \$34,450. There were seven \$1000 bills. Where did the balance sum of \$14,450 come from? I inferred that a substantial part of that must have been given to him in exchange for the blue plastic bag. Whatever was there in the blue plastic bag was worth quite a lot of money. What could that be?

234. Based on the exculpatory parts of his s 121 statement, that he only delivered a blue bag to someone who met him at the 6th floor lift landing but not to someone in the flat on the 3rd floor, counsel submitted that he ought to be acquitted. I could not ascribe much weight to these exculpatory parts for the following reasons.

235. After careful evaluation, I did not think those exculpatory parts were true that he did not go to the flat on the 3rd floor to deliver the blue plastic bag. No one was called to testify on behalf of the 3rd accused that he took delivery on the 6th floor of a blue plastic bag from the accused, which contained something which was not drugs but was some 'yellow substance'.

236. His refusal to testify and be subjected to cross-examination did not help his defence at all. On the contrary, it lent credence to what the surveillance officers saw. I found it most unlikely that there were apparently two things co-incidentally happening: a different man seen appearing outside the flat at the 3rd floor at about the same time that the 3rd accused was purportedly delivering a blue plastic bag containing something illegal to another male Malay on the 6th floor, which no one else saw. I drew an adverse inference against the 3rd accused under s 196(2) of the Criminal Procedure Code (Cap 78) of that co-incidence happening.

237. There was ample credible evidence from SSgt Subramaniam and W/Sgt Rahizah and the surveillance team, supported by evidence of contemporaneous radio message communications, that the driver of JDF 755 had indeed gone up to the 6th floor of the Blk 489 via the lift, walked along the common corridor, walked down the stairs to the 3rd floor, stood outside the said flat and later leaving the way he came from. He was seen carrying a blue plastic bag when he went up the lift and later, he was no longer seen with the blue plastic bag when he returned to his car. The totality of the surveillance evidence led me to the inexorable

conclusion that the 3rd accused had delivered a blue plastic bag to a person at the said flat on the 3rd floor.

238. I must emphasize that the prosecution's case against the 3rd accused was not entirely based on this surveillance evidence alone but was corroborated by the inculpatory parts of the 3rd accused's s 121 statement.

239. The 3rd accused had confessed in substance to the following :

(a) 'Ah Bear' had previously asked him to carry packets of items into Singapore. He had done so and was paid. He made these deliveries because he was short of money.

(b) On the eve of his arrest 'Ah Bear' asked him again to make delivery of items into Singapore. Ah Bear handed a **blue plastic bag** to him. He did not know the **number of packets** inside. 'Ah Bear' told him to **collect money** from the person he was handing the blue plastic bag over.

(c) On the day of his arrest, he hid the plastic bag under the spare tyre in the boot of his car JDF 755. He believed that the things he carried were **illegal** as 'Ah Bear' had previously told him to hide them well. But he never thought that he would face the death penalty if arrested.

(d) When he was at Ang Mo Kio, he removed the blue plastic bag and transferred it to the floorboard of the rear passenger seat. He saw about one to two packets of **yellow substance** inside the bag. He called a number provided subsequently by 'Ah Bear' and the male Malay told him that he was at Blk 489 Jurong West.

(e) Upon reaching Blk 489, he called the male Malay again and was told to go to the 6th storey. He went to the 6th story where he **met a male Malay**, and **handed the blue plastic to him** and collected a brown envelope containing money from him.

(f) He was shown the blue plastic bag seized and he recognised and **identified it as the blue plastic bag** mentioned in his statement which he said he was carrying when he went up the lift of Blk 489.

240. Much was made of the fact by the defence that the handphone no. 979916901 traced on the 3rd accused's handphone was not traced to the handphone of Suboh. The person traced to that handphone number was not called to give evidence by either side. There was no evidence as to the time of the call and whether that call was indeed the same call he was seen making when he arrived at Blk 489. In my view, the existence of the call per se was insufficient to raise a reasonable doubt in the prosecution's case that the accused did deliver a blue plastic bag of drugs to the said flat.

241. The defence produced photographs of the scene taken about half a year after the arrest to show that the view of the surveillance officers were blocked by trees. Hence, it was submitted that SSgt Subramanian and W/Sgt Rahizah did not see the 3rd accused go to the flat. I noted that the high contrast in the photographs would give the wrong impression that the features under a shadow would not be discernable with the naked eye. The photographer admitted that the photos D7(1) – (26) were taken when the sky was overcast and it was drizzling. The surveillance by the CNB officers on the other hand was done on a bright sunny day in the afternoon. Hence, the photographs would not reflect or reproduce the visual clarity that the surveillance officers had.

242. I accepted the prosecution's submission that Mr Kwek was not able to describe the state and size of the trees as in December 1999. Photographs D7 (No: 32 and 34) in any case appeared to show that the line of sight from the car park at which observation was kept to the flat was not completely obstructed. Further, the view of the 6th floor common corridor at Blk 489 would not be obstructed based on the height estimation provided Mr Wong, which was marked on Exhibit D7 (No 7).

243. I could not place much weight on the testimony of the defence witnesses called in relation to the obstruction of the

surveillance officers' view. They were not there at the time of the incident. They did not see the actual state of the vertical sub-branch, the main branches and the density of the foliage of the trees. Although Mr Wong could say that the sub-branch was there and had never been cut, he could not say how dense the foliage of the branches were on the day in question.

244. The testimony of the CNB surveillance officers was that the foliage of the trees was much less dense and their view was not obstructed at that time. I accepted the testimony of the surveillance officers that they did see the 3rd accused at the door step of the said flat. They were sufficiently experienced surveillance officers who did track the movement of the 3rd accused from the common corridor to the flat although there would be instances where they lost sight of him as he was descending and ascending the staircase. Being an afternoon on a working day, I accepted the evidence of the CNB surveillance officers that the place was rather deserted. As such, it would be most unlikely for the surveillance officers to confuse the 3rd accused with another person who happened to be around the vicinity of the 6th floor and 3rd floor at that time at Blk 489.

245. Based on the totality of the evidence, I found that the prosecution had proved beyond reasonable doubt that the 3rd accused had delivered the seized drugs in the blue plastic bag to Suboh at the flat on the 3rd floor of Blk 489. Accordingly, I convicted the 3rd accused on an amended charge of delivery of 165.67 grams of diamorphine to Suboh.

Chan Seng Onn

Judicial Commissioner

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