

Public Prosecutor v Huang Rong Tai and Another
[2003] SGCA 1

Case Number : Cr App 15/2002
Decision Date : 20 January 2003
Tribunal/Court : Court of Appeal
Coram : Chao Hick Tin JA; Judith Prakash J; Yong Pung How CJ
Counsel Name(s) : Daniel Koh Poh Leong (DPP) for the appellant; Wong Siew Hong (Infinitus Law Corporation) for the first respondent; Goh Siok Leng (Christina Goh & Co) for the second respondent
Parties : Public Prosecutor — Huang Rong Tai; XYZ

Evidence – Proof of evidence – Confessions – Confessions – Accused mildly retarded – Whether accused capable of making reliable statements

Evidence – Proof of evidence – Confessions – Accused retracting confession – Accused not giving explanation for retraction – Whether confession true and reliable

Evidence – Proof of evidence – Confessions – Reliability of contents of accused's statements

Delivered by Yong Pung How CJ

The respondents, Huang and XYZ (a 16 year-old male), were tried in the High Court before Judicial Commissioner Choo Han Teck (as he then was) on two charges each of mischief by fire under s 436 of the Penal Code (Cap 224) read with s 34. The first charge related to the setting of fire to a market and hawker centre at Blk 226D, Ang Mo Kio Avenue 1 on 8 February 2000, at or about 2.53 am, while the second charge was in respect of the setting of fire to a market and hawker centre at Blk 341, Ang Mo Kio Avenue 1 on 7 January 2001, at or about 2.16 am. The respondents were acquitted of both the charges and the prosecution has now appealed against their acquittal.

The fire investigation reports

2 Before we go into the circumstances under which the respondents were arrested, we think it proper to lay out some important findings in the fire investigation reports tendered by the prosecution, in respect of the fires forming the subject matter of the two charges. The evidence presented by the reports was not materially in dispute.

3 In the fire investigation report relating to the fire at Blk 226D Ang Mo Kio, the fire was classified as incendiary. The fire damaged 120 wet market and hawker stalls altogether, as well as the roof structure and the electrical wiring of the market. From the eyewitnesses' account, it was indicated that the fire originated from the flower stall at the wet market area, numbered as stall no. 110. The point of fire origin was determined to be at the position marked 'O' as shown on an exhibit marked as Annex C and Photo No.18 of Annex F, at the base of a refrigerator found in between stalls no. 110 and 91. In the report, intense and severe burn marks were stated to be found on the wrapping papers near the compressor of the refrigerator, indicating the point of fire origin. Intense and severe burn marks were also observed on the interior and exterior of the refrigerator and on the aluminium shutter nearby. The fire was reported to have gradually developed from the papers at the compressor of the

refrigerator, spreading to burn upwards towards the timber joist of the roof structure. No trace of flammable liquid was detected from the samples of debris sent for laboratory analysis.

4 The other fire investigation report also classified the fire at Blk 341 Ang Mo Kio as incendiary. All possible accidental causes were ruled out. The fire severely damaged a total of 190 wet market and hawker stalls. The extent of the damage was such as to necessitate the reconstruction of the entire market. According to the report, high and severe charring effects were observed on the remains of stall no. 72. Surface and intense burn marks were also observed on top of stall no. 91. The top portion of an aluminium ladder placed at the side of stall no. 91 was completely melted and low level and deep burning were observed between stalls no. 77 and 78. The area of fire origin was believed to involve a number of stalls (stalls no. 70, 71, 72, 77, 78, 79, 80, 89, 90 and 91) and was marked out as 'O' on an exhibit marked as Annex C to the fire investigation report. It is pertinent to note that this fire investigation report, in relation to Blk 341, referred to an *area* of fire origin, as opposed to a *point* of fire origin. This will be elaborated upon later.

5 Traces of flammable accelerant were detected using hydrocarbon detectors at the drain pipes of stalls no. 90 and 91. The drain pipes were dismantled, sealed as exhibits and sent for laboratory analysis together with eight other samples of debris. Chia Poh Ling, a Scientific Officer with the Department of Scientific Services testified at trial that she was the one who examined the drain pipes and the rest of the debris samples sent to her for analysis by the fire investigators. She found petrol stains on one part of the drain pipe from stall no. 91. Nothing was detected on the rest of the samples.

Background facts

6 On 6 September 2001, at about 3.00 am in the morning, the respondents were spotted, together with a young girl, by three police patrol officers, Sgt Mohamed Bin Zainol, Cpl Hairulnizam bin Sengari and Cpl Juhardi bin Sa'adon near Blk 206 Ang Mo Kio Avenue 3. The young girl walked away upon seeing the police officers, who found this suspicious. Sgt Mohamed went over to question the two respondents and to ascertain their identities, while the two corporals proceeded to look for the young girl. As she could not be found, the corporals returned to join Sgt Mohamed. Huang was unable to produce his IC. When told by the two respondents that they had not been arrested before, the police officers decided to screen them, whereupon it was found that this was not true and that Huang actually had a previous police record. The police officers then conducted a search of the two respondents and found a lighter on Huang but no cigarettes on either of them. According to the police officers, Huang explained that he carried the lighter 'for fun'.

7 A few hours later, at around 4.45 am, the police officers received a message that a motorcycle was on fire at Blk 205. They suspected that the two respondents might be involved and put up an information report on them back at the police station. On 10 September 2001, at around midnight, Sgt Murugasvaran s/o Madasamy went with a team of colleagues to Huang's house and brought him back to the police station to assist in the investigation of the fire on the motorcycle. At around 8.00 am the next morning, Huang was placed under arrest by SIO Sabil Juni. On the way to the scene of the fire, Huang volunteered a statement to SIO Sabil Juni that XYZ had also been involved in the setting of the fire. He led the police officers to XYZ's residence at Blk 4, Seletar Road but retracted the statement when just outside XYZ's residence. XYZ was, nevertheless, invited to the police station for

questioning. He denied his involvement and was subsequently released on the same day.

8 Sometime after 14 September 2001, while still in the custody of the police, Huang told them that he and XYZ were involved in setting the fires to the Ang Mo Kio markets at Blks 226D and 341. As a result, XYZ was arrested at the McDonald's Restaurant where he was working.

Huang's statements

9 Four statements by Huang containing confessions in relation to the fires at the two Ang Mo Kio markets were sought to be admitted by the prosecution. There were two long statements recorded on 24 and 25 September 2001 respectively and two cautioned statements recorded at 1.35 pm and 2.31 pm respectively on 24 September 2001. It is necessary for us to set out his long statement recorded on 24 September 2001 as the contents of the statement are vital to the case at hand.

Exhibit P9 – Long statement recorded on 24 September 2001

Sometime last year, Ah Huat and I went to Blk 226 Ang Mo Kio, at about 3.00 to 4.00 am. It was a wet market that had already closed for the day. We looked for old newspaper among the stalls and managed to find them. Ah Huat took my lighter and lighted some newspapers. Thereafter he put the burning newspaper under a refrigerator in the market. He handed some burning newspapers to me and I did the same thing by putting them under the same refrigerator. At the same time, I also acted as a lookout. We did not stay to check whether a fire broke out. Soon after, we left the place on our bicycles.

2 We have actually bought petrol to the place to start a fire. The petrol was bought at a petrol station in Ang Mo Kio area. I cannot remember when we have bought the petrol. Before we started lighting up the newspapers, I poured some petrol to dampen the newspapers. We have brought the petrol which was contained in a plastic container. After dampening the newspapers both Ah Huat and I have poured some petrol onto the market floor. We used up half the quantity of petrol in the container. We went to a block of flats starting with digit '3' where I hid the container of petrol in the void deck, underneath a certain balcony.

3 On one occasion sometime this year, at about 2.00 to 3.00 am, Ah Huat and I were at Blk 338 Ang Mo Kio . This place was near to a 7-Eleven outlet; we have bought some cup noodles which we have heated up in the 7-eleven premises. Ah Huat and I sat at the void deck consuming the noodles and smoking away. We have not planned what to do then. After sometime, we decided to ride to a nearby market which is behind a Police Post. We went into the market which was already closed for business for the day. In the market, we walked about to see if there were any place to start a fire. At that time, we were spotted by an 'uncle'. When we noticed him around, we quickly left the place and returned to the same 7-Eleven outlet. Ah Huat was then waiting for me outside the shop. I was inside the 7-eleven outlet to buy drinks and cigarettes. When I came out, two Policemen questioned me and asked me how old I was. At that time I was smoking and I had to show them my identity card. They wanted to know what I was doing there. Apparently they had checked Ah Huat earlier when I was still inside the 7-Eleven premises. The Police told me that someone had complained about some housebreaking in the area. The Police left after

checking us.

4 About 20 minutes later, I went to the void deck of the block of flats where I have kept the container of petrol. After retrieving it, I went to join Ah Huat who was at the car park. I handed the container to him and he left with it. Before he left I reminded him to wait for me at the place near to the market we went to moments earlier. We went separately to the wet market. I got onto my bicycle and rode to the said market. Ah Huat had left earlier on his bicycle for the place. The petrol was with him. When I arrived at the market, I saw Ah Huat already at the premises standing in between the stalls that had Lunar New Year stuff on sale. Ah Huat had already opened the cap of the container. Both of us were very excited and I asked him not to hesitate but to proceed to pour the petrol. Both of us poured the petrol at random. We both used my blue lighter to light up some scrap paper and throw them onto the areas stained with petrol. After this, we left on our bicycles.

5 A few days later, I happened to meet Ah Huat at Games Station in Ang Mo Kio central. It was around 10.00 – 11.00 pm and he was playing games. Ah Huat was in the company of his cousin, a female whose name I do not know. There was also 'Minnie', Ah Huat's 12 year-old female friend. At about midnight Ah Huat's cousin took Minnie home. Actually all four of us left the Game Station at the same time. We walked to a neighbourhood block of flats starting with digit '5'. I think Minnie lives in Block 561. We went up to Minnie's flat and her mother scolded her and beat her up. I tried to talk to the mother to ask her to refrain from beating Minnie up. Before Ah Huat and I left the flat, I heard Minnie's elder brother offering her a path to take. She was to choose to either continue her studies or to go to a girls' home. The cousin came down with us but she left in her boyfriend's car soon after. Ah Huat and I were hungry then and we went hunting for food. Subsequently we came to a 7-eleven outlet. As before, we bought two cup noodles and heat them up in the premises. We sat on the floor and consumed the noodles outside the 7-eleven outlet. After some moments we walked to a wet market nearby. It was already closed for the day. We went inside to look around. We managed to find some old newspapers and lit them with my lighter. Both of us put the burning newspapers underneath a refrigerator. Soon after we poured some thinner-like liquid behind the said refrigerator and put some cardboard papers there. When the cardboard caught fire, we left the place on foot. We did not ride our bicycles that night.

6 There is no other person involved in setting fire to the market near the 7-eleven outlet.

7 Ah Huat and I had also set fire to a fabric-awning somewhere behind a coffee shop located on the ground floor of a residential block. From the 2nd storey, Ah Huat and I poured thinner-like liquid onto the awning. We then lit some scrap papers with my lighter and threw the burning papers onto the awning. The awning caught fire and we immediately left on our bicycles.

10 The other long statement recorded on 25 September 2001 was in the form of questions and answers. When asked whether he was sure that he had used petrol to set fire to the markets in the Ang Mo Kio area, Huang replied "Yes, I remember that we have gone to a petrol station together to buy petrol. This petrol station near to Blk 600 plus Ang Mo Kio, had a logo of a tiger."

11 In the cautioned statements, Huang said that he knew that he had done wrong. He just hoped

that the judge would be lenient towards him and that he would not be sentenced to caning. He would also like to say sorry to his mother.

Interview with the SCDF officers

12 In addition to the four police statements, the prosecution also sought to admit an oral confession made by Huang to the Singapore Civil Defence Force ("SCDF") officers on 27 September 2001. On that day, four of the SCDF officers had arrived at the Ang Mo Kio police station for an interview with Huang. Their purpose was to obtain an arsonist's profile for their database. They introduced themselves as officers from the SCDF Fire Investigation Branch and explained to Huang the purpose of the interview.

13 It was their evidence that Huang could understand them and spoke to them easily in a mixture of simple English, Mandarin and Hokkein. He appeared calm and relaxed and volunteered information without any prompting.

14 Huang was first asked about his personal background and other family matters. As the interview progressed, he confessed to the SCDF officers that he and his 15 year-old partner had set fire to the two markets in Ang Mo Kio. He volunteered freely the details of how the two of them had started the fires. In relation to Blk 341, Huang admitted to using petrol to splash on the stalls along a passageway in the market, before using a lighter to start the fire on newspapers stuffed inside a freezer at a stall selling pork. As for Blk 226D, he claimed that he had sprinkled petrol on some newspapers which he stuffed under a refrigerator at a flower stall. He then used his lighter to start the fire.

15 The petrol was said to have been bought for \$10 from a petrol station and kept in a plastic detergent container. After starting the fire at Blk 226D, Huang had hidden the container at the void deck of his block of flats. He and his partner had used the petrol again to start the fire at Blk 341.

16 According to the SCDF officers, in addition to the fires at Blks 341 and 226D, Huang had also confessed to setting fire, together with his partner, at Blk 530 and to a number of motorcycles. Huang was able to describe the two techniques taught to him by a mechanic friend which they had used to set fire to the motorcycles. The first was to topple the motorcycle and the second was to cut the fuel pipe of the motorcycle.

17 The SCDF officers further testified that Huang indicated to them that he had no rational reason for setting the fires but that, sometimes, he felt "shiok" i.e very satisfied, after setting a fire, although a little afraid.

The decision below

18 At the trial the defence challenged the admissibility of Huang's confessions to the police and SCDF officers on the ground of involuntariness. They also challenged the admissibility of four other statements made by XYZ; namely two cautioned statements (dated 26 September and 5 October 2001) and two long statements (dated 21 September and 2 October 2001). As a result, two separate

trials-within-trial were conducted to determine the admissibility of Huang's and XYZ's statements respectively.

19 At the end of the trials-within-trial, the trial judge ruled that Huang's statements were to be admitted as, in his view, Huang was unable to provide a coherent account of the nature of the threat, inducement or promise that operated on his mind. In respect of XYZ's statements, the trial judge was, however, not satisfied that the statements were made without threat, inducement or promise and refused their admissibility.

20 Huang was determined by Ms Clare Yeo, a clinical psychologist at the Institute of Mental Health and Woodbridge Hospital, to have mild mental retardation, with an IQ of 65 ± 5 . The prosecution adduced the evidence of two psychiatrists, Dr Tommy Tan and Prof Rathi Mahendran, who had examined Huang on various occasions before the trial, to show that despite Huang's low IQ, he was capable of making the statements which he did. The defence, on the other hand, called Ms Sharon Seetoh, Huang's former teacher at the Chao Yang Special School, as a witness. She testified that Huang has poor language skills though his numeric skills are better. He also has difficulties in expressing himself in English, and cannot relate events in the correct sequence due to difficulty understanding the concept of 'before' and 'after'. The trial judge accepted her evidence, being satisfied that it was rational, appropriate and credible. He took the view that Ms Seetoh's evidence was sufficient to raise a reasonable doubt as to whether the statements were true or faithfully recorded. In addition, he found some aspects of Huang's statements must be regarded with caution, for example, it was not explained how a container of petrol could be kept in the void deck of a HDB flat for over a year, without anyone noticing or taking it away. Since the trial judge had doubts as to the reliability of Huang's statements as the sole basis for convicting Huang and XYZ, he acquitted them of the charges.

The issues

21 The prosecution is dissatisfied with the trial judge's decision. Their grounds of appeal can be summarized broadly as follows : -

- (a) that the trial judge had erred in law in his treatment and consideration of Huang's statements after he had found that they were voluntarily made;
- (b) that the trial judge had erred in finding that Huang's low intellect was sufficient to render his statements unreliable, when the totality of the evidence did not support such a finding;
- (c) that the trial judge had erred in failing to consider the overwhelming evidence which warranted a finding that the statements were true and reliable beyond a reasonable doubt;
- (d) alternatively, that the trial judge had erred in finding that XYZ's statements to the police were made involuntarily when this finding was against the weight of evidence.

The Appeal

Manner of treatment of the retracted statements

22 It is well established that the confession of an accused can be relied upon to convict him and any other co-accused implicated in the confession, although it may be subsequently retracted. The court need only be satisfied that first, the confession was voluntarily made and secondly, that it was true and reliable : *Mohamed Bachu Miah & Anor v PP* [1993] 1 SLR 249 and *PP v Rozman bin Jusoh* [1995] 3 SLR 317.

23 In the present case, Huang retracted the incriminatory parts of his statements in court by alleging that he fabricated them, as he was afraid of the police who had interrogated him intensively and deprived him of rest and sustenance. Under cross-examination by the prosecution, Huang stated that paragraphs 1, 2, 4 and 7 of his long statement dated 24 September 2001 were all fabricated but admitted that paragraphs 3 and 6 were the truth. As for paragraph 5, it was said that part of it was the truth while the latter half of it was fabricated.

24 The primary objection of the prosecution in this appeal was directed towards the manner in which the trial judge had treated and considered the statements which he had admitted as voluntarily made.

25 Relying on the case of *Lau Song Seng v PP* [1998] 1 SLR 663, the prosecution argued that since the statements had already been 'tested' in the trial-within-trial and admitted as voluntarily made, the trial judge ought to have found that the statements were, *prima facie*, true and reliable, unless otherwise proven. The specific passage in this Court's decision which the prosecution relied on was as follows :-

Given that the statements were admissible but retracted, we think it unfortunate that the trial judge did not explain how he treated them. We were of the view that regard had to be paid to Foo's explanation of the inconsistencies between his evidence-in-chief and his investigation statements. If he had offered a good explanation, that might have afforded us good cause to reject his statements altogether. However, when asked in cross-examination to explain why his evidence differed from his statements, Foo repeated his allegations that the statements had been involuntarily given. As this assertion had already been rejected by the trial judge and no other explanation was put forth, we had to doubt the veracity of the evidence he gave at trial. *The starting point was therefore that the evidence-in-chief should, prima facie, be treated as less reliable than the investigation statements.* (emphasis by the prosecution)

26 It is important to note that the starting point to be taken is that the statements should merely, *prima facie*, be treated as more reliable, in relation to the accused's testimony at trial. The admission of a statement as voluntarily made did not mean that the statement had achieved an infallible status, as rightly pointed out by the trial judge. A good explanation given at the trial for the retraction of the statements, other than a reiteration of the allegation of the statements being involuntarily made, could afford a good cause for rejecting the statements altogether.

27 Nevertheless, in the present circumstances, Huang had not proffered at trial any explanation, other than repeating what he had said at the trial-within-trial that he was forced to fabricate the incriminating parts of his statements as a result of the treatment he received at the hands of the police. With great respect, in our view, the trial judge had not considered whether such an

explanation given by Huang was credible, especially after taking the view that Huang's account of the threat, inducement or promise was not sufficiently coherent to render the statements involuntary. The starting point that the trial judge should have taken, following the approach in *Lau Song Seng* was, therefore, that Huang's statements ought to be treated as *prima facie* more reliable than his evidence in court. In so far as the trial judge had not done so, he had erred in law in his consideration of the statements. However, it must be reiterated that treating the statements as *prima facie* more reliable than the accused's testimony in court is merely the starting point to take. The trial judge's error in law did not necessarily mean that his final conclusion to place no weight on Huang's statements was wrong, unless it was against the weight of all the evidence before him.

Huang's low intelligence

28 It must be clarified right at the outset that the low intelligence of an accused *per se* would not render his statements unreliable. In the case of *PP v Rozman bin Jusoh* [1995] 3 SLR 317, the Court of Appeal, in dealing with the culpability of an accused person possessing an IQ of 74, held that :

low or subnormal intellect is not unsoundness of mind and is not a defence to a criminal charge, and an educationally subnormal person can be criminally culpable for his actions....'low intellect' and his disposition of being easily susceptible to manipulation by others is not a defence to a criminal charge. Nor can such low intellect and malleable disposition diminish or eradicate the presence of mens rea.

29 This case clearly shows that a person with low IQ is still capable of possessing the requisite mens rea for an offence. We agree with the prosecution that, similarly, the mere fact that Huang was of low IQ did not necessarily mean that he was incapable of giving a reliable statement to the police.

30 The prosecution submitted that the trial judge had erroneously concluded that Huang's IQ of 65 ± 5 affected the reliability of the statements which he gave to the police and the SCDF officers. However, a reading of the trial judge's judgment would reveal that nowhere was it stated that the statements were unreliable merely because Huang had a low intellect.

31 The trial judge was mindful that Huang had not been entirely consistent and had categorically incriminated himself and XYZ in his statements but stated that the issue at hand was whether, notwithstanding the incriminatory statements, Huang had raised a reasonable doubt as to the reliability of those statements. He took the view that the evidence of Ms Seetoh, who was able to testify as to Huang's linguistic ability, was relevant and must be balanced against the evidence of the prosecution witnesses who had examined Huang and testified that he was able to relate events in a chronological order and furnish the level of coherence contained in the statements.

32 The prosecution, nevertheless, further argued that the trial judge erred in choosing to accept without qualification the opinion of Ms Seetoh over the testimony of the experts who had interviewed Huang in the months leading up to the trial. It was contended that, prior to testifying in court, Ms Seetoh's last contact with Huang was in 1997. Given that her evidence was based on her memory of Huang five years earlier, the trial judge should have treated it with some caution. Furthermore, she had been Huang's teacher and it was possible that this might have an impact on the objectivity of her

testimony.

33 We are of the view, however, that the trial judge was entitled to accept Ms Seetoh's evidence over that of the experts. It was entirely a matter of evaluation of the evidence by the trial judge. The trial judge had stated at para 10 of his judgment :

In this regard, I see it as the court's duty to weigh the qualifications and standing of the respective witnesses, the length of time they had in contact with the accused, the length of time when they first and last saw the accused, the circumstances and environment in which the contact was made; and then taking measure of the accused himself in his testimony, and with that assessment, to consider the statements made by him.

34 In addition, the trial judge observed that in spite of Huang's low intelligence, Huang understood most of the questions put to him by his counsel and those under cross-examination. Huang's answers were mostly logical and sensible, but his manner of expression as well as his demeanour revealed, in the trial judge's opinion, a "young and impressionistic mind." It was further stated that his impression of Huang was consistent with Ms Seetoh's testimony as to the mental capabilities of Huang. These were findings of fact by the trial judge, which should not be lightly disturbed, as the trial judge had the opportunity to make an assessment of the credibility and veracity of the witnesses : *Ang Jwee Heng v PP* [2001] 2 SLR 474.

35 Had there been no other evidence before the trial judge, we are of the view that he would have been entitled to find that Huang's limited mental capabilities, as described by Ms Seetoh, were sufficient to displace the *prima facie* reliability of his statements. To this end, we would not be in a position to say that the trial judge was plainly in error in placing no weight on the statements.

36 However, with due respect, the trial judge had failed to consider *all* of the evidence before coming to his conclusion that Huang's statements could not be relied upon. It is the court's duty to attribute the correct and appropriate evidential value to a statement by an accused in the light of the totality of the evidence before it: *PP v Sugianto* [1994] 2 SLR 1. Failure to do so could result in a decision which is against the weight of evidence, warranting intervention by an appellate court.

The Evidence

(a) The fire investigation reports

37 The fire investigation reports were crucial pieces of evidence in this case as they provided information on how the fires at the two markets were started. To recap, in relation to Blk 226 D, the point of fire origin was determined to be at a compressor of a refrigerator found in between stalls no. 110 and 91. It was stated that intense and severe burn marks were found on the wrapping papers near the compressor of the refrigerator. Intense and severe burn marks were also observed on the interior and exterior of the refrigerator as well as on the aluminium shutter near the refrigerator.

38 In his confession recorded on 24 September 2001, Huang described how he and XYZ had gone to Blk 226 Ang Mo Kio, a wet market which had already closed for the day, at about 3.00 to 4.00 am. They dampened some old newspapers found among the stalls with petrol, before lighting them and putting them under a refrigerator in the market.

39 With regard to Blk 341, the fire investigation report revealed that high and severe charring effects were observed on the remains of stall no. 72. Surface and intense burn marks were observed on top of stall no. 91. The area of origin was determined to involve a number of stalls, being stalls no. 70, 71, 72, 77, 78, 79, 80, 89, 90 and 91. Petrol stains were found on one of the metal drain pipes at stall no.91.

40 In the same confession recorded on 24 September 2001, Huang described how he and XYZ had ridden separately to a market. XYZ had the container of petrol with him and had already opened the cap of the container when Huang arrived at the market. Huang related how the both of them had felt very excited and how he had asked XYZ not to hesitate but to pour the petrol at random. They then used Huang's blue lighter to light up some scrap papers and throw them onto the areas stained with petrol.

41 It seems to us that Huang's account of how the fires were started was consistent with the findings in the fire investigation reports. It is important to note that the fire investigation report in relation to Blk 226 D described a *point* of fire origin while that in relation to Blk 341 referred instead to an *area* of fire origin. The origins of fire at both the markets matched accurately the manner in which Huang had described the starting of the fires. We are of the view that such a convergence of evidence could not be easily ignored. Notwithstanding that it was accepted that Huang has linguistic difficulties and may not understand the concepts of 'before' and 'after', it is hard to imagine that he could provide such accurate details regarding the fires, unless he was involved in the participation of the crime himself. In this regard, it must be noted that, during his testimony in court, Huang claimed that he 'fabricated' the stories about setting the fires ie. that he had made them up himself. There was hence no question that the stories had been 'fed' to him by the police to implicate him and even XYZ.

42 We note that in Huang's statement there was actually no specific mention of Blk 341 as the market that was set on fire. Nevertheless, in paragraph 3 of his long statement which he admitted was true, he stated :

On one occasion sometime this year, at about 2.00 to 3.00 am, Ah Huat and I were at *Blk 338 Ang Mo Kio*. This place was near to a 7-Eleven outlet; we have bought some cup noodles which we have heated up in the 7-eleven premises. Ah Huat and I sat at the void deck consuming the noodles and smoking away. We have not planned what to do than. After sometime, we decided to ride to a *nearby market* which is behind a *Police Post*. We went into the market which was already closed for business for the day.[emphasis added]

43 An examination of the sketches of the location map and of the site plans, which were admitted into evidence, shows that the only wet market in the vicinity of Blk 338 Ang Mo Kio and Teck Ghee Neighbourhood Police Post was Blk 341 Ang Mo Kio. There was therefore no doubt that the market set

on fire referred to in Huang's long statement was Blk 341.

(b) Visits to the fire scenes

44 The other evidence corroborating aspects of Huang's statements would be the evidence of the SIO Sabil Juni, who testified that Huang was the one who had led them to the scene of the crime on 25 September 2001. His evidence was corroborated by two other escorting officers, Cpl Koh Boon Yang and former Sgt Raymond Wong. Sgt Wong gave evidence that he was the driver of the patrol car in which they were seated and that he had to pull over once or twice in order to wait for Huang's instructions.

45 The officers testified that Huang had led them to Blk 338 and stopped in front of a coffee shop. Huang then pointed generally in the direction where he and XYZ had started the fire as, at that time, Blk 341 had already been demolished and was undergoing reconstruction. Subsequently, Huang led the police officers inside the market at Blk 226D. Initially, he could not recall where he had started the fire. As they were nearing the end, he pointed out that he started the fire somewhere at the end of the market.

46 On 8 October 2001, XYZ had, independently, led the same group of police officers to the scenes of the fires. XYZ had also stood in front of the same coffee shop at Blk 338 and told them that it was somewhere near the coffee shop that he had started the fire. It was the evidence of the police officers that at Blk 226D, XYZ had brought them to the end of the market and pointed to a few stalls there, informing them that that was the place where he had started the fire.

47 It is significant to note that, although the two respondents had separately led the police officers to the scenes of the crime, their accounts of where the fires were started were consistent with each other.

(c) Confession to the SCDF officers

on 21 September 2001, informing them that a suspect had confessed to setting fires at the Ang Mo Kio markets. The defence case was that the SCDF officers already had pre-conceived conclusions in mind by the time they interviewed Huang on 27 September 2001 and, as such, the interview could have been conducted in a manner aimed at validating those pre-conceived conclusions. Even though the trial judge did not state precisely how he dealt with the evidence of the SCDF officers with respect to Huang's oral confession, it would appear that he accepted the defence's arguments and hence did not give any weight to their evidence. It was stated at paragraph 7 of his judgment that "the officers appeared to me to be p

48 The interview with Huang conducted on 27 September 2001 by the SCDF officers was for the purposes of collating an arsonist's profile for their database. It was the evidence of the SCDF officers that they had introduced themselves as fire investigation officers from the SCDF and that Huang had understood the purpose of the interview. Huang's demeanour during the interview was normal and sometimes cheerful. The SCDF officers testified that no leading questions were used to elicit any information from Huang, who volunteered freely details such as how, where and when he and his 15

year-old partner had set the fires at the markets. According to the SCDF officers, he had even told them that there was no rationale for what he was doing and that sometimes he felt "shioh" after setting a fire, although a little afraid.

49 The trial judge admitted Huang's oral confessions to the SCDF officers as voluntarily made at the end of the trial-within-trial. It was revealed during the cross-examination of Captain Azmi bin Adam that the team of SCDF officers who interviewed Huang had actually received a call from the police leased with the prospect of collating data from an arsonist for their 'arsonist profile' data-pool that it did not occur to them that the 'arsonist' had not yet been convicted".

50 From an examination of the notes of evidence, there is, however, nothing to suggest that the police officers had shared information on the many specific details in Huang's police statements with the SCDF officers. No doubt, the interview to collate information for their 'arsonists' profile' should have been more appropriately conducted at a later stage i.e after the trial. Nevertheless, this should not detract from the voluntariness and veracity of the confession made by Huang to the SCDF officers. The integrity and credibility of the SCDF officers were not in challenge. There was also no allegation by the defence that there was a conspiracy between the SCDF and the police officers to implicate Huang and XYZ in the offences. Indeed, there was no proper or rational basis for the trial judge to suppose such a conspiracy.

51 The prosecution also pointed out to us that, although the thrust of the defence case put to the SCDF officers was that they had asked leading questions to validate their pre-conceived conclusions, it was Huang's own evidence that he had not admitted to any offences to the SCDF officers but had just 'pointed out randomly' on the sites of the fires a map which was shown to him by the SCDF officers.

(d) Confession to the psychiatrists

52 Professor Rathi Mahendran gave evidence that during her first interview with Huang on 4 October 2001 at the Institute of Mental Health, Huang had told her that a person named "Ah Huat" had been involved with him in the fires. Huang further told her that he blamed "Ah Huat" for setting the Ang Mo Kio market fires and related how he had gone to the Esso petrol station with him to buy petrol. There was evidence that "Ah Huat" referred to XYZ as, according to Prof Mahendran, Huang had also told her that "Ah Huat had already been caught by the police, and was in remand in a boys' home". It was not in dispute that XYZ was arrested on 20 September 2001 and was remanded in the Singapore Boys' Home from 22 September 2001 onwards.

53 Huang had also told Dr Tommy Tan, who examined him on 22 February and 1 March 2002, that XYZ was involved in setting the fires, even though he denied doing so himself. We considered that the obvious reason for Huang to deny committing the offences was that by that time, he had decided to change his tune and claim innocence. In fact, by the time of the trial, he had changed his tune even further and was claiming that both he and XYZ were innocent and that he had fabricated their entire involvement in the offences.

54 The trial judge had held that the only direct evidence against the respondents was Huang's confessions to the police and the evidence was insufficient to convict them of the charges. That is not so. In the present case, there was not one but four separate occasions when Huang had admitted to the offences of setting fires to the two markets. Besides the s 121 and s 122(6) statements, there was also Huang's visit to the scenes of crime with the police. In addition, he had admitted to the offences during his interviews with the SCDF officers and Prof Mahendran respectively. We observe that he was able to point out to the police officers where the fires were started and that at every stage of his confessions, he was able to provide specific details as to how they had started the fires. He also surrendered a lighter to the police, claiming that he used it for setting fires. Moreover, there was the evidence in the form of the fire investigation reports, which corroborated strongly with what Huang had told the police in his s 121 statement. We are satisfied that these independent and corroborative evidence prove the reliability of the statements which Huang had given to the police.

The contents of the statements

55 The trial judge was also concerned with certain aspects of the statements given by Huang to the police. He was of the view that they must be regarded with some caution and that there were reasonable doubts raised as to the reliability of the contents of the statements :

First, it was not explained how a container of petrol could be kept in the void deck of an Housing Development's flat for over a year without someone else, a cleaner, for instance, taking it away. The actual spot where it was kept was not known. Furthermore, some questions that arise naturally from the statements were not answered. First, why would two young and jobless boys spend \$10 on petrol to use as an accelerant when cheaper alternatives such as kerosene could more easily and readily be purchased? Secondly, why would the accused confess to a crime which occurred more than a year ago and without any other evidence confronting him? Finally, as Mr Wong pointed out, there was no corroborative evidence that the first and second accused knew each other during the times of the two fires. Indeed, the evidence is to the contrary. I am left with some doubt as to whether this was the duo (if indeed the fires were caused by a pair of arsonists) who set fire to the two markets.

56 However, to our minds, it is not apparent that the contents of Huang's statements were such that the court could not rely on them to any extent. No doubt, it was strange that a container of petrol could have been left at a HDB flat's void deck, for over a year, without anyone noticing or removing it. Nevertheless, this should not affect the reliability of Huang's statements, which are sufficiently corroborated by the fire investigation reports that petrol was found at the area of fire origin at Blk 341. Although it was accepted that Huang has linguistic difficulties, we observe that he had given a very consistent account of *petrol* being used in the fires in his statements. Moreover, Huang had at no time given a precise location as to where the container of petrol had been kept. It was not entirely inconceivable that it could have been stored at a HDB void deck without detection since this very much depended on the place where it was actually stored, as rightly pointed out by the prosecution. As to why kerosene, which could more easily and readily be purchased, was not used instead, was really anybody's guess. It was entirely too speculative for the trial judge to say that the two respondents, being young and jobless, should have preferred kerosene over petrol.

57 Furthermore, it is not always necessarily true that an accused would not confess to a crime without being confronted by evidence. An accused can confess to a crime for a whole variety of reasons and in a situation like the present one, a spontaneous confession on the part of the accused in the absence of being confronted by evidence could, equally, show a guilty mind. It was not disputed that Huang was originally being investigated for a fire set on a motorcycle on the 6 September 2001. Sometime after his arrest, he had confessed to SIO Sabil Juni that he and his friend were responsible for the fires at the two markets in Ang Mo Kio. He had then consistently maintained that confession up till the time of his first interview with Prof Mahendran on 4 October 2001. It is to be reiterated that he had not alleged that the police had forced him to confess to the offences. It was his own evidence that he had fabricated and concocted the stories because he was afraid of the police. However, the police were not investigating him initially for the fires at the markets. In fact, there was evidence that the investigating officer had not even known of the fires until he was informed by Huang. In our view, Huang had not offered a reasonable explanation for his 'fabrication'. As such, we came to the conclusion that it must be the truth when he told the investigating officer of his participation in setting the fires at the markets.

58 As for whether the two respondents had in fact known each other during the material times when the fires were set, both of them had claimed during the trial that they had known each other only about one month prior to Huang's arrest on 10 September 2001.

59 During her testimony in court, Huang's mother, Mdm Chew Ah Moi, was asked when she had become aware that her son was going out with XYZ. She replied "June 2001". However, during cross-examination by the prosecution, she admitted that she would not really know whether Huang had been associating with XYZ much earlier than June 2001. Lee Bing Qing, a friend of XYZ, testified that she had first met XYZ in May 2001 and that, whenever she saw XYZ, she would see Huang with him. Their evidence clearly showed that the two respondents' claim that they had only known each other for one month prior to Huang's arrest was untrue. We are of the view that, in any event, the weight of the evidence in this case proved clearly that Huang had already been acquainted with XYZ at the times of the fires.

Judgment

60 For all the reasons given above, we are satisfied that Huang's statements were true and reliable. As such, we find it unnecessary to deal with the prosecution's alternative ground of appeal that the trial judge had erred in finding that XYZ's statements were involuntarily made. It is well established that the statements of an accused can be used for the purposes of proving the guilt against a co-accused : *Chin Seow Noi v PP* [1994] 1 SLR 135. In our opinion, the trial judge's acquittal of the two respondents was plainly against the weight of the evidence and we accordingly allow the appeal and convict both respondents.

61 With regard to sentence, committing mischief by fire is a very serious offence, and a person convicted of it under s 436 can be punished with imprisonment for life. In the two cases, they resulted in serious damage to property. In fact, the damage to Blk 341 was such as to require complete reconstruction of the market. In our considered opinion, taking into account the gravity of the offences, the public interest element and the personal circumstances of Huang including his previous conviction, it is appropriate to sentence him to five years' imprisonment on each of the two

charges, the sentences to run consecutively, totalling ten years. The sentencing of XYZ will be postponed, pending a report on the suitability of a sentence of reformatory training.

Copyright © Government of Singapore.