Thiruselvam s/o Nagaratnam v Public Prosecutor
[2001] SGCA 13

Case Number : CA 19/2000

Decision Date : 02 March 2001

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; L P Thean JA; Yong Pung How CJ

Counsel Name(s) : Surian Sidambaram (briefed) (Surian & Partners) and Pratap Kishan (assigned) (Sim Mong Teck & Partners) for the appellant; Bala Reddy and Sia Aik Kor (Deputy Public Prosecutor) for the respondent

Parties : Thiruselvam s/o Nagaratnam — Public Prosecutor

Criminal Law – Statutory offences – Misuse of Drugs Act – Abetment of trafficking -Whether charge proven beyond reasonable de abt – ss 5(1)(a), 12 & 33 Misuse of Drugs Act (Cap 185, 1997 Ed)

Constitutional Law – Equal protection of the law – Appellant facing capital charge of abetment of trafficking – Charging with and convicting principal offender of non-capital charge -Whether unfair discrimination against appellant exists – Constitution of Republic of Singapore (1992 Ed) art 12(1)

Evidence – Witnesses – Confessions of witness – Whether s 24 of Evidence Act applicable to such confessions – s 24 Evidence Act (Cap 97, 1997 Ed)

Evidence – Witnesses – Using previous inconsistent statements – Whether and when proof of voluntariness of statements necessary – s 122 Criminal Procedure Code (Cap 68) (5) – s 248, 147(6) Evidence Act (Cap 97, 1997 Ed)

(delivering the judgment of the court): The appellant, Thiruselvan s/o Nagaratnam, resided at Block 645, Ang Mo Kio Avenue 6, [num]12-4995, Singapore. He was a lashing worker with the Port of Singapore Authority. On 13 January 2000, he was arrested for his involvement in a drug transaction with one Katheraven s/o Gopal (`Katheraven`). He was tried before the High Court on a charge for abetting Katheraven in trafficking in 807.6g of cannabis on 13 January 2000 at about 3.40pm at Ang Mo Kio Avenue 6, Singapore, an offence under s 5(1)(a) read with s 12 and punishable under s 33 of the Misuse of Drugs Act (Cap 185, 1997 Ed). He was convicted and was sentenced to suffer death. Against his conviction he now appeals.

The prosecution`s case

The evidence led by the prosecution was as follows. On 13 January 2000, Katheraven was introduced to an undercover narcotics officer, Sgt Andrew John Joachim (`Sgt Andrew`), who was interested in purchasing 1 kg of cannabis. He met Sgt Andrew at about 2.45pm at Bukit Merah View, and offered to sell to Sgt Andrew 1 kg of cannabis for $2,200 plus $500 commission. When Sgt Andrew asked for a reduction of the price, Katheraven made some calls on his handphone (No 97603714) and spoke in Tamil to the person at the other end. He then informed Sgt Andrew that the price could not be reduced. Upon confirmation of the deal, Katheraven made further calls on his handphone. Thereafter, he told Sgt Andrew that he had to go to Ang Mo Kio to collect the drugs.

According to the telephone records, which were subsequently obtained by the prosecution, there were four successive outgoing calls from Katheraven`s handphone to the appellant`s pager (No 96069940) between 3pm and 3.04pm on that day. This was followed by two incoming calls from the appellant`s home telephone (No 4525161) at about 3.05pm and 3.13pm.

Sgt Andrew drove to Ang Mo Kio with Katheraven. They arrived at the car park of Block 646, Ang Mo Kio Street 61 at about 3.30pm. Katheraven left the car and walked towards the direction of Block 648 Ang Mo Kio. The telephone records showed that there were two outgoing calls to the appellant`s pager at 3.36pm and 3.40pm respectively. A short while later, Katheraven ran back to Sgt Andrew`s car carrying something under his T-shirt. After he stepped into the car, he lifted his shirt, removed a slab of cannabis and handed it to Sgt Andrew. He was arrested immediately thereafter by officers from the Central Narcotics Bureau (`CNB`).

The slab of substance was subsequently analysed by the Department of Scientific Services and was found to contain 807.6g of cannabis and 115g of cannabis mixture.

The telephone calls

After Katheraven`s arrest, between 3.49pm and 6.37pm, there were 20 incoming calls to his handphone from the appellant`s home telephone, which were not answered by the arresting CNB officers. At about 7.20pm, Katheraven`s handphone rang again. This time the call was answered by one of the arresting officers, Cpl Anan Devan (`Cpl Anan`). The telephone records showed that this incoming call came from a public telephone (No 4549968) at Block 632 Ang Mo Kio [num ]01-952. According to Cpl Anan, the caller asked for `Kathi`. Cpl Anan informed him that Kathi was not around and that he was a friend of Kathi. The caller (later identified as the appellant) identified himself as `Thiruchy`. Cpl Anan could not remember the entire contents of the conversation but he distinctly recalled that the appellant said in Tamil `Porula Edutha Karsai Tharunam`, which meant, `If the thing is taken, the money must be paid`. Cpl Anan told him that he would not cheat him and would pay the money. Cpl Anan believed that the caller possibly mistook him for the purchaser of the drugs who would have the money to pay him. He accordingly informed the other CNB officers.

Shortly after, the appellant called again. The telephone records showed that this incoming call was received at 7.30pm and came from the same public telephone. The appellant asked for Kathi. Cpl Anan said that he was not around and asked the appellant where he wanted the money to be handed to him. The appellant said that he would be at the coffee shop at Block 630 Ang Mo Kio and that he would be wearing a `Milan` white soccer jersey and a pair of soccer shorts.

On the way to Ang Mo Kio, Cpl Anan received another call from the appellant, recorded at 7.47pm (from No 4520742), asking about the time Cpl Anan would reach the coffee shop. Cpl Anan replied that he was on his way. On arrival, Cpl Anan, together with SSgt Mohd Azam spotted a male Indian fitting the description in the company of two other male Indians in a coffee shop at Block 632. Before long, the appellant called again asking where he was and said that he was waiting for the money. Cpl Anan replied that he was in the vicinity but did not feel safe going to the coffee shop. Cpl Anan expressed his preference to meet in front of the bus stop at Block 639 Ang Mo Kio Avenue 6. The appellant agreed. The telephone records showed that this incoming call was made at 8.09pm and came from a public telephone (No 4522407) at Block 632 Ang Mo Kio Avenue 6.

There were altogether four telephone calls made to Katheraven`s handphone between 7.20pm and 8.09pm, which were answered by Cpl Anan. The appellant admitted that he made the four calls but disputed the contents of the conversations.

The arrest

At about 8.20pm, the appellant was arrested as he was walking toward the bus-stop at Block 639

Ang Mo Kio. He was wearing a `Milan` white soccer jersey. As he was being brought to his registered address for a search, he denied that he was the caller or that he was known as Thiruchy. When the appellant`s wife opened the door, Cpl Anan asked her in Tamil if Thiruchy was in, and in reply she said that he was not at home. At this juncture, the appellant shouted in Tamil that he was only known by his first name `Thiruselvam`.

Statements made by the appellant

The prosecution adduced several statements made by the appellant after his arrest. He did not challenge that the statements were made by him voluntarily and they were duly admitted in evidence. In these statements, the appellant gave accounts of the events leading up to his arrest. In the first four statements recorded from him between 13 and 19 January 2000, the appellant denied knowing Katheraven. He said that he merely agreed to do a favour for a friend known as Thambi who had requested him to collect a sum of over a thousand dollars from a person wearing black shirt and trousers at the bus-stop in front of Block 639 Ang Mo Kio. He had in turn informed Thambi that he was wearing soccer shirt and trousers. He denied knowing that the money he was collecting was drug money. In this version, he did not speak to Cpl Anan on the telephone; nor did he arrange to meet Cpl Anan at the bus stop where he was arrested.

In two subsequent statements recorded on 25 and 26 January 2000 by ASP Fan Tuck Chee (`ASP Fan`) and interpreted by Ms Caroline Edmund Susila (`Caroline`), the appellant admitted that he had not told the whole truth in his earlier statements. He had not mentioned Joe, who was a friend of Thambi. He now admitted knowing Katheraven who called him `Thiruchi`. Katheraven contacted him on 13 January 2000 on his pager (No 96069940) on three occasions in the afternoon in relation to Katheraven`s prior arrangement to meet Thambi or Joe. The first page was received at about 2pm. He assisted Katheraven by contacting Joe on his behalf and liaising between Katheraven and Joe using his house telephone. He had given Joe`s handphone to Katheraven so that he could contact Joe directly.

It is unnecessary to set out further details of his statements. In so far as they are material and assist the appellant in his defence, they contained an account substantially along the line of his defence to which we shall refer in a moment.

Evidence of Katheraven

Katheraven was called as a witness for the prosecution. He had earlier pleaded guilty in the High Court on 16 June 2000 to two non-capital charges for supplying the drugs to Sgt Andrew on 13 January 2001. He was sentenced to a total of 25 years` imprisonment and 24 strokes of the cane.

In his testimony in court, Katheraven completely exonerated the appellant from any involvement in the supply or sale of the drugs to him. His evidence was that on 13 January 2000 at about 12.45pm, he received a call on his handphone from his friend `Selvam` who asked for his assistance in obtaining 1 kg of cannabis for his friend, Andrew (ie Sgt Andrew). At about 1pm, he paged and telephoned one Joe Bhaskaran using his handphone to arrange for the supply of the drugs. He conceded that he spoke to the appellant on 13 January 2000 at about 1pm, but the call concerned the return of a sum of $300 which he had borrowed from the appellant earlier. He essentially denied discussing about drugs in any of his telephone conversations with the appellant.

According to the telephone records, there were no outgoing calls to Joe Bhaskaran`s number which

Katheraven gave as 97517436. In fact there was no record of any such call from Katheraven`s handphone to this number on 13 January 2000. During the time between 12.44pm and 1pm, the records reflected only an incoming call from number 7458050 at 12.44pm following by an outgoing page to the appellant`s pager at 12.52pm. The next call was one coming from the appellant`s home at 12.54pm.

As a result of the material contradictions between Katheraven`s oral testimony and his previous statements, the prosecution applied for leave to refer to previous inconsistent and contradictory statements made by Katheraven with a view to impeaching his credit. These previous statements were: (i) a signed statement recorded on 20 January 2000, exh P29 (`P29`); (ii) a statement of facts which was produced in court and to which he admitted when he pleaded guilty to the trafficking charges on 16 June 2000, exh P46 (`P46`); (iii) a statement recorded on 16 June 2000 after he had pleaded guilty to the trafficking charges, exh P49 (`P49`). The trial judge having read the statements allowed the prosecution to refer Katheraven to the statements and to cross-examine him with a view to impeaching his credit. The trial judge also admitted the statements as evidence of the facts stated therein under s 147(3) of the Evidence Act. In so doing, the trial judge took the view that there was no necessity to conduct a voir dire to satisfy himself that the statements, P29 and P49, were made by Katheraven voluntarily. The material portions of the three statements were substantially similar and implicated the appellant in the supply of the drugs to Katheraven.

Defence

The appellant gave evidence in his defence. He denied any involvement in the drug transaction. He admitted Katheraven was known to him since 1993 and had his pager number. His evidence was that his telephone conversations and numerous outgoing calls to Katheraven up to 6.37pm on 13 January 2000 pertained to the repayment of a sum of $300 which Katheraven had borrowed from him some two weeks earlier and were not about drugs.

So far as material, his evidence of the material events is as follows. At about 6.30pm, on 13 January 2000, he went to the coffeeshop at Block 632 Ang Mo Kio to meet a friend Shanmugam. Shortly after, he met one Thambi, who had sold VCDs to him in the past. At Thambi`s request, the appellant followed him to the coffeeshop at Block 630 to discuss something important. There, he saw Joe, a close friend of Thambi. Thambi and Joe were known to both him and Katheraven. Thambi said that Katheraven telephoned him the previous day to arrange to buy some stuff, which he said was drugs. Thambi spoke to Joe, and both of them made arrangements to supply the drugs to Katheraven who took them, saying that he would pay later and that he would not cheat them. As he was a close friend of the appellant, Joe trusted Katheraven and allowed him to take the stuff. That was the first time he heard of the transaction, and he was shocked and surprised that Joe was a drug pusher. He was told that Katheraven had since failed to make the payment. Joe told him to call Katheraven to come to the coffee shop, since Katheraven was his friend. They also insisted that he pay on Katheraven`s behalf and that he could collect the money from Katheraven, since they were friends. When the appellant protested, Joe shouted at him, and threatened to do something to him and Katheraven if he failed to call Katheraven and ask him to come by 8pm to pay them the money. He then agreed to locate Katheraven and tell him to see them.

He said that Joe and Thambi did not inform him of the amount of money which Katheraven had to pay. Neither did they tell him that the drugs they supplied to Katheraven were cannabis. It did not occur to him to ask them. In the midst of this argument with Joe, he removed a card (where he had written the name, Thambi, and Joe`s telephone number) from his waist pouch and threw it on the table, saying that he would have nothing to do with them anymore and did not want to get involved in the

matter under discussion. He told Joe and Thambi that he would call Katheraven and ask him to pay up.

The appellant then returned to Block 632. Along the way, he called Katheraven from a public telephone. The person who answered the call (ie Cpl Anan) said that Katheraven was not in and that he was Katheraven`s friend. The appellant introduced himself as Thiruchy. Conversing in Tamil, the appellant said that Katheraven had called him earlier about the return of a loan; that Katheraven had put him into some kind of problem and that people were asking for him and waiting for payment. He asked Cpl Anan to enquire from Katheraven what stuff he had taken from Ang Mo Kio. Cpl Anan promised to pass the message to Katheraven and asked him to call back after five minutes.

The appellant related the conversation to Thambi who was then standing beside him. The appellant called again and questioned Cpl Anan whether he had asked Katheraven. Cpl Anan responded that both he and Katheraven would be coming with the money and asked where they should meet. The appellant told him to meet at the coffeeshop at Block 632 Ang Mo Kio, where he would show them the men who wanted the money. Thereafter the appellant returned to his friends at Block 632, while Thambi returned to Block 630.

From the coffee-shop he called Cpl Anan the third time. Cpl Anan informed him that he and Katheraven were on their way and would arrive in about 20 minutes. The appellant said that he would be at Block 632, to which Cpl Anan replied that he had gone there but nobody was there. They each described their respective clothings to the other so that they could identify each other. Cpl Anan said that he was not familiar with that place, and the appellant responded that Katheraven knew the location of the coffeeshop.

A short while later, the appellant received a call from Thambi. The appellant informed him that Katheraven and his friend were on their way with the payment. However, Thambi said that he and Joe had to leave as they had something to attend to and that he would call Katheraven on his own to collect the payment.

The appellant continued drinking with his friends. He subsequently called Katheraven`s handphone with the intention of informing him that Thambi and Joe had left. Cpl Anan answered the call and said that they were already in the vicinity. When the appellant told him to meet at the coffee shop at Block 632, Cpl Anan suggested the bus-stop at Block 639 instead. The appellant agreed and left for the bus-stop where he was arrested. After he was handcuffed, he was assaulted by Cpl Anan. At the time of his arrest, he denied that he was Thiruchy or that he called Katheraven`s handphone as he was in fear and was confused.

Josephine d/o Anthony

The appellant`s wife, Josephine d/o Anthony, gave evidence on his behalf. She testified that her husband spoke to Katheraven on the telephone on the 13 January 2000, after which her husband informed her that Kathi was going to return the money borrowed from him, including some moneys pertaining to VCDs, which Katheraven had bought from her husband`s friend. Her husband had also asked her to get a name card from his pouch with the name `Thambi` written on it, and her husband gave the number to Katheraven over the telephone. Apart from the above, she could not remember anything else. She conceded that she had not mentioned this to the CNB officers in her statement to them which was recorded some four months after his arrest. She explained that she was stressed up that her husband was arrested and it did not occur to her to tell the CNB officers.

The appeal

Before us, Mr Sidambaram, counsel for the appellant, raises the following main arguments. First, he submits that the charge against the appellant, being a capital charge, in contradistinction to the non-capital charge that was preferred against Katheraven, the principal offender, was in breach of art 12 of the Constitution. Secondly, the trial judge erred in admitting in evidence the two statements made by the appellant, P29 and P49, and the statement of facts, P46. Thirdly, the trial judge erred in his evaluation of the evidence and in disbelieving the appellant. The evidence against the appellant was wholly circumstantial and did not conclusively point to his guilt.

Article 12 of the Constitution

As a preliminary point, Mr Sidambaram submits that in preferring the charge against the appellant, the prosecution had breached art 12(1) of the Constitution, which provides:

All persons are equal before the law and entitled to equal protection of the law.

The appellant was charged for abetting Katheraven in committing the offence of trafficking in a quantity of 807.6g of cannabis, which is a capital charge. Katheraven himself, on the other hand, was charged for trafficking in a quantity of not more than 500g and not less than 300g of cannabis which, because of the reduced amount of cannabis involved in the charge, was a non-capital charge. He was convicted on that charge. In other words, Katheraven being the main offender was charged and convicted on a lesser charge, while the appellant himself, who allegedly abetted Katheraven in that offence, faced a capital charge. There was thus no equality before the law. To achieve equality, the appellant ought to have been charged with abetment of the same offence with which Katheraven was charged, a non-capital offence.

In response, Mr Bala Reddy, the deputy public prosecutor, contends that the prosecution has the discretion to decide whether or not to prefer a charge in any particular case, and whether or not to prefer a charge against a particular offender, and what charge should be brought against the offender. He further submits that there is no legal requirement that the abettor should be charged and convicted for abetting the trafficking in drugs in the same quantity as the principal offender is charged so long there is proof that the offence of trafficking in the quantity as stated in the charge was committed.

A point similar to the one under consideration was decided by the Privy Council in **Teh Cheng Poh v PP** [1979] 1 MLJ 50 , on appeal from the Federal Court of Malaysia. There, the accused was charged with possession of a revolver and ammunition in a security area under the Internal Security Act 1960. He was tried under the special procedure laid down by the Essential (Security Cases) (Amendment) Regulations 1975 and was found guilty and was convicted. At the time of the commission of the offence, there were two Acts of Parliament which made unlawful possession of firearms and ammunition a criminal offence. One was s 57 of the Internal Security Act 1960 which made unlawful possession of firearms or ammunition in a security area a capital offence. The other was the Arms Act 1960, and the offence under that Act was not a capital offence. The ingredients of the offences under the respective Acts are substantially the same. In exercise of his discretion, the Attorney General decided to charge the accused under the Internal Security Act, which carried the mandatory death penalty. It was contended on behalf of the accused that the exercise of such discretion deprived the accused of the equality before the law under art 8(1) of the Malaysian Constitution

which provided:

> *All persons are equal before the law and entitled to the equal protection of the law.*

The Privy Council rejected this argument. Lord Diplock delivering the judgment of the Board said at p 56:

> *... Under the common law system of administration of criminal justice a prosecuting authority has a discretion whether to institute proceedings at all and, if so, with what offence to charge the accused. Such a discretion is conferred upon the Attorney General of Malaysia by art 145(3) of the Constitution, viz:*
>
> *`The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence other than proceedings before a Muslim court, a native court or a court-martial.`*
>
> *There are many factors which a prosecuting authority may properly take into account in exercising its discretion as to whether to charge a person at all, or, where the information available to it discloses the ingredients of a greater as well as a lesser offence, as to whether to charge the accused with the greater or the lesser. The existence of those factors to which the prosecuting authority may properly have regard and the relative weight to be attached to each of them may vary enormously between one case and another.* ***All that equality before the law requires, is that the cases of all potential defendants to criminal charges shall be given unbiased consideration by the prosecuting authority and that decisions whether or not to prosecute in a particular case for a particular offence should not be dictated by some irrelevant consideration****. [Emphasis is added.]*

A more direct authority on the point is the case of **Sim Min Teck v PP** [1987] SLR 30 . There, the appellant, Sim Min Teck, was convicted of two charges of murder, namely, that he with two other persons, in furtherance of a common intention, committed murder by causing the deaths of two persons. One of the two accomplices was charged on the same facts with the lesser offence of culpable homicide not amounting to murder. It was argued on behalf of Sim before this court that he had been discriminated against, contrary to art 12(1) of the Constitution, on the ground that his accomplice had been charged with the lesser offence. This court had no hesitation in rejecting this submission. Wee Chong Jin CJ, delivering the judgment of the court, said at p 33:

> *Lastly, it was contended on behalf of the appellant that because Beh had been charged on the same facts with the lesser offence, the appellant had been discriminated against contrary to art 12(1) of the Constitution of Singapore which states that `All persons are equal before the law and entitled to the equal protection of the law.` We rejected this contention. The Attorney General of Singapore is by art 35(8) of the Constitution given power, exercisable at his discretion to institute, conduct or discontinue any proceedings for any offence.*

The Chief Justice then quoted with approval the above passage of the judgment of Lord Diplock in

Teh Cheng Poh (supra).

It is true that in ***Sim Min Teck*** the accused was one of the main offenders and the accomplice played a lesser role in the commission of the offence of murder. In the instant case, the position is the reverse: the appellant was only an abettor of Katheraven, the person who committed the main offence. To that extent, this case is slightly different from ***Sim Min Teck*** . However, this difference is immaterial and does not detract from the weight of that authority. The principle remains the same. The prosecution has a wide discretion to determine what charge or charges should be preferred against any particular offender, and to proceed on charges of different severity as between different participants of the same criminal acts. In this case, it has a discretion to choose between preferring a charge against the appellant for abetment of trafficking in a quantity which carries the capital punishment and preferring one for abetment of trafficking in a quantity which does not. In our judgment, there was no breach of art 12 of the Constitution.

Previous statements

As we have related, there were three previous statements of Katheraven on which he was cross-examined and which were admitted in evidence to prove the facts stated therein under s 147(3) of the Evidence Act. They are: (i) the statement recorded on 20 January 2000, P29; (ii) the statement of facts which was produced and admitted in the proceedings against him when he pleaded guilty to the trafficking charges on 16 June 2000, P46; and (iii) the statement recorded on 16 June 2000 after he had pleaded guilty to the trafficking charges, P49. Mr Sidambaram challenges the decision of the trial judge on the admission of these three statements in evidence, on the ground that, as regards to P29 and P49, they had not been proved to have been made by Katheraven voluntarily, and as for P46, it had not been proved that Katheraven had admitted to that statement. We now consider his arguments in relation to each of the statements seriatim.

The statement of facts - exh P46

It is convenient to consider first the argument against the admission of the statement of facts, P46. The main contention here is that the prosecution had not proved that Katheraven had admitted to the statement of facts, P46, in the proceedings brought against him, and accordingly P46 was not a statement made by Katheraven and the trial judge erred in allowing it to be used for the purposes of cross-examining Katheraven under s 147(1) of the Evidence Act and in admitting it as substantive evidence of the facts stated therein under s 147(3) of the Act. Mr Sidambaram pointed out that the prosecution did not produce the relevant record of the proceedings against Katheraven and the latter did not admit that in those proceedings he had admitted to the contents of P46. In these circumstances, there was no evidential basis to support the trial judge`s finding that P46 had been interpreted and explained to and admitted by Katheraven.

We find this a technical quibble. There was no dispute as to the authenticity of P46 before the trial judge. It was a certified true copy of the original and contained the court markings indicating that P46 was admitted as an exhibit in the criminal proceedings against Katheraven on 16 June 2000. There was no dispute that P46 was an exact copy of the statement of facts which was tendered in the proceedings against Katheraven. Katheraven was then represented by counsel and P46 was admitted in the presence of his counsel. There is no straitjacket requirement that the tender of the record of proceedings is the only way to prove that Katheraven had admitted to P46 without qualification.

The trial judge exercised great caution in dealing with P46. He asked Katheraven a series of questions to satisfy himself that Katheraven had indeed admitted to P46 without qualification. Katheraven initially admitted but in the very next breath denied that the statement of facts was read and explained to him. On the other hand, he admitted that the charge was read to him and was admitted by him; but he claimed that he could not recall whether P46 was read or interpreted to him. At a later point in his testimony, he claimed that he admitted out of fear to the untrue facts stated in relation to the appellant`s involvement in the drug transaction. The trial judge found that Katheraven was lying with regard to this statement. He was justified in making this finding and on the evidence was entitled to come to the conclusion that P46 had been read and explained to Katheraven in court and that he had admitted to the statement without qualification.

Statements made on 20 January - exh P29

We now turn to the statement, P29, which was made by Katheraven on 20 January 2000. Before the trial judge, Katheraven admitted that P29 was his signed statement, and the trial judge dispensed with any proof that the statement was indeed made by Katheraven. The statement was used by the prosecution in the cross-examination of Katheraven under s 147(1) of the Evidence Act, and the trial judge admitted it as evidence of the facts stated therein under s 147(3) of the Act.

In so admitting the statement, the trial judge held that there was nothing in s 147, which requires the admissibility of a statement of a witness to be subject to the additional proof that the witness, and in this case, Katheraven, made the statement voluntarily. He said at [para] 73 of his grounds of judgment:

> *I observed that nothing in s 147(3) requires the admissibility of a statement of a witness (including one who might have been an accomplice or an accused person) to be subject to additional proof of voluntariness. Similarly there is no specific statutory provision for admissibility for the purposes under s 147(1) (2) or s 157(c) to be subject to the requirement of voluntariness.*

Before us, Mr Sidambaram takes issue with the admission of P29 as evidence of the facts as stated therein. He submits that P29 was recorded from Katheraven for investigation purposes and was a confession made by Katheraven at the time when he was an accused person. He was an accused person, because there was then criminal proceedings pending against him. Therefore, s 24 of the Evidence Act applies to that statement, and as Katheraven disputed that he made the statement voluntarily, the trial judge should have conducted a voire dire to determine whether the statement was made by Katheraven voluntarily. As that had not been done, that statement of Katheraven ought not to have been admitted in evidence.

It is not in issue that Katheraven was at the time he made P29 an accused person in the proceedings then pending against him, and that the statement was, in so far as it concerned him, a confession falling within s 17(2) of the Evidence Act. Now, if he were an accused person in the present proceedings, clearly under s 24 of the Evidence Act the prosecution would have to prove that he made the statement voluntarily. But in the present proceedings he was not an accused person; the proceedings were not against him, but against the appellant. Only the appellant was an accused person; Katheraven was merely a witness. The question therefore is whether s 24 is applicable with regard to P29, which was a confession made by Katheraven who was an accused person at the time he made it.

It is convenient at this stage to refer to s 24 of the Evidence Act which is as follows:

> *A confession made by an accused person is irrelevant in a criminal proceeding if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the court to give the accused person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceeding against him.*

The wording in this section refers in general terms to ***a confession made by an accused person*** and says that it is irrelevant in ***a criminal proceeding*** in certain circumstances. There is nothing in the section to confine these crucial words to a definite or particular accused person or criminal proceeding. Hence, in a sense these words are capable of a construction which suggests that the section is applicable to a confession made by a person who, at the time he made it, was an accused person with reference to the proceedings against him, but who is not an accused person in `a criminal proceeding` in which he appears merely as a witness. In our view, we do not think that such an application was intended by that section.

This section has to be construed in the context of the meaning of a confession which is defined in s 17(2) of the Evidence Act as follows:

> *A confession is an admission made at any time by a person accused of an offence, stating or suggesting the inference that he committed that offence.*

In our view, the words `accused of an offence` relate to the offence with which the accused is being charged and the admission relates to that offence. If the admission relates to some other offence with which the accused is not being charged or to an offence with which a person other than the accused is charged, such admission, in so far as the accused is concerned, has no relevance.

Reverting to s 24 of the Evidence Act, it seems to us that the words `an accused person` must bear some relevance to the `criminal proceeding`, and it follows that the words `an accused person` means a person who `is accused` of the offence and the words `a criminal proceeding` mean the criminal proceeding in which that person is accused of the offence, ie the proceeding in which the accused is charged with the commission of the offence to which the confession relates. In our opinion, s 24 is confined to a confession made by a person who is an accused person in the criminal proceedings in which he is being charged. It has no application where the confession, though made by a person who was at the time he made it an accused person, is used in other proceedings in which the person who made it is not an accused person but merely a witness.

There is some support for the view that s 24 is confined to a confession made by an accused person which is used in a criminal proceeding against him and has no application in circumstances such as the present case where it is used in proceedings against another person. Mr Bala Reddy has brought to our attention the following persuasive authorities, which we find helpful. In **Viran Wali v State** (Unreported) , the court considered s 24 of the Indian Evidence Act, which in all material respects was identical with s 24 of our Evidence Act. The court rejected an argument that the operation of s 24 Indian Evidence Act was excluded because the accused person was not formally accused of an offence at the time he made the confession. Syed Murtaza Fazl Ali J having reviewed several earlier authorities concluded at p 15:

> *... **Section 24 refers to the status of a person not at the time when he made the confession but when the confession is being considered by the court and when he is undoubtedly an accused person**. On a consideration, therefore of the authorities mentioned above, we are clearly of the opinion, that s 24 refers even to a person who becomes an accused subsequently and this interpretation seems to be in consonance with the language employed in s 24 of the Evidence Act. [Emphasis added.]*

A similar view was expressed by the Madras High Court in **Deputy Director, Enforcement Directorate, Madras v P Mansoor Mohamed Ali Jinnah & Ors** (Unreported) at [para] 26:

> *It is clear from the principles enunciated by the judicial pronouncements of the Supreme Court and the various High Courts that the expression `an accused person` occurring in s 24 of the Evidence Act connotes the person against whom evidence is sought to be led in a criminal proceeding and includes any person who subsequently becomes an accused provided that at the time of making the statement, criminal proceedings were in prospect, and it does not predicate a formal accusation against him at the time of making the statement sought to be proved as a condition of its applicability.*

In our opinion, where s 147 is invoked and a previous statement of a witness, who is not the accused in the proceedings before the court, is used to cross-examine him and also to prove the existence of certain facts stated therein, what is required to be proved is that the statement was made by the witness. There is no requirement under s 147 to prove further that the witness made the statement voluntarily. We are reinforced in our view by the provisions of s 147(6) which provides:

> *In estimating the weight, if any, to be attached to a statement admissible in evidence by virtue of this section regard shall be had to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement and, in particular, to the question whether or not the statement was made contemporaneously with the occurrence or existence of the facts stated, and to the question whether or not the maker of the statement had any incentive to conceal or misrepresent the facts.*

In this regard, we agree with what the trial judge said in [para] 74 of his grounds of judgment:

> *In my opinion, the safeguards for ensuring the reliability of statements admitted under s 147 are found in s 147(6). If a statement has been involuntarily extracted from any witness (and all the more so from a witness who at the time of giving the statement was an accused person), the weight of that statement admitted for the purpose under s 147(3) may be significantly reduced although its admissibility per se remains unaffected.*

Where, however, the witness is an accused person himself, then the application of s 147 is subject to s 24 of the Evidence Act and also s 122(5) of the Criminal Procedure Code, if the latter is applicable. In other words, if the statement is a confession, then before the use of that statement under s 147 it must be proved that the statement was made by the accused voluntarily. If the statement is not a confession but falls within s 122(5) of the Code, equally it must be proved that the accused made the statement voluntarily. This requirement is specifically enjoined by the respective statutory provisions.

In conclusion, insofar as P29 is concerned, there is no requirement to conduct a voir dire to determine that it was made by Katheraven voluntarily before it is admitted for cross-examination or as substantive evidence under s 147 of the Evidence Act. It does not follow, however, that the court can ignore the question of the voluntariness in the making of the statement. If it is raised in the process of examination and cross-examination of the witness, and it is found that the statement was not made voluntarily, that is certainly an important factor to be considered in determining the weight to be accorded to the statement.

There is a further argument raised by Mr Sidambaram in relation to P29. It is submitted that the prosecution had failed to call the interpreter, Ms Caroline Edmond Susila, to prove that P29 was made by Katheraven, thereby resulting in a gap in the evidence pertaining to the circumstances in which P29 was recorded. This omission rendered the making of P29 unproven and therefore inadmissible.

This argument has completely no merit. It is patently clear that Katheraven had from the outset admitted that P29 contained his signature and was a statement made by him. What he retracted was the truth of its contents, explaining that he was in fear at the time he gave the statement. He did not retract his admission that P29 was his statement. In the circumstances, there was no necessity to call the interpreter to prove that it was made by Katheraven, though the absence of such witness may well impact on the weight to be accorded to the statement in light of Katheraven`s allegation concerning ASP Fan. That is an entirely separate issue altogether, which we will address in a moment when we consider the sufficiency of the evidence against the appellant.

Statement made on 16 June 2000 - P49

We now turn to P49. That statement was made by Katheraven soon after his plea of guilt and his conviction by the High Court in the presence of his counsel representing him at the time. Katheraven before the trial judge denied that he made that statement; he admitted only that the signature on the last page of the document was his. Consequently, the prosecution led evidence from ASP Fan and the interpreter, Mohd Ferdhouse, to prove that the statement was made by him. The trial judge was in the end satisfied that the statement, P49, was made by Katheraven.

The trial judge next considered whether there was any requirement to subject the statement to the further proof that Katheraven made it voluntarily, and held that as Katheraven was merely a witness, he saw no necessity for conducting a voire dire to determine the voluntariness of Katheraven in making that statement. He therefore admitted the statement as evidence of the facts stated therein under s 147(3) of the Evidence Act. In our opinion, the trial judge was correct.

Mr Sidambaram submits that the statement was pre-prepared and was brought to Katheraven while he was in the lock-up in the Supreme Court immediately after he had pleaded guilty to the charges, that Katheraven signed it out of fear and that he signed the statement even though the contents were false, and that at that time Katheraven would have signed any document placed before him. For this reason, he submits that P49 is unreliable and no weight should be attached to that document.

We note that Mr Sidambaram is not saying that P49 is not admissible in evidence; he is saying that, because it was not given voluntarily by Katheraven, no weight should be given to the statement. On this aspect of the evidence, the trial judge dealt with it at [para] 68 and 69 of his grounds of judgment where he said:

68 At first, Katheraven said that he gave his statement in P49 in fear as he was

afraid that something might happen to him. He explained that the investigating officer (`IO`) had told him during the recording of this statement that he would be hanged. Later he retracted his evidence and said that the IO did not say that to him. Katheraven was undoubtedly an unreliable witness in court.

69 As counsel was present when his P49 statement was obtained, I found it hard to accept that he was still fearful of the CNB officers. Moreover, he was no longer in their custody but in the custody of the prison officers by now.

We can find no reason for disturbing this finding of the trial judge. In any case, P49 was not the only statement that implicated the appellant. The appellant has to contend with the two other statements, P29 and P46, which have been admitted in evidence under s 147(3) of the Evidence Act, and which implicated him in similar terms.

Katheraven`s evidence and his former inconsistent statements

We now turn to the evidence. In this regard Katheraven`s evidence plays a major role. His evidence in court exonerated the appellant completely from the drug transaction. However, his three statements, P29, P46 and P49, implicated the appellant.

When confronted with the statements, Katheraven proffered various explanations for the contradictions, and he retracted the material parts of the statements which implicated the appellant. He testified that he gave the statement, P29, in fear as the investigating officer told him that he would be hanged. He readily agreed to a suggestion to implicate the appellant as he wanted to save himself from the gallows, and to induce the investigating officer to believe him. He admitted, however, that the investigating officer had not promised him anything in exchange for implicating the appellant. When he was questioned further, he explained that the only reason he subsequently implicated the appellant in P29 was because he was afraid that something might happen to him. When he was pressed further as to why he chose to implicate the appellant, he explained that this was because `he`s my friend` and `[b]ecause he was arrested and taken to MIB with me`.

As regards the statement of facts, P46, he initially admitted, then denied that the statement of facts was read to him when he pleaded guilty to the drug trafficking charges. He admitted that the charges was read to him and that he had pleaded guilty to the charges against him but was not able to remember the subsequent proceedings; specifically, he could not remember whether he had admitted to the statement of facts. When he was asked by the trial judge, he confirmed that whatever he pleaded guilty to or admitted to was done out of fear. However, he conceded that the charges against him were true but asserted that the contents of P46 was untrue. When he was questioned by defence counsel, he agreed to the suggestion that he was prepared to admit to the statement of facts in order to escape the gallows, and was not concerned about the truth of the contents after the charges against him were reduced.

As regards P49, he said that he was confused and did not understand its contents; he simply signed the pre-prepared P49 as he was afraid that the prosecution may appeal against his sentence, but he agreed that this was a wholly self-induced fear. By then, he was not bothered whether what was stated in it was truthful or not and signed the statement as it no longer concerned him.

The material portions of the three statements which implicated the appellant in the drug transaction

were substantially similar. It is not necessary to refer to all the three statements in detail. Suffice it here to set out the material part of P29 which is as follows:

> *13 `Thirichi` now works as a lashing worker at the port. Sometime in 1999, I got to know that he has contacts in cannabis as he told me that if there is anybody who wants cannabis, I can contact him and introduce buyers to him. He also told me that he will give me whatever he afford as commission.*
>
> *14 ...*
>
> *15 On the day when I was arrested, I called `Thirichi` at about 2 something in the afternoon at his house. I was with `Andrew` in the car and I told `Thirichi` in Tamil that I needed 1 kg of cannabis. He told me to call him back in about 5 minutes time. About 5 minutes later, `Thirichi` called me back at my handphone and asked me to go down to the coffeeshop at Blk 630 Ang Mo Kio Ave 6. He also told me that a man in blue shirt and pants will be at the coffeeshop and I am to tell the person my name. The person will then give me the stuff and I am to hand over the money of $2220. During the conversation with `Thirichi`, he told me the price for the 1 kg of cannabis. The conversation lasted for about 10 to 15 minutes.*
>
> *16 ...*

Later, Katheraven said:

> *17 ... I did told `Andrew` to drive me to Ang Mo Kio Ave 6 and on the way there, I called `Thirichi` instead of `Joe`. I asked `Thirichi` if he had any stuff and I wanted 1 kg of cannabis. `Thirichi` asked me to call him back in 5 minutes time. I called him back again in 5 minutes and told him that I am driving to Ang Mo Kio and asked if the stuff is ready. `Thirichi` then answered that he had already arranged for the stuff and told me that the stuff costs $2220 and asked me to call him again when I reached the carpark of Blk 645 Ang Mo Kio Ave 6. He will then arrange for the Malaysian supplier to deal direct with `Andrew`. I told `Thirichi` that `Andrew` does not want to deal direct with the cannabis supplier. `Thirichi` asked me why `Andrew` was scared and I told him not to worry as `Andrew` is my friend. `Thirichi` then told me to meet a man in blue shirt and trousers at the coffeeshop of Blk 630 Ang Mo Kio Ave 6 and identify myself. The man will hand to me the cannabis and I will pay him. However, I told `Thirichi` that the buyer wants to see the stuff and will only pay upon seeing the stuff. `Thirichi` agreed to the payment arrangement and ask me to make sure that the money is paid.*
>
> *18 After I reached Ang Mo Kio Ave 6, `Andrew` dropped me off at the carpark of Blk 646 Ang Mo Kio Ave 6 and I did walk to the coffeeshop at Blk 630 Ang Mo Kio. At the coffeeshop, the Malaysian did use my handphone to call the number 96069940. In the toilet, the Malaysian handed over the block of cannabis to me and as I had said before, I removed the black plastic bag hid the cannabis by tucking it into my trousers. The Malaysian told me that he needed to go out somewhere and asked me to give the money to direct to `Thirichi`. At that*

> *time, I was thinking of paging `Thirichi` and paying him the money after I had collected it from `Andrew`.*

The trial judge, having considered his evidence and the statements, placed far more weight on the statements than his sworn testimony in court. In determining the weight to be accorded to the statements, the trial judge directed his mind to the factors contemplated in s 147(6) and the guidance provided in the cases of **Selvarajan James v PP** [2000] 3 SLR 750 ; **PP v Tan Kim Seng Construction Pte Ltd & Anor** [1997] 3 SLR 158 (Unreported) **Chai Chien Wei Kelvin v PP** [1999] 1 SLR 25 . The trial judge said at [para] 81:

> *P29 was a statement made by him fairly contemporaneously, about seven days after the drug transaction in question. P49 and the SOF were given on 16 June 2000 some five months later. Katheraven was consistent throughout that period of five months and never wavered in implicating the accused as the one who arranged for the supply of one kg of cannabis to him. Although the accused might be under considerable strain when giving his statement in P29 after having been arrested for a capital offence, and he might be apprehensive in court when he pleaded guilty and admitted to the SOF, however, I did not find any fear, pressure or intimidation or any motivation that would cause him to falsify an account in P29 of the involvement of his childhood friend in a very serious offence, or to admit to an untrue account in the SOF ... I concluded that Katheraven decided to reveal the accused`s involvement in all his previous statements because that was simply what happened.*

Later, after consideration of other aspects of Katheraven`s evidence, the trial judge came to the following conclusion at [para] 86 and 87:

> *86 I had carefully scrutinsed P29, P49 and the SOF and tested the alleged facts stated therein against the evidence of the CNB officers and the other objective evidence in particular the phone records. I was mindful at all times that he was an accomplice and that he might have an incentive to frame the accused in P29 to minimise his involvement, exculpate himself or to seek leniency in any way he could ... Needless to say, I still exercised caution in taking account of Katheraven`s three inconsistent statements for the truth of their contents. I had carefully considered in detail Katheraven`s explanations for the contradictions between his former statements and his oral testimony, which for the reasons given earlier were wholly unsatisfactory.*
>
> *87 In court, Katheraven exonerated the accused and retracted all the parts in his statements that implicated the accused to help him. In my judgment, his testimony was highly suspect, if not untruthful.*

We agree entirely with the trial judge`s evaluation of Katheraven`s evidence.

Telephone calls

The other material evidence against the appellant was the telephone records adduced by the

prosecution, which showed the telephone calls made from and to Katheraven`s handphone at the material time. During the time when Sgt Andrew was with Katheraven in the afternoon of 13 January 2000, which was approximately between 3pm and 3.45pm, there was a series of telephone calls made by Katheraven using his handphone (No 97603714). The telephone records showed that four successive outgoing calls were made from Katheraven`s handphone to the appellant`s pager No 96069940 between 3pm and 3.04pm followed by a return call from appellant`s home telephone No 4525161 at 3.05pm. That was about the time when Sgt Andrew was negotiating with Katheraven on the price of 1 kg of cannabis. At 3.13pm there was another call from the appellant`s home which came through Katheraven`s handphone. Following that, Katheraven informed Sgt Andrew that the supplier was about to leave his home. Sgt Andrew and Katheraven arrived at Block 646 Ang Mo Kio Street 61 at about 3.30pm. Katheraven got out of the car and walked towards Block 648 Ang Mo Kio. The telephone records showed that Katheraven`s handphone had been used to page the appellant twice between 3.36pm and 3.40pm. Soon after that time, Katheraven came back to Sgt Andrew and delivered the drugs to the latter, and immediately thereafter he was arrested.

The records further showed that throughout this period, there were no calls to or from anyone, except the appellant, on Katheraven`s handphone. The only person with whom Katheraven was in contact at that time was the appellant. The inference is irresistible that these calls were made in relation to the drug transaction and the appellant was involved in the drug transaction. The appellant did not really deny that these calls were made; he denied that they were made in relation to a drug transaction.

In addition, there were the four telephone calls made by the appellant to Katheraven`s handphone between 7.20pm and 8.09pm on the evening of 13 January 2000, which were answered by Cpl Anan. These telephone calls were not denied by the appellant; he only disputed the contents of their conversations on the telephone. We have related both Cpl Anan`s evidence on the conversations and the appellant`s evidence thereof earlier and it is not necessary to rehearse them here. Suffice it to say that the trial judge rejected appellant`s account of these telephone conversations as unbelievable and contrived. We see no reason to interfere with his findings. The appellant`s versions of their conversations were inherently improbable.

The appellant`s defence

The appellant`s defence was that he was innocently caught up in a drug transaction between, on the one hand, Katheraven and, on the other, Joe and Thambi, and was threatened by them into contacting Katheraven and collecting from him the payment for the drugs he had taken. This defence was rejected by the trial judge. The trial judge found that it was inconceivable that Joe and Thambi would hold the appellant liable to pay for the drugs which Katheraven had taken simply because they were friends. They had Katheraven`s number and could have simply called him themselves instead of asking the appellant to do so. There was no compelling reason for the appellant to get involved in the payment for the drugs as he alleged. The trial judge also found that the appellant`s evidence was inherently inconsistent. Further, the trial judge noted that the appellant said that Joe and Thambi did not tell him the type of drugs involved and the amount to be paid; yet the appellant was able to provide these details in his statement to ASP Fan. For our part, we can find nothing in these findings which are wrong. On the contrary, they are plainly correct.

In our judgment, the evidence against the appellant was overwhelming, and the trial judge`s finding that the charge against the appellant had been proved beyond reasonable doubt was fully supported by the evidence. We agree with his finding. We therefore dismiss the appeal.

Outcome:

Appeal dismissed.